

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

Project No. 77-318 – California  
Potter Valley Project  
Pacific Gas and Electric Company

October 4, 2023

VIA FERC SERVICE

Stephanie Maggard  
Pacific Gas and Electric Company  
300 Lakeside Drive  
Oakland, CA 94612

Subject: Request for Additional Information – Amendment of Minimum Flow  
Requirements

Dear Ms. Maggard:

This is in response to your request for a long-term variance of the minimum flow requirements at the Potter Valley Project No. 77, filed with the Federal Energy Regulatory Commission (Commission) on July 31, 2023. Ordering paragraph (C) and license Article 52 of the Commission's January 28, 2004 Order Amending License<sup>1</sup> requires that you implement the National Marine Fisheries Service's (NMFS) Reasonable and Prudent Alternative (RPA).<sup>2</sup> Among the requirements of the RPA, you are required to implement a series of minimum flow requirements at the project based on the season, water year type, and environmental conditions.

In your filing, you request a long-term variance of the minimum flow requirements beginning in 2024 until project decommissioning, which you are planning to initiate by January 2025 with the filing of a surrender application. Due to your request for a continuing variance until such a time as the project is surrendered, Commission staff have determined that your request constitutes an amendment to your project license. As

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<sup>1</sup> 106 FERC ¶ 61,065.

<sup>2</sup> *Ibid.* at Appendix A.

such, Commission staff require additional information to complete our review of your application. Therefore, we are requesting additional information as outlined below.

1. As stated in 18 CFR 4.201(c), any request for a non-capacity license amendment must include those exhibits that would be revised as a result of the proposal. This includes an exhibit E, or Environmental Report, that would analyze those potential effects from the proposed amendment. In your filing, you provide a brief review of potential effects to fishery resources in the Eel and East Branch Russian rivers, as well as a short discussion of impacts to water quality and quantity at the project that would result from the proposed amendment.

In order for Commission staff to complete its review the potential impacts of the proposed license amendment, please provide an assessment of impacts to all resources impacted by the proposed amendment in an Exhibit E, including but not limited to: geology and soils; water quantity (including effects to available water for consumptive uses and agriculture in the East Branch Russian River); water quality (including effects to water temperature in the Eel River and East Branch Russian River with and without the proposed amendment); aquatic resources (including impacts to resident fish species, macroinvertebrates, amphibians, and reptiles); terrestrial resources; threatened and endangered species (discussed further in paragraphs 2 and 3 below); recreation resources (including impacts to recreation resources at Lake Pillsbury, Eel River, and East Branch Russian River); cultural and historic resources; land use and aesthetic resources (including a discussion of impacts to shoreline development at Lake Pillsbury); and any impacts to communities with environmental justice concerns. If any of the foregoing resources are not impacted by the proposal, the Exhibit E should contain a statement of no effect for resources not affected by the proposed amendment.

2. Review of your proposal indicates that the action area in both the Eel River and East Branch Russian River includes known ranges for federally-listed terrestrial and aquatic species under the Endangered Species Act (ESA) that are under the jurisdiction of the U.S. Fish and Wildlife Service (FWS). Please describe what impacts may occur to species under the FWS' jurisdiction. If you anticipate effects to federally-listed species under the purview of the FWS, please provide an applicant-prepared biological assessment (BA) that provides an account of effects to species under the purview of the FWS. To facilitate development of a BA, you may consider requesting Commission approval to be designated as the Commission's non-federal representative for the purpose of informal consultation with the FWS, including development of a BA.

Alternatively, if you do not anticipate any effects to federally-listed species under FWS' jurisdiction, your proposal should contain a statement of no effect for these species and your supporting rationale.

3. Similarly, you provided a brief review of potential impacts to federally-listed salmonids under the ESA. As stated in your summary of environmental effects, you anticipate a reduction in available habitat and increased water temperatures below Scott Dam as a result of your proposal. Due to the potential effects to these species under the jurisdiction of the National Marine Fisheries Service (NMFS), Commission staff anticipate that it will need to conduct formal consultation with NMFS under section 7 of the ESA. Formal consultation will include submittal of a BA, providing an account of any potential effects to federally-listed species under NMFS' jurisdiction. Therefore, please provide an account of these effects in an applicant-prepared BA. To facilitate the development of an applicant-prepared BA and determining the effects of the proposed amendment, you may consider requesting Commission approval to be designated as the Commission's non-federal representative for the purpose of informal consultation with NMFS.
4. In your filing, you also state that additional diversions may be allowed to the East Branch Russian River when Lake Pillsbury is spilling and all targeted environmental conditions (as determined by the resource agencies) are satisfied in the Eel River. You further explain that the resource agencies would develop initial guidelines to submit to the Commission by November 30, 2023 for minimum flow thresholds for spill diversions to commence and end, as well as associated ramping rates. You also explain that you may develop an alternative diversion prescription based on agency guidelines which would be implemented upon resource agency review and approval. Finally, you state that these guidelines may be refined in subsequent years based upon mitigation monitoring efforts, and that you would inform stakeholders of possible discretionary diversion, which would be included in the forthcoming guidelines filed with the Commission by November 30, 2023.

It is not possible to ascertain from your description of the forthcoming guidelines whether they are a departure from the existing license conditions or whether they would constitute best management practices to further reduce environmental impacts. In either scenario, Commission staff are unable to review the potential effects to environmental resources of these forthcoming guidelines or subsequently act on your proposed amendment until these parameters have been defined, reviewed by the agencies, and filed with the Commission for review. Therefore, we request that you accelerate the

development of these guidelines in consultation with the resource agencies and file them with the Commission in order to accelerate Commission action on your amendment request. Alternatively, you may consider removing this element from your proposal or further clarifying the nature of the forthcoming guidelines and whether they represent a fixed protocol that is outside of the requirements of your project license.

5. You explain that in order to allow flexible management of Lake Pillsbury water storage, minimum instream flows may be further modified beyond the parameters of the proposed amendment annually upon written agreement between you and the resource agencies. If flow regimes are further modified, you would notify the Commission within 30 days of reaching an agreement, or no later than May 1 of each year. In such a scenario, you would implement the revised flow regime, unless you receive a response from the Commission within 15 days.

While Commission staff are not necessarily opposed to adaptive management or dynamic water management, your proposal would result in flow adjustments beyond those analyzed as part of this proceeding and may have adverse effects on environmental resources, including those under purview of the ESA, Clean Water Act, and other federal statutes. Your proposed 15-day turnaround time would also not allow adequate time for Commission staff to review the proposed changes, fulfill its obligations under federal statutes, and take action on the proposed operational changes. Rather, any one-time or annual adjustment to an existing license requirement would be better suited as a request for a temporary variance of your project license. Therefore, this element of your proposal should be removed or modified in a such a way that the parameters for additional flow modifications are clearly defined and analyzed in your exhibit E.

6. In your filing, you state that you would manage the amount of water diverted into the East Branch Russian River in consultation with the Drought Working Group (DWG). In a separate August 25, 2022 letter, you also defined the then-current DWG members. Please verify that the provided list remains current or update the entities that will be included in the DWG and why each stakeholder affected by your proposal is included or excluded from the DWG.
7. Finally, you provided documentation of consultation with the California Department of Fish and Wildlife (California DFW), NMFS, FWS, and Round Valley Indian Tribes on your proposed amendment. Your filing indicates that California DFW, NMFS, and the Round Valley Indian Tribes are supportive of

your proposal. As a matter of policy, the Commission requires that applicants consult with all parties that would be directly affected by proposed amendments, including private entities affected by the proposal. Review of your proposal indicates that you did not conduct consultation with all downstream stakeholders affected by changes in water quantity, including those that rely on water from the East Branch Russian River, such as the Potter Valley Irrigation District (PVID). Therefore, you must provide documentation of consultation with all project stakeholders directly affected by your proposal, including the PVID.

Relatedly, pre-filing consultation is required for all agencies that have any nexus with environmental matters over which an agency has jurisdiction. Review of your filing does not indicate that you consulted with the California State Water Resources Control Board (California SWRCB) on your proposal. Under Section 401 of the Clean Water Act, a water quality certification is required for any action that may result in a change in discharge or have a material adverse impact on water quality at the project. Accordingly, please consult with the California SWRCB to determine if a water quality certification is necessary for the proposed amendment and if so, please complete the application process and file a completed certification with the Commission. Alternatively, if a water quality certification is not required, please provide documentation of consultation from the California SWRCB indicating that certification is not necessary.

Please provide the requested information as soon as practicable. The Commission strongly encourages electronic filing. Please file the requested information using the Commission's eFiling system at <https://ferconline.ferc.gov/eFiling.aspx>. For assistance, please contact FERC Online Support at [FERCOnlinesupport@ferc.gov](mailto:FERCOnlinesupport@ferc.gov); call toll-free at (866) 208-3676; or, for TTY, contact (202) 502-8659. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P-77-318.

Please also note that due to the wide range of potential effects from your proposed amendment and public interest in the project, Commission staff will also be issuing a public notice of your application, inviting comments, interventions, and protests. This process may identify additional resources potentially affected by the proposed license amendment. Consequently, Commission staff may request additional information from

you, depending on the extent of existing information available on the project record and concerns raised by potential stakeholders.

Thank you for your cooperation. If you have any questions regarding this matter, please contact me at (415) 369-3335 or [john.aedo@ferc.gov](mailto:john.aedo@ferc.gov).

Sincerely,

John Aedo  
Fish Biologist  
Division of Hydropower Administration  
and Compliance