



20 May 2014

To: Honorable Kimberly D. Bose  
Secretary  
Federal Energy Regulatory Commission

Subject: Request and Justification for Expedited FERC License Issuance

Re: FERC Project No. 12496, Lassen Lodge Hydroelectric Project, Rugraw, LLC.

Following is a discussion and related documentation on the timing of Federal tax credits planned for and required for the financial viability of the Lassen Lodge Hydroelectric Project (LLHP) as well as the California Public Utilities Commission (CPUC) mandated contract terms for the Renewable Auction Mechanism (RAM) Power Purchase Agreement (PPA) entered into between San Diego Gas & Electric Co. (SDG&E) and the Applicant, Rugraw, LLC, for the project power sales off-take. The time limitations required to take advantage of the Federal Tax Credits before they expire and to meet the SDG&E/CPUC Renewable Auction Mechanism PPA terms leads to the desire for the project to be fully licensed and permitted to allow for field construction work to commence by Mid-April 2015, thus leading for this request and justification for expedited FERC license issuance while still maintaining all mandatory licensing statutory comment periods.

The Lassen Lodge Hydroelectric Project financial viability relies on being able to take full advantage of the 30% Federal Tax Credit known as the Investment Tax Credit (ITC) under Internal Revenue Code Section 26 USC § 48. This section was most recently amended by H.R. 8, the American Taxpayer Relief Act of 2012.

To qualify for the ITC, the Lassen Lodge Hydroelectric Project first qualifies for the Federal Production Tax Credit (PTC) under Section 26 USC § 45 that was most recently amended by H.R. 8, the American Taxpayer Relief Act of 2012.

Per 26 USC § 48, the taxpayer is allowed, and the Lassen Lodge Project plans to make, a one-time election to utilize 26 USC § 48, ITC, in lieu of Section 26 USC § 45, PTC, in the first year the credit is taken, provided, however, that the project meets all of the requirements of 26 USC § 45 including “continuous construction” commencing prior to January 1, 2014 and also meets all of the requirements of 26 USC § 48, including commercial operation by December 31, 2016 in order to qualify for the tax credit.

IRS Notice 13-29, further clarified by Notice 13-60, describes the very project time-frame and requirements scenario that applies to the Lassen Lodge Hydroelectric Project – must commence “continuous construction” by December 31, 2013 to qualify for the PTC and must be in commercial operation by December 31, 2016 to qualify for one-time election to use the ITC in lieu of the PTC.

To meet the definition of “continuous construction” pursuant to 26 USC § 45, PTC, the Lassen Lodge Project has preceded prior to December 31, 2013 with custom hydroelectric turbine and electrical transformer manufacturer orders for these critical project long-lead delivery equipment requirements.

## ***RUGRAW, LLC***

Also, the project has proceeded with a California Independent System Operator (CAISO) Transmission Interconnection process commencing on March 31, 2012. The Small Generator Interconnection Agreement (SGIA) was signed on May 23, 2013, and, based on the progress of the Interconnection design and construction by the Transmission Operator (TO), Pacific Gas & Electric Co. (PG&E), the initial availability grid interconnection date is March 31, 2015. This is a very time-consuming and expensive process all by itself, but is now well underway and there are no technical issues that haven't already been resolved, and permitting and financing are the only final requirements that are required in order to authorize the completion of this work to meet the project Commercial Operation Date (COD).

The Lassen Lodge Hydroelectric Project has been awarded a Power Purchase Agreement contract by San Diego Gas & Electric Co. via the California Public Utilities Commission Renewable Auction Mechanism in the RAM IV procurement. This contract was awarded to replace the initial PPA contract that was initially awarded in RAM II, but was replaced with the current RAM IV contract to allow more time for project permitting and completion.

The SDG&E PPA is based on specific contract language mandated by the CPUC. One of the CPUC absolute requirements is that the project delivers Renewable Green Energy towards meeting the State of California Air Quality Improvements mandated by California Assembly Bill 32 (AB 32) and California Senate Bill X1-2 (SB X1-2) and be in full Commercial Operation Date (COD) within 24 months of the approval by the CPUC of the PPA between the Buyer (SDG&E) and the Seller (Lassen Lodge Hydroelectric Project). The RAM IV PPA was approved by the CPUC via SDG&E Advice Letter 2547-E with an effective date of December 23, 2013. Thus, the contract COD is set to December 23, 2015. There is a One-Time six month delay allowed per the PPA contract for delays to the project such as permitting delays, so, if a delay was warranted, applied for and granted by SDG&E, the COD could possibly be as late as June 23, 2016. In order for the CPUC to push for the Green Renewable Energy be delivered to the citizens of the State of California in a timely manner to meet the goals of the State, there is no Force Majeure relief or other ability for the contract COD to be extended for a reason of Governmental Approval (i.e. permitting) delays. The presumption by the CPUC is that 24 months should be sufficient to design, permit, construct, interconnect and deliver COD for a project.

One of the challenges of building a hydroelectric facility in and adjacent to the South Fork of Battle Creek is to design and organize the project to minimize the soil run-off into the stream related to Construction, Operation and Maintenance activities. One of the ways to assist in doing this, is to do the excavation work – for the pipeline, penstock and powerhouse – in the late spring, summer and early fall time-frame so as to be during periods of low historic rainfall and runoff. It would not be prudent or feasible to attempt to construct these “excavation and backfill” required activities during the heart of the rainy season. Also, the minimal in-stream work required for the LLHP diversion structure will be accomplished at the lowest period of historic streamflow in the late summer and early fall. The practical limitations on the time that excavation related construction can take place “generally” to Mid-April to Mid-October require that the predominant amount of work on the project be done in the late spring through mid fall.

## ***RUGRAW, LLC***

There is a delicate balancing act to coordinate timing of the design, permitting, material procurement, construction, interconnection, tax strategy, financing and operation of a Renewable Energy Project like the Lassen Lodge Hydroelectric project.

Thus, in order to meet the SDG&E/CPUC PPA COD deadline within the confines of the IRS PTC and ITC requirements to commence continuous construction by December 31, 2013 (which the LLHP has done) and to complete the project and be in commercial operation by December 31, 2016, have a viable power off-take agreement PPA with a COD date of December 23, 2015 and be financeable so that it can be constructed, the project desires to have secured all required licenses and permits to have the ability to commence field construction work in spring of 2015 – no later than Mid-April 2015 ideally.

If COD is not delivered within the contract COD of December 23, 2015, as potentially extended to June 23, 2016, the PPA is automatically terminated per the CPUC rules designed to deliver the Renewable Green Energy to the marketplace timely to meet the State of California's legislative and executive branch goals. The challenge with targeting the June 2016 latest COD date, the excavation work and instream work still has to be completed predominately by the fall of 2015 because of the limited time in 2016 to do the required excavation and instream work, thus the desire to have all licenses and permits issued such that a mid-April 2015 field construction commencement could be achieved. If the PPA is terminated due to late delivery of COD, the development deposit of \$450,000 supplied by the Lassen Lodge Hydroelectric Project would be forfeited to SDG&E, all of the additional development, interconnection and procurement expenses of the project would be lost, the project will be bankrupt and would not get constructed, and the Green Renewable Energy goals of the project, of the Federal Government and of the State of California would not be met and this opportunity for Green Renewable Energy would be lost.

Rugraw, LLC, as the applicant for the FERC license, has worked diligently to provide a thoughtful and comprehensive Final License Application (FLA) working closely with the primary environmental consultant, Tetra Tech, and well as other highly qualified specialists. Our hope and desire is that if there are any questions, clarifications, requests or recommendations related to the contents of the FLA that any of the agencies, groups or individuals may have about the application that the applicant be informed of such item(s) now and the applicant be given an opportunity to respond to such items and to supplement the application prior to the June 20, 2014 end of comment period. This would allow all agencies, groups or individuals to have all of the elements they desire included in the FLA yet not have additional information requests upon June 20 thus allowing the license application process to move forward to the next step and not necessitating another statutory comment period. Collaboration with all parties to provide any additional information desired prior to the June 20<sup>th</sup> comments deadline will allow all comments to be heard, allow all mandatory statutory license periods to be maintained and yet allow the additional comments period to be waived thus moving the project forward to an expedited license issuance to meet the project, Federal and State of California goals to encourage the development of successful Green Renewable Energy by eliminating the need for this duplicative comment period.

As always, please contact anyone on our Rugraw, LLC team or the Tetra Tech team, if you have any questions or comments.

Charlie Kuffner

***RUGRAW, LLC***

Managing Partner  
Rugraw, LLC  
[charlie.kuffner@gmail.com](mailto:charlie.kuffner@gmail.com)  
415.652.8553

Jim Tompkins  
Vice President of Operations  
Rugraw, LLC  
[h2owiz@sbcglobal.net](mailto:h2owiz@sbcglobal.net)  
530.246.0103  
530.949.8284

Phillip Leaply  
Senior Project Manager  
Tetra Tech  
[Phillip.Leapley@tetrattech.com](mailto:Phillip.Leapley@tetrattech.com)  
916.853.4505  
916.284.8512

Encl: Internal Revenue Code Section 26 USC § 45, PTC;  
Internal Revenue Code Section 26 USC § 48, ITC;  
IRS Notice 13-29;  
IRS Notice 13-60;  
SDG&E Advice Letter 2547-E (as approved by the CPUC with template PPA contract form)

CC: Jim Tompkins – Rugraw, LLC;  
Phillip Leaply – Tetra Tech