

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Rugraw, LLC) **Project No. 12496**
) **(Lassen Lodge Hydroelectric Project)**

LATE MOTION TO INTERVENE OF PACIFIC GAS AND ELECTRIC COMPANY

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214), and the Commission's August 28, 2014 Notice Of Application Accepted For Filing And Soliciting Motions To Intervene And Protests in this proceeding ("Notice"), Pacific Gas and Electric Company ("PG&E") hereby moves for late intervention in the above-captioned proceeding pertaining to Rugraw, LLC's ("Rugraw") April 21, 2014 application for license for the Lassen Lodge Hydroelectric Project No. 12496 ("LL Project"). For the reasons discussed below, the Commission should grant PG&E's late motion to intervene in this proceeding.

COMMUNICATIONS

All pleadings and other correspondence regarding this motion and this proceeding should be sent to the persons listed below, and such persons should be placed on the official service list maintained by the Commission's Secretary for this proceeding:

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BACKGROUND

The LL Project would be located on the South Fork Battle Creek about 1.5 miles west of Mineral, California, in Tehama County. The LL Project would include a diversion dam at River Mile (“RM”) 23, an intake, a 7,258-foot-long pipeline feeding a 5,230-foot-long penstock, a 50 by 50-foot powerhouse containing a single turbine/generating unit with a capacity of 5.0 megawatts and an integral tailrace, and a concrete box culvert from which Project discharges would return to the South Fork Battle Creek. The LL Project’s bypass reach would be approximately 2.4 miles-long. The LL Project would be operated as a run-of-river project. Rugraw proposes to provide a minimum flow of 13 cubic-feet-per-second (“cfs”) to the bypass reach, with all flow greater than 13 cfs diverted by the LL Project’s intake up to the maximum capacity of the turbine (95 cfs). Rugraw also proposes to follow a 30% of existing stream flow per hour ramping rate. The Project would also include a 12-mile-long transmission line interconnecting with a PG&E transmission line.

PG&E is the licensee of the Battle Creek Hydroelectric Project No. 1121 (“Battle Creek Project”), located on the mainstem Battle Creek and the North and South Forks of Battle Creek. *See* 56 FPC 994 (1976). The Battle Creek Project includes three diversion structures on the South Fork Battle Creek downstream of the proposed location of the LL Project: the Coleman Diversion Dam, the Inskip Diversion Dam, and the South Diversion Dam.

As the Commission is aware, PG&E is participating in a cooperative endeavor with state and federal agencies and non-governmental groups pursuant to a 1999 Memorandum Of Understanding (“MOU”) to restore self-sustaining populations of Chinook salmon and steelhead and their habitat in the Battle Creek watershed (the Battle Creek Steelhead and Salmon Restoration Project (“Restoration Project”). The Restoration Project has been divided into three

separate phases: Phase 1A; Phase 1B; and Phase 2. The Commission has already approved Phase 1A (*see Pacific Gas and Electric Co.*, 128 FERC ¶ 62,135 (2009)) and Phase 1B (*see Pacific Gas and Electric Co.*, 131 FERC ¶ 62,166 (2010)). PG&E is currently in the process of preparing the license amendment application to implement Phase 2. The Restoration Project includes, *inter alia*, modifications to nine dam sites at the Battle Creek Project, including installation of fish passage facilities and removal of facilities, increases in minimum flows, and the rerouting of flows. Under the MOU, the Restoration Project, and the license for the Battle Creek Project, PG&E is required to maintain specified minimum instream flows past all three diversion structures and to comply with a strict ramping rate requirement (0.1 ft/hr).¹

The August 28, 2014 Notice established October 27, 2014, as the due date for motions to intervene.

DISCUSSION

The Commission should grant PGE's late motion to intervene in this proceeding.

First, PGE clearly has an interest that will be directly affected by the outcome of this proceeding. Operation of the LL Project could adversely affect the ability of PG&E to comply with the minimum instream flow and ramping rate requirements at its downstream Coleman, Inskip, and South Diversion Dams on the South Fork Battle Creek. For example, if Rugraw follows a 30% of flow per hour ramping rate during project shutdowns and startups as it proposes, PG&E may be unable to comply with the mandated 0.1ft/hr ramping rate requirement at its downstream facilities. Further, if Rugraw down-ramps flows pursuant to the 30% criterion, there may be insufficient water available for PG&E to meet the minimum instream flow

¹ The minimum instream flow requirements are specified in Article 33(a) of the Battle Creek Project license, while the ramping rate provision is set forth in Article 33(d). *See* 128 FERC ¶ 62,135 at pp. 64,336-338.

requirements at its downstream Diversion Dams. Thus, operation of the LL Project could adversely affect PG&E's ability to comply with its license for the Battle Creek Project, the MOU, and important elements of the Restoration Project. Not only does this jeopardize PG&E's compliance record with respect to the Battle Creek Project license, but it could adversely affect the fishery resources PG&E agreed to promote and protect in the MOU and Restoration Project. PG&E notes that it has an additional interest in this proceeding given that Rugraw proposes to interconnect the LL Project's transmission line with PG&E's 50-kV Volt-South transmission line.

Second, given that PG&E is the licensee of the Battle Creek Project and is responsible for complying with all requirements of the license for that Project, including those associated with the MOU and the Restoration Project, PG&E's interest in this proceeding cannot be adequately represented by any other entity.

Third, since PG&E's motion to intervene is only 39 days late, PG&E's participation in this proceeding as a party will neither disrupt the proceeding nor cause prejudice to any other party.

Finally, PG&E had good cause for failing to intervene by the October 27, 2014 due date. Specifically, because of scheduling issues and the need to address issues associated with the ongoing drought, PG&E personnel were unable during the intervention period to monitor developments at the Commission that might affect the Battle Creek watershed.

CONCLUSION

PG&E respectfully requests that the Commission grant PG&E's late motion to intervene in this proceeding.

Respectfully submitted,

/s/ John A. Whittaker, IV

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ATTORNEYS FOR PACIFIC GAS AND ELECTRIC COMPANY

Dated: December 5, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the parties designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 5th day of December, 2014.

/s/ John A. Whittaker, IV
John A. Whittaker, IV

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