



FEDERAL LAND DONATION ISSUES WORK GROUP MEETING

May 31, 2013
10:00 a.m. to 12:00 p.m.

<p>Meeting Location: 33 New Montgomery Street, 17th Floor San Francisco, CA</p> <p>Conference Call-In Number: 1-888-550-5602 Code: 0773 5550</p> <p>Contact: Robin Flynn (650) 344-9072</p>

AGENDA

1. Review Proposed Solutions to FPA Issue

- a. Forest Service Proposal to Resolve 4e issues, dated May 21, 2013 (attached)
- b. Stipulation drafted by Richard Roos-Collins, dated April 20, 2013 (attached)
- c. PG&E's proposed alternative giving federal agencies right to manage lands of interest; When nearby hydro operations cease, fee title transferred to federal agencies (See attached April 19, 2013 proposal)

2. Next Steps

- a. Provide work group report to Stewardship Council board regarding progress made and alternatives to donating lands to federal agencies
- b. Follow-up with BLM at state level
- c. Follow-up with federal agency officials in Washington, D.C.
- d. If issue not resolvable, formal communication from federal agencies
- e. Other

Forest Service Proposal to Resolve 4e issues on PG&E Donations

May 21, 2013

The FS can agree to the following to create a framework/agreement that provides PG&E regulatory predictability and limits risks of additional mitigation being imposed on PG&E for any unforeseen issues. These stipulations are:

1. The FS shall not exercise authority under Section 4(e) of the Federal Power Act¹ to open the affected licenses due to the transfer of the parcels listed in table 1 (see example table below)

Project	Project Number	Affected Parcels	License Issuance Date	Licensee Expiration Date
Pit 3, 4, & 5	P-233	Parcel #'s 1, 2, 3, 12, etc.	July 2, 2007	July 2, 2043

2. The FS has required all mitigation necessary for the protection and utilization of the reservation directly attributed to the projects listed in Table 1 during the time of licensing. There are no known issues that would necessitate reopening the license and imposing additional mitigation measures to be implemented under the existing license.
3. If the FS determines that additional mitigation is needed during the formal FERC proceeding for issuance of a new license, the mitigation shall be tied to the effects of the project and shall be objective based and tied to resource outcomes that can be accomplished in the project area and not tied to specific parcels unless there is spatially explicit damage that can only be mitigated at a given location. The FS shall allow PG&E to develop mitigation plans based on collaborative discussion to address the mitigation necessary for the protection and utilization of the reservation.
4. Prior to the FS proposing additional mitigation measures on the licensee on the parcels, the FS must develop the mitigation based on substantial evidence in the FERC record and directly attributable to the actions of PG&E that occur following the transfer of the parcels to the FS.
5. PG&E retains all administrative and legal remedies available to challenge any FS attempts to require mitigation on the parcels.

¹ 16 U.S.C. §§ 797(e) and 803(a)(1)

Pacific Forest and Watershed Lands Stewardship Council

**Proposal to Permit Donations of PG&E's Watershed Lands to Forest Service/BLM
Consistent with 2003 Stipulation's Provision regarding FPA section 4(e) Authority**

April 20, 2013

Before the California Public Utilities Commission (CPUC) approves Pacific Gas & Electric Company's (PG&E) application under Public Utilities Code section 851 to donate a parcel of Watershed Lands to the Forest Service or BLM, the Agency and PG&E will enter into a stipulation (Transfer Stipulation) regarding the exercise of authority to condition PG&E's license for Project [number] under Federal Power Act (FPA) Part I, and specifically, 16 USC § 797(e). The Agency and PG&E may also elect to include the substantive terms in the deed itself.

Definitions

"2003 Stipulation" shall mean: "Stipulation Resolving Issues Regarding The Land Conservation Commitment," as approved in CPUC Decision 03-12-035.

"Agency" shall mean: [USFS or BLM, as applicable for a given transaction].

"FPA 4(e)" shall mean: 16 U.S.C. § 797(e) as may hereafter be amended, and specifically, the provision that "...licenses ...issued within any reservation ...shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation...."

"FPA 4(e) Authority" shall mean the Agency's authority under FPA 4(e) to condition a license for the Project.

"Parcel" shall mean: [specify for each transaction].

"Parcel Transfer" shall mean: the donation of the Parcel by PG&E to the Agency.

"Project" shall mean: [specify for each transaction].

"Reservation" shall mean: [specify for each transaction].

"Watershed Lands" shall mean: those lands subject to the Land Conservation Commitment as provided in the 2003 Stipulation.

Terms

1. If the Agency issues conditions applicable to the Parcel under FPA 4(e) authority:
 - a. The Agency will issue such conditions incident to ordinary licensing proceedings for the Project and not incident to the Parcel Transfer;
 - b. Such conditions will not expand or limit PG&E's obligations, or the rights of others, including the Agency, that would have existed under FPA 4(e) Authority if the Parcel had remained in PG&E's ownership; and
 - c. Any conditions applicable to the Parcel under FPA 4(e) Authority will be for the purpose of adequate protection and utilization of the Reservation. In the Transfer Stipulation, the Agency and PG&E may agree to other provisions to address the Project's direct adverse impacts, if any, on the beneficial uses of the Parcel itself.
2. The 2003 Stipulation and the Transfer Stipulation do not waive or modify the Agency's FPA 4(e) authority applicable to the Parcel. These stipulations, and the Agency's subsequent issuance of conditions applicable to the Parcel under that authority, are intended and will be construed to exercise such authority.

Review of Transfer Stipulation

Before approving a given Section 851 application, the CPUC will determine that the Transfer Stipulation, as well as other transactional terms, are consistent with the 2003 Stipulation. The CPUC will incorporate the terms of the Transfer Stipulation into its order approving the Section 851 application. Further, in any such approval, the CPUC will provide that PG&E may recover in rates the costs of compliance with any valid license condition so imposed.

DISCUSSION POINTS
Potential Structure to Enable Donations of PG&E's Watershed Lands to Forest Service/BLM Consistent with 2003 Stipulation's Provision regarding FPA section 4(e) Authority

April 19, 2013

To facilitate the ultimate donation of certain Watershed Lands to the Forest Service or BLM (collectively, the Agency), each Agency and PG&E would enter into a master License and Management Agreement (LMA) regarding the management of such Watershed Lands, and the terms and conditions under which PG&E would convey fee title to that Agency.

To involve the Agency in Subject Properties in a manner that will not trigger FPA Section 4(e) authority, PG&E is willing to pursue discussions regarding the LMA that includes the following:

1. Property Ownership. The Agency would acknowledge PG&E's continued fee title to Subject Properties and that the rights granted and/or management obligations assumed pursuant to the LMA do not create a reservation in Subject Properties for purposes of issuing FPA Section 4(e) conditions.
2. Management Responsibility. Notwithstanding PG&E's continued fee title to Subject Properties, the Agency would assume full management responsibility for Subject Properties, subject to PG&E's rights for continued operations and ongoing rights and responsibilities as the underlying fee title owner. PG&E would pay real property taxes and assessments on Subject Properties, but otherwise would have no financial or other responsibility or liability for Subject Properties (except with respect to pre-existing hazardous materials).
3. Future Fee Transfer. With approval from the CPUC, PG&E would commit to transfer the fee interest in Subject Properties to the Agency upon termination of all hydroelectric generation uses on, nearby, and/or affecting Subject Properties, as said termination of hydroelectric generation uses is documented in final orders or other decommissioning requirements issued by the FERC and/or other agency(ies) with jurisdiction over PG&E's hydroelectric generation uses on, nearby, or/or affecting Subject Properties.
4. FPA 4(e) Authority. Rights and obligations created in the LMA shall not impair Agency rights and authorities under FPA 4(e). However, in any proceeding challenging a condition which the Agency issues pursuant to FPA 4(e) to require the (a) performance of any measure on Subject Properties or (b) the construction of any facility on Subject Properties, Agency must provide a legal and factual basis for the condition demonstrating that such condition is not solely for the benefit of Subject Properties and is necessary to assure the protection and utilization of the surrounding Agency reservation.
5. Term of Agreement: The LMA would incorporate separate schedules/exhibits for Subject Properties related to each FERC Project License. The term for each schedule/exhibit would be concurrent with the associated FERC Project License and renewable by the Parties to remain concurrent with any new or successor Licenses issued affecting said Subject Properties.
6. Termination Rights: The Agency could terminate the LMA in whole or in part (as it relates to specific schedules/exhibits) for any reason. PG&E could terminate the LMA in whole

or in part (as it relates to specific schedules/exhibits) if the Agency breaches any term of the LMA or challenges the validity or enforceability of any term thereof. Valid termination of the LMA (or any schedule/exhibit therein) would be followed by PG&E encumbering properties subject to such termination with conservation easements in accordance with the 2003 Stipulation.

7. **Deed Restriction:** A Deed Restriction would be placed on Subject Properties limiting development so as to protect the beneficial public values thereon. Said Deed Restriction would be enforceable against PG&E and the Agency by a third party beneficiary. Upon transfer of the fee interest in Subject Properties, said Deed Restriction would be converted to a Conservation Covenant (USFS) or Deed Restriction (BLM), the form of which would be recommended by the Council, accepted by Agency, and incorporated for reference in the LMA.

PG&E and the Agency acknowledge that this term sheet is non-binding and does not contain all the essential terms of the LMA discussed above, and that such essential terms will be the subject of further negotiation.

Definitions

2003 Stipulation: Stipulation Resolving Issues Regarding The Land Conservation Commitment (LCC), as approved in CPUC Decision 03-12-035.

Council: The Pacific Forest and Watershed Lands Stewardship Council.

FPA 4(e): 16 U.S.C. § 797(e) as amended in the future, and specifically, the provision that “...licenses ...issued within any reservation ...shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation....”

FPA 4(e) Authority: The Agency’s authority under FPA 4(e) to condition a license for a project.

Subject Properties: Watershed lands recommended by the Council for donation to an Agency for which PG&E has determined a conflict with the requirements of the 2003 Stipulation may arise from such donation.

Management: With limited exceptions, full responsibility for the oversight, care, and management of land uses and protection of natural resources on Subject Properties consistent with the management protocols applicable to the surrounding Agency reservation.

Reservation: As defined in 16 U.S.C § 796 (3)(2). Specifically including national forests, tribal lands embraced within Indian reservations, military reservations, and other lands and interests in lands owned by the United States, and withdrawn, reserved, or withheld from private appropriation and disposal under the public land laws; also lands and interests in lands acquired and held for any public purposes; but excluding national monuments and national parks; .

Watershed Lands: Lands subject to the LCC per the 2003 Stipulation.