

## MEETING OF THE BOARD OF DIRECTORS OF THE MERCED IRRIGATION DISTRICT

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DATE:

July 1, 2014

SUBJECT:

The Board will review and consider authorizing execution of a purchase and sale agreement between the Pacific Gas and Electric Company (PG&E, or the seller) and the District (the purchaser) regarding the Redacted and authorizing other actions relating to or necessary to implement the purchase and sale agreement, as well as consider adopting a Notice of Exemption from the California Environmental Quality Act (CEQA) relating to the proposed purchase.

RECOMMENDED ACTION:

Staff recommends that the Board adopt Resolution No. 2014-xx, which authorizes execution of a purchase and sale agreement for the purchase by the District of Redacted and authorizes other actions relating to or necessary to implement the purchase agreement, and adopts a Notice of Exemption relating to the proposed purchase.

BACKGROUND & DISCUSSION:

*Purchase and Sale Agreement*

District staff was recently approached by representatives of PG&E regarding the District's possible interest in purchasing Redacted which is owned by PG&E and operated under a license issued by FERC. Redacted is PG&E's hydroelectric power project on the Redacted Redacted

Redacted The project has a hydroelectric capacity of 3.4 MW, and includes a 34 foot high concrete dam that is 574 feet long, as well as a powerhouse that was constructed in 1894 and reconstructed in 1930. The District currently provides physical operation of Redacted on behalf of, and at the direction of, PG&E through a coordinated operations memorandum of understanding.

Having received direction from the Board to proceed with discussions with PG&E regarding a possible purchase, staff has worked diligently with representatives of PG&E, first to develop substantial terms of a purchase and sale agreement for Redacted and second to develop an agreement that incorporates those terms.

A general description of some of the key assets to be purchased by the District is as follows:

- 20.5 acres of real property (entire Redacted site)
- Redacted impoundment and related appurtenances

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- [Redacted] powerhouse and equipment
- FERC license No. 2467
- All switches, connections, fences, recreational facilities, etc.
- All water rights associated with Merced Falls

Not all physical equipment located at the [Redacted] site is included in the purchase. A limited amount of PG&E's substation/transmission equipment that is not considered part of the [Redacted] Project will remain owned and operated by PG&E. Final lists of the assets being purchased and of the assets not being purchased will be included as exhibits in the final purchase and sale agreement.

The substantial terms of the purchase and sale are as follows:

- Purchase price – \$850,000
- Deposit – \$50,000 to be paid within 5 days of signing a purchase and sale agreement
- Payment – District has option to pay purchase price in full upon Closing, or defer payment under a payment schedule for up to 1 calendar year
- “As-is, where-is” sale, to include transfer of title to all of the assets and facilities of PG&E associated with the [Redacted], including real property, as substantially set forth in a schedule to the purchase and sale agreement, excluding only those specifically designated substation/transmission facilities and assets substantially set forth in a schedule of excluded assets
- Catastrophic failure – if ‘catastrophic failure’ occurs between signing of agreement and Closing, either party may terminate the agreement
- Obtain Cal ISO interconnection(s)
- Enter into coordinated operations agreement with PG&E
- Obtain approval of sale from FERC and CPUC
- Conservation easement over all real property

If approved, staff anticipates that the final details of the purchase and sale agreement may be negotiated within approximately the next 30 days. However the process for obtaining approval of a proposed sale by FERC and the CPUC is likely to take substantially longer, likely between 12 and 18 months.

*CEQA Compliance: Notice of Exemption*

In general, CEQA applies to discretionary agency approvals of projects that may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. If an agency action appears to involve approval of a project, the action may nevertheless be exempt from CEQA review on a variety of grounds, including by applicable statutory or categorical exemptions.

The proposed purchase and sale of Merced Falls by the District from PG&E qualifies for several exemptions from review under CEQA. Ongoing projects approved before the enactment of CEQA are

exempt from compliance with CEQA. (See 14 Cal. Code Regs §15261.) Similarly, the operation, repair, maintenance, permitting, licensing or leasing, or minor alteration of an existing public or private structure, facility, or equipment is also exempt. (See, 14 Cal. Code Regs §15301.) Minor alterations to the condition of land, water or vegetation are exempt from CEQA review. (See 14 Cal. Code Regs §15304.) Also, actions by agencies that ensure the maintenance or protection of a natural resource or the environment are exempt from CEQA review. (See 14 Cal. Code Regs §§15308.)

Here, the proposed sale can be described as a “paper transaction”, consisting of simply transferring the title to the assets associated with Merced Falls from PG&E to the District. The proposed purchase includes no expansion or material modification of [Redacted] or how it is operated compared to how the Project presently exists and is being operated. No physical alteration to the property or hydroelectric facilities, the [Redacted] or the water within will occur as a result of the purchase and sale. Moreover, [Redacted] will step into PG&E’s shoes with respect to the FERC license for the Project upon the transfer of the license to [Redacted] at Closing. In sum, the proposed purchase simply is an exchange of ownership interests. The District does not anticipate making any material change to the operation of the [Redacted] Project or the assets associated with the Project.

Finally, the CEQA Guidelines also include a “common sense exemption” which provides an exemption from CEQA for activities where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. (See 14 Cal. Code Regs §15061(b)(3).) This exemption was developed and adopted to protect against an activity or type of project not listed in the statutory or categorical exemptions list that might be required needlessly to comply with the requirements of CEQA. As described above, what is proposed here is a “paper transaction” that does not involve expansion or material modification of the facility or how it is operated, or any other direct or indirect physical change to the environment. Accordingly, it may be seen with certainty that the proposed purchase and sale transaction could not possibly have a significant effect on the environment.

As the agency with primary approval authority over the transaction, the District would be the Lead Agency for purposes of CEQA. Responsible Agencies include, but may not be limited to, the California Public Utilities Commission, which would rely upon the District’s CEQA review determination in making its own CEQA findings.

ALTERNATIVES/PROS AND CONS OF RECOMMENDED ACTION:

Pros:

- Anticipated revenue from sale of renewable hydroelectric power
- Geographically close to existing District facilities; District’s Northside Canal diversion is located within the [Redacted] impoundment area
- District control of [Redacted] facilities
- Intangible benefits (*e.g.*, integrated operations on [Redacted], etc.)

Cons:

- Purchase price
- Annual O&M
- Refurbishment and automation cost
- Additional relicensing activities

Alternatives:

Do not move forward with the proposed purchase and sale of [Redacted] in which case PG&E is likely to proceed with a purchase and sale with another third party.

DEPARTMENT CONCURRENCES:

n/a

FISCAL IMPACT:

If approved, MID would be responsible for payment of the purchase price for [Redacted] in the amount of \$850,000, as well as capital, operation and maintenance costs for the Project moving forward into the future. Additional District resources (primarily in-kind work in the form of District staff time and materials) would need to be dedicated to final negotiations of the purchase and sale agreement with PG&E, as well as to diligently pursuing all necessary and appropriate approvals for the purchase and sale, in amounts not yet determined.

## MERCED IRRIGATION DISTRICT

### RESOLUTION NO. 2014-xx

**RESOLUTION AUTHORIZING EXECUTION OF PURCHASE AND SALE AGREEMENT BETWEEN THE PACIFIC GAS AND ELECTRIC COMPANY AND THE MERCED IRRIGATION DISTRICT FOR THE PURCHASE OF THE [Redacted] AND AUTHORIZING ACTIONS RELATED THERETO, AND ADOPTING NOTICE OF EXEMPTION RELATING TO THE PURCHASE AND SALE**

**WHEREAS**, the [Redact] Irrigation District (District) is a California irrigation district, organized under the Irrigation District Law contained in the Water Code §§20500 *et. seq.*;

**WHEREAS**, the District is authorized by law to own and operate hydroelectric facilities for the benefit of its customers;

**WHEREAS**, the District has been approached by the Pacific Gas and Electric Company (PG&E) regarding the District's interest in purchasing PG&E's [Redacted] and associated facilities and assets;

**WHEREAS**, the Board of Directors for the District (Board) previously authorized staff to begin negotiations with PG&E regarding the purchase of the [Redacted] and associated facilities and assets;

**WHEREAS**, after diligently negotiating with PG&E, the parties have reached agreement on the substantial terms of a purchase and sale agreement;

**WHEREAS**, the substantial terms of the proposed purchase and sale agreement relating to the [Redacted] and associated facilities and assets by the District include:

- Purchase price – \$850,000
- Deposit – \$50,000 to be paid within 5 days of signing a purchase and sale agreement
- Payment – District has option to pay purchase price in full upon Closing, or defer payment under a payment schedule for up to 1 calendar year
- “As-is, where-is” sale, to include transfer of title to all of the assets and facilities of PG&E associated with the [Redacted] including real property, as substantially set forth in a schedule to the purchase and sale agreement , excluding only those specifically designated substation/transmission facilities and assets substantially set forth in a schedule of excluded assets
- Catastrophic failure – if ‘catastrophic failure’ occurs between signing of agreement and Closing, either party may terminate the agreement
- Obtain Cal ISO interconnection(s)
- Enter into coordinated operations agreement with PG&E

- Obtain approval of sale from FERC and CPUC
- Conservation easement over all real property

**WHEREAS**, the Board, having reviewed and considered the substantial terms of a purchase and sale agreement set forth more fully in Attachment [REDACTED] hereto, hereby determines it to be in the best interests of the District to expend funds necessary to purchase the [Redacted] and associated facilities and assets from PG&E, consistent with the substantial terms contained herein, and to take any other actions reasonably necessary to implement the purchase and sale agreement;

**WHEREAS**, the proposed action consists of transferring title to the [Redacted] [Redacted] and associated facilities and assets from PG&E to the District and does not include an expansion or material modification of facilities or a change in the operation thereof. No physical alteration to the [Redacted] or the water within will occur as a result of the transaction. Based on the foregoing, the purchase and sale transaction is exempt from requirements of the California Environmental Quality Act (CEQA) pursuant to exemptions contained in Title 14 of the California Code of Regulations, including but not limited to the exemptions set forth in §§15261, 15301 15304, and 15308. The transaction is additionally generally exempt under CEQA Guideline §15061(b)(3) because it may be seen with certainty that there is no possibility that the transaction may have a significant effect on the environment.

**NOW THEREFORE, BE IT RESOLVED THAT:**

1. The recitals set forth hereinabove are true and correct, and are incorporated herein.
2. The Board authorizes the General Manager to complete negotiations and execute a purchase and sale agreement for the [Redacted] and associated facilities and assets in a form substantially similar to that included in Attachment A hereto, and subject to such reasonable edits and modifications as the General Manager deems appropriate, execution of said agreement to provide conclusive evidence of this Board's approval of said edits or modifications.
3. The Board determines that the proposed action is exempt from requirements of the California Environmental Quality Act (CEQA) pursuant to exemptions contained in Title 14 of the California Code of Regulations, including but not limited to the exemptions set forth in §§15261 (project approved prior to 1970), 15301 (existing facilities), and 15304 (minor alterations to land), and 15307 and 15308 (protection of natural resources and the environment). The transaction is additionally generally exempt under CEQA Guideline §15061(b)(3) because it may be seen with certainty that there is no possibility that the transaction may have a significant effect on the environment.
4. The Board authorizes the General Manager or General Counsel to sign and file a Notice of Exemption consistent with the CEQA determinations contained herein.
5. The Board authorizes the General Manager and any such employees or consultants as

the General Manager may designate, to execute such additional agreements and/or documents, and to take such additional actions, as may be reasonably necessary or convenient to carry out and implement the purchase and sale agreement and intent of this Resolution.

**PASSED AND ADOPTED** by the Board of Directors of Merced Irrigation District this 1<sup>st</sup> day of July, 2014, by the following vote:

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| Ayes:    | Directors: |
| Noes:    | Directors: |
| Abstain: | Directors: |
| Absent:  | Directors: |

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Tim Pellissier  
President  
Merced Irrigation District

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David Long  
Vice President/Secretary  
Merced Irrigation District