



Testimony

of

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before the

**Committee on Energy and Commerce
Subcommittee on Energy and Power**

of the

United States House of Representatives

on

**Hearing: “Discussion Drafts Addressing Hydropower
Regulatory Modernization and FERC Process Coordination
under the Natural Gas Act”**

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Good morning Chairman Whitfield, Ranking Member Rush and members of the Energy and Power Subcommittee. My name is Randy Livingston, and I serve as Vice President of Power Generation at Pacific Gas and Electric Company (PG&E).

PG&E is one of the largest combined natural gas and electric utilities in the United States. Based in San Francisco, with more than 22,000 team members, the company delivers some of the nation's cleanest energy to nearly 16 million people – or one in 20 Americans – throughout a 70,000-square-mile service area in Northern and Central California.

PG&E also owns and operates one of nation's largest investor-owned hydroelectric systems, which is built along 16 river basins and stretches more than 500 miles. PG&E's 67 powerhouses, including a pumped storage facility, have a total generating capacity of 3,888 megawatts (MW) – enough to meet the needs of nearly four million homes. The system relies on approximately 100 reservoirs located primarily in the higher elevations of California's Sierra Nevada and Southern Cascade mountain ranges.

PG&E's hydroelectric system consists of 26 federally licensed projects. Since 2000, PG&E has completed 10 hydropower relicensing proceedings representing 1,140 MW. PG&E has 7 “active” hydropower relicensing proceedings, which represent an additional 1,131 MW.

As required by federal and State regulatory agencies, PG&E evaluates and mitigates the projects' impacts on natural resources and the environment. We have made it a priority to work collaboratively with stakeholders, including federal and State agencies, local community members, environmental organizations, fishing interests and other recreationalists, and agricultural landholders, among others, during the relicensing process. Together, we work to assess the impacts of these projects, identify the issues of importance, develop plans to protect fish and wildlife habitat, enhance recreational uses, and improve water quality and flow management.

We believe this collaborative approach best serves the public interest, as we recognize that many entities and individuals rely on the watersheds in which our facilities are located. At the same time, we believe that the process currently in place could be substantially improved.

Hydropower is an invaluable, renewable resource – and one that our country can and should do more to capitalize on. It is a greenhouse gas free source of energy that provides important benefits to the overall power system, particularly systems with significant amounts of intermittent renewable generation, as well as to energy consumers across the country.

We appreciate all the efforts made to date by past Congresses to advance hydroelectric generation and we believe that this Committee is taking a very important step to continue this progress, with the release of the Discussion Draft on Hydropower Regulatory Modernization (or Discussion Draft), and by holding today's hearing.

PG&E believes it is critical for hydroelectric power generators to be able to move through the relicensing process more efficiently and more affordably, so that we can implement the environmental protections, community improvements and facility upgrades much more quickly than we do today. Essentially, delays in the relicensing process merely delay improvements and add costs, which are ultimately borne by the energy consumer.

We believe that the Discussion Draft includes common sense reforms, which would allow owners and operators of hydroelectric systems to function more efficiently, while providing – and accelerating -- environmental protections and other benefits.

Hydropower: An Abundant Resource with Challenges

Hydropower is America's largest renewable energy resource. This safe, affordable and dependable natural resource is also by far the largest source of renewable electricity in the United States, at approximately 100 gigawatts of installed capacity.

In order to capitalize on hydropower's existing capacity and future potential, addressing key challenges within the existing hydropower licensing process is necessary. With respect to PG&E's system, the process to relicense existing hydroelectric projects requires extensive consultation with multiple State and federal agencies, consistently takes at least seven years, and frequently lasts more than ten years. For example, the relicensing of the Poe Project is now in year seventeen.

Meanwhile, the cost to PG&E customers to obtain a license renewal has routinely exceeded \$20 million per license, and some current proceedings will exceed \$50 million. When, and if, a license is approved and received, implementing the conditions of the license also routinely costs tens-of-millions of additional dollars.

To put this into greater perspective, the cost and duration of the process to relicense an existing hydroelectric project can be just as cumbersome and complex as seeking a license for a new, unbuilt hydroelectric project. In both cases, the cost and duration associated with licensing is typically far greater than any other established electric generation technology.

Congressional Action: Addressing Federal Regulatory Changes

PG&E applauds Congress for taking meaningful steps over the years to promote hydropower development, including taking swift action in 2013 to pass the "Hydropower Regulatory Efficiency Act of 2013" (now Public Law 113-23), and the "Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act" (now Public Law 113-24).

We also remain encouraged that the U.S. House of Representatives and U.S. Senate have expressed a desire – and are working now – to craft broad energy plans in the 114th Congress. PG&E fully supports the process and will remain an active voice in

sharing our experiences during the development of potential legislation related to hydropower licensing, among other key issues.

Actions taken to provide a greater level of regulatory clarity and certainty for hydropower development and production, which are captured in the Discussion Draft, serve as another example of the important work of this Subcommittee. The recognition of such licensing challenges in California and across this country, and the initiative to address these issues – as the Energy and Commerce Committee intends with this Discussion Draft – are very important if our goal is to maximize hydropower’s future potential.

Thus, there is no question that the Discussion Draft helps in many ways to significantly improve the efficiency of the federal regulatory processes surrounding hydropower licensing. In fact, PG&E believes it responsibly reduces regulatory uncertainty across the nation, without sacrificing protections for the environment or jeopardizing the integrity of the licensing process.

However, PG&E believes challenges still remain, and future action at the federal level is necessary to assure the continued operation of existing hydropower and support for growth of new hydropower. At its most basic level, improving the efficiency of the licensing and relicensing processes is of foremost importance.

Licensing Improvements for Hydropower

PG&E appreciates and recognizes the right of and need for federal agencies to place license conditions upon the lands for which they have the responsibility to manage. Similarly, PG&E also recognizes and appreciates that different federal agencies have different missions and may therefore have different perspectives on what license conditions are needed. However, we believe that better coordination of these perspectives is necessary given how the process and agency interaction works today.

The recommendations we advocate to modernize the process will: 1) help improve the timeliness and cost of renewing a license; 2) ensure all involved stakeholders use the same underlying data, studies and schedule in exercising their authorities; 3) provide clarity of extent of authorities; and 4) provide a process for a single effective challenge opportunity before the Federal Energy Regulatory Commission (FERC) to resolve disputes regarding proposed license conditions.

Some specific actions Congress can take to overcome the existing challenges and maximize hydropower’s potential, include addressing the following four areas:

- Improve coordination between federal and State environmental reviews;
- Better define the extent of authorities by federal agencies;
- Improve federal agency coordination and transparency; and
- Improve federal and State agency coordination and transparency.

To achieve these basic improvements, Congress should consider advancing legislation on the following five principles, which the Discussion Draft does in several cases:

- Establishing a defined process at FERC to resolve issues arising from overlapping or conflicting authorities, or overlapping and conflicting license conditions among federal agencies, as well as between federal and State agencies.

The Discussion Draft accomplishes this recommendation with respect to issued licenses through new Federal Power Act (FPA) section 4(h) which provides that the Commission shall have exclusive authority to enforce, amend, approve compliance with, and otherwise administer all terms, conditions, prescriptions, certifications, articles, and all other requirements included in any license or exemption. PG&E believes that the intent of the Discussion Draft is for this authority to be applicable to conditions proposed during a licensing process and that such intent should be clarified in the Discussion Draft.

- When a preliminary condition is proposed by an agency, the relicensing process currently allows a licensee to propose alternatives that would meet the resource objective, but be superior from a licensee's perspective; and it allows for trial type hearings on the preliminary condition. However, the process does not allow for any challenge of a final condition; further, it does not require that the final condition resemble the preliminary condition or the outcome of the hearing. To that end, we suggest this be addressed.

The Discussion Draft partially accomplishes this recommendation through new FPA section 35 which requires the Commission to establish procedures to ensure the integration of all applicable conditions in the trial-type hearing such that the findings of fact resulting from the trial-type hearing are accounted for in any determination related to the conditions, any modified conditions, or alternatives to modified conditions. Also, the Secretaries are prohibited from submitting any new condition/prescription addressing any impact or resource related to facts established with respect to the trial-type hearing.

- Requiring the use of the same studies and data for both federal and State environmental analyses, including defining a disciplined schedule for all agencies and stakeholders to adhere to.

The Discussion Draft accomplishes this recommendation by adding new FPA section 4(i), which seeks to minimize duplicative studies and process costs by maximizing the use of existing information.

- PG&E recognizes the rights and authorities of the federal government when a hydropower project is built on federal land, and the ability of the agency overseeing that land to prescribe reasonable conditions to protect other

beneficial uses. At times, PG&E has negotiated voluntarily for certain conditions to be applied on private land. But we do not believe that federal agencies should have unilateral authority to condition private land. We recommend that federal land management agencies with jurisdiction over federal lands affected by a hydropower project develop and propose the necessary and reasonable mandatory conditions and terms that are under their jurisdiction, consistent with their authorities, on project or federal lands, and directly related to the project.

The Discussion Draft accomplishes this recommendation by revising FPA section 4(e) to provide for mandatory conditions for the portion of such reservation occupied by the project that will mitigate adverse effects of the project, if any, except that no such condition may impose a requirement that impairs project operations, management, or utilization of lands or resources outside such portion of the reservation occupied by the project.

- Empowering FERC not to adopt proposed license conditions that do not have a clear nexus with the project being licensed or any actual effect on federal reserved land.

The Discussion Draft should be enhanced to fully achieve this recommendation by adding to its FPA section 4(e) revisions language that mandatory conditions must “have a clear and direct nexus to the presence or operations of the project.”

We also believe additional efforts could be made to further enhance the Discussion Draft, including allowing FERC not only to establish a schedule with respect to all federal authorizations, but also to consider late filed conditions as recommendations under FPA Section 10(a).

At present, the Discussion Draft provides that if an agency does not comply with the schedule established by the Commission, with respect to a federal authorization, then the licensee may pursue remedies under new section 313(d) of the FPA. These remedies include jurisdiction in the courts of appeals for the review of an order or action of a federal agency (other than the Commission) or a State agency acting pursuant to federal law and an alleged failure to act by a federal agency (other than the Commission) or State agency acting pursuant to federal law. This section allows the court to remand the proceeding to the agency and to establish a schedule for action. While the proposed language is an improvement over the current situation, it could still result in extensive legal delays and heavy additional costs for the licensee.

In addition to implementing these principles, Congress should continue its work to identify criteria that result in sensible mandatory conditions all agencies can embrace. While PG&E generally has had success in working with federal and State resource agencies and others to develop collaborative solutions, the fact remains that certain federal entities can be narrowly focused on a single resource or unwilling to consider all of the impacts of their mandatory conditions, such as economic, environmental and

electric reliability. We believe that a bipartisan solution should be within reach to address this concern.

PG&E believes these common sense, much-needed improvements to the hydropower licensing process can be accomplished in a responsible and balanced manner that protects and preserves our fisheries and other natural resources, as well as the collaborative process in place today.

At the same time, such enhancements would bring consistency, predictability, and lower costs for projects that support the safe and reliable delivery of domestic hydroelectric power – benefiting utility customers, the environment, American jobs, energy infrastructure, and the power grid. For example, a license renewal typically results in enhanced habitat and species protections, more access to recreational areas and updated water resources measures. These are improvements that all stakeholders want, but unfortunately they often take too long to put in place. We believe a more timely process will not jeopardize the implementation of these benefits, but instead ensure that they happen sooner and at lower cost to energy consumers.

PG&E looks forward to continuing our efforts – and working with Congress to further address these important issues – as we strive to operate the safest and most reliable hydroelectric system in the nation.

Again, PG&E appreciates the opportunity to participate in today's hearing. We applaud your leadership, as well as that of Congresswoman Cathy McMorris Rodgers (R-WA), for bringing the hydropower licensing issue to light. PG&E looks forward to working with you, this Subcommittee, and other members of the U.S. House Representatives and U.S. Senate on finding reasonable opportunities to advance hydropower development, including embracing realistic reforms to reshape and modernize the licensing process.