
State Water Resources Control Board

April 1, 2025

Ms. Jennifer Hartman
Relicensing Project Manager
Pacific Gas and Electric Company
300 Lakeside Drive
Oakland, CA 94612
Sent via Email: jf1d@pge.com

**Kerckhoff Hydroelectric Project
Federal Energy Regulatory Commission Project No. 96
Fresno and Madera Counties
San Joaquin River**

DENIAL WITHOUT PREJUDICE OF WATER QUALITY CERTIFICATION FOR KERCKHOFF HYDROELECTRIC PROJECT

Dear Ms. Hartman:

On August 22, 2024, Pacific Gas and Electric Company (PG&E) submitted to the State Water Resources Control Board (State Water Board or Board) Executive Director a request for water quality certification (certification) pursuant to section 401 of the federal Clean Water Act (CWA) (33 U.S.C. § 1341) for the relicensing of the Kerckhoff Hydroelectric Project (Project). As discussed later in this letter, your August 22, 2024, request for certification for the Project is denied without prejudice.

As background, after reviewing a certification application and other relevant information, the State Water Board must either: (1) issue an appropriately conditioned certification; or (2) deny certification. (Cal. Code Regs., tit. 23, § 3859.) The State Water Board may issue certification if the State Water Board determines that an activity will comply with applicable water quality standards and other appropriate requirements of state law. The State Water Board may deny a certification application if compliance with water quality standards and other appropriate requirements is not determined, but the application suffers from some procedural inadequacy. (Cal. Code Regs., tit. 23, § 3837, subd. (b)(2).) The State Water Board may also deny a certification application if the State Water Board has requested supplemental information and the federal period for certification will expire before the State Water Board has time to receive and properly review the supplemental information. (Cal. Code Regs., tit. 23, § 3836, subd. (b).)

Additionally, under federal regulations, the certifying authority may grant certification, grant certification with conditions, deny certification, or expressly waive certification. (40 C.F.R. § 121.7, subd. (a).) A denial of certification should include a statement explaining why the certifying authority cannot certify that the activity will comply with water quality requirements, including but not limited to a description of any missing

E. JOAQUIN ESQUIVEL, CHAIR | ERIC OPPENHEIMER, EXECUTIVE DIRECTOR

water quality-related information if the denial is based on insufficient information. (40 C.F.R. § 121.7, subd. (e).)

Project Description

PG&E owns and operates the Project which is located in the foothills of the western slope of the Sierra Nevada on the San Joaquin River, approximately 2.5 miles from Auberry, California. The Project is comprised of Kerckhoff Dam, Kerckhoff Reservoir, Kerckhoff 1 Powerhouse and associated facilities, Kerckhoff 2 Powerhouse and associated facilities, the Smalley Cover Recreation Area, and streamflow gages. The Project was originally licensed by the Federal Power Commission in 1922 for a 50-year term.

On November 24, 2020, PG&E filed its Final License Application (FLA) with the Federal Energy Regulatory Commission (FERC) to relicense the Project. In response to FERC's Additional Information Requests and ongoing discussions with interested parties, PG&E subsequently filed FLA supplements on May 27, 2022, and April 3, 2023. PG&E's FLA and supplements for the Project included flow provisions that contained: (1) revised minimum instream flows; (2) American shad spawning flows; (3) flows to maintain water temperature in the Project bypass reach; (4) end-of-spill recession and whitewater flow release measures; (5) planned outage flows and ramping rates; (6) subsequent spill ramp down measures to reduce potential stranding during spills at Kerckhoff Dam; and (7) a spill flow measure¹ that PG&E has proposed to help protect public safety by holding flows below Kerckhoff Dam at 500 cubic feet per second (cfs) in between Kerckhoff Dam spill events with the goal of providing the recreating public (e.g., hikers) with visual cues that flows are too high to safely enter the water and also to benefit aquatic life. Outside of ramping up due to planned outages PG&E's proposed flow regime does not include ramping up rates to moderate Project flows downstream of Kerckhoff Dam.

As part of FERC relicensing of the Project, PG&E proposes 16 new environmental management measures; construction of a new recreational facility (Vista Day Use Area); installation of one new flow gage (San Joaquin River above Kerckhoff Reservoir Inflow Gage); upgrade of two manual radial gates on Kerckhoff Dam to automated control; and retirement of the Kerckhoff 1 Powerhouse, including modification of its associated facilities.

Mandatory 4(e) Conditions and Trial-Type Hearing

On June 27, 2024, FERC issued its Ready for Environmental Analysis (REA) for the Project. FERC's REA began a 60-day period in which comments, mandatory conditions, and preliminary terms and conditions must be submitted to FERC. During FERC's REA comment period, the Department of Interior (DOI) (including the Bureau of Land Management (BLM), United States Fish and Wildlife Service (USFWS), National Park Service, and Bureau of Reclamation); United States Forest Service (USFS); State

¹ PG&E refers to this measure as the "spill season flow measure." The proposed measure involves the use of visual cues (i.e., maintaining a 500 cfs target hourly average flow for a minimum of five hours) when sustained spills below Kerckhoff Dam are 500 cfs or more for at least five hours and neither the end-of-spill flow recession measure nor the subsequent spill ramp down measure is being implemented.

Water Board; California Department of Fish and Wildlife (CDFW); and American Whitewater (AWW) submitted responses to the REA.

Several relicensing participants (BLM, USFWS, CDFW, USFS, and AWW) expressed concern that PG&E's proposed flow regime would not fully address public safety concerns as Project releases would artificially remain at a targeted 500 cfs and would not attempt to minimize the duration of uncontrolled spills. Moderating the flow ramp up to the degree feasible would allow people to safely avoid higher flows downstream of Kerckhoff Dam. BLM, CDFW, USFW, and USFS stated that PG&E's proposed flow regime would allow for rapid flow changes from 500 to 3,500 cfs in short time frames, which could result in river elevation changes below Kerckhoff Dam of 6 feet within less than an hour as measured at Site 5². (Site 5 of PG&E's 2021 Stage-Discharge Investigation is significant because this area of the Project Bypass Reach had the highest stage change of any site studied.) Additionally, BLM's REA response included preliminary 4(e) mandatory conditions that would require the Project to operate under different flows than proposed by PG&E. Specifically, BLM's 4(e) mandatory conditions would require PG&E to implement: Southern California Edison's (SCE) Long Term Operating Rules (LTOR) Flows through the Kerckhoff Bypass Reach (Condition 4) and a Ramp Up for the Protection of Public Safety and Aquatic Life (Condition 5) which would result in a ramp up schedule with a stage change of one foot per hour as measured at the Project's J2 Gage (approximately 0.48-mile downstream of Kerckhoff Dam).

Relicensing participants (BLM, USFWS, CDFW, USFS, and AWW) stated in their conditions, comments, and recommendations that implementation of LTOR flows for the Project would be more similar to the system's natural hydrograph while also providing for whitewater boating opportunities.

On October 24, 2024, in response to BLM's preliminary 4(e) mandatory conditions, PG&E submitted a request to the DOI for a Trial-Type Hearing on Disputed Issues of Material Fact (Hearing Request)³ pertaining to certain preliminary 4(e) mandatory conditions filed by the BLM on September 24, 2024. PG&E's Hearing Request disputed

² An example of the dynamic flows associated with the Project is provided in PG&E's September 30, 2024 Currents Blog, which noted that flows in the San Joaquin River were anticipated to increase from approximately 30 cfs to 500 cfs or more as a result of a planned outage at Kerckhoff 2 Powerhouse. Data from the California Data Exchange Center at the J2 gage (upstream of Site 5) show that flows on October 1, 2024 increased from 31 cfs to over 2,000 cfs in approximately 5.5 hours and peaked at 4,608 cfs by the end of the day before dropping to around 600 cfs and then throttling between 500 cfs and over 2,000 cfs each day thereafter throughout the outage period (October 1 to November 22, 2024). During this period, changes in flow at the gage resulted in many instances of stage changes greater than one foot per hour with at least one instance of a stage change of four feet in one hour. Though PG&E has proposed planned spill flow measures, such measures would not fully address situations such as occurred in 2024.

³ A Hearing Request is part of FERC's Integrated Licensing Process whereby the licensee or another party can dispute factual issues contained in Federal Power Act section 4(e) conditions and propose alternatives.

six of BLM's 4(e) Conditions: (1) Condition 2 Coordinated Operations Plan, which requires coordinated operations between PG&E and SCE; (2) Condition 3 Outages, which pertains to outages of the Kerckhoff 2 Powerhouse⁴ that may affect minimum streamflow; (3) Condition 4 Passage of LTOR flows required in SCE's existing Big Creek 4 Hydroelectric Project license, which could effectively implement the LTORs down ramping of spills through the Kerckhoff Bypass Reach of the San Joaquin River for the Project; (4) Condition 5 Ramp Up for Protection of Public Safety and Aquatic Life, which would require a ramp up rate targeting a stage change of one foot or less per hour as measured at gage J2 for flows up to 4,000 cfs; (5) Condition 6 Revise Reporting at J-6, which requires PG&E to operate the existing gage to United States Geological Survey standards, make the gages results publicly available via the internet; and (6) Condition 9 Stream Gauging, which requires PG&E to measure temperature at the new stream gage it proposes above Kerckhoff Reservoir.

On December 5, 2024, the DOI (parent agency of BLM) filed a notice with FERC stating that DOI and PG&E agreed to stay the trial-type hearing process for a period not to exceed 120 days from the date of filing (until April 4, 2025) to allow for settlement discussions.

On August 22, 2024, PG&E applied for a certification for the Project⁵, and on September 24, 2024, FERC established that the reasonable period of time for the State Water Board to act on the certification as August 22, 2025 (one year from PG&E's certification application for the Project). The ongoing settlement discussions and trial-type hearing process may result in changes to the Project description outside of the information submitted to the State Water Board as part of the Project's certification application. The ongoing differences over Project flow requirements between PG&E, agencies, and other interested parties have created uncertainty about the Project's future operations under a new license, including potential flows, ramping rates, and measures to address safety concerns.

Settlement discussions with PG&E and BLM are ongoing. The ongoing settlement and potential future trial-type hearing process: (1) have currently delayed certainty on the Project's scope for approximately five months of the Board's one-year time period to act on PG&E's Project certification request; and (2) impacts the range and scale of potential Project impacts and alternatives related to flows, ramping rates, and human health and safety. Given such delays, the State Water Board no longer has adequate time to receive, review, and assess the resolution(s) of the settlement and/or trial-type hearing processes and issue a Project certification to ensure adequate water quality protections.

Additional Information Requests

On July 29, 2024, State Water Board staff sent PG&E questions related to: (1) clarification on information PG&E provided in April 2024; (2) future Project

⁴ BLM's 4(e) Condition 3 Outages does not specify what facility the measure would apply to; however, considering the proposed retirement of the Kerckhoff 1 Powerhouse, it is assumed this measure applies to the Project's only remaining powerhouse, Kerckhoff 2.

⁵ The State Water Board issued public notice of the Project certification application on September 17, 2024. (Cal. Code Regs., tit. 23, § 3858.)

operations; (3) concrete volumes associated with decommissioning the Kerckhoff 1 Powerhouse, which involves plugging the K1 tunnel; and (4) information on the amounts of hazardous materials stored as part of Project operations. State Water Board staff's questions were to inform the Project's ongoing certification and California Environmental Quality Act (CEQA) processes as the Board is the CEQA lead agency for the Project's relicensing.

On September 16, October 1, October 22, and December 3, 2024, State Water Board staff sent follow up inquiries requesting responses. On December 13, 2024, PG&E staff provided inadequate responses that did not include: (1) an estimate of the maximum volume of concrete that will be required for retirement/modification of each Kerckhoff 1 Powerhouse facility (i.e., K1 Tunnel); (2) the general location for the plug within the K1⁶ Tunnel; (3) a determination if PG&E anticipates short duration, high release flow events, followed by quick decreases to much lower flows to occur on an annual basis; and (4) information on the amount of hazardous materials stored as part of Project operations. Responses received did not provide State Water Board staff with the information requested and were not sufficient for the State Water Board to act on the Project's pending certification application as the flow management and information on concrete/hazardous material amounts and construction activity locations can inform potential water quality impacts.

On February 5, 2025, State Water Board staff sent PG&E additional questions in response to PG&E's December 13, 2024, responses. State Water Board staff's questions mainly reiterate previous requests for information on decommissioning activities associated with the Kerckhoff 1 Powerhouse and concrete/hazardous materials, as well as new requests regarding if PG&E plans to implement the BLM's preliminary 4(e) mandatory conditions. State Water Board staff requested that PG&E return its responses to the February supplemental information request within two weeks (February 19, 2025). This timeline was established due to the time needed for the State Water Board staff to receive and review information for a certification action.

PG&E failed to provide its responses by February 19, 2025, but did submit responses on March 6, 2025. PG&E's responses did not provide adequate information on several of State Water Board staff's questions. Specifically, PG&E did not provide adequate responses for: (1) an estimate of the maximum volume of concrete required for each aspect of the Kerckhoff 1 Powerhouse and associated facilities retirement/modification (i.e., K1 Tunnel); (2) a general location for the plug within the K1 Tunnel; (3) if additional infrastructure would be needed for K1 tunnel plugging; (4) method PG&E would use to produce and transport concrete, equipment, and other materials to the Project site; (5) historical quantities of hazardous materials required for the Project (to inform future hazardous material amounts); (6) if PG&E agrees to implement BLM's preliminary 4(e) mandatory conditions; and (7) if facility modifications would be needed for PG&E to implement conditions required by the BLM's 4(e) conditions.

In its December 13, 2024, and March 6, 2025 responses, PG&E stated that "detailed design drawings [related to questions regarding concrete location and amounts associated with Kerckhoff 1 Powerhouse retirement/modification] will not be prepared

⁶ K1 refers to tunnel that diverts from the K1 Intake Structure and discharges to the Kerckhoff 1 Powerhouse.

until after license issuance". At the time of this letter, PG&E has not fully developed the design for retirement of its Kerckhoff 1 Powerhouse and K1 tunnel; therefore, the Board does not have sufficient information to ensure water quality impacts will be appropriately addressed.

Given the ongoing uncertainty around requested supplemental information, State Water Board staff do not have enough time in the one-year certification timeline to receive and properly review the requested information within the federal review period, which ends on August 22, 2025. (Cal. Code Regs., tit. 23, § 3836, subd. (b).) Consistent with federal regulations, the State Water Board (certifying agency) cannot at this time certify that the discharge from the proposed Project will comply with water quality requirements. (40 C.F.R. § 121.7.)

Water Quality Certification Action

After review of the Project certification application and supporting documentation, including responses submitted by PG&E, and given the ongoing settlement and trial-type hearing processes, the State Water Board has determined that the application does not provide sufficient information to assess the Project's potential impacts on water quality. Based on available information and the ongoing need for additional information to inform the Project's related impacts to water quality, PG&E is hereby notified that its August 22, 2024, request for certification for the Project relicensing is denied without prejudice, effective the date of this letter.

The State Water Board encourages PG&E to submit a new request for certification once the Project is sufficiently defined, including resolution of the trial-type hearing, and the requested additional information is provided for review and consideration by Board staff. State Water Board staff look forward to working with PG&E on a future certification request for the Project.

If you have questions regarding this letter, please contact Chase McCormick, Project Manager, by email to: Chase.Mccormick@waterboards.ca.gov or phone call to: (916) 323-9390. Written correspondence should be directed to:

State Water Resources Control Board
Division of Water Rights - Water Quality Certification Program
Attn: Chase McCormick
P.O. Box 2000; Sacramento, CA 95812-2000.

Sincerely,



Eric Oppenheimer
Executive Director

Enclosure: Attachment A: Certificate of Service

ec: Debbie-Anne Reese, Secretary
Federal Energy Regulatory Commission
Via efile to FERC Docket

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Ms. Jennifer Hartman

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ebc: Interested Parties List

**ATTACHMENT A:
Certificate of Service**

Certificate of Service

I hereby certify that I have this day filed electronically with the Federal Energy Regulatory Commission and served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 1 day of April.

Chase McCormick

Chase McCormick
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Division of Water Rights
State Water Resources Control Board
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