ORDER GRANTING TEMPORARY VARIANCE OF MINIMUM FLOW REQUIREMENTS

(issued December 12, 2013)

1. On December 9, 2013, Pacific Gas and Electric Company filed a request with the Federal Energy Regulatory Commission (Commission) for a temporary variance of the minimum flow requirements for the Potter Valley Project No. 77. The project is located on the Eel River and East Fork Russian River in Lake and Mendocino Counties, California.

BACKGROUND AND LICENSE REQUIREMENTS

2. Ordering paragraph (C) of the Commission’s January 28, 2004 Order Amending License\(^1\) requires the licensee to implement a complex minimum flow regime contained in the National Marine Fisheries Service’s (NMFS) Reasonable and Prudent Alternative (RPA), filed with the Commission on November 29, 2002. Among the requirements of the RPA, the license is required to meet minimum flow requirements at three locations, based on water year types. Specifically, the licensee is required to meet minimum flows at: the Eel River below Cape Horn Dam; the Eel River below Scott Dam; and the East Branch of the Russian River.

LICENSEE’S REQUEST

3. Due to dry water year conditions, the licensee requests an indefinite variance from the minimum flow requirements of the RPA at the three minimum flow compliance points at the project. The licensee states that it can no longer sustain the minimum flow requirements and needs to reduce flow releases to conserve water in Lake Pillsbury, provide for the continued release of water for long-term protection of Chinook salmon and steelhead, and to eliminate the risk of vertical bed collapse in the Lake Pillsbury reservoir bed. The licensee explains that the project is currently in a “normal” water classification year and requests that it be allowed to provide flow releases under the

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\(^1\) See 106 FERC ¶ 61,065. Order Amending License (issued January 28, 2004).
“critical” water year classification for the Eel River below Scott Dam and East Branch of the Russian River and the “exceptionally low inflow” classification for the Eel River below Cape Horn Dam. The licensee further states that per the RPA, the “normal” classification for the Eel River below Scott Dam and East Branch of the Russian River was designated in June 2013, and remains in effect through December 2013. However, the licensee states that the “normal” classification was due to precipitation in December 2012, with negligible precipitation since then. Consequently, the licensee requests that it be allowed to implement the lower water year flow releases until no longer operationally necessary and inflow to Lake Pillsbury meets the criteria for a “dry” or “normal” designation.

4. In its request, the licensee also explains that altering the flows at the project to meet the “critical” and “exceptionally low inflow” classifications would result in: a flow reduction of 100 cubic feet per second (cfs), to 20 cfs at the Eel River below Scott Dam; a flow reduction of 35 cfs, to 5 cfs on the East Branch Russian River; and a reduction of 100 cfs, to 25 cfs on the Eel River below Cape Horn Dam. The licensee states that the initial portion of this season’s Chinook salmon run is currently reaching the project area and beginning to spawn. Based on observations of spawning activity, the licensee states that it believes the majority of the early salmon redds would remain the wetted channel if the flows were reduced from 100 cfs to the proposed 25 cfs below Cape Horn Dam.

AGENCY CONSULTATION

5. The licensee developed its proposal in conjunction with the National Marine Fisheries Service (NMFS), California Department of Fish and Wildlife (CDFW), and the Round Valley Indian Tribes (Tribes). By electronic mail dated December 6, 2013, NMFS states that it supports the proposed variance, due to the low storage levels in Lake Pillsbury, the current critically dry weather conditions, and forecast of no significant precipitation events in the coming weeks. NMFS also states that salmon are beginning to actively spawn in the thalweg (deepest portion) areas of the stream channel that are unlikely to be dewatered during the potentially reduced flows. NMFS finally states that the variance is consistent with the intent of the RPA and should be implemented as soon as possible. By letter dated December 6, 2013, the CDFW approved of the licensee’s proposed flow variance. By electronic mail, the Tribes provided written support for the proposed flow releases. However, given the low water year, the Tribes stated that they did not support any flow releases whatsoever to the East Branch Russian River.

DISCUSSION AND CONCLUSIONS

6. The licensee is requesting a variance of the minimum flow requirements at the project due to critically dry water conditions in the Eel River basin. Although the licensee is required to provide flow releases based on a normal water year classification, basin conditions appear to be more in line with that of a critically dry year. Therefore,
the license proposes to reduce flow releases throughout the project to conserve water resources and avoid negative long-term impacts to fisheries resources and the integrity of the Lake Pillsbury reservoir bed.

7. Review of the licensee’s filing and agency comments indicates that spawning Chinook salmon are already present below the project, with some evidence of early spawning. While the licensee and resource agencies state that the most of the spawning fish are currently in the deeper portions of the channel, we question whether the flow reduction would avoid negatively impacting some quantity of the spawning fish, especially those that may have already begun to spawn in shallow portions of the Eel River. However, given the present circumstances, the continued release of flows during the currently dry conditions could jeopardize continued flow releases altogether, should lake storage levels continue to recede. Further, the resource agencies are in agreement that a timely reduction of the minimum flow releases is justifiable under the current water conditions. Therefore, a temporary variance to the minimum flow requirements should be approved. Conversely, the Tribes petition for a cessation of flow releases to the East Branch Russian River altogether is not prudent, given the existing fishery and the consumptive water uses downstream.

8. Concerning the licensee’s request for an indefinite variance of the minimum flow requirements, it not the Commission’s practice to grant variance requests with an unspecified expiration date. Given the potential for conditions to change in a short period of time, the licensee should be granted a temporary variance until January 31, 2014. This should allow ample time to further analyze water and fishery conditions and consult with the resource agencies, should the licensee require an additional flow variance. Therefore, if the licensee requires a variance beyond January 31, 2014, it should request one no later than January 15, 2014.

9. Finally, given the historical public interest in the Potter Valley Project and the associated fisheries resources, the general public and interested resource agencies would generally be afforded the opportunity to review and comment on a proposal of this nature. However, given the urgency of this matter, the Commission has elected to take action on the licensee’s proposal to avoid any immediate negative impacts to the downstream fishery. Notwithstanding, the general public and other interested resource agencies should be granted the opportunity to be involved in the long-term outcome of this matter, especially if conditions warrant a flow deviation beyond January 31, 2014. Therefore, we are issuing a 30-day public notice concurrent with the licensee’s temporary variance request. This information will be used to evaluate any request for a minimum flow variance beyond January 31, 2014. Based on any comments or new information received, we are also reserving the right to modify this order, as set forth below.
The Director orders:

(A) Pacific Gas and Electric Company’s (licensee) request, filed December 9, 2013, for a temporary variance of the minimum flow requirements of ordering paragraph (C) of the Commission’s January 28, 2004 Order Amending License for the Potter Valley Project No. 77, is approved, as modified in ordering paragraphs (B) through (D).

(B) The license is hereby allowed to implement the “critical” water year flow releases for the Eel River below Scott Dam and East Branch of the Russian River and the “exceptionally low inflow” flow releases for the Eel River below Cape Horn Dam under Appendix A of the Commission’s January 28, 2004 Order Amending License through January 31, 2014, or until no longer operationally necessary and inflow to Lake Pillsbury meets the criteria for a “dry” or “normal” designation.

(C) If Eel River basin conditions warrant an additional variance of the minimum flow requirements beyond January 31, 2014, and the license requires an additional variance, it shall file its request with the Federal Energy Regulatory Commission no later than January 15, 2014.

(D) The Commission reserves its authority to modify this order based on any new information received and as conditions may warrant.

(E) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2006), and the Commission’s regulations at 18 C.F.R. § 385.713 (2013). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee’s failure to file a request for rehearing shall constitute acceptance of this order.

(for) Thomas J. LoVullo
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Division of Hydropower Administration and Compliance