



Mark Krausse
Director
State Agency Relations

1415 L Street, Suite 280
Sacramento, CA 95814

(916) 386-5709
mckd@pge.com

June 14, 2012

VIA E-MAIL

Mr. Charles Hoppin, Chair
State Water Resources Control Board
1001 I Street, 12th Floor
Sacramento, CA 96814



Re: **Request to Hold: Item #3 on June 19, 2012 Agenda: Proposed Resolution to Amend Resolution No. 2011-0005 to Allow CEQA Cost Recovery Authority**

Dear Chairman Hoppin:

On behalf of Pacific Gas and Electric Company (PG&E), I respectfully request that the State Water Resources Control Board (SWRCB) not take up the resolution identified as Agenda Item No. 3 on its June 19, 2012 meeting agenda. While PG&E appreciates the underlying intent of the proposed resolution is to speed the water quality certification process, we ask that this item be held to allow PG&E and other parties the opportunity to work with the board staff to develop methods to improve the timely processing of water quality certifications.

One of the most significant challenges of the California State Water Resources Control Board's ("State Water Board") water quality certification process is the amount of time it takes to process an application for water quality certification. Although the federal Clean Water Act provides that water quality certifications are to be processed "within a reasonable period of time (which shall not exceed one year)", 33 U.S.C. § 1341(a)(1), in fact, the certification processes associated with the relicensing of many of PG&E's hydroelectric projects take several years.

However, by authorizing the Executive Director to utilize funds in the Water Rights Fund to hire environmental consultants for California Environmental Quality Act (CEQA) activities for water right applications and petitions, PG&E is concerned that Proposed Resolution No. 2011-0005 could create additional delays in the certification process.

One approach to speeding the process would be to address a much more fundamental driver of the systemic delays in processing water quality certification applications for FERC-licensed hydroelectric projects: the redundant nature of much of the SWRCB's environmental analysis concerning the impacts of the subject hydro project. As the State Water Board is aware, when a licensee applies to FERC to relicense a hydro project, FERC conducts an extensive environmental review pursuant to NEPA. Although NEPA is by no means co-extensive of

CEQA, it does require review of many of the same issues as does CEQA. As a practical matter, FERC's NEPA analysis is always conducted prior to the State Water Board's CEQA analysis.

PG&E believes it would be much more efficient for the State Water Board, rather than performing its CEQA analysis from scratch, to instead take account of FERC's NEPA analysis and to utilize it to the maximum extent possible, including, where appropriate, incorporation by reference. The CEQA Guidelines expressly contemplate such a result. *See* CEQA Guidelines § 15221(a) (“When a project will require compliance with both CEQA and NEPA, state or local agencies should use the EIS or finding of no significant impact rather than preparing an EIR or negative declaration if the following two conditions occur: (1) An EIS or finding of no significant impact will be prepared before an EIR or negative declaration would otherwise be completed for the project; and (2) The EIS or finding of no significant impact complies with the provisions of these guidelines”). *See also* Public Resources Code §21083.7 (a) (specifying that the lead agency “shall, whenever possible, use the [EIS prepared under NEPA] as such environmental report”). The State Water Board could also be proactive and work with FERC in the development of a joint NEPA/CEQA document. Again, the CEQA Guidelines expressly contemplate such cooperation. *See* CEQA Guidelines § 15222.

PG&E understands that FERC and the State Water Board have been discussing for some time how best to coordinate their respective environmental reviews and streamline the water quality certification process.¹ PG&E applauds such efforts and would encourage the State Water Board to re-double them so that the water quality certification process in California can begin to resemble the streamlined process envisioned by Congress. Expending energy in this direction will yield far greater results than the proposal embodied in the proposed resolution.

For these reasons, we request that you hold Item #3 on the June 19, 2012 Board Meeting agenda.

Sincerely,

Mark Krausse
