

152 FERC ¶ 62,046
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Project No. 803-106

ORDER GRANTING IN PART, TEMPORARY VARIANCE OF MINIMUM FLOW
REQUIREMENT UNDER ARTICLE 39

(Issued July 22, 2015)

1. On June 25, 2015, Pacific Gas and Electric Company (licensee) filed a request with the Federal Energy Regulatory Commission (Commission) for a temporary variance of the minimum flow requirements under Article 39 of the project license for the DeSabra-Centerville Project No. 803. The project is located on Butte Creek, West Branch Feather River, and their tributaries in Butte County, California.

LICENSE REQUIREMENT

2. License Article 39¹ requires that the licensee maintain minimum streamflows at various project locations. In particular, the licensee is required to maintain year-round instantaneous minimum flows of 7 cubic feet per second (cfs) in the West Branch Feather River below Hendricks Head Dam and in Butte Creek below Butte Head Dam during dry water years.

LICENSEE'S REQUEST

3. The licensee requests a temporary variance of the minimum flow requirements in the West Branch Feather River below the Hendricks Head Dam (gage BW-40) and in Butte Creek below the Butte Head Dam (gage BW-97). The licensee requests that the instantaneous dry year minimum flow requirement of 7 cubic feet per second (cfs) at both locations be temporarily modified to a 7 cfs, 48-hour average minimum flow. The licensee states that the temporary variance would eliminate the need to release additional buffer flows of 4 to 5 cfs and instead, allocate those flows to the lower reaches of Butte Creek, where spring-run Chinook salmon are currently holding. The licensee requests the variance until the natural resource agencies determine that it is no longer necessary to support the spring-run Chinook salmon.

¹ See 26 FERC ¶ 62,236. Order Amending Revised Exhibit S (issued March 15, 1984).

AGENCY CONSULTATION

4. The licensee developed its proposal in consultation with the California Department of Fish and Wildlife (CDFW), U.S. Fish and Wildlife Service (FWS), U.S. Forest Service (FS), National Marine Fisheries Service (NMFS), and California State Water Resources Control Board (State Water Board). By email dated June 19, 2015, the FS informally concurred with the licensee's proposed variance at Hendricks Head Diversion; provided the licensee submits monthly flow gaging data and notifies the resource agencies of any event that inhibits or impairs the licensee from maintaining a 7 cfs release. The FS also requested that the variance cease at the end of February, or when storms or other events preclude safe operation. By emails dated June 19, 2015, the CDFW and State Water Board state that they support the proposed variance at the Hendricks Head Diversion Dam. Finally, on June 22, 2015, NMFS stated that it supported the proposed variance at the Hendricks Head Diversion.

DISCUSSION AND CONCLUSIONS

5. The licensee is requesting a temporary variance of the minimum flow requirements at the Hendricks Head Diversion Dam and Butte Head Diversion. Regarding the Hendricks Head location, approval of the licensee's request would decrease flows in the West Branch Feather River, while concurrently increasing flows for federally-listed spring-run Chinook salmon in Butte Creek via an inter-basin transfer. The increase in flows would help offset high water temperatures and lower flows in Butte Creek during the current drought conditions. Given the benefits to listed species, the close approximation of the required minimum flow, and the support of the resource agencies, the proposed variance at the Hendricks Head location should be approved. However, the licensee's request for a temporary variance should be granted for a limited period, until the public has an opportunity to review and comment on the licensee's proposal. Therefore, on July 20, 2015, we issued a public notice to solicit any comments or interventions for an extended flow variance. This will give Commission staff the benefit of any additional agency or public comments for an extended variance, should the current conditions continue.

6. Concerning the proposed variance at the Butte Head Dam, approval of the licensee's proposal would not result in any flow increase in Butte Creek for spring-run Chinook salmon. Rather, it would result increased diversion out of Butte Creek and through the DeSabra Forebay, where the increased residence time could lead to increased water temperatures before it is returned to Butte Creek via the project powerhouses. Further, the decreased flows could adversely affect project operations on the downstream Forks of Butte Project No. 6896, which diverts water from Butte Creek shortly below the Butte Head Dam. Finally, the agency consultation record provided by the licensee does not indicate that the resource agencies were consulted on the proposed variance at the

Butte Head Dam. Therefore, due to no material benefit to the fisheries resources, potential adverse effects to the downstream hydropower project, and absence of resource agency consultation, the licensee's proposed variance at the Butte Head Dam should be dismissed. If the licensee can indeed demonstrate a material benefit to aquatic resources at this location, along with documentation of consultation with the downstream licensee and the resource agencies, it may consider refileing a request for a temporary variance at this location, along with the above information.

7. In summary, we are approving the licensee's request for a temporary variance at the Hendricks Head Dam for a limited period of time. The temporary variance at Hendricks Head Dam should be granted through August 28, 2015. This time frame will allow a 30-day comment period for the public notice and subsequent Commission action, without an interruption in the temporary operating requirements. Based on comments received and the available data at that time, we will take action, as warranted, on an extension of the licensee's proposal beyond August 28, 2015. We are also dismissing the licensee's request for a temporary variance at the Butte Head Dam. We should also reserve our authority to modify the current temporary variance based on any new information received, or as updated conditions may warrant.

The Director orders:

(A) Pacific Gas and Electric Company's (licensee) request, filed June 25, 2015, for a temporary variance of the minimum flow requirements at the Hendricks Head Dam under license Article 39 at the DeSabra-Centerville Project No. 803, is approved through August 28, 2015.

(B) The licensee's request for a temporary flow variance at the Butte Head Dam is dismissed.

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

(D) 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. § 825*l* (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2014). 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.

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Division of Hydropower Administration
and Compliance