

**DRAFT**

**PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

**Item # 20**

**Agenda ID #13132**

**ENERGY DIVISION**

**RESOLUTION E-4644 (Rev. 1)**

**August 14, 2014**

**R E S O L U T I O N**

Resolution E-4644. Pacific Gas and Electric Company (PG&E) Deer Creek Land Donation Request for Approval under Advice Letter (AL) 4337-E, under direction provided in Decision (D.) 08-11-043, D.10-08-004 and Public Utilities Code Section 851.

**PROPOSED OUTCOME:**

- This Resolution approves Pacific Gas & Electric Company's (PG&E's) AL 4337-E, with an effective date of today. PG&E's AL proposes donation of fee simple title to the 151-acre Deer Creek property to the United States Forest Service (USFS) pursuant to PG&E's Bankruptcy Settlement Agreement that established a Land Conservation Commitment (LCC).

**SAFETY CONSIDERATIONS:**

- Effective administration of PG&E's LCC is part of the responsibility of PG&E to meet their obligations under Public Utilities Code Section 451 to provide services that promote the safety, health, comfort, and convenience of their patrons, employees and the public.

**ESTIMATED COST:**

- In D.03-12-035, the Commission approved the LCC with funding at \$70 million, and this Resolution authorizes approximately \$1,450 of those previously authorized funds to be used specifically for tax neutrality payments for the Deer Creek property donation. Additionally, ongoing fees for managing the conservation easement are expected, again to be covered by the previously authorized LCC funding.

By Advice Letter 4337-E Filed on December 27, 2013.

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## **SUMMARY**

This Resolution approves PG&E's AL 4337-E, with an effective date of today. On December 27, 2013 PG&E filed Advice Letter 4337-E, requesting approval under Public Utilities Code Section 851, of the Deer Creek Land Donation.

Pursuant to PG&E's LCC approved in D.03-12-035, PG&E proposes donation of fee simple title to the 151-acre Deer Creek property to the United States Forest Service (USFS). This donation is being made in the public interest with the intent to provide for: (1) the preservation of land areas to protect the natural habitat of fish, wildlife, and plants; (2) the protection of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values; and (3) the prevention of any uses that will significantly impair or interfere with those values. This donation is in accordance with the terms and conditions specified in the PG&E Bankruptcy Settlement Agreement and Stipulation that were approved by the Commission (CPUC) in Decision D. 03-12-035.<sup>1</sup>

## **BACKGROUND**

On April 6, 2001, PG&E filed for Chapter 11 bankruptcy protection. Two years later, CPUC approved a Settlement Agreement under which PG&E Watershed Lands would be subject to conservation easements and/or be donated in fee simple to public entities or non-profit organizations for the benefit of the public. Pursuant to the Settlement Agreement, the Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council) was established in 2004 to develop a plan to permanently protect, for the benefit of the citizens of California, more than 140,000 acres of Watershed Lands currently owned by PG&E.

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<sup>1</sup> The Settlement Agreement provides a substantially increased opportunity for environmentally beneficial use and access by the public to 140,000 acres of land associated with PG&E's hydroelectric facilities, without compromising the ability to PG&E to generate electricity from those facilities. In 1999 PG&E proposed to sell these lands to the highest bidder. The Settlement Agreement would remove forever that possibility, and replace the spectre of loss of public control with the promise of perpetual public access. (D.03-12-035, pages 61, 62.)

Located primarily in the Sierra Nevada and Cascade Mountain range watersheds, the PG&E Watershed Lands contain some of the most pristine and resource-rich landscapes found in the state. The properties are diverse and geographically remote, located in 21 counties from the northern reaches of the state to the southern end of the Central Valley.

Protecting the Watershed Lands will be accomplished through (1) PG&E's grant of conservation easements to one or more public agencies or qualified conservation organizations so as to protect the natural habitat of fish, wildlife and plants, the preservation of open space, outdoor recreation by the general public, sustainable forestry, agricultural uses, and historic values (collectively the Beneficial Public Values), and (2) PG&E's donation of the Watershed Lands in fee simple to one or more public entities or qualified conservation organizations, whose ownership would be consistent with these conservation objectives. This effort is known as PG&E's "Land Conservation Commitment" (LCC).

As required by D.03-12-035, the Stewardship Council prepared a Land Conservation Plan (LCP) to establish a framework for the conservation and/or enhancement of the Watershed Lands, and to ensure the permanent protection of these lands for the benefit of current and future Californians. To address the challenge of a conservation effort of this large scope, and to facilitate engagement of a wide range of stakeholders and interested members of the public, the Stewardship Council grouped the Watershed Lands into 47 planning units and established a phased approach to development and implementation of the LCP.

In 2007, the Stewardship Council Board adopted Volumes I and II of the LCP:

Volume I: The Land Conservation Framework establishes the overall framework for the LCP, including legal requirements, the planning process, methodologies, public involvement, and relevant regulatory processes.

Volume II: Planning Unit Concepts documents existing conditions and presents management objectives, potential measures, and conceptual plans to preserve and/or enhance the Beneficial Public Values (BPVs) within each planning unit. The management objectives for the Deer Creek planning unit are:

1. Preserve and enhance habitat in order to protect and restore special biological resources;
2. Preserve open space in order to protect natural and cultural resources, as well as the unique character of the site;
3. Enhance recreational facilities in order to provide educational opportunities and enhance the recreational experience;
4. Develop and implement forestry practices in order to contribute to a sustainable forest, preserve and enhance habitat, as well as to ensure appropriate fuel load management;
5. Agricultural uses;
6. Identify and manage cultural resources in order to ensure their protection, as well as to support opportunities for public education.

Volume III also documents existing economic uses.

Volume III: Land Conservation and Conveyance Plans (LCCPs) to be issued serially and cumulatively, will encompass a series of real estate transaction packages that will detail the specific land conservation and/or disposition requirements for each parcel or cluster. LCCPs represent the Stewardship Council's recommendations for preserving and/or enhancing the BPVs of the Watershed Lands to PG&E, and are intended to support required regulatory approvals of the land transactions.<sup>2</sup>

Specifically, the LCCP produced for each parcel will incorporate the 10 programmatic objectives of the LCP as identified in the Stipulation that was an integral part of the Proposed Settlement Agreement adopted in D. 03-12-035. These 10 programmatic objectives, which are intended to govern how the LCP is implemented for each and every Watershed Parcel, include: 1) reasonably exact estimates of acreage, by parcel, within or outside licensed project boundaries, and existing economic uses (including all related agreements); (2) objectives to preserve and/or enhance beneficial public values, as defined in the Settlement Agreement, Appendix E, of each individual parcel; (3) a recommendation for grant of a conservation easement or fee simple title for each such parcel;

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<sup>2</sup> The LCCP addresses the requirements set forth in Section 12(a) of the "Stipulation Resolving Issues Regarding the Land Conservation Commitment" September 25, 2003.

(4) a finding that the intended recipient of such easement or fee simple title has the funding and other capacity to maintain that property interest so as to preserve and/or enhance the beneficial public values thereof; (5) an analysis of tax and other economic and physical impacts of such a disposition strategy, and a commitment by an appropriate entity to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county under this Land Conservation Commitment will be “tax neutral” for that county<sup>3</sup>; (6) a disclosure of all known hazardous waste or substance contamination or other such environmental liabilities associated with each parcel; (7) appropriate consideration of whether to split any parcel which is partly used or useful for operation of PG&E’s and/or co-licensee’s hydroelectric facilities, where the beneficial public values of the unused part may be enhanced by such split, provided it is consistent with Section 12(b)(4) of this stipulation; (8) a strategy to undertake appropriate physical measures to enhance the beneficial public values of individual parcels; (9) a plan to monitor the economic and physical impacts of disposition and implementation of enhancement measures on the applicable management objectives; and (10) a schedule for the implementing transactions and measures.

## **NOTICE**

Notice of AL 4337-E was made by publication in the Commission’s Daily Calendar. PG&E states that a copy of the Advice Letter was mailed and distributed in accordance with Section 4 of General Order 96-B.

## **PROTESTS**

Advice Letter AL 4337-E was not protested.

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<sup>3</sup> The Stewardship Council has agreed that it is the appropriate entity to provide property tax revenue, drawing from the \$70 million provided to the Stewardship Council to implement the Land Conservation Commitment. (Deer Creek LCCP, November 14, 2003).

## **DISCUSSION**

Energy Division has reviewed PG&E AL 4437-E requesting approval in accordance with the streamlined procedure adopted by the Commission in D.08-11-043, D.10-08-004 and Public Utilities Code Section 851. PG&E has provided the information required by D.08-11-043 Ordering Paragraph 2.<sup>4</sup> All of the information required by D.08-11-043 is included in the Deer Creek Land Conservation and Conveyance Plan (LCCP) and appended to PG&E AL 4337-E as Attachment A.

### Deer Creek (LCCP)

The Deer Creek Property contains one legal parcel of approximately 151 acres (Land Conservation Parcel ID#716). The property will be donated to the United States Forest Service (USFS) and will be subject to a conservation covenant granted by the USFS to the Sierra Nevada Conservancy (SNC).<sup>5</sup> The Deer Creek Property is located in Tehama County along USFS Road 28N29, approximately 25 miles north of Chico. The property provides important outdoor recreation, cultural resources, and wildlife habitat within the canyons of Deer Creek. The property is surrounded by the Lassen National Forest, including the Ishi Wilderness Area, which is located immediately west of the property. Parking and informal camping areas are located on the property on the south side of Deer Creek, near the Ponderosa Way Bridge.

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<sup>4</sup> For Category 1 transactions, PG&E shall submit a simplified advice letter to the Commission that shall include the following five items of information for the proposed transaction: (1) identification of Conservation Property parcel(s); (2) Type of property interest disposition(s); (3) Legal name and location of receiving party or parties; (4) the proposed use(s) and conservation management objectives with references to applicable section(s) of the Land Conservation Plan (LCP); and (5) Applicable exemption(s) under CEQA (where no exception to the exemption applies) with explanation, if necessary, or reason why transaction is not a “project” under CEQA. (D. 08-11-043 page 46)

<sup>5</sup> Sierra Nevada Conservancy, 11521 Blocker Drive, Suite 205, Auburn, CA 95603

The property primarily serves as a gateway to a variety of recreation activities on the surrounding National Forest lands on Deer Creek, including backpacking, hiking, horseback riding, mountain biking, fishing, and whitewater boating.

The property provides important habitat for spring run Chinook salmon, western pond turtle, and foothill yellow-legged frog. The USFS has recommended federal Wild and Scenic River designation for Deer Creek, including the segment that runs through the Property.

There are no existing economic uses or agreements on the Deer Creek Property. Because the property is not required for ongoing hydroelectric operations or water delivery contracts, PG&E will not be reserving any rights in the Property as part of the transaction.

The Stewardship Council Board made a finding that the USFS and SNC will have the funding and other capacity to maintain the property interest so as to preserve and/or enhance the BPVs. The USFS is a public agency established in 1905 with the mission of sustaining the health, diversity, and productivity of the Nation's forests and grasslands to meet the needs of present and future generations. SNC is a California state agency whose mission is to initiate, encourage and support efforts that improve the environmental, economic and social well-being of the Sierra Nevada Region, its communities and the citizens of the State of California.

As outlined above, the Stipulation adopted by D.03-12-035, requires that the LCP provide: "an analysis of tax and other economic and physical impacts of such a disposition strategy, and a commitment by an appropriate entity (which may be PG&E, subject to being authorized by the Commission to fully recover in rates any such costs in approving PG&E's Section 851 application or in another appropriate Commission proceeding, Stewardship Council, donee, or a third party, depending on the individual circumstances) to provide property tax revenue, other equivalent revenue source, or a lump sum payment, so that the totality of dispositions in each affected county under this Land Conservation Commitment will be "tax neutral" for that county".<sup>6</sup>

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<sup>6</sup> Stipulation Resolving Issues Regarding The Land Conservation Commitment (page 8)

To achieve property tax neutrality, the Stewardship Council has developed a methodology to establish a standard payment process when lands are transferred to organizations that are exempt from paying property taxes.<sup>7</sup> The methodology would be applied to all counties which experience a loss in property tax revenue due to a fee title donation. The transfer of the Deer Creek parcel to the USFS is expected to result in the reduction of approximately \$58 in annual taxes paid to Tehama County, based on a land appraisal recorded land value of \$4,562.<sup>8</sup>

After the approval of a fee-title donation, the Stewardship Council will work with the affected county to calculate the payment amount for inclusion in the LCCP. There are two options for making tax neutrality payments: (1) a one-time lump-sum payment; (2) funding of an independent trustee to continue annual payments in lieu of taxes.<sup>9</sup>

For the Deer Creek donation, if Tehama County chooses the lump-sum option, the Stewardship Council would make a one-time payment of \$1,450 to the county. If Tehama County chooses the annual payment option, the Stewardship Council would deposit \$1,450 with a third party trustee, which would be responsible for making annual payments to Tehama County. The Commission endorses the Guidelines Regarding Satisfaction of Tax Neutrality and the Property Tax Neutrality Methodology adopted by the Stewardship Council.<sup>10</sup>

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<sup>7</sup> Appendix 4 of the Deer Creek LCCP includes this property tax neutrality methodology.

<sup>8</sup> State Board of Equalization, Land Appraisal Record, 12-17-2013.

<sup>9</sup> Pursuant to the methodology described in the Property Tax Neutrality Methodology adopted on June 27, 2012, the trustee will make annual payments equal to 4% of a rolling 20 quarter average of the principal balance invested for the parcel. Tehama County would, in turn, be required to distribute the funds to the general fund and applicable special districts consistent with the Tax Rate Area in effect for the parcel. Deer Creek LCCP, November 14, 2013. (page 18)

<sup>10</sup> The Guidelines Regarding Satisfaction of Tax Neutrality were adopted by the Stewardship Council board on March 30, 2011 after an opportunity for public comment and outreach to all potentially affected counties. The Property Tax Neutrality methodology was adopted by the Stewardship Council board on May 2, 2012 and amended by the Stewardship Council board on June 27, 2012 after

*Footnote continued on next page*

According to the Stewardship Council, the PG&E Settlement Agreement includes in lieu payments to counties to achieve property tax neutrality as an allowable use of a portion of the \$70 million LCC fund.<sup>11</sup> The Commission is in agreement with the Stewardship Council that the use of the LCC funds to achieve tax-neutrality is a permissible use of those funds, and not inconsistent with D.03-12-035. Initial estimates provided by the Stewardship Council to Commission staff indicates that total tax neutrality payments to counties over the course of the LCC would likely range from \$5 million to \$6.5 million.

### California Environmental Quality Act

The Stewardship Council did not identify any physical measures to enhance the BPVs of the Deer Creek Property. While transfers of ownership of utility property under Public Utilities Code section 851 may have an environmental impact, and accordingly constitute projects under the California Environmental Quality Act (CEQA), here the proposed transfer of the Deer Creek property to the USFS constitutes just a change in ownership with no proposed changes to land uses; thus no direct or indirect environmental impacts will occur as a result of the donation. Therefore, the transaction is exempt from CEQA under the “common sense” exemption (CEQA Guideline 15061(b)(3), and AL 4337-E does not require review under CEQA.

Additionally, and in compliance with the Stipulation 12(a) requirements,

- The hazardous waste disclosure<sup>12</sup> found no potential hazardous waste, substance contamination, or other such environmental condition on the property.<sup>13</sup>

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an opportunity for public comment and outreach to all potentially affected counties. The Property Tax Neutrality Methodology establishes a standard payment process when lands are transferred to organizations that are exempt from paying property taxes. (Deer Creek LCCP, page 18)

<sup>11</sup> Deer Creek LCCP, page 17.

<sup>12</sup> Deer Creek Environmental Site Assessment Report, April 29, 2011.

<sup>13</sup> The Deer Creek Environmental Site Assessment Report, April 29, 2011.  
(Deer Creek LCCP, page 19)

- Appropriate consideration was given to whether any portion of the Deer Creek Property required retention for PG&E's ongoing hydroelectric operation. PG&E determined that no parcel split was required.
- The Stewardship Council has not identified any physical measures to enhance the beneficial public values of the Deer Creek property. The Stewardship Council is developing a grant program to fund enhancements on the Watershed Lands in the future. Grant funding will be available to accomplish any number of potential future physical measures such as developing trails, day use areas, and other public access improvements. The USFS may apply to the grant program to fund future physical measures.
- The Stipulation requires that the LCCP outlines a plan to monitor the economic and physical impacts of disposition and implementation of enhancement measures. The conservation covenant holder is required to monitor every conservation covenant that it holds to ensure that the landowner is complying with the terms of the covenant in perpetuity. The Stewardship Council has entered into a Conservation Covenant Services Funding Agreement with SNC whereby the Stewardship Council or a successor funding entity will pay the SNC for its services in accordance with the invoices submitted by SNC to fund SNC's monitoring activities at Deer Creek and other services to carry out its rights as the conservation covenant holder.
- The implementation schedule for the Deer Creek Transaction indicates CPUC review and approval in Mid-2014 and close of escrow by the end of 2014. The Stewardship Council will begin releasing funds to SNC starting at the end of 2014.

### Conclusion

The Commission has reviewed PG&E AL 4337-E including the attached Deer Creek Property disposition package prepared by the Stewardship Council and has determined that the Deer Creek Property donation LCCP is both thorough and complete, and complies with both D.08-11-043, D.10-08-004, and with each of the ten of the Stipulation section 12(a) requirements adopted by D.03-12-035.

## **COMMENTS**

Public Utilities Code section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

On July 22, 2014 The Stewardship Council filed comments on Draft Resolution E-4644 to address a few inaccuracies or areas lacking in clarity. None of the comments were substantive in nature.

On August 4, 2014 PG&E filed comments in support of the Stewardship Council, asking for the corrections requested by the Stewardship Council.

## **FINDINGS**

1. The Commission approved a PG&E bankruptcy settlement Agreement in D.03-12-035. Among other things, the Settlement Agreement contained provisions for certain environmental benefits. Those benefits included the adoption of the Land Conservation Commitment, which established provisions to permanently protect and enhance the approximately 140,000 acres of PG&E's watershed lands associated with its hydroelectric system, plus the 655 acre Carrizo Plains property in San Luis Obispo County.
2. D.03-12-035 established a Land Conservation Plan process and also helped establish a non-profit corporation named the Pacific Forest and Watershed Lands Stewardship Council to oversee the implementation of the Land Conservation Commitment and to carry out environmental enhancement activities.
3. D.03-12-035 authorized the creation of the Land Conservation Commitment and required PG&E through retail rates, to fund the Stewardship Council with \$70 million over 10 years to cover both the administrative expenses and the costs of environmental enhancements to the protected lands. D. 03-12-035 also adopted the "Stipulation Resolving Issues Regarding the

- Land Conservation Commitment". The "Stipulation Resolving Issues Regarding the Land Conservation Commitment, Section 12 (a) describes the 10 informational components to be contained in the disposition document developed by the Pacific Forest Watershed Lands Stewardship Council for each donated parcel.
4. D.08-11-043, modified by D.10-08-004 established a streamlined Section 851 process for Advice Letters related to the PG&E Land Conservation Commitment.
  5. On December 27, 2013, PG&E filed Advice Letter (AL) 4337-E, Deer Creek Land Donation-Request for Approval under Public Utilities Code Section 851.
  6. PG&E Advice Letter 4337-E complied with the streamlined procedures that adopted by the Commission in D.08-11-043 as modified by D.10-08-004.
  7. Advice Letter AL 4337-E was not protested.
  8. AL 4337-E contained a LCCP that was compliant with D.03-12-035. The Stewardship Council prepared a LCCP for the Deer Creek Property in compliance with D.03-12-035 and in accordance with the requirements set forth in Section 12(a) of the Stipulation Resolving Issues Regarding the Land Conservation Commitment.
  9. In the LCCP, the Stewardship Council identified the United States Forest Service as a qualified recipient, fee-simple, of the 151-acre Deer Creek Property. The Sierra Nevada Conservancy was identified as the organization qualified to hold and manage the conservation covenant over the property. The Stewardship Council documented in the LCCP the ability of each organization to enhance the Beneficial Public Values (BPVs) of the Deer Creek Property in compliance with D.03-12-035.
  10. The Stewardship Council did not identify any physical measures to enhance the BPVs of the Deer Creek Property. However, a grant program is

available to fund future physical measures, if deemed appropriate by the United States Forest Service and the Sierra Nevada Conservancy.

11. The Deer Creek Environmental Site Assessment Report dated April 29, 2011 found no potential hazardous waste, substance contamination, or other such environmental conditions on the property.
12. The proposed transaction constitutes a change in ownership with no proposed changes to land uses; thus no direct or indirect environmental impacts will occur as a result. Therefore, the transaction is exempt from review under the California Environmental Quality Act (CEQA). Accordingly, approval of this Advice Letter does not require review under CEQA.
13. The Stewardship Council recommends that the source of the required tax-neutrality funding to be paid to Tehama County for the Deer Creek Property be taken from the \$70 million LCC fund.
14. The Commission agrees with the Stewardship Council that the tax neutrality payment to Tehama County may come from the LCC fund.
15. Estimated total tax neutrality payments to Counties over the course of all land transfers are expected to range from \$5 million to \$6.5 million.
16. The State Board of Equalization estimates the value of the Deer Creek Property is \$4,462.
17. If Tehama County chooses the lump-sum tax neutrality payment option, the County would receive a one-time payment of \$1,450 or ongoing annual payments equal to 4% of a rolling 20 quarter average of the principal balance invested for the parcel.
18. As recommended by the Pacific Forest and Watershed Stewardship Council, PG&E proposed to donate fee-simple title to the 151-acre Deer Creek Property to the United States Forest Service. The Deer Creek Property

will be protected by an Environmental Agreement with the United States Forest Service and by a conservation covenant administered by the Sierra Nevada Conservancy.

19. The Stewardship Council has entered into a Conservation Covenant Services Funding Agreement with the Sierra Nevada Conservancy to establish a monitoring endowment to reimburse the Sierra Nevada Conservancy for costs it incurs for monitoring activities at Deer Creek.
20. The Implementation schedule calls for CPUC review and approval by mid-2014.

**THEREFORE IT IS ORDERED THAT:**

1. The request of PG&E for approval of the Deer Creek Land Donation as requested in AL 4337-E is approved.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held August 14, 2014; the following Commissioners voting favorably thereon:

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PAUL CLANON  
Executive Director