

Decision 11-07-040 July 28, 2011

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company and Topaz Solar Farms, LLC for an Expedited Order (1) Authorizing the Conveyance of Certain Property Pursuant to Public Utilities Code Section 851 and (2) Modifying Decision 03-12-035. (U39E).

Application 11-04-016
(Filed April 15, 2011)

**DECISION APPROVING LAND TRANSFER AND
ACTING ON RELATED ISSUES**

1. Summary

This decision grants the unopposed application of Pacific Gas and Electric Company (PG&E) and Topaz Solar Farms, LLC (Topaz) for Commission authorization under Public Utilities Code § 851 for PG&E to transfer to Topaz its Carrizo Plain property, which is subject to the Land Conservation Commitment (LCC) that is part of PG&E's bankruptcy settlement, in return for the concurrent transfer by Topaz of 1,200 acres of private land located within Carrizo Plain National Monument for inclusion within the Monument proper. Topaz will transfer that acreage to the United States Bureau of Land Management (BLM) or on an interim basis, to Sequoia Riverlands Trust, to hold and manage until BLM can take title. The Pacific Forest and Watershed Lands Stewardship Council has endorsed the land transfer.

In order to effectuate the land transfer, this decision modifies portions of Decision 12-03-035 and attachments to that decision, including the LCC, and provides associated relief. The decision defers any determination on PG&E's ratemaking proposal to PG&E's next general rate case.

2. Background

2.1. The Carrizo Plain Property

Pacific Gas and Electric Company (PG&E) owns approximately 654 acres of land in an area of San Luis Obispo County known as the Carrizo Plain.¹ Previously the site of a demonstration solar facility, the property includes improvements associated with that former use, including an old warehouse/storage structure. At present PG&E leases the land to a local rancher for dry farming and grazing. Two PG&E transmission lines run in the vicinity of the property's northern boundary: the 115 kilovolt (kV) Temblor-San Luis Obispo distribution line is sited along the property's northern border and the 230 kV Morro Bay-Midway transmission line is sited directly north of that. Topaz Solar Farms, LLC (Topaz) proposes to build a 550 megawatt (MW) photovoltaic (PV) power plant that would surround the property on more than two sides.

¹ Some references to this land found in this docket and elsewhere use the plural, i.e., Carrizo Plains, and some spell the first word Carizzo. Today's decision uses the spelling Carrizo Plain, consistent with the name of the Carrizo Plain National Monument (see <http://www.blm.gov/ca/st/en/fo/bakersfield/Programs/carrizo.html>), except where quoting original documents that use an alternate spelling.

Currently, PG&E's Carrizo Plain property is part of some 140,000 acres in California often collectively referred to as the watershed lands. PG&E agreed to permanently conserve these lands as part of the 2003 settlement of its electricity crisis bankruptcy filing. Decision (D.)03-12-035 adopted the settlement, which consists of the Settlement Agreement between PG&E, PG&E Corporation and the Commission, including the Land Conservation Commitment (LCC) attached to the Settlement Agreement as Appendix E, and also the Stipulation Resolving Issues Regarding the Land Conservation Commitment, dated September 25, 2003 (Stipulation), which supplements the Settlement Agreement.²

Under the LCC, all of the watershed lands and the Carrizo Plain property must be either: (1) subject to permanent conservation easements restricting development of the land to protect and preserve their beneficial public values, or (2) donated in fee simple to one or more public agencies or qualified non-profit conservation organizations that will ensure the protection of those beneficial values. The Pacific Forest and Watershed Lands Stewardship Council (Stewardship Council), a private foundation established under Internal Revenue Code § 501(c)(3) pursuant to the bankruptcy settlement, oversees implementation of the LCC.

² The specific terms of the conservation effort are set out in Paragraph 17 of the Approved Settlement Agreement, entitled "Preservation and Environmental Enhancement of PG&E Land" (D.03-12-035, Appendix C), in the Statement of Purpose and in the Commitments found in the Land Conservation Commitment (D.03-12-035, Appendix E to Appendix C), and in the more detailed provisions of the Stipulation (Investigation 02-04-026, Exhibit 181), including Paragraph 12, which elaborates upon the Land Conservation Plan.

2.2. Overview of the Topaz Project

Topaz, a Delaware limited liability corporation, is a wholly owned subsidiary of First Solar, Inc. (First Solar). Topaz is actively planning development of the 550 MW PV power plant. The Topaz project, which is expected to be placed into commercial operation in three phases between December 31, 2012 and June 30, 2014, should generate annually, when complete, approximately 1% of PG&E's retail load. The Commission has approved a power purchase agreement (PPA) and an amended PPA, under which PG&E will purchase the output of the Topaz Solar Farm.³

Topaz is seeking funding for the project through loans backed by the United States Department of Energy as part of the Federal Institution Partnership Program in the American Recovery and Reinvestment Act. A condition of the funding is that construction must begin by September 30, 2011.

3. Authority Sought

PG&E and Topaz ask the Commission to modify D.03-12-035 and the underlying settlement to remove the Carrizo Plain property from the watershed lands covered by the LCC and to authorize PG&E, under Public Utilities Code Section 851⁴ to transfer the property in fee to First Solar unencumbered by a conservation easement.⁵ In return, Topaz commits to transfer to the United

³ See respectively, Resolution E-4221, dated January 29, 2009, and Resolution E-4313, dated April 19, 2010.

⁴ All subsequent references to statutes are to the Public Utilities Code unless otherwise indicated

⁵ As relevant here, § 851 provides that no public utility "shall . . . sell, lease, assign, mortgage, or otherwise dispose of . . . the whole or any part of . . . property necessary or

Footnote continued on next page

States Bureau of Land Management (BLM), or an alternate conservation organization as an interim measure until BLM can take title, two parcels of private, unimproved land, totaling 1,200 acres, subject to conditions specified by the Stewardship Council in its resolution dated October 20, 2010, as amended on April 13, 2011. These two tracts, referred to as the Exchange Properties, are located within the boundaries of the Carrizo Plain National Monument, in Kern and San Luis Obispo counties.

PG&E also seeks the following, related authority: approval of certain ratemaking adjustments, findings that the environmental review conducted by the County of San Luis Obispo, as Lead Agency, is sufficient for the Commission's purposes and that no further environmental review is necessary, and direction to Commission staff to make the filings necessary to obtain the bankruptcy court's modification of the 2003 bankruptcy settlement, including the LCC, so that the land transfer may occur.⁶

PG&E and Topaz ask the Commission to expedite review and to issue a decision no later than July 28, 2011. They state that approval on this schedule is necessary for construction to begin by September 30, 2011, as the Department of Energy's loan guarantee program requires.

useful in the performance of its duties to the public," without first having obtained Commission approval.

⁶ The bankruptcy Settlement Agreement's Paragraph 27 expressly provides for modification of the settlement "by an agreement in writing signed by each of the Parties hereto [PG&E, PG&E Corporation, and the Commission] which is filed with and, if necessary, approved by the [Bankruptcy] Court." (D.03-12-035, Appendix C at 19.)

No protests were filed and the application is unopposed. Topaz filed a response in further support of the application on May 25, 2011. The application was submitted for decision on June 21, 2010, following issuance of the scoping memo.

4. Stewardship Council's Conditions on the Land Transfer

The Stewardship Council supports the exchange of the PG&E's 654 acre Carrizo Plain property for the Exchange Properties, subject to the conditions specified in Paragraph 4 of its amended resolution.⁷ The Stewardship Council essentially finds that the PG&E property may provide "significant beneficial public values, including habitat for the endangered San Joaquin kit fox" but that, on balance, the Exchange Properties "may provide greater environmental and economic benefits to the people of California ... by integrating ... [the Exchange Properties] into the management of the surrounding Carrizo Plain National Monument" and by allowing the development of renewable energy.⁸

Paragraph 4 of the Stewardship Council's amended resolution (referring to First Solar, which owns Topaz), articulates support for the transfer upon the condition that First Solar has completed all required environmental review and has obtained a conditional use permit from San Luis Obispo County, as well as

⁷ The initial and amended resolutions are appended to the application, respectively, as Attachment B (Carrizo Plain Land Exchange Board Action, October 20, 2010) and Attachment H (Carrizo Plain Land Exchange Amended Board Action, April 13, 2011). Except for Paragraph 4, the two versions are identical.

⁸ Stewardship Council Carrizo Plain Land Exchange Amended Board Action, Paragraph 2, April 13, 2011.

any regulatory authorizations required by federal or California endangered species law, and upon this revised, three-part condition precedent:

- Prior to transfer of the PG&E property, First Solar must ensure the transfer of the Exchange Properties, in fee, to BLM for inclusion in the Carrizo Plain National Monument *but if* BLM cannot accept the transfer within the time horizon necessary for construction to begin on September 30, 2011, *then* the Exchange Properties must “be transferred to an alternate land conservation organization (Alternate) deemed qualified by PG&E to own and manage the properties for the beneficial public values thereon.”⁹
- Permanent protection of the Exchange Properties must be achieved by execution of a conservation easement (or equivalent) between BLM or any Alternate and an entity qualified to hold and manage conservations easements in California.
- First Solar must bear the reasonable transactions cost incurred by BLM, or any Alternate, and an entity qualified to hold and manage the conservations easements.

Paragraph 4 reiterates the Stewardship Council’s preference that the Exchange Properties be transferred directly to BLM and identifies the now-short horizon for starting construction of the PV project as the reason for the revised condition precedent. Paragraph 4 concludes:

The Stewardship Council prefers a transaction that results in the direct transfer of the Exchange Properties to the BLM. However, in recognition of PG&E’s desire to expedite the transfer of its Carrizo Plain Property to First Solar to accommodate First Solar’s project construction schedule, the Stewardship Council supports an “interim ownership structure, subject to [the three-part condition

⁹ *Id.*, Paragraph 4.a.

precedent outlined in the bullet points above], pursuant to which the Exchange Properties would be transferred to a qualified land conservation organization and subsequently conveyed to the BLM via its normal donation process.

Other documents filed as part of the application include BLM's letter of intent to acquire the Exchange Properties, executed by BLM and Topaz (Attachment J to the Application) as well as the letter of intent executed by Topaz and the Alternate selected, Sequoia Riverlands Trust (Attachment L to the Application), setting forth the agreement by which Sequoia Riverlands Trust will hold the Exchange Properties until BLM can accept them. Sequoia Riverlands Trust is a regional, non-profit land trust dedicated to conserving the natural and agricultural legacy of the southern Sierra Nevada and San Joaquin Valley.

Both letters of intent recognize that the Exchange Properties will be transferred subject to conservations easements/ deed restrictions to ensure the preservation and enhancement of conservation values, including wildlife habitat preservation.

5. Environmental Review

The California Environmental Quality Act (CEQA)¹⁰ applies to discretionary projects to be carried out or approved by public agencies. A basic purpose of CEQA is to "inform governmental decision-makers and the public about the potential, significant environmental effects of the proposed activities."¹¹ Since the Commission must act on this § 851 application and issue a discretionary decision without which the project cannot proceed, the

¹⁰ Public Resources Code Section 21000, *et seq.*

¹¹ Title 14 of the California Code of Regulations (hereafter, CEQA Guidelines), Section 15002.

Commission must act as either a Lead Agency or Responsible Agency under CEQA.

In § 851 cases, the Lead Agency is generally the public entity with the greatest responsibility for supervising or approving the project as a whole.¹² Other public agencies which have discretionary authority for approving or carrying out some aspect of the project that falls under their jurisdiction are Responsible Agencies under CEQA.¹³ The Commission is often a Responsible Agency for projects approved pursuant to § 851, because the local entity in which the project is located has responsibility for supervising or approving the project as a whole, and the Commission exercises narrower jurisdiction by determining whether the transaction meets the requirements of § 851.

The County of San Luis Obispo is the Lead Agency for the Topaz project and the Commission is a Responsible Agency. CEQA requires the Commission to consider the Lead Agency's environmental documents and findings before acting upon or approving the project.¹⁴ PG&E's application includes the following environmental documents prepared by the County of San Luis Obispo:

- Final Environmental Impact Report (FEIR), Volumes I and II, dated March 2011 (Attachment B to the Application);
and
- Memoranda with Additional Information Regarding FEIR, dated April 12, 2011, and prepared by the San Luis Obispo

¹² CEQA Guidelines, Section 15051(b).

¹³ CEQA Guidelines, Section 15381.

¹⁴ CEQA Guidelines Section 15050(b). The specific activities that must be conducted by a Responsible Agency are contained in CEQA Guidelines Section 15096.

County Department of Planning and Building (Attachment N to the Application).

The application also includes the County resolution that certifies the FEIR and issues a conditional use permit to Topaz.

- County of San Luis Obispo Planning Commission Resolution, dated May 12, 2011, granting Conditional Use Permit Nos. DRC2008-00009 and SUB2010-00060 (Attachment M to the Application);

The County's FEIR states that the Draft EIR (DEIR) was published on October 28, 2010, and was subsequently revised in response to comments. The County determined that the revisions did not require recirculation of the DEIR because the revisions clarified and amplified the information and analysis in that document but did not present any new, significant environmental impact or increase the severity of previously disclosed impacts.

The FEIR describes the potential environmental impacts associated with construction, operation, maintenance, and decommissioning of the Topaz project at several alternative sites on the property. The FEIR evaluates those potential environmental impacts, including project-related and cumulative impacts, in the following areas: aesthetics; agriculture; air quality; climate change/greenhouse gas; biological resources; cultural and paleontological resources; geology, mineral resources and soils; hazards and hazardous materials; land use and recreation; noise; population and housing; public services, utilities, and service systems; transportation and circulation; and water resources.

The site the County has selected and the development the County has authorized on that site (referred to as the Revised Project in the FEIR) will result in solar arrays on approximately 3,500 acres, overhead on-site power lines,

underground collector lines, an electric substation and switching station, a monitoring and maintenance facility, and a solar energy learning center.

The FEIR finds that the selected alternative is a reconfiguration of one of the project alternatives that, when compared to the original project, reduces the use of native annual grassland habitat to facilitate wildlife movement, avoids all lands under Williamson Act contract, and has a smaller overall footprint while producing the same amount of power. With the implementation of prescribed mitigation measures and finalization of the land exchange, this alternative will reduce significant cumulative impacts to special status species and to the wildlife corridor for the kit fox to a less than significant level. Attachment C to today's decision contains a separately stated list of the CEQA findings relevant to our review, as a Responsible Agency, of the County's preparation and certification of the FEIR and its determination to issue a permit to construct.

We have reviewed the County of San Luis Obispo's environmental documents and find them to be adequate for our decision-making purposes. Therefore, for purposes of our project approval, we adopt the County's FEIR.

6. Discussion

6.1. The Transfer Is Not Adverse to the Public Interest

The primary question for the Commission in § 851 proceedings is whether the proposed transaction -- in this case, the transfer of land -- is "adverse to the public interest."¹⁵ Under § 851, the Commission may "take such action, as a condition to the transfer, as the public interest may require."¹⁶

¹⁵ *Universal Marine Corporation*, 14 CPUC 2d 644, 646 (1984).

¹⁶ D.3320, 10 CRRC 56, 63.

The transfer proposed here is unique in that the Carrizo Plain property is subject to the LCC adopted as part of PG&E's bankruptcy settlement and the transfer requires that we remove 654 acres from the LCC. Ultimately, however, the transfer will result in the addition of approximately twice that acreage to the Carrizo Plain National Monument and also will enable the development, in the relative near term, of 550 MW of PV power in California. The Stewardship Council, which is charged to oversee implementation of the LCC, and which has assessed the specific conservation values inherent in PG&E's Carrizo Plain property and the Exchange Properties, has determined that, on balance, the transfer will benefit the public. We have no reason to second guess this assessment.

Moreover, the transfer can occur without interfering with PG&E's operations or affecting service to its customers. Where no such harm will result, the Commission has authorized leases, licenses, and other legal rights in real property, recognizing that the public interest is best served where utility property is used for other productive purposes.¹⁷ By analogy, those factors further support the transfer of the Carrizo Plain property from PG&E ownership.

6.2. Modification of D.03-12-035

To permit the transfer to go forward, PG&E's Carrizo Plain property must be removed from the restrictions of the LCC and the bankruptcy Settlement Agreement, and D.03-12-035, which approved those documents, must be modified accordingly. We should make these necessary revisions, as set out in the Ordering Paragraphs of today's decision. Further, in coordination with the

¹⁷ D.04-07-023 at 13, citing D.02-01-058 and other decisions.

Commission's General Counsel, Commission staff should be authorized to take all actions necessary to comply with Paragraph 27 of the bankruptcy Settlement Agreement, which specifies how the signatories thereto may modify that document and gain bankruptcy court approval, as necessary.

6.3. Ratemaking Considerations

As the application states, PG&E's Carrizo Plain property is non-depreciable land that currently is included in PG&E's ratebase and it will be removed from electric generation ratebase once the transaction is completed. PG&E will receive no consideration for the land transfer.

The actual ratemaking ramifications of the transfer are unclear, however. The application states: "PG&E proposes to record the loss on disposition of the electric generation property to ratepayers and shareholders consistent with the accounting treatment adopted in the Commission's Gain on Sale Rulemaking 04-09-003." (Application at 15.) Subsequently, PG&E revised this proposal, as follows: "Upon further analysis, however, PG&E recommends that the accounting treatment adopted in the Commission's Gain on Sale Rulemaking 04-09-043 should not be applied since no cash consideration will be given for the land transferred, and that *no loss be recorded to ratepayers*. Rather, PG&E recommends that any loss, equal to the present book value, be recorded to shareholders." (Second Amendment to Application at 2, emphasis in original.)

PG&E has not adequately explained why any such loss (which presumably will lower PG&E's tax liability) should have no benefit for ratepayers, who have funded the ratebase return PG&E has earned since the property was purchased. Moreover, PG&E has not explained how the statements quoted above relate to § 14.17 of the Land Transfer Agreement between PG&E and Topaz (Attachment A to the application). That provision entitles PG&E to any and all tax benefits

relating to transfer of the Carrizo Plain property and the Exchange Property, and moreover, obligates Topaz to cooperate with PG&E's efforts to obtain such tax benefits.

Because we lack sufficient information to resolve this ratemaking issue, and given the parties' request that we expedite review of this application, our approval is conditioned as follows. PG&E should, in its next General Rate Case application, include prepared testimony that clearly explains whether either PG&E or Topaz received any tax benefits from the transfer of the Carrizo Plain property to Topaz or from the transfer of the Exchange Properties to Sequoia Riverlands Trust and/or BLM. To the extent that PG&E or Topaz received any tax benefits, PG&E shall identify the value of those tax benefits, recommend how those tax benefits should be flowed through to ratepayers and/or shareholders, and clearly explain its rationale.

6.4. Conclusion

We defer decision on the ratemaking treatment of any loss associated with the land transfers but otherwise approve the application pursuant to § 851 so that Topaz may secure final funding approval and commence construction in a timely manner.

7. Comments on Proposed Decision

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g) of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed jointly by PG&E and Topaz on July 18, 2011; no reply comments were filed. On July 25, 2011 the parties filed, as directed by the ALJ, the revised CEQA Findings and Overriding Considerations issued by the lead agency, the County of San Luis Obispo. The County issued these

revisions after the County Board of Supervisors denied all appeals filed in response to the County Planning Commission's certification of the EIR.

We have appended the revised CEQA Findings and Overriding Considerations to today's decision as Attachment C (replacing the prior version that was appended to the proposed decision). These revisions are minor and do not alter our assessment that the County's environmental documents are adequate for our decision-making purposes and that we should adopt the County's FEIR.

The parties' comments seek a substantive change in the proposed decision that we do not adopt. The parties ask the Commission to authorize a third transfer option to permit Sequoia Riverlands Trust or another qualified entity to take title to the Exchange Properties, in lieu of BLM, should BLM determine not to take title for any reason. The parties' comments describe this as an "unlikely event."¹⁸ As support for this additional contingency, they reference the April 15, 2011, executed transfer agreement (Attachment A to the Application, specifically Recital I at page 2 and Section 2 at page 3), the Stewardship Council's April 13, 2011 amended resolution (specifically, page 2), and the April 28, 2011 letter of intent with Sequoia Riverlands Trust (specifically, pages 1-4). We decline to authorize a third transfer option at this time. Only the latter of these three documents, which also is the last of them to be executed, clearly contemplates - and provides a resolution for -- a scenario where BLM declines to accept the Exchange Properties. We do not read the transfer agreement to address such a scenario nor is it clear to us that a third transfer option was

¹⁸ Comments at 2.

considered and endorsed by the Stewardship Council. Should a problem arise in the future regarding BLM's acceptance of title to the Exchange Properties, the parties may file a petition for modification of today's decision.

8. Assignment of Proceeding

Mark J. Ferron is the assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. The Stewardship Council has recommended that PG&E be authorized to convey its Carrizo Plain property to Topaz in return for the concurrent transfer of the Exchange Properties from Topaz to (a) BLM for inclusion in Carrizo Plain National Monument, or (b) as an interim measure, to Sequoia Riverlands Trust to hold and manage until BLM can take title.
2. The transfer can occur without interfering with PG&E's operations or affecting service to its customers.
3. In its next general rate case application, PG&E should disclose what tax benefit, if any has resulted from the land transfers, recommend how those tax benefits should be flowed through to ratepayers and/or shareholders, and clearly explain the rationale for its proposal.
4. The County is the Lead Agency for the proposed project under CEQA.
5. The County has prepared and certified a FEIR for the project and the findings relevant to the Commission's review are appended to today's decision as Attachment C.
6. The Commission is a Responsible Agency for the proposed project under CEQA.

Conclusions of Law

1. Consistent with § 851, PG&E's conveyance of the Carrizo Plain property to Topaz in return for the concurrent transfer of the Exchange Properties from Topaz (a) directly to BLM for inclusion in Carrizo Plain National Monument, or (b) as an interim measure, to Sequoia Riverlands Trust to hold and manage until BLM can take title, is not adverse to the public interest and should be authorized.

2. PG&E has not adequately explained its ratemaking proposal, but resolution of that issue can be deferred to PG&E's next general rate case application.

3. The FEIR prepared and approved by the County was prepared pursuant to CEQA and is adequate for the Commission's decision-making purposes as a Responsible Agency under CEQA.

4. The Commission has reviewed the FEIR and it represents our independent judgment in our decision-making process.

5. D.03-12-035, including the PG&E bankruptcy Settlement Agreement that decision adopted, together with the LCC attached to the settlement agreement, should be modified to permit PG&E's to convey its Carrizo Plain property to Topaz in return for the concurrent transfer of the Exchange Properties to BLM, or on an interim basis until BLM can take title, to Sequoia Riverlands Trust.

6. Commission staff should be authorized, under the direction of the Commission's General Counsel, to take all actions necessary to comply with Paragraph 27 of the PG&E bankruptcy Settlement Agreement approved by D.03-12-035, which specifies how the signatories may modify the Settlement Agreement and gain bankruptcy court approval of the modification, as necessary.

7. The decision should be effective today in order to allow Topaz to secure final funding approval and commence construction in a timely manner.

O R D E R

IT IS ORDERED that:

1. Pursuant to Public Utilities Code Section 851, Pacific Gas and Electric Company is authorized to convey the Carrizo Plain property to Topaz Solar Farms, LLC, (Topaz) in return for the concurrent transfer by Topaz of the Exchange Properties from Topaz:

(a) directly to the United State Bureau of Land Management (BLM) for inclusion in Carrizo Plain National Monument,
or

(b) as an interim measure, to Sequoia Riverlands Trust to hold and manage until BLM can take title.

2. Pacific Gas and Electric Company (PG&E) must, in its next general rate case application, include prepared testimony that clearly explains whether PG&E or Topaz Solar Farms, LCC, (Topaz) received any tax benefits from the transfer of the Carrizo Plain property to Topaz or from the transfer of the Exchange Properties to Sequoia Riverlands Trust and/or United State Bureau of Land Management. To the extent that PG&E or Topaz received any tax benefits, PG&E shall identify the value of those tax benefits, recommend how those tax benefits should be flowed through to ratepayers and/or shareholders, and clearly explain the rationale for its proposal.

3. For purposes of the approval specified in Ordering Paragraph 1, we adopt the Final Environmental Impact Report prepared and certified by the County of San Luis Obispo.

4. For purposes of the approval specified in Ordering Paragraph 1, we adopt the California Environmental Quality Act Findings and Overriding Considerations prepared and certified by the County of San Luis Obispo and appended to this order as Attachment C.

5. Pacific Gas and Electric Company (PG&E) is required to implement all PG&E-Proposed Mitigation Measures associated with the land swap and with PG&E's actions related to the Topaz Solar Farm Project.

6. Decision (D.) 03-12-035 is modified as indicated in the following

(a) Ordering Paragraph 6 of D.03-12-035 is modified to read:

As modified to remove the Carrizo Plains from the protected lands owned by Pacific Gas and Electric Company, Tthe Land Conservation Commitment Stipulation in Exhibit 181 is approved and adopted.

(b) Ordering Paragraph 7 of D.03-12-035 is modified to read:

As modified to remove the Carrizo Plains from the protected lands owned by Pacific Gas and Electric Company, Tthe Modified Settlement Agreement (the "Settlement Agreement" in Appendix C) is approved and adopted by the Commission.

(c) Paragraph 17, entitled "Preservation and Environmental Enhancement of PG&E Land," in Appendix C (the Approved Modified Settlement Agreement) of D.03-12-035 is modified as shown in Attachment A to this opinion.

(d) Appendix E, entitled "Land Conservation Commitment," to Appendix C of D.03-12-035 is modified as shown in Attachment B to this opinion.

7. Under the direction of the General Counsel of the California Public Utilities Commission (Commission), Commission staff are authorized to take all

actions necessary to comply with Paragraph 27 of Appendix C (the Approved Modified Settlement Agreement) of D.03-12-035, which specifies how the signatories may modify the settlement agreement and gain bankruptcy court approval of the modification, as necessary.

8. Application 11-04-016 is closed.

This order is effective today.

Dated July 28, 2011, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT A

**Modification to Paragraph 17
of Appendix C (Approved Modified Settlement Agreement)
of Decision 03-12-035**

17. Preservation and Environmental Enhancement of PG&E Land. PG&E owns approximately 140,000 acres of watershed lands (“Watershed Lands”) associated with its hydroelectric generating system ~~and the approximately 655 acre Carrizo Plains property in San Luis Obispo County (“Carrizo Plains”).~~ Of the Watershed Lands, approximately 95,000 acres are lands that are either included in the project boundaries, contain essential project elements related to the operations of the hydro facilities, or are part of legal parcels that contain major FERC project facilities. The remaining 44,000 acres are lands completely outside the FERC project boundaries and do not contain FERC project features. The Watershed Lands ~~and Carrizo Plains~~ are worth an estimated \$300 million, *less the value of the approximately 655 acre Carrizo Plain property in San Luis Obispo County which was removed from the land conservation commitment in 2011.*

a. PG&E agrees to the land conservation commitment set forth in Appendix E hereto, by which the Watershed Lands ~~and Carrizo Plains~~ will be subject to conservation easements and/or donated in fee simple to public agencies or non-profit conservation organizations (“Land Conservation Commitment”). Nothing herein relieves PG&E or the Commission of their responsibilities pursuant to, inter alia, Public Utilities Code §851 (obtaining approval of the Commission before the disposition of utility property).

b. On the Effective Date or as soon thereafter as practicable, PG&E shall establish PG&E Environmental Enhancement Corporation, a California non-profit corporation, to oversee the Land Conservation Commitment and to carry out environmental enhancement activities. The governing board of PG&E Environmental Enhancement Corporation will consist of one representative each from PG&E, the Commission, the California Department of Fish and Game, the State Water Resources Control Board, the California Farm Bureau Federation, and three public members to be named by the Commission.

c. PG&E shall fund PG&E Environmental Enhancement Corporation with \$100 million in Cash: \$70 million of which will cover administrative expenses and the costs of environmental enhancements to the Watershed Lands ~~and~~

~~Carizzo Plains~~, provided that no such enhancement may at any time interfere with PG&E's hydroelectric operations, maintenance or capital improvements; and \$30 million of which will be dedicated to the Environmental Opportunity for Urban Youth Program. The funds will be paid in equal installments over ten years on the Effective Date and on January 2 of each year thereafter. The Commission shall authorize PG&E to recover these payments in retail rates without further review.

(END OF ATTACHMENT A)

ATTACHMENT B

**Modifications to Appendix D (Land Conservation Commitment) to
Appendix C (Approved Modified Settlement Agreement)
of Decision 03-12-035**

STATEMENT OF PURPOSE

PG&E shall ensure that the Watershed Lands it owns ~~and Carizzo Plains~~ are conserved for a broad range of beneficial public values, including the protection of 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. PG&E will protect these beneficial public values associated with the Watershed Lands ~~and Carizzo Plains~~ from uses that would conflict with their conservation. PG&E recognizes that such lands are important to maintaining the quality of life of local communities and all the people of California in many ways, and it is PG&E's intention to protect and preserve the beneficial public values of these lands under the terms of any agreements concerning their future ownership or management.

PG&E Environmental Enhancement Corporation will develop a plan for protection of these lands for the benefit of the citizens of California. Protecting such lands will be accomplished through either (1) PG&E's donation of conservation easements to one or more public agencies or qualified conservation organizations consistent with these objectives, or (2) PG&E's donation of lands in fee to one or more public entities or qualified conservation organizations, whose ownership would be consistent with these conservation objectives.

COMMITMENTS

1. PG&E Shall Place Permanent Conservation Easements on or Donate Watershed Lands: The Watershed Lands ~~and Carizzo Plains~~ shall (1) be subject to permanent conservation easements restricting development of the lands so as to protect and preserve their beneficial public values, and/or (2) be donated in fee simple to one or more public entities or qualified non-profit conservation organizations, whose ownership will ensure the protection of these beneficial public values. PG&E will not be expected to make fee simple donations of Watershed Lands that contain PG&E's or a joint licensee's hydroelectric project features. In instances where PG&E has donated land in fee, some may be sold to private entities subject to conservation easements and others, without significant public interest value, may be sold to private entities with few or no restrictions.

The conservation easements shall provide for the preservation of land areas for the protection of 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 and, shall prevent any other uses that will significantly impair or interfere with those values. Conservation easements on the Watershed Lands will include an express reservation of a right for continued operation and maintenance of hydroelectric facilities and associated water delivery facilities, including project replacements and

[Deleted text indicated by overstrike; all else original]

- improvements required to meet existing and future water delivery requirements for power generation and consumptive water use by existing users, compliance with any FERC license, FERC license renewal or other regulatory requirements. In addition, easements will honor existing agreements for economic uses, including consumptive water deliveries. The conservation easements shall be donated to and managed by one or more non-profit conservation trustees, qualified conservation organizations or public agencies with the experience and expertise to fully and strictly implement the conservation easements.
2. Process For Development of the Conservation Easements and Land Donation Plan: PG&E will work with PG&E Environmental Enhancement Corporation and the Commission in the development and implementation of the conservation easements and land donation plan. PG&E Environmental Enhancement Corporation will recommend to PG&E (1) conservation objectives for the properties, including identification of conservation values, (2) criteria for ultimate disposition of the properties, (3) conservation easements guidelines, and (4) land disposition plans.
 3. Reporting Responsibilities: PG&E Environmental Enhancement Corporation will prepare a report to the Commission within 18 months of the Effective Date describing the status of the conservation easement and land disposition plan. PG&E Environmental Enhancement Corporation will make the report available to the public upon request. Every two years following the first report, PG&E Environmental Enhancement Corporation will prepare a report to the Commission on the implementation of the conservation easement and land disposition plan.

(END OF ATTACHMENT B)

[D1107040 Attachment C](#)