

UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company )  
In Re: Notice of Application Accepted )  
For Filing and Soliciting Comments, )  
Motions to Intervene, and Protests )

Project No. 77-000

**MOTION TO INTERVENE OUT OF  
TIME BY THE POTTER VALLEY TRIBE**

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*Attorney for the Potter Valley Tribe*

## I. INTRODUCTION

The Potter Valley Tribe (hereinafter “Tribe”) hereby moves to intervene in the above-captioned proceeding pursuant to Rule 214 of the Federal Energy Regulatory Commission’s (“FERC”) Rules of Practice and Procedure, *18 C.F.R. § 385.214*. The Tribe has an interest in this proceeding that no other party can represent and maintains a good cause for the waiver of the time limitation. *18 C.F.R. § 385.214(b)(3)*. The Tribe’s intervention is in the public interest. *18 C.F.R. § 385.214(b)(2)(ii),(iii)*.

## II. MOVANT’S POSITION & GOOD CAUSE REGARDING TIME LIMITATION

### a. The Tribe’s Position

The Potter Valley Tribe is a federally recognized Tribe and therefore is entitled to the rights and privileges accorded Indian tribes under federal law. *89 Fed. Reg. 944, 946, January 8, 2024*. The Potter Valley Hydroelectric Project (hereinafter “the Project”) is located within aboriginal territory of the Tribe, which the Tribe has been tied to physically, spiritually, and culturally since time immemorial. As the result of prejudicial and genocidal policies during the days of early statehood, the Tribe was deprived of rights to a vast majority of their homelands.

Over time, the Tribe has slowly reacquired parcels of their ancestral territory, including the immediately surrounding lands of the Project. In 2003, the California Public Utilities Commission (“CPUC”) approved a bankruptcy settlement agreement regarding PG&E’s 2001 bankruptcy filing. The agreement provided for the environmental benefits and conservation of lands that are important to maintaining the quality of life of all Californians. This included approximately 140,000 acres of PG&E’s watershed lands associated with its hydroelectric system.

As part of the settlement, PG&E formed the nonprofit foundation, the Pacific Forest and Watersheds Lands Stewardship Council (“Stewardship Council”) to develop and implement a plan for the protection of such lands. In 2011, three proposals, including that of the Tribe, were submitted to the Stewardship Council for consideration for a donation of fee title to certain lands located within the Eel River planning unit. In 2012, the Stewardship Council Board of Directors recommended the Tribe to receive approximately 723 acres of land at the Eel River Planning Unit located in Mendocino County.

In 2014, the Stewardship Council Board of Directors recommended the Tribe to receive approximately 219 acres of land at the Eel River (Lower Trout Creek) Planning Unit located in Mendocino and Lake Counties. On July 24, 2019, after years of effort, the Tribe and PG&E finally closed on the donative fee transfer property. In the end, the Tribe received 879 acres back of its ancestral lands. These lands encompass the portion of the Eel River on which the Project is located and run further along the river to the east. Decisions regarding the direction of the Project will likely directly affect the Tribe’s use and quality of their lands as they are contiguous to the Project itself.

Moreover, the Tribe has unadjudicated and unquantified rights to the waters and fishing of the Eel River due to the aboriginal use and occupancy of their ancestral territory that long predates

the arrival of European settlers. *See United States v. Abouseiman*, 976 F.3d 1146, 1160. The Tribe maintains a vested cultural and practical interest in the use and quality of the Eel River. A healthy Eel River and fishery is critical to the Tribe's culture and identity. These interests will be impacted by the outcome of PG&E's License Surrender and Decommissioning of the Project. No other party can represent the interests of the Tribe whose perspective and cultural connection to the Eel River and surrounding lands is unique. The Potter Valley Tribe has an interest in this proceeding under Rule 214 of the Rules of Practice and Procedure of the Commission.

The Tribe respectfully requests to be included as a party to the proceeding to adequately represent their interests and rights in this important proceeding.

b. Good Cause for the Waiver of the Time Limitation

The Tribe has made numerous attempts to establish proper consultation on the Potter Valley Hydroelectric Project for over a decade. In a series of documented communications with PG&E and the Stewardship Council, the Tribe has repeatedly expressed its desire to be acknowledged as an interested party in the divestiture of the lands and facilities of the Project.

In 2013, the Tribe requested from the Stewardship Council that the retained lands and the Project facilities be donated to the Tribe pursuant to a previously submitted Land Stewardship Plan. In 2013, the Tribe submitted a secondary request with clarification to Parcel 748, which is included in this proceeding. These requests were denied with little justification. In 2017, the Tribe proposed a compromise in the form of a parcel split. This request was denied. In 2019, the Tribe yet again formally requested the restoration of the retained lands. This request was denied.

After the project was orphaned in 2020, the Tribe sent several letters to the appropriate entities requesting inclusion in discussions regarding the project. These letters were submitted over the course of three years. These requests never resulted in the Tribe's inclusion at the "bargaining table" and the interests of the Tribe fell on deaf ears. In 2023, the Tribe submitted a series of formal letters requesting consultation on the Initial Draft Surrender Application and Decommissioning Plan, affirming the Tribe's interest in lands. These requests were likewise ignored. Most recently, the Tribe submitted a formal letter to PG&E requesting proper consultation for the ongoing development of the Final Draft Surrender Agreement and the Final Surrender Application and Decommissioning Plan in June 2024. Despite these extensive measures, the Tribe currently is not party to any of the major discussions or proceedings regarding the Project.

The Tribe has now chosen to move for intervention in an exhaustive effort to be fairly included in the conversations that determine the divestment of the facilities and waters on their ancestral lands.

The Tribe's participation in this proceeding will not prejudice any party nor will it delay the schedule or broaden the scope of the issues in this proceeding. *18 C.F.R. § 385.214(d)(1)(ii), (iv)*. PG&E submitted an Extension of Time request for the Final Draft Surrender Agreement and the Final Surrender Application and Decommissioning Plan on June 6, 2024. Per PG&E's published FERC License Surrender Application Development Schedule, PG&E is currently undergoing the "Consultation with Resource Agencies and Tribes" phase of the

application. The Tribe's participation as a party to the proceeding at this time would not hinder the overall schedule of the proceeding; rather, it would enable PG&E to gather a more comprehensive consultation during the precise phase of Tribal consultation.

### III. MOVANT'S INTEREST

The Tribe's intervention of this proceeding is in the public interest. The Commission's adopted policy statement regarding tribal consultation in its proceedings obligates the Commission to keep with its trust responsibility by assuring "that tribal concerns and interests are considered whenever the Commission's actions or decisions have the potential to adversely affect Indian tribes." *18 C.F.R § 2.1c(e)*. The Commission, as an agency of the federal government, is subject to the United States' fiduciary responsibilities towards Tribes. *Covelo Indian Cmty. v. FERC*, 895 F.2d 581 (9th Cir. 1990). The Tribe's intervention serves the public interest by holding the Commission to its fiduciary obligations in this significant proceeding.

### IV. COMMUNICATIONS

All correspondence and communication with the Potter Valley Tribe concerning this matter should be directed to:

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### V. CONCLUSION

For the reasons set forth above, the Motion of the Potter Valley Tribe to intervene in the proceeding of Project Number 77-000 should be granted.

Date: July 16, 2024

Respectfully submitted,



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Michelle Lee  
*Attorney for the Potter Valley Tribe*

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served, by first class mail or electronic mail, a Motion to Intervene Out-of-Time by the Potter Valley Tribe, each person designated on the official Service List compiled by the Commission in the above-captioned proceedings.

Dated this 16th day of July 2024.



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