



SOUTH FEATHER WATER & POWER AGENCY

TO: Board of Directors

FROM: Michael Glaze, General Manager

DATE: February 16, 2010

**RE: Cost-Sharing Agreements – PG&E
Agenda Item for 2/23/10 Board of Directors Meeting**

In 2004, in response to changes to the basic hydrologic criteria used in assessing Agency dams for compliance with Federal and State safety rules, the AECOM/DMJM Harris consulting team was retained by SFWPA to provide engineering investigation, analysis and design modifications to Sly Creek and Lost Creek dams. These are considered “high hazard” facilities under the governing criteria of both the California Division of Safety of Dams and FERC, requiring that they be evaluated for compliance with the guidelines when subjected to the probable maximum flood (PMF). The result of the initial assessment was the determination that both dams will require modifications in order to safely pass the anticipated PMF inflows.

In 2007, the consultants estimated the cost for the Lost Creek Dam crest modifications to be between \$12.5 and \$13.5 million. This project is scheduled for construction after 2010. However, the Sly Creek Dam crest modifications are scheduled for construction this year and the 2010 Power Division budget includes \$7,725,000 for this project.

Under the present contract with PG&E that expires on June 30, 2010, capital improvement projects such as these are 100% funded by PG&E. However, because construction of the first of the two will not be completed until after the present contract expires, and because the life expectancy of the completed projects is 70+ years beyond the end of the present contract, demanding that PG&E pay 100% of the cost would most likely be a futile exercise. Nevertheless, the Sly Creek project comes at a difficult time for SFWPA, just as it is beginning the new power-purchase contract with PG&E and before enough net revenue can be generated from the sale of power to cover project expenses.

Discussions have been ongoing with PG&E for about two years regarding this issue, and a tentative agreement has now been reached for funding both the Sly Creek Dam Crest Modification Project and the Lost Creek Dam Crest Modification Project. Attached are the two agreements, which include the provision that PG&E will provide up-front funding for all of the project’s costs, with SFWPA paying back its 60% share, plus interest, by July 31, 2015.

The recommended action is:

"I move approval of, and authorization for the General Manager to execute, the cost-sharing agreements with P.G. & E. for the Sly Creek and the Lost Creek dam-crest modification projects."

**SLY CREEK DAM AGREEMENT
BETWEEN PACIFIC GAS & ELECTRIC COMPANY
AND SOUTH FEATHER WATER AND POWER AGENCY**

This agreement (Agreement) is entered into as of the last date of execution by and between Pacific Gas & Electric Company (PG&E), a California corporation, and South Feather Water & Power Agency (Agency), a public agency of the state of California, jointly referred to as “Parties” herein;

RECITALS

WHEREAS, the Agency is the owner of the South Feather Power Project (SFPP), FERC Project #2088, a water and hydroelectric project located on the South Fork Feather River and tributaries, of which Sly Creek Dam (Dam) is a major component; and

WHEREAS, the Agency is required by the Federal Energy Regulatory Commission (FERC) to ensure that its spillway facilities are able to safely pass Probable Maximum Flood flows (PMF); and

WHEREAS, the estimates of PMF determined by the Agency have been accepted as the PMF by FERC and the California Division of Safety of Dams; and

WHEREAS, the Agency has analyzed the existing spillway and determined that it is not able to pass the PMF without risk of dam failure, property damage or injury to persons; and

WHEREAS, FERC has ordered the Agency to modify the Dam to allow safe passage of PMF flows; and

WHEREAS, the Agency has designed spillway improvements that will allow the Dam to safely pass PMF flows; and

WHEREAS, the South Fork Project Power Purchase Contract (Power Purchase Contract) between PG&E and the Agency, dated June 15, 1960, requires PG&E to pay for the operation and maintenance of the SFPP; but PG&E contends that the Power Purchase Contract does not obligate PG&E to pay for the costs of the Dam spillway improvements, and Agency disputes PG&E’s contention; and

WHEREAS, to resolve this dispute, PG&E and the Agency have negotiated a settlement to share responsibility for funding the remaining design and the construction of the Dam modifications.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Completion of Project Documents. The Agency will obtain completed design, construction drawings and specifications for spillway modifications and/or improvements to Sly Creek Dam (“the Project”) as required by FERC to allow the Dam to safely pass the PMF.
2. Engineer’s Estimate. The Agency will provide PG&E with a written engineer’s estimate (Engineer’s Estimate) of the cost of the Project for PG&E’s approval, which approval will not be unreasonably withheld. The Engineer’s Estimate shall include all sunk costs incurred since January 1, 2009 plus anticipated costs to complete of the Project for permitting, engineering, contracting, and construction, construction management, and inspection. The Engineer’s Estimate shall also include a 10% contingency on the anticipated costs.
 - a. If, within 30 days of receiving the Engineer’s Estimate, PG&E notifies the Agency in writing that it considers the whole or any portion of the Engineer’s Estimate to be unreasonable, the Parties shall meet and confer in an attempt to resolve the issue or issues of disagreement.
 - b. If, within 30 days of the written notice in paragraph 2(a) above, PG&E and the Agency cannot reach mutual agreement that the Engineer’s Estimate is reasonable, this Agreement shall terminate and each Party shall be free to commence dispute resolution in accordance with Paragraph 15, Dispute Resolution, of this Agreement.
3. Bid Solicitations. In the absence of written notification by PG&E within the time prescribed above that it considers any portion of the Engineer’s Estimate to be unreasonable, or all issues or disagreements regarding reasonableness have otherwise been resolved as provided in paragraph 2(a) above, PG&E shall be deemed to have accepted the Engineer’s Estimate and the Agency shall prepare bid documents and solicit bids for construction of the Project.
 - a. Within 30 days from the date Agency opens the construction bids it has received for the Project, but in no event later than the time for acceptance or rejection of bids, PG&E and the Agency shall meet to review the Project cost estimate (Project Cost Estimate). The Project Cost Estimate shall include all sunk costs incurred since January 1, 2009 plus anticipated costs to completion of the Project for permitting, engineering, contracting, construction (the lowest responsible construction bid), construction management, and inspection. The Project Cost Estimate shall also include a 15% Project contingency on the anticipated costs. If SFWP has binding time and materials with not-to-exceed contract pricing for any of the work at the time the Project Cost Estimate is prepared, Project Cost Estimate shall reflect 95% of the contract not-to-exceed amounts before adding the 15% Project contingency.
 - b. If the Project Cost Estimate is less than or equal to the Engineer’s Estimate it shall be deemed reasonable and acceptable to both parties. If the Project Cost Estimate is in excess of the Engineer’s Estimate, it shall be subject to the reasonable approval of the Parties. Acceptance of the Project Cost Estimate shall constitute a waiver of any right the Parties may have to terminate this Agreement and a waiver of any rights they may have, at law or in equity, including under the Power Purchase Contract, to seek

dispute resolution for the cost sharing responsibility for the Project. Upon agreement, PG&E shall confirm to the Agency in writing its acceptance of the Project Cost Estimate.

- c. If the Parties cannot agree on the Project Cost Estimate within 30 days, either Party may terminate this agreement with three days written notification to the other Party, and each Party shall be free to commence dispute resolution in accordance with Paragraph 15, Dispute Resolution, of this Agreement.
4. PG&E Obligation to Reimburse. If the Project Cost Estimate is acceptable to PG&E, PG&E agrees that Agency may proceed with construction with 100% of the actual Project cost reimbursable to SFWP under the Power Purchase Contract.
- a. The Agency shall submit all requests for reimbursement (Reimbursement Requests) of Project expenses to PG&E on a monthly basis. Reimbursement Requests shall be payable by PG&E within thirty (30) days of receipt of a Reimbursement Request from the Agency.
 - b. Reimbursement Requests shall be accompanied by a Project status report, including construction progress, summary of Project costs billed for the billing period, and summary of total Project costs billed from January 1, 2009 up to the date of the Reimbursement Request. In addition, the Agency shall notify PG&E, in writing, immediately at any time that it anticipates that Project costs will exceed the Project Cost Estimate, and shall promptly provide PG&E with a written report explaining the reasons for cost overruns and measures taken to mitigate the cost overruns by no later than the next monthly status report following the notification.
5. Agency Obligation to Reimburse.
- a. The Agency shall reimburse PG&E 60% of the final Project cost (Completed Cost), including all costs incurred from January 1, 2009, plus simple interest that accrues monthly at a rate equal to the Wall Street Journal Prime Rate as published on the last day of each month in the Money Rate Section of the West Coast Edition of the Wall Street Journal.
 - b. If the Completed Cost exceeds 100% (not including interest) of the Project Cost Estimate, the Agency shall reimburse PG&E 80% of the amount that the Completed Cost exceeds the Project Cost Estimate, plus interest.
 - c. All amounts due PG&E from the Agency shall be due and payable by July 31, 2015.
 - d. Simple interest shall accrue monthly on the Agency's 60% (or 80%) share of Completed Costs from the time Reimbursement Requests are paid by PG&E. For expenses paid prior to execution of the final agreement, interest shall accrue monthly from January 1, 2009 or the time Withdrawal Requests under the Power Purchase Contract with those expenses were paid, whichever is later.

6. Records. The Agency shall maintain records of the Project, including records of billing and payment, inspection reports, permits and other documents related to the Project. PG&E and its designated agents shall have the right to inspect all Project records maintained by the Agency at any time within normal business hours.
7. Power Purchase Contract Unaffected. This Agreement shall not change, modify or amend any of the terms and conditions of the Power Purchase Contract except as expressly provided herein. Nothing in this Agreement shall set precedent for replacement, reconstruction or refurbishing of any other SFPP facility, equipment or feature.
8. Permits. The Agency shall be responsible for obtaining all regulatory permits and approvals necessary for construction of the Project to proceed under this Agreement.
9. Agencies. The Parties agree to use their best efforts to jointly and cooperatively defend and protect this Agreement, if necessary, before the CPUC or any other regulatory agency having jurisdiction over PG&E or the Agency. Should PG&E's recovery of its costs under this Agreement be denied, the Parties shall meet in good faith to attempt to revise the terms of this Agreement in a way that makes it acceptable to the regulatory agency.
10. Notice. Whenever notice is required to be in writing, it may be given by delivery addressed as follows:
 - a. To the Agency:

South Feather Water & Power Agency
2310 Oro Quincy Highway
Oroville, CA 95966
Attention: Agency General Manager
 - b. To PG&E:

Mr. Kevin H. Goishi, Principal Project Manager
Pacific Gas & Electric Company
343 Sacramento Street
Auburn, CA 95603
11. Section Headings: All section headings in this Agreement are for convenience of reference only and are not to be construed as modifying or governing this language in the section referred to or to define or limit the scope of any provision of this Agreement.
12. Law Governing. This Agreement is made in the State of California under the constitution and laws of the State of California and is to be so construed.
13. Amendment. Except as limited by applicable regulations or laws of any jurisdiction having authority, this Agreement may be amended at any time by mutual agreement of the parties.

14. Construction of Agreement. The Parties acknowledge that each had informed and able counsel to advise it concerning the terms of this Agreement, and agree that neither Party shall be deemed the drafting party in any dispute involving construction of the terms of the Agreement.
15. Dispute Resolution. All disputes that may arise from this Agreement, its interpretation or implementation, shall be resolved as provided in Article 20 of the Power Purchase Contract and the Parties agree that Article 20 is hereby incorporated by reference into this Agreement. Parties further agree that the referenced Article 20 will remain a condition of this Agreement even after the July 1, 2010 termination of the Power Purchase Contract.
16. Term of Agreement. The term of the Agreement begins upon execution of the Agreement and terminates 60 days after the final Project Withdrawal Request has been paid by PG&E, unless terminated earlier pursuant to Section 2 Paragraph b or Section 3 Paragraph c.
17. Indemnification. This Agreement is subject to the Indemnification Provisions in Article 15 of the Power Purchase Contract and that Article 15 is hereby incorporated by reference into this Agreement. The Parties further agree that Article 15 will remain a condition of this Agreement even after the July 1, 2010 termination of the Power Purchase Contract.
18. Severability. If any provision of this Contract is determined to be illegal, unenforceable, or invalid in whole or in part, such provision or part thereof shall be stricken from this Contract and shall not affect the legality, enforceability or validity of the remainder of this Contract. If any provision or part thereof of this Contract is stricken in accordance with the provisions of this Article, it shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in intent to the stricken provision as is legally possible.
19. Review of Design. The Agency shall submit to PG&E from time to time, and as soon as possible, the plans and specifications of all portions of the Project. PG&E's review and acceptance of the design and specifications shall not be construed as confirming or endorsing the design and specifications or as warranting their safety, durability, or reliability. PG&E shall not, by reason of such review or lack of review, be responsible for strength, details of design, adequacy, or capacity of features built pursuant to such design and specifications. PG&E shall also have the right to inspect all work performed by or for the Agency in constructing elements of the Project.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

SOUTH FEATHER WATER & POWER AGENCY

By: _____
Michael C. Glaze
General Manager

Date: _____

PACIFIC GAS & ELECTRIC COMPANY

By: _____
Randy S. Livingston
Vice President

Date: _____

**LOST CREEK DAM AGREEMENT
BETWEEN PACIFIC GAS & ELECTRIC COMPANY
AND SOUTH FEATHER WATER AND POWER AGENCY**

This agreement (Agreement) is entered into as of the last date of execution by and between Pacific Gas & Electric Company (PG&E), a California corporation, and South Feather Water & Power Agency (Agency), a public agency of the state of California, jointly referred to as “Parties” herein;

RECITALS

WHEREAS, the Agency is the owner of the South Feather Power Project (SFPP), FERC Project #2088, a water and hydroelectric project located on the South Fork Feather River and tributaries, of which Lost Creek Dam (Dam) is a major component; and

WHEREAS, the Agency is required by the Federal Energy Regulatory Commission (FERC) to ensure that its spillway facilities are able to safely pass Probable Maximum Flood flows (PMF); and

WHEREAS, the estimates of PMF determined by the Agency have been accepted as the PMF by FERC and the California Division of Safety of Dams; and

WHEREAS, the Agency has analyzed the existing spillway and determined that it is not able to pass the PMF without risk of dam failure, property damage or injury to persons; and

WHEREAS, FERC has ordered the Agency to modify the Dam to allow safe passage of PMF flows; and

WHEREAS, the Agency has designed spillway improvements that will allow the Dam to safely pass PMF flows; and

WHEREAS, the South Fork Project Power Purchase Contract (Power Purchase Contract) between PG&E and the Agency, dated June 15, 1960, requires PG&E to pay for the operation and maintenance of the SFPP; but PG&E contends that the Power Purchase Contract does not obligate PG&E to pay for the costs of the Dam spillway improvements, and Agency disputes PG&E’s contention; and

WHEREAS, to resolve this dispute, PG&E and the Agency have negotiated a settlement to share responsibility for funding the remaining design and the construction of the Dam modifications.

NOW THEREFORE THE PARTIES MUTUALLY AGREE AS FOLLOWS:

1. Completion of Project Documents. The Agency will obtain completed design, construction drawings and specifications for spillway modifications and/or improvements to Lost Creek Dam (“the Project”) as required by FERC to allow the Dam to safely pass the PMF.
2. Engineer’s Estimate. The Agency will provide PG&E with a written engineer’s estimate (Engineer’s Estimate) of the cost of the Project for PG&E’s approval, which approval will not be unreasonably withheld. The Engineer’s Estimate shall include all sunk costs incurred since January 1, 2009 plus anticipated costs to complete of the Project for permitting, engineering, contracting, and construction, construction management, and inspection. The Engineer’s Estimate shall also include a 10% contingency on the anticipated costs.
 - a. If, within 30 days of receiving the Engineer’s Estimate, PG&E notifies the Agency in writing that it considers the whole or any portion of the Engineer’s Estimate to be unreasonable, the Parties shall meet and confer in an attempt to resolve the issue or issues of disagreement.
 - b. If, within 30 days of the written notice in paragraph 2(a) above, PG&E and the Agency cannot reach mutual agreement that the Engineer’s Estimate is reasonable, this Agreement shall terminate and each Party shall be free to commence dispute resolution in accordance with Paragraph 15, Dispute Resolution, of this Agreement.
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 - a. Within 30 days from the date Agency opens the construction bids it has received for the Project, but in no event later than the time for acceptance or rejection of bids, PG&E and the Agency shall meet to review the Project cost estimate (Project Cost Estimate). The Project Cost Estimate shall include all sunk costs incurred since January 1, 2009 plus anticipated costs to completion of the Project for permitting, engineering, contracting, construction (the lowest responsible construction bid), construction management, and inspection. The Project Cost Estimate shall also include a 15% Project contingency on the anticipated costs. If SFWP has binding time and materials with not-to-exceed contract pricing for any of the work at the time the Project Cost Estimate is prepared, Project Cost Estimate shall reflect 95% of the contract not-to-exceed amounts before adding the 15% Project contingency.
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IN WITNESS WHEREOF, the Parties hereto have executed this Agreement.

SOUTH FEATHER WATER & POWER AGENCY

By: _____
Michael C. Glaze
General Manager

Date: _____

PACIFIC GAS & ELECTRIC COMPANY

By: _____
Randy S. Livingston
Vice President

Date: _____