

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas & Electric Company

Project No. 12779-000

NOTICE DENYING LATE INTERVENTION

(March 4, 2008)

On April 17, 2007, the Commission issued a public notice of Pacific Gas & Electric Company's (PG&E) application for a preliminary permit for the Humboldt WaveConnect Project No. 12779, to be located in the Pacific Ocean off the coast of Humboldt County, California.

The Fishermen Interested in Safe Hydrokinetics (FISH Committee) filed a late motion to intervene on February 28, 2008.

In determining whether to grant late interventions, the Commission may consider such factors as whether the movant had good cause for filing late, whether the movant's interests are adequately represented by other parties to the proceeding, and whether granting the intervention might result in disruption to the proceeding or prejudice to other parties.¹ Movants for late interventions must, among other things, demonstrate good cause why the time limitation should be waived.²

FISH Committee, created in January 2008 with the purpose of representing and protecting the interests of the Mendocino County coastal fishing community, argues that it did not have an opportunity to intervene because it was created, as an unincorporated California entity, only after the filing deadline. It also argues that its members have specialized knowledge and experience with ocean conditions in the project area and have economic interests that are not adequately represented by other parties in the proceeding. FISH Committee also contends that granting its late intervention would not disrupt or delay the application process and would not prejudice or result in additional burdens to any other party.

¹ 18 C.F.R. § 385.214(d) (2007).

² *See id.* § 385.214(b)(3).

Movant's assertions are without merit. The Commission issued public notice of the preliminary permit application on April 17, 2007 and published notice in the *Federal Register* on April 23, 2007.³ In addition, the *Eureka Times Standard* published notice on April 23, 2007, April 30, 2007, May 7, 2007, and May 14, 2007.⁴ Movant therefore was on notice of PG&E's application since April 17, 2007, but failed to timely respond to it.⁵

Although FISH Committee was created after the filing deadline, its members are comprised entirely of organizations that were provided notice of PG&E's application for a preliminary permit. Allowing late intervention at this point in the proceeding would create prejudice and additional burdens on the Commission and the applicant.

In any event, the issues raised by movant are premature at the preliminary permit proceeding. Movant's concerns lie with the actual project and not the permit, the issuance of which does not authorize the construction of the project.⁶ The issuance of a preliminary permit only allows the permittee the right to preserve the priority of application for a license while the permittee obtains data and performs feasibility studies.⁷ If PG&E files a license application for the project, then the movant's concerns can be addressed at that time.⁸

Movant has failed to demonstrate good cause for granting its late intervention. Therefore its motion for late intervention in this proceeding is denied.

³ See 72 Fed. Reg. 20,114 (2007).

⁴ See 16 U.S.C. § 797(f) (2000). Publisher's Affidavit dated May 14, 2007 and placed in the public record of Project No. 12779 proceeding on March 4, 2008.

In addition to the published notice, PG&E's application was reported in several regional newspapers including the *Press Democrat* and the *San Francisco Chronicle*.

⁵ See 44 U.S.C. § 1507 (2000); see also *Federal Crop Ins. Corp. v. Merrill*, 332 U.S. 380 (1947) (holding that Federal Register publication provides notice to all affected parties).

⁶ See *Sunset Falls, L.P.*, 60 FERC ¶ 61,301 at 62,079 (1992) ("a permit does not authorize construction").

⁷ See 16 U.S.C. § 798 (2000); 18 C.F.R. § 4.80 (2007).

⁸ To receive all filings in this docket, movant is encouraged to use the Commission's e-Subscription service, which can be accessed at <http://www.ferc.gov/docs-filing/esubscription.asp>.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection must be filed within 30 days of the date of issuance of this notice, pursuant to 18 C.F.R. § 385.713 (2007).

Kimberly D. Bose,
Secretary.