



UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

| Pacific Gas & Electric

| Potter Valley Project P-77

Friends of the Eel River et. al.'s Request for Review of CEII Filed regarding the Potter Valley Project.

Friends of the Eel River, California Sportfishing Protection Alliance, Native Fish Society, Northern California Council Fly Fishers International, California Trout, Redwood Chapter Sierra Club, American Whitewater, and Trout Unlimited respectfully submit this request for review of the proper classification of information regarding the Potter Valley Project, P-77, labeled as Critical Energy Infrastructure Information (CEII) by Pacific Gas and Electric (PG&E). We are concerned that PG&E continues to classify as CEII information that, while not security-related, is highly relevant to public safety, and of great potential value to emergency response planning.

We urge FERC to review the classification of the inundation maps included in Pacific Gas and Electric (PG&E's) December 8, 2023 Emergency Action Plan (EAP) Update.¹ PG&E classified Enclosures 1, 2, and 3 in its Dec. 8 letter as CEII/CUI, marked "Do Not Release" to the public. Enclosures 1, 2, and 3 are described, in pertinent part, as "Scott Dam Inundation Maps, Overview Sheets 1-9," "Scott Dam Inundation Maps, Detailed Sheets 1-68," and "Scott Dam Spillway Inundation Maps — Appendices," respectively.

The information PG&E has classified as CEII/CUI here appears substantially similar to that publicly released by the California Division of Safety of Dams (DSOD) in several forms, including geospatial data.² DSOD also publishes both the Scott Dam and the Scott Dam

¹ FERC accession no. 20231211-5016

² See the DSOD Dam Breach Inundation Map Web Publisher entry for Scott Dam and Scott Dam Spillway at https://fmds.water.ca.gov/webgis/?appid=dam_prototype_v2

spillway inundation maps as separate documents.³ On the upper left corner of the first page of each, DSOD appends the following statement in a separate text box:

DSOD Note: Dam owner stamped the entire map as CEII/CUI. However, DSOD does not consider information submitted to it, whether it be the entire map or information on the map, to meet the definition of CEII/CUI. DSOD recognizes that the map contains specific security-sensitive information, which is similar in nature to CEII/CUI, and so DSOD has carefully reviewed the map and redacted specific security-related information before making the map available to the public.

We believe it is in the public interest for FERC to investigate PG&E's inundation maps, and to make publicly available all information which does not strictly meet the inclusion criteria for CEII. Public officials, landowners, and members of the public, including recreational users of the Eel River, are interested in the inundation maps and related information concerning public safety.

Under Commission regulation, CEII is defined as "information related to critical electric infrastructure, or proposed critical electric infrastructure, generated by or provided to the Commission or other Federal agency other than classified national security information, and that is designated as critical electric infrastructure information by the Commission or the Secretary of the Department of Energy pursuant to section 215A(d) of the Federal Power Act." See 18 CFR § 388.113 (c)(1).

Commission regulations at 18 CFR § 388.113(c)(2) define CEII as "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure (physical or virtual) that:

1. Relates details about the production, generation, transmission, or distribution of energy;
2. Could be useful to a person planning an attack on critical infrastructure;
3. Is exempt from mandatory disclosure under the Freedom of Information Act; and
4. Gives strategic information beyond the location of the critical infrastructure."

The subject maps concern potential flooding downstream of PG&E's two dams in the upper mainstem Eel River. They do not provide any specific engineering, vulnerability, or detailed design information about project infrastructure. Thus, the inundation maps do not reach the threshold to be considered CEII.

³ The documents, titled CA00398_MD_Scenario1.pdf and CA00398_SW1_Scenario1.pdf, can be downloaded from the Scott Dam entry at the DSOD Dam Breach Inundation Map Web Publisher noted in footnote 2 above.

Even if the maps did show specific engineering, vulnerability, or detailed design information about project infrastructure, they still do not qualify as CEII under any of the subordinate clauses of 18 CFR § 388.113(c)(2). The maps depict inundation levels in the Eel River watershed downstream of a potential dam failure. The maps do not reveal any strategic information beyond the location of two dams that are more than a century old and well marked in many public sources. The maps do not convey details about the production, generation, transmission, or distribution of energy, nor do they reveal information that could be useful to a person planning an attack. There is no evidence to indicate that the Commission's public release of the inundation maps could cause them to be "used to impair the security or reliability of the bulk-power system or distribution facilities or any other form of energy infrastructure."⁴ Thus, the inundation maps do not appear to meet the regulatory definition of CEII in any way.

If the purpose of CEII designation is "to safeguard information vital to protect the nation's energy infrastructure" as the Commission wrote in establishing CEII designation,⁵ then there is arguably little reason to designate information about Scott Dam as CEII at this point. With the July 2021 failure of the transformer in Potter Valley and PG&E's 2003 announcement that it would not replace the equipment, the entire project has ceased entirely to produce any electric power. With PG&E's imminent decommissioning of the Project, the balance between the need to protect energy infrastructure and the need to provide information relevant to public safety should shift toward disclosure.

We note that the Commission's regulations at 18 CFR § 388.112(b)(1) require CEII filers to provide a justification for CEII treatment. (See also 18 CFR § 388.113(d)(1)(i), which provides that "(a) person requesting that information submitted to the Commission be treated as CEII must include with its submission a justification for such treatment ...") The filer must also submit to the Commission a public version with the information that is claimed to be privileged material redacted, to the extent practicable, as required by 18 CFR § 388.113(d)(2). We are unable to locate any justification in the docket for the classification of the Potter Valley Project inundation maps.

Nor has PG&E released public versions of the inundation maps redacted to the extent practicable. DSOD's release of redacted versions of the inundation maps demonstrates that such a release is indeed practicable. We are unable to see how release of the maps in question could conceivably reveal any "specific engineering, vulnerability, or detailed design information" about the Potter Valley Project dams, as 18 CFR § 388.113(c)(2) requires.

⁴ See 18 CFR § 388.113(e)(2)

⁵ See 67 FR 57994 at 57996

Our understanding of the Commission’s regulations requires that CEII information and accompanying justifications and redacted public versions of the filed information are to be reviewed by Commission staff, and only to be treated as CEII if that review finds the information is properly classified as CEII. The Commission’s regulations are not entirely clear regarding the time frame within which classification decisions are to be made, but do clearly state that the CEII Coordinator is responsible for the decision, e.g. “(t)he CEII Coordinator will evaluate whether the submitted information or portions of the information are covered by the definitions in paragraphs (c)(1) and (2) of this section prior to making a designation as CEII.”⁶ We have been unable to locate any correspondence regarding review of CEII-classified filings in this docket, despite the fact that nearly everything which potentially touches on dam safety is routinely filed as CEII. Does FERC in fact review CEII submissions to ensure they are properly designated?

In comments filed with the Commission in June 2023 regarding PG&E’s Upper NF Feather Hydroelectric Project No. P-2105 American Whitewater noted that,

“As the Commission is well aware, many of its licensees have used the CEII process to withhold from public access information that does not properly meet these criteria. The Commission’s Order 683, issued on September 21, 2006, addressed this situation by more specifically defining the types of information that qualify for CEII designation. However, many licensees, including PG&E, have continued to use the CEII process to withhold essentially all dam safety information from public access.”⁷

Based on our experience regarding PG&E’s failure to release information regarding the Potter Valley Project, we share American Whitewater’s concern that the Commission’s CEII process has been abused, leaving “the American public in the dark and unknowledgeable about the risks that dams may pose to their personal safety, families, livelihoods, and property.”⁸ While it is the case here that DSOD has released redacted versions of the Potter Valley Project inundation maps, PG&E and FERC’s unwarranted classification of the maps may needlessly restrict communication between emergency services, planning agencies, and the general public, if only by creating uncertainty about what can and cannot be discussed with the public who are at risk from any potential dam failure.

In light of recently revealed risks of severe damage to Scott Dam from seismic activity on the Bartlett Springs Fault, PG&E has been instructed by DSOD not to raise the gates atop Scott Dam until further notice, reducing the storage capacity of the reservoir by approximately 20,000 acre feet. While this fact suggests that the existing inundation maps

⁶ See 18 CFR § 388.113(d)(1)(v)

⁷ FERC accession number 20230607-5125

⁸ Ibid.

thus reflect a flow unlikely to occur, it also reinforces concerns that downstream residents and recreationists may have about the potential for catastrophic failure of Scott Dam. Where it is not necessary to protect information about dam safety for bona fide national security reasons, as here, there is a strong public interest in ensuring that information which can help people plan, prepare for, and respond to potential crises be made unambiguously public.

As noted, the Potter Valley Project inundation maps have properly been made public by the California DSOD. Given that fact, we urge FERC not to accept PG&E's continued classification of the Potter Valley Project inundation maps as CEII. Rather, we request FERC instruct PG&E to redact any truly sensitive security-related information, as DSOD has done, and then to release the Dec. 8 maps and any further updates to the public in unclassified form. Additionally, we request that the Commission make public the filers' CEII justification statements that are required by 18 CFR § 388.112(b)(1), and uphold 18 CFR § 388.113(d)(2) by requiring filers to submit public versions of CEII filings with privileged CEII material redacted.

Thank you for your consideration of this matter.

Sincerely yours,

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