

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Elizabeth Anne Moler, Chair;
Vicky A. Bailey, James J. Hoecker,
and Donald F. Santa, Jr.

Southern California Edison) Project No. 1388-008
Company

ORDER ON REHEARING IN PART
AND STAYING LICENSE IN PART

(Issued May 19, 1997)

On March 6, 1997, Southern California Edison Company (Edison) filed a timely request for rehearing of the Commission's February 4, 1997 order granting a new license for the continued operation and maintenance of Edison's Lee Vining Project No. 1388, located on Lee Vining Creek in the Mono Lake Basin, in Mono County, California. 1/ For the reasons discussed below, we act now on those parts of the rehearing request that do not deal with Section 4(e) of the Federal Power Act (FPA) or involve the conditions submitted thereunder, and we defer action on the Section 4(e) issues. We also stay a provision of a Section 4(e) condition that entails potential exacerbation of flooding.

BACKGROUND

The Lee Vining Project is a 11.25-megawatt project that includes four dams and three associated impoundments. 2/ A portion of the project is located in the Inyo National Forest, which is managed by the U.S. Forest Service. A national forest is a reservation for FPA purposes. 3/ Section 4(e) of the FPA provides that licenses issued within any reservation "shall be subject to and contain such conditions as the Secretary of the department under whose supervision such reservation falls shall deem necessary for the adequate protection and utilization of such reservation."

The Forest Service's Section 4(e) conditions, issued December 23, 1993, are still pending Edison's appeal before the

1/ 78 FERC ¶ 61,110.

2/ For a detailed description of the project, see 78 FERC at pp. _____.

3/ See FPA Section 3(2), 16 U.S.C. § 796(2).

Forest Service, 4/ which has indicated that it will not act on the appeal until after it has completed a new hydro policy and handbook. 5/ Consequently, the new license for the Lee Vining Project, which includes the Forest Service's conditions, 6/ reserves the Commission's right to amend these conditions in light of the Forest Service's decision on appeal. 7/

On rehearing of the relicense order, Edison argues that the Forest Service's Section 4(e) conditions must be deleted from the license. It also requests that certain non-Section 4(e) license articles be revised or deleted.

DISCUSSION

A. Section 4(e) Conditions

Edison raises a variety of legal and technical arguments concerning the Section 4(e) conditions placed in the new license for the Lee Vining Creek Project, which we will address in a subsequent order. 8/ We are however staying a portion of the Forest Service's stream-flow requirements, in light of concerns raised by Edison on rehearing, concerns we believe need to be examined, that these provisions could unreasonably hamper its ability to take preemptive measures to mitigate potential flooding conditions that may damage downstream property. 9/ We

4/ The Forest Service initially issued Section 4(e) conditions for the project on May 25, 1993. Edison appealed these, and on December 23, 1993, the Forest Service issued revised conditions. It is Edison's February 3, 1994 appeal of these conditions that is still pending.

5/ See September 23, 1994 Forest Service letter to Edison, Attachment 1 to Edison's rehearing request.

6/ See Appendix A to the relicense order.

7/ See ordering paragraph D.

8/ While we could address some of Edison's Section 4(e) arguments now, deferral will keep all Section 4(e) issues together for appeal purposes.

9/ Edison cites, for example, to Condition 4's provision for a maximum release of 2 cubic feet per second (cfs) from the project's Tioga Lake reservoir, and notes that in past years of heavy snowfall it has historically released well over 2 cfs from Tioga Lake Dam to hold back heavy run-off and avoid excessive spills.

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also direct our staff to meet with representatives of Edison and the Forest Service to develop mutually acceptable provisions for flow releases and a reservoir level maintenance plan for the purpose of avoiding or reducing potential flood damage. If no resolution is reached by 120 days from the date of this order, we will carefully consider our options in this matter.

B. Other License Articles

License Article 405 requires Edison to limit water level fluctuations below project facilities by not varying flow releases from project dams and tailraces between October 15 and April 1 by more than 10 cfs from the average daily flow in early October (between October 1 and October 14). Edison argues that Article 405 is unjustified and too restrictive, and asks that it be revised to reflect natural flow conditions. Specifically, Edison contends that the requirements of Article 405 do not apply to the project powerhouse and Tioga Lake dam releases.

Article 405 was intended to refer only to Saddlebag Lake dam (not any of the other facilities) as recommended in the FEA at sections V.B.2. and VIII. The purpose of this condition is to help stabilize the flow regime during trout spawning and egg incubation periods and thereby minimize the loss of incubating trout eggs due to scouring, drying out, or freezing. Accordingly, we will revise Article 405 such that flow fluctuation limits pertain only to flow releases from Saddlebag Lake dam. 10/

Edison requests the deletion of license Article 401, which purports to require Edison to bury an 0.8-mile segment of a telephone line connecting the project to the telephone company's communication network. We agree that this was an error, and will delete the article. We will also delete the reference in Article 407 to the telephone line and Article 401.

2/ (...continued)

While the Forest Service's Condition 4 provides that Edison may temporarily modify flow release requirements if required by operating emergencies beyond its control, it is not clear that this provision provides Edison the flexibility it needs to adjust reservoir levels in anticipation of flood conditions.

10/ Edison correctly points out that the license order incorrectly characterizes the Forest Service's Condition 4 as containing a ramping rate requirement.

cc: W. D. Pagel
D. Dormire
N. Sliger
R. Schroeder
J. Irwin
T. Loun

The Commission orders:

(A) Southern California Edison Company's request for rehearing, filed on March 6, 1997, is granted as set forth herein; the Commission will act on the remainder of the request for rehearing by separate order.

(B) The requirements for water management at Tioga Lake Dam set forth in Condition 4 of Appendix A of the February 4, 1997 order issuing new license for the Bee Vining Project are, effective on the date of issuance of this order, stayed pending further order of the Commission. The Commission staff is directed to schedule a meeting with the licensee and the U.S. Forest Service for the purpose of developing stream-flow requirements that will meet the needs of the Forest Service and manage project reservoir water levels in a manner that will avoid or reduce the adverse impact of flood conditions on the project area and downstream locations. The licensee shall file status reports on this matter 60 and 120 days from the date of this order.

(C) Article 401 is deleted from the license.

(D) Article 405 is revised to read:

Article 405. The licensee shall limit water level fluctuations below Saddlebag Lake dam by not varying flow releases between October 15 and April 1 by more than or less than 10 cubic feet per second from the average daily flow in early October (between October 1 and October 14), subject to other minimum flow requirements as specified in Condition 4 in Appendix A to this order.

(E) The first sentence of Article 407 is revised to read:

At least 90 days before the start of any land-disturbing or land-clearing activities associated with the installation of flow gages pursuant to Condition 5 in Appendix A, the licensee shall file for Commission approval a plan to control erosion and to minimize the quantity of sediment resulting from land disturbance.

By the Commission.

(S E A L)

Lois D. Cashell
Lois D. Cashell,
Secretary.