

149 FERC ¶ 61,035
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Sacramento Municipal Utility District

Project No. 2101-095

ORDER GRANTING REHEARING IN PART,
DENYING REHEARING IN PART, AND AMENDING LICENSE

(Issued October 16, 2014)

1. The Sacramento Municipal Utility District (SMUD) filed a request for rehearing of an order authorizing SMUD to continue operation and maintenance of its 637.3-megawatt (MW) Upper American River Hydroelectric Project (Upper American Project) No. 2101, and to construct, as a part of the project, the proposed 400-MW Iowa Hill Pumped Storage Development (Iowa Hill Development).¹ We grant rehearing and amend the license, as described below.

Background

2. The Upper American Project currently consists of seven developments located on the Rubicon River, Silver Creek, and South Fork American River in El Dorado and Sacramento Counties in central California. On July 23, 2014, Commission staff issued a new license for the project, including various measures designed to protect the environment, carry out project purposes, and satisfy Commission requirements. The license incorporated certain terms of a comprehensive Settlement Agreement related to the relicensing of both the Upper American Project and the adjacent downstream Chili Bar Hydroelectric Project No. 2155, licensed to Pacific Gas & Electric Company.²

¹ *Sacramento Mun. Util. Dist.*, 148 FERC ¶ 62,070 (2014) (*SMUD*).

² A new license for the Chili Bar project was issued shortly after that for the Upper American Project. *Pac. Gas & Elec. Co.*, 148 FERC ¶ 62,148 (2014).

3. On August 22, 2014, SMUD filed a timely request for rehearing of the July 23, 2014 license order. SMUD requests that the Commission modify requirements regarding the scope of revised Exhibit G maps (Article 203), due dates for the submission of plans for Commission approval (Article 401), and SMUD's expanded obligations for various recreation facilities (Article 408).

A. Article 203. Exhibit G Drawings

4. License Article 203 requires SMUD to file revised Exhibit G drawings enclosing within the project boundary the Cleveland Corral Information Center (Center), Deer Crossing Campground, and Big Hill Communications Site, among other recreation sites. On rehearing, SMUD contends that the Center and the Deer Crossing Campground should not be included as project works. SMUD explains that the Settlement Agreement did not obligate SMUD to maintain either site. SMUD also notes that in the relicensing Final Environmental Impact Statement (FEIS) Commission staff concurred with SMUD that the Information Center should not be included in the project boundary because inclusion would be unnecessary for project purposes.³ Staff also explicitly deleted the Deer Crossing Campground from the FEIS analysis of project facilities, concurring with SMUD's comments on the Draft EIS.⁴

5. We agree with SMUD that the Center and the Deer Crossing Campground appear in Article 203 in error. Accordingly, we grant rehearing on this issue, and we will delete these recreation sites from Article 203.

6. SMUD also contends that Article 203 should be modified to refer to discrete recreation facilities of the Big Hill Communication Site rather than to the site in its entirety. SMUD explains that the Big Hill Communication Site is primarily used by the Forest Service as a communication, fire observation, and fire staging area. Under the Settlement Agreement, SMUD is only obligated to maintain certain recreation facilities at the Big Hill Vista on top of Big Hill, and Commission staff identified only the recreation portion of the Big Hill Communication Site in the FEIS.

³ The Cleveland Corral Information Center is a Forest Service facility that is open to all visitors to the Crystal Basin, including visitors to non-project lakes, streams, lands, and trails throughout the 68,000-acre basin. Therefore, Commission staff agreed with SMUD that this is a non-project facility and should not be included within the project boundary. FEIS at A-29 (Mar. 14, 2008).

⁴ Deer Crossing Campground is a small, private camp operated under a special use permit by the Forest Service. Therefore, Commission staff agreed with SMUD that this is a non-project facility and should not be included with the project boundary. FEIS at A-6.

7. We agree with SMUD that the revised Exhibit G drawings should incorporate only the discrete recreation facilities at the Big Hill Vista rather than the Big Hill Communications site in its entirety. Accordingly, we grant rehearing on this issue, and we will modify Article 203.

B. Article 401. Commission Approval, Reporting, and Filing of Amendments

8. Various terms found in the California State Water Resources Control Board's (Water Board) final section 401 Water Quality Certification (WQC) conditions and the U.S. Forest Service's final section 4(e) conditions require SMUD to prepare and submit plans for approval by the California Water Board or the Forest Service, or both. License Article 401(a) requires that each such plan or proposed measure must also be submitted to the Commission and may not be implemented prior to Commission approval. Article 401(a) establishes due dates for SMUD to submit each of these plans to the Commission.

9. On rehearing, SMUD requests that the Commission modify the due dates for the submission of the Chili Bar License Coordinated Operations Plan, the Methods for Hardhead Monitoring in Slab Creek Reservoir Plan (Hardhead Monitoring Plan), the Methods and Locations for Monitoring Edgewater Temperature Conditions in Slab Creek Reservoir Plan (Edgewater Temperature Monitoring Plan), and the Whitewater Boating Recreation Plan for the South Fork Silver Creek below Ice House Dam.

10. Regarding the Chili Bar License Coordinated Operations Plan, SMUD explains that the Commission included conflicting due dates in the license for the Upper American Project and the license for the adjacent downstream Chili Bar Project. Article 401(a) in the former requires that SMUD submit the plan “within 4 months of license issuance.” The latter requires Pacific Gas & Electric Company to file the plan “within 120 days of license issuance.”⁵

11. Given that Commission staff issued the license for the Upper American Project before the license for the Chili Bar Project, rather than simultaneously with it, we agree with SMUD that the due date for SMUD’s Chili Bar License Coordinated Operations Plan should be modified to be within 120 days of license issuance for the Chili Bar Project. Accordingly, we grant rehearing on this issue, and we will modify the due date in Article 401(a).

12. Regarding the Hardhead Monitoring Plan and the Edgewater Temperature Monitoring Plan, SMUD explains that the Article 401(a) due dates conflict with the implementation dates in WQC Conditions 21.A and 21.B, respectively. The certification

⁵ *Pac. Gas & Elec. Co.*, 148 FERC ¶ 62,148, at art. 401(a) (second row, fourth column) (2014).

requires implementation of these monitoring plans to detect possible impacts from SMUD's use of Slab Creek Reservoir as the lower reservoir in the Iowa Hill Development's pumped storage operation.

13. Article 401(a) requires that SMUD submit both plans within five months of license issuance, i.e. by December 23, 2014. SMUD contends that the existing due date is three to eight years ahead of required plan implementation and that later due dates would enable SMUD to develop both plans based on better information about the design of the Iowa Hill Development. WQC Condition 21.A only requires that SMUD implement the Hardhead Monitoring Plan in two overlapping stages: (A) monitoring for the location of hardhead life stages "during, at least, the two years immediately prior to and two years immediately after Iowa Hill operations," and (B) monitoring for hardhead entrainment due to Iowa Hill "during the first two years after Iowa Hill begins to operate" ⁶ WQC Condition 21.B requires that SMUD implement the Edgewater Temperature Monitoring Plan "during, at least, the two years immediately prior to and two years immediately after Iowa Hill operations," ⁷ a time period identical to the first stage of the Hardhead Monitoring Plan. If SMUD begins operating the Iowa Hill Development in 2023, as expected, then SMUD must implement both plans in 2021.

14. SMUD misquotes WQC Condition 21.A as requiring that SMUD implement the hardhead monitoring plan only "during the first two years *after* Iowa Hill begins to operate . . . ," ⁸ ignoring that first-stage hardhead monitoring must begin during the two years immediately *prior* to Iowa Hill operations. Because SMUD mistakes a two-year difference in implementation dates, SMUD requests that the Commission modify the due date for the Hardhead Monitoring Plan to four years after license issuance, i.e. July 23, 2018, and modify the due date for the Edgewater Temperature Monitoring Plan to two years after license issuance, i.e. July 23, 2016.

15. We agree with SMUD that the due dates in Article 401(a) unnecessarily hasten the submission of the Hardhead Monitoring Plan and the Edgewater Temperature Monitoring Plan. We conclude that extending the due date for each plan to two years after license issuance will provide sufficient time for Commission review and approval before plan implementation, while also enabling SMUD to develop the plans based on better, emerging information about the Iowa Hill Development, as SMUD argues. Because

⁶ SMUD, 148 FERC ¶ 62,070, at Appendix A, Water Quality Certification Condition 21.A "Hardhead Monitoring in Slab Creek Reservoir."

⁷ *Id.* at Appendix A, Water Quality Certification Condition 21.B "Temperature Conditions in Slab Creek Reservoir."

⁸ Request for Rehearing at 5 (emphasis added).

SMUD erroneously found a two-year difference in the time periods for implementing the two plans under the WQC conditions, and because SMUD requested to reflect this two-year difference in the modified Article 401(a) due dates, we deny SMUD's request to modify the due date for the Hardhead Monitoring Plan to four years after license issuance as without basis. Accordingly, we grant rehearing on this issue, in part, and deny rehearing, in part, and we will modify these due dates in Article 401(a) to two years after license issuance.

16. Regarding the Whitewater Boating Recreation Plan for the South Fork Silver Creek below Ice House Dam, SMUD explains that the due date does not allow sufficient time to gather necessary information and also conflicts with the due dates in the relevant certification and Forest Service conditions. Under WQC Condition 4.B, SMUD must prepare this Recreation Plan to determine conditional triggers, based on actual boating use of the South Fork Silver Creek below Ice House Dam, under which SMUD must increase the number of days that it provides recreation streamflows on this waterway beyond the days prescribed in the license. Article 401(a) requires that SMUD submit the plan within two years of license issuance. SMUD argues that this due date does not allow sufficient time to gather data about boating usage to set the usage-linked triggers for additional recreational flows. Certification Condition 4.B requires SMUD to submit the plan to California authorities prior to the end of the first five-year period under the license.⁹ Forest Service Condition 50.2 imposes the same due date for submission to the Forest Service.¹⁰ SMUD argues that a later due date would enable SMUD to prepare a plan that establishes triggers based on actual boater usage data. SMUD requests that the Commission modify the due date for the Whitewater Boating Recreation Plan for the South Fork Silver Creek below Ice House Dam to four years after license issuance.

17. We agree with SMUD that the due date in Article 401(a) unnecessarily hastens the submission of the Whitewater Boating Recreation Plan for the South Fork Silver Creek below Ice House Dam. Extending the due date to four years after license issuance will provide sufficient time for Commission review and approval while also improving SMUD's ability to prepare a plan that establishes predetermined triggers based on longer-observed boater usage data, as SMUD argues. Accordingly, we grant rehearing on this issue, and we will modify the due date in Article 401(a).

⁹ *SMUD*, 148 FERC ¶ 62,070, at Appendix A, Water Quality Certification Condition 4.B "South Fork Silver Creek below Ice House Reservoir Dam."

¹⁰ *SMUD*, 148 FERC ¶ 62,070, at Appendix B, Forest Service Condition No. 50 – Recreation Streamflows, 2. South Fork Silver Creek Below Ice House Reservoir Dam.

C. Article 408. Recreation Implementation Plan

18. Article 408 requires SMUD to expand its Recreation Implementation Plan, which is required by Forest Service condition 41, to include the operation and maintenance of various facilities “identified in Tables 5.3.8-1 through 5.3.8-5 in the licensee’s final license application.”¹¹

19. On rehearing, SMUD notes that these tables list not only project-related facilities but also several unrelated facilities. Unrelated facilities in the tables are designated by footnote 3 in the licensee’s final license application. In Article 408, Commission staff does not distinguish project-related facilities from unrelated facilities in the tables. SMUD believes that Commission staff did not intend to bring unrelated facilities into the license. SMUD requests that the Commission modify Article 408 to make an explicit distinction.

20. We agree with SMUD that Article 408 is unintentionally over-inclusive. Accordingly, we grant rehearing, and will modify Article 408 to specify that the named recreation areas and facilities as identified in Tables 5.3.8-1 through 5.3.8-5 in the licensee’s final license application with the exceptions noted by footnote 3¹² must be included within the expanded Recreation Implementation Plan.

The Commission orders:

(A) The rehearing request filed by Sacramento Municipal Utility District on August 8, 2014, is granted in part and denied in part.

(B) Article 203 of the license for the Upper American River Hydroelectric Project No. 2101 (148 FERC ¶ 62,070 (2014)) is revised as follows:

(1) The first sentence is revised by deleting the words “the Cleveland Coral Information Center, the Deer Crossing Campground,”.

(2) The first sentence is revised by replacing the words “Big Hill Communication Site” with the words “recreation facilities associated with the Big Hill Vista on Big Hill,”.

¹¹ *Id.* at Appendix B, Condition No. 41 – “Recreation Implementation Plan.”

¹² SMUD Application vol. 2A, sec. 5.3.8 (filed July 7, 2005).

(C) Article 401 of the license for the Upper American River Hydroelectric Project No. 2101 (148 FERC ¶ 62,070 (2014)) is revised as follows. In the table below the subheading “(a) Requirement to File Plans for Commission Approval”:

(1) The entry in the 5th (final) column of the 21st row, which addresses the “Coordination Plan with licensee for the Chili Bar Project,” is revised by replacing the words “Within 4 months of license issuance” with the words “No later than December 18, 2014.”

(2) The entries in the 5th (final) column of the 19th and 20th rows, which address the “Methods for Hardhead Monitoring in Slab Creek reservoir” and the “Methods and Locations for Monitoring Edgewater Temperature Conditions in Slab Creek reservoir,” respectively, are revised by replacing the words “Within 5 months of license issuance” with the words “Within 2 years of license issuance.”

(3) The entry in the 5th (final) column of the 33rd row, which addresses the “Whitewater Recreation management plan for the South Fork Silver Creek below Ice House Dam,” is revised by replacing the words “Within 2 years of license issuance” with the words “Within 4 years of license issuance.”

(D) Article 408 of the license for the Upper American River Hydroelectric Project No. 2101 (148 FERC ¶ 62,070 (2014)) is amended to read as follows:

The Recreation Implementation Plan required by U.S. Forest Service condition 41 (Appendix B), shall be expanded to include the operation and maintenance for the term of the license of the following existing recreation areas and associated facilities: Loon Lake Area, Gerle reservoir Area, Union Valley reservoir Area, Ice House reservoir Area, Junction reservoir Boat Launch, Brush Creek Reservoir Boat Launch, Slab Creek reservoir Area, and Big Hill Overlook, as identified in Tables 5.3.8-1 through 5.3.8-5 in the licensee’s final license application with the exceptions noted by footnote 3. SMUD Application vol. 2A, sec. 5.3.8 (filed July 7, 2005).

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.