

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

_____)	
Turlock Irrigation District and)	Docket No. UL11-1-000
Modesto Irrigation District)	Project No. 2299-078
_____)	

CONSERVATION GROUPS' ANSWER IN OPPOSITION TO TURLOCK AND
MODESTO IRRIGATION DISTRICTS' REQUEST FOR
EXTENSION OF SCHEDULE

The Conservation Groups¹ file this answer in opposition to Turlock and Modesto Irrigation Districts' (collectively, Districts) "Request for Extension of Schedule," *see* eLibrary no. 20131220-5293 (Dec. 20, 2013), for submitting a license or exemption application for the La Grange Project, and for complying with the Commission's Part 12 dam safety regulations. The Commission should deny the Districts' request because they have not shown the additional time is needed, or that an extension of time is in the public interest.

BACKGROUND

On December 19, 2012, the Commission issued an "Order Finding Licensing of Hydroelectric Project Required" for the Districts' La Grange Project (UL11-1-000) (141 FERC ¶ 62,211) (Order). The Order required the Districts to file a schedule for submitting a license or exemption application for the Project within 36 months, and a schedule for complying with the Commission's dam safety regulations. *See* Order, Ordering ¶¶ (B), (C).

On January 18, 2013, the Districts filed a "Request for Rehearing and Motion for Stay." eLibrary no. 20130118-5187. The Districts' rehearing request challenged the bases for the Commission's finding of jurisdiction over La Grange. On the same date, the Conservation Groups filed in support of the Commission's finding of jurisdiction. eLibrary no. 20130118-5256. However, the Conservation Groups requested rehearing of the Commission's determination that La Grange was not used and useful to power operations at the Districts' Don Pedro Project (P-2299) and decision to defer the determination whether to license both projects as a complete unit of development.

On March 18, 2013, the Districts filed a proposed schedule for complying with the Order's directives. eLibrary no. 20130318-5066.

¹ American Rivers, American Whitewater, the California Sportfishing Protection Alliance, California Trout, Central Sierra Environmental Resource Center, Golden West Women Flyfishers, Northern California Council Federation of Fly Fishers, Trout Unlimited, and Tuolumne River Trust.
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On June 12, 2013, the Districts renewed their request for a stay, or in the alternative, an extension of their proposed schedule for complying with the Order by one year. On June 27, 2013, Office of Energy Projects (OEP) Staff granted a six-month extension of the deadlines to comply with the Order pending the Commission’s decision on the merits of the Districts’ Request for Rehearing and Motion for Stay. eLibrary no. 20130627-3037, p. 3. However, OEP Staff determined that the Districts had not provided sufficient justification for a one-year extension. *Id.* at 2. OEP Staff stated that the Districts could file another request if they could “demonstrate that additional time is needed to meet the requirements” of the Order. *Id.*

On July 19, 2013, the Commission denied the Districts’ requests for rehearing and for stay pending judicial review.² “Order on Rehearing, Clarifying Intervention Status, and Denying Stay Pending Judicial Review,” eLibrary no. 20130719-3031, p. 45. The Order on Rehearing upheld the Commission’s jurisdiction over La Grange on three separate grounds, any one of which is sufficient to require that the project be licensed (or exempted): (1) the project is located on a navigable water of the United States; (2) it occupies lands or reservations of the United States; and (3) it is located on a Commerce Clause stream, affects the interests of interstate or foreign commerce, and has undergone post-1935 construction that increased the project’s generating capacity. In rejecting the Districts’ request for a stay pending judicial review, the Commission found that the Districts had not demonstrated irreparable harm. It also found that a stay would not be in the public interest. *Id.* at 7-8.

On September 13 and 17, 2013, the Districts and the Tuolumne River Trust (TRT), respectively, filed separate petitions for review of the “Order on Rehearing” in the U.S. Court of Appeals for the District of Columbia Circuit. The petitions raise different issues. The Districts challenge the Commission’s determination of jurisdiction. TRT continues to support the Commission’s determination that it has mandatory licensing jurisdiction over La Grange, but challenges the Commission’s determination that La Grange does not re-regulate releases from the Don Pedro Project.

On December 20, 2013, the Districts filed the “Request for Extension of Schedule,” requesting the following changes to the current schedule:

Deadline	Current Schedule	Proposed Schedule
Commencement of Licensing	January 27, 2014	July 29, 2014
License Application Filing	June 16, 2016	December 19, 2016
Hazard Assessment	February 22, 2014	May 22, 2014
Dam Inspection and Potential Failure Mode Analysis	July 15, 2014	January 15, 2015
EAP	April 19, 2014	July 19, 2014

² The Order Denying Rehearing also denied the Conservation Groups’ request for rehearing of whether La Grange is used to re-regulate power releases from the Don Pedro Project. *Id.* It deferred a decision on whether the La Grange and Don Pedro Projects should be licensed as a complete unit of development. *Id.*
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ARGUMENT

The Commission Should Deny the Districts' Request for Further Extension of the Schedule.

A. The Costs of Compliance Do Not Warrant Extension.

OEP Staff denied the Districts' initial request for a one-year extension of time to comply with the Order's directives to file an application for license or exemption for the La Grange Project, and to comply with the Commission's dam safety regulations. The Districts' latest request for extension, which would effectively give them a one-year extension from the initial deadlines, offers insufficient justification to warrant the Commission reconsidering the previous denial.

The Districts continue to argue that the costs to comply with the Order warrant further delay. As noted by the Commission previously, the Districts offer no support for their estimates of costs associated with complying with the Order. Order on Rehearing at 7. They do not directly respond to the Commission's previous findings in this case and others that economic loss does not constitute irreparable harm. *See id.*

Instead the Districts argue that costs would be unreasonable for their ratepayers in light of consecutive years of drought and a slow economy. Again, they offer no evidence in support of this argument. The Districts and their ratepayers will amortize the costs of licensing over some number of years in the future. Just as the La Grange Project has generated and will continue to generate benefits to the Districts and their customers in wet water years and dry water years, it will be paid for over wet and dry water years in the future.

Further, this argument ignores the considerable benefit the Districts and their ratepayers have received in not having to comply with licensing or dam safety requirements for the past several decades.

B. Further Extension is Contrary to the Public Interest.

The Districts also fail to show that the costs of complying with the Order outweigh the public interest in licensing the project and ensuring it complies with dam safety regulations. As the Commission previously found:

The La Grange Project requires licensing on several grounds, and has operated for many years without the requisite Commission authorization. The Commission's licensing process, which balances developmental purposes and environmental protection, should be followed. In addition, the public interest in ensuring that the dam is safe outweighs the potential economic harm to the Districts of complying with the Commission's dam safety regulations.

Id. at 8.

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C. Concurrent Proceedings Would Be More Efficient than Sequential Ones.

We object to the Districts' arguments that concurrent licensing proceedings for the Don Pedro and La Grange Projects would place an "unnecessary burden" on agencies and other stakeholders. Request for Extension of Schedule at 2. As stated in our "Answer in Opposition to Motion for Stay," eLibrary no. 20130219-5137, sequential licensing proceedings would pose a greater hardship than concurrent proceedings.

The licensing of La Grange will involve many of the same environmental resource issues that are being addressed in the Don Pedro relicensing. The Districts must file their license application for the Don Pedro Project by April 2014. Further delay of La Grange licensing proceeding will limit the Commission's and stakeholders' opportunities to resolve resource issues common to both projects in a coordinated manner prior to issuance of a new license for Don Pedro. This increases the risk that the Don Pedro license will need to be reopened soon after issuance. Contrary to the Districts' argument, extending the timeline for resolution of these common resource issues would be more of a burden on the Commission and other stakeholders than concurrent proceedings.

D. Further Extension Is Not Necessary for Consultation Regarding Use of the TLP.

Lastly, we object to the Districts' argument that an additional six months is needed for the Districts to consult with agencies and interested parties on the use of the Traditional Licensing Process (TLP) as opposed to the Integrated Licensing Process (ILP). The Districts offer no reason why they have not consulted with the agencies and other stakeholders regarding use of the TLP during their previous six-month extension. They do not offer support for why such consultation would require an additional six months now.

The ILP has been the default licensing process since 2005. *See* 18 C.F.R. § 5.3(a). The Commission will grant requests to use the TLP or Alternative Licensing Process only for "good cause shown." 18 C.F.R. § 5.3(e).

While we are willing to consult with the Districts regarding appropriate process for the La Grange licensing, as a preliminary matter we disagree that there is good cause for use of the TLP. Rather, we support use of the ILP for all of the reasons cited in the final rule approving the ILP:

The new licensing process is designed to create efficiencies by integrating a potential license applicant's pre-filing consultation with the Commission's scoping pursuant to the National Environmental Policy Act (NEPA). Highlights of this "integrated" process include:

- Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- Increased public participation in pre-filing consultation;
- Development by the potential applicant of a Commission-approved study plan;

- Opportunities for better coordination between the Commission’s processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;
- Encouragement of informal resolution of study disagreements, followed by study dispute resolution; and
- Issuance of public schedules.

Hydroelectric Licensing Under the Federal Power Act, 68 Fed. Reg. 51,070 – 51,071 (Aug. 5, 2003). We disagree that use of the TLP would create efficiencies that outweigh the cited benefits of the ILP.

CONCLUSION

The Conservation Groups respectfully request that the Commission deny the Districts’ Request for Extension of Schedule.

Dated: December 26, 2013

Respectfully submitted,



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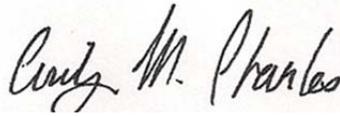
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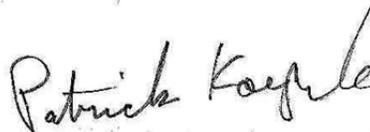
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CERTIFICATION OF SERVICE

**Turlock Irrigation District and Modesto Irrigation District,
Docket No. UL11-1-000 and Project No. P-2299-078**

I, Nicholas Niiro, hereby certify that I have this day served the foregoing document, "Conservation Groups' Answer in Opposition to Turlock and Modesto Irrigation Districts' Request for Extension of Schedule," by electronic mail, or first class mail if no email address has been provided, on each person with an email address designated on the official service lists compiled by the Secretary in the P-2299-078 and UL11-1-000 dockets.

Dated: December 26, 2013

By:



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