

151 FERC ¶ 62,058
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Pacific Gas and Electric Company

Project No. 1061-096

ORDER GRANTING TEMPORARY VARIANCE OF MINIMUM FLOW
REQUIREMENTS

(Issued April 24, 2015)

1. On April 6, 2015, Pacific Gas and Electric Company (licensee) filed a request with the Federal Energy Regulatory Commission (Commission) for a temporary variance of the minimum flow requirements for the Phoenix Project, located on the South Fork of the Stanislaus River in Tuolumne County, California.

LICENSE REQUIREMENT

2. Article 105 of the Commission's September 30, 1992 Order Issuing New License¹ as amended on rehearing² requires the licensee to release from Lyons reservoir a seasonal minimum flow regime varying between 10 and 5 cubic feet per second (cfs). In dry water years as determined by the California Department of Water Resources (California DWR), the licensee is required to release from Lyons reservoir a constant flow of 5 cfs, or inflow, whichever is less. Article 105 makes no provisions for critically dry water years.

LICENSEE'S REQUEST

3. Due to prolonged California drought conditions, the licensee requests a temporary variance from the minimum flow requirements of article 105. The California DWR's 2015 water year forecast as of April 1, 2015 identifies the current water year in the San Joaquin Valley, including the South Fork of the Stanislaus River, as a critically dry water year.³ As a result of the critically dry conditions, the licensee requests that the

¹ See 60 FERC ¶ 62,256.

² See 69 FERC ¶ 61,070, Order on Rehearing (issued October 18, 1994).

³ http://cdec.water.ca.gov/cgi-progs/iodir_ss/wsi (last accessed Thursday April 16, 2015).

minimum flow release be reduced from 5 cfs to a 24-hour average daily target flow of 3 cfs with an instantaneous 2-cfs flow.

4. The licensee requests this variance to ensure the reduced water resources in the San Joaquin River basin can be managed to meet the needs of downstream end-users and sustain instream flows releases for rainbow trout and foothill yellow-legged frog habitat support for the remainder of the 2015 water year. The licensee would continue its aquatic monitoring program developed during temporary variances granted in 2014.⁴ The licensee requests the temporary variance remain in effect until October 15, 2015.

CONSULTATION

5. The licensee initiated consultation with the California DFW by e-mail on March 24, 2015. In addition, the licensee provided copies of its variance request to the U.S. Fish and Wildlife Service, U.S. Forest Service, and California State Water Resources Control Board and the Central Sierra Environmental Resource Center (Central Sierra). The California DFW responded to the licensee's consultation request by email on March 30, 2015. The other resource agencies did not respond to the licensee's request for comments.

6. In its March 30, 2015 email, the California DFW agreed to the licensee's request but recommended the licensee: 1) maintain an instantaneous minimum flow of 2 cfs with a daily average target flow of 3 cfs; 2) modify the aquatic monitoring program to complete the amphibian visual encounter survey (VES) for all life-stages before May 31, 2015; 3) ensure that the VES and water temperature data be collected at the same locations as in 2014; and 4) provide the VES results within 30 days of completion. The California DFW stated that the remainder of the aquatic monitoring data should be provided to the agency by March 31, 2016 and at least 14 days prior to any request for 2016.

7. Central Sierra responded to the licensee's request by letter filed with the commission on April 16, 2015. Central Sierra reluctantly supports the licensee's request for a temporary minimum flow variance until October 15, 2015. However, Central Sierra requests that the Commission require the licensee to mitigate for the reduced flows from Lyons reservoir by increasing flows in 2016 by an amount equal to the licensee's proposed 2015 flow reduction, if 2016 is a normal-wet or normal-dry water year. Central

⁴⁴ The Commission previously granted the licensee temporary minimum flow variances on February 6, 2014, (146 FERC ¶ 62,106); March 18, 2014, (146 FERC ¶ 62,187); and June 16, 2014, (147 ¶ FERC 62,208). The June 16, 2014 temporary variance expired on October 1, 2014.

Sierra concludes that this proportional increase in 2016 flows, assuming a normal-wet or normal dry water year in 2016, would provide a beneficial “cleansing” flow in the South Fork of the Stanislaus River.

DISCUSSION AND CONCLUSIONS

8. The licensee is requesting a temporary variance of the minimum flow requirements at the project due to critically dry water conditions in the San Joaquin Valley including the South Fork of the Stanislaus River. Currently, Lyons reservoir storage is at 80 percent of capacity or about 4,200 acre-feet. The Commission’s record shows that 2012 was a dry water year, 2013 and 2014 were critically dry years, and the California DWR is currently projecting 2015 to be another critically dry year as well. In addition to the licensee’s statements and record of temporary variance requests, we reviewed the U.S. Drought Monitor which shows the project area as experiencing an extreme level of drought⁵ and has a three-month forecast for persistent or intensifying drought.⁶

9. The South Fork of the Stanislaus River immediately downstream of Lyons Dam supports a tailwater fishery composed of non-native brown trout, rainbow trout, and, at least historically, pikeminnow, Sacramento sucker, and hardhead. The middle and lower reaches contain a warmwater assemblage of redeye bass, Sacramento sucker, and California roach.⁷ The yellow-legged frog has also been found at 12 scattered sites downstream of Lyon dams and is primarily found in the river in spring and fall months when breeding, rearing and metamorphosis occurs.⁸

10. Aquatic monitoring from 2014 showed results similar to those from 2002. The Yellow-legged frog survey conducted on May 16, 2014 did not observe any egg masses or other life-stages in the South Fork of the Stanislaus River, although egg masses were observed in the Middle Fork of the Stanislaus River earlier in the week. The absence of

⁵ <http://droughtmonitor.unl.edu/MapsAndData/MapArchive.aspx> (last accessed Thursday April 16, 2015).

⁶ http://www.cpc.ncep.noaa.gov/products/expert_assessment/sdo_summary.html (last accessed Thursday April 16, 2015).

⁷ Pacific Gas and Electric Company (2014) Supplemental information for continued variance request for Lyons reservoir. Filed with the Commission March 18, 2014.

⁸ *Id.*

yellow-legged frog life-stages in the South Fork of the Stanislaus River is attributed to a high hydrograph and above normal flow velocities during the sampling bout. The survey did not indicate any impairment of aquatic habitat. Redeye bass individuals, although less numerous than in the 2002 survey, were heavier resulting in a higher standing crop within the reach.

11. Conserving water at this time, in light of the current drought and near-term forecast for extended drought, is a prudent measure to help ensure that water is available for downstream users and instream flow releases should the drought continue. Usually the end-of-spill period at Lyons Dam occurs in July. Last year the end-of-spill occurred on May 31, 2014. The licensee anticipates, with a storage of about 80 percent of capacity and the record low snow-pack, it is unlikely that spill at Lyon Dam will occur this year. The licensee states that using a daily average target flow instead of an instantaneous flow will allow the licensee to eliminate the 2-cfs buffer the licensee usually discharges from Lyons Dam to ensure that instantaneous flows remain in compliance with the requirements of the license. This change would allow the licensee to store additional water above the storage achieved by reducing the minimum flow from 5 cfs to 3 cfs.

12. Central Sierra's request for increase 2016 minimum flows from Lyons reservoir would not provide any mitigation for reduced minimum flows in 2015. The licensee's 2014 aquatic monitoring did not indicate substrate embeddedness was affect aquatic habitat.⁹ The dominate substrate in the reach downstream of Lyons dam was boulder, bedrock and cobble while less than 5 percent was silt and sand. Therefore, flushing flows would provide little benefit.

13. To monitor potential effects that may result from minimum flow variance including deposition of fine sediment, we conclude the licensee should continue to implement its aquatic monitoring program consistent with previous monitoring programs to permit data comparison.

14. Consistent with previous Commission orders, any temporary variance granted should include a provision for notifying the California DFW and/or appropriate agencies if the variance has adverse effects greater than anticipated. Therefore, ordering paragraph (B) requires the licensee to notify the relevant state agency upon discovering significant adverse effects during its sampling program. The Commission should reserve the right to modify this order, as set forth below.

⁹ Embeddedness refers to the extent to which gravel, cobble, and boulders are surrounded by, covered, or sunken into the silt, sand, or mud of the stream bottom.

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The Director orders:

(A) Pacific Gas and Electric Company's (licensee) request, filed April 6, 2015, for a temporary variance of the minimum flow requirements contained in article 105 is approved, as modified in ordering paragraph (B). The variance shall remain in effect until October 15, 2015.

(B) While implementing its aquatic monitoring program, if the licensee observes significant adverse impacts to aquatic species or their habitat, such as large numbers of stranded or desiccated species at any life-stage, the licensee shall, within 24 hours of the observation, notify the California Department of Fish and Wildlife and/or other appropriate agencies of the discovery. The licensee shall file a report of any such incident with the Commission within 10 days. The Commission reserves the right to make changes to minimum flows at the project to protect downstream users and environmental resources.

(C) This order constitutes final agency action. Any party may file a request for rehearing of this order within 30 days from the date of its issuance, as provided in section 313(a) of the Federal Power Act, 16 U.S.C. § 825l (2012), and the Commission's regulations at 18 C.F.R. § 385.713 (2014). The filing of a request for rehearing does not operate as a stay of the effective date of this order, or of any other date specified in this order. The licensee's failure to file a request for rehearing shall constitute acceptance of this order.

/for/

Steve Hocking, Chief
Environmental and Project Review Branch
Division of Hydropower Administration
and Compliance

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