

59 F.P.C. 1810, 1977 WL 16861

SOUTHERN CALIFORNIA EDISON COMPANY,

PROJECT NO. 120

ORDER ISSUING NEW LICENSE (MAJOR)

September 7, 1977

***1810** LICENSE (MAJOR)

****1** Before Commissioners: Charles B. Curtis, Chairman; Don S. Smith and Georgiana Sheldon.

On February 12, 1970, Southern California Edison Company (Applicant) of Rosemead, California, filed an application for a new license under Section 15 of the Federal Power Act (Act)¹ for the constructed Big Creek No. 3 Project, FPC Project No. 120. Big Creek No. 3 Project is located on the San Joaquin River in Fresno, Tulare, and Kern Counties, California, and includes, in part, lands of the Sierra National Forest.² The project consists of a diversion dam, a 23-acre reservoir, a 5.3-mile long tunnel, an existing powerhouse with an installed capacity of 106,500 kilowatts, a new powerhouse addition with an installed capacity of 35,000 kW, and 129 miles of 220-kV transmission line. On October 9, 1974, Applicant supplemented its application for a license to include the proposed addition of the new 35-MW generating unit to the project.

The original license for this project was issued to Southern California Edison Company on June 8, 1933.³ On January 4, 1926, the Commission amended the Project No. 120 license to include the Vincent Transmission Line as part of the project.⁴ Subsequently, the Commission determined that Indian lands were affected by a portion of the Vincent Transmission Line and ordered the license amended accordingly.⁵ On March 3, 1971, the original license expired and Applicant continued to operate the project under ***1811** the first of several successive annual licenses. By our order issued February 4, 1977⁶ we determined that a portion of the Vincent Transmission Line extending from Magunden Substation to Gould Switching Station should be excluded from the project. By the same order we required Applicant to remove and relocate that portion of the Vincent Transmission Line located on Indian lands. On June 13, 1977, Applicant filed a revised Exhibit M to reflect the deletion of transmission facilities pursuant to our February 4, 1977 order.

Public Notice

Public notice of the filing of the application was given as required by the Act with December 17, 1970 as the last date for filing protests or petitions to intervene. Public notice of the October 1974 supplement to the application proposing the addition of a new generating unit was given with January 17, 1975, as the last date for filing protests or petitions to intervene.

On April 21, 1971, the Sycamore Valley Association, as the governing body of the Cold Springs Indian Band, was granted intervention in the relicensing proceeding. The concerns of the Sycamore Valley Association related to the Vincent Transmission and Telephone Lines' infringement on the property of the Cold Springs Rancheria. As previously mentioned, that issue was disposed of in our February, 1977 order requiring removal and relocation of those portions of the lines infringing on the Rancheria.

****2** The Commission's staff prepared draft and final environmental impact statements (DEIS, FEIS) on the applications for relicensing the Big Creek No. 3 Project, FPC Project No. 120, and the Big Creek No. 2A and 8, FPC Project No. 67. Notice of Availability of the DEIS was published in the *Federal Register* with June 14, 1976 as the last date for filing protests or petitions to intervene. None was received. Notice of availability of the FEIS was published in the *Federal Register* on October 29, 1976.

The Secretary of the Commission forwarded copies of Applicant's application for a new license and the October 1974 supplement thereto to relevant Federal, State and local agencies for comment by letters dated November 17, 1970, and January 7, 1975, respectively. Comments on the application and its supplement were received from State and Federal agencies. Most of the comments were addressed in the staff's draft and final environmental impact statements, and we need not restate those comments except to the extent that they are incident to certain matters that need further clarification.

Nature of the Applicant and Financial Ability

Southern California Edison Company is a corporation organized under the laws of the State of California, having its principal place of business at *1812 Rosemead, California. It is authorized to do business in California, Arizona, Nevada and New Mexico.

Applicant's financial ability to construct the proposed additional generating unit and to operate and maintain the project is adequately reflected in its FPC Form No. 1.

Compliance with State Law

Applicant states that it has complied with the requirements of the laws of the State of California, within which the project is located, with respect to the appropriation, diversion, and use of water for power purposes and with respect to the right to engage in the business of developing, transmitting, and distributing power and in any other business necessary to effect the purposes of the license applied for. Additionally, Applicant states that it will file with the State Water Resources Control Board of the State of California an application for a permit to appropriate the waters of the San Joaquin River for the operation of the proposed project additions in compliance with the provisions of the Water Code of the State of California.

Need for Power and Economic Feasibility

Between 1977 and 1981 Applicant estimates peak demands will increase from 10,837 MW to 12,426 MW, respectively. Applicant's reserve margins during the period would decrease from 27.1% to 16.9%, respectively. Applicant's generation expansion plan for the 1977-81 period includes the Long Beach Combined Cycle Unit 9 (112 MW), Cool Water Combined Cycle Units 3 and 4 (572 MW), San Onofre Unit 2 (182 MW), Big Creek 3, Unit 5 (35 MW), Lucerne Valley CT (60 MW), Fuel Cell 1 (26 MW), Axis CT (23 MW), Long Beach 10 and 11 Combined Cycle rerate (112 MW).

With all the planned capacity additions thru the summer of 1981, including the proposed Big Creek No. 3 Unit 5, Applicant's reserve margin falls to 16.9 percent. Without the 35 MW Unit 5, the reserve margin would be 16.7 percent. Normally, a reserve margin of 18% to 22% is considered necessary to insure reliable service.

**3 The installation of 35 MW of additional capacity at Project No. 120 would utilize stream flow now being spilled and is consistent with comprehensive development of the river basin. Applicant's growing system demand indicates the need for the additional capacity and energy to be produced by the proposed installation, and the additional unit is the least-cost power source available to Applicant for producing equivalent power. The estimated annual cost of power produced by the proposed addition is \$2,578,000 (as of January 1977).

The alternative of not installing the proposed new capacity at Project No. 120 would require Applicant to generate an equivalent amount of power from an alternative source. Since the proposed generating unit would operate at an average plant factor of about 15 percent, the alternative power source *1813 would be peaking-type generating station, such as pumped storage, combustion turbine, or combined-cycle. The estimated annual cost of equivalent power produced by the most economical alternative, a combustion turbine, is \$5,256,000 (as of January, 1977).

Energy Conservation

The operation of the project's existing and proposed generating units would provide 141,500 kW of capacity and an average annual generation of 828,000 MWh, utilizing a renewable resource that would save the equivalent of approximately 1,360,000 barrels of oil per year.⁷ Other benefits would be the avoidance of air pollution and other hazards resulting from the use of fossil fuels, and the saving of energy expended in extracting, processing, and transporting those fuels.

Safety and Adequacy

The existing project structures at the Big Creek No. 3 Project have been inspected regularly by our staff, and every five years by an independent board of consultants retained by the Applicant pursuant to Part 12 of the Commission's Regulations. The most recent five-year consultant's report on structural stability and safety noted that the project dam is in excellent condition. The Commission staff's most recent operation report (May 6, 1977), covering the period from September 25, 1975 to July 15, 1976, reported that the dam, powerhouse, and other project structures have been adequately maintained and kept in a safe and sound condition.

There was no substantial damage to project structures in passing the record flood. In its letter dated February 19, 1975, the Corps of Engineers recommended that under the new license flow releases be limited during flood periods to no greater than natural inflow. We agree and have provided for that requirement in Article 33 of the license. In the event of the probable maximum flood, dam failure would be unlikely. Applicant has, however, prepared an emergency action plan (filed October 23, 1975) in accordance with directions given by the Commission in its letter dated August 15, 1975. That plan is designed to provide an early warning to upstream and/or downstream inhabitants and property owners in the event of an accident to, or failure of, project structures. Article 37 will require Applicant to implement and modify that plan when appropriate.

****4** The proposed addition to Big Creek No. 3 Project would involve construction of an extension to Big Creek No. 3 powerhouse and the installation of a 35 MW hydroelectric generating unit. The proposed construction will be safe and adequate if carried out in accordance with sound engineering principles. The Corps of Engineers reported by letter dated February 19, 1975 that ***1814** the proposed addition of a fifth generating unit at the project would not interfere or be inconsistent with any existing or proposed flood control or navigation works of the Corps in the San Joaquin River Basin.

Environmental Considerations

As previously stated, a final environmental impact statement (FEIS) was prepared and issued by the Commission's staff in October 1976. The FEIS addressed issues relating to the applications for new license for both Project No. 67 and Project No. 120.

The environmental impacts associated with relicensing the project, including the addition of a fifth generating unit, have been fully considered in the FEIS and in other supporting materials in the record. A discussion of the more significant environmental issues requiring special license conditions follows.

The U.S. Forest Service and the Applicant entered into a memorandum of understanding on April 16, 1971, concerning a wide variety of environmental matters, including land use management, fish and wildlife resources, and recreation.

1) Aquatic Ecosystem

Soil erosion and eventual stream sedimentation could be a problem during construction at Project No. 120. Abatement of this problem through soil stabilization measures in regions of steep gradient will be necessary to protect project waters. Applicant and the Forest Service have agreed that Applicant should prepare a soil erosion plan prior to engaging in construction and maintenance activities within the project boundary that could cause an erosion problem. In addition, Article 19 of this license will provide for soil erosion control measures.

In its letter of June 10, 1971, the U.S. Department of the Interior (Interior) recommended, in the interest of water quality, the inclusion of a special license article requiring the Licensee to provide such facilities, or modify operation, as ordered by the FPC upon recommendation of the State of California or the Environmental Protection Agency. The standard articles of Form L-2, which will be part of the Project No. 120 license, are replete with provisions that reserve to the Commission the right to order the Licensee to undertake a wide variety of measures in the interest of water quality, and thus we deem it unnecessary to include a special article in the license.

A water quality certificate was issued for Project No. 120 by the State of California on July 7, 1975. The State found no indication that the Applicant's proposals for construction, operation, and maintenance, and would involve the discharge of sanitary waste effluent into or near watercourses. On August 1, 1975, copies of the certificate were sent to the Environmental Protection Agency.

***1815** 2) Vegetation

****5** Current plant inventories, prepared by the Smithsonian Institution and the Department of the Interior, list a number of threatened or endangered plant species which are known to occur in the project area, or to have habitat requirements that could be met within project boundaries. Individuals of at least one species, the tree-anemone (*Carpenteria californica*), could be directly affected by construction or project-related activities. License Article 35 will provide for a botanical survey and will require that the Licensee, in cooperation with appropriate State and Federal agencies, undertake adequate protective measures for any endangered or threatened plant species discovered.

Interior recommended that stipulations pertaining to disposal of materials or timber under the provisions of the Act of July 31, 1947, 43 U.S.C. § 601, *et seq.* (1964), be included in the new license. License Article 29 provides that the Licensee shall cooperate with the United States in the disposal by the United States of such materials on Federal lands, provided that the Commission shall authorize such disposal and settle any questions of interference with project operations.

3) Fish and Wildlife

Applicant's Exhibit S generally conforms to the Commission's Regulations. Implementation of the measures proposed would result in the improvement of fish and wildlife resources in the project area and other areas affected by the project. Applicant and the State of California Department of Fish and Game are in agreement as to measures to be taken regarding stream releases, reservoir cleaning, land and timber management, and brush clearing.

The Resources Agency of California recommended that the agreement executed on March 22, 1971, between the California Department of Fish and Game and Southern California Edison Company be incorporated into and become part of any license issued for the project. The most significant provisions of this agreement pertain to water releases and reservoir cleaning. We believe that these issues can be resolved under the standard and special license articles included herein, and that inclusion of the agreement of March 22, 1971, in the license is not necessary.

The Forest Service recommended that provision IIA of its Memorandum of Understanding with Southern California Edison Company, relating to stream releases from Dam No. 6, be included as a condition of the license. That provision requires Applicant to pass at least 3 cfs of water over, by, or through Dam No. 6 year-round, except when flows are beyond reasonable control of Applicant; and requires that changes in flow during the summer months be made as gradually as possible. Applicant concurred with this recommendation by letter dated September 22, 1971. Article 38 of the license will provide for the recommended flow releases.

***1816** The Resources Agency of California recommended that efforts be made by the Applicant to avoid construction-related disturbances from November through April to avoid adversely affecting the winter survival of the San Joaquin herd of California mule deer. License Article 43 will afford adequate protection for the wintering deer herds by requiring that the Licensee take

all reasonable measures to avoid or minimize construction related disturbances to the mule deer population in the vicinity of the project.

4) Recreation

****6** Project No. 120 is located at a relatively low elevation in a rugged area subject to summer temperatures that may exceed 100°F. At maximum capacity, the reservoir has a surface area of approximately 23 acres. These factors render this site considerably less appealing to recreationists than the reservoirs of Applicant's other projects at higher elevations. There are no recreation facilities at Project No. 120, but to enhance recreational potential, Applicant has proposed in its Exhibit R (recreational use plan) the development of three fishing access trails from the project road down to the reservoir. Applicant has also proposed to construct a parking area, water supply, sanitary facilities, and a rest area. Applicant's Exhibit R generally conforms to our Regulations, and we are approving that recreational use plan.

5) Historical and Archeological Resources

The California State Historic Preservation Officer has determined that there are no California State Landmarks, State Points of Historical Interest, or sites listed in the National Register of Historic Places in the vicinity of the project.

The U.S. Department of the Interior and the California Department of Parks and Recreation recommended that an archeological survey by a competent, professional archeologist be conducted over all areas to be affected by the project. License Article 36 requires that the Licensee consult with the California State Historic Preservation Officer to determine the extent of any archeological survey and salvage excavations that may be necessary prior to any construction.

Comprehensive Development

The water and related land resources of the Upper San Joaquin River Basin have been extensively developed by the U.S. Bureau of Reclamation's Friant Dam and other Central Valley project facilities, Applicant's Big Creek system, the Pacific Gas and Electric Company's Crane Valley system and Kerckhoff Project, and by land management of the National forests and parks by the U.S. Forest Service and the National Park Service.

Studies have been made by Federal and State agencies and electric utility companies for the future development and utilization of the water and related ***1817** land resources of the basin. These studies involved investigation of sites for hydroelectric power, water-oriented recreation, water conservation for irrigation and municipal supply, and purposes such as fish and wildlife management, water quality, and flood control. The potential for further development of the basin's water resources lies generally in the drainage area above Mammoth Pool, known as the west side area.

The entire Big Creek system is hydraulically coordinated and electrically interconnected.⁸ Storage in project and system reservoirs is released for the benefit of irrigation by downstream users, in accordance with an agreement between the Applicant and the United States. Project reservoirs provide flood control during periods of heavy early-winter storms or abnormally high snowmelt runoff.

****7** Studies relative to further development and utilization of the recreational and fish and wildlife resources of the project areas of Project Nos. 67 and 120 began in 1968, and were directed by representatives of Federal and State agencies and the Applicant. These cooperative studies have resulted in agreements between the Applicant and the Forest Service and the Applicant and the California Department of Fish and Game relative to recreational development, reservoir operation, minimum water releases, and other measures to manage the recreational use and fish and wildlife resources of Project Nos. 67 and 120.

The project as constructed, and with the proposed addition of the 35,000 kW unit, is not in conflict with any plans for more comprehensive development of the watershed. It is noted that the existing project would not be inconsistent with future

development of the Big Creek Project No. 1A which would develop the head between Huntington Lake and Shaver Lake, or the Big Creek Project No. 3A which would redevelop the head between Shaver Lake and the San Joaquin River, should they become economically feasible and consistent with the comprehensive development of the Big Creek system. The installation of the additional unit at Powerhouse No. 3 of Project No. 120 would not affect or be affected by these potential projects, and would permit utilization of water now being spilled at Dam No. 6 during the spring runoff period to generate about 45 million kWh annually.

***1818** *Federal Takeover*

Section 14 of the Act⁹ reserves to the United States the right to takeover a non-publicly owned project upon the expiration of the license after paying the Licensee's net investment in the project, not to exceed fair value of the property taken, plus severance damages, if any Applicant stated that Federal takeover of the project could result in: (1) increased costs for the Company's rate-payers; or less rapid reduction in rates; (2) reduced earnings for those presently holding Applicant's securities; (3) adverse effects on Applicant's ability to raise money due to the influence of increased costs on potential investors in Applicant's company; and (4) loss of \$1,794,000 per year in tax revenue to local, State and Federal entities. No Federal, State or local agency recommended takeover or redevelopment of the Big Creek No. 3 Project by the United States or any other entity. We also believe that a recommendation to Congress for Federal takeover of the project on our own motion pursuant to Section 7(c) of the Act¹⁰ would be inappropriate for the reasons hereinbefore discussed.

Exhibits

Exhibits L, M, R and S, submitted with the license application and described more fully in Ordering Paragraph (B), have been examined and found to substantially conform to our Rules and Regulations, and should be approved and made part of this of this license. Exhibit K sheets FPC No. 120-234 through 238 and 360 conform to the Commission's Regulations and will also be approved and made part of the license.

****8** Exhibit J (FPC No. 120-232) will not be approved because it shows as part of the project that portion of the Vincent Transmission Line that the Commission found non-jurisdictional in its order issued February 4, 1977 (*see*, footnote 6, *supra*). For the same reason Exhibit K sheets 66 through 104 (FPC No. 120-299 through 377), showing the Vincent Transmission Line from Magunden to Gould substations will not be approved. Additionally, Exhibit K sheets 6 through 65 FPC No 120-239) contain the following deficiencies:

- a. Transmission lines that are part of Project No. 2175 are shown as part of Project No. 120.
- b. The project boundary is not shown at certain locations.
- c. Project access roads are not identified.
- d. Incorrect references are made to land ownership and rights.
- e. Required survey data are not shown.
- f. Data are not shown to enable staff to determine the amount of public land affected.

Article 42 directs the Licensee to file a revised Exhibit F and, for Commission ***1819** approval, revised Exhibits J and K, in conformance with Section 4.41 of our Regulations.

Annual Charges

The installed capacity of the project will be 141,500 kilowatts. License Article 39 provides that the authorized installed capacity of this project for annual charge purposes shall be 188,700 horsepower.

The annual charge for the use of United States lands will be determined in accordance with Commission Order No. 560 (issued December 29, 1976, 56 FPC 3860). Computation of the amount of that charge will be deferred until an Exhibit K accurately reflecting lands within the project area is approved.

License Term

Where an applicant has proposed substantial new construction, but has not proposed to redevelop the project, our general policy has been to issue a new license under Section 15 of the Act¹¹ for a period of forty years.¹² The construction proposed by the Applicant for this project falls within this category, but we find in this instance sufficient grounds for a minor adjustment in that license term.

All seven projects in the Big Creek System are hydraulically coordinated and electrically interconnected. In order to provide the Commission an opportunity to analyze and make recommendations with respect to the entire system, we deem it appropriate, where feasible, to synchronize the FPC license expiration dates within a system. Of the six other licensed projects in the Big Creek System, license expiration dates range from 2003 to 2009. In this instance, no radical reduction of the license term will be required to achieve synchronization and thus no overriding concerns regarding any impact on the economic feasibility of redevelopment are extant. The latest expiration date for any project in the system is February 28, 2009 for Project No. 2175 (Huntington Lake and Powerhouse Nos. 1 and 2). A forty year license term from the expiration of the original Project No. 120 license would result in a new license expiration date of March 20, 2011. Thus a reduction of approximately two years is all that is required.

****9** In its August 12, 1971 letter commenting on the application, the Forest Service recommended that the new license for Project No. 120 terminate on September 28, 2003, coinciding with the earliest termination date of the relicensed projects in the Big Creek System. We deem it more desirable to select the latest termination date in the system which is February 28, 2009, for Project No. 2175. In so doing, we are able to approach the desired result, ***1820** simultaneous review of all projects in the system, without unnecessarily constraining the Applicant to an even shorter license term. Accordingly, we will issue a license for Project No. 120 for a period effective the first day of the month in which the license is issued and terminating February 28, 2009.

The Commission finds:

- (1) Big Creek No. 3 Project, FPC Project No. 120, as constituted under this license, affects lands of the United States.
- (2) The Applicant, Southern California Edison Company, is a corporation organized under the laws of the State of California and has submitted satisfactory evidence of compliance with the requirements of all applicable State laws insofar as necessary to effectuate the purposes of a license for the project.
- (3) Public notice of the application was given. No protests were received. A petition to intervene was filed by the Sycamore Valley Association and was granted by the Commission.
- (4) The concerns of the intervenor, Sycamore Valley Association, were disposed of by the Commission's order of February 4, 1977.
- (5) No conflicting application is before the Commission.

(6) The project will not affect a Government dam, nor will the issuance of a license therefor, as herein provided, affect the development of any water resources for public purposes that should be undertaken by the United States.

(7) Subject to the terms and conditions hereinafter imposed the project is best adapted to a comprehensive plan for improving or developing the waterways involved for the benefit of interstate or foreign commerce, for the improvement and utilization of water power development, and for other beneficial public uses, including recreational purposes.

(8) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the annual charge to be paid under the license for the cost of administration of Part I of the Federal Power Act is reasonable.

(9) The amount of the annual charge for the use of United States lands should be computed after approval of a revised Exhibit K.

(10) The plans of project structures, insofar as the interests of navigation are concerned, have been approved by the U.S. Department of the Army, Corps of Engineers.

(11) A final environmental impact statement has been prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. § 4321, *et seq.*, after preparation and circulation of a draft environmental impact statement and receipt of comments thereon.

****10** (12) The term of the license hereinafter authorized is reasonable.

(13) The following described transmission facilities are part of the project within the meaning of Section 3(11) of the Act: the Vincent Transmission Line, consisting of a 220-kV transmission line, and a telephone line, extending ***1821** from Powerhouse No. 3 to Magunden Substation, a distance of approximately 129 miles.

(14) The exhibits designated and described in paragraph (B) below conform substantially to the Commission's Rules and Regulations and should be approved to the extent indicated, and made part of the license for the project.

(15) There is a demonstrated need in Applicant's system for the proposed addition of 35-MW of generating capacity to Big Creek No. 3 Project.

(16) The proposed addition to the hydroelectric generating capacity of the project is superior to any alternative studied.

(17) The Applicant has the necessary financial capabilities to construct and operate the project.

(18) No recommendation for Federal takeover has been received.

(19) Takeover of the Big Creek No. 3 Project is unwarranted and it is in the public interest to issue a new license to the Applicant subject to the terms and conditions hereinafter imposed.

The Commission orders:

(A) This license is issued to Southern California Edison Company of Los Angeles, California, under Section 15 of the Federal Power Act, for a period effective the first day of the month in which this license is issued and terminating February 28, 2009, for the construction, operation, and maintenance of FPC Project No. 120, Big Creek No. 3, located in Fresno County, California, on the San Joaquin River, a non-navigable waterway and affecting lands of the United States in the Sierra National Forest, subject to the terms and conditions of the Act which is incorporated herein by reference as part of this license and subject to such Rules and Regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) The Big Creek No. 3 Project, FPC No. 120, consists of:

(i) all lands constituting the project area and enclosed by the project boundary or the Licensee's interests in such lands, the limits of which are otherwise defined, the use and occupancy of which are necessary for the purposes of the project; such project area and project boundary being partially shown and described by certain exhibits which form part of the application for a new license and which are designated and described as follows:

Exhibit FPC No. Showing

K 1 120 360 Dam No. 6

K 1A 120 234 Tunnel Alignment

K 2 120 235 Boundary Map of

Project Area-Tunnel

K 3 120 236 ‘

K 4 120 237 ‘

K 5 120 238 ‘

***1822** (ii) Project works consisting of:

(1) Dam No. 6, a 155-foot-high concrete overflow arch dam with a crest length of 495 feet, impounding a reservoir covering about 23 acres, with a maximum storage capacity of 1,726 acre-feet at normal pool elevation 2,230 feet. The sill of the ungated spillway at maximum pool level is 308 feet in length. There are four 66-inch-diameter sluice-ways near the base of the dam.

****11** (2) Tunnel No. 3, an unlined tunnel 28,191 feet long and 21 feet wide with an arched roof and vertical side walls 21 feet high, carries water from Dam No. 6 to a penstock manifold located above Big Creek Powerhouse No. 3.

(3) Four steel penstocks with inside diameter ranging from 90 inches at the top to 54 inches at the bottom, extending 1,386 feet from Tunnel No. 3 to Big Creek Powerhouse No. 3, and a fifth steel penstock varying in diameter from 84 inches at the top to 72 inches at the bottom extending parallel to the other penstocks.

(4) Powerhouse No. 3, a reinforced concrete structure containing five generating units, three of which are rated at 25,000 kW, a fourth at 31,500 kW, and a fifth at 35,000 kW, for a total installed capacity of 141,500 kW.

(5) Transmission facilities consisting of:

(a) The Vincent Transmission Line, a 220-kV, 3-phase, single-circuit transmission line, and a telephone line, extending about 129 miles from Powerhouse No. 3 to the Magunden Substation.

(6) All appurtenant facilities, the location, nature, and character of which are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which also form part of the application for a new license and which are designated and described as follows:

Exhibit FPC No. Showing

L 2 120 363 Dam No. 6 Plans, Elevation and Sections

L 3 120 364 Dam No. 6 and Penstocks

L 4 120 365 Tunnel No. 3

L 5 120 366 Tunnel No. 3 to Penstocks

L 6 120 367 Penstocks Manifold

L 7 120 368 Penstocks Nos. 1, 2 & 3

L 8 120 369 Penstock No. 4

L 9 120 370 Penstock No. 5

L 10 120 371 Units One, Two and Three

L 11 120 372 Unit Four

L 12 120 373 Unit Five

L 13 120 374 Big Creek Powerhouse No. 3

L 14 120 375 Big Creek Powerhouse No. 3

L 15 120 376 Switching Station

***1823** *Exhibit M:* Consisting of two typewritten pages entitled 'General Description of Mechanical, Electrical and Transmission Equipment,' filed with the Commission on October 9, 1974, and amended (page 2) on June 13, 1977.

Exhibit R: Consisting of 16 typewritten pages entitled 'Recreation Plan for the Big Creek No. 3 Project,' and one drawing, titled 'proposed Dam No. 6 Scenic Area,' FPC No. 120-359, filed with the Commission on June 10, 1971.

Exhibit S: Consisting of 10 typewritten pages entitled 'Fish and Wildlife Resources Big Creek No. 3 Project,' filed with the Commission on June 10, 1971.

(iii) All of the structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, and such other property as may be used or useful in connection with the project or any part thereof, whether located on or off the project area, if and to the extent that the inclusion of such property as part of the project is approved

or acquiesced in by the Commission; together with all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance or operation of the project.

****12** (C) Exhibits K, L, M, R and S, as designated and described in paragraph (B) above, are hereby approved and made a part of the license to the extent noted.

(D) This license is also subject to the following terms and conditions set forth in Form L-2 (revised October 1975, 54 FPC 1808) entitled 'Terms and Conditions of License for Unconstructed Major Project Affecting Lands of the United States,' which terms and conditions, designated as Articles 1 through 32, are attached hereto¹³ and made a part hereof, and subject to the following special conditions set forth herein as additional articles:

Article 33. The Licensee shall operate the project reservoir in such a manner that releases from the reservoir during flood flows shall be no greater than the peak flows which would have occurred in the absence of the project.

Article 34. The Licensee shall file for Commission approval, within six months from the date construction is completed, revised Exhibit L drawings showing the project as built.

Article 35. The Licensee shall, prior to commencement of construction at the project, provide for a survey of project lands conducted by professional botanists to determine the presence of any threatened or endangered plant species as defined by the Smithsonian Institution and the Department of the Interior. If any such plants are threatened by the construction, operation, or maintenance of project works, including ***1824** recreation facilities, appropriate measures shall be taken to protect the endangered plant species, which may include, but not be limited to, altering project construction activities or use patterns, or transplanting the threatened plant species under the supervision of a professional botanist. The survey and all protective measures shall be made in cooperation with appropriate State and Federal agencies, and the Licensee shall, within one year following the issuance of this order, file with the Commission the results of the survey and any measures taken or proposed to protect endangered plant species at the project.

Article 36. The Licensee shall, prior to the commencement of construction, consult with the California State Historic Preservation Officer to determine the extent of any archeological survey and salvage excavations that may be necessary prior to any construction activities and provide funds in a reasonable amount for any needed surveys or salvage excavations to be conducted and completed prior to commencement of any construction at the project.

Article 37. The Licensee shall continue to implement and modify when appropriate, the emergency action plan prepared in accordance with previous instructions of the Commission dated August 15, 1975. Licensee shall monitor any changes in upstream or downstream conditions which may influence flows or affect areas susceptible to damage, and shall promptly make and file with the Commission appropriate changes in such emergency action plan.

****13** *Article 38.* Pending further order by the Commission on its own motion, or at the request of other affected Federal and State agencies, after notice and opportunity for hearing, the Licensee shall at all times discharge from Dam No. 6 a minimum flow of 3 cfs, for the purpose of protecting and enhancing the downstream aquatic habitat: *Provided*, That such flows may be temporarily modified if required by operating emergencies, or for fishery management purposes upon mutual agreement between the Licensee and the State of California Department of Fish and Game.

Article 39. Pursuant to Section 10(d) of the Act, a specified reasonable rate of return upon the net investment in the project shall be used for determining surplus earnings of the project for the establishment and maintenance of amortization reserves. One-half of the project surplus earnings, if any, accumulated under the license, in excess of the specified rate of return per annum on the net investment, shall be set aside in a project amortization reserve account at the end of each fiscal year: *Provided*, That, if and to the extent that there is a deficiency of project earnings below the specified rate of return per annum for any fiscal year under the license, the amount of such deficiency shall be deducted from the amount of any surplus earning accumulated

thereafter until absorbed, and one-half of the remaining surplus earnings, if any, cumulatively *1825 computed, shall be set aside in the project amortization reserve account; and the amounts thus established in the project amortization reserve account shall be maintained therein until further order of the Commission.

The annual specified reasonable rate of return shall be the sum of the weighted cost components of long-term debt, preferred stock, and the cost of common equity, as defined herein. The weighted cost component for each element of the reasonable rate of return is the product of its capital ratios and cost rate. The current capital ratios for each of the above elements of the rate of return shall be calculated annually based on an average of 13 monthly balances of amounts properly includable in the Licensee's long-term debt and proprietary apital as listed in the Commission's Uniform System of Accounts. The cost rates for such ratios shall be the weighted average cost of long-term debt and preferred stock for the year, and the cost of common equity shall be the interest rate on 10-year governmental bonds (reported as the Treasury Department's 10-year constant maturity series) computed on the monthly average for the year in question plus four percentage points (400 basis points).

Article 40. The Licensee shall pay the United States the following annual charges, effective as of the first day of the month in which the license is issued:

(a) For the purpose of reimbursing the United States for the cost of administration of Part I of the Act, a reasonable annual charge as determined by the Commission in accordance with the provisions of its Regulations, in effect from time to time. The authorized installed capacity for such purpose is 188,700 horsepower.

**14 (b) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands, exclusive of transmission line rights-of-way, an amount to be determined later;

(c) For the purpose of recompensing the United States for the use, occupancy and enjoyment of its lands for transmission line rights-of-way, an amount to be determined later.

Article 41. Licensee shall commence construction of Unit No. 5 at Powerhouse No. 3 within one year following the date of issuance of this order and shall thereafter in good faith and with due diligence prosecute such construction and shall complete the construction within four years thereafter.

Article 42. Licensee shall file within one year following the date of issuance of this license, a revised Exhibit F and, for Commission approval, revised Exhibits J and K, in conformance with Section 4.41 of the Commission's Regulations.

Article 43. The Licensee shall, from November 1 through April 30, of each year during the construction of the additional generating *1826 unit, take all reasonable measures to avoid or minimize constructionrelated disturbances to the mule deer population in the vicinity of the project.

(E) This order shall become final 30 days from the date of its issuance unless application for rehearing shall be filed as provided in Section 313(a) of the Act, and failure to file such an application shall constitute acceptance of this license. In acknowledgment of the acceptance of this license it shall be signed for the Licensee and returned to the Commission within 60 days from the date of issuance of this order.

FEDERAL POWER COMMISSION

Footnotes

1 16 U.S.C. § 808

2 See, Section 4(e) of the Federal Power Act (16 U.S.C. § 797e)

- 3 Second Annual Report of the FPC (1922), p. 298
- 4 Sixth Annual Report of the FPC (1926), p. 118.
- 5 Order Amending License, Southern California Edison Company
- 6 Order Modifying Initial Decision and Amending License, [Southern California Edison Company, Project No. 120, 57 FPC 690 \(1977\)](#).
- 7 See, Energy and Policy Conservation Act of 1975, [Public Law 94-163, 89 Stat. 871, 940 \(Section 382\)](#).
- 8 Applicant's Big Creek System consists of the following seven projects licensed by the Commission:
FPC Project No.
67, Big Creek No. 2A and No. 8
120, Big Creek No. 3
2017, Redinger Lake and Powerhouse No. 4
2085, Mammoth Reservoir and Powerhouse
2086, Lake Thomas A. Edison
2174, Portal Forebay and Powerhouse
2175, Huntington Lake and Powerhouse Nos. 1 and 2
- 9 [16 U.S.C. § 807\(a\)](#)
- 10 [16 U.S.C. § 800\(c\)](#).
- 11 [16 U.S.C. § 8008](#).
- 12 Order Issuing New License (Major), *The Montana Power Company*, Project No. 2301, issued October 5, 1976, [56 FPC 2008](#).
- 13 Omitted in printing.

59 F.P.C. 1810, 1977 WL 16861

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