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July 8, 2013

Ms. Tammy Vallejo  
State Water Resources Control Board – Division of Water Rights  
Water Quality Certification Program  
P.O. Box 2000  
Sacramento, CA 95812-2000

Dear Ms. Vallejo:

Subject: *Comments on Draft Memorandum of Understanding Between the Federal Energy Regulatory Commission (FERC) and the California State Water Resources Control Board (SWRCB) Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California*

The Los Angeles Department of Water and Power (LADWP) appreciates the opportunity to provide comments on the *Draft Memorandum of Understanding (MOU) Between the Federal Energy Regulatory Commission (FERC) and the California State Water Resources Control Board (SWRCB) Concerning Coordination of Pre-Application Activities for Non-Federal Hydropower Proposals in California*. LADWP also appreciates the work of SWRCB staff in developing the Draft MOU.

LADWP would like to first offer broad comments about the licensing process. The ramifications of the recent Southern California Edison (SCE) decision to permanently close its San Onofre Generating Station (SONGS) illustrates the criticality of every megawatt that is generated in Southern California, particularly during the summer months – and the significance of every power plant that contributes to, and helps maintain the reliability of, the grid .

Against a background of increasing number of environmentally-based regulations, the long-term planning process for power plant operators has become more rigorous – and often uncertain. LADWP therefore believes that whenever possible, regulatory agencies must simplify and shorten the process by utilizing already-extant data. This approach would confer benefits to the environment, utility ratepayer, and the utilities, and would result in more precise long-term planning that would help maintain the reliability of the grid.

When a power plant/generating station operator files with the Federal Energy Regulatory Commission (Commission) for a New License to operate its facility, the water quality certification will become part of the Commission's 30-to-50-year operating

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license for the said facility. Significant changes to the physical and regulatory environment, and the state of scientific knowledge, are of course anticipated during this lengthy time period. But the very length of the time period precludes knowledge about the scope of anticipated changes.

LADWP believes that in the case for relicensing, studies utilized for the previous licensing of a facility, updates to such studies, if necessary, coupled with SWRCB water quality data already mandated sampling/monitoring activities, should suffice to initiate the renewal process. To request anything more is to enter the realm of speculation and uncertainties that will result in unnecessary expenditures of time and money.

LADWP would like to offer the following specific comments on the Draft MOU; these are intended for clarification for relicensing projects.

1. Section 1. Purpose (First paragraph on Page 2)

This paragraph states: "The State Water Board recognizes that the Integrated Licensing Process (ILP) (18 C.F.R. Part 5) is the Commission's default process.<sup>3</sup> However, as appropriate, this MOU will also pertain to the Commission's Traditional Licensing Process (TLP) (18 C.F.R. Parts 4, 16) and Alternative Licensing Process (ALP) [18 C.F.R. §4.34li]."

LADWP believes that the default integrated licensing process (ILP) should always be the basis for the MOU unless specific information or other factors demand otherwise. Eliminating uncertainties from a complex process whenever possible is a must.

2. Section II. Regulatory Deadlines, Item 1 (page 2)

This Section reads: "In the case of a proceeding under the TLP or ALP, the Commission and the State Water Board will develop a mutually agreeable schedule."

There are no time limits imposed for development of said schedule. LADWP believes that a standard mechanism for setting said schedule (such as splitting the difference between schedule proposals, for example) is required. Applicants need/deserve a better-defined process and a significantly shorter licensing/401 cert schedule for their own internal planning processes.

Barring a standard schedule-setting mechanism, at minimum, LADWP suggests that the MOU should stipulate a time limit for developing the schedule; thirty (30) to sixty (60) days seems adequate.

3. Section II. Regulatory Deadlines, Item 2 (page 2).

Section II includes this statement: "If a rescheduling agreement cannot be reached.....seek to resolve the issue at a higher level..."

There are no time limits imposed for development of said schedule; LADWP believes this uncertainty must be eliminated by imposing a sixty (60) to ninety (90) day limit for achieving a resolution. .

4. Section II, Pre-Application Filing Activities Under the ILP, item 1b (Page 2)

This Section states: "As part of the scoping meeting(s) (box 4), the State Water Board and Commission will discuss and attempt to reach consensus on the proposed geographic scope of studies. If either agency thinks that the proposed project's scope needs to be modified after the scoping meeting(s) (Box 4), the Commission and State Water Board will discuss and attempt to reach consensus on the proposed scope modification. If there is no consensus on the project's scope of effects, then each agency will proceed using its own geographic scope of studies."

LADWP believes that unless there is sufficient justification for a new and/or expanded geographic scope of studies, that the geographic scope utilized previously should be employed again, as that would have included water quality and beneficial uses considerations.

5. Section II, Pre-Application Filing Activities Under the ILP, item 3 (Page 3)

The introduction to this Section reads: "The Commission and the State Water Board agree to actively participate in study plan development (18 C.F.R. §§ 5.9 – 5.13) (Boxes 5 -10) The State Water Board will, to the extent possible, identify studies and information necessary for water quality certification (Box 5)."

The determination of studies required for 401 certification and licensing is not well defined. In addition, LADWP is concerned that there are no deadlines, nor a duration of time allocated for each stage of the process. Previous licensing and/or 401 activities for a given facility (if any) should drive this process. Item d in particular seems to leave the process open-ended: "The State Water Board will make every attempt to request studies and information as early in the licensing process as possible. However, participation in this MOU will not affect the State Water Board's authority to require any study or information it later determines to be necessary for issuance of water quality certification." LADWP believes that this statement is so broad that entities seeking license renewals will be incapable of planning and budgeting for the renewal process.

6. Section II, Pre-Application Filing Activities Under the ILP, Item 4 (Page 3)

LADWP is concerned that this item is very vague: "In its comments on the Preliminary Licensing Proposal (or Draft License Application) (Box 17), the State Water Board will, to extent possible, make clear to the applicant any specific environmental analyses needed for issuance of water quality certification and that should be included in the Final License Application (Box 18)."

LADWP believes that since the SWRCB usually has years of historic Water Quality monitoring/sampling data for existing facilities, including any permit exceedances, as well as knowledge of the facility's operations, it is unfair to applicants that the list of needed environmental analyses is so tentative – possibly through nearly the entire renewal process. This lack of certainty is not feasible for most applicants, due not only to budgeting considerations, but particularly if consultants are required to undertake any additional studies. The contracting process for government agencies is cumbersome and lengthy; contracting and any study could therefore take years. Again, LADWP believes the only tenable option is for necessary environmental studies to have been identified within six (6) months of submittal of the Draft License Application.

7. Section II, Post-Application Filing Activities Under the ILP, Baseline section (Page 4)

This section states "Pursuant to the Commission's policy and California case law, the current state of the environment, with the existing project facilities, is the baseline condition against which the proposed action and all alternatives in the environmental document(s) will be compared for purposes of NEPA and CEQA. The State Water Board's water quality certification authority, however, extends to project-related impacts to water quality notwithstanding whether those impacts are due to existing conditions."

LADWP is unclear whether the latter portion of the final sentence ("..... notwithstanding whether those impacts are due to existing conditions.") implies that the board can consider future water quality conditions. But LADWP believes that future conditions would logically be speculative, as it is unclear to what extent future conditions can be extrapolated from historic data. LADWP understands that new Water Quality limits may have to be imposed for a given facility - to take into account new regulations and emerging scientific data. But it is also unclear whether such "updates" would necessarily require completely new studies by an applicant.

8. Section II, Post-Application Filing Activities Under the ILP, Communication section Item 3 (Page 4)

Item 3 reads: "The Commission and the State Water Board will each identify staff as the designated points of contact (in Communication #1 above) who will register online at <http://www.ferc.gov/esubscribenow.htm> to be notified via e-mail of new filings and issuances related to the project.

LADWP requests a deadline of thirty (30) days for identification of the above-referenced staff.

Thank you for this opportunity to provide these comments. Again, LADWP would like to express its appreciation to staff members for their work on this Draft MOU.

Should you have any questions regarding this letter, please contact me at (213) 367-0436.

Sincerely,



Katherine Rubin  
Manager of Wastewater Quality and Compliance

c: Ms. Erin Ragazzi – State Water Resources Control Board (SWRCB)  
Mr. David Rose – Staff Counsel, SWRCB  
Ms. Michelle Lyman – LADWP Counsel