

21 F.P.C. 419, 1959 WL 3238

SOUTHERN CALIFORNIA EDISON COMPANY,

PROJECT NO. **2175**

ORDER ISSUING LICENSE (MAJOR)

March 27, 1959

****1 *419** Before Commissioners: Jerome K. Kuykendall, Chairman; Frederick Stueck, William R. Connole and Arthur Kline.

Application was filed December 21, 1954, by Southern California Edison Company, of Los Angeles, California, (Applicant) for a license under the Federal Power Act (hereinafter referred to as the Act) for existing Project No. **2175**, designated as the 'Big Creek No. 1 and No. 2 Project', located on Big Creek, tributary to the San Joaquin River, in Fresno, Tulare, and Kern Counties, California, and affecting navigable waters and lands of the United States within Sierra National Forest, and other lands of the United States.

According to the application for license, construction of Big Creek Powerhouses Nos. 1 and 2 and Huntington Lake Reservoir was commenced in 1902 by Pacific Light and Power Company. Construction was continued in 1911 by its successor Pacific Light and Power Corporation, which completed construction in early 1914. The initially planned two generators in Big Creek Powerhouse No. 1, of 20,000 horsepower each, were placed in operation on November 8, 1913. The first generator in Big Creek Powerhouse No. 2 was placed in operation on December 18, 1913, and the second generator on January 11, 1914, each of 20,000 horsepower.

The Chief of Engineers, Department of the Army, in reporting on the application, advised that the project has no significant effect on present navigation or on flood flows on the San Joaquin River downstream from the Government's Friant Dam and that, therefore, it is not considered necessary to place any restrictions in any license issued for the project in the interest of navigation. The tracings of Exhibits 'J', 'K', and 'L', filed as part of the application for license, have been approved by the Secretary of the Army and Chief of Engineers, Department of the Army, insofar as the interest of navigation are concerned.

An Assistant Secretary of the Interior, in reporting on the application, recommended for inclusion in any license issued for the project certain special conditions to assure project operation in harmony with existing contracts between the United States, Applicant, and Miller and Lux Incorporated and its associated canal companies, and in the interests of recreation and of fish and wildlife conservation-all as hereinafter substantially provided.

The State of California Department of Fish and Game, in reporting on the application, recommended for inclusion in any license issued for the project certain special conditions for the protection of fish and wildlife resources substantially as hereinafter provided.

An Assistant Secretary of Agriculture, in reporting on the application, advised that while the operation of the project has been satisfactory under the stipulations of a permit issued June 22, 1917 to Applicant by the Department, increased multiple demands on the area-use make necessary certain modifications of the permit conditions to assure that the project will continue to operate compatibly with the protection and utilization of the National Forest involved, and that it is the mutual opinion of the California State Department of Fish and Game, the U.S. Fish and Wildlife Service, and the U.S. Forest Service that the recreational value of the area would be greatly improved if there were more water in certain sections of the stream channels now being controlled by the project works. Accordingly, the Assistant Secretary recommended for inclusion in any license issued for the project certain conditions for the protection of the interests just mentioned as hereinafter provided.

****2 *420** Applicant requests a so-called 'fair value' license under the provisions of Section 23(a) of the Act for a period of 50 years. According to the application for license, the project was constructed under: (1) a power permit, issued in 1913

to Applicant's predecessor by the Acting Secretary of Agriculture, which permit was later supplemented and amended; (2) an easement granted in 1914 by the Acting Secretary of Agriculture to Applicant's predecessor; (3) a final power permit issued to Applicant in 1917 by the Secretary of Agriculture, which permit was later supplemented; (4) a power permit issued to Applicant's predecessor in 1913 by the Secretary of the Interior, who approved its transfer to Applicant in 1917; and (5) several special use permits issued to Applicant by the Forest Service and dated from August 20, 1921 through October 26, 1950.

Major changes and additions to the project works were made by Applicant as follows: (i) Huntington Lake Reservoir was raised 35 feet in 1917; (ii) In Big Creek Powerhouse No. 1 a third generator, of 22,500 horsepower, was placed in service on July 12, 1923, and the fourth unit, of 35,000 horsepower, on June 8, 1925; (iii) In Big Creek Powerhouse No. 2 a third generator, of 21,456 horsepower, was placed in service on February 1, 1921, and the fourth unit, of 25,000 horsepower, on March 31, 1925.

The Commission finds:

(1) The Applicant 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 effect the purposes of a license for the project.

(2) The constructed project consists of:

(a) All lands constituting the project area and enclosed by the project boundary or the limits of which are otherwise defined, and/or interest in such lands necessary or appropriate for the purposes of the project, whether such lands or interest therein are owned or held by the applicant or by the United States; such project area and project boundary being more specifically shown and described by certain exhibits which formed a part of the application for license and which are designated and described as follows:

(b) Principal structures consisting of:

Four arched or straight gravity type concrete dams (Dams Nos. 1, 2, 3 and 3A) across Big Creek or saddles tributary thereto, varying in heights from 10 feet to 159 feet above ground surface; Huntington Lake Reservoir, created by the above four dams, having a gross storage capacity of about 89,766 acre-feet; a concrete arch overflow structure (Dam No. 4) across Big Creek, about 79 feet high above streambed, creating a pond of 99 acre-feet gross capacity below the tailrace of Big Creek Powerhouse No. 1, from which water is diverted to Big Creek Powerhouse No. 2; and three small diversion dams to divert waters of Balsam Creek, Eley Creek, and Adit 8 Creek into Adits 3, 6, and 8, respectively, of Tunnel No. 2. Two pressure lines (Tunnels Nos. 1 and 2), about 10,350 feet *421 and about 21,760 feet long, respectively, Tunnel No. 1 extending from Huntington Lake Reservoir to the head of penstocks at Big Creek Powerhouse No. 1, and Tunnel No. 2 extending from the afterbay dam (Dam No. 4) at Big Creek Powerhouse No. 1 to head of penstocks at Big Creek Powerhouse No. 2; standpipes at all penstocks and a surge chamber in Tunnel No. 2; penstocks; three short conduits, one each from Balsam Creek, Eley Creek, and Adit 8 Creek diversion dams to adits of Tunnel No. 2. Big Creek Powerhouse No. 1 with a total installation, in four units, of 97,500 horsepower (at 1900 feet effective head) and 66,900 kilowatts name-plate rating; Big Creek Powerhouse No. 2 with a total installation in four units of 86,456 horsepower (at respective effective heads) and 57,750 kilowatts name-plate rating; a switchyard near Big Creek Powerhouse No. 1 and two 220 KV circuits connecting the powerhouse and switchyard; a switchyard near Big Creek Powerhouse No. 2 and two 220 KV circuits connecting the powerhouse and switchyard; necessary oil circuit breakers and switching and transformer equipment; two 220 KV single circuit transmission lines each approximately 144 miles long, one line extending from Big Creek Powerhouse No. 1 switchrack by way of Vestal Substation switchrack to the switchrack at the Magunden Substation, the other line extending from Big Creek Powerhouse No. 1 switchrack by way of switchracks at Big Creek Powerhouse No. 2, Big Creek Powerhouse No. 3, Rector Substation, and Vestal Substation, to the Magunden Substation switchrack. Miscellaneous hydraulic,

mechanical, and electrical appurtenances, structures, and facilities including telephone, control, and power circuits, and other project works, all necessary in operation and maintenance of the project works.

****3** -the location, nature, and character of which structures are more specifically shown and described by the exhibits hereinbefore cited and by certain other exhibits which formed a part of the application for license and which are designated and described as follows:

'M' 'General Descriptions of Mechanical, Electrical, and Transmission Equipment' in 5 sheets, filed Dec. 21, 1954.

(c) All other structures, fixtures, equipment or facilities used or useful in the maintenance and operation of the project and located on the project area, including such portable 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 ***422** and to the extent that the inclusion of such property as part of the project is approved or acquiesced in by the Commission; also, all riparian or other rights, the use or possession of which is necessary or appropriate in the maintenance and operation of the project.

(3) No conflicting application is before the Commission. Public notice has been given.

(4) The issuance of a license for the project, as hereinafter provided, will not affect the development of any water resources for public purposes which should be undertaken by the United States.

(5) The project affects navigable waters and lands of the United States within Sierra National Forest, and other lands of the United States.

(6) The issuance of a license for the project will not interfere or be inconsistent with the purposes of any reservation or withdrawal of public lands, or with the purposes for which Sierra National Forest was created or acquired.

(7) The Applicant has submitted satisfactory evidence of its financial ability to continue the operation of the project.

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

(9) The installed horsepower capacity of the project hereinafter authorized for the purpose of computing the capacity component of the administrative annual charges is 166,000 horsepower. The energy generated thereby will continue to be used for domestic, commercial, industrial, agricultural, and other uses in Applicant's service areas in the Contral and Southern parts of California.

(10) The amount of annual charges to be paid under the license for the purpose of reimbursing the United States for the costs of administration of Part I of the Act and for recompensing it for the use, occupancy, and enjoyment of its lands, including transmission line rights-of-way, is reasonable as hereinafter fixed and specified.

(11) The transmission facilities described in finding (2)(b) above are part of the project within the meaning of Section 3(11) of the Act, and should be included in the license for the project.

****4** (12) It is desirable to reserve for future Commission determination what additional transmission facilities, if any, should be included in this license.

(13) The exhibits designated and described in finding (2)(a) and (b) above conform to the Commission's rules and regulations and should be approved as part of the license for the project.

(14) Some of the project works having been constructed subsequent to enactment of the Federal Power Act, and Applicant having failed to file the application for license within a reasonable time prior to the date of expiration of the aforementioned 1917 permit issued by the Secretary of Agriculture, Applicant has not shown that it is entitled to a license under Section 23(a) of the Act.

The Commission orders:

(A) This license is issued to Southern California Edison Company, of Los Angeles, California (hereinafter referred to as the Licensee) under the provisions of Section 4(e) of the Federal Power Act for a period of 50 years, effective as of March 1, 1959, for the operation and maintenance of constructed Project No. 2175, affecting navigable waters and lands of the United States within Sierra National Forest and other lands of the United States, subject to the terms and conditions of the Act which is incorporated by reference as a part of this license, *423 and subject to such rules and regulations as the Commission has issued or prescribed under the provisions of the Act.

(B) This license is also subject to the terms and conditions set forth in Form L-5, December 15, 1953, entitled 'Terms and Conditions of License for Constructed Major Project Affecting Navigable Waters and Lands of the United States' (17 FPC 110), except for Articles 8, and 14 through 18 thereof, which terms and conditions are attached hereto and made a part hereof; *Provided*, however, that the omission, of such excepted articles from the license shall not be construed as a waiver of any terms and conditions of the Act, and subject to the following special conditions set forth herein as additional articles:

Article 27. The Licensee shall operate the project in harmony with the contracts entered into by the Licensee, or its predecessors in interest, with Miller & Lux Incorporated relating to the stages of the San Joaquin River at which the Licensee may store water of said river, which contracts are dated August 17, 1906; June 14, 1909; February 21, 1916; October 3, 1916; August 16, 1918; April 27, 1920; November 2, 1922; February 11, 1924; October 7, 1924; December 3, 1925; April 25, 1928; July 19, 1933; and November 25, 1936, respectively, and which are referred to in the contract dated July 27, 1939, between the United States, Miller & Lux Incorporated, and Gravelly Ford Canal Company entitled 'Contract for Purchase of Miller & Lux Water Rights', as said contracts have been supplement and modified by the contracts entered into by the Licensee with the United States and other parties dated June 30, 1949, and April 9, 1953, relating to Project No. 2017 and Project No. 2086, respectively, and as any or all of said contracts of the Licensee may be further amended, supplemented, modified, or superseded by subsequent agreement between the Licensee and the United States.

****5** *Article 28.* The Licensee shall release sufficient water into the section of Big Creek below Huntington Lake (Dam 1) throughout the period April 15 through December 15 of each year so as to maintain a flow of not less than two (2) cubic feet per second as measured at the existing gaging point located approximately 0.9 mile below Dam 1: *Provided*, that the Licensee is permitted to divert and recover the amount of its release after said water has reached the SW 1/4 of Section 22, T. 8 S., R. 25 E., M.D.B. and M.: *Provided further*, That the diversion and recovery proviso of said water shall be subject to review and adjustment by the Commission upon request of Licensee at any time prior to December 31, 1960, and after review by the Secretary of the Interior, Secretary of Agriculture, and the Director of the California Department of Fish and Game: *Provided further*, That in the event that it shall be determined by the California Department of Fish and Game and the Department of the Interior that flows existing between Powerhouse No. 1 (Dam 4) and Powerhouse No. 2 tailwater pool (Dam 5) are insufficient to maintain the fishery in that stretch of Big Creek, the Commission may upon the recommendation of the California Department of Fish and Game and the Secretary of the Interior require the Licensee to maintain a flow of not less than two (2) cubic feet per second, during the period April 15 to December 15, at the head of said tailwater pool at Powerhouse No. 2: *Provided further*, That after not less than ten (10) years of operation with such rates of release in force but not later than December 31, 1980, the fish, wildlife, and recreational requirements for water in the affected sections of Big Creek shall be reviewed, and the rates of

release shall be adjusted by the Commission as found to be required at that time; and *Provided further*, That the required rates of release with such adjustment shall not be greater than five (5) cubic feet per second.

Article 29. The Licensee shall in the interest of recreation make every reasonable effort to maintain the water surface of Huntington Lake Reservoir at as *424 high an elevation and with as little fluctuation during the period from May 1 to September 10 of each year as is consistent with the primary purpose of the reservoir and the contracts referred to in Article 27 hereof.

Article 30. The Licensee shall clear and keep clear to an adequate width lands of the United States along open conduits, and shall dispose of all temporary structures, unused timber, brush, refuse, or inflammable material resulting from the clearing of the lands or from the maintenance or alteration of the project works. In addition, all trees along the margins of reservoirs which may die during operations of the project shall be removed. The clearing of the lands and the disposal of the material shall be done with due diligence and to the satisfaction of the authorized representative of the Commission.

****6** *Article 31.* The Licensee shall interpose no objection to and shall in no way prevent, the use by the agency of the United States having jurisdiction over the lands of the United States affected, or by persons or corporations occupying lands of the United States under permit, of water for fire suppression from any stream, conduit or body of water, natural or artificial, used by the Licensee in the operation of the project works covered by the license, or to the use by said parties of water for domestic purposes from any stream or body of water, natural or artificial, used by the Licensee in the operations of the project works covered by the license.

Article 32. The Licensee shall pay to the United States the following annual charges:

(i) For the purpose of reimbursing the United States for the costs of administration of Part I of the Act, one (1) cent per horsepower of the installed capacity (166,000 horsepower) plus two and one-half (2 1/2) cents per 1,000 kilowatt-hours of gross energy generated by the project during each calendar year for which the charge is made;

(ii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands, exclusive of those used for transmission line right-of-way, \$4,288.86;

(iii) For the purpose of recompensing the United States for the use, occupancy, and enjoyment of its lands for transmission line right-of-way only, \$1,799.20.

Article 33. The Commission expressly reserves the right to determine at a later date what additional transmission lines and appurtenant facilities, if any, shall be included in this license.

Article 34. The operations of the Licensee so far as they affect the use, storage, and discharge from storage of waters affected by the license, shall at all times be controlled by such reasonable rules and regulations as the Commission may prescribe for the protection of life, health, and property, and in the interest of the fullest practicable conservation and utilization of such waters for power purposes and for other beneficial public uses, including recreational purposes; and the Licensee shall release water from the project reservoir at such rate in cubic feet per second, or such volume in acre-feet per specified period of time, as the Commission may prescribe for the purposes hereinbefore mentioned.

(C) The exhibits designated and described in finding (2) above are approved as part of this license.

(D) 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
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