

129 FERC ¶ 61,133
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

County of Butte, California

Docket No. EL09-55-001
and

v.

Project No. 2100-171

California Department of Water Resources

ORDER DENYING REHEARING

(Issued November 19, 2009)

1. On July 16, 2009, the Commission issued an order (July 16 Order) denying a complaint filed by the County of Butte, California (Butte County) against California Department of Water Resources (California DWR), licensee for the Oroville Project No. 2100.¹ The July 16 Order found that, contrary to Butte County's assertions, California DWR was not in violation of our recreation and public service requirements or its license. On August 7, 2009, Butte County filed a request for rehearing of the July 16 Order. For the reasons discussed below, the Commission denies the request for rehearing.

Background

2. The Oroville Project was originally licensed in 1957.² The 762-megawatt project is located on the Feather River, in Butte County, California, in the immediate vicinity of the City of Oroville, approximately 130 miles northeast of Sacramento, California. The project includes the Oroville Reservoir, the Thermalito Forebay, the Thermalito Afterbay, and the Thermalito Diversion. The project occupies 41,540 acres of land, including 1,620 acres of federal lands managed by the U.S. Department of Agriculture's Forest Service and the U.S. Department of the Interior's Bureau of Land Management.

¹ 128 FERC ¶ 61,068 (2009).

² *California Department of Water Resources*, 17 FPC 262 (1957) (*California DWR*).

3. On January 26, 2005, California DWR filed an application for a new license. On March 26, 2006, California DWR filed a comprehensive settlement agreement with the Commission on behalf of itself and 53 settling parties. Butte County, which is a party to the relicensing proceeding, is not a party to the settlement agreement.³ On January 31, 2007, the license for the project expired. The project has been operating on an annual license since February 1, 2007.⁴ The relicensing proceeding is currently pending before the Commission.

4. On May 22, 2009, Butte County filed a complaint against California DWR. The complaint alleged that California DWR was in violation of Standard Articles 7, 14, and 37 of the Project No. 2100 license⁵ and of the recreation and public safety requirements of section 2.7(f)(1) of the Commission's regulations.⁶ Butte County stated that California DWR did not comply with license requirements to provide for public safety and recreational opportunities at the project. As a result, Butte County said, it provided police and other first responder services to meet the demand for public protection at the project without compensation, since California DWR is exempt from the payment of property taxes and does not make payments in lieu of taxes.⁷ Butte County alleged that California DWR violated its recreational and public safety obligations at the project, since it failed to reimburse Butte County for first responder services.

5. Butte County also argued that the Commission should adopt interim conditions, under Standard Articles 3 and 9,⁸ pending the relicensing of the project, to require

³ Butte County claims that it was excluded from settlement negotiations. The settlement agreement will be considered by the Commission in the relicensing proceeding.

⁴ See *Notice of Authorization for Continued Project Operation*, issued February 1, 2007, in Project No. 2100.

⁵ See Standard Articles 7, 14, and 37, Form L-6, published at 16 FPC 1121 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

⁶ 18 C.F.R. § 2.7(f)(1) (2009).

⁷ California DWR is exempt under California law from the payment of property taxes. In the complaint, Butte County estimated that it loses \$6.9 million per year in property taxes, as a result of California DWR's tax exempt status.

⁸ See Standard Articles 3 and 9, Form L-6, published at 16 FPC 1121 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

California DWR to reimburse Butte County for costs associated with providing public services to the project.

6. Butte County requested that the Commission require California DWR to: (1) provide annual reimbursement of \$5.8 million to the county for its costs incurred in providing law enforcement and public safety services to the project from the date that the license expired on January 31, 2007 through the pendency of the relicensing proceeding, and (2) make annual payments in lieu of taxes in the amount of \$6.9 million to reimburse the county for the infrastructure needed to provide public services and for the use of county land and natural resources.

7. The Commission issued public notice of the complaint on May 22, 2009, with a deadline of June 11, 2009, for comments, motions to intervene, and the licensee's response.⁹

8. On June 10, 2009, California DWR filed an answer to the complaint. In its answer, California DWR disputed that it had violated any of its license requirements, stating that the Commission has never found the project to be in noncompliance. California DWR also contended that the Commission did not have the authority to impose interim conditions, since Standard Articles 3 and 9 do not permit the Commission to reevaluate the terms of the license.

9. On June 11, 2009, the State Water Contractors (Water Contractors) and the Metropolitan Water District of Southern California (Metropolitan) filed a joint motion to intervene and comments. Water Contractors and Metropolitan asserted that a complaint proceeding is not the appropriate venue for Butte County to raise its concerns, since the same concerns are being evaluated in the pending relicensing proceeding. Water Contractors and Metropolitan argued that the complaint failed to allege any violation of statute, regulation, or license term by California DWR, and, further, that the license does permit the Commission to order any remedy to the complaint.

10. On June 30, 2009, Butte County filed an answer to California DWR's answer and Water Contractors' and Metropolitan's comments.

11. On July 16, 2009, the Commission issued an order denying Butte County's complaint.¹⁰ The Commission found that Butte County's complaint did not prove

⁹ 74 Fed. Reg. 26,393 (June 2, 2009).

¹⁰ *Butte County v. California Department of Water Resources*, 128 FERC ¶ 61,068 (2009) (*Butte County*).

California DWR to be in violation of any statute, rule, or order. The Commission also held that none of California DWR's license standard articles reserved the authority for the Commission to impose interim conditions requiring California DWR to reimburse Butte County for the costs associated with providing public services to the project, and that the Commission does not require its licensees to subsidize local services. To the extent that Butte County was suggesting that the Commission impose new requirements on California DWR, we said that those matters should be addressed in the relicensing proceeding.

12. On August 7, 2009, Butte County filed a request for rehearing of the July 16 Order denying its complaint. Butte County argues that the Commission improperly denied the complaint because California DWR is in violation of section 2.7(f) of the Commission's regulations¹¹ and Standard Articles 7¹² and 14¹³ of its project license. Butte County also alleges that the July 16 Order erred in failing to recognize that California DWR's license expressly reserves authority under Standard Article 3¹⁴ and sections 4(e)¹⁵ and 10(c)¹⁶ of the Federal Power Act (FPA) to reopen the license and impose interim conditions.

¹¹ 18 C.F.R. § 2.7(f)(1) (2009).

¹² Butte County also cites to Standard Article 18 in its rehearing request, stating that California DWR is required to provide "full public utilization of such lands and waters for navigation and recreational purposes" except for reserved areas as "necessary for the protection of life, health, and property." *See* request for rehearing at 17. However, the language quoted by Butte County pertains to Standard Article 7 of the project license. We assume here that Butte County meant to refer to Standard Article 7, and not Standard Article 18. *See* Standard Article 7, Form L-6, published at 16 FPC 1121, 1123 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

¹³ *See* Standard Article 14, Form L-6, published at 16 FPC 1121, 1124 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

¹⁴ Butte County also cites to Standard Article 4 in its rehearing request, stating that California DWR must "comply with the rules and regulations of general or special applicability as the Commission may from time to time prescribe for the protection of life, health, and property." *See* request for rehearing at 17-18. However, the language quoted by Butte County pertains to Standard Article 3 of the project license. We assume Butte County to refer to Standard Article 3. *See* Standard Article 3, Form L-6, published at 16 FPC 1121 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

Discussion

A. Procedural Issues

13. Butte County argues that the Commission improperly rejected its June 30, 2009 answer to California DWR's June 10, 2009 answer and Water Contractors' and Metropolitan's June 11, 2009 comments.

14. Rule 213 of the Commission's regulations does not allow answers to answers, unless otherwise ordered by a decisional authority.¹⁷ In the July 16 Order we denied Butte County's answer to California DWR's answer to the complaint and Water Contractors' and Metropolitan's comments because Butte County's answer did not provide additional information to assist us in our decision-making.¹⁸ Butte County asserts that the answer was improperly rejected because it was needed to clarify and correct comments made by California DWR, Water Contractors, and Metropolitan. Butte County argues that the July 16 Order provided no justification for rejecting its June 30 answer when the Commission has routinely permitted answers to answers.¹⁹

15. Pursuant to Rule 213, answers to answers are not permitted.²⁰ However, the Commission *may* allow an answer to an answer if good cause exists. The answer should not reargue matters previously raised or raise new issues.²¹ We will not routinely allow

¹⁵ 16 U.S.C. § 797(e) (2006).

¹⁶ 16 U.S.C. § 803(c) (2006).

¹⁷ 18 C.F.R. § 385.213(a)(2) (2009).

¹⁸ *Butte County*, 128 FERC ¶ 61,068, at P 16.

¹⁹ *See* Butte County's rehearing request at 35.

²⁰ *North American Electric Reliability Corporation*, 129 FERC ¶ 61,033, at P 29 (2009); *New York Independent System Operator*, 129 FERC ¶ 61,045, at P 8 (2009); *Southern California Edison Company*, 128 FERC ¶ 61,287, at P 14 (2009); *Calpine Corporation v. California Independent System Operator Corporation*, 128 FERC ¶ 61,271, at P 19 (2009); *Public Utility District No. 1 of Chelan County, Washington*, 96 FERC ¶ 61,300, at n.8 (2001); *Susquehanna Power Company and PECO Energy Power Company*, 86 FERC ¶ 61,095, at n.19 (1999).

²¹ *Central Vermont Public Service Corporation*, 113 FERC ¶ 61,167, at P 11 (2005).

continued replies to pleadings, lest we never be in a position to decide matters before us. Butte County failed to show good cause for permitting it to file an answer. Further, Butte County's response reargued matters previously raised in the complaint. Therefore, Butte County's answer did not enhance our understanding of the proceeding and was correctly rejected.

B. Complaint

16. Rule 206 of the Commission's regulations provides that a complaint may be filed against a person alleged to be "in contravention or violation of any statute, rule, order, or other law administered by the Commission, or for any other alleged wrong over which the Commission may have jurisdiction" and must "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards and regulatory requirements."²²

17. In the instant proceeding, Butte County asserts that the July 16 Order erred in concluding that California DWR was not in violation of the Commission's policy on recreational development under section 2.7(f)(1) of our regulations. We disagree.

18. The Commission's policy statement on recreation development at licensed projects (section 2.7) provides that a licensee must "comply with federal, state, and local regulations for health, sanitation, and public safety, and to cooperate with law enforcement authorities in the development of additional regulations for such purposes."²³ In the July 16 Order, we determined that Butte County did not show how this policy requires the remedies it sought or that California DWR was in violation of the policy.²⁴

19. Section 2.7 expresses our long-term policy of seeking the "ultimate development" of recreational resources at hydroelectric projects.²⁵ To that end, we encourage cooperative efforts between licensees and federal, state, and local entities to provide needed recreation facilities and uses on project lands and waters.²⁶ The licensee is

²² 18 C.F.R. § 385.206(a) and (b).

²³ 18 C.F.R. § 2.7(f)(1). See *Guidelines for Public Safety at Hydropower Projects* (March 1992) at <http://www.ferc.gov/industries/hydropower/safety/guidelines/public-safety.pdf>.

²⁴ See *Butte County*, 128 FERC ¶ 61,068, at P 19.

²⁵ *McCallum Enterprises I, Limited Partnership*, 126 FERC ¶ 61,127, at P 16 (2009).

²⁶ *Susquehanna Power Company, PEPCO Energy Power Company*, 111 FERC

expected to cooperate with law enforcement agencies to develop public safety regulations. This requirement does not imply that the licensee is responsible for law enforcement on project lands. Indeed, nothing in the FPA, California DWR's license, or out precedent suggests that licensees are responsible for the provision of law enforcement or safety services. Rather, local authorities are responsible for these services.²⁷ Butte County has not asserted that California DWR is not cooperating with law enforcement agencies or with federal, state, or local agencies in the provision of recreational facilities. Thus, we find that the July 16 Order did not err in determining that California DWR is in compliance with section 2.7(f)(1).

20. Moreover, we find that the July 16 Order did not err in finding there was no evidence that California DWR violated the requirements of Standard Article 7²⁸ or Article 14²⁹ of its project license.

21. The Commission takes compliance with the terms of its license seriously and our staff conducts regular inspections of project facilities. As stated in the July 16 Order, staff found the Oroville project to be in good condition and properly maintained in its most recent dam safety inspection and identified only a few minor environmental action items, which were remedied, in the project's latest environmental inspection.³⁰ Butte

¶ 62,035, at 64,057 (2005).

²⁷ *PacifiCorp*, 123 FERC ¶ 62,260, at P 41 (2008); *Yuba County Water Agency*, 54 FERC ¶ 62,082, at 63,140-41 (1991).

²⁸ Standard Article 7 requires the licensee to allow public access to project waters and lands for navigation and recreational purposes. However, the licensee may prevent public access on project waters and lands in order to protect life, health, and property. *See* Standard Article 7, Form L-6, published at 16 FPC 1121, 1123 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

²⁹ Standard Article 14 requires the licensee to do everything reasonably within its power to require its employees and contractors to do everything within their power to prevent and suppress fires. *See* Standard Article 14, Form L-6, published at 16 FPC 1121, 1124 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

³⁰ *See Butte County*, 128 FERC ¶ 61,068, at P 20 (citing Letter from George Taylor, Division of Hydropower Administration and Compliance, to Raphael Torres, State Water Project Deputy Director, issued July 30, 2008 (discussing the June 2008 environmental inspection); and Letter from Ron Adhya, Regional Engineer, to Raphael Torres, State Water Project Deputy Director, issued August 28, 2008 (discussing the May

(continued...)

County has not alleged any instance of a direct license violation or of California DWR's failing to cooperate with law enforcement or fire or emergency personnel. Therefore, we find that the July 16 Order did not err in finding that California DWR was in compliance with our licensing requirements.

22. Finally, Butte County's claim that the July 16 Order did not address whether California DWR committed "any other alleged wrong over which the Commission may have jurisdiction"³¹ is incorrect. In support of its assertion, Butte County states that the Commission has broad powers to ensure the public safety and that it is the licensee's responsibility to ensure public safety, regardless of whether the licensee enforces those measures or delegates responsibility to law enforcement personnel.³² Butte County claims that without properly funding the county, California DWR is unable to provide adequate public safety to the project and is committing a wrong under the Commission's jurisdiction.

23. In fact, as demonstrated by the very cases the county cites, we have repeatedly rejected proposals to require licensees to pay for local personnel such as law enforcement officers. The Commission is concerned with protecting resources through specific, enforceable provisions, rather than requiring a licensee to provide funding for agency personnel.³³ The general mandates of license articles and our regulations that Butte County cites do not require a licensee to provide public safety services, nor do they require a licensee to compensate local jurisdictions for the costs of such services.

2008 dam safety inspection)).

³¹ 18 C.F.R. § 385.206(a).

³² See Butte County's rehearing request at 18 and n.20 (citing *Public Utility District, No. 2*, 123 FERC ¶ 61,049, at P 79 (2008); *Portland General Electric Co.*, 117 FERC ¶ 61,112, at P 83 (2006); *Settlements in Hydropower Licensing Proceedings Under Part I of the Federal Power Act (Settlement Policy)*, 116 FERC ¶ 61,270, at P 24 (2006)).

³³ The Commission would have no way of assuring that the hiring of personnel paid for by the licensee will actually serve a project purpose or ameliorate a project effect. *Settlement Policy*, 116 FERC ¶ 61,270, at P 24. See *Avista Corporation*, 127 FERC ¶ 61,265, at P 193 (2009); *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049, at P 79 (2008); *Portland General Electric Co.*, 117 FERC ¶ 61,112, at P 83 (2006).

Therefore, it is our policy to require licensees to implement specific license provisions, and not to fund local agency personnel.³⁴

24. There is a distinction between compliance with the license and compliance with local law. Nothing in California DWR's license either prevents or requires an agreement between the licensee and Butte County for any type of enforcement on project lands and waters. As Butte County stated, the Commission looks to licensees to ensure compliance with the license requirements on project land and waters, regardless of whether the licensee chooses to fund local personnel to carry out enforcement measures.³⁵ Enforcement of local laws pertaining to project lands and waters is unrelated to project uses or purposes and is not a matter of Commission jurisdiction. Enforcement of local laws is properly left to Butte County.³⁶ It is possible that the county could convince the

³⁴ *Avista Corporation*, 127 FERC ¶ 61,265, at P 193 (2009); *Public Utility District No. 2 of Grant County, Washington*, 123 FERC ¶ 61,049, at P 79 (2008); *Portland General Electric Co.*, 117 FERC ¶ 61,112, at P 83 (2006); *Settlement Policy*, 116 FERC ¶ 61,270, at P 24 (2006). *See also Portland General Electric Company*, 117 FERC ¶ 61,112, at P 43 (2006) (Our concern does not lie with the extraction of a financial contribution from the licensee; rather, it lies with the fulfillment of a project purpose for which the financial contribution is intended.).

³⁵ To support its contention that the Commission looks to the licensee to ensure public safety at project facilities, Butte County cites to *Public Utility District No. 2*, 123 FERC ¶ 61,049, at P 79 (2008) (Commission is concerned with protecting resources not funding personnel and equipment), *Virginia Hydrogeneration and Historical Society*, 112 FERC ¶ 62,195, at 64,459 (2005) (licensee instructed to install fencing around project structures), *Willard Janke v. Public Service Company of Colorado*, 103 FERC ¶ 61,203, at P 16 (2003) (licensee directed to adequately ensure protection of penstock), *Flambeau Paper Corporation*, 53 FERC ¶ 61,063, at 61,203 (1990) (licensee is responsible for maintaining the safety of the dam). We agree that the licensee is ultimately responsible for the construction, operation, and maintenance of all required recreation facilities and areas. However, as demonstrated in the cited cases, the Commission imposes concrete measures for ensuring that recreation facilities are safe, not more general ones, such as the provision of funds or monies as Butte County requested in its complaint. *See Settlement Policy*, 116 FERC ¶ 61,270, at P 2-12 (2006).

³⁶ Butte County states that if the Commission does not act to provide funds for law enforcement, then no other agency can step in to ensure public safety at the project. This statement is conclusory. As stated above, it is the responsibility of local authorities to ensure compliance with state and local law.

licensee to enter into an off-license funding arrangement, but, again, that would be a matter outside of our jurisdiction.³⁷

25. Further, the Commission is not a taxing authority. Should the state see fit to require California DWR to pay taxes, it may do so. The fact that the state has not done so does not obligate the Commission or its licensee to cover the county's expenses. Nothing in the FPA indicates that Congress intended for the Commission to assume the responsibility for overseeing the provision of local safety and law enforcement. The Commission will not usurp this function or establish a tax regime in addition to those provided for by state and federal law.³⁸

C. Interim Conditions

26. Pursuant to section 6 of the FPA,³⁹ a license “may be altered . . . only upon mutual agreement between the licensee and the Commission after 30 days public notice. Therefore, if a license does not reserve the Commission's authority with respect to a matter, then any changes in the license conditions on that matter require the licensee's consent.”⁴⁰

³⁷ *New York Power Authority*, 120 FERC ¶ 61,266, at P 29 (2007); *Portland General Electric Company*, 117 FERC ¶ 61,112, at P 84 (2006); *City of Seattle, Washington*, 75 FERC ¶ 61,319, at 62,014 (1996). Settling parties are free to enter into off-license or side agreements with respect to matters not included in a license. However, the Commission has no jurisdiction over such agreements and their existence will carry no weight in the Commission's consideration of a license application. Although the Commission cannot enforce these agreements, they may be made enforceable by other means, such as binding arbitration, or through state or federal court. *Settlement Policy*, 116 FERC ¶ 61,270, at P 6, 14 (2006).

³⁸ *PacifiCorp*, 125 FERC ¶ 61,196, at P 33 (2008); *Public Utility District No. 1 of Douglas County, Washington*, 122 FERC ¶ 61,032, at P 9 (2008); *New York Power Authority*, 120 FERC ¶ 61,266, at P 33 (2007).

³⁹ 16 U.S.C. § 799 (2006).

⁴⁰ *See Butte County*, 128 FERC ¶ 61, 068, at P 22 (citing *Confederated Tribes and Bands of the Yakima Indian Nation v. FERC*, 746 F.2d 466, 473 (9th Cir. 1984) (notwithstanding a reopener clause in a license, the Commission cannot amend a license without the licensee's consent)).

27. Butte County argues that the July 16 Order erred in failing to recognize that the Commission has authority under Standard Article 3 to reopen the license and impose interim conditions. Butte County also argues that to the extent that a reopener clause is required, the July 16 order incorrectly focused on a reservation of authority in the project's license to impose annual reimbursements or payments in lieu of taxes. The county states that under *Platte River I*,⁴¹ the Commission must undertake an assessment of what measures, if any are required to address an alleged danger and that it is insufficient for the Commission to promise to address the issue on relicensing.⁴²

28. *Platte River I* and the subsequent *Platte River II* decision⁴³ dealt with the Commission's authority under section 6 of the FPA to impose interim measures to protect against serious environmental threats to an endangered species. Here there has been no showing of imminent environmental harm of any kind. Moreover, the court in *Platte I* found that the license in question reserved the Commission's authority to impose environmental protective conditions, while Butte County has shown nothing in the license that would authorize the unilateral imposition of measures to remedy alleged economic harm to the county. And in *Platte II*,⁴⁴ the court affirmed the Commission's conclusion that sections 4(e) and 10(a)(1) of the FPA did not give the Commission general authority to impose interim measures.

29. As previously stated in the July 16 Order, Standard Article 3 does not reserve the authority for the Commission to impose a license requirement for the provision of payments in lieu of taxes or annual reimbursements for law enforcement and public safety.⁴⁵ Likewise, the July 16 Order stated that during a reopener proceeding, the

⁴¹ *Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*, 876 F.2d 109 (D.C. Cir. 1989) (*Platte River I*).

⁴² *Platte River I*, 876 F.2d at 116. See *PacifiCorp*, 125 FERC ¶ 61,196, at P 11-12 (2008). To the extent that Butte County has requested that we require California DWR to make annual reimbursements or payments in lieu of taxes over the term of a new license, this request will be addressed in the relicensing proceeding.

⁴³ *Platte River Whooping Crane Critical Habitat Management Trust v. FERC*, 962 F.2d 27 (D.C. Cir. 1992) (*Platte II*).

⁴⁴ *Platte II*, 962 F.2d at 32-33.

⁴⁵ *Butte County*, 128 FERC ¶ 61,068, at P 25. See Standard Article 3, Form L-6, published at 16 FPC 1121 (1953), and incorporated into the license at 17 FPC at 265, Ordering Paragraph (B).

petitioner must show that the terms of the license are no longer adequate to deal with the current conditions.⁴⁶ Given our conclusions that Butte County has not shown that California DWR has violated any provision of its license or of our regulations, or that current license conditions are not adequate to protect the environment, the county has failed to allege or demonstrate facts sufficient to support reopening the license.⁴⁷ The protection of the economics of Butte County is not a project purpose, and there are no license conditions that require California DWR to accommodate the county's fiscal needs. As noted above, the fact that California DWR does not pay local taxes is matter under the state's jurisdiction, and not something that is appropriate for the Commission to remedy.

30. In its request for rehearing, Butte County argues for the first time that sections 4(e) and 10(c) of the FPA require the Commission to reopen California DWR's license and impose interim conditions. These arguments are waived, since they could have been raised earlier.⁴⁸ Raising new arguments on rehearing is disruptive to the administrative process because it has the effect of a moving target for parties seeking a final administrative decision.⁴⁹ In any event, Butte County's arguments lack merit.

⁴⁶ See *Butte County* 128 FERC ¶ 61,068, at P 25 (citing *PacifiCorp*, 126 FERC ¶ 61,236, at P 14 (2009)).

⁴⁷ On April 21, 2005, Butte County first alleged that it was in economic distress as a result of California DWR's failure to make payments in lieu of taxes for the law enforcement personnel, emergency services, and related support the county supplies to the project. See *Motion of County of Butte, California for Order Requiring Conduct of Socio-Economic Impact Studies*, filed April 21, 2005, in Project No. 2100. Butte County did not seek to reopen the project license. We do not find that the current conditions in Butte County have rendered the terms of the license inadequate.

⁴⁸ *Power Authority of the State of New York; Massachusetts Wholesale Electric Company v. Power Authority of the State of New York*, 107 FERC ¶ 61,259, at P 8 (2004); *Baltimore Gas and Electric Company*, 91 FERC ¶ 61,270, at 61,922 (2000); *Northern States Power Company*, 64 FERC ¶ 61,172, at 62,522 (1993); *Cities and Villages of Albany and Hanover, Illinois*, 61 FERC ¶ 61,362, at 62,451 and n.4 (1992).

⁴⁹ By raising arguments for the first time on rehearing, Butte County has effectively precluded California DWR from responding, since, as noted earlier, answers to requests for rehearing are generally prohibited under Rule 713(d)(1) of the Commission's regulations. 18 C.F.R. § 385.713(d)(1) (2009).

31. Section 4(e) of the FPA directs the Commission to give equal consideration to the purposes of power and development, energy conservation, fish and wildlife, recreational opportunities, and preservation of environmental quality in deciding whether to *issue* a license.⁵⁰ The Commission must afford equal consideration to environmental measures during the consideration of a license,⁵¹ such as balancing the public interest to reach a reasoned factual decision.⁵² However, there is no basis under the statute for inferring an intention to have us routinely amend licenses to incorporate interim measures between licensing proceedings.⁵³

32. Section 10(c) of the FPA provides that licensees and not the federal government are responsible for project-caused damages.⁵⁴ A licensee is required to maintain projects in an adequate state of repair and must repair or replace damaged project works in a timely manner.⁵⁵ However, section 10(c) does not give the Commission the authority to impose damages. If Butte County feels that it has been injured as a result of California DWR's operation of the Oroville Project, it may seek an appropriate remedy in court. This is not a matter within the Commission's jurisdiction.

33. In addition to the foregoing, as we stated in the July 16 Order, Butte County has raised in the ongoing licensing proceeding the issue of whether California DWR should compensate it for the costs of law and safety services, and the matter will be dealt with there. The county cannot subvert the licensing process by attempting to resolve licensing issues through a complaint. Butte County's request for relief is therefore premature.

⁵⁰ 16 U.S.C. § 797(e) (emphasis added).

⁵¹ *PacifiCorp*, 126 FERC ¶ 61,236, at P 16 (2009).

⁵² *Conservation Law Foundation v. FERC*, 216 F.3d 41 (D. C. Cir. 2000) (citing *State of California v. FERC*, 966 F.2d 1541, 1550 (9th Cir. 1992)).

⁵³ *PacifiCorp*, 126 FERC ¶ 61,236, at P 16 (2009) (Commission denied the Tribe's request to amend PacifiCorp's annual license to include, as interim measures, proposed mandatory conditions from the ongoing licensing proceeding).

⁵⁴ *Pacific Gas and Electric Company*, 78 FERC ¶ 61,094, at 61,337 (1997) (citing *Citizens Utilities Company*, 68 FERC ¶ 61,310, at 61,286 (1994)).

⁵⁵ *El Dorado Irrigation District v. Pacific Gas and Electric Company*, 82 FERC ¶ 61,255, at 62,021 (1998).

34. Butte County's request for rehearing does not convince us to alter our previous decision that Butte County's complaint failed to show that California DWR violated any statute, rule, order, or committed any other alleged wrong. Therefore, we deny rehearing.

The Commission orders:

The request for rehearing filed by the County of Butte, California on August 7, 2009 is denied.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.