

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Pacific Gas and Electric Company

Project No. 1354-036

ORDER DENYING REHEARING

(Issued October 28, 2004)

1. Pacific Gas and Electric Company (PG&E) has requested rehearing of a Commission staff order approving and modifying a fish entrainment study plan for PG&E's Crane Valley Project No. 1354, located on Willow Creek and other connected waterways in Madera County, California.¹ As discussed below, we modify the previous order, and otherwise deny rehearing. This order is in the public interest because it clarifies PG&E's obligations with respect to the entrainment study plan.

Background

2. On September 16, 2003, the Commission issued a new license for the Crane Valley Project, which consists of six developments including five powerhouses, two storage reservoirs, four smaller impoundments and an extensive system of diversions, conduits and service roads.² The project occupies about 738 acres of the Sierra National Forest and is located on Willow Creek, North Fork Willow Creek, South Fork Willow Creek, Chilkoot Creek, and Chiquito Creek in Madera County, California.

3. Article 407 of the new license required PG&E to file for Commission approval, within six months of license issuance, design drawings of fish bypass facilities for the project's Browns Creek canal, changes to its Browns Creek diversion, or both, to reduce

¹ 108 FERC ¶ 62,022 (2004). The new license for the Crane Valley Project was issued on September 16, 2003.

² 104 FERC ¶ 62,198.

entrainment of brown and rainbow trout at the project.³ Alternatively, if PG&E concluded that there was no need for the bypass facilities, PG&E was to file, for Commission approval, a study plan developed in consultation with state and federal resource agencies to evaluate the magnitude of fish entrainment at the Brown's Creek Diversion. Based on the results of the study, PG&E was to develop recommendations for fish protection.

4. On March 12, 2004, PG&E made a filing pursuant to Article 407. The company stated that it did not believe that the bypass facility was necessary, because it was intended as mitigation for the impacts of constructing a new powerhouse, which PG&E had decided not to build. In consequence, PG&E's filing included a fish entrainment study plan, which had been developed in consultation with the specified resource agencies. The plan provided for sampling of fish during a single water-year type.⁴

5. On July 9, 2004, Commission staff issued an order modifying and approving the fish entrainment study plan. As relevant here, the order modified the plan to require sampling during two different water-year types. Staff stated that

The plan would only assess entrainment during a single water-year type. A more predictive model of entrainment and the fate of fish entrained would be gained if sampling occurred in a second water-year type. The licensee should collect entrainment data during a normal-to-wet water year and during a less-than-normal water year. Given the unpredictable nature of

³ Entrainment generally refers to the transport of fish to a project's powerhouse and turbines, where they may be injured or killed; in this instance, it refers simply to the removal of fish from their native stream by flows diverted to a project canal, which carries water to a project reservoir.

⁴ A water year runs from October 1 through September 30. The San Joaquin Valley water-year type index, developed by the California State Water Resources Control Board for an area that includes the project site, defines one type of "wet" water year, two "normal" classifications (above and below normal), and two "dry" classifications (dry and critical). See PG&E request for rehearing at 3-4.

future precipitation, the licensee and the [resource] agencies should be given the latitude to determine when sampling occurs to meet this goal. [⁵]

6. On August 6, 2004, PG&E filed a timely request for rehearing of the July 9 Order, asserting that the required sampling could be overly difficult and expensive to conduct.

Discussion

7. PG&E does not dispute the validity of requiring sampling during two different water-year types, but rather argues that complying with the requirement will not be possible. The company explains that the study plan requires sampling during October, December or January, February, April, May, and July or August, while the water-year type is typically determined by monthly forecasts beginning in February, with a final determination being made based on a May 1 water forecast. PG&E contends that it will have to begin sampling for the second year of the study without knowing whether that water-year will be of a type different from the first year of sampling, and thus might have to start the second year of sampling a number of times until a different water-year type occurs. The company contends that this potential duplication of effort would be wasteful.⁶

8. It is uncontroverted that sampling during two different types of water year is necessary to accurately assess the impact of fish entrainment at the project. Data collected during a dry year will not be predictive of impacts during a wet year and vice versa. While we are sympathetic with PG&E's concern with respect to wasted effort and cost should several similar water years occur in succession, we agree with staff's conclusion that data from two different types of water years is necessary to provide the information needed to justify not requiring bypass facilities. Moreover, PG&E has not proposed an alternative method of collecting data for two full water year types.⁷ PG&E

⁵ 108 FERC at 64,026. Staff noted that the U.S. Forest Service recommended sampling during two types of water years. *Id.* See "Crane Valley License Conditions, Entrainment Study," Phil Strand, Fisheries Program Manager, Sierra National Forest, and Kevin Williams, Fisheries Biologist, Bass Lake District, January 22, 2004 (Appendix C to the PG&E's fish entrainment study plan).

⁶ Request for rehearing at 3-7.

⁷ PG&E, on rehearing, proposed for the first time to collect data, possibly in multiple years, but only in October and July or August, and only from the project canal, not from the stream itself. This would not allow an accurate assessment of the project's impacts.

does not provide cost figures or otherwise demonstrate that repeated sampling will be unduly expensive. Moreover, the study requirement here is hardly unusual. Many entrainment studies – as well as other types of biological monitoring – require sampling during different conditions. There are certainly instances of entrainment studies requiring sampling for more than two years. Thus, we are not imposing on PG&E a particularly onerous requirement.

9. Nevertheless, the July 9 Order recognizes that the unpredictable nature of future precipitation may affect the timing of data collection for the study, and provides that PG&E and the resource agencies be given latitude in determining when the data collection takes place. Accordingly, we will modify ordering paragraph (C) of the July 9 Order to provide that if weather conditions prevent PG&E from completing collection of data for the second water-year type within five years of its initial sampling, it shall consult with the resource agencies and file a revised study plan with the Commission. We also note that, because the important consideration is that data be collected under different flow conditions, rather than necessarily in 12 consecutive months, PG&E and the resource agencies may be able to agree to combine data from similar seasons of otherwise dissimilar water years (*i.e.*, if data for a dry year is needed for the second year, PG&E could utilize data from the dry fall of what eventually was determined to be a wet water year overall with data from dry seasons of another year).

The Commission orders:

(A) The request for rehearing filed in this proceeding on August 6, 2004, by Pacific Gas and Electric Company is denied.

(B) Ordering Paragraph (C) of the “Order Modifying and Approving Fish Entrainment Study Plan Under Article 407,” issued in this proceeding on July 9, 2004, is modified to read as follows:

The licensee shall conduct the sampling described in the approved plan during two water-year types. The licensee shall consult with the resource agencies prior to the first year’s sampling to identify its water-year type. The licensee shall continue to coordinate with the agencies after the completion of the first year’s sampling to determine the next appropriate year for data collection. The licensee shall notify the Commission within 60 days of determining when the second year’s data collection will begin. If the licensee is unable to complete collection of the second year’s data

within five years of collection of the first year's data, the licensee shall consult with the agencies and file a revised study plan, for Commission review and approval.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.