

L/JTQ:avm **

Decision 82 10 037 OCT 6 1982

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application)
of SOUTHERN CALIFORNIA EDISON CO.)
present and future public conven-)
ience and necessity require or)
will require that applicant con-)
struct and operate the Balsam)
Meadow hydroelectric powerhouse)
and related facilities located in)
Fresno County, California.)

Application 60175
(Filed January 8, 1981)

ORDER GRANTING LIMITED REHEARING
OF DECISION NO. 82-06-051

Petitions for rehearing of Decision (D.) 82-06-051 have been filed by the Cities of Anaheim and Riverside (Cities), by the State Water Resources Control Board (Board) and by Sierra Association for Environment (SAFE). Southern California Edison Company (Edison) has filed a response to said petitions.

The Commission has reviewed each and every allegation of said petitions and is of the opinion that the petitions of the Cities and the Board should be denied but that a limited rehearing, based on SAFE's petition, should be granted.

Although we deny the Cities' petition, we believe that D.82-06-051 should more clearly reflect our conclusion that the granting of SCE's application to construct the Balsam Meadow Powerhouse will not adversely affect competition within the electric power industry. Therefore, we will supplement the decision on this point, as set forth infra.

In D.82-06-051, we rejected the Cities' requests on two grounds: first, that the record did not provide substantial evidence in support of the position advocated by the Cities, and second, that the Cities' request that the CPUC order Edison to enter a partnership with the Cities belonged before FERC rather

than this Commission. The Cities contest both of the findings but their arguments are without merit.

As noted in D.82-06-051, the Cities presented no witnesses in support of their position. The only mention in the record of the alleged lower costs to Edison's ratepayers resulting from the Cities' proposal appears in a statement of the Cities' counsel (Tr. at 87, 89). The Cities argue that adequate factual material exists to support the Cities' claim and that the Commission erred in not taking official notice of that material. The documents referred to were appended to the Cities' concurrent brief. Cities made no motion--either at the time of filing their brief or at the hearings--to have the Commission take official notice of this material. Indeed, the Cities did not make a formal request to this effect until filing their Petition for Rehearing. We believe that such a procedure--which would not provide other parties the opportunity to object to inclusion of these documents or to offer rebuttal--fails to protect the rights of the parties and thus contravenes Rule 64 of the Commission's Rules of Practice and Procedure.

The Cities' claim that the Commission erred by deferring to FERC regarding the issue of joint participation is also without merit. Cities admit that we do not have jurisdiction over the construction of generating plants by municipalities. The Cities fail to show that the Commission even has the statutory authority to compel a privately-owned utility to join in a partnership with a municipality. Even if the Cities could show that, there is no substantial evidence in the record which supports the claim that the Commission has abused its discretion in choosing not to do so.

The Board's petition was defective procedurally in that the Board was not a party to the proceeding and hence, under Section 1731 of the Public Utilities Code, lacked standing to petition for rehearing. However, since we are today granting a

limited rehearing on the basis of SAFE's petition, we direct our staff to review the responses to the Board's comments on the Draft Environmental Impact Report (EIR) for the Balsam Meadow project and to supplement them with additional analysis and discussion where this seems required.

As SAFE's petition points out, we indicated in the DRAFT EIR--in response to comments by both SAFE and the California Energy Commission (CEC)--that during the certification evaluation phase of the proceedings on the proposed project that we would use updated CEC supply and demand projections, that is, the projections set forth in the 1981 Biennial Report, to analyze whether there is a need for the project. Although we did discuss this Biennial Report's projections in D.82-06-051, the discussion was based on the view of the Legal Division set forth in the staff brief. The Biennial Report was never made a part of the evidentiary record and, further, the applicant's proposal was not analyzed in light of the Report in any document in the record of this proceeding.

We believe that the supplementing of the evidentiary record with such an analysis is appropriate.

We also believe that the EIR itself should include more substantive evaluations of the proposed Tunnel No. 7 alternative and the alternative that calls for the retrofitting of the Big Creek 1 and 2 powerhouses. We direct our staff to coordinate the preparation of these additional materials. We also direct our staff to review the existing Final EIR in its entirety and to further supplement its contents where required.

Because our directives herein could result in substantial additions to the existing environmental document, we will require our staff to recirculate for comment and review the completed environmental document in its entirety. This process should be carried out in accordance with the Draft EIR review requirements

set forth in Rule 17.1 of our Rules of Practice and Procedure (Cf. Rule 17.1(f)(2 and 4)). Therefore,

IT IS ORDERED that,

1. Rehearing of D.82-06-051 is granted, for the purpose of analyzing the need for the proposed project in light of the CEC's most recent Biennial Report available for timely review, evaluating the Tunnel No. 7 and the Big Creek 1 and 2 alternatives, and, as required, supplementing the existing environmental document with additional materials.

2. Prior to rehearing, the proposed environmental document, including any revised responses to the comments on the Draft EIR submitted by the Board, should be distributed for public and agency review in accordance with Rule 17.1(f)(2 and 4) of the Rules of Practice and Procedure.

3. D.82-06-051 is modified as follows:

a) The last paragraph on page 31 is modified by the addition of the following:

"Finally, the record does not support Cities' contention that granting a certificate to Edison for the project will have an adverse competitive effect. We do not believe that if the Cities were to share in the ownership of the project that significantly greater efficiency or reduced rates would result, nor are we aware of any evidence in the record demonstrating these contentions. Moreover, the record does not show that Balsam Meadow is the last hydroelectric site in the Upper San Joaquin watershed. Rather it shows that there are a number of other sites in such watershed where a potential exists for locating new powerhouses. The Cities are thus not precluded from later development of a hydroelectric site by our action herein."

b) The following finding of fact is added:

"23. Edison's ownership and operation of the powerhouse authorized herein will not result in an adverse competitive effect.

4. The limited rehearing provided for herein shall be heard at such time and place and before such Commissioner or Administrative Law Judge as shall hereafter be determined.

5. The Executive Director shall serve notice of such hearing upon the parties in accordance with the Commission's Rules of Practice and Procedure.

6. The Executive Director also shall file, as set forth in Appendix A herein, a request with the Secretary of Resources to withdraw the Notice of Determination for the project that was previously filed with said Secretary.

7. Except as herein provided, rehearing of D.82-06-051 is denied.

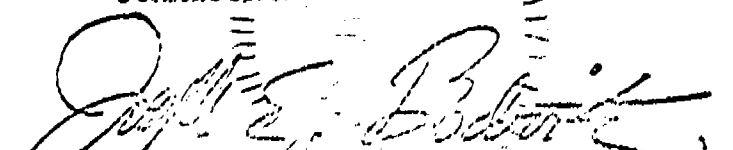
8. The stay of D.82-06-051 shall remain in effect until further order of this Commission.

This order is effective today.

Dated OCT 6 1982, at San Francisco, California.

JOHN E. BRYSON
President
RICHARD D. GRAVELLE
LEONARD M. GRIMES, JR.
VICTOR CALVO
PRISCILLA C. GREW
Commissioners

I CERTIFY THAT THIS DECISION
WAS APPROVED BY THE ABOVE
COMMISSIONERS TODAY.


Joseph E. Bodovick, Executive Director

APPENDIX A

NOTICE OF DETERMINATION WITHDRAWN

TO: Secretary for Resources
1416 Ninth Street, Room 1312
Sacramento, CA 95814

FROM: California Public Utilities
Commission
350 McAllister Street
San Francisco, CA 94102

On June 9, 1982, the California Public Utilities Commission filed the attached Notice of Determination with the Secretary for Resources for the project titled "Balsam Meadow Powerhouse," following issuance of Commission Decision (D.) 82-06-051.

This is to advise you that the Commission subsequently has determined that rehearing of D.82-06-051 should be granted and that additional material should be prepared for inclusion in the Environmental Impact Report. The Commission, therefore, hereby requests that the Notice of Determination be withdrawn.

If the determinations reached as a result of the rehearing warrant it, the Commission shall file another Notice of Determination on this project at a later date.

Respectfully submitted,

Janice E. Kerr

Hector Anninos

James T. Quinn

5066 State Building
San Francisco, CA 94102
(415) 557-1763

Dated:

Attorneys for the Public
Utilities Commission of
the State of California.

NOTICE OF DETERMINATION

TO: Secretary for Resources
1416 Ninth Street, Room 1312
Sacramento, California 95814

FROM: California Public
Utilities Commission
350 McAllister Street
San Francisco, Calif. 94102

SUBJECT: Filing of Notice of Determination in compliance with
Section 21108 or 21152 of the Public Resources Code.

Project Title

Balsam Meadow Powerhouse

State Clearinghouse Number (if submitted to State Clearinghouse)

81030554

Contact Person

Richard Tom

Telephone Number

557-2572

Project Location

Fresno County

Project Description: Construction of a powerhouse with forebay and related facilities and the construction of approximately 4.5 miles of a 220 kV transmission line to carry the power to an interconnecting transmission line.

This is to advise that the California Public Utilities Commission as lead agency has made the following determination regarding the above described project:

1. The project has been approved by the Lead Agency.
 disapproved
2. The project will have a significant effect on the environment.
 will not
3. An Environmental Impact Report was prepared for this project pursuant to the provisions of CEQA.
 A Negative Declaration was prepared for this project pursuant to the provisions of CEQA. A copy of the Negative Declaration is attached.

Date received for filing

Executive Director

Date

limited rehearing on the basis of SAFE's petition, we direct our staff to review the responses to the Board's comments on the Draft Environmental Impact Report (EIR) for the Balsam Meadow project and to supplement them with additional analysis and discussion where this seems required.

As SAFE's petition points out, we indicated in the DRAFT EIR--in response to comments by both SAFE and the California Energy Commission (CEC)--that during the certification evaluation phase of the proceedings on the proposed project that we would use updated CEC supply and demand projections, that is, the projections set forth in the 1981 Biennial Report, to analyze whether there is a need for the project. Although we did discuss this Biennial Report's projections in D.82-06-051^{the discussion was} based on the view of the Legal Division set forth in the staff brief. ^{The Biennial} Report was never made a part of the evidentiary record. ~~Neither was the applicant's proposal, analyzed in light of the 1981 Biennial Report projections, ever made the subject of a report that could be offered into the record and subjected to cross-examination.~~ KR

We believe that the supplementing of the evidentiary record with such an analysis is appropriate.

We also believe that the EIR itself should include more substantive evaluations of the proposed Tunnel No. 7 alternative and the alternative that calls for the retrofitting of the Big Creek 1 and 2 powerhouses. We direct our staff to coordinate the preparation of these additional materials. We also direct our staff to review the existing Final EIR in its entirety and to further supplement its contents where ~~this seems~~ required. KR

Because our directives herein could result in substantial additions to the existing environmental document, we will require our staff to recirculate for comment and review the completed environmental document in its entirety. This process should be carried out in accordance with the Draft EIR review requirements

and further, the applicant's proposal was not analyzed in light of the Report in any document in the record of this proceeding.

set forth in Rule 17.1 of our Rules of Practice and Procedure (Cf. Rule 17.1(f)(2 and 4)). Therefore,

IT IS ORDERED that,

1. Rehearing of D.82-06-051 is granted, for the purpose of analyzing the need for the proposed project in light of the CEC's ¹⁹⁸⁴ Biennial Report ^{evaluating the Tunnel No. 7 and the Big Creek 1 and 2 alternatives, and, as may be required, supplementing the existing environmental document with additional materials.}

2. Prior to rehearing, the proposed environmental document, including any revised responses to the comments on the Draft EIR submitted by the Board, should be distributed for public and agency review in accordance with Rule 17.1(f)(2 and 4) of the Rules of Practice and Procedure.

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b) The following finding of fact is added: