



May 26, 2015

The Honorable Edward Whitfield
Chairman
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Statement for the record of the May 13, 2015 hearing on *Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act*

Chairman Whitfield and Ranking Member Rush:

The Modesto Irrigation District (MID) and Turlock Irrigation District (TID) of California appreciate the opportunity to express their strong support for the overarching principles embodied in the discussion drafts by the Committee and by Representative Cathy McMorris Rodgers to modernize and improve the hydropower licensing and relicensing process.

MID and TID are co-owners and licensees of the Don Pedro Project on the Tuolumne River in the Central Valley of California. Owned 31.54% by MID and 68.46% by TID, the project was placed into service in 1971. It consists of a 2,030,000 acre-foot (AF) reservoir and a powerhouse capable of generating 203 megawatts. The Federal Energy Regulatory Commission (FERC) issued the Districts a license for the original Don Pedro Project in 1966, and that license expires on April 30, 2016. Since 2009, the Districts have been working towards acquiring a new license following the procedures under FERC's Integrated License Process (ILP). Following extensive consultation with FERC, resource agencies, Tribes, and conservation groups, the Districts filed a draft license application on November 26, 2013, and a final license application with FERC on April 28, 2014.

In addition to the hydropower generated by the Don Pedro Project, MID and TID meet the needs of their electric power customers with a variety of generation, including wind, solar and natural gas.

To date, the Districts have spent six years and more than \$20 million on the FERC relicensing process for the Don Pedro Project. The Districts expect to spend several more years and millions of dollars more in the expectation of a new license that will allow MID and TID to continue to cost-effectively operate the very same hydropower facility that they have been operating for the last 45 years. Because MID and TID are public agencies, the costs associated with the relicensing process, and meeting any additional conditions imposed by a new license, will be borne by the communities we serve.

Securing a new FERC license is not only crucial to providing California's Central Valley with a clean and sustainable energy supply, it is also a fundamental component of the Districts' long-term effort to meet the State's aggressive greenhouse gas reduction goals and to fulfill other energy and environmental mandates. Although large hydro systems are not included within California's regulatory definition of renewable energy, Don Pedro's generation emits no greenhouse gases, so it helps limit our carbon footprint. Moreover, Don Pedro is our most economical energy source and, because of its operating flexibility, it is a critical resource for meeting demand and stabilizing the regional grid.

The Districts agree with the testimony of the National Hydropower Association (NHA) that *"the time, cost and risks associated with licensing hydropower projects are not commensurate with the impacts when compared with other forms of generation."*¹ In our experience, gained first-hand over the last six years, the cost of licensing and relicensing hydropower projects is in large part driven by two factors:

- the large number of very costly studies of natural resources *potentially* affected by the operation of the project; and
- the amount of time and money devoted to carefully developing the study scopes and methods, all done in close concert with resource agencies and interested parties, to ensure that studies are performed to strict scientific standards.

As part of the relicensing process for Don Pedro, MID and TID have developed appropriate study plans and performed more than three dozen separate studies,² with the cost of some individual studies exceeding \$1 million. These studies examine the Don Pedro project's potential effects on, among other values, historic properties, Native American cultural sites, public recreation, federally protected species, state protected species, water quality, water temperature, instream flow, resident and anadromous fish populations both in the reservoir and downstream of the project, terrestrial species and regional socioeconomic resources. Each of these 38 studies was developed by the Districts in consultation with multiple federal and state agencies, numerous interest groups during countless meetings and conference calls, which in combination generated thousands of pages of information and comments. In addition, the Districts have held more than a dozen public workshops on the studies and their findings since 2013. After each study is performed, a draft report is shared with all the participants in the relicensing process to provide an additional opportunity for review and comment. The Districts then respond to every comment, modify the draft report and issue a final report.

¹ Written Testimony of John Suloway on behalf of The National Hydropower Association before the U.S. House of Representatives Energy and Commerce Committee Power and Energy Subcommittee Regarding Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act, May 13, 2015

² Studies and all other documents related to Don Pedro Project – FERC No. 2299 – are available here: <http://www.donpedro-relicensing.com/default.htm>

The great amount of care, time and money committed by the Districts, and the scientists and engineers we retained, to performing rigorous studies using accepted methods vetted by all the relicensing participants would be well worthwhile if the results were then actually used by the participants to inform their opinions and the recommended terms and conditions that they want FERC to impose on the new license.

However, in our case, these carefully executed studies have been routinely ignored or worse yet, criticized as faulty, when the results do not confirm participants pre-conceived notions or beliefs about environmental impacts. We have found the exception to this is the FERC staff itself, which give every indication of being objective reviewers that use and reference all of the resulting studies, and do not seem to have pre-conceived notions about project impacts.

Both MID and TID agree with the NHA assertion that demands for numerous studies and extensive information “are sometimes used as a negotiating tactic” by interests groups and resources agencies seeking to force acceptance of their goals, which may not be in the broader public interest. In our experience to date, once the scientific studies are completed, resource agencies and interest groups have generally not accepted study results that run counter to their interests, agendas, or agency missions, no matter how much scrutiny the study plan and study methods were given by the same entities prior to the performance of the study.

It has become apparent to the Districts during this relicensing process that the extensive information developed through rigorous study and planning is ignored and discounted when it does not serve the “needs” of some interested parties. This refusal to consider the science can and does occur because certain resource agencies have the ability to unilaterally override FERC’s objective review of the record (mandatory conditioning agencies). Such mandatory-conditioning resource agencies, and the interest groups whose goals are closely aligned with theirs, only have to cite the slimmest of evidence to impose costly and unwarranted measures and operating restrictions on a licensee, even if the overall weight of the evidence does not support the measure. It is only FERC that weighs the entire record of evidence that licensees have spent many millions of dollars developing under rigorous rules and guidelines. Under these circumstances, it is imprudent public policy to allow a resource agency with a narrow mission and armed with only the slightest bit of evidence to drive national energy policy and, in the case of the Districts, national agricultural and water supply policy.

The discussion drafts would restore FERC’s ability to do what it is well suited to do -- fairly balance a variety of public interests using all the information before it -- by giving FERC exclusive authority to enforce and administer all license terms and conditions. The importance of this improvement to federal licensing and regulation of hydropower projects cannot be overstated.

The Districts’ experience is that resources agencies are always inclined to use their essentially absolute conditioning authority. The overall result is a significant distortion of the intent of the Federal Power Act’s mandate that FERC’s licensing decisions give “equal consideration” to a diversity of interests affected by proposed and existing hydropower projects. When any single-purpose agency can impose its agenda without regard to other legitimate public purposes and interests, “equal consideration” has little meaning. Vested with mandatory conditioning authority, resources agencies, have no incentive to consider the entire record of evidence, and are instead inclined to cherry-pick the record for bits of information that appear to support their mission. Furthermore, this absolute conditioning authority, independent of FERC’s authority, precludes fair negotiation with other stakeholders, and redirects resources to less environmentally beneficial and practical

purposes. In the face of mandatory conditions, FERC is unable to offer recourse to adversely affected stakeholders, and thus is unable to fulfill its “equal consideration” mandate and its overall duty to serve the public interest.

The Districts have found while resource agencies have knowledge that should be included in the licensing process, however they should be encouraged to consider the full record before FERC, just as FERC does. The discussion drafts recognize and respect the missions of the resources agencies and their importance in the licensing process. By making FERC the final decision-maker, the drafts would ensure that the resources agencies engage more fully, in a timely fashion and on an equal footing with other stakeholders. The likely result is not less protection of environment or fish, but better, more practical protections with a broader base of stakeholder support.

Modesto and Turlock Irrigation Districts have the highest regard for the professionalism and dedication of the FERC staff. It is the regulatory process, not the agency that needs to be fixed.

We look forward to working with the Committee and with Rep. McMorris Rodgers to further refine your proposals to improve the federal hydropower licensing process by increasing transparency and accountability and reducing redundancy and inefficiencies.

Sincerely,



Roger VanHoy, P.E.
General Manager
Modesto Irrigation District



Casey Hashimoto, P.E.
General Manager
Turlock Irrigation District