

**UNITED STATES OF AMERICA**  
**BEFORE THE**  
**FEDERAL ENERGY REGULATORY COMMISSION**

SOUTHERN CALIFORNIA EDISON

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DOCKET NO. P-2290-122

**MOTION TO INTERVENE AND OBJECTION OF  
KERN RIVER BOATERS REGARDING SCE'S  
REQUEST FOR TIME TO COMPLETE ITS  
DEFICIENT FINAL LICENSE APPLICATION**

**I. INTRODUCTION AND INTERVENTION**

Pursuant to 18 C.F.R. § 385.214 and § 385.211, Kern River Boaters (KRB) hereby moves to intervene and submit these comments in response to Southern California Edison's (SCE) February 11, 2025 Request for Waiver and Extension of Time in Response to FERC's Deficiency of License Application and Additional Information Requests.<sup>1</sup>

KRB has a direct and substantial interest in the outcome of this proceeding because the continued operation of KR3 significantly impacts environmental conditions, recreational opportunities, and public access to the North Fork Kern River. KRB's mission is to represent the interests of its members — river users, conservationists, and recreation advocates — affected by KR3 operations. KRB has been intimately involved in the current relicensing proceeding and seeks to insure stakeholder interests in timeliness and participation against SCE's request.

SCE's request for additional time to submit Exhibit F design drawings raises serious concerns given the inarguable notice that it was required in the final license application, the lack of any justification for its initial omission or need for additional time, and SCE's history of delay, misrepresentation, and procedural maneuvering. While KRB acknowledges that the REA milestone has already been delayed until late 2025 due to SCE's failure to complete the REC-2 camera study, granting SCE a blanket extension on Exhibit F until June 30, 2025 risks further delaying key milestones and limiting opportunities for public review.

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<sup>1</sup> FERC Accession No. 20250211-5163.

For the following reasons, KRB requests that if FERC grants this extension, it should only do so with strict conditions to prevent further delay and ensure full transparency in SCE's submission of its design documents.

## II. ARGUMENT

### A. SCE's History of Procedural Delays, Misrepresentation, and Bad Faith Justifies Heightened Scrutiny

SCE's request should be evaluated in the context of its history of obstructing or delaying critical analyses in this proceeding, misrepresenting facts, and attempting to sidestep commitments that would increase public and agency oversight. Some of the most concerning examples include:

#### 1. Failure to Maintain Required Flow Data for Eight Years

SCE failed to maintain hourly flow data for the first eight years of the current license, a clear failure to comply with modern hydroelectric monitoring and reporting expectations.<sup>2</sup> This has limited the ability of agencies and the public to assess project impacts and calls into question SCE's commitment to transparency.

#### 2. Manipulating USFS's 4(e) Condition Language to Deny Recreation Flows

In 2004, FERC adopted the U.S. Forest Service (USFS) final 4(e) conditions requiring recreational flows into the KR3 license. Given the omission of a single word from the conditions, SCE (in the words of USFS staff) "took advantage" of a minor clerical error (one word) to deny recreational flows during the week before Memorial Day, despite clear agency intent — and SCE's own signature to the settlement that led to the 4(e) — to the contrary.<sup>3</sup>

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<sup>2</sup> FERC Accession No. 20240701-5180, Vol. II, WR-2 at 4 (.pdf p. 66).

<sup>3</sup> On February 27, 2014, USFS Recreation Officer Nancy Ruthenbeck wrote her colleagues, "The weeklong flows [before Memorial Day] *were very important to us*. In no way, did we expect to have [those flows unprotected] and I wasn't aware of what SCE was apparently doing until Mr. Duxbury filed his complaint. . . . Before SCE and the whitewater interests [reached] the settlement agreement, they approached us to see if we would be amenable to whatever they settled on. *We told them yes, as long as they abided by some sideboards that we gave them. The weeklong flows [before Memorial Day] was one.*" (Italics added.) On March 03, her colleague Dennis Smith replied, "SCE had agreed up front to the original language *but has been taking advantage of our one word mistake* from the original settlement agreement between AW and SCE." See FERC Accession No. 20160428-5206 at 4.

### *3. Misleading and Improper Elision to Smear KRB*

In the ISR stage of these proceedings, SCE accused KRB of “significant bias” based on a selectively edited quotation that omitted critical context regarding KRB’s position on the phenomenon of solar curtailment. This misrepresentation was an underhanded attempt to undermine a stakeholder’s input and demonstrates a troubling willingness to attempt to distort perceptions to its advantage.<sup>4</sup>

### *4. Repeatedly Delaying Fish Monitoring to Avoid Low-Water-Year Data*

SCE sought the delay of every fish monitoring study that was scheduled to be conducted under the current license in a low-water year. As a result, the only water year monitored that was not in the upper tertile occurred in 2016, which revealed a catastrophic 95% reduction in trout populations below Fairview Dam. This suggests that additional monitoring in low-water years would have produced even more damning results, and that SCE’s delays avoided documenting the full impact of the KR3 diversion.<sup>5</sup>

### *5. Delaying the REC-2 camera study instead of working with the Forest*

SCE’s failure to engage cooperatively with the US Forest Service after privacy objections resulted in unnecessary delays that postponed the conclusion of relicensing studies close to a year *after* submission of the final license application.<sup>6</sup>

### *6. Ex Parte Meeting with FERC to escape the REC-2 Camera Study*

Prior to the USFS privacy concerns, SCE held an undisclosed *ex parte* meeting with FERC in an unsuccessful attempt to avoid conducting the SPD-approved REC-2 camera study altogether. This raises serious procedural concerns about SCE’s willingness to comply with public-interest study requirements.<sup>7</sup>

### *7. Implausible Claim That Its MIF Proposal Would Not Increase Water Diversion*

In its Draft License Application, SCE asserted it did not know whether its MIF proposal would allow it to divert more water (and make more money) than under the current license — which it obviously did by reducing the MIF in drier months and increasing SCE’s ability to divert in those months. SCE’s stated position was absurd and defies the economic self-interest of an investor-owned hydroelectric operator.<sup>8</sup> It also delayed full stakeholder analysis of water diversion impacts, once again shortening the window for public scrutiny.

### *8. Failure to conduct flow preference analysis in the REC-1 ISR.*

SCE did not include a flow preference analysis, despite it being clearly marked as an ISR product by the SPD. SCE then refused to acknowledge this omission as a variance,

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<sup>4</sup> FERC Accession No. 20240401-5656 at 54.

<sup>5</sup> FERC Accession No. 20241001-5282 at 116.

<sup>6</sup> FERC Accession No. 20231211-5183 at 79-80.

<sup>7</sup> FERC Accession No. 20240401-5656 at 42-44.

<sup>8</sup> FERC Accession No. 20241001-5282 at 79-84.

leading to a lengthy round of ISR comments that delayed the SMD and pushed the USR report past the filing of the DLA — once again complicating and shortening opportunity for stakeholder comment.<sup>9</sup>

*9. Withholding hydrology data in retribution for KRB's MIF complaint.*

SCE committed to providing hydrology data to facilitate stakeholder analysis of minimum instream and recreational flows during the TWiG stage, but reversed course after KRB raised unrelated concerns in its May 2022 MIF complaint.<sup>10</sup> SCE has been fighting and/or slow-playing the release of hydrology data ever since — again, increasing obstacles to public scrutiny.

*10. Misuse of the CEII process and unfulfilled promises to FERC*

SCE improperly filed its entire set of applications for the KR3 tunnel rehabilitation project as CEII because, as SCE later conceded, “only certain pages contained CEII.”<sup>11</sup> SCE promised FERC it would “appropriately segregate the public and CEII” portions and “resubmit the Applications” for public inspection.<sup>12</sup> KRB does not see any such resubmission in the FERC eLibrary.

These are but a few of the examples that paint a picture of a licensee that has consistently acted to avoid oversight, limit scrutiny, and delay necessary studies that might expose adverse project impacts. Given this history, FERC should not grant the requested extension; but if it does, it should append strict conditions to prevent SCE from using this as another opportunity to frustrate and shorten the window for public participation.

## **B. SCE Fails to Offer a Justification for Additional Time**

Under 18 C.F.R. § 4.41(g)(3), an applicant is required to provide complete engineering design information with its application, and under 18 C.F.R. §§ 4.32(e)(1)(iv) and 4.35, completeness is a threshold requirement for acceptance of license applications. This requirement is neither unreasonable nor unusual, as complete engineering data is a fundamental requirement of any hydropower relicensing application.

So, SCE had years of notice that such documentation would be required. The FERC pre-application process, scoping documents, and study plan determinations all signaled the need for complete and detailed engineering design information. SCE's claim

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<sup>9</sup> FERC Accession Nos. 20231211-5183 at 47-49 & 20240401-5656 at 19-20.

<sup>10</sup> FERC Accession No. 2022603-5148 at 35, fn. 116.

<sup>11</sup> FERC Accession No. 20130806-5052 at 3.

<sup>12</sup> *Id.*, at fn. 6.

that it needs additional time for “due diligence” suggests that it knowingly submitted an incomplete and inadequate FLA.

Granting SCE an extension would undermine the integrity of FERC’s licensing regulations, which require applications to be complete and reviewable at the time of filing. SCE’s request for additional time is unaccompanied by any meaningful explanation of why it cannot meet the deficiency deadline. Instead, it provides a vague statement that it needs additional time for internal review. This raises critical questions: What specific “due diligence” is required that was not anticipated prior to filing the FLA? Why was this information not completed prior to the filing deadline? Why can it not be completed prior to the deficiency deadline? How does SCE justify its failure to meet a fundamental regulatory requirement under 18 C.F.R. § 4.41(g)(3)?

Absent a clear, substantive statement of answers to these questions, this extension request appears to be an attempt to remedy a self-inflicted delay. It should not be rewarded with additional time.

### **C. Delaying Submission of Engineering Documents Risks Further Pushing Back REA**

Although as noted above the anticipated date for REA has already been delayed until late 2025 due to SCE’s failure to conduct the REC-2 camera study, FERC should not assume that SCE’s June 30, 2025, deadline will be met and will not entail further delay.

If SCE fails to meet the new deadline, will FERC allow another extension? Any additional postponement could push REA into 2026 or later, disrupting the relicensing process. FERC’s review process, moreover, is not instantaneous; it requires time. If engineering drawings must be evaluated before FERC can proceed with environmental analysis, a delayed submission could create a bottleneck effect, further slowing down the licensing process. FERC should therefore demand concrete assurances from SCE that this extension will not lead to further delay.

### **D. Public Participation in Engineering Review Could Be Undermined**

SCE’s request to postpone submission of critical engineering data until mid-2025 risks compressing the timeline for public review of safety-related aspects of the project. If SCE’s final submission occurs just months before REA, the public will have insufficient time to review and analyze these technical materials before major licensing decisions are made. Given that engineering studies are highly complex, interested parties will require time to consult experts, conduct independent review, and prepare informed comments — something that cannot happen if the timeline is compressed.

We add that SCE may improperly use Critical Energy Infrastructure Information concerns to obstruct public review, as it did with its tunnel rehabilitation project. FERC should require that both an interim progress report and final Exhibit F be filed with a

public version that redacts *only information strictly constituting CEII*. Indeed, 18 C.F.R. § 388.112 requires that only genuinely critical infrastructure information be withheld from public disclosure — a standard as we have shown above SCE has failed to meet in the past.

As such, to prevent an undue restriction of public participation, FERC should require SCE to file a redacted public version of its progress by May 1, 2025, and a redacted public version of its Exhibit F materials as soon as they are submitted.

Finally, although SCE ostensibly makes this request solely for Exhibit F design drawings, it also states its “intent” to submit “a majority” of its responses to the deficiency notice by March 18. That is unhelpful, and augurs poorly. FERC should make clear that apart from the design drawings, a late submission of responses to the deficiency notice will not be tolerated.

### **III. CONCLUSION: DENIAL OR CONDITIONED APPROVAL**

Based on the foregoing, FERC should deny SCE’s application. In the alternative, it should attach strict conditions to approval in the public interest.

The Federal Power Act (16 U.S.C. § 803) mandates that hydropower licensing decisions balance developmental and environmental considerations in the public interest. Delays that solely benefit the applicant at the expense of public participation and environmental oversight are contrary to this mandate. Granting SCE’s request would: reward poor compliance behavior and reinforce a precedent of regulatory delay tactics; undermine FERC’s statutory responsibility to ensure timely and complete application reviews; unnecessarily delay relicensing milestones and the REA Notice, harming public stakeholders; and reward an application for time that was unaccompanied by any reasonable attempt at justification — a poor administrative precedent.

For these reasons, KRB respectfully requests that FERC deny SCE’s request for a waiver and extension of time. SCE must be held to the existing 90-day deadline to ensure that relicensing proceeds in a timely manner and in accordance with the statutory and regulatory requirements of the Federal Power Act.

Should FERC grant SCE’s request, it should impose the following reasonable conditions to ensure procedural fairness and prevent additional delays:

1. Justification: Require SCE to explain within 10 days why it was unable to produce the required drawings in a timely manner.
2. Firm Deadline: Announce no further extensions will be granted beyond June 30, 2025.

3. Interim Reporting Requirement: SCE must submit a progress report by May 1, 2025, detailing the status of its Exhibit F materials and confirming that it will meet the June deadline.

4. Public Version of Interim Report and Final Submission: When filing the progress report and Exhibit F, SCE must provide a redacted public version that removes only information strictly deemed CEII — ensuring the public is not unduly restricted.

5. No Additional Delays: FERC must state clearly that this extension with regard to Exhibit F will not be used to further delay the relicensing timeline, and no further time will be afforded the balance of deficiencies identified by FERC.

By imposing these strict procedural safeguards, FERC can grant the requested extension without allowing SCE to exploit procedural loopholes or further delay public review. The conditions also further FERC's statutory obligation to fairly adjudicate this application and allow for public participation — obligations that are undermined by repeated delays and lack of transparency. Should FERC decline to impose such conditions, KRB respectfully requests that the extension be denied to avoid further delays that could harm public participation and environmental oversight in this proceeding.

DATED: February 14, 2025

Respectfully submitted by the Directors of Kern River Boaters,

//s// EAD

Elizabeth Duxbury, President

//s// JLP

José Luis Pino, Vice President

//s// BHD

Brett Duxbury, Secretary-Treasurer



KERN RIVER BOATERS

PO Box 1938

Kernville, CA 93238

760.376.1905

[kernriverboaters@gmail.com](mailto:kernriverboaters@gmail.com)

### **CERTIFICATION OF SERVICE**

I certify that on February 14, 2025, I served the foregoing document upon each contact for Project No. 2290 (Kern River No. 3) as depicted by the FERC Online Service List, at: <https://ferconline.ferc.gov/ServiceListResults.aspx?DocketNo=P-2290>.

Dated: 14FEB2025

//s// BD

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Brett Duxbury