

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

The Nevada Hydro Company, Inc.)	
Application for Preliminary Permit)	P-14227-000
_____)	

MOTION TO INTERVENE AND COMMENTS OF SOUTHERN CALIFORNIA
EDISON COMPANY

I. MOTION TO INTERVENE

Southern California Edison Company (“SCE”), a wholly owned subsidiary of Edison International, is an investor-owned utility subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC” or “Commission”). SCE’s principal place of business is 2244 Walnut Grove Avenue, Rosemead, California 91770.

Applicant The Nevada Hydro Company (“Nevada Hydro”) seeks a preliminary permit from this Commission proposing to study the feasibility of the Lake Elsinore Advanced Pumped Storage Project (“LEAPS”).¹ SCE is affected by this proceeding, as Nevada Hydro’s application proposes to interconnect the proposed LEAPS generating facility to SCE’s existing transmission system. As such, SCE has an immediate interest in the outcome of this proceeding. SCE’s interest cannot be represented by any other party and, consequently, SCE respectfully requests

¹ The Nevada Hydro Company, Inc.: Application for Preliminary Permit, Project No. P-14227-00 (*fld.* July 18, 2011).

that the Commission grant SCE permission to intervene in this proceeding. SCE hereby reserves its rights to raise substantive issues regarding all aspects of this proceeding, and to file additional comments, as warranted by the proceeding. SCE designates the following person for service on the Commission's service list in this proceeding:

Robert Kang
Attorney for Southern California Edison Company
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II. COMMENTS

SCE requests Nevada Hydro to clarify whether it is seeking this Commission's authorization to develop two primary lines/generation tie lines in connection with the LEAPS Project, or a single stand-alone, networked transmission line. The former rests within this Commission's authority to authorize.² But, as this Commission has previously stated, the latter does not.³

Nevada Hydro seeks a preliminary permit to develop its LEAPS generating facility. In order to interconnect LEAPS to the electrical grid operated by the California Independent System Operator ("CAISO"), Nevada Hydro has entered into a Large Generator Interconnection Agreement ("LGIA") with San Diego Gas & Electric Company ("SDG&E") and is negotiating a second LGIA with SCE. Although only one primary line/generation tie line ("generation tie line") is needed to transmit power from LEAPS to the CAISO-controlled grid, Nevada Hydro's

² *Order Denying Rehearing*, The Nevada Hydro Company, Inc., Project No. P 11858-004, 137 FERC ¶ 61,133 (Nov. 17, 2011), at ¶ 5 (Commission is only authorized to license "primary lines" – those used solely to transmit power from a generating facility to the grid).

³ *Order Denying Rehearing*, 137 FERC ¶ 61,133, at ¶¶ 5, 26 ("the benefits of a stand-alone transmission line, which we have no jurisdiction to authorize . . ."), 35 ("the Commission is not authorized to license the TE/VS line as a stand-alone transmission line.").

interconnection requests seek development of two separate generation tie lines to interconnect LEAPS, both to the SCE-owned and SDG&E-owned portions of the CAISO-controlled grid. However, Nevada Hydro’s description of the line portion of its LEAPS Project appears to describe something else entirely:

“[t]he proposed 32-mile-long, 500-kV generation tie line (referred to as the Talega-Escondido/Valley-Serrano Interconnect would connect the Project to two existing transmission lines: one a 230-kV line south of the project called the Talega-Escondido transmission line [owned by SDG&E] and the other a 500-kV line to the north called the Valley-Serrano transmission line [owned by SCE].”⁴

Nevada Hydro’s description of its proposed “TE/VS” line as an implied single “32-mile-long . . . generation tie line” is confusing and ambiguous. Although Nevada Hydro describes “TE/VS” in the Application as a “generation tie line,” Nevada Hydro does not appear to be seeking authorization to develop the two separate generation tie lines that it has requested through the CAISO Generator Interconnection Process. Rather, Nevada Hydro appears to be seeking Commission authorization to develop a single stand-alone networked transmission line intended to transmit power to-and-from the SCE and SDG&E-owned portions of the CAISO-controlled grid.

The Pre-Application Document filed by Nevada Hydro on January 25, 2012, only adds to the confusion. On the one hand, Nevada Hydro states that “the transmission only portion is referred to as the Talega Escondido/Valley-Serrano 500 kV Interconnect (TE/VS Interconnect) Project,” and states that the TE/VS is being pursued before the California Public Utilities Commission (“CPUC”).⁵ This description suggests that Nevada Hydro is not seeking this Commission’s authorization to license a stand-alone networked transmission line in connection

⁴ Application, *supra* note 1, at 3, 4.

⁵ Lake Elsinore Advanced Pumped Storage Project No. 14227 Pre-Application Document, Project No. P 14227 (*fld.* January 25, 2012).

with its LEAPS application. On the other hand, that same Pre-Application Document states that “the entire project (both generation and transmission) is referred to as the 500 MW Lake Elsinore Advanced Pumped Storage (LEAPS) project.”⁶ Thus, Nevada Hydro’s Application appears to still seek this Commission’s approval to develop its purported “32-mile-long generation tie line” – a project that resembles a stand-alone networked transmission line in all but name.⁷ The fact that Nevada Hydro’s Application describes its proposed set of generation tie lines as “TE/VS” – the same name given to the stand-alone networked transmission line project before the CPUC – also suggests that Nevada Hydro is treating, erroneously, the two as one-and-the-same.⁸ Nevada Hydro’s filings are so unclear as to whether it is proposing to license the two generation tie lines that have been studied as interconnection facilities or a single networked line that has not been studied. Importantly, two generation tie lines do not transform into a single stand-alone networked line, so it is important that Nevada Hydro make its transmission proposal clear.

The ambiguity surrounding the lines portion of Nevada Hydro’s Application goes to the heart of this Commission’s jurisdiction. As this Commission informed Nevada Hydro in the November 17, 2011, dismissal of Nevada Hydro’s earlier LEAPS licensing proceeding: “the

⁶ Pre Application Document, *supra* note 5, at 3.

⁷ Application, *supra* note 1, at 8.

⁸ Compare Application, *supra* note 1, at 8 (describing generation tie line as “TE/VS”) with Pre Application Document, *supra* note 5, at 3 (describing stand-alone transmission line project before the CPUC as “TE/VS”).

If Nevada Hydro is, in fact, pursuing this Commission’s approval to develop two generation tie lines, then Nevada Hydro should change the names for those two lines. Providing the two lines at issue in this FERC proceeding with the single, combined name of “TE/VS” gives the erroneous impression of a single networked transmission line running from San Diego’s system to SCE’s system; the name also suggests that line will transmit power to-and-from those sources. But if this Project is developed through the LGIA process and this Commission’s licensing authority, there would be two lines involved – one primary line running from SDG&E’s system to LEAPS, and a second, separate primary line running from LEAPS to SCE’s system. Each separate line would transmit power solely from LEAPS, and from no other source, to their respective points of interconnection. Each separate line would have its own specific name. *E.g.*, *Order Denying Rehearing*, 137 FERC ¶ 61,133, at ¶ 5 (Commission can only authorize primary lines). Using a combined name to describe two distinct generation tie lines would be erroneous and confusing.

Commission is not authorized to license the TE/VS line as a stand-alone transmission line.⁹

Instead, “the Commission has authority to license only primary lines – those which transmit power from the project to the point of junction with the distribution system or interconnected primary transmission system *and do not transmit power from other sources.*”¹⁰

If Nevada Hydro is proposing to use the LGIA process and this Commission’s licensing authority to develop two separate, roughly 15-mile-long, primary generation tie lines – one line intended **solely** to transmit power from LEAPS to the SCE portion of the CAISO-controlled grid, and a second line intended **solely** to transmit power from LEAPS to the SDG&E portion of that same grid, then Nevada Hydro should amend its application before this Commission accordingly. In contrast, if Nevada Hydro is seeking Commission authorization to develop a 32-mile networked transmission line intended to transmit power to-and-from SCE’s and SDG&E’s transmission systems (and thus transmit power from sources other than LEAPS), then Nevada Hydro is not in the correct regulatory forum to seek such authorization.¹¹ More importantly, such a proposal has not been found to be required by the CAISO in any of the annual transmission planning process (TPP) up to and including the recently completed TPP. Simply

⁹ *Order Denying Rehearing*, 137 FERC ¶ 61,133, at ¶¶ 26, 35 (emphasis added).

¹⁰ *Order Denying Rehearing*, 137 FERC ¶ 61,133, at ¶ 5 (emphasis added).

¹¹ Notably, it is not clear whether Nevada Hydro is following the process for developing a stand-alone networked transmission line. For example, in order to develop such a line, Nevada Hydro must secure multiple studies such as path rating studies and SCE system impact studies designed to evaluate the impact of connecting a stand-alone networked transmission line to SCE’s systems. The LGIA process has not addressed this type of impact, does not meet these needs, and does not serve as a substitute to interconnect a stand-alone networked transmission line to SCE’s system.

It is not clear whether Nevada Hydro intends to pursue any process at SCE to interconnect a stand-alone networked transmission line to SCE’s systems, or to have the impacts of interconnecting such a line studied. Likewise, it is not clear whether Nevada Hydro has a project pending before the CAISO to have a stand-alone TE/VS line evaluated through the CAISO’s Transmission Planning Process. Finally, it is also not clear whether Nevada Hydro has obtained – or even requested – any path ratings studies from the Western Electricity Coordinating Council (“WECC”). Nevada Hydro should clarify these issues.

styling a stand-alone networked transmission line as a “generation tie line” is a cosmetic mask that does not confer Commission jurisdiction to approve the former.

Nevada Hydro should clarify whether it is seeking Commission approval to develop two separate generation tie lines in connection with the LEAPS Project or a single stand-alone networked transmission line beyond this Commission’s authority to approve. Upon receiving the requested clarification, the Commission will be able to focus its resources on matters within its jurisdiction, and to exclude from consideration those which are not. SCE appreciates this opportunity to comment, and reserves the right to submit additional comments as this proceeding develops.

Respectfully submitted,

JENNIFER HASBROUCK
ROBERT KANG

/s/

By: Robert Kang

Attorneys for
SOUTHERN CALIFORNIA EDISON COMPANY

Dated: January 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Rosemead, CA. this **30th** day of **January, 2012**.

/s/ Vicki.Carr-Donerson

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

Nevada Hydro Company, Inc.
Lake Elsinore Advanced Pumped Storage Project

Docket No. P-14227-000

**Motion/Notice of Intervention and Comments of the Center for Biological Diversity
Regarding The Nevada Hydro Company’s Application for a Preliminary Permit**

Pursuant to 18 C.F.R. section 385.212 (FERC Rule 212), and 18 C.F.R. section 385.214 (FERC Rule 214), the Center for Biological Diversity (the “Center”) submits this motion to intervene in the license application proceedings for the Lake Elsinore Advanced Pumped Storage (“LEAPS”) Project on Lake Elsinore and the Cleveland National Forest in California (P-14227-000). A license application was submitted for the LEAPS Project by the Nevada Hydro Company, Inc (“TNHC”). The Center seeks to intervene to assert environmental concerns in the proceedings. In support of this motion to intervene, the Center states as follows:

I. STATEMENT OF FACTS

On February 2, 2004, the Elsinore Valley Municipal Water District (“EVMWD”) and the Nevada Hydro Company, Inc. filed an application for an original hydropower license with the Federal Energy Regulatory Commission (“FERC”) for construction and operation of the 500-megawatt LEAPS Project (P-11858). The LEAPS Project is proposed to be located on Lake Elsinore, the Cleveland National Forest, and adjacent public and private lands in and around the City of Lake Elsinore in Riverside County, California. The Project consists of an upper dam and reservoir, powerhouse, and over thirty miles of transmission lines that traverse lands managed by

the Forest Service in the Cleveland National Forest, Camp Pendleton Marine Base, and lands managed by the Bureau of Land Management.

In 2006, FERC issued the Draft Environmental Impact Statement (“EIS”) for the LEAPS Project that evaluates the co-applicants’ proposal and a FERC staff alternative for licensing the LEAPS Project pursuant to the National Environmental Policy Act (“NEPA”). In 2007, FERC issued the Final EIS for the LEAPS Project.

TNHC has also filed several applications with the California Public Utilities Commission (“CPUC”) for the transmission line component of the LEAPS Project—The Talega Escondido/Valley Serrano 500kV Interconnect Project. (“TE/VS”).¹ From 2007 to 2009 TNHC filed a series of draft and incomplete applications that were reviewed repeatedly by CPUC staff for corrections and additions.² Because TNHC continually failed to provide the required environmental documents the CPUC eventually dismissed both the 2007 and 2009 TE/VS applications without prejudice.³

TNHC once again applied to the CPUC for the TE/VS project in 2010.⁴ The 2010 TE/VS application is also in question because of incomplete testimony, questions regarding financial viability and costs, and the ability of the TNHC to recoup costs associated with the TE/VS Project through the California Independent System Operator (“CAISO”) process.⁵ TNHC has applied for and withdrawn the TE/VS project from the CAISO process prompting to the CAISO

¹ CPUC, Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A0710005 (Filed October 9, 2007); Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A0902012 (Filed February 20, 2009); Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A1007001 (Filed July 6, 2010).

² CPUC A0902012, Decision Dismissing Application Without Prejudice, Decision 09-04-006 (Filed April 16, 2009) available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/99913.htm .

³ *Id.*

⁴ CPUC, A1007001, available at <http://docs.cpuc.ca.gov/published/proceedings/A1007001.htm> .

⁵ CPUC, A1007001, Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (Issued

to leave the TE/VS project out of the transmission planning process.⁶ TNHC also failed to provide the bond for the TE/VS Project as required by the CPUC.⁷ In December of 2011

Administrative Law Judge Angela K. Minkin stated the following

Given the many questions that have arisen, as well as the significant resources that have already been devoted to this proceeding, rather than continuing to grant stays and delays in this proceeding, I am inclined to recommend that the Commission dismiss this application.⁸

The decision on whether to dismiss the 2010 CPUC application is still pending.

Beginning in 2005 THNC also began to file and withdraw several applications before the California State Water Resources Control Board (“State Board”) for water quality certification associated with the LEAPS-TE/VS Project.⁹ On October 1, 2009, the State Board denied the application for water quality certification associated with the LEAPS-TE/VS Project.¹⁰ TNHC then filed suit against the State Board for their denial and sought a writ of mandate to direct the State Board to set aside its order and either allow Nevada Hydro to withdraw and resubmit its application or hold an adjudicatory hearing.¹¹ TNHC also has outstanding debt obligations associated with that State Board filing that it has refused to repay.¹²

In addition, TNHC has been in an ongoing dispute with its former co-applicant for the LEAPS-TE/VS Project, EVMWD.¹³ This ongoing dispute led to the termination of the 14 year

December 1, 2011), available at <http://docs.cpuc.ca.gov/efile/RULINGS/154509.pdf> .

⁶ California Independent System Operator, 2010 Final California ISO Transmission Plan (April 7, 2010), at 362-363 available at <http://www.aiso.com/2771/2771e57239960.pdf> .

⁷ CPUC, A1007001, Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (Issued December 1, 2011).

⁸ *Id.*

⁹ FERC, Order Denying Rehearing, Project No. 11858-004 (Issued November 17, 2011) available at http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20111117-3026 .

¹⁰ *Id.*

¹¹ *Id.*; *The Nevada Hydro Company v. State Water Resources Control Board*, San Diego Superior Court No. 37-2011-00088797-CU-WM-CTL (Filed April 1, 2011).

¹² CPUC, A1007001, Comments by Elsinore Valley Municipal Water District In Response to Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (filed December 16, 2011) at 3, available at <http://docs.cpuc.ca.gov/efile/CM/156036.pdf> .

¹³ FERC, Order Denying Rehearing, Project No. 11858-004 (Issued November 17, 2011).

old Development Agreement between THNC and EVMWD.¹⁴ It also prompted the dismissal previous dismissal of this same Project, Project No. 11858.¹⁵

The LEAPS Project has also come under financial scrutiny. In 2006 an independent economic analysis conducted on the Project on behalf of EVMWD revealed that the Project was not economically viable¹⁶ and that TNHC had not produced economic studies justifying development of LEAPS or TE/V.S.¹⁷ TNHC's bidding, contracting, and transparency with the LEAPS-TE/V.S Project was also the subject of a Grand Jury proceeding in the Riverside County Superior Court.¹⁸ A 2009 Grand Jury Report noted that two economic evaluations that concluded the LEAPS-TE/V.S project was "not economically viable."¹⁹ The Grand Jury Report also resulted in three major recommendations: 1) EVMWD must require due diligence in establishing future contracts such as LEAPS, in order to avoid relying on sole bidders for contracts;²⁰ the LEAPS project is not economically viable;²¹ EVMWD should provide an itemized accounting of the four million dollars in ratepayer funds spent on the LEAPS Project.²²

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¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ LEAPS Economic Evaluation (Feb 7, 2006), available at <http://docs.cpuc.ca.gov/efile/CM/156150.pdf> . A summary of key findings of the LEAPS Economic Evaluation are: when revenue and cost factors are considered the LEAPS project, as a merchant plant, is not viable at this time; Nevada Hydro's spreadsheet dated July 20, 2005 assumed an on-peak price of \$65 per MWh and an off-peak price of \$25 per MWh. Although these price assumptions might be reasonable under different circumstances, since the California energy crisis ended in 2001, such a high differential has existed on only a few days, and the average differential is far lower; based on 2005 actual prices, in our base case we project that LEAPS would have had annual net energy sales of just \$0.3 million, instead of the \$54.6 million Nevada Hydro calculated.

¹⁷ *Id.*

¹⁸ 2008-2009 Grand Jury Report on the Elsinore Valley Municipal Water District: Lake Elsinore Advanced Pumped Storage Project, Riverside County Superior Court (February 23, 2009), available at http://www.riverside.courts.ca.gov/grandjury/09elsinorevalley_muniwaterdistrict.pdf .

¹⁹ *Id.* at 3.

²⁰ *Id.* at 1, 5.

²¹ *Id.* at 5.

²² *Id.* at 5.

II. STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION

The Center for Biological Diversity is a non-profit, public interest environmental organization with more than 320,000 members and online activists dedicated to the protection of native species and their habitats through science, policy, and environmental law. The Center's membership includes individuals who regularly use and enjoy the lands that will be affected by the LEAPS Project, including the Cleveland National Forest, Lake Elsinore, and surrounding areas, for hiking, backpacking, hunting, fishing, photography, wildlife viewing, scientific study, and other recreational, aesthetic, and educational purposes.

Based on the information in the 2007 Final EIS and elsewhere in the FERC docket for this and the previous application, the interests of the Center, and their individual members will be adversely affected by the LEAPS Project. In particular, the Center has an interest in avoiding or minimizing the LEAPS Project's impacts on sensitive species of plants, fish, and wildlife; avoiding or minimizing the Project's impacts to Lake Elsinore and other waterbodies; avoiding or minimizing the Project's impacts on public lands, including the Cleveland National Forest; and promoting alternatives to the proposed action that would minimize environmental harm. These interests may be directly affected by the outcome of this proceeding if FERC approves a license for the LEAPS Project.

The Center has a statutory right to intervene. 18 C.F.R. section 385.212 (FERC Rule 212), 18 C.F.R. section 385.214 (FERC Rule 214). In addition, the Center's environmental interests described above may be directly affected by outcome of the proceeding if FERC licenses the LEAPS Project. The Center's participation is justified because of this potential adverse effect. 18 C.F.R. § 385.214(b)(2)(ii). Moreover, the Center seeks to intervene in this proceeding to assert their environmental interests on behalf of the public. The Center will

attempt to limit the LEAPS Project's environmental harm and to protect public trust resources including the waters of Lake Elsinore, public lands in the Cleveland National Forest and elsewhere, and the plants, fish, and wildlife that will be affected by the Project. Accordingly, the Center's participation is justified because it is in the public interest. 18 C.F.R. § 385.214(b)(2)(iii).

A. A SUPPLEMENTAL EIS IS REQUIRED

The Center has a strong interest in assuring that the laws regarding analysis of projects that have significant impacts on the environment are followed and that the public and decision makers are fully informed of potential impacts to the environment. In the present case the Center has a strong interest in assuring that a supplemental EIS is prepared for the LEAPS Project because of the substantial changes and new circumstances that have occurred since the 2007 Final EIS for the previous LEAPS application. A supplemental EIS is required when there are substantial changes in the project, there are significant new circumstances relevant to environmental concerns, or a supplemental EIS will further the purposes of NEPA. 40 CFR § 1502.9(c)(1) & (2). Changes in applicable forest management and additional information regarding sensitive species and habitat standards that would be affected by the project require a supplemental EIS to be prepared. *Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (9th Cir. 2006) (forest management plan amendment); *Friends of the Clearwater v. Dombeck*, 222 F.3d 549 (9th Cir. 2000) (new sensitive species designations and habitat standards).

1. The Application and EIS Fail to Adequately Describe the Changes to and Location of the Southern Terminus- the Case Springs Substation

The current application fails to provide the necessary details and description regarding the southern terminus of the Project where it would interconnect with the San Diego Gas & Electric system. The CPUC 2009 Decision Dismissing the Application Without Prejudice for the

TE/VS component of the LEAPS Project was based on the application's failure to provide the necessary details regarding the Case Springs Substation.²³

TNHC's CPUC application states that southern interconnection with San Diego Gas & Electric's ("SDG&E") grid will take place at a "new substation in the vicinity of United States Marine Corps (USMC) Camp Joseph H. Pendleton."²⁴ In early 2009 the USMC definitively denied clearance for the Case Springs substation site on Camp Pendleton when the USMC informed TNHC that "the case is closed on the LEAPS substation with respect to any possibility of it being sited anywhere within an active training area on the Base."²⁵

In light of this the TNHC changed the southern terminus and explained that the Case Springs Substation will be located "within land owned by the Fallbrook Land Conservancy (Conservancy), at MP 31.5."²⁶ However, the Fallbrook Land Conservancy has refused to allow any of the components of the Project on its property.²⁷ TNHC's failure to secure or describe a location for the Case Springs substation at the southern terminus and the crucial interconnection with the lines controlled by San Diego Gas & Electric leaves the Project description and design incomplete, inaccurate, and unstable and requires revision to the EIS.

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²³ CPUC A0902012, Decision Dismissing Application Without Prejudice, Decision 09-04-006 (Filed April 16, 2009), Attachment 5 at 1, available at <http://docs.cpuc.ca.gov/published/Graphics/99922.PDF>.

²⁴ Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500-kV Interconnect, A1007001 (Filed July 6, 2010) at 4, available at http://www.cpuc.ca.gov/Environment/info/aspen/nevadahydro/pea5/app/TNHC_CPCN_application.pdf.

²⁵ Supplemental Information submitted under P-11858, Copy of email from USMC to Applicant concerning the decision of Camp Pendleton to disallow the use of Camp Pendleton facilities for the LEAPS project southern substation (March 25, 2009), available at http://elibrary.ferc.gov/idmws/File_list.asp?document_id=13701392.

²⁶ CPUC, A1007001, Proponent's Environmental Assessment at 3-89, 3-137, available at http://www.cpuc.ca.gov/Environment/info/aspen/nevadahydro/pea5/rev_ch3/ch3_proj_desc_REV0211.pdf.

²⁷ Letter from Fallbrook Land Conservancy to TNHC, April 28, 2011, available at <http://docs.cpuc.ca.gov/efile/CM/156151.pdf> (Attachment 4).

2. The Application and EIS Fail to Analyze the Changes in the Management of Sensitive Species in the Cleveland National Forest that Could be Affected by the LEAPS-TE/VS Project

The EIS relied upon valid management plans and Biological Opinions regarding the Cleveland National Forest where the reservoir and transmission lines will be located. However the Biological Opinion for the Cleveland National Forest has been ruled invalid, has been ordered revised, and is still in the process of completion.²⁸ The EIS must be supplemented to address the changed forest management regulations under the Endangered Species Act affecting sensitive species that would be impacted by the LEAPS-TE/VS project. *See e.g. Klamath Siskiyou Wildlands Center v. Boody*, 468 F.3d 549 (9th Cir. 2006).

3. The Application Proposed to Change the Dam Requirements for the Reservoir

A supplemental EIS is required because of the changes to the LEAPS project that are not analyzed in the 2007 Final EIS. The application for a preliminary permit states that the “proposed project is a pumped storage project and will not use a dam.”²⁹ However, the 2007 FEIS describes the dam as a critical part of the LEAPS project.³⁰ The Supplemental EIS must analyze the impacts of the LEAPS Project since it has changed to exclude the dam, including, but not limited to, how those changes will impact water quality resources and public health and safety.

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²⁸ *Center for Biological Diversity v. U.S. Fish and Wildlife Service*, Case No. 08-cv-01278-MHP (Filed March 5, 2008).

²⁹ FERC, Application for a Preliminary Permit for the Lake Elsinore Advanced Pumped Storage Project (July 18, 2011) at 2, 5, 11.

³⁰ See Final Environmental Impact Statement, Lake Elsinore Advanced Pumped Storage Project, FERC Project No 11858 *e.g.* at xxiii, 2-2, 2-5, available at <http://www.ferc.gov/industries/hydropower/enviro/eis/2007/01-30-07.asp>.

4. The Application and EIS Fail to Disclose and Analyze Changes Resulting from the Sunrise Powerlink Project

The LEAPS-TE/VS project is an alternative to the San Diego Gas & Electric Company's ("SDG&E") Sunrise Powerlink Project in meeting electricity needs for SDG&E's territory. The Sunrise Powerlink has received all necessary approvals and is proceeding with construction.³¹ Once again, the assumptions and analysis in TNHC's application and the 2007 Final EIS are inaccurate and must be updated because the electrical infrastructure upon which the purpose and need is premised is incorrect and outdated. Evidence presented in the Sunrise Powerlink proceeding indicates that when the Sunrise Powerlink is built, import capability into the San Diego area under all-lines-in-service conditions will be increased from the current level of 2850 MW to 4200 MW. Because the Sunrise Powerlink will be placed in-service, TNHC's Base Case (without the TE/VS project) should model San Diego area all lines-in-service import capability at 4200 MW and analyze the Sunrise Powerlink as an alternative to the Project, and whether, with the Sunrise Powerlink, the Project is even necessary.

IV. CONTACT INFORMATION

The name, address, telephone number, and email address of the person representing the Center for Biological Diversity in this matter is:

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San Francisco, CA. 94619
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Please direct all communications regarding this proceeding to the above person.

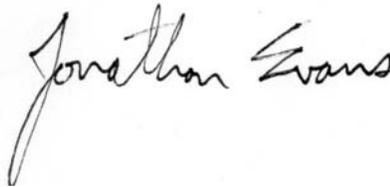
³¹ Decision Granting a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, D0812058 (Issued December 24, 2008); see also

V. CONCLUSION

For the foregoing reasons, the Center for Biological Diversity respectfully moves FERC to grant leave to the Center to intervene in this proceeding as full parties with all rights and privileges thereof.

DATED: January 27, 2012

Jonathan Evans
CENTER FOR BIOLOGICAL DIVERSITY

A handwritten signature in black ink that reads "Jonathan Evans". The signature is written in a cursive style with a large, sweeping initial 'J'.

By:

JONATHAN EVANS
Attorney for Movant
CENTER FOR BIOLOGICAL DIVERSITY

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the FERC's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at San Francisco, California this 27th day of January, 2012.

A handwritten signature in black ink that reads "Jonathan Evans". The signature is written in a cursive style with a long, sweeping underline for the letter 'J'.

Jonathan Evans
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Service List for P-14227-000 Nevada Hydro Company, Inc.

Contacts marked ** must be postal served

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

The Nevada Hydro Company, Inc.

Docket No. P-14227-000

**MOTION TO INTERVENE AND COMMENTS OF
THE ELSINORE VALLEY MUNICIPAL WATER DISTRICT**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure, 18 C.F.R. Sections 385.212 and 385.214 (2009), and FERC's Notice of Preliminary Permit Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications, dated November 29, 2011, the Elsinore Valley Municipal Water District (District) hereby moves to intervene and submit comments in the above-captioned docket, initiated by The Nevada Hydro Company, Inc. (Nevada Hydro) on July 14, 2011 to apply for an original license to construct and operate the proposed 500-megawatt (MW) Lake Elsinore Advanced Pumped Storage Project (LEAPS Project).

In support of this motion, the District states as follows:

I. Background

The Elsinore Valley Municipal Water District is a political subdivision of the State of California, organized and existing under the Municipal Water District Act of 1911 (Cal. Water Code, § 71000 et. seq.). Under California Water Code Section 71662, as a municipal water district, the District is authorized to utilize its water, facilities and property to provide, generate and deliver hydroelectric power.

The District's interest and past involvement in the LEAPS Project stemmed from its commitment to pursuing hydropower generation and ancillary transmission for the benefit of

Lake Elsinore and the District's rate payers. Following some initial efforts by the District to obtain a FERC permit, the District submitted a permit application on November 1, 1994 (FERC Docket No. p-11504), and a preliminary permit issued in 1995. In 1997, Nevada Hydro and the District entered into a Development Agreement based upon that same project.

A. The Status of the 1997 Development Agreement

In the 1990's, the District formed a relationship with Nevada Hydro to assist the District with financing and permitting the Project. The District and Nevada Hydro entered into a Development Agreement on May 15, 1997 for the "LEAPS Project." (1997 Development Agreement, attached as Ex. A.) In addition to conceptualizing the LEAPS Project, the Development Agreement defined the parties' responsibilities and offered assurances relative to their roles in developing the Project.

Under the Agreement, Nevada Hydro agreed to obtain all federal, state and local entitlements required for the Project, and to provide the necessary funding for the costs of applying for, processing, and obtaining all entitlements. (See Ex. A at ¶¶ 1.1, 1.2, 1.4.) Nevada Hydro also agreed to reimburse the District for Project-related expenditures and represented that it had sufficient resources to obtain the FERC license, and could obtain additional equity and resources to finance the construction of the Project. (See Ex. A at ¶¶ 3.1, 3.2, 3.3, 6.7.)

In the District's view, Nevada Hydro did not fulfill its contractual obligations. As a result, the District notified Nevada Hydro in a letter dated July 18, 2011 that it was terminating the Development Agreement. (See Termination Letter, attached as Ex. B.) Nevada Hydro's recent filing with FERC confirms the District's termination and states that:

By letter dated July 18, 2011, the [District] notified [Nevada Hydro] that it was terminating the agreement under which the two parties were acting as co-

applicants for the license application in P-11858. As a result, [Nevada Hydro] is pursuing licensing for the project in this docket [P-14227] without the [District].”

(Nevada Hydro’s Pre-Application Document in Proceeding No. P-14227 at § 1.1 [submitted January 26, 2012, accession document number 20120126-5028].) Despite this statement to FERC, Nevada Hydro’s representatives then attended a meeting of the District’s Board of Directors on the same day (January 26th) and publicly stated that Nevada Hydro viewed the Agreement as remaining applicable to the District. These contradictory representations are yet another reason that the District has been compelled to submit these comments and seek intervention in the pending proceeding.

Beyond these conflicting representations regarding the Agreement, the District believes that, among other impermissible actions, Nevada Hydro (1) split the Project to focus on a stand-alone transmission line (the Talega-Escondido/Valley-Serrano (TE/VS) Interconnect) instead of the Project’s pumped storage facility, and (2) failed to pay all Project-related fees as required by the 1997 Development Agreement.

The District’s views regarding the stand-alone nature of the TE/VS Interconnect have been previously addressed before FERC, and so need not be repeated at length here. (See Elsinore Valley Municipal Water District’s Letter Responding to FERC’s Request to Show Cause, Project No. 11858, December 1, 2009, attached as Ex. C; Elsinore Valley Municipal Water District’s Answer to Pleading of the Nevada Hydro Company, Project No. 11858, January 26, 2010, attached as Exhibit D.) Ultimately, FERC noted in its Dismissal Order concerning the prior application for the LEAPS Project (FERC Docket Number p-11858) that Nevada Hydro’s actions regarding the TE/VS Interconnect demonstrate that Nevada Hydro is only interested in the stand-alone TE/VS Interconnect. (Order Dismissing License Application, July 12, 2011,

Project No. 11858-002 (“Dismissal Order”) at p. 3.)

The District’s views regarding the payment of Project-related fees involves, among other issues, Section 3833 of Title 23 of the California Code of Regulations. Section 3833 authorizes the State Water Resources Control Board to collect a fee from those who apply to the State Water Board for a 401 Certification. On January 21, 2009, Nevada Hydro and the District filed the most recent joint application for 401 Certification with the State Water Board for the LEAPS Project. However, following several years during which Nevada Hydro submitted and withdrew its application for a 401 Certification for the LEAPS Project, the State Water Board dismissed the application on October 1, 2009 without prejudice. On November 2, 2009, Nevada Hydro sought reconsideration of the State Water Board’s denial order, which was likewise denied on March 1, 2011.¹ Fees for the 2010-2011 fiscal year were then assessed by the State Water Board, which were contested by Nevada Hydro via letter to the State Water Board. Ultimately – and despite the 1997 Development Agreement’s requirement that Nevada Hydro pay Project-related fees (see Ex. A at ¶ 1.40) – Nevada Hydro neither paid the fees nor obtained resolution through the administrative appeals process regarding whether the fees were properly assessed by the State Water Board. As a result, the California State Board of Equalization pursued payment of the fees directly from the District, on grounds that the District was one of the original co-applicants to the 401 Certification application. Following the threat of a collection proceeding against the District, and in an effort to shield its rate payers from still additional penalties, fines, and costs, the District tendered a check to the California State Board of Equalization in the

¹ Following the denial of its Petition for Reconsideration, Nevada Hydro filed a lawsuit in state court against the State Water Board, seeking a writ of mandate directing the State Water Board to set aside and vacate its order. Although Nevada Hydro filed the lawsuit without informing or even discussing the matter with the District, the District was nonetheless named as a real party in interest to the litigation and incurred subsequent legal fees related to its involvement in the lawsuit. The suit was recently dismissed by Nevada Hydro, and the State of California subsequently entered a creditor judgment against Nevada Hydro for \$8,916.32 of costs incurred by the State during the pendency of the lawsuit. To the District’s knowledge, this debt remains outstanding as of the date of this filing.

amount due (\$131,294.98) on August 17, 2011. As of the date of this filing, Nevada Hydro has not resolved this outstanding debt with the District.

B. The Immediately Prior FERC Proceeding (P-11858)

As FERC is aware, Nevada Hydro's instant application before FERC (FERC Docket No. p-14227), is not the first application for the Project that has been filed. Indeed, some iteration of the Project has been pending before FERC for nearly twenty years.

As FERC is also aware, the immediately previous FERC application for the LEAPS Project (FERC Docket No. p-11858) was only recently dismissed. In a letter dated May 6, 2011 and in view of many years of apparent inaction by Nevada Hydro, FERC staff asked the District and Nevada Hydro (as co-applicants for the license application) to provide information demonstrating why the application before FERC (No. p-11858) should not be dismissed. Following the submission of separate responses by Nevada Hydro and the District, FERC dismissed the application in an order dated July 12, 2011. (See Dismissal Order, Docket No. p-11858.) Thereafter, on July 14, 2011, Nevada Hydro filed the instant application (No. p-14227) for a preliminary permit for the Project.

II. Comments of the Elsinore Valley Municipal Water District

In view of the above history and background, the District submits the following initial comments as to Nevada Hydro's application.

1. The District is not a co-applicant with Nevada Hydro as to the instant application. Given its past involvement with the Project, the District must make it clear to the

public and all other interested parties that it was not consulted by Nevada Hydro with regard to the instant application and is neither a co-applicant nor a Project sponsor.

2. To clarify conflicting representations made by Nevada Hydro, the District must make clear that it no longer has a contractual relationship with The Nevada Hydro Company. Any contractual relationship that the District had with Nevada Hydro has been formally terminated, and the District has no obligations to provide services or resources in support of the LEAPS Project as currently envisioned by Nevada Hydro.

3. Because Nevada Hydro proposes to use Lake Elsinore as a lower basin for pumped storage operations, the District must make clear that Nevada Hydro does not own the rights to the waters of Lake Elsinore. Instead, the District owns the water rights to Lake Elsinore pursuant to a grant deed from the State of California. (Grant Deed, attached as Ex. E.) Should it wish to entertain Nevada Hydro's application, the District believes FERC should first address the threshold issue of whether Nevada Hydro has – or can obtain – water rights sufficient to operate the hydroelectric facility.

4. Similarly, Nevada Hydro proposes to build the Project on or affecting lands that are currently held by public agencies (including, but not limited to, the District and the City of Lake Elsinore) and the State of California. This property is currently being put to public use, and has been for decades. These uses include water quality management, water treatment, water transfer, lake management and recreational facilities, as well as public rights-of-way. The effect that the Project will have on these established uses, and how the public agencies are to continue carrying out their public services if the Project is implemented, have yet to be clarified.

The District believes that this, too, is a threshold issue that must be resolved if FERC wishes to entertain Nevada Hydro's application.

5. It is unclear how Nevada Hydro intends to fund the construction of this Project in its entirety. Based on the limited examples above, it is not clear whether Nevada Hydro has sufficient capital to finance a Project of this magnitude. If FERC is to entertain this application, the District believes that FERC should first confirm that Nevada Hydro can finance the construction and operation of the entire Project. If, for example, Nevada Hydro were to begin the LEAPS Project and thereafter become unable to adequately fund the completion of construction and operation of the Project, severe adverse environmental impacts would result as the partially constructed Project sat idly by for an indefinite period of time.

6. Finally, and consistent with the conclusions set forth in FERC's Dismissal Order regarding the previous FERC proceeding (FERC Docket Number p-11858), Nevada Hydro appears to be pursuing the construction of a stand-alone transmission interconnect, which could have only a tangential connection to the pumped storage facility. The District assumes that any hydropower license issued in connection with Nevada Hydro's application would be of a limited scope insofar as it would authorize a primary transmission line, but not the entire Interconnect. Such a limited scope seems most consistent with FERC's authority to license "transmission lines, or other project works necessary or convenient" for the direct utilization of hydropower (16 U.S.C. § 797(e); see also discussion in Dismissal Order at pp. 3, 4.)

III. Motion for Intervention

Due to the above-expressed concerns, due to the inconsistent representations made by Nevada Hydro regarding the (now terminated) contractual relationship between the District and

Nevada Hydro, due to the District's ownership of both facilities and property that may be affected by the Project, and due to the District's status as the holder of the water rights in Lake Elsinore, the District has a substantial interest in the outcome of this proceeding. Accordingly, the District moves for intervention in this proceeding and respectfully requests Party status.

IV. Communications

All communications, notices, pleadings, orders and other documents related to this proceeding should be addressed to the following individuals:

Elsinore Valley Municipal Water District
Attn: Ronald E. Young, General Manager
31315 Chaney Street
Lake Elsinore, CA 92530-2743
Phone: (951) 674-3146
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John Brown, General Counsel
Best Best & Krieger LLP
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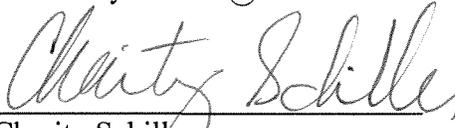
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Phone: (951) 826-8223
Email: charity.schiller@bbklaw.com

V. Conclusion

For the reasons stated above, the District respectfully requests that the Commission accept the District's comments and grant the District's motion to intervene in this proceeding.

Respectfully submitted on behalf of the ELSINORE
VALLEY MUNICIPAL WATER DISTRICT,

BEST BEST & KRIEGER LLP
Charity Schiller
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By: 
Charity Schiller

Dated: January 30, 2012

May 31, 2012

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

**Re: Motion to Intervene and Comments of the Elsinore Valley
Municipal Water District Regarding Project No. P-14227-000
(January 30, 2012) and Supplemental Comments**

Dear Ms. Bose:

The Elsinore Valley Municipal Water District (“District”) submitted comments on January 30, 2012 to the Federal Energy Regulatory Commission (“FERC”) regarding Project No. P-14227-000. A copy of the District’s comments (without attachments) is enclosed as Attachment A. The District continues to be interested in the process regarding The Nevada Hydro Company’s (“Nevada Hydro”) application to study the feasibility of the Lake Elsinore Advanced Pumped Storage (“LEAPS”) Project to be located on Lake Elsinore and San Juan Creek, in Riverside, Orange, and San Diego Counties, California. The District stands by its prior comments and would like to make two supplemental comments.

First, the California Public Utilities Commission (“CPUC”) recently dismissed Nevada Hydro’s application for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project (Application No. 10-07-001). A copy of the CPUC decision is enclosed as Attachment B. This dismissal occurred on May 24, 2012. This point may weigh into FERC’s evaluation of the primary line necessary to carry the LEAPS Project’s power to Southern California’s transmission grid.

Second, Nevada Hydro has again failed to pay the annual 401 Water Quality Certification (“401 Certification”) Fee for the LEAPS Project assessed by the State Board of Equalization on behalf of the State Water Resources Control Board (“SWRCB”). The most recent fee (for fiscal year 2011-2012) was assessed on November 2, 2011 and was in the amount of \$113,860.00.

This point may weigh on FERC's evaluation of Nevada Hydro's financial ability to complete any Project and satisfy any conditions applicable to the Project.

Thank you for your consideration of these comments, and please contact me with any questions.

Respectfully submitted,

/s/ George H. (Greg) Williams

George H. (Greg) Williams, Jr.

Counsel for
Elsinore Valley Municipal Water District

cc: General Manager, Elsinore Valley Municipal Water District

ATTACHMENT A

Decision 12-05-022 May 24, 2012

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Nevada
Hydro Company for a Certificate of Public
Convenience and Necessity for the
Talega-Escondido/Valley-Serrano 500 kV
Interconnect Project.

Application 10-07-001
(Filed July 6, 2010)

**DECISION DISMISSING APPLICATION AND
DENYING PETITION TO MODIFY DECISION 11-07-036**

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**DECISION DISMISSING APPLICATION AND
DENYING PETITION TO MODIFY DECISION 11-07-036**

Summary

In this decision, we dismiss The Nevada Hydro Company's (Nevada Hydro) Application (A.) 10-07-001 for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500 kilovolt Interconnect Project. We take this action because, despite over 18 months of work, the application is not complete and does not conform to our requirements. We cannot continue to expend Commission or party resources on A.10-07-001. Although we dismiss this application without prejudice, we impose a series of conditions that must be met if we are to consider an application for this project (or similar projects) in the future. We also deny Nevada Hydro's Petition to Modify Decision (D.) 11-07-036, and require Nevada Hydro to comply with the performance/surety bond requirements specified by Ordering Paragraph 2 of D.11-07-036.

1. Background

In this application, The Nevada Hydro Company (Nevada Hydro) requests a Certificate of Public Convenience and Necessity (CPCN) for the Talega-Escondido/Valley-Serrano (TE/VS) 500 kilovolt (kV) Interconnect Project.

Nevada Hydro previously filed Application (A.) 07-10-005 and A.09-02-012 seeking the same authorization. These applications were dismissed without prejudice by Decision (D.) 09-04-006, because Nevada Hydro failed to prepare a complete Proponent's Environmental Assessment (PEA), as required by the California Environmental Quality Act (CEQA).

On July 6, 2010, the instant revised application was accepted for filing. On August 5, 2010, Commission staff determined that the PEA was complete for purposes of CEQA. At the request of Commission Staff, Nevada Hydro amended its PEA on February 25, 2011. The Notice of Preparation was filed on March 14, 2011 at the Governor's Office of Planning and Research. By this action, Commission staff began an independent evaluation of the proposed project, including public scoping meetings to develop alternatives to the proposed project, and the potential environmental impacts of the proposed project and alternatives, as required by CEQA.

Timely protests were filed by the Division of Ratepayer Advocates (DRA), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), John Pecora (Pecora), Forest Residents Opposing New Transmission Lines (FRONTLINES), Fresian Focus, LLC, Linda Lou and Martin Ridenour, the Elsinore Valley Municipal Water District (EVMWD), and jointly by the Center for Biological Diversity, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau, and Santa Ana Mountains Task Force of the Sierra Club. We refer to these intervenors as Joint Intervenors. Nevada Hydro filed its reply on August 16, 2010.

We issued D.11-07-036 on July 28, 2011 to address several threshold issues in Phase 1 of this proceeding. In D.11-07-036, we determined that, consistent with precedent, Nevada Hydro would become a public utility under Pub. Util. Code §§ 216 and 218, if a CPCN were to be issued in Phase 2 of this proceeding. In addition, because it was not certain that a CPCN would be issued for this project and because we must harmonize the various statutes that are incorporated in the Pub. Util. Code, we ordered Nevada Hydro to guarantee payment for those intervenors who meet the requirements of Pub. Util. Code

§§ 1801 et seq. and for consultants hired by DRA, regardless of the outcome of this application. Therefore, we directed Nevada Hydro to post a surety bond or performance bond in the amount of \$550,000 to cover the anticipated costs of eligible intervenors who make a substantial contribution to this proceeding, consistent with the requirements of the Pub. Util. Code. We also ordered Nevada Hydro to enter into a reimbursable contract arrangement that would cover the costs of DRA's expert consultants, approximately \$450,000, assuming Phase 2 went forward. We concluded that these are reasonable costs of doing business for an entity proposing to be certified as a public utility and proposing to build a project originally estimated to cost \$353 million (in 2007 dollars), and now anticipated to cost \$684 million.

Pursuant to Rule 16.6, on August 22, 2011, Nevada Hydro requested an extension of time from the Executive Director to comply with Ordering Paragraphs 2 and 3 of D.11-07-036. On August 25, 2011, the Executive Director granted a 60-day extension and required Nevada Hydro to provide the appropriate bond by October 28, 2011. On October 28, 2011, Nevada Hydro filed a motion for acceptance of a bond and cashiers check made payable to the California Public Utilities Commission. On November 9, 2011, as directed by the assigned Administrative Law Judge (ALJ), Nevada Hydro filed a petition for modification of D.11-07-036 to request that a letter of credit with cash backing be accepted in lieu of the bond. FRONTLINES and Joint Intervenors filed timely responses to the petition.

On November 10, 2011, the assigned ALJ convened a prehearing conference in Phase 2 of this proceeding. On December 1, 2011, the assigned ALJ issued a ruling that required the parties to file and serve comments on whether

or not the Commission should dismiss A.10-07-001 and, if it is dismissed, whether or not the application should be dismissed with prejudice.

Nevada Hydro, DRA, SCE, SDG&E, EVMWD, Joint Intervenors, Pecora, and FRONTLINES filed and served timely comments on the ruling. No reply comments were accepted. On January 3, 2012, Nevada Hydro filed a motion requesting leave to file reply comments and January 4, 2012, SCE filed a motion to strike portions of Nevada Hydro's comments.

2. Should the Application be Dismissed?

2.1. The Parties' Positions

At the prehearing conference held on November 10, 2011, in response to the ALJ's questions regarding financial viability, Nevada Hydro explained that the witnesses associated with the Siemens Company are no longer available and requested a 90-day stay in the proceeding in order to prepare and submit new, replacement testimony. The testimony that must be replaced addresses costs and reliability and therefore feeds into the testimony of other Nevada Hydro witnesses who relied on the previously-submitted testimony. DRA raised additional concerns regarding the cost calculations in the previously-submitted testimony and requested that calculations of costs and benefits be done on a stand-alone basis, i.e., not associated with the Lake Elsinore Advanced Pumped Storage (LEAPS) Project. DRA also raised questions regarding Nevada Hydro's modeling assumptions.

SDG&E stated that the application is still deficient and that Nevada Hydro has not complied with Rules 2.3 and 3.1(g), in particular. SCE raised concerns regarding the collection of the Transmission Access Charge (TAC), whether the California Independent System Operator (CAISO) approval is required in order for Nevada Hydro to collect such a charge, and suggested that

Nevada Hydro file a compliance filing to prove that it has the financial wherewithal to go forward. EVWMD concurred with this suggestion and agreed with DRA's statements regarding costs and benefits.

The Center for Biological Diversity agreed that the application remains deficient and stated that the application should be dismissed with prejudice. The Santa Ana Mountains Task Force of the Sierra Club and the Friends of the Forest (Trabuco District) and the Santa Rosa Plateau pointed out that the issue of the Southern terminus remains an open question, and that this issue was a key reason the previous applications were dismissed. FRONTLINES suggested that a technical workshop be convened in the impacted area to discuss modeling and cost issues. Several parties concurred with this recommendation.

In its response to the ALJ's Ruling, Nevada Hydro argues that many, many years of work have gone into this project and the Commission should proceed with Phase 2. Nevada Hydro contends that it has embarked on "sensitive" commercial negotiations with prospective investors and has attached letters of intent from the St. Augustine Trust and First Reserve Corporation to provide development and construction financing for the proposed project. These commitments depend on regulatory approval of the project and retention of a bonded general contractor. Nevada Hydro contends that such letters of intent demonstrate that once a CPCN is issued, the project will have the necessary financing to become financially viable. Applicant further contends that issuance of a CPCN will lead to a reasonable expectation that the proposed project would become part of the CAISO grid and will lead to recovery of operating and investment costs.

In order to recover its costs, Nevada Hydro states that it intends to turn control over its facilities to the CAISO and to recover its costs through the TAC.

Nevada Hydro states that it submitted a Participating Transmission Owner application for the project to the CAISO in February 2007, as supplemented in April 2009. Nevada Hydro maintains that the project has been evaluated and approved by the CAISO when it was proposed as the Valley Rainbow Interconnect Project (sponsored by SDG&E) and further contends that the CAISO evaluated the project as part of the Southwest Transmission Expansion Plan and the South Regional Transmission Plan. Applicant also contends that the CAISO's actions in 2006 regarding the South Regional transmission Plan led to a conclusion that the project will ensure reliability and will achieve cost savings. However, Nevada Hydro acknowledges that the CAISO has not acted on these findings.

Nevada Hydro explains that the TE/VS project was originally planned as a tie-line with the LEAPS project, which was being considered at the Federal Energy Regulatory Commission (FERC). Nevada Hydro states that the FERC proceedings resulted in a Final Environmental Impact Statement that also considered the stand-alone project. Applicant also cites to FERC's approval of rate incentives and states that this approval "is the driver of inducing commercial funding sources to provide capital for the development and construction of innovative, non-utility transmission projects such as the TE/VS interconnect."¹ Nevada Hydro also maintains that the viability of the project is proven because in the environmental review of SDG&E's Sunrise Project, the Final Environmental Impact Report ranked the LEAPS Transmission-Only Alternative as one of the preferred alternatives.

¹ Nevada Hydro's December 16, 2011, Comments at 12.

While Nevada Hydro recognizes that Siemens is no longer financially involved in this project and that key aspects of its testimony must be replaced, Nevada Hydro contends that it has identified a substitute construction manager and is ready to proceed to correct cost and modeling assumptions that will result in lower costs to ratepayers. Thus, Nevada Hydro states that it is premature to dismiss the application; that need and economics must be determined based on the development of a complete record, and that dismissal of the application, particularly dismissal with prejudice would be “catastrophic” to the owners and investors who have invested \$25 million in the endeavor thus far.² In addition, Nevada Hydro contends that such actions would have a chilling effect on the independently developed projects of all kinds in California.

Nearly all other parties assert that the application should be dismissed. FRONTLINES states that this application should go forward “to ensure the ongoing TEVS CPSN application is the last TEVS CPCN application from Nevada Hydro that the Commission ever considers.”³ FRONTLINES therefore suggests that the Commission convene a workshop to establish appropriate modeling assumptions and cost/benefit parameters and that Nevada Hydro prepare new expert witness testimony based on the workshop findings. Alternatively, FRONTLINES agrees that the application could be dismissed with prejudice but only if the Commission precluded Nevada Hydro from submitting any future application for any transmission line project which interconnects the Talega-Escondido line with the Valley-Serrano line.

² *Id.* at 22.

³ FRONTLINES’ December 16, 2011, Comments at 2.

DRA supports dismissal of the application because Nevada Hydro has failed to submit a complete application despite ample time and opportunity to do so. DRA explains that Nevada Hydro's failure to submit a complete application has led to wasted resources for parties and for the Commission. DRA suggests that the application be dismissed without prejudice but states that the Commission should require a complete and thorough application including testimony sponsored by witnesses who will be available for hearings and cross-examination. DRA correctly observes that Nevada Hydro is obligated to pay all of DRA's costs incurred with hiring an expert witness in this proceeding, pursuant to D.11-07-036.

SDG&E, SCE, EVWMD, and Pecora all agree that the application should be dismissed, and either state that the application should be dismissed without prejudice or defer to the Commission to make this determination. SCE and SDG&E maintain that should Nevada Hydro be allowed to refile an application, that application must be complete in all ways, must comply with the Rules of Practice and Procedure, must demonstrate that a viable Southern terminus exists for the project, and must show that Nevada Hydro is actively seeking approval from the CAISO for the required interconnection and ability to implement a TAC. EVWMD contends that Nevada Hydro has not honored certain obligations to pay for all LEAPS Project development costs, including all necessary permits and entitlements and represents that this failure is evidence of Nevada Hydro's inability to obtain necessary financing for the TE/VS project. Joint Intervenors argue that the application should be dismissed with prejudice because the application fails to comply with Commission rules and fails to provide the needed experts and witnesses to ensure that the parties can fully assess the project.

2.2. Discussion

Without assessing the contentions and representations regarding Nevada Hydro's failure to pay certain obligations, we conclude that this application is procedurally deficient and should be dismissed. At this late date, we decline to stay this proceeding while Nevada Hydro seeks expert witnesses to prepare testimony that is critical to the consideration of whether this project is viable, feasible, economic, and whether there is a need for the project. The Commission cannot afford to squander its resources on applications that, despite over 18 months of work, remain vague and speculative as to financing plan and indeed the project description itself. Nevada Hydro has had ample opportunity in this application and in previous applications to develop its project description and financing plan appropriately, and to confirm that it can present its case-in-chief that includes with specificity how it will interconnect with both SDG&E and SCE's systems and that the CAISO will accept control as the grid operator. This has not occurred. In sum, despite months of work and resources expended by this Commission, the parties, and the project proponent itself, Nevada Hydro has not yet provided the Commission with a full and complete application that would allow us to assess the economics and need of the proposed project. Because its financial wherewithal to proceed with the project is not readily apparent, we dismiss this application.

Intervenors that have been found eligible for intervenor compensation may file and serve requests for intervenor compensation, which the Commission will consider in due course. Consistent with the requirements of D.11-07-036, we direct Nevada Hydro to honor authorized intervenor compensation requests and to ensure that the reimbursable contracts with the Commission's Energy Division

consultants for environmental review of the project and with DRA for expert consultants are paid in full.

However, we also take this opportunity to confirm that the Commission supports the concept of independent transmission owners and operators. On the one hand, we acknowledge that Nevada Hydro has had multiple opportunities to prepare a complete and sufficient application. On the other hand, there may be savings for ratepayers if competent independent transmission owners receive a CPCN. In this particular case, we set a series of conditions that Nevada Hydro, its principals, or any other proponent of this project (or similar projects) must meet before an application will be accepted for filing at the Commission. We concur with the Joint Intervenors' recommendations that any subsequent application must meet the following requirements:

1. To be considered complete, any application must comply fully with the requirements of the Pub. Util. Code §§ 1001 *et seq.*, General Order 131, the Rules of Practice and Procedure, must fully demonstrate the proposed project's need, and must comply with the detailed requirements to provide a cost control plan, implementation plan, and project management plan;
2. Any subsequent application must ensure that the financial viability of the project is clear and that any financial partner's participation is transparent, as well as the financial viability of the project and proponent's ability to support the project;
3. Any subsequent application must include complete testimony from expert witnesses. Because the application must be complete, parties must be able to rely on the proffered experts and their testimony;
4. Any subsequent application must provide an accurate and stable project description and location and the

Energy Division must not accept the PEA as complete without such a description; and

5. Any subsequent application must explain how the CAISO is currently considering the project and must include a full discussion of how revenue requirements will be calculated and recovered through the TAC, as well as the impact on California ratepayers.

To the extent that the project proponents consider filing a future application, we agree with Joint Intervenors and FRONTLINES that a technical workshop should be convened before any application is filed. The technical workshop should be held in the location of the proposed project. To the extent that a future project of this type is considered, Nevada Hydro (or any subsequent project proponent) is responsible for convening and properly noticing such a workshop, which will be held at Nevada Hydro's expense. Nevada Hydro must also maintain a list of workshop attendees. The technical workshop should focus, at a minimum, on the proposed project description as a stand-alone project, the proposed route, costs, benefits, and modeling assumptions. The workshops must be widely-noticed and held well before any application is submitted to the Commission. Nevada Hydro must supply a thorough description of the workshop and must explicitly demonstrate in any subsequent application how it has considered and incorporated the input from such a workshop. Nevada Hydro must serve any subsequent application on the workshop attendees, as well as on the service list to this proceeding. In addition, Energy Division Staff must review a preliminary application and must agree that the application is complete, pursuant to the requirements of this decision, before applicant files formally. We also require Nevada Hydro to demonstrate that all approved reimbursable contract invoices have been paid in full before a new

application tendered by either Nevada Hydro or its principals will be accepted for filing.

Because we are dismissing this application, all pending motions are dismissed as moot.

**3. Should the Petition to Modify
D.11-07-036 be Granted?**

In D.11-07-036, among other things, we determined that the Nevada Hydro is subject to the mandates of Pub. Util. Code §§ 1801 *et seq.*, whether or not the proposed transmission line is not certificated by this Commission. We reasoned that: “A transmission line proceeding often has many interested parties and intervenors who ‘have a stake’ in the outcome of this matter.

It would have a chilling effect on effective participation, if there is not some guarantee that funding will be available to pay those eligible intervenors who are determined to have made a substantial contribution to this proceeding, whether or not a CPCN is issued to Nevada Hydro. In addition, this approach treats all applicants for a transmission CPCN similarly; to hold otherwise would be to impose more stringent requirements on utility CPCN applicants than on non-utility applicants without any justification for this differential treatment.”⁴

We concluded that the costs of providing a performance or surety bond and entering into a progressive invoicing and reimbursable contract arrangement with DRA are reasonable costs of doing business for an entity proposing to be certified as a public utility and proposing to build a project now estimated to cost

⁴ D.11-07-036, Conclusion of Law 8 at 18.

\$684 million⁵ and therefore ordered Nevada Hydro to post a surety or performance bond with a face value of \$550,000, or approximately 1.5 times the budgets estimated by the three eligible intervenor groups in this proceeding. The bond requirement is to remain in effect until the proceeding is completed and Nevada Hydro has compensated all intervenors that the Commission determines have made a substantial contribution to the proceeding. While there is a fund within the Commission's budget to pay intervenors in broad policy rulemakings where there are either numerous or unnamed respondents, this proceeding does not meet the requirements for paying intervenors from this fund.⁶

Nevada Hydro was ordered to post the bond within 30 days of the effective date of D.11-07-036. Ordering Paragraph 5 stated that the application would be dismissed if Nevada Hydro did not comply with these requirements. Pursuant to Rule 16.6, On August 22, 2011, Nevada Hydro requested an extension of time from the Executive Director to comply with these requirements. On August 25, 2011, the Executive Director granted a 60-day extension and required Nevada Hydro to provide the appropriate bond by October 28, 2011. On October 28, 2011, Nevada Hydro filed a motion for acceptance of a bond and cashiers check made payable to the California Public

⁵ November 30, 2010 Testimony of Nevada Hydro Witness Drzemiecki, Exhibit 2 indicating Gross Plant Beginning of Year. Gross plant includes costs associated with construction of physical plant, acquisition of rights-of-ways and easements, and financing costs during the construction period.

⁶ D.00-01-020 established a fund within the Commission's budget for intervenor awards in quasi-legislative proceedings in which there are either numerous respondents or respondents are not named.

Utilities Commission. In its motion, Nevada Hydro acknowledged its confusion regarding the intervenor compensation program and who was responsible for paying the intervenors. On November 9, 2011, as directed by the assigned ALJ, Nevada Hydro filed a petition for modification of D.11-07-036 to request that a letter of credit with cash backing be accepted in lieu of the bond. FRONTLINES and Joint Intervenors filed timely responses to the petition.

Nevada Hydro states that it understands that it is subject to the laws of the State and the Rules of Practice and Procedure, and further acknowledges its responsibility to pay intervenor compensation ultimately awarded by the Commission. Nevada Hydro contends that because the Commission did not specify the “form, language, beneficiary, conditions precedent to performance, creditworthiness of the surety, or other legal elements” of the bond, it believes the alternative proposed approach should be acceptable.⁷ Nevada Hydro further understands that a letter of credit is not a form of guarantee under California law, but explains that it has set aside \$550,000 in cash that is on deposit with Wells Fargo to compensate intervenors. Nevada Hydro further contends that this arrangement may be more conducive to intervenor funding because the funds will be readily available and will not require the extensive paper trail that a surety or performance bond would require.

Joint Intervenors urge the Commission to reject the Petition for Modification because the intervenor compensation program requires a well-defined and well-functioning guarantee of payment, particularly if (as is the case here) the application is denied or dismissed, the CPCN is not issued, and

⁷ Petition to Modify D.11-07-036 at 2.

Nevada Hydro does not become a public utility. The parties argue that a letter of credit and the revocable funds on deposit do not provide the necessary guarantee that funds will be in place to compensate intervenors. In addition, these intervenors explain that the letter of credit contain both cancellation and expiration clauses that are inapposite to the requirements of Ordering Paragraph 2 of D.11-07-036. FRONTLINES agrees with the Joint Intervenors, stating that the Letter of Credit as structured is inadequate to guarantee payment and secure intervenor compensation funds.

We agree with the intervenors: as structured, the Letter of Credit proffered by Nevada Hydro and the funds placed on deposit by Rex Waite are not a sufficient substitute for the guarantees intended to be in place by a performance or surety bond. As FRONTLINES points out, a bond cannot be arbitrarily or unilaterally cancelled by Nevada Hydro or Mr. Waite, is secured by a reliable funding source, and must clearly designate that payments must be made to eligible intervenors if Nevada Hydro defaults on its intervenor compensation obligations. Therefore, we deny Nevada Hydro's Petition to Modify D.11-07-036 and require Nevada Hydro to post the requisite bond within 15 days of the effective date of this decision. No time extensions will be granted. We urge Nevada Hydro to work with appropriate outside counsel to ensure that the bond is issued expeditiously. While the bonding requirements will serve to protect the interests of the intervenors, we expect Nevada Hydro to promptly pay all approved intervenor compensation claims. Nevada Hydro must demonstrate that such payments have been made within 30 days of our decisions authorizing such payments and must include any interest payments so ordered. To the extent that payments have not been made when a new application is filed,

Nevada Hydro must include a status report on the payment of any pending claims.

4. Categorization and Need for Hearings

In Resolution ALJ 176-3257 dated July 8, 2010, the Commission preliminary categorized this application as Ratesetting, and preliminary determined that hearings were necessary. Because we dismiss the application based on procedural deficiencies, no hearings are required. The hearings determination is changed to state that no evidentiary hearings are necessary.

5. Comments on Proposed Decision

The proposed decision of ALJ Minkin in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Nevada Hydro, SCE, EVMWD, and FRONTLINES filed timely opening comments. SCE and FRONTLINES filed timely reply comments. We have considered the factual, technical, and legal concerns delineated in the comments and have made changes, as appropriate, in the decision. We have given little weight to comments that merely reiterate or reargue positions

As SCE suggests, we have clarified that we are referring to "independent" transmission owners in this decision.

Nevada Hydro contends that the decision is in error because we require CAISO approval of the project "or efforts to obtain same as a precondition to a CPCN application."⁸ Both SCE and FRONTLINES state that Nevada Hydro has mischaracterized the Large Generator Interconnection Procedure at the CAISO, among other concerns. As stated above, Nevada Hydro must explain how the

CAISO is considering the project and must further demonstrate how it will recover costs and the impact of those costs on California ratepayers. This is a reasonable requirement.

Nevada Hydro disputes the need for a technical conference as a pre-condition to filing a new application. We do not need to have an open proceeding here for Nevada Hydro to convene such a workshop. Indeed, such efforts could help to both resolve technical issues prior to an application being filed and could lead to a more efficient, less contentious proceeding. While this proceeding will be closed, the service list remains accessible on our web site.

We decline to add additional requirements to the workshop process, as FRONTLINES suggests. Parties have the ability to ask specific questions of Nevada Hydro at the workshops. While FRONTLINES suggests that Nevada Hydro should provide a 45-day notice period for the workshops, we note that Rule 13.1(a) of our Rules of Practice and Procedure require proper notice of hearings to be provided “not less than 10 days before the date of hearing.” We urge Nevada Hydro to provide as much notice as possible, since such actions will recognize community values and concerns, but we will not impose further requirements.

Nevada Hydro also contends that requiring the payment of authorized intervenor compensation claims before the Commission accepts a new application will unfairly delay any new application. As discussed above, we expect Nevada hydro to honor all commitments, including prompt payment of approved intervenor compensation claims. Approved claims must be paid

⁸ Nevada Hydro Comments to Proposed Decision at 7.

within 30 days of our orders authorizing such payment and must include any interest payments so ordered. To the extent that claims are outstanding, Nevada Hydro must file a status report in the new docket. All reimbursable contract invoices must be paid on a timely basis and must be paid in full before a new application will be accepted for filing.

6. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

Findings of Fact

1. Nevada Hydro previously filed A.07-10-005 and A.09-02-012 seeking a CPCN for the TE/VS 500 kV Interconnect Project.
2. By D.09-04-006, we dismissed A.07-10-005 and A.09-02-012 without prejudice, because Nevada Hydro failed to prepare a complete PEA, as required by CEQA.
3. Without assessing the contentions and representations regarding Nevada Hydro's failure to pay certain obligations, we conclude that A.10-07-001 is procedurally deficient and should be dismissed.
4. The Commission cannot afford to squander its resources on applications that, despite more than 18 months of work, remain vague and speculative as to financing and indeed the project itself.
5. It makes little sense to stay this proceeding while Nevada Hydro seeks expert witnesses to prepare testimony that is critical to the consideration of whether this project is viable, feasible, economic, and whether there is a need for the project.
6. Nevada Hydro has had ample opportunity in A.10-07-001 and in previous applications to develop its project description and financing plan appropriately

and to confirm that it can present its case-in-chief, which includes with specificity how it will interconnect with both SDG&E's and SCE's systems, and that the CAISO will accept control as the grid operator; however, none of these actions have occurred.

7. We support the concept of independent transmission owners and operators, which may provide savings for ratepayers if competent independent transmission owners receive a CPCN.

8. It is reasonable to impose a series of conditions that Nevada Hydro, its principals, or subsequent project proponents must meet before an application for this or any similar project will be accepted for formal filing by the Commission.

9. The Letter of Credit and Cash Deposit approach proposed by Nevada Hydro in its Petition for Modification filed on November 9, 2011 does not provide the requisite guarantee of intervenor compensation funding ordered in D.11-07-036.

Conclusions of Law

1. Application 10-07-001 should be dismissed without prejudice.
2. Nevada Hydro, its principals, or subsequent project proponents should be required to comply with a series of conditions in order to have any subsequent application accepted for filing by this Commission:
 - a. To be considered complete, any application must comply fully with the requirements of the Pub. Util. Code §§ 1001 *et seq.*, General Order 131, the Rules of Practice and Procedure, must fully demonstrate the proposed project's need, and must comply with the detailed requirements to provide a cost control plan, implementation plan, and project management plan;
 - b. Any subsequent application must ensure that the financial viability of the project is clear and that any financial partner's participation is transparent, as well as the

- financial viability of the project and proponent's ability to support the project;
- c. Any subsequent application must include complete testimony from expert witnesses. Because the application must be complete, parties must be able to rely on the proffered experts and their testimony;
 - d. Any subsequent application must provide an accurate and stable project description and location and the Energy Division must not accept the PEA as complete without such a description;
 - e. Any subsequent application must explain how the CAISO is currently considering the project and include a full discussion of how revenue requirements will be calculated and recovered through the Transmission Access Charge, as well as the impact on California ratepayers;
 - f. To the extent that the project proponents (or subsequent proponents) consider filing a future application for a similar project, the project proponents shall convene a technical workshop before any application is filed at this Commission. The technical workshop must be held in the location of the proposed project;
 - g. To the extent that a future project of this type is considered, Nevada Hydro (or any subsequent project proponent) is responsible for convening and properly noticing such a workshop, which will be held at Nevada Hydro's expense. The technical workshop must focus, at a minimum, on the proposed project description, route, costs, benefits, and modeling assumptions. The workshops must be widely-noticed and held well before any application is submitted to the Commission. Nevada Hydro must maintain a list of workshop attendees;
 - h. Nevada Hydro (or subsequent project proponent) must supply a thorough description of the workshop and must explicitly demonstrate in any subsequent application how it has considered and incorporated the input from such a workshop. Nevada Hydro must serve any subsequent

- application on workshop attendees, among others, as well as on the service list to this proceeding;
- i. Prior to any subsequent application being formally filed, Energy Division Staff must review any preliminary application and agree that the application is complete, pursuant to the requirements of this decision; and
 - j. No subsequent application may be filed until Nevada Hydro demonstrates that it has paid in full all approved reimbursable contract invoices.
3. The Petition to Modify D.11-07-036, filed by Nevada Hydro on November 9, 2011, should be denied.
4. Nevada Hydro should be required to comply with Ordering Paragraph 2 of D.11-07-036 and should be required to post the required performance or surety bond within 15 days of the effective date of this decision.
5. As we determined in D.11-07-036, it is reasonable to require Nevada Hydro to provide a performance or surety bond in the amount of \$550,000 and to require the bond to remain in effect until Nevada Hydro has fully compensated all intervenors that the Commission determines have made a substantial contribution to this matter.
6. It is reasonable to require prompt payment to eligible intervenors that the Commission has determined have made a substantial contribution to this proceeding.
7. It is reasonable to require Nevada Hydro or its principals to demonstrate that all approved intervenor compensation claims have been paid in full within 30 days of our orders so authorizing, including any authorized interest payments. It is reasonable to require Nevada Hydro to file a status report on pending claims in the new docket.

8. Because the application is dismissed, all pending motion should be dismissed as moot.

9. This proceeding should be closed, although Nevada Hydro should be ordered to post the requisite bond, to honor all intervenor compensation claims awarded by the Commission, and to ensure that the reimbursable contracts with the Commission's Energy Division consultants for environmental review of the project and with DRA for expert consultants are paid in full.

10. Hearings are not necessary.

11. This decision should be effective today.

O R D E R

IT IS ORDERED that:

1. Application 10-07-001 is dismissed without prejudice. To the extent that The Nevada Hydro Company (Nevada Hydro), its principals, or subsequent project proponent chooses to pursue the proposed Talega-Escondido/Valley-Serrano Transmission Line Interconnect or other similar project, the project proponent must comply with the following explicit requirements:

- a. To be considered complete, any subsequent application must comply fully with the requirements of the Pub. Util. Code §§ 1001 *et seq.*, General Order 131, and the Rules of Practice and Procedure, must fully demonstrate the proposed project's need, and must comply with the detailed requirements to provide a cost control plan, implementation plan, and project management plan;
- b. Any subsequent application must ensure that the financial viability of the project is clear and that any financial partner's participation is transparent, as well as the financial viability of the project and proponent's ability to support the project;

- c. Any subsequent application must include complete testimony from expert witnesses. Because the application must be complete, parties must be able to rely on the proffered experts and their testimony;
- d. Any subsequent application must provide an accurate and stable project description and location and the Energy Division must not accept the Proponent's Environmental Assessment as complete without such a description;
- e. Any subsequent application must include a discussion of the California Independent System Operator's current consideration of the project and include a full discussion of how revenue requirements will be calculated and recovered through the Transmission Access Charge, as well as the impact on California ratepayers;
- f. To the extent that the project proponents (or subsequent proponents) consider filing a future application for a similar project, the project proponents shall convene a technical workshop, before any application is filed at this Commission. The technical workshop must be held in the location of the proposed project;
- g. To the extent that a future project of this type is considered, Nevada Hydro (or any subsequent project proponent) is responsible for convening and properly noticing such a workshop, which will be held at Nevada Hydro's expense. The technical workshop must focus, at a minimum, on the proposed project description as a stand-alone project, the proposed route, costs, benefits, and modeling assumptions,. The workshop must be widely-noticed and held well before any subsequent application is filed at the Commission. Project proponents must maintain a list of workshop attendees;
- h. Nevada Hydro (or subsequent project proponent) must supply a thorough description of the workshop and must explicitly demonstrate in any subsequent application how it has considered and incorporated the input from such a workshop. Project proponents must serve any subsequent

- application on workshop attendees, among others, as well as on the service list to this proceeding;
- i. Energy Division Staff must review any preliminary application and must agree that the application is complete, pursuant to the requirements of this decision. Nevada Hydro (or subsequent project proponents) must include a letter from the Director of the Energy Division that states the application is complete as an attachment to any subsequent application tendered for formal filing;
 - j. Prior to a subsequent application being accepted for filing, Nevada Hydro must demonstrate that it has paid in full all reimbursable contract invoices approved by the Energy Division and the Division of Ratepayer Advocates. Nevada Hydro shall include a declaration that all such approved invoices have been paid; and
 - k. When a new application is filed, Nevada Hydro (or subsequent project proponents) must demonstrate that all authorized intervenor compensation claims have been paid within 30 days of our authorizing decisions, and that such payments include such interest payments as are authorized in those decisions, or Nevada Hydro must file a status report on any pending claims in the new docket.
2. The Nevada Hydro Company's Petition to Modify Decision (D.) 11-07-036 is denied. Consistent with D.11-07-036 and Ordering Paragraph 2, The Nevada Hydro Company shall provide a surety or performance bond in the amount of \$550,000 that shall remain in effect until it has fully compensated all eligible intervenors determined to have made a substantial contribution to this proceeding.
3. No later than 15 days after the effective date of this proceeding, The Nevada Hydro Company shall file and serve proof of the bond in this proceeding.

4. This proceeding is closed. Consistent with the requirements of Decision 11-07-036, the Nevada Hydro Company must post the bond as directed in Ordering Paragraphs 2 and 3, must honor authorized intervenor compensation requests and must ensure that the reimbursable contracts with the Commission's Energy Division consultants for environmental review of the project and with the Division of Ratepayer Advocates for expert consultants are paid in full.

5. The hearing determination is changed to no hearings necessary.

6. Application 10-07-001 is closed.

This order is effective today.

Dated May 24, 2012, at San Francisco, California.

MICHAEL R. PEEVEY
President
TIMOTHY ALAN SIMON
MICHEL PETER FLORIO
CATHERINE J.K. SANDOVAL
MARK J. FERRON
Commissioners

ATTACHMENT B

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

The Nevada Hydro Company, Inc.

Docket No. P-14227-000

**MOTION TO INTERVENE AND COMMENTS OF
THE ELSINORE VALLEY MUNICIPAL WATER DISTRICT**

Pursuant to Rules 212 and 214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedure, 18 C.F.R. Sections 385.212 and 385.214 (2009), and FERC's Notice of Preliminary Permit Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications, dated November 29, 2011, the Elsinore Valley Municipal Water District (District) hereby moves to intervene and submit comments in the above-captioned docket, initiated by The Nevada Hydro Company, Inc. (Nevada Hydro) on July 14, 2011 to apply for an original license to construct and operate the proposed 500-megawatt (MW) Lake Elsinore Advanced Pumped Storage Project (LEAPS Project).

In support of this motion, the District states as follows:

I. Background

The Elsinore Valley Municipal Water District is a political subdivision of the State of California, organized and existing under the Municipal Water District Act of 1911 (Cal. Water Code, § 71000 et. seq.). Under California Water Code Section 71662, as a municipal water district, the District is authorized to utilize its water, facilities and property to provide, generate and deliver hydroelectric power.

The District's interest and past involvement in the LEAPS Project stemmed from its commitment to pursuing hydropower generation and ancillary transmission for the benefit of

Lake Elsinore and the District's rate payers. Following some initial efforts by the District to obtain a FERC permit, the District submitted a permit application on November 1, 1994 (FERC Docket No. p-11504), and a preliminary permit issued in 1995. In 1997, Nevada Hydro and the District entered into a Development Agreement based upon that same project.

A. The Status of the 1997 Development Agreement

In the 1990's, the District formed a relationship with Nevada Hydro to assist the District with financing and permitting the Project. The District and Nevada Hydro entered into a Development Agreement on May 15, 1997 for the "LEAPS Project." (1997 Development Agreement, attached as Ex. A.) In addition to conceptualizing the LEAPS Project, the Development Agreement defined the parties' responsibilities and offered assurances relative to their roles in developing the Project.

Under the Agreement, Nevada Hydro agreed to obtain all federal, state and local entitlements required for the Project, and to provide the necessary funding for the costs of applying for, processing, and obtaining all entitlements. (See Ex. A at ¶¶ 1.1, 1.2, 1.4.) Nevada Hydro also agreed to reimburse the District for Project-related expenditures and represented that it had sufficient resources to obtain the FERC license, and could obtain additional equity and resources to finance the construction of the Project. (See Ex. A at ¶¶ 3.1, 3.2, 3.3, 6.7.)

In the District's view, Nevada Hydro did not fulfill its contractual obligations. As a result, the District notified Nevada Hydro in a letter dated July 18, 2011 that it was terminating the Development Agreement. (See Termination Letter, attached as Ex. B.) Nevada Hydro's recent filing with FERC confirms the District's termination and states that:

By letter dated July 18, 2011, the [District] notified [Nevada Hydro] that it was terminating the agreement under which the two parties were acting as co-

applicants for the license application in P-11858. As a result, [Nevada Hydro] is pursuing licensing for the project in this docket [P-14227] without the [District].”

(Nevada Hydro’s Pre-Application Document in Proceeding No. P-14227 at § 1.1 [submitted January 26, 2012, accession document number 20120126-5028].) Despite this statement to FERC, Nevada Hydro’s representatives then attended a meeting of the District’s Board of Directors on the same day (January 26th) and publicly stated that Nevada Hydro viewed the Agreement as remaining applicable to the District. These contradictory representations are yet another reason that the District has been compelled to submit these comments and seek intervention in the pending proceeding.

Beyond these conflicting representations regarding the Agreement, the District believes that, among other impermissible actions, Nevada Hydro (1) split the Project to focus on a stand-alone transmission line (the Talega-Escondido/Valley-Serrano (TE/VS) Interconnect) instead of the Project’s pumped storage facility, and (2) failed to pay all Project-related fees as required by the 1997 Development Agreement.

The District’s views regarding the stand-alone nature of the TE/VS Interconnect have been previously addressed before FERC, and so need not be repeated at length here. (See Elsinore Valley Municipal Water District’s Letter Responding to FERC’s Request to Show Cause, Project No. 11858, December 1, 2009, attached as Ex. C; Elsinore Valley Municipal Water District’s Answer to Pleading of the Nevada Hydro Company, Project No. 11858, January 26, 2010, attached as Exhibit D.) Ultimately, FERC noted in its Dismissal Order concerning the prior application for the LEAPS Project (FERC Docket Number p-11858) that Nevada Hydro’s actions regarding the TE/VS Interconnect demonstrate that Nevada Hydro is only interested in the stand-alone TE/VS Interconnect. (Order Dismissing License Application, July 12, 2011,

Project No. 11858-002 (“Dismissal Order”) at p. 3.)

The District’s views regarding the payment of Project-related fees involves, among other issues, Section 3833 of Title 23 of the California Code of Regulations. Section 3833 authorizes the State Water Resources Control Board to collect a fee from those who apply to the State Water Board for a 401 Certification. On January 21, 2009, Nevada Hydro and the District filed the most recent joint application for 401 Certification with the State Water Board for the LEAPS Project. However, following several years during which Nevada Hydro submitted and withdrew its application for a 401 Certification for the LEAPS Project, the State Water Board dismissed the application on October 1, 2009 without prejudice. On November 2, 2009, Nevada Hydro sought reconsideration of the State Water Board’s denial order, which was likewise denied on March 1, 2011.¹ Fees for the 2010-2011 fiscal year were then assessed by the State Water Board, which were contested by Nevada Hydro via letter to the State Water Board. Ultimately – and despite the 1997 Development Agreement’s requirement that Nevada Hydro pay Project-related fees (see Ex. A at ¶ 1.40) – Nevada Hydro neither paid the fees nor obtained resolution through the administrative appeals process regarding whether the fees were properly assessed by the State Water Board. As a result, the California State Board of Equalization pursued payment of the fees directly from the District, on grounds that the District was one of the original co-applicants to the 401 Certification application. Following the threat of a collection proceeding against the District, and in an effort to shield its rate payers from still additional penalties, fines, and costs, the District tendered a check to the California State Board of Equalization in the

¹ Following the denial of its Petition for Reconsideration, Nevada Hydro filed a lawsuit in state court against the State Water Board, seeking a writ of mandate directing the State Water Board to set aside and vacate its order. Although Nevada Hydro filed the lawsuit without informing or even discussing the matter with the District, the District was nonetheless named as a real party in interest to the litigation and incurred subsequent legal fees related to its involvement in the lawsuit. The suit was recently dismissed by Nevada Hydro, and the State of California subsequently entered a creditor judgment against Nevada Hydro for \$8,916.32 of costs incurred by the State during the pendency of the lawsuit. To the District’s knowledge, this debt remains outstanding as of the date of this filing.

amount due (\$131,294.98) on August 17, 2011. As of the date of this filing, Nevada Hydro has not resolved this outstanding debt with the District.

B. The Immediately Prior FERC Proceeding (P-11858)

As FERC is aware, Nevada Hydro's instant application before FERC (FERC Docket No. p-14227), is not the first application for the Project that has been filed. Indeed, some iteration of the Project has been pending before FERC for nearly twenty years.

As FERC is also aware, the immediately previous FERC application for the LEAPS Project (FERC Docket No. p-11858) was only recently dismissed. In a letter dated May 6, 2011 and in view of many years of apparent inaction by Nevada Hydro, FERC staff asked the District and Nevada Hydro (as co-applicants for the license application) to provide information demonstrating why the application before FERC (No. p-11858) should not be dismissed. Following the submission of separate responses by Nevada Hydro and the District, FERC dismissed the application in an order dated July 12, 2011. (See Dismissal Order, Docket No. p-11858.) Thereafter, on July 14, 2011, Nevada Hydro filed the instant application (No. p-14227) for a preliminary permit for the Project.

II. Comments of the Elsinore Valley Municipal Water District

In view of the above history and background, the District submits the following initial comments as to Nevada Hydro's application.

1. The District is not a co-applicant with Nevada Hydro as to the instant application. Given its past involvement with the Project, the District must make it clear to the

public and all other interested parties that it was not consulted by Nevada Hydro with regard to the instant application and is neither a co-applicant nor a Project sponsor.

2. To clarify conflicting representations made by Nevada Hydro, the District must make clear that it no longer has a contractual relationship with The Nevada Hydro Company. Any contractual relationship that the District had with Nevada Hydro has been formally terminated, and the District has no obligations to provide services or resources in support of the LEAPS Project as currently envisioned by Nevada Hydro.

3. Because Nevada Hydro proposes to use Lake Elsinore as a lower basin for pumped storage operations, the District must make clear that Nevada Hydro does not own the rights to the waters of Lake Elsinore. Instead, the District owns the water rights to Lake Elsinore pursuant to a grant deed from the State of California. (Grant Deed, attached as Ex. E.) Should it wish to entertain Nevada Hydro's application, the District believes FERC should first address the threshold issue of whether Nevada Hydro has – or can obtain – water rights sufficient to operate the hydroelectric facility.

4. Similarly, Nevada Hydro proposes to build the Project on or affecting lands that are currently held by public agencies (including, but not limited to, the District and the City of Lake Elsinore) and the State of California. This property is currently being put to public use, and has been for decades. These uses include water quality management, water treatment, water transfer, lake management and recreational facilities, as well as public rights-of-way. The effect that the Project will have on these established uses, and how the public agencies are to continue carrying out their public services if the Project is implemented, have yet to be clarified.

The District believes that this, too, is a threshold issue that must be resolved if FERC wishes to entertain Nevada Hydro's application.

5. It is unclear how Nevada Hydro intends to fund the construction of this Project in its entirety. Based on the limited examples above, it is not clear whether Nevada Hydro has sufficient capital to finance a Project of this magnitude. If FERC is to entertain this application, the District believes that FERC should first confirm that Nevada Hydro can finance the construction and operation of the entire Project. If, for example, Nevada Hydro were to begin the LEAPS Project and thereafter become unable to adequately fund the completion of construction and operation of the Project, severe adverse environmental impacts would result as the partially constructed Project sat idly by for an indefinite period of time.

6. Finally, and consistent with the conclusions set forth in FERC's Dismissal Order regarding the previous FERC proceeding (FERC Docket Number p-11858), Nevada Hydro appears to be pursuing the construction of a stand-alone transmission interconnect, which could have only a tangential connection to the pumped storage facility. The District assumes that any hydropower license issued in connection with Nevada Hydro's application would be of a limited scope insofar as it would authorize a primary transmission line, but not the entire Interconnect. Such a limited scope seems most consistent with FERC's authority to license "transmission lines, or other project works necessary or convenient" for the direct utilization of hydropower (16 U.S.C. § 797(e); see also discussion in Dismissal Order at pp. 3, 4.)

III. Motion for Intervention

Due to the above-expressed concerns, due to the inconsistent representations made by Nevada Hydro regarding the (now terminated) contractual relationship between the District and

Nevada Hydro, due to the District's ownership of both facilities and property that may be affected by the Project, and due to the District's status as the holder of the water rights in Lake Elsinore, the District has a substantial interest in the outcome of this proceeding. Accordingly, the District moves for intervention in this proceeding and respectfully requests Party status.

IV. Communications

All communications, notices, pleadings, orders and other documents related to this proceeding should be addressed to the following individuals:

Elsinore Valley Municipal Water District
Attn: Ronald E. Young, General Manager
31315 Chaney Street
Lake Elsinore, CA 92530-2743
Phone: (951) 674-3146
Email: RYoung@EVMWD.net

John Brown, General Counsel
Best Best & Krieger LLP
3500 Porsche Way, Suite 200
Ontario, CA 91764
Phone: (909) 483-6640
Email: john.brown@bbklaw.com

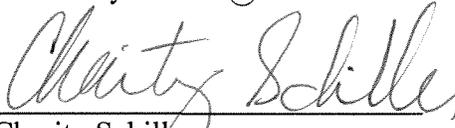
Charity Schiller
Best Best & Krieger LLP
3750 University Ave, Suite 400
Riverside, CA 92501
Phone: (951) 826-8223
Email: charity.schiller@bbklaw.com

V. Conclusion

For the reasons stated above, the District respectfully requests that the Commission accept the District's comments and grant the District's motion to intervene in this proceeding.

Respectfully submitted on behalf of the ELSINORE
VALLEY MUNICIPAL WATER DISTRICT,

BEST BEST & KRIEGER LLP
Charity Schiller
3750 University Avenue, Suite 400
Riverside, CA 92501
Phone: (951) 826-8223
Email: charity.schiller@bbklaw.com

By: 
Charity Schiller

Dated: January 30, 2012

CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have this day served a copy of the foregoing on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C. this 1st day of June 2012.

/s/George H. Williams, Jr.
George H. Williams, Jr.
Bracewell & Giuliani LLP
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motions to intervene and competing applications.³ Accordingly, SDG&E hereby moves to intervene and submit the accompanying comments, below.

II. CORRESPONDENCE

All notices, orders, correspondence, and other communications related to this proceeding should be directed to the following individuals:

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III. MOTION TO INTERVENE

SDG&E is a California corporation with its principal place of business at 8330 Century Park Court, San Diego, California. SDG&E is engaged in the transmission, distribution, and sale of electricity under the jurisdiction of the Federal Energy Regulatory Commission and the California Public Utilities Commission. SDG&E distributes electricity at retail to some 1.4 million customers in San Diego and Orange Counties, California. SDG&E is a participating transmission owner that has transferred operational control of its transmission system to the California Independent System Operator. SDG&E has a substantial interest in this proceeding as the LEAPS Project, as proposed, inclusive of the proposed TE/VS Interconnect, would interconnect with SDG&E's transmission facilities. SDG&E's interest cannot be adequately represented by other parties to this proceeding.

³ See Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications, dated November 29, 2011, docket no. P-14227.

IV. COMMENTS

In July 2004, Nevada Hydro filed with its co-applicant, the Elsinore Valley Municipal Water District (“District”), an application for the LEAPS project. This application, docketed by the Commission as P-11858, was dismissed by Order of the Commission’s Director, Office of Energy Projects on July 12, 2011. Following a request for rehearing by Nevada Hydro, the Commission denied rehearing of P-11858 in an Order dated November 17, 2011 (the “Rehearing Order”), which contains an extensive discussion both of the seven-year history of P-11858 and the Commission’s basis for dismissing P-11858. The Rehearing Order noted, but left unresolved, many areas of disagreement between Nevada Hydro and the District, including the issue as to whether the proposed TE/VS Interconnect would be considered a primary line, a facility which the Commission has authority to license, or a “stand-alone” transmission line, which this Commission does not have authority to license.⁴

As noted above, shortly after the July 12, 2011 Order dismissing P-11858, Nevada Hydro filed on July 18, 2011 an application “identical” to the application that was later dismissed by the Rehearing Order, except that the District was no longer a co-applicant.⁵ Because eight years have now passed since Nevada Hydro’s initial 2004 filing, and approximately five years have passed since the issuance of the Final Environmental Impact Statement, which was based at least in part on preceding factual representations by the applicant, SDG&E queries whether the now-pending application may be outdated precisely because it is “identical” to and not updated in all relevant respects from the prior application, docketed and later dismissed in P-11858. In its Rehearing Order, the Commission stated that

⁴ See Rehearing Order at Paragraph 5.

⁵ As Nevada Hydro states in its July 18, 2011 filing in this proceeding (at page 1), “[t]he project proposed herein is identical to that described in the Commission’s Final Environmental Impact Statement, issued under P-11858 in 2007.”

“[i]t may be possible to use in any future licensing proceeding those portions of the record that have been developed in these proceedings *which remain up to date.*”⁶ As a preliminary matter, Nevada Hydro should be required to verify that all factual representations on which the 2007 Final Environmental Impact Statement were based are still current, complete and accurate as are all other aspects of its now-pending application and further representations.⁷ It is reasonable to require an applicant re-filing an “identical,” eight-year old application to assure the Commission and affected parties that its representations “remain up to date.”

As an example of SDG&E’s concern, Nevada Hydro represents that:

The proposed Case Springs 500 kV to 230 kV gas-insulated substation (GIS), located near MP 31.5, serves as the southern interconnection of the TE/VS Interconnection to the SDG&E system. The Substation (500 kV, 230 kV, and 13.8 kV station power) will be located adjacent to the ROW of SDG&E’s existing 230 kV transmission lines within land owned by the Fallbrook Land Conservancy.⁸

SDG&E is aware, however, that as of April 28, 2011, the Fallbrook Land Conservancy has indicated that its board withdrew the Fallbrook Land Conservancy Land as a potential site for Case Springs substation.⁹ Thus, there is uncertainty regarding the location of the Case Springs substation and the portion of the 500 kV line purportedly on Fallbrook Land Conservancy land which would connect to that substation, as proposed in P-14227. The Case Springs substation is the connection point with SDG&E’s existing transmission facilities.¹⁰

⁶ Rehearing Order at n.19, emphases added.

⁷ SDG&E has noted that, on January 26, 2011, Nevada Hydro filed an extensive “Pre- Application Document” (hereafter “Pre-Application Document”). As of this filing date, SDG&E has not had sufficient time to review and fully consider.

⁸ Nevada Hydro Pre-Application Document at 31.

⁹ Nevada Hydro December 16, 2011 Comments on Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application, Attachment 7.

¹⁰ SDG&E observes that many of the photos contained in Nevada Hydro’s Pre-Application Document are dated 2003 and 2008; the proposed location of the southern terminus of the TE/VS Interconnect continue to reference the dismissed Fallbrook Land Conservancy site and remains unclear.

At bottom, Nevada Hydro needs to confirm that its application and representations in P-14227, and the factual basis of the Final Environmental Impact Statement, are up to date, complete and accurate.

Second, SDG&E notes that Nevada Hydro has filed an application with the California Public Utilities Commission (“CPUC”) for approval of a certificate of public convenience and necessity (“CPCN”) for the proposed TE/VS line.¹¹ Presumably, from the CPUC’s perspective, Nevada Hydro is seeking approval of the TE/VS Interconnect as a “stand alone” line, not a “primary” line that would only transmit power from the proposed LEAPS Project and not from other sources of power. However, the contents of Nevada Hydro’s 2011 application at the FERC would suggest that Nevada Hydro is, at the same time, seeking FERC’s approval of TE/VS as a “primary” line. The FERC needs to make an explicit determination of whether TE/VS is a “primary” line and therefore jurisdictional to the FERC under federal hydro licensing law, or a “stand alone” line in which case FERC would not have jurisdiction.

Before the Commission and parties expend further resources in this proceeding, SDG&E recommends that FERC direct Nevada Hydro to verify that its application and other filings in P-14227 are up to date, complete, and accurate. SDG&E recommends that the FERC confirm that Nevada Hydro has identified, with specificity sufficient for environmental and technical analysis, the location of the Case Springs substation. Given the Fallbrook Land Conservancy board’s decision to “withdraw” its land as a potential site for the Case Springs substation, SDG&E recommends that the FERC make an explicit finding as to whether Nevada Hydro’s proposed location for the Case Springs substation is certain enough to justify

¹¹ See CPUC Proceeding A.10-07-001.

the expenditure of further resources in this proceeding. Finally, the FERC must determine at the outset of this proceeding whether it has jurisdiction under federal hydro licensing law over some or all of the proposed 500 kV facilities, the substations at the northern and southern ends of the 500 kV line and related transmission upgrades in the Talega-Escondido transmission corridor. .

V. CONCLUSION

For the reasons set forth herein, SDG&E respectfully moves to intervene in this proceeding and requests that it be accorded all rights as a full party to such proceeding.

Respectfully submitted,

/s/ Paul A. Szymanski

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January 27, 2012

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.
Dated at San Diego, California, this 27th day of January, 2012.

 /s/ Jenny Norin
Jenny Norin
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