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June 3, 2011

Jeff C. Wright
Director, Office of Energy Projects
Federal Regulatory Energy Commission
888 First Street, NE
Washington, DC 20426

Re: The Elsinore Valley Municipal Water District's Response to FERC's May 6, 2011 Letter Requesting Just Cause for the LEAPS License Application (Project No. 11858)

Dear Mr. Wright:

The Board of Directors of the Elsinore Valley Municipal Water District ("District") has asked me to submit this response to the Federal Energy Regulatory Commission ("FERC") Office of Energy Projects' May 6, 2011 letter, wherein FERC staff requests that the District and The Nevada Hydro Company, Inc. ("TNHC") provide an explanation as to why FERC should not dismiss the license application for the Lake Elsinore Advanced Pumped Storage ("LEAPS") Project (herein "Staff's May 6 Letter"). The District submits this letter solely on its own behalf in order to clarify its own views, and the District understands that TNHC will be responding separately.

I. THE DISTRICT LACKS STATUTORY AUTHORITY TO PURSUE A TRANSMISSION-ONLY PROJECT

The District is a municipal water district organized pursuant to the Municipal Water District Law of 1911. (Cal. Wat. Code, §§ 71000 et seq.) Currently, the District has over 35,000 water, wastewater, and agricultural service connections. Further, as a public agency, the District's powers are limited to those prescribed by law. Pursuant to the California Water Code, the District's powers include, among others, the provision, generation, and delivery of hydroelectric power. (Cal. Wat. Code, § 71662 et seq.) To that end, the District is authorized to construct, maintain, and operate facilities necessary or convenient for the provision, generation, and delivery of hydroelectric power. Projects that involve the transmission of electricity independent of hydropower facilities, such as free-standing transmission lines, do not clearly fall within the District's statutory authority.

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The LEAPS Project, as originally contemplated by the District and TNHC – and as memorialized in a Development Agreement executed by both parties in 1997 – called for the construction of a hydropower facility and an attendant transmission line. (See 1997 Development Agreement [referencing FERC License Application No. 11504].) Since the proposed Project’s infancy, the District’s involvement has always been predicated upon a hydroelectric facility. In 2004, the District and TNHC, as co-applicants, submitted with FERC a new license application for the LEAPS Project (FERC License Application Project No. 11858). The LEAPS Project consisted of the hydropower facility and ancillary transmission.

Over the last several years, TNHC, acting on its own accord, has stated to several permitting agencies on the public record that the LEAPS project should be treated as two separate projects (a hydroelectric project and a stand-alone transmission line). TNHC has applied in its own name seeking authorization for stand-alone transmission with the California Public Utilities Commission (“CPUC”), apparently to the exclusion of its previously active pursuit of the LEAPS application in P-11858. From the District’s perspective, TNHC’s pursuit of a stand-alone transmission project is consistent with neither the District’s historical position nor with its current statutory authority.

As it relates to FERC, TNHC has stated that the license application should be viewed as encompassing two projects: (1) a pumped storage facility and (2) a separate stand-alone TE/VS transmission line. (See TNHC’s letter to FERC dated April 24, 2006 commenting on the Draft EIS.) Notwithstanding TNHC’s characterization of the LEAPS Project, FERC appears to have focused on the pumped storage project, consistent with its authority under the Federal Power Act, stating “we consider the LEAPS Project to consist of the co-applicants’ proposal for a pumped storage facility and associated transmission lines.” (See January 2007 Final Environmental Impact Statement, Project No. 11858 at E-83 [emphasis added].)

Staff’s May 6 letter references the District’s December 1, 2009 filing with FERC, requesting an order directing TNHC, “to show how it intends to prosecute the license application within a reasonable time frame” (herein the “Show Cause Request”). As the District explained in its Show Cause Request, there are still two important thresholds to a license that TNHC must overcome: (1) obtaining a state water quality certificate; and (2) demonstrating a plan for diversion of water for the Project. Rather than address those two concerns, TNHC has instead steadfastly pursued stand-alone transmission. Thus, the District’s Show Cause Request was predicated by the same concern, outlined above, that TNHC is pursuing stand-alone transmission, not the LEAPS application.

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**II. THE DISTRICT UNDERSTANDS THAT THE RECEIPT OF A 401 WATER QUALITY
CERTIFICATION IS A LEGAL PRECONDITION TO THE ISSUANCE OF A FERC LICENSE**

As FERC is aware, the LEAPS Project requires a federal Clean Water Act section 401 water quality certification from the State Water Resources Control Board (“State Board”). TNHC filed the initial 401 certification application for the LEAPS Project on March 16, 2005. The application identified the District as a co-applicant. TNHC subsequently withdrew and resubmitted the 401 certification applications¹ annually in the years 2005 through 2009,² each time withdrawing the applications before the expiration of the one-year statutory deadline. The fifth and final applications filed by TNHC on January 21, 2009 were ultimately denied without prejudice by the State Board on October 1, 2009. As FERC is aware, the State Board denied the applications on the basis that TNHC had failed to timely provide the State Board with an adequate California Environmental Quality Act (“CEQA”) document for the LEAPS Project, which is a pre-requisite for obtaining a 401 certification. TNHC responded to the State Board’s denial by unilaterally filing a Petition for Reconsideration with the State Board by letter dated November 2, 2009.

The District, in turn, responded to TNHC’s Petition for Reconsideration by letter dated December 1, 2009,³ the purpose of which was to clarify the District’s views as concerned several issues addressed in TNHC’s Petition. In its Response, the District agreed with the State Board’s assessment that the proposed hydropower facility and transmission line were two components of a single CEQA project, and further agreed with the State Board’s determination that the environmental analysis cited by TNHC was insufficient to meet CEQA’s requirements and the State Board’s regulatory requirements for issuing a 401 certification. (See, e.g., Cal. Code Regs., tit. 23, § 3856(f).)⁴

Ultimately, the State Board denied TNHC’s Petition for Reconsideration by Order adopted on March 1, 2011. TNHC subsequently filed, unbeknownst to the District, a Petition for Writ of Mandate with the Superior Court of California, San Diego County, on April 1, 2011,

¹ Beginning with the second request for certification, TNHC began to submit two separate 401 certification applications for the LEAPS Project: one application for the hydropower facility and one application for the TE/VS line. TNHC separated those applications without consulting the District.

² TNHC submitted the second request with the State Board in March 2006, its third request in February 2007, and its fourth request in February 2008.

³ The District’s Response to TNHC’s Petition for Reconsideration is also mentioned in FERC’s May 6, 2011 letter.

⁴ More specifically, TNHC maintained that the Environmental Impact Statement (“EIS”) prepared by FERC and the United States Forest Service (“USFS”) pursuant to the National Environmental Policy Act (“NEPA”) was an adequate substitute for a CEQA document.⁴ TNHC also suggested that the EIR/EIS prepared by the CPUC for the Sunrise Powerlink Project could serve as an adequate CEQA document. However, the State Board concluded that neither of those documents provided an adequate analysis of the LEAPS Project to allow the issuance of a 401 water quality certification.

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naming the State Board as a Respondent and the District as a Real Party in Interest. The matter is now pending before the Superior Court, and the ultimate outcome is unknown.

Separately, the District notes that, in connection with TNHC's application with the CPUC for a stand-alone transmission, the CPUC is serving as the lead agency under CEQA for the preparation of an EIR. The CPUC has publicly stated that it will consider both the transmission interconnect and the pumped storage facility in its EIR, although it is unknown at this time what type of analysis (project-level or merely programmatic) will be completed for the pumped storage facility or whether that analysis will be sufficiently detailed to allow the State Board to issue a 401 water quality certification based upon the EIR.

III. CONCLUSION

In conclusion, the District reiterates its status as a municipal water district whose authority is defined and limited by the state Legislature. Although the District has clear authority to pursue hydroelectric projects and transmission lines necessary or convenient for the delivery of hydroelectric power, the type of stand-alone transmission project apparently envisioned by TNHC is one that the District cannot pursue.

I hope FERC finds this information helpful in its inquiry concerning the status of the license application for the LEAPS Project. We are available to discuss this matter further at your convenience.

Sincerely,

/s/John E. Brown
John E. Brown, Counsel
Elsinore Valley Municipal Water District

cc: President and Board of Directors
General Manager
All Parties