

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**

**TABLE OF CONTENTS**

<b>Title</b>	<b>Page</b>
DECISION DISMISSING APPLICATION AND .....	2
DENYING PETITION TO MODIFY DECISION 11-07-036.....	2
Summary.....	2
1. Background.....	2
2. Should the Application be Dismissed?.....	5
2.1. The Parties' Positions.....	5
2.2. Discussion.....	10
3. Should the Petition to Modify D.11-07-036 be Granted? .....	13
4. Categorization and Need for Hearings .....	17
5. Comments on Proposed Decision .....	17
6. Assignment of Proceeding .....	19
Findings of Fact.....	19
Conclusions of Law .....	20
ORDER .....	23

**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."<sup>1</sup> 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.

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<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> 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.

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<sup>2</sup> *Id.* at 22.

<sup>3</sup> 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.”<sup>4</sup>

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

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<sup>4</sup> D.11-07-036, Conclusion of Law 8 at 18.

\$684 million<sup>5</sup> 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.<sup>6</sup>

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

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<sup>5</sup> 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.

<sup>6</sup> 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.<sup>7</sup> 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

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<sup>7</sup> 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."<sup>8</sup> 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

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<sup>8</sup> 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.<sup>1</sup> 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

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<sup>1</sup> 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  
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3500 Porsche Way, Suite 200  
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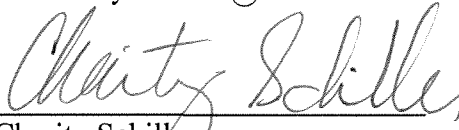
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**V. Conclusion**

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  
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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  
2000 K Street, NW, Suite 500  
Washington, DC 20006  
(202) 828-5800