

**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:

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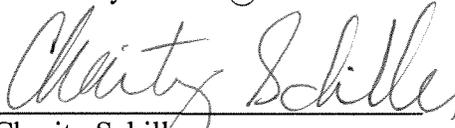
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**V. Conclusion**

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,

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By:   
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