



FRONTLINES

FOREST RESIDENTS OPPOSING NEW TRANSMISSION LINES

January 27, 2011 (JST)

Kimberly D. Bose
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Subject: FRONTLINES motion to intervene and comments in opposition to The Nevada Hydro Company's Application for a Preliminary Permit for the Lake Elsinore Advanced Pumped Storage Project ("LEAPS")

Reference: Docket P-14227

Dear Ms. Bose:

Forest Residents Opposing New Transmission Lines ("FRONTLINES") moves to intervene within the 60 day limit established by the Commission's "Notice Of Preliminary Permit Application Accepted For Filing And Soliciting Comments, Motions To Intervene, And Competing Applications" issued November 29, 2011.

Copies of this document have been served on all parties listed in the FERC's service list (see attached service list).

Respectfully submitted;

Jacqueline Ayer
On behalf of FRONTLINES

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

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

Project No. P-14227-000

**FOREST RESIDENTS OPPOSING NEW TRANSMISSION LINES (“FRONTLINES”) MOTION
TO INTERVENE AND COMMENTS IN OPPOSITION TO THE NEVADA HYDRO
COMPANY’S APPLICATION FOR A PRELIMINARY PERMIT.**

Pursuant to 18 C.F.R. § 385.214 and the Federal Energy Regulatory Commission’s (“Commission’s”) “Notice Of Preliminary Permit Application Accepted For Filing And Soliciting Comments, Motions To Intervene, And Competing Applications” issued November 29, 2011, Forest Residents Opposing New Transmission Lines (“FRONTLINES”) hereby moves to intervene and provide comments on The Nevada Hydro Company’s (“TNHC’s”) Preliminary Permit Application (“Application”) for the Lake Elsinore Advanced Pumped Storage (“LEAPS”) Project (Docket P-14227).

**I
PROTEST AND MOTION TO INTERVENE**

In accordance with Rule 214(b) of the Commission’s Rules of Practice and Procedure, FRONTLINES asserts its opposition to the LEAPS project and protests the Application submitted by TNHC. FRONTLINES is an unincorporated association that is registered with the California Secretary of State and is authorized pursuant to its Bylaws and Articles of Association to advocate the interests and concerns of residents and property owners that are affected by proposed electrical transmission and generation infrastructure in or near the Cleveland National Forest (“CNF”). These interests include conserving the natural beauty and recreational opportunities of the CNF’s vast undeveloped areas, securing the safety of lives and property in the CNF (which is a Very High Fire Hazard Area) by ensuring

that development projects neither inhibit fire-fighting efforts nor pose intrinsic fire threats to the CNF, and protecting Southern California's few remaining bucolic rural communities within and adjacent to the CNF from unsightly and unnecessary industrial infrastructure. FRONTLINES opposes the LEAPS project as it is contrary to all of FRONTLINES' stated interests. There is no doubt that FRONTLINES members have a direct and substantial interest in the outcome of the LEAPS proceeding, and that FRONTLINES participation in the LEAPS proceeding will benefit the public. Without FRONTLINES participation, the unique interests of residents and landowners in Riverside, Orange, and San Diego Counties will not be sufficiently represented in the LEAPS proceeding.

II COMMENTS ON TNHC'S APPLICATION

FRONTLINES has carefully analyzed TNHC's LEAPS Application with respect to the requirements imposed by 18CFR PART 4 SUBPART D §4.32 and §4.81, and has determined that the Application contains substantial deficiencies and inaccuracies. Highlights of FRONTLINES analysis are presented here; further details are provided in Attachment 1.

As a preliminary matter, the Commission is advised that the LEAPS project described in TNHC's preliminary permit application will encroach substantially into the designated San Mateo Wilderness Area. In particular, FRONTLINES points out that the 145 acre portion of Section 27 of T6S R5W which TNHC asserts will be within the LEAPS project boundary¹ is located entirely within the San Mateo Wilderness. As the Commission is aware, the Wilderness Act prohibits the establishment of energy projects in designated wilderness areas, and it presents a permanent and legal barrier which will preclude the Commission from issuing a license for the LEAPS project as it is now proposed by TNHC. Since the Commission is statutorily barred from issuing a license, there seems little point in proceeding with Docket P-14227. FRONTLINES therefore urges the Commission to promptly reject TNHC's application, thereby eliminating the public's burden of further review and analysis of this project.

¹ See Exhibit 1, Section 7 of TNHC's Application.

TNHC deliberately fails to identify nearby cities and unincorporated communities that will be affected by the project as required by §4.32(a)(2)(ii) and §4.32(a)(2)(iv).

FRONTLINES notes that, in Orange County alone, at least 3 cities representing nearly 250,000 people are located within 15 miles of the LEAPS dams and were improperly omitted from TNHC's LEAPS application, including San Clemente, Mission Viejo, and Lake Forest. TNHC also omitted at least 4 cities representing more than 200,000 people in Riverside County including Menifee, Wildomar, Perris and Corona. The Commission is advised that the Orange County cities omitted from the LEAPS Application are among ***the most threatened*** by the wildland fire risks posed by the LEAPS project. This fact was firmly established by the California Public Utilities Commission ("CPUC") and the U.S. Bureau of Land Management ("BLM") in the fireshed and fire behavior modeling analysis that was conducted in CPUC docket A.06-08-010². TNHC also fails to identify the many unincorporated communities that are in the path of the proposed project, including Rancho Capistrano, Tenaja, La Cresta, and El Cariso.

With full knowledge, TNHC also failed to identify cities which have previously expressed substantial concerns regarding the LEAPS project and should therefore have been included in the Application in accordance with §4.32(a)(2)(iv). For example, the Cities of San Juan Capistrano and Dana Point are substantially concerned with the flood risk to their communities (and the attendant loss of life) that is posed by the LEAPS project. Both TNHC and the Commission are aware of these concerns³ and there is no doubt that both cities should have been identified in the LEAPS Application. Yet, the Commission did not reject TNHC's Application for failing to identify these cities. To the contrary, the Commission issued the LEAPS "Notice of Preliminary Permit Application Accepted for Filing" with full knowledge that TNHC willfully omitted Dana Point and San Juan Capistrano from both the service list and the body of the LEAPS Application. Certainly, these cities are substantial

² See figures Figure E.7.1.15-6 and Figure E.7.1.15-7 of the Final EIS/EIR published for the SDGE Sunrise Project (CPUC Docket A.06-08-010). These figures model fire trends under "Santa Ana" conditions, and clearly show the fire sweeping to the west miles beyond the USFS boundary. The communities to the west of the CNF that are affected by these conditions include Mission Viejo, Lake Forest, San Clemente, and Rancho Santa Margarita.

³ See letters dated January 18, 2007 from the City of San Juan Capistrano and February 16, 2007 from the City of Dana Point sent to the Commission in Docket P-11858 [submittal # 20070201-0101 and #20070313-0160].

stakeholders in the LEAPS licensing process, and TNHC's deliberate omission of these Stakeholders, together with the Commission's tacit approval of these omissions, will impair the ability of these stakeholders to timely file a motion to intervene, and ultimately limit their ability to fully participate in the LEAPS licensing proceeding.

TNHC's LEAPS Application Deliberately Misrepresents the Counties in which the Proposed LEAPS Project Will be Located.

THNC's Application falsely asserts that the proposed LEAPS project is located only in Riverside County, and intentionally withholds the fact that the LEAPS Project is actually spread across 3 counties: Orange County, Riverside County, and San Diego County. In fact, nearly one-third of the proposed LEAPS high voltage power line is located in Orange and San Diego Counties, and will predominantly be constructed along ridgelines in Very High Fire Hazard zones. The Commission is advised that the areas of Orange County and San Diego County in which the LEAPS power line will be located are particularly susceptible to horrific wildland fire events, as evidenced by the Santiago, Horno, Ammo, Wilcox, Rosa, Rice, Coronado Hills, Witch, and Poomacha fires in 2007⁴. The 2007 fire season was not unique; and in fact the 2003 fire season caused even more death and destruction in San Diego County's Very High Fire Hazard areas than the 2007 fire season. Indeed, the Cedar fire of 2003 burned 80,000 acres in 10 hours, which is more than two acres burned *per second*.

Aside from the intrinsic and substantial fire risk posed by the high voltage LEAPS power line, its placement along ridgelines in areas prone to wildland fire will directly and substantially impede aerial and ground-based fire suppression efforts. The reason is both clear and simple; wildland fires are fought from ridgelines, but neither ground-based firefighting strategies nor aerial suppression tactics can be used on any ridgeline that is occupied by high voltage power lines⁵. Thus, any fire that approaches, or starts within, the LEAPS right-of-way can (and will) move rapidly through the communities of El Cariso,

⁴ As a result of these fires, 2 people died, 87 firefighters were injured, more than 1,400 homes were destroyed, nearly 300,000 acres of land were burned, and more than 100,000 people were evacuated.

⁵ Ground-based firefighters will not work anywhere near high voltage lines due to the extreme danger of arcing caused by the presence of smoke. Similarly, aerial firefighting teams will not drop retardant or water anywhere near high voltage lines.

Rancho Capistrano, Tenaja, De Luz, and La Cresta, and under “Santa Ana” conditions, it will quickly move west to engulf nearby communities (such as Verdugo Portrero, Coto de Caza, Dove Canyon, Rancho Cielo, Portola Hills, and Robinson Ranch) before threatening heavily populated communities such as Rancho Santa Margarita, Lake Forest, Mission Viejo, San Clemente, , etc. This firestorm scenario has been clearly documented for the LEAPS Project in the record established by the CPUC and BLM for the Sunrise Transmission Project⁶ .

Given the wildland fire threat to the safety and security of Orange and San Diego County residents that is posed by the LEAPS project, there is no doubt that these counties are significant stakeholders in the LEAPS licensing proceeding. However, TNHC’s intentional failure to admit that major portions of the LEAPS project will be located in these counties, or even give notice to San Diego County, ensures that these counties will be improperly and negligently excluded from participating in the Commission’s LEAPS licensing process.

TNHC’s Application Fails to Identify Non-Federal Lands Enclosed by the Proposed LEAPS Project as required by §4.81(d)(3)(ii).

Another substantial deficiency of TNHC’s Application is the failure to map, identify, or even mention the non-federal lands that are enclosed within the LEAPS project boundary. Much of these non-federal lands are privately held, and the future of these lands is of primary concern to FRONTLINES. TNHC’s intentional failure to identify these non-federal lands in the LEAPS Application gives the (false) impression that non-federal lands are unaffected by the LEAPS project. This fraudulent omission 1) Ensures that the stakeholders who own these non -federal lands and therefore have a clear interest in the LEAPS project remain ignorant of the LEAPS Application, and 2) Limits the opportunity for these stakeholders to file timely protests and motions to intervene in the Commission’s LEAPS proceeding.

TNHC’s Study Plan Does not Include any Studies or Data Collection Efforts.

TNHC does not propose to conduct any studies or data collection efforts during the term of the preliminary permit, rather it intends to review previous studies and re-open prior

⁶ CPUC Docket A.06-08-010 testimony and briefs.

consultations and discussions. FRONTLINES notes that the Commission has previously determined that the feasibility of constructing the LEAPS project relies substantially on the technical feasibility of designing project features that will function adequately under a variety of seismic conditions⁷. Despite this unambiguous statement by the Commission regarding the importance of seismic design features in establishing the feasibility of the LEAPS project, TNHC's "study plan" fails to address or even consider them. In fact, the Application indicates that TNHC intends to *avoid* seismic investigations because it states that TNHC "will not perform any test pits, borings, or other foundation work in the field during the feasibility study period". More to the point, the previous studies which TNHC intends to review during the term of the preliminary permit specifically do *not* address the potential effects of seismic hazards related to LEAPS operations.⁸ Clearly, TNHC has no interest in addressing the seismic issues which the Commission has previously determined are necessary for establishing LEAPS feasibility. The Commission is reminded that the *sole purpose* of the preliminary permit is to secure the priority of an application to enable the permittee to perform the studies and data collection efforts necessary to determine the feasibility of the project and support a dam license application[§4.80]; If an applicant does not intend to perform the studies or collect the data necessary to establish project feasibility, then there is no point in issuing a preliminary permit. Because TNHC's application explicitly proposes to avoid the seismic studies that are necessary to determine LEAPS project feasibility, it must be rejected by the Commission on its face.

III CONCLUSION

As FRONTLINES has clearly demonstrated, TNHC's LEAPS Application lacks essentially all the information required by §4.32 and §4.81, and much of the information that the Application does provide is either incomplete or erroneous. Typically, the Commission rejects such applications, and in fact, over the last 2 months, the Commission has issued

⁷ Page 3-23 of the FEIS

⁸ The prior LEAPS analysis relegated these studies to the design and construction process. The LEAPS FEIS states: "the potential effects of seismic hazards related to operation of both the co-applicants' proposal and the alternatives would be addressed during the design (and construction) process". (Pg 3-23, Docket P11858)

more than 10 deficiency letters for Preliminary Permit Applications which failed to properly identify cities located within 15 miles of the project boundary and/or did not comply with the mapping and submittal requirements imposed by §4.81⁸. One of these letters (issued 2 weeks ago for the Canton power project [Docket P-13273]) actually states that Commission staff researched the area of the proposed project, and found numerous cities that should have been identified in the Application.

The Commission' failure to apply this same level of scrutiny to TNHC's Application for the LEAPS Preliminary Permit is inexplicable. However, there is no doubt that this failure will prevent affected cities and counties from filing timely motions to intervene, and preclude the 500,000+ people who are represented by these cities and counties (and who will endure the LEAPS risks) from having a voice in the LEAPS Proceeding. FRONTLINES urges the Commission to correct this error, and reject TNHC's Application as patently deficient. FRONTLINES points out that neither TNHC nor TNHC's investors will be harmed if the Commission acts now to reject the LEAPS Application; TNHC can simply correct the material deficiencies noted herein, and submit a new application which substantially complies with applicable regulations. Failing to do so will frustrate the purpose of §4.32 and §4.81, and fail to secure the interests of the public in general, and the particular interests of the counties, cities, and communities that were ignored by TNHC in the LEAPS Application.

NOTICE AND COMMUNICATIONS

Correspondence, pleadings, notices, orders, and other communications should be

addressed to: Jacqueline Ayer
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Respectfully submitted:

/s/ Jacqueline Ayer
 Jacqueline Ayer
 On behalf of FRONTLINES

January 27, 2012 (JST)

⁸ Applications in Dockets 13273, 14315, 14311, 13242, 13244, 13256 and 13292 failed to identify all the cities with populations exceeding 5,000 located within 15 miles of the project. Applications in Dockets 14330, 14331, 14242, 14315, 14296, 14288, 13273, 14315, and 14311 failed to comply with 4.32 and §4.81 mapping/boundary requirements.

CERTIFICATE OF SERVICE

I, Jacqueline Ayer, 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 Okinawa, Japan
this 27th of January, 2012
(Japan Standard Time).

/s/Jacqueline Ayer
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Service list is attached

SERVICE LIST FOR DOCKET P-14227

Party	Primary Person or Counsel of Record to be Served	Other Contact to be Served
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ATTACHMENT 1

FRONTLINES notes that the LEAPS project proposed by TNHC and described in the Preliminary Permit Application submitted in Docket P-14227 will encroach substantially into the Designated San Mateo Wilderness Area^A. As the Commission is aware, the Wilderness Act prohibits the establishment of energy projects in designated wilderness areas, and it presents a permanent and legal barrier which will preclude the Commission from issuing a license for TNHC's proposed LEAPS Project. Since the Commission is statutorily barred from issuing a license, there seems little point in proceeding with Docket P-14227^B. FRONTLINES therefore urges the Commission to promptly reject TNHC's application, thereby eliminating the burden of further review and analysis of this project.

Beyond this, FRONTLINES notes that TNHC's Application is *patently deficient* because it fails to substantially provide the information required by 18 CFR for preliminary permit applications. FRONTLINES further notes that much of the information that the Application does provide is surprisingly inaccurate. Given the substantial deficiencies and inaccuracies of TNHC's Application, the Commission should reject the application in accordance with section 18CFR §4.32(a)(e)(2). Specific deficiencies that FRONTLINES notes in TNHC's Application are discussed below.

1.0 TNHC'S APPLICATION DOES NOT COMPLY WITH 18CFR PART 4 SUBPART D §4.32

1.1 TNHC Fails To Identify Several Large Cities That Are Located Within 15 Miles of The LEAPS Dams In Violation of §4.32(a)(2)(ii).

TNHC's LEAPS Application deliberately misrepresents the number of cities that have populations exceeding 5,000 and are located within 15 miles of the LEAPS dams. In Orange County alone, there are at least 3 cities (San Clemente, Mission Viejo, and Lake Forest) that lie within 15 miles of the LEAPS dams and which represent nearly 250,000 people. TNHC

^A Exhibit 1 of the Application states that the LEAPS project will enclose portions of the entire northwest quarter and half of the northeast quarter of Section 27 in T6S R5W which comprise 145 acres of the designated San Mateo Wilderness Area. For reference, please consult the Sitton Peak USGS Quad map.

^B *Town of Summersville v. FERC*, [780 F.2d 1034](#), 1038-39 (D.C.Cir.1986)

also fails to identify at least four cities in Riverside County (Menifee, Wildomar, Corona and Perris) that are also within 15 miles of the LEAPS dams and have a combined population exceeding 200,000. The Orange County cities that TNHC omitted from the LEAPS Application are among *the most threatened* by the wildland fire risk posed by the LEAPS project. This fact was firmly established by the California Public Utilities Commission (“CPUC”) and the U.S. Bureau of Land Management (“BLM”) via the LEAPS project firehazard and fire behavior modeling analysis that was conducted in CPUC docket A.06-08-010^c.

1.2 TNHC Fails To Identify Cities That Are Concerned With, and Substantially Affected by, the LEAPS Project In Violation of §4.32(a)(2)(iv).

The Application also fails to identify the cities and political subdivisions which (as TNHC is aware) are interested in, and will be substantially affected by, the LEAPS project. For example, TNHC intentionally omits the Cities of San Juan Capistrano and Dana Point, even though both these cities have previously expressed grave concerns regarding the flood risk to their communities (and the attendant loss of life) that is posed by the LEAPS project. The Commission is certainly aware that the Cities of Dana Point and San Juan Capistrano have substantial concerns regarding the LEAPS project^d and that both cities should have been identified in TNHC’s Application. Yet, the Commission did not reject TNHC’s Application for failing to identify these cities. To the contrary, the Commission issued the LEAPS “Notice of Preliminary Permit Application Accepted for Filing” with full knowledge that TNHC willfully omitted the Cities of Dana Point and San Juan Capistrano from both the service list and the body of the application in violation of §4.32(a)(2)(iv). There is no doubt that these cities are substantial stakeholders in the LEAPS licensing proceeding. TNHC’s deliberate omission of these and other stakeholder cities from their application,

^c See figures Figure E.7.1.15-6 and Figure E.7.1.15-7 of the Final EIS/EIR published for the SDGE Sunrise Project (CPUC Docket A.06-08-010). These figures model fire trends under “Santa Ana” conditions, and clearly show the fire sweeping to the west miles beyond the USFS boundary. The communities to the west of the CNF that are affected by these conditions include Mission Viejo, Lake Forest, San Clemente, and Rancho Santa Margarita.

^d See letters dated January 18, 2007 from the City of San Juan Capistrano and February 16, 2007 from the City of Dana Point sent to the Commission in Docket P-11858 [submittal # 20070201-0101 and #20070313-0160].

together with the Commission's tacit approval of these omissions, will certainly impair the ability of these stakeholders to timely file a motion to intervene, and will ultimately limit their ability to fully participate in the LEAPS licensing proceeding.

1.3 TNHC Violates §4.32(a)(2)(ii) by Falsely Asserting That the LEAPS Project Is Located Only in Riverside County.

Contrary to what TNHC asserts in their Application, Riverside County is *not* the only county in which any part of the LEAPS project is located^E. THNC intentionally withholds the fact that the LEAPS Project is actually spread across 3 counties: Orange County, Riverside County, and San Diego County. In fact, nearly one-third of the proposed LEAPS high voltage power line will be located in Orange and San Diego Counties, and will predominantly be constructed along ridgelines in Very High Fire Hazard zones. The Commission is advised that the areas of Orange County and San Diego County in which the LEAPS power line will be located are particularly susceptible to horrific wildland fire events, as evidenced by the Santiago, Horno, Ammo, Wilcox, Rosa, Rice, Coronado Hills, Witch, and Poomacha fires in 2007^F. The 2007 fire season was not unique; and in fact the 2003 fire season caused even more death and destruction in the Very High Fire Hazard areas of San Diego County than the 2007 fire season. The Cedar fire of 2003 (which destroyed 2,200 homes) burned 80,000 acres in 10 hours, which is more than two acres burned *per second*. Aside from the intrinsic fire risk posed by the LEAPS power line, its placement along ridgelines in wildland fire areas will substantially impede aerial and ground-based fire suppression efforts^G.

^E Item 2 of TNHC's Initial Statement states: "The location of the proposed [LEAPS] project" is "Riverside County". Item 8 of TNHC's Initial Statement asserts that "The name and address for the county in which any part of the project and any Federal facilities that would be used by the project, would be located" is "Riverside County Administrative Officer 4040 Lemon St. Riverside, CA 92501". Page 1 of TNHC's Exhibit 1 asserts that the proposed LEAPS project "is to be located in Riverside County, California". Item 3 of TNHC's Exhibit 4 asserts "The Project will be located on portions of lands in Riverside County, California identified in Section 7 of Exhibit 1 of this Application". Page 1 of TNHC's Cover letter states that the LEAPS project is "located in the Cleveland National Forest in Riverside County, California".

^F As a result of these fires, 2 people died, 87 firefighters were injured, more than 1,400 homes were destroyed, nearly 300,000 acres of land were burned, and more than 100,000 people were evacuated.

^G Ground-based firefighters cannot work anywhere near high voltage lines due to the extreme danger of arcing caused by the presence of smoke. Similarly, aerial firefighting teams will not drop retardant or water anywhere near high voltage lines.

2.0 TNHC'S APPLICATION DOES NOT COMPLY WITH 18CFR PART 4 SUBPART D §4.81

18CFR PART 4 SUBPART D §4.81 requires that preliminary permit applications include three substantial exhibits which provide information regarding the location and extent of the proposed project and identify the investigations, studies, and work plans that will be implemented by the applicant during the term of the permit. FRONTLINES' analysis of the TNHC's Application reveals that these exhibits contain omissions, inconsistencies, deficiencies, and inaccuracies which are so substantial that they render the application effectively invalid.

2.1 Exhibit 1 Of TNHC's Application Does Not Comply With §4.81(b)

§4.81(b) requires an applicant to provide an Exhibit 1 which includes a written project description and a tabulated summary of all the lands of the United States ("U. S. Lands") which are enclosed by the proposed project boundaries. FRONTLINES has determined that the Exhibit 1 which TNHC provided in the LEAPS Application is both incomplete and internally inconsistent, to wit:

2.1.1 Tabulated information in Exhibit 1 fails to identify hundreds of acres of United States Lands that are enclosed by the LEAPS project boundary.

The LEAPS Project includes transmission lines that connect LEAPS generation to the SCE transmission system and which traverse several miles of US Lands lying within Sections 6 and 8 of T6S R5W and Sections 13, 24, 25 and 36 of T5S R6W (reference: the Alberhill USGS quad map). However, TNHC fails to identify these lands in the tabulated list provided in Section 7 of Exhibit 1. Similarly, several miles of U.S. Lands (which are depicted in the Margarita Peak and Wildomar USGS Quad sheets) that are traversed by the southern LEAPS transmission line were also omitted from the list provided in Section 7 of Exhibit 1. In addition to understating the extent to which U.S. Lands are affected by the LEAPS project, these omissions prevent the identification of affected communities and other stakeholders and limit the ability of these stakeholders to participate in the LEAPS licensing process and render the Application substantially incomplete.

2.1.2 Tabulated data in Exhibit 1 identifies U.S. Lands that are not addressed by the Project Description provided in Exhibit 1.

According to the project description provided in Exhibit 1, TNHC proposes to develop the upper reservoir by constructing a dam on Decker Canyon. However, the tabulated data provided in Exhibit 1 indicates that TNHC proposes to construct the upper reservoir in Morrell Canyon rather than Decker Canyon. Specifically, Table 1 identifies the entire south half of Section 22 in T6S R5W and most of the north half of Section 27 in T6S R5W as being enclosed by the LEAPS Project Boundary. An inspection of the Sitton Peak and Alberhill USGS Quad maps reveals that these areas comprise the north end of Morrell Canyon. It appears that the tabulated data provided by Exhibit 1 are inconsistent with the project description provided in Exhibit 1.

Additionally, the inclusion of Morrell Canyon in the Exhibit 1 tabulated data conflicts substantially with the preferred alternative analysis prepared by the Commission as part of the FEIS in the previous LEAPS proceeding (P-11858). In particular, the Commission staff previously recommended Decker Canyon as the site for the LEAPS upper reservoir rather than the Morrell Canyon site recommended by TNHC. The FEIS essentially takes Morrell Canyon “off the table”, yet inclusion of the Morrell Canyon site in the tabulated data presented in Exhibit 1 indicates that TNHC appears intent on proceeding contrary to the direction established by the FEIS.

2.1.3 The LEAPS Project Description includes substantial inaccuracies.

FRONTLINES notes the following inaccuracies in the LEAPS project description included in the Application:

- TNHC claims that the LEAPS project includes a substation that will be located on, or adjacent to, the Camp Pendleton Marine Corps Base. The fact is, TNHC has been unable to find a suitable location for the southern substation, which is intended to connect LEAPS generation to the SDGE transmission system.^H

^H See FRONTLINES filing in Docket P-14227 submitted October 2011 (Submittal #20111007-5002)

- TNHC asserts (on page 8) that “The TE/Vs Interconnect is presently in the final stage of its permitting at the California Public Utilities Commission (“PUC”). If PUC approval occurs prior to the Commission issuing a license under this application, the applicant will modify its application to remove the TE/Vs Interconnect from the project description, as the TE/Vs Interconnect will no longer be considered a gen-tie line for LEAPS”. This statement is false. Not only is the TEVS interconnect proceeding now before the CPUC still in the initial stages of review, the presiding Administrative Law Judge recently articulated a clear intent to dismiss the project in its entirety, perhaps with prejudice¹.
- TNHC claims (on page 5) that “no new dams per se will be constructed” for the LEAPS project. As a “structure for impounding water” there is no doubt that the Decker Canyon dam is indeed a dam. This ludicrous statement is inconsistent with other statements contained in TNHC’s Application and it is contrary to prior Commission dam studies and dam reports on the LEAPS project, all of which determine that the Decker Canyon dam is indeed a dam which is subject to the Commission’s Division of Dam Safety and Inspection.

2.2 Exhibit 2 of TNHC’S Application Does Not Comply With §4.81(c)

2.2.1 The Application Lacks the Study Plan Required by Section §4.81(c)(1)

Section § 4.81(c)(1) requires that all Preliminary Permit Applications include a study plan containing “a description of any studies, investigations, tests, or surveys that are proposed to be carried out, and any that have already taken place, for the purposes of determining the technical, economic, and financial feasibility of the proposed project” . Despite this clear requirement, TNHC’s Application does not describe a single study that will be conducted to establish the LEAPS project feasibility, nor does it identify any studies that have already taken place. In fact, TNHC’s Application fails to provide any kind of study plan or feasibility assessment. FRONTLINES notes that the Commission has previously determined that the feasibility of constructing the LEAPS project relies substantially on the technical feasibility of designing project features that will function adequately under a variety of seismic conditions ¹. Despite this clear and unambiguous statement by the Commission regarding the importance of seismic design features in establishing the

¹ See Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application issued December 1, 2011 by the CPUC in Proceeding A.10-07-001.

¹ Page 3-23 of the FEIS

feasibility of constructing LEAPS, TNHC's "study plan" fails to consider these or any other factors. Instead, the LEAPS "study plan" focuses on reviewing previous studies; ***none of which*** addressed these potential effects of seismic hazards on the LEAPS project^K. In fact, the Application indicates that TNHC intends to *avoid* seismic investigations because it states TNHC "will not perform any test pits, borings, or other foundation work in the field during the feasibility study period". The *sole purpose* of the preliminary permit is to secure the priority of an application to enable the permittee to perform the studies and data collection efforts that are necessary to determine the feasibility of the project and support a dam license application^L, and any application which explicitly proposes to avoid the very studies that are necessary to determine project feasibility must be rejected by the Commission on its face.

2.2.2 The Application Lacks the Dam Construction Work Plan Required by §4.81(c)(2)

Section 4.81(c)(2) EXPLICITLY mandates that a dam construction work plan be submitted with any preliminary permit application if the project entails any "*new dam construction*". The term "new dam construction" is defined as: "any dam construction the studies for which would require test pits, borings, or other foundation exploration in the field"^M. There is no doubt that field studies including test pits, borings, and other foundation explorations will be required before construction of the Decker Canyon dam, thus it is clear that 1) The LEAPS project constitutes "new dam construction" and 2) TNHC is required to submit a dam Work Plan. Incredibly, TNHC claims in their Application that a work plan is not required for the LEAPS Application because "no new dam per se is required for the [LEAPS] project". TNHC does not cite a "dam" definition to support this ludicrous statement, which must necessarily be rejected by the Commission as insubstantial drivel.

^K The prior LEAPS analysis conducted in Docket P-11858 did not study the seismic hazard effects of the LEAPS project, and instead relegated these studies to the design and construction process. The LEAPS FEIS states (on page 3-23): "the potential effects of seismic hazards related to operation of both the co-applicants' proposal and the alternatives would be addressed during the design (and construction) process".

^L §4.80 Subpart D of Part 4 of 18 CFR

^M §4.81(c)(2)(iii)

TNHC's claim that LEAPS does not require a "new dam per se" is contrary to TNHC's statements found elsewhere in the Application^N. More to the point, it is contrary to the Commission's own dam break studies, which conclude that the Decker Canyon dam is classified as having a "high downstream hazard potential"⁰ which would probably cause loss of human life if it fails or is misoperated. Obviously, LEAPS includes new dam construction and obviously this new dam will require test pits, borings, and other foundation exploration studies in the field. Thus TNHC's obligation to provide a Dam Construction Work Plan with their Preliminary Permit Application is firmly established.

2.2.3 The Application is not Eligible for a Waiver

TNHC requests that the Commission waive the dam work plan requirement imposed by Section 4.81 (c)(2) because they do not intend to "perform or require test pits, borings, or other foundation exploration in the field during the feasibility study period". However, the Commission has previously determined that seismic design studies (which necessarily require foundation explorations) are essential to determining the construction feasibility of the LEAPS project. The idea that the Commission would grant TNHC's waiver request based on a "study plan" that specifically avoids the very seismic studies which are necessary to establishing LEAPS project feasibility is absurd. The Commission must not permit TNHC to leverage the glaring deficiencies of their LEAPS "study plan" so they can avoid their obligation to prepare a dam Construction Work Plan as required by §4.81(c)(2).

2.3 Exhibit 4 Of TNHC's Application Does Not Comply With §4.81(d)

TNHC's Exhibit 4 (which should probably have been labeled Exhibit 3) fails to comply with the mapping provisions imposed by §4.81(d), which EXPLICITLY require that all project details be mapped on USGS Topographical quad sheets. In addition to the obviously deficient lack of USGS quad maps, TNHC's application fails to provide any of the specific project details mandated by §4.81(d):

^N On Page 7 of the Application, TNHC assert that the upper reservoir "will be created by a dam across the [Decker] Canyon" which will be "constructed in a narrow section of the Decker Canyon". On page 12, TNHC describes the southwest boundary of the LEAPS project as "a dam across a narrow section of Decker Canyon".

⁰ Page 3-26 of FEIS

2.3.1 *The Application does not comply with §4.81(d)(1) because it fails to map the location of the project with reference to affected streams.*

The Application completely omits any reference to streams or creeks in general, and the San Juan Creek and San Juan Creek watershed in particular, even though the project is located at the headwaters of San Juan Creek.

2.3.2 *The Application does not comply with §4.81(d)(2) because it fails to map the locations and physical interrelationships of the principal project features.*

The Application fails to map the locations and physical interrelations of the LEAPS transmission line, substations, dams and other project features. Figure 2 vaguely identifies some of the LEAPS project elements, but it fails to indicate the Decker dam configuration and it *isn't even accurate*, because it indicates that the Case Springs substation will be located on Camp Pendleton Marine Corps Base. The Commission is informed that the Marine Corps will not permit the construction of any substation on their property.

2.3.3 *The Application does not comply with §4.81(d)(3)(i) because it does not address the entire Project Boundary.*

The Application is supposed to identify the “proposed boundary for the project, enclosing all principal project features... including but not limited to any dam, reservoir, water conveyance facilities, powerplant, *transmission lines*, and other appurtenances” [§4.81(d)(3)(i)]. However, TNHC’s Application limits the project boundary description to include only the Decker Canyon dam and Lake Elsinore (See “item 3” of TNHC’s “Exhibit 4”). It fails to identify or even mention the 3 substations proposed for the project and the 32+ mile transmission line traversing both federal and non-federal lands.

2.3.4 *The Application does not comply with §4.81(d)(3)(ii) because it fails to identify and map the non-federal lands enclosed within the Project Boundary.*

The Application is supposed to map “non-Federal lands and any public lands or reservations of the United States necessary for the purposes of the project” if these lands are enclosed by the project boundary [§4.81(d)(3)(ii)]. TNHC’s Application fails to provide such maps, and in fact ignores all the privately held lands which lay within the LEAPS project boundary. This matter is of substantial concern to FRONTLINES members, many of

whom were previously informed by the Applicant that the LEAPS project will result in the loss of their private property via eminent domain authority granted by the Commission. TNHC's failure to identify these parcels in their application ensures that these property owners remain ignorant of TNHC's Application, which effectively eliminates their opportunity to file a timely motion to intervene in this proceeding. Undoubtedly, such an outcome will work in TNHC's favor.

2.3.5 The Application does not comply with §4.81(d)(5) because it fails to map the designated wilderness areas located within the Project Boundary.

According to the tabulated data provided in the LEAPS Application, at least 145 acres of the San Mateo Wilderness area lies within the LEAPS project boundary. Therefore, and in accordance with §4.81(d)(5), TNHC is required to specifically map those portions of the LEAPS project which will be located in the San Mateo Wilderness. However, TNHC's Application violates this provision of the CFR because it does not map the extent to which the LEAPS project intends to encroach on the San Mateo Wilderness. By failing to map wilderness areas that will be directly affected by the LEAPS project, TNHC's application is, at best, disingenuous and at worst, intentionally misleading.

In addition, Figure 2 of Exhibit 4 of TNHC's Application indicates that the LEAPS transmission line will encroach on portions of the San Mateo Wilderness area near the CNF Boundary. However, TNHC fails to identify these encroachments in the table of U. S. Lands provided in Exhibit 1 of the Application. TNHC's failure to clearly identify the manner and extent to which the LEAPS project will impact wilderness areas renders the Application patently deficient and provides adequate basis for an immediate rejection.

It is bad enough that TNHC's Application ignores the USGS mapping requirements imposed by the §4.81(d). TNHC compounds this deficiency by excluding major LEAPS elements from the project boundary description provided in Section 3 of Exhibit 4 (such as all the substations and 32+ miles of transmission lines) and failing to properly scale the figures so

^P The table provided in Exhibit 1, Section 7.0 identifies Section 27 of T6S R5W which lies squarely within the San Mateo Wilderness.

that the details required by §4.81(d) can be distinguished. TNHC's entire Exhibit 4 utterly fails to comply with the requirements imposed by §4.81(d) with the possible exception of a single sentence found at the bottom of Page 12 which states that the LEAPS project boundary is not located in the vicinity of any area included in or proposed for inclusion in the National Wild and Scenic Rivers System. It is clear from the inadequate studies and the inconsistencies found in the LEAPS project description, tabulated data, and maps that TNHC's Application fails to comply with virtually *all* conditions imposed by with §4.81.

3.0 CONCLUSION

FRONTLINES has reviewed the underlying applications for several Preliminary Permits that were recently issued by the Commission for projects in California^Q and found that, *without exception* each application:

- Specified the seismic and subsurface geological investigations to be conducted during the term of the preliminary permit to establish the dam project feasibility.
- Included a study plan detailing the specific studies and investigations that that would be conducted during the term of the preliminary permit.
- Included a dam construction work plan.
- Provided mapping details on USGS Quad sheets .
- Identified lands of the Unites States and non-federal lands located within the entire Project Boundary (including the transmission lines).
- Indicated quite clearly whether the project included new dam construction.

These are all necessary elements of any preliminary permit application and are specifically required by §4.32 and §4.81. Clearly, by issuing permits for these projects, the Commission established a precedence which requires compliance with §4.32 and §4.81 prior to issuance of a preliminary permit. Applying this precedence to the TNHC LEAPS Application leaves the Commission with only a single course of action: reject TNHC's Application as patently deficient.

^Q Dockets P-13793, P-12807, P-12747

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