

# David Mark & Company

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May 31, 2017

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

RE: **Lake Elsinore Advanced Pumped Storage Project**  
Project Number 14227  
Notification of Intent to File License Application

Dear Secretary Bose,

The Nevada Hydro Company (the "Company" or "Applicant") herein provides notice to the Federal Energy Regulatory Commission ("Commission") of its intent to file an original license application ("NOI") for the Lake Elsinore Advanced Pumped Storage facility (the "Project"), Commission Project No. 14227.

The Company here is providing evidence of the significant amount of work it has undertaken to keep the information and consultation efforts fresh, and to demonstrate that here, the Commission has the opportunity to accelerate the licensing of a hydroelectric project, without violating either the National Environmental Policy Act ("NEPA") or its own processes or while meeting the mandates imposed upon it by the Federal Power Act and more recent Federal law aimed at streamlining the licensing process.

This NOI references a number of attachments, which may be found in the "NOI Attachment" portion of this filing. In addition, the Company has also included a complete final license application ("FLA"), marked as "draft". The FLA includes all required Exhibits, a detailed consultation report section and a number of attachments referenced throughout the FLA.

## **1. Introduction: The Company's Directive from the Commission**

In its December 2, 2015 letter to the Company ("2015 Letter"), the Commission provided direction on how the Company is to proceed to license the Project. This filing has been prepared in accordance with this directive and Commission rules.

First, the Commission's 2015 Letter advised that: *"Commission staff expects any license application filed by Nevada Hydro with respect to Project No. 14227 to contain all of the information required by the Commission's regulations."* The Company of course acknowledges this mandate, and this filing is intended to describe how the Company proposes to meet it.

Second, the Commission's 2015 Letter noted that: *"However, Nevada Hydro may be able to update and refile relevant information from the Project No. 11858 proceeding as part of a license application for Project No. 14227."* The 2015 Letter advised further that: *"Nevada Hydro may wish to consult with Commission staff to determine whether particular information from the prior proceeding will be considered sufficient."* The Company appreciates the willingness of Commission staff to discuss and potentially allow the incorporation of relevant information from Project No. 11858 into this docket,

as well as to potentially allow additional relevant information that serves to update information contained in this previous docket. Information from the old docket that the Company proposes to use in this proceeding is identified and described in Section 3.1 of this filing, as is information that serves to update this information.

The Commission's 2015 Letter pointed out to the Company that, *"before it can move forward in the pre-filing process it must file a Notice of Intent to File a License Application (NOI) that specifies the licensing process it intends to use."* This filing is the Company's NOI. The licensing process the Company proposes to use is discussed in Section 3.3 of this filing, although additional discussions with Commission staff on this issue will be appreciated, in order that Commission staff and the Company can arrive at the most appropriate licensing process to use in the unique situation to which this filing gives rise. The Company believes this situation is unique in Commission licensing history, requiring further discussion, in that

1. The Commission issued a final environmental impact statement describing a project it could license, yet no license was ever issued;
2. The applicant has filed a new preliminary permit for the identical project staff recommended in that environmental document; and,
3. The Applicant has diligently worked to update information the Commission prepared, and reviewed in that previous environmental document and has consulted with agencies and other stakeholders discussing the updated information it has developed.

The Commission's 2015 Letter noted further that, *"If applicable, Nevada Hydro may use any updated draft license application, rather than a PAD, to consult with agencies and interested parties during pre-filing consultation."* As discussed in detail throughout Section 3, the Company filed a PAD early in this proceeding, and has since developed a number of documents providing more detailed descriptions of the Project and its environmental setting that has assisted in the Company's ongoing consultation efforts, including documents that expand upon and update those from Project No. 11858.

Finally, the Company deeply appreciates the Commission's willingness to consider a request from the Company that it consider "authorization to waive specific sections of the pre-filing consultation regulations." The Company's initial thoughts on this helpful suggestion may be found in Section 3.4 of this filing, and looks forward to discussing this further with Commission staff.

## 2. Notification of Intent to File

Commission rules require that the Company notify the Commission of its intent to file a license application. The requirements for this notice are in 18 CFR 5.5 and 5.6

### 2.1 Notification requirements from 18 CFR 5.5

As required by Commission rules at 18 CFR 5.5 and elsewhere, the Company is providing the following information:

(1)	The applicants name and address.	The Nevada Hydro Company 2416 Cades Way Vista, CA 92083
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(2)	The project number.	Project No. 14227
(3)	The license expiration date, if any	N/A
(4)	An unequivocal statement of the potential applicant's intention to file an application for an original license, or, in the case of an existing licensee, to file or not to file an application for a new or subsequent license.	By this notice, the Company is now moving forward to file an application for an original license for the above referenced project before the expiration of its preliminary permit as extended.
(5)	The type of principal project works licensed, if any, such as dam and reservoir, powerhouse, or transmission lines.	This is a pumped storage project and will not use a dam. The upper reservoir will be new construction. The lower reservoir will be Lake Elsinore, an existing natural lake. Facilities will also include a powerhouse and high voltage lines to connect the powerhouse to the existing grid.
(6)	The location of the project by state, county, and stream, and, when appropriate, by city or nearby city.	State: California County: Riverside Lower Reservoir: existing Lake Elsinore City: City of Lake Elsinore
(7)	The installed plant capacity, if any.	Approximately 500 MW generating
(8)	The names and mailing addresses of:	
(8)(i)	Every county in which any part of the project is located, and in which any Federal facility that is used or to be used by the project is located;	Riverside County Administrative Officer 4040 Lemon St. Riverside, CA 92501  County of Orange 333 W Santa Ana Blvd, Santa Ana, CA 92701
(8)(ii)	Every city, town, or similar political subdivision;	
(A)	In which any part of the project is or is to be located and any Federal facility that is or is to be used by the project is located, or	City of Lake Elsinore 130 South Main Street Lake Elsinore, CA 92530

(B)	That has a population of 5,000 or more people and is located within 15 miles of the existing or proposed project dam;	County of Orange 333 W Santa Ana Blvd, Santa Ana, CA 92701  City of Canyon Lake 31516 Railroad Canyon Road Canyon Lake, CA 92587  City of Murrieta 24601 Jefferson Ave. Murrieta, CA 92562  City of Temecula 41000 Main Street Temecula, CA 92589  City of Rancho Santa Margarita 22112 El Paseo Rancho Santa Margarita, CA 92688  City of San Juan Capistrano 32400 Paseo Adelanto, San Juan Capistrano, CA 92675
(8)(iii)	Every irrigation district, drainage district, or similar special purpose political subdivision:	
(A)	In which any part of the project is or is proposed to be located and any Federal facility that is or is proposed to be used by the project is located; or	Elsinore Valley Municipal Water District 31315 Chaney Street Lake Elsinore, CA 92530  US Forest Service Cleveland National Forest 1147 East Sixth Street Corona, CA 92879
(B)	That owns, operates, maintains, or uses any project facility or any Federal facility that is or is proposed to be used by the project;	US Forest Service Cleveland National Forest 1147 East Sixth Street Corona, CA 92879
(iv)	Every other political subdivision in the general area of the project or proposed project that there is reason to believe would be likely to be interested in, or affected by, the notification; and	US Forest Service Cleveland National Forest 1147 East Sixth Street Corona, CA 92879  Eastern Municipal Water District P.O. Box 8300 San Jacinto, CA 92581-8300
(v)	Affected Indian tribes.	The Pechanga Indian Reservation P.O. Box 1477 Temecula, CA 92593

The Company is distributing this notification of intent to the appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in this proceeding.<sup>1</sup>

In addition, by this letter and as permitted under Rule Section 5.5(e), the Company hereby requests that it be designated as the Commission's non-Federal representative for purposes of consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, and Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR 600.920. The Company further requests authorization to re-initiate consultation (as it did previously in Project No. 11858) under section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR 800.2(c)(4).

## **2.2 Notification requirements from 18 CFR 5.6: the Pre-Application Document**

Along with the notification requirements of 18 CFR 5.5, Section 5.6 of Commission Rules directs that

*an applicant must file a preapplication document (PAD), which makes known all existing engineering, economic, and environmental information relevant to licensing the project that is reasonably available, or can reasonably be obtained with due diligence, when the NOI is filed. The PAD serves as the foundation for issue identification, study plan development, and the Commission's environmental analysis. It will also set forth the applicant's proposed schedule for completing application preparation and filing the application with the Commission.*<sup>2</sup>

As set forth in 18 CFR 5.6(b), the purpose of the PAD is to provide

*existing information relevant to the project proposal that is in the potential applicant's possession or that the potential applicant can obtain with the exercise of due diligence. This existing, relevant, and reasonably available information is distributed to these entities to enable them to identify issues and related information needs, develop study requests and study plans, and prepare documents analyzing any license application that may be filed. It is also a precursor to the environmental analysis section of the Preliminary Licensing Proposal or draft license application provided for in §5.16, Exhibit E of the final license application, and the Commission's scoping document(s) and environmental impact statement or environmental assessment under the National Environmental Policy Act (NEPA).*

Section 5.6(b) advises that "a potential applicant must exercise due diligence in determining what information exists that is relevant to describing the existing environment and potential impacts of the project proposal (including cumulative impacts), obtaining that information if the potential applicant

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<sup>1</sup>/ The Company is using the distribution lists from the following proceeding for this purpose: The distribution list from Commission project number Project No. 11858 and Project No. 14227, as well as the list developed by the California Public Utilities Commission for the permitting of the Company's Talega-Escondido/Valley-Serrano 500 kV Interconnect Project.

<sup>2</sup>/ Handbook For Hydroelectric Project Licensing and 5 MW Exemptions from Licensing, Federal Energy Regulatory Commission, Washington, DC, April 2004, ("Handbook"), page 2-4.

does not already possess it, and describing or summarizing it as provided for in paragraph (d) of this section.”

As a result of the large amount of information developed in connection with the former licensing docket (Project No. 11858), in 2012, soon after the Commission accepted the Company’s preliminary permit in this docket, the Company was able to file its PAD with the Commission. The PAD adopted the project described in the Commission’s Final Environmental Impact Statement (“Final EIS”) in that previous docket<sup>3</sup> with updated information the Company had developed since that Final EIS was published. A number of parties provided comments on the filed PAD, and as described below, the Company used this PAD, and updates developed thereto since, in consultation efforts with resource agencies and other interested parties. This ongoing consultation effort is further described in Section 3.2 of this filing.

The Company assumes that this abundance of updated relevant, specific information filed with the Commission more than met the more general informational requirements for acceptable PADs, and that now, the Company has formally met the notification requirements as set forth in Sections 5.5 and 5.6 of Commission Rules.

### **3. Proposal to advance this application**

As described in herein, the Company respectively requests that the Commission advance this application under either the Integrated Licensing Process (“ILP”) or the Traditional Licensing Process (“TLP”), with certain modifications, described below. The Company requests these modifications to integrate the extensive:

1. Updates to relevant information that has been developed in Project No. 11858.
2. Relevant additional information the Company and others have developed and made public since publication of the Final EIS.
3. Outreach and consultation efforts in which the Company has engaged since filing its original license application in Project No. 11858 and particularly since its Preliminary Permit was granted by the Commission in this docket.

The Commission’s licensing Handbook notes the following about the ILP:

*It is designed to improve efficiency and timeliness of preparing and processing license applications by: combining a potential license applicant’s pre-filing consultation with the Commission’s scoping pursuant to the National Environmental Policy Act (NEPA), rather than conducting these activities sequentially; increasing public participation in pre-filing consultation; improving coordination between the Commission’s processes and those of other*

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<sup>3</sup>/ Final Environmental Impact Statement for Hydropower License, Lake Elsinore Advanced Pumped Storage Project, FERC Project No. 11858, Federal Energy Regulatory Commission and the U. S. Forest Service Trabuco Ranger District, FERC/EIS – 0191F, January 2007.

*participants; providing for increased staff assistance during the preparation of the application; and establishing schedules for all participants, including Commission staff.*<sup>4</sup>

As described in the following sections, the Company has effectively combined pre-filing consultation with scoping conducted by a number of agencies, including the Commission. This also has effectively increased agency and public participation in the Company's ongoing pre-filing consultation efforts. As the ILP explicitly allows for improved coordination between the Commission's processes and those of other participants with whom the Company has been involved, the Company believes the ILP may be most appropriate.

The Company notes however that in its 2015 Letter, the Commission may have been suggesting use of the TLP. The Company would be pleased to discuss with the Commission use of this process if the Commission sees benefits in its use over that of the ILP to better accommodate the unique circumstances of this application.

**3.1 The Company has developed a significant, detailed record of relevant supplementary material that has been widely distributed and should be formally incorporated into the Project docket**

As the Company has developed a significant public record of relevant new detailed Project information since the Commission issued the Final EIS, the Company respectfully requests that the Commission now incorporate this full public record for the Project into this proceeding. This public record includes:

- The complete record from Project No. 11858, including studies, outcomes and record of the extensive consultation efforts.
- Extensive relevant information the Company has developed in connection with its application to the California Public Utilities Commission ("CPUC") in their role as lead agency for analysis of the Project under the California Environmental Quality Act ("CEQA").
- CEQA analysis and conclusions regarding the Project, published by the CPUC in a final CEQA and NEPA report.
- Updated environmental analysis.
- Results of detailed relevant consultation between the Company and the US Forest Service in connection with the Project's proposed use of lands of the Cleveland National Forest ("Forest").
- Executed interconnection agreements describing the scope and cost of connecting the project to the region's high voltage grid.
- Extensive, multi-year, consultation by the Company with resource agencies and other stakeholders.

Each of these sources of relevant publically available information that supplements the contents of the Final EIS will be described in the following subsections.

**3.1.1 Information from Project No. 11858**

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<sup>4</sup> / Handbook at page iii.

The Project remains identical to the preferred alternative identified by the Commission in the Final EIS. Further, the full record in that docket, including consultation documentation and studies supporting the conclusions in the Final EIS all remain relevant to the Project today and should be incorporated now.

Included in this docket are results of many studies resulting in, for example, the conclusions reached by the Santa Ana Regional Water Quality Control Board ("Santa Ana Water Board") in its role in the Section 401 certification process, the conclusion of Section 7 consultation, as well as other notices of agency conclusions and, of course, the Final EIS.

### **3.1.2 The Company's application to the CPUC, accepted as complete in 2011**

With the issuance by the Commission of the Final EIS, the Company commenced consultation with a number of California government agencies in connection with meeting the requirements to support issuance of the Section 401 certification by the California State Water Resources Control Board ("Water Board").

The issue the Company faced was identifying a lead agency for CEQA. CEQA requires state and local agencies within California to follow a protocol of analysis and public disclosure of environmental impacts of proposed projects and adopt measures to mitigate those impacts. CEQA applies to certain activities of state and local public agencies which must comply with CEQA when undertaking an activity defined by CEQA as a "project." A project is an activity undertaken by a public agency or a private activity which must receive some discretionary approval (meaning that the agency has the authority to deny the requested permit or approval) from a government agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment. The LEAPS "project" meets this mandate by requiring discretionary approval by the Water Board.

Because they saw value to the State's ratepayers in the Project, the CPUC offered to be the lead agency for the Project, if the Company agreed to treat its primary lines as a transmission line. As the California agency with responsibility for approving electric transmission facilities, the CPUC offered to act as the lead agency for undertaking the environmental review of the Project under CEQA and would prepare an Environmental Impact Report in compliance with CEQA that would be used by the Water Board to process the Company's application for Section 401 Certification.

The Company saw value to this proposal as the CPUC had already independently completed an extensive CEQA analysis of the Project in connection with its analysis of another project, known as the Sunrise Powerlink project proposed by SDG&E.<sup>5</sup> This analysis included a review of the Project as functional alternatives to the Sunrise project. The CPUC concluded after its detailed analysis that the Company's "TE/VS Project" was "the environmentally superior transmission project" in this proceeding.<sup>6</sup>

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<sup>5</sup> / In the Matter of the Application of San Diego Gas & Electric Company for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project, Application 06-08-010.

<sup>6</sup> / See "Overall Environmentally Superior Alternative" #3 on page ES-4 of the Final EIS for the Sunrise Powerlink [here](#). The complete final EIS/EIR is available [here](#). In January 2008, the CPUC and BLM issued a Draft EIR/EIS for SDG&E's Sunrise 500 kV Transmission project in Imperial and San Diego Counties. The Final EIR/EIS was published in October 2008. In the Sunrise EIR/EIS, the CPUC considered the Project as one of alternatives analyzed. One alternative was transmission-only, the other was transmission plus generation. The Final EIS was used as a basis for the alternatives evaluation, in addition to an early draft of the Applicant's PEA and limited fieldwork.

The Company requests that the Commission include this final environmental document in the record for this docket.

Believing this deep familiarity with the project had value, the Company agreed to propose its “TE/VS Project” to the CPUC, and the CPUC agreed to act as the lead CEQA agency because, under CEQA, the lead agency must evaluate the impacts of an entire project, even if the agency does not have authority over all aspects of the project. From the perspective of the CPUC, the pumped hydro portion of the project is dependent on the TE/VS Project; therefore, the pumped storage project is a connected action that must be considered. Under Section 15378 of the CEQA Guidelines, the CPUC was to analyze both the “TE/VS Project” and the pumped storage portions of the “Project” as the “whole of the action,” even though CPUC’s authority extended only to the approval or denial of the CPCN application for the TE/VS Project elements.<sup>7</sup>

As required, the Company filed with the CPUC an application for approval for the TE/VS Project. The application was approved as complete in 2011. The CPUC imposes extraordinarily rigorous standards on applicants to submit all current, relevant information required for their analysis. This included the requirement for the Company to develop a much more detailed project description and a “Proponent’s Environmental Assessment” (“PEA”). The PEA serves as the basis for creation of an EIR, much like the Commission can use an environmental assessment (or applicant prepared draft EIS) as the basis for its own EIS. This [link](#) is to the CPUC’s web site where Nevada Hydro’s application may be found. This application contains a significant amount of detailed information that augments what was available in the Final EIS. Some examples:

- Enhanced and more detailed electrical and engineering drawings for substations.
- An extremely detailed project description.
- Detailed maps covering the entire scope of the project, including primary transmission connections to the interconnected grid, tower and other facility locations and upgrades to facilities within the interconnected grid.
- Updated environmental description and impact assessments.

The public record developed by the CPUC significantly augments and updates the information that was developed in Commission Project No. 11858, and the Company requests that this extensive record to be incorporated into the record for the Project. The complete inventory of filings made by all parties to the proceeding, as well as decisions and rulings issued by the CPUC may be found [here](#). This inventory of documents also demonstrates the extensive consultation efforts in which the Company has been involved, as described further in Section 3.2 of this filing.

### **3.1.3 Updated Environmental Analyses**

As a result of the work described in the previous subsections, the Company was able to update the description of the environment and impact assessment. This may be found in the PEA just described

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<sup>7</sup> The issue of how the wires portion of the Project is to be considered is now moot, as the Company has since abandoned working with the CPUC to approve the “TE/VS Project” and will license the entire project, including its primary lines, under the Federal Power Act’s requirements through the Commission. Nonetheless, the materials prepared by the Company and accepted by the CPUC remain extremely relevant for use in this docket.

and in the [Update to Environmental Assessment](#), and [Updated Impact Analysis.pdf](#) the Company prepared for use by the Commission found in the “Attachments to NOI” section of this filing. The Company has also extracted and included as an attachment to this NOI a much more detailed project description than had last been before the Commission ([LEAPS Detailed Description.pdf](#) and replacement pages containing expanded detailed graphics).

**3.1.4 Detailed consultation between the Company and the US Forest Service precisely identifies the Project’s proposed use of Forest lands.**

The Final EIS generally identified areas where the Project would affect property of the Cleveland National Forest (“Forest”). The Company therefore began a process with Forest personnel to identify specific sites within the Forest for project facilities. Roughly 30 of the approximately 32-mile total length of the two primary line connections to the grid traverse the Forest. This vetting process involved detailed evaluation of the proposed location of each of the 170 transmission towers to be located on Forest land, as well as substation and work locations within the Forest. Project and Forest staff met on-site and assessed existing site conditions, proposed site access methods, erection as well as site maintenance and rehabilitation for each proposed location. The results of this extensive collaboration, containing evaluations for the nearly 200 locations the project will touch Forest property has been widely available since publication in 2009 and may be found in the “Attachments to NOI” section of this filing (see “[USFS LEAPS Facility Siting Workbook.pdf](#)”).

With this confirmation by the Forest, the Company developed detailed site designs for Project facilities. These detailed designs are reflected in the detailed Project description and in detailed route maps and excavation volumes, all of which may be accessed at this [link](#) to the CPUC’s web site,<sup>8</sup> and which have been fully incorporated into the Company’s attached draft license application, described in Section 4.

**3.1.5 Executed interconnection agreements describe the scope and cost of connecting the project to the region’s high voltage grid.**

Since the Final EIS was published, the Company has executed agreements with area utilities which allow Project power to be transmitted to the interconnected grid. The Project is the only proposed hydro project in California to have perfected interconnection agreements, this during an arduous decade long process.

This process began in 2005, predating the Final EIS, when the Company first submitted its single interconnect request to the California Independent System Operator (“CAISO”) to interconnect the Project at two points on the CAISO-controlled transmission grid: one on the SDG&E system to the south of the powerhouse location, and the other on the Southern California Edison (“SCE”) system to the north of the powerhouse location. The CAISO acknowledged that the Project would be treated as a singular project with a single scope of work to be developed jointly among the CAISO, SDG&E, SCE and the Company. However, the CAISO, SDG&E and SCE later required separate processes resulting in separate interconnection agreements, one with each utility as counterparty. The result was that the single interconnection request was processed on two different tracks, with two different timelines of two

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<sup>8</sup> / Chapter 3 of the Company’s application to the CPUC contains this detailed “Project Description”.

different utilities. So, the draft agreement with SDG&E was filed unexecuted with the Commission in 2008, with outstanding issues resolved by the Commission in 2009.

While the Commission addressed agreement conditions in connection with the southern (SDG&E) connection point, the Company was also negotiating the northern interconnection with SCE. However, the CAISO and SCE deferred discussions on the second component of the interconnection request for an extended period. The agreement was only finally executed in the last few years, and the Company and SCE are still discussing certain provisions of the agreement.

Notwithstanding all of this, the Commission has ruled that these two connection elements constitute the single interconnection for the Project with a single interconnection queue position. As a result, the Company now has documented the precise engineering configuration and cost of the Project's interconnections to the State's high voltage grid. These agreements should be incorporated into the docket, and may be found in the "Attachments to NOI" section of this filing (see "[SCE NHC LGIA Filing.pdf](#)" and "[SDGE NHC LGIA Filing.pdf](#)"). Information from these agreements has been incorporated into the attached draft license application, described in Section 4.

### **3.1.6 Review of Final EIS now underway**

In connection with its decision to provide this NOI to the Commission, the Company has engaged the services of TRC Solutions,<sup>9</sup> a highly qualified environmental consulting firm, to assess changes that may have occurred since issuance of the Final EIS that might be addressed in an update to the Final EIS. The Company will provide their report to the Commission when complete to incorporate into the Project Docket. The Company will also use its findings as a basis for additional pre-filing consultation, if the findings conclude it is required.

### **3.2 Extensive consultation has occurred since the Commission published its Final EIS**

Extensive consultation has occurred under the regulatory umbrellas of two agency proceedings, as well as independent of agency proceedings as initiated and documented by the Company. Under agency umbrellas, first, as directed by Commission rules in this docket, and in addition, under CEQA rules in California.

As the Commission is aware, the Company consulted with a variety of stakeholders in advance of filing its application for a preliminary permit in this docket and comments were received in this docket when the Commission accepted the preliminary permit application for filing. Additional consultation occurred in advance of and upon filing of the Company's PAD in 2012. Further, in 2014, the Company formally solicited comments from resource agencies and the public on factors to be addressed to update the Final EIS.

Extensive consultation also occurred under the umbrella of the CPUC's processing of the Company's application, described above in Section 3.1.2, and in connection with the CPUC's independent analysis of the Project, as described in this same section. For example, in the Company's own proceeding, in addition to the comprehensive application the Company filed, the CPUC's docket contains over 200 individual documents addressing various facets of the application and its processing,

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<sup>9</sup> / Information on the company may be found at [www.trcsolutions.com](http://www.trcsolutions.com)

as well as the Company's responses to most of the issues raised. The CPUC also held formal public meetings and hearings addressing a variety of issues raised by the application.

Further, and as described in Section 3.1.3, the Company and staff of the Cleveland Forest have had extensive consultation over the years, including documentation of extensive collaboration on the use of Forest lands.

The Company also worked closely with representatives of the regional state Fish and Wildlife office in connection with the designation of land near project facilities for species protection purposes. Results of this consultation were incorporated into the Company's application to the CPUC and is incorporated in the attached draft license application, described in Section 4.

In addition, the Company convened and hosted a public workshop in 2012, at a location central to the project location. The meeting, although scheduled for the hours 4 pm to 8 pm, actually began at 3:30 pm commensurate with the arrival of interested parties, and lasted until after 8 pm. The Company had provided extensive notice of the meeting. The Company's consultant mailed 5,000 invitation cards to interested and affected parties, placed public notice display advertising in the three daily newspapers of general circulation in the region, and distributed notice to the email list developed in connection with proceedings at the CPUC. A detailed report of this workshop may be found in the "Attachments to NOI" section of this filing (see "[Public Workshop Report.pdf](#)").

More recently, the Company reached out to area water agencies to document updated water supply and water quality issues associated with Lake Elsinore. The Company was able to review and assess any new issues that may be addressed during this proceeding, and added a number of new relevant studies that are referenced in the attached draft license application, described in Section 4.

This extensive on record consultation should be incorporated into this docket. Although the Company would be pleased to discuss any gaps Commission staff may perceive, the Company believes that it has met all required pre-filing consultation requirements.

### **3.3 Issues Related to Scoping**

The Company is aware of the criticality of proper scoping to the Commission processing of a licensing application. The Company is also aware that both the ILP and TLP describe required steps related to scoping in each process. The Commission's Handbook describes the two processes as follows:

*In the integrated licensing process, Commission staff involvement begins during the pre-filing consultation process and is sustained throughout the licensing process. The integrated licensing process merges pre-filing consultation and the National Environmental Policy Act (NEPA) process, brings finality to pre-filing study disputes, and maximizes the opportunity for the federal and state agencies to coordinate their respective processes with the Commission's licensing process.*

*In the traditional licensing process, the Commission conducts scoping after an application is accepted for filing by the Commission, and there is little Commission involvement during the pre-filing consultation process prior to when the application is filed.<sup>10</sup>*

The following two subsections briefly describe scoping requirements in the ILP and TLP. The section then concludes with a proposal for consideration by the Commission relative to any further scoping requirements the Commission may direct in advance of application filing.

### **3.3.1 Scoping in the ILP**

In the integrated licensing process, pre-filing consultation is conducted concurrently with the Commission's NEPA scoping process. The filing of the NOI and PAD begins the pre-filing consultation, and sets in motion the Commission's scoping and tribal consultation efforts. The NOI leads to the development of a study plan through consultation. With a study plan finalized, the potential applicant is to proceed with the studies identified and provide results when completed. As the potential applicant proceeds with the identified studies, those requesting additional or modified studies face an increasingly difficult hurdle requiring a showing of good cause detailing why such additions or changes are now required. Section 5.16 of Commission rules require that "no later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the potential applicant must file for comment a preliminary licensing proposal". The filing of a draft license application is also permitted under this section, followed by the filing of the final license application, after the specified consultation period.

### **3.3.2 Scoping in the TLP**

Use of the TLP requires advance approval from the Commission. The TLP consists of three stages. The first stage requires meetings with various parties leading to a set of resource-specific study plans and the filing of detailed documentation of the consultation process. The second stage requires the applicant to distribute a draft application with a written request for review and comment by resource agencies. The filing of the application with the Commission initiates the third consultation stage.

### **3.3.3 Proposed process to use**

As described in Section 3.1 (regarding the additional detailed and relevant information the Company has developed) and Section 3.2 (regarding consultation in which the Company has remained engaged), the ongoing consultation and scoping processes in which the Company has been engaged uniquely places the Project between the requirements of both the ILP and TLP processes.

From the perspective of the ILP, while the Company filed its PAD in 2012, it did not explicitly provide the required NOI, but instead offered to consult with the Commission (in Section 2 of the filed PAD) on the appropriate process to move the application forward. Although no meeting with the Commission occurred, the PAD did provide notice to interested resource agencies, Indian tribes and members of the public that this

*"Pre-Application Document (PAD) provides information to initiate consultation concerning the application for a federal permit and associated entitlements as may be required from the*

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<sup>10</sup> / Handbook, at page 1-2.

*Federal Energy Regulatory Commission (FERC or Commission) and from other federal, state, and local agencies to permit, construct, and operate an advanced pumped storage hydroelectric generation project, including all facilities appurtenant thereto.”<sup>11</sup>*

A wide variety of parties provided comments to the Commission in response to the notice provided by the PAD filing, thus meeting the intent of Sections 5.5 and 5.6 of Commission rules. Further, as described in Sections 3.1 and 3.2 of this filing, the Company has continued providing more specific, detailed and relevant information to interested parties and has also continued to consult with interested parties. Notably, none of the comments identified any real additional scoping-related issues.

When viewed through a TLP lens, and again as detailed in Sections 3.1 and 3.2 of this filing, the Company has already complied with the intent and spirit of the first and second consultation stages.

However, whether in the ILP or TLP, it is the Company’s view that between the scoping that took place in Project No. 11858 and in the various CPUC proceedings, no new useful information would come out of subjecting the Project to complete re-scoping as detailed in either the ILP or TLP. As described above, the Project has been subjected to scoping by the Commission in the prior docket and at least twice by the CPUC. No new information was uncovered by scoping exercises since the Commission’s action in the former docket.

However, and as described in Section 3.1.6, the Company has engaged a qualified environmental firm to assess whether current rules mandate that additional issues be incorporated into the current analysis of the Project. The Company proposes that any limited additional scoping be addressed during the course of the licensing of the Project, and not delay the Company in submitting its license application before expiration of the current preliminary permit.

As always, the Company would be pleased to discuss scoping requirements with Commission staff.

### **3.4 Proposed treatment of additional pre-filing requirements**

Because the Company has developed and has made public so much supplemental relevant detailed information about the Project while continuing ongoing consultation with agencies and interested stakeholders on this supplemental information, the Company requests that the Commission permit it, as the next step, to directly file its final license application under 18 CFR 5.16.

The Company respectfully provides the following comments and suggestions on the ILP steps leading up to filing.

#### **3.4.1 Tribal consultation**

As required by Commission Rule 5.7, the Company will work to arrange a meeting between local Indian tribes and Commission staff within 30 days following the filing of this notice.

#### **3.4.2 Commission Notice under Section 5.8**

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<sup>11</sup>/ Pre-Application Document, Lake Elsinore Advanced Pumped Storage Project, Federal Energy Regulatory Commission Project Number 14227, Prepared by: The Nevada Hydro Company, Inc., January 2012, at Section 1.

The Company does not see value to an additional round of scoping prior to allowing the Company to file its license application. The Commission undertook extensive scoping leading to the publication of the Final EIS. The Elsinore Valley Municipal Water District also commenced a number of scoping proceedings while it was the CEQA lead agency. Later when the CPUC assumed this lead role, it too advanced an extensive scoping effort, including two public meetings. Detail on the CPUC's proceeding may be found [here](#).

Since the Commission initiated and completed its scoping effort, no issues have been identified that have not previously been addressed thoroughly in the Final EIS and in the CEQA proceedings at the CPUC, described previously. Nonetheless, and as described previously, the Company has engaged the services of a major environmental consulting firm to assess what may be needed to bring the Final EIS to present standards. The Company proposes that any additional scoping be limited to any issues uncovered by this analysis and be addressed during the Commission's processing of the license application.

### **3.4.3 Comments and Study Requests**

Commission Rules, including at Section 5.9, allow interested parties to file comments and study requests. As has been described herein, this Project has been subjected to comments and study requests for more than 10 years, all of which have been properly responded to by the Commission, other regulators or by the Company itself. While the Company will always entertain new requests, based upon the extensive consultation that has taken place since the Final EIS was published, the Company believes that any such requests not be cause to delay Commission acceptance of the Company's license application, but instead be addressed during the processing of the Company's application.

### **3.4.4 Study Plans and Studies**

Section 5.11 of the Commission's Rules requires the filing by the Company of a proposed study plan. Ordinarily, such a proposed plan must include with respect to each proposed study:

- (1) A detailed description of the study and the methodology to be used;
- (2) A schedule for conducting the study;
- (3) Provisions for periodic progress reports, including the manner and extent to which information will be shared; and sufficient time for technical review of the analysis and results; and
- (4) If the potential applicant does not adopt a requested study, an explanation of why the request was not adopted, with reference to the criteria set forth in §5.9(b).

Further, Section 5.12 of the Commission's Rules allows interested parties to submit comments on any such plans, Section 5.13 allows such plans to be revised based upon comments received, Section 5.14 provides for a dispute resolution process and Section 5.15 provides procedures to be followed in the actual study.

As described above in Section 3.4.2 in connections with Commission notice of scoping, "[s]ince the Commission initiated and completed its scoping effort, no issues have been identified that have not previously been addressed thoroughly in the Final EIS and in the CEQA proceedings at the CPUC,

described previously. Nonetheless, and as described previously, the Company has engaged the services of a major environmental consulting firm to assess what may be needed to bring the Final EIS to present standards. The Company proposes that any additional scoping be limited to any issues uncovered by this analysis and be addressed during the Commission's processing of the license application." As such, the Commission should not require the Company to submit another full scoping plan, in advance of filing its license application.

#### **4. Draft License Application is attached to this notice**

Section 5.16 of the Commission's Rules allows the Company to file a draft license application instead of the Preliminary Licensing Proposal. Although the Rules require that ordinarily, an applicant must provide notice of its intent to do so in the updated study report required by Section 5.15(f), as the Company is requesting that the Commission waive this requirement, it is instead providing this notice that it is filing and has included a "draft" license application, attached to this notice. The Company is titling this application as "draft" as required by Section 5.16, however, the Company notes that for all intents and purposes it is complete and could be considered by the Commission the Company's license application, to be filed under Section 5.17 and 5.18 of Commission rules.

#### **5. Conclusion**

The Company understands that the Commission is faced with a unique situation with this Project as it has been thoroughly assessed by the Commission with a Final EIS issued for the identical project now addressed in this docket. Although the Final EIS is now 10 years old, not much has changed to require the Commission to restart this licensing process from the beginning. The Company here is providing evidence of the significant amount of work it has undertaken to keep the information and consultation efforts fresh, and to demonstrate that here, the Commission has the ability to accelerate the licensing of a hydroelectric project, without violating either its own processes or NEPA while meeting the mandates imposed upon it by the Federal Power Act and more recent Federal law aimed at streamlining the licensing process.

The Company hopes that the Commission will agree to move this Project forward under the reasonably accelerated basis described in this filing.

Please let us know if you have questions.

Sincerely,

/s/ David Kates

David Kates

On behalf of The Nevada Hydro Company