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BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project.

Application 10-07-001
(Filed July 6, 2010)

**JOINT ASSIGNED COMMISSIONER'S AND
ADMINISTRATIVE LAW JUDGE'S
PHASE 1 SCOPING MEMO RULING**

1. Summary

This ruling sets forth the procedural schedule, establishes the scope of the issues for Phase 1, confirms the categorization, and assigns the presiding officer for this proceeding. This Phase 1 Scoping Memo Ruling follows the prehearing conference held on September 22, 2010.

2. Background

In this application, the Nevada Hydro Company (Nevada Hydro or TNHC) requests a Certificate of Public Convenience and Necessity (CPCN) for the Talega-Escondido/Valley-Serrano 500 kiloVolt (kV) Interconnect Project. Nevada Hydro previously filed Application (A.) 07-10-005 and A.09-02-012 seeking the same authorization. These applications were dismissed without prejudice by Decision (D.) 09-04-006. In that decision, the Commission stated:

The Nevada Hydro Company (Nevada Hydro or Applicant) has not provided the required environmental documents that comply with General Order (GO) 131-D and the Commission's Rules of Practice and Procedure. As a result, we cannot deem this

application complete and we cannot carry out our statutory responsibilities under the California Environmental Quality Act. We recognize that the Project may have potential benefits and we encourage Applicant to take the time and invest the necessary resources to develop an updated and revised application that includes a complete Proponent's Environmental Assessment that fully addresses all of our concerns, including those specified in the Commission Staff's deficiency letter dated March 12, 2009.¹

On July 6, 2010, the instant revised application was accepted for filing. Nevada Hydro states that this application now complies with Commission direction. On August 5, 2010, Commission staff determined that the Proponent's Environmental Assessment was complete for purposes of the California Environmental Quality Act (CEQA). When the Notice of Preparation is filed at the Governor's Office of Planning and Research, Commission staff will begin an independent evaluation of the proposed project, including public scoping meetings to develop alternatives to the proposed project, and the potential environmental impacts of the proposed project and alternatives, as required by CEQA.

Timely protests were filed by the Division of Ratepayer Advocates (DRA), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), John Pecora, Forest Residents Opposing New Transmission Lines (FRONTLINES), Fresian Focus, LLC, Linda Lou and Martin Ridenour, the Elsinore Valley Municipal Water District, and jointly by the Center for Biological Diversity, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau,

¹ D.09-04-006 at 1.

Santa Ana Mountains Task Force of the Sierra Club. Nevada Hydro filed its reply on August 16, 2010.

3. Threshold Issues and Scope of Phase 1

At the pre-hearing conference (PHC), the assigned Administrative Law Judge (ALJ) raised several threshold issues to be addressed in either testimony or initial briefs. TNHC also indicated that the witnesses sponsoring the economic testimony are no longer available. TNHC proposed to provide supplemental testimony from substitute witnesses who will also provide updated testimony addressing economic issues such as the Sunrise Powerlink Project, impact of legislation addressing once-through cooling generation, the development of renewable energy, and reduced loads throughout California, as well as testimony related to reliability and financial viability.

By Ruling issued on October 6, 2010, the assigned ALJ confirmed that this testimony was to be served by November 30, 2010, and that the testimony should supplement the showing on costs, provide updated, detailed, and specific maps, the proposed substations, and associated impact on SDG &E and SCE. The Ruling also set a briefing schedule for certain threshold issues, including a) whether or not THNC would be a public utility (as defined in Pub. Util. Code § 218) upon issuance of a CPCN,² b) whether the proposed Talega-Escondido/Valley-Serrano transmission line is a stand-alone project and whether THNC must apply for a CPCN at this Commission, if the Federal Energy Regulatory Commission (FERC) certifies the Lake Elsinore Advanced Pumped Storage (LEAPS) project, for which THNC is a co-applicant at FERC

² All statutory references are to the Pub. Util. Code, unless otherwise noted.

with the Elsinore Valley Municipal Water District, and c) how to address responsibility for payment of compensation for intervenors found eligible for such compensation pursuant to §§ 1801 et seq., as well as reimbursement for DRA's expenses for hiring consultants, pursuant to § 631.

Nevada Hydro, DRA, SCE, SDG&E, FRONTLINES, Center for Biological Diversity, Friends of the Forest (Trabuco District) and the Santa Rosa Plateau, Santa Ana Mountains Task Force of the Sierra Club, John Pecora, and Elsinore Valley Municipal Water District timely filed and served concurrent opening briefs. Other than DRA, the same parties filed and served concurrent reply briefs. On December 23, 2010, Nevada Hydro filed a motion, requesting leave to file a reply brief in response to what it characterizes as new arguments raised in the reply briefs of certain intervenors. As set forth below, we are phasing this proceeding and the Commission will issue a decision in Phase 1. At this juncture, there is no need to "reply" to the reply briefs. Therefore, we deny Nevada Hydro's motion.

It is reasonable to consider the following threshold issues in the scope of Phase 1 of this proceeding before devoting additional Commission or party resources to remaining issues:

1. Entities applying for a CPCN at the Commission are generally certificated as public utilities if and when the project is approved. If the project is not approved, for some reason, the entity would not be determined to be a public utility. Is there a reason to proceed any differently in this matter? Why or why not?
2. There was some discussion at the PHC as to whether the transmission line proposed by TNHC is a stand-alone project. Since TNHC has co-applied with Elsinore Valley Municipal Water District to the FERC for a license to construct and operate the Lake Elsinore Advanced Pumped Storage

- (LEAPS) facility, does this imply that TNHC will own any generation generated by LEAPS? If so, must TNHC seek a CPCN at this Commission for LEAPS?³ If not, how is this different from the Helms pumped storage project?⁴
3. If, for some reason, the Talega-Escondido/Valley-Serrano project is not approved and TNHC is not determined to be a public utility under Pub. Util. Code § 218, should eligible intervenors receive intervenor compensation under Pub. Util. Code §§ 1801 et seq.? If so, who would be responsible for paying those intervenors?
 4. Should TNHC be required to post a bond or provide some other guarantee of payment for intervenors or for payment to DRA for consultant services pursuant to Pub. Util. Code § 631?

Issues 1 and 2 have been adequately briefed. We clarify that the project to be considered in this proceeding is the transmission line proposed by Nevada Hydro. However, the CEQA process will include the whole of the action, which will include LEAPS.

We anticipate the amount of bond or other guarantee of payment to ensure appropriate compensation to eligible intervenors and to allow DRA to hire a consultant can be addressed in comments. We therefore anticipate that Phase 1 can be resolved by written comments and that no hearings are necessary in

³ Pub. Util. Code § 1001. Also, General Order 131-D provides, in pertinent part, that “no electric public utility, now subject, or which hereafter may become subject, to the jurisdiction of this Commission, shall begin construction in this state of any new electric generating plant, or of the modification, alteration, or addition to an existing electric generating plant, or of electric transmission/power/distribution line facilities, or of new, upgraded or modified substations without first complying with the provisions of this General Order.”

⁴ See D.85910 (80 CPUC 52); also discussed in D.85-08-102 (18 CPUC2d 700).

Phase 1. It is incumbent upon any party arguing for evidentiary hearings to file a motion in the timeframe specified by the schedule below (i.e., when opening comments are due or by February 11, 2011) that identifies specifically any disputed material issues of fact that the party asserts require hearings and why these disputed facts are material to a resolution of Phase 1. The schedule for Phase 1 is as follows:

4. Schedule for Phase 1

Event	Date
Phase 1 Scoping Memo Ruling	January 20, 2011
Comments on appropriate amounts, if any, required for surety bond or other guarantee of payment related to intervenor compensation and funding of DRA consultant; motions requesting evidentiary hearing on Phase 1 due, as more fully described above	February 11, 2011
Reply Comments	February 25, 2011
Proposed Decision on Phase 1 Issues (if evidentiary hearings are not held)	March 2011
Phase 1 Decision Considered on Commission Agenda (if evidentiary hearings are not held)	April 2011

The Presiding Officer may revise this schedule, as necessary. The issues raised in this Phase 1 scoping memo will be resolved within 18 months of the date that this Scoping Memo Ruling is issued, pursuant to § 1701.5.

Issues associated with financial viability include whether Nevada Hydro has adequate financial backing to fund the costs of development and construction of the Talega-Escondido/Valley-Serrano transmission line, including network upgrades, and specifics as to how the financing will be structured and how Nevada Hydro will recoup its costs. These issues will be

considered in Phase 2, in conjunction with the need for the proposed project and the project's impact on the environment, according to the statutory framework set forth in the Pub. Util. Code. A separate Scoping Memo Ruling will be issued for Phase 2.

The environmental review and the consideration of need essentially occur on parallel tracks. Any interested person who has concerns about the environmental review, the development of proposed alternatives and the assessment of the environmental impacts of the proposed projects and alternatives should participate in the environmental review of this project, once the CEQA process is more fully developed. Comments on environmental documents should not be sent to the ALJ, the assigned Commissioner or other Commissioners, or filed with the Commission's Docket Office, nor should comments in the environmental review process be served on other parties.

5. Alternative Dispute Resolution

As discussed at the PHC, parties should consider whether Alternative Dispute Resolution (ADR) would be helpful in resolving or narrowing disputed issues prior to evidentiary hearings. For example, while we urge parties work cooperatively to resolve any discovery issues, ADR can be useful in resolving any such disputes. Of course, we expect parties to respond to data requests and other information requests in a timely fashion. Additionally, facilitated workshops could be held to assist parties in understanding the assumptions underlying financial calculations. Parties should contact the assigned ALJ or ALJ Jean Vieth, the ADR Coordinator, to request that a neutral mediator or facilitator be assigned.

6. Service List and Filing and Service of Documents

Parties must file certain documents as required by the Rules or in response to rulings by either the assigned Commissioner or the ALJ. All formally filed documents must be filed with the Commission's Docket Office and served on the service list for the proceeding. Article 1 of the Rules contains all of the Commission's filing requirements. We will adhere to Rule 1.13(b) in this proceeding and use electronic filing for all documents that must be filed. More information about electronic filing is available at <http://www.cpuc.ca.gov/PUC/efiling>.

Other documents, including prepared testimony, are served on the service list but not filed with the Commission's Docket Office. We will follow the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure for all documents, whether formally filed or just served. This Rule provides for electronic service of documents, in a searchable format, unless the appearance or state service list member did not provide an e-mail address. If no e-mail address was provided, service should be made by United States mail. In this proceeding, the ALJ requires concurrent e-mail service to all persons on the service list for A.10-07-001 for whom an email address is available, including those listed under "Information Only." Parties are expected to provide paper copies of served documents upon request.

E-mail communication about this case should include, at a minimum, the docket number and a brief description of the attached communication on the subject line of the e-mail; for example, A.10-07-001, Opening Brief. Paper format copies, in addition to electronic copies, shall be served on the assigned Commissioner and the ALJ.

ALJ Minkin established a new service list for this matter at the prehearing conference. The official service list can be accessed at www.cpuc.ca.gov, under Proceedings. Parties should confirm that their information on the service list is correct, and serve notice of any errors on the Commission's Process Office, the service list, and the ALJ. Prior to serving any document, each party must ensure that it is using the most up-to-date service list for A.10-07-001. The list on the Commission's website meets that definition.⁵

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or who has questions about the electronic filing procedures should contact the Commission's Public Advisor at (866) 849-8390 or (415) 703-2074, or (866) 836-7825 (TTY-toll free), or send an e-mail to public.advisor@cpuc.ca.gov.

7. Intervenor Compensation

The PHC in Phase 1 was held on September 22, 2010. Because the issues to be considered in Phase 1 could not be fully developed within 30 days of the PHC, the assigned ALJ established December 17, 2010 as the date for customers who intend to seek an award of compensation to file and serve a notice of intent (NOI) to claim compensation. The Center for Biological Diversity has been found eligible for compensation. FRONTLINES, John Pecora, and Friends of the Forest (Trabuco District) and the Santa Rosa Plateau, Santa Ana Mountains Task Force of the Sierra Club have filed NOIs. We urge parties to coordinate so that

⁵ This proceeding can also be monitored by subscribing to electronic copies of documents in this proceeding that are published on the Commission's website. There is no need to be on the service list in order to use the subscription service. Instructions for enrolling in the subscription service are available on the Commission's website at <http://subscribecpuc.cpuc.ca.gov>.

resources may be used efficiently and to avoid duplication. A separate ruling will address eligibility. Pursuant to Rule 17.1(b), an amended NOI may be filed within 15 days after the issuance of this Scoping Memo Ruling for Phase 1. We note that the Commission must determine as threshold issues whether Nevada Hydro is a public utility, whether Nevada Hydro is responsible for payment of intervenors, and whether Nevada Hydro must post a bond or some other guarantee of payment to intervenors, and therefore we emphasize that participation in this proceeding in no way guarantees compensation.

8. Categorization and *Ex Parte* Communications

In Resolution ALJ 176-3257, the Commission preliminarily determined that this proceeding should be categorized as ratesetting and preliminarily determined that evidentiary hearings would be required. This ruling confirms that this proceeding has been categorized as ratesetting and we anticipate that evidentiary hearings will be held in Phase 2. Therefore, the *ex parte* provisions of Pub. Util. Code § 1701.3 and Rule 8.2(c) and Rule 8.3 are applicable and must be followed.

9. Presiding Officer and Final Oral Argument

Pursuant to Pub. Util. Code § 1701.3, ALJ Minkin is designated as the presiding officer in this proceeding. If Phase 1 hearings occur and parties wish to have final oral argument on Phase 1 issues held before a quorum of the Commission, they must so indicate in their concurrent opening briefs.

Therefore, **IT IS RULED** that:

1. The scope of Phase 1 of Application 10-07-001 is set forth in Section 3 of this ruling.
2. The schedule for Application 10-07-001 is set forth in Section 4 of this ruling. The Presiding Officer may adjust this schedule, as necessary. Pursuant to

Pub. Util. Code § 1701.5, Phase 1 of this matter will be resolved within 18 months of the date of this Scoping Memo Ruling, or no later than July 2012.

3. Nevada Hydro Company's Motion for Leave to File a Reply Brief in Response to the Reply Briefs of Certain Intervenors, filed and served on December 23, 2010, is denied.

4. This proceeding is categorized as ratesetting and we anticipate that evidentiary hearings will be held in Phase 2.

5. Administrative Law Judge Minkin is the presiding officer.

6. The service list for this proceeding can be accessed on the Commission's website as described herein.

7. The electronic filing protocols delineated in Rule 1.13(b) (see also ftp://ftp.cpuc.ca.gov/static/Efile_User_Guide_3-12-08.PDF) and the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure shall govern this proceeding.

8. The *ex parte* provisions of Pub. Util. Code § 1701.3 and Rules 8.2(c) and 8.3 apply to this proceeding.

9. Notices of Intent (NOIs) to claim compensation were to be filed and served by December 17, 2010. Those NOIs will be addressed by separate ruling. An amended NOI may be filed within 15 days after the issuance of this Scoping Memo Ruling.

10. Parties shall respond to data requests and other information requests in a timely fashion.

Dated January 19, 2011, at San Francisco, California.

 /s/ NANCY E. RYAN
Nancy E. Ryan
Assigned Commissioner

 /s/ ANGELA K. MINKIN
Angela K. Minkin
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated January 19, 2011, at San Francisco, California.

/s/ TERESITA C. GALLARDO

Teresita C. Gallardo

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.