

Decision **PROPOSED DECISION OF ALJ MINKIN** (Mailed 6/20/2011)**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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

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

**DECISION REGARDING PHASE 1 ISSUES****1. Summary**

In this application, the Nevada Hydro Company (Nevada Hydro) requests a Certificate of Public Convenience and Necessity (CPCN) for the Talega-Escondido/Valley-Serrano 500 kilovolt Interconnect Project. Pursuant to the Scoping Memo Ruling issued for Phase 1 of this proceeding, this decision addresses the following threshold issues: a) whether or not Nevada Hydro would become a public utility (as defined in Pub. Util. Code §§ 216(a) and 218(a)) upon issuance of a CPCN,<sup>1</sup> b) whether Nevada Hydro 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 Nevada Hydro is a co-applicant at FERC with the Elsinore Valley Municipal Water District, and c) how to address responsibility for payment of

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<sup>1</sup> All statutory references are to the Pub. Util. Code, unless otherwise noted.

compensation for intervenors found eligible for such compensation pursuant to §§ 1801 et seq., as well as reimbursement for the Division of Ratepayers Advocates' (DRA) expenses for hiring consultants, pursuant to § 631.

Consistent with precedent, we find that Nevada Hydro will become a public utility under Pub. Util. Code §§ 216 and 218, if a CPCN is issued in Phase 2 of this proceeding. We will address the issue of whether or not Nevada Hydro must seek a CPCN from this Commission, if LEAPS is certificated by FERC, and assuming Nevada Hydro owns and sells power that may be generated by LEAPS.

Because it is not certain that a CPCN will be issued for this project and because we must harmonize the various statutes that are incorporated in the Pub. Util. Code, it is reasonable for Nevada Hydro to guarantee payment for those intervenors who meet the requirements of §§ 1801 et seq. and for consultants hired by DRA, regardless of the outcome of this application. Therefore, the Commission directs Nevada Hydro to post a surety bond or performance bond in the amount of \$550,000 to cover the anticipated costs of eligible intervenors who make a substantial contribution to this proceeding, consistent with the requirements of the Pub. Util. Code. As DRA requests, we order Nevada Hydro to enter into a reimbursable contract arrangement that would cover the costs of DRA's consultants, currently estimated at \$450,000. We conclude that these are reasonable costs of doing business for an entity proposing to be certified as a public utility and proposing to build a project originally estimated to cost \$353 million (in 2007 dollars), and now anticipated to cost \$684 million.

**2. Background**

The Nevada Hydro Company (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. On July 6, 2010, the instant revised application was accepted for filing. On August 5, 2010, Commission staff determined that the Proponent's Environmental Assessment (PEA) was complete for purposes of the California Environmental Quality Act (CEQA). At the request of Commission Staff, Nevada Hydro amended its PEA on February 25, 2011. The Notice of Preparation was filed on March 14, 2011 at the Governor's Office of Planning and Research. By this action, Commission staff has begun an independent evaluation of the proposed project, including public scoping meetings to develop alternatives to the proposed project, and the potential environmental impacts of the proposed project and alternatives, as required by CEQA.

Timely protests were filed by the Division of Ratepayer Advocates (DRA), Southern California Edison Company (SCE), San Diego Gas & Electric Company (SDG&E), John Pecora (Pecora), Forest Residents Opposing New Transmission Lines (FRONTLINES), Fresian Focus, LLC, Linda Lou and Martin Ridenour, the Elsinore Valley Municipal Water District (EVMWD), and jointly by the Center for Biological Diversity (CBD), Friends of the Forest (Trabuco District) and the Santa Rosa Plateau (FOF&P), and Santa Ana Mountains Task Force (SAMTF) of the Sierra Club. Nevada Hydro filed its reply on August 16, 2010.

**3. Threshold Issues and Scope of Phase 1**

As set forth in the Scoping Memo Ruling for Phase 1, it is reasonable to consider certain threshold issues before devoting additional resources to this proceeding. Parties briefed or filed comments on the following issues:

1. Entities applying for a Certificate of Public Convenience and Necessity (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. Since Nevada Hydro has co-applied with EVMWD to the Federal Energy Regulatory Commission (FERC) for a license to construct and operate the Lake Elsinore Advanced Pumped Storage (LEAPS) facility, does this imply that Nevada Hydro will own any generation generated by LEAPS? If so, must Nevada Hydro seek a CPCN at this Commission for LEAPS?<sup>2</sup> If not, how is this different from the Helms pumped storage project?<sup>3</sup>
3. If, for some reason, the Talega-Escondido/Valley-Serrano project is not approved and Nevada Hydro 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 Nevada Hydro 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?

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<sup>2</sup> 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.”

<sup>3</sup> See D.85910 (80 CPUC 52); also discussed in D.85-08-102 (18 CPUC2d 700).

Nevada Hydro, DRA, SCE, SDG&E, FRONTLINES, CBD, FOF&P/SAMTF, Pecora, and EVMWD timely filed and served concurrent opening briefs. Other than DRA, the same parties filed and served concurrent reply briefs. Nevada Hydro, DRA, FRONTLINES, and, jointly, CBD, FOF&P, and SAMTF filed and served comments, as provided in the Scoping Memo Ruling. Phase 1 was submitted on April 25, 2011, upon issuance of the Administrative Law Judge (ALJ) Ruling accepting CBD's late-filed comments.

#### **4. Public utility status and requirement to obtain CPCN for LEAPS**

Nevada Hydro maintains that Commission generally certifies new market entrants as public utilities as a result of issuing the CPCN, as has been the case for several gas storage facilities, including Lodi Gas Storage and, more recently, Gill Ranch Storage.<sup>4</sup> If the CPCN is granted, Nevada Hydro states that it will both own electric transmission facilities and will dedicate these facilities to public use; therefore, it will meet the statutory definition of an electrical corporation (§ 218) and will satisfy the dedication to public use test (§ 216). Nevada Hydro also argues that public policy support this outcome, explaining that FERC has moved toward increased open access and greater competition in transmission.

SCE states that the Commission should treat Nevada Hydro in the same manner as it would any private entity seeking to enter the California transmission market. SCE maintains that, under the assumption that Nevada Hydro will become a public utility if the Commission issues a CPCN, all aspects

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<sup>4</sup> D.00-05-048, 6 CPUC 3d at 232; D.09-10-035 at 3.

of the Pub. Util. Code must apply. SDG&E contends that a plan to build is not sufficient; instead, Nevada Hydro cannot be certificated as a public utility until it actually owns or operates electric plant.

Because of the related nature of LEAPS and the proposed Talega-Escondido/Valley-Serrano transmission line, CBD recommends that the Commission defer consideration of the proposed transmission line until the pumped storage project receives approval from FERC and that the Commission should consider both projects together in determining whether a CPCN should be issued. FRONTLINES contends that the Commission effectively rendered this issue moot when it accepted the application for filing. Pecora agrees that Nevada Hydro will become a public utility if the Commission issues a CPCN, but argues that simply submitting an application does not convey public utility status on Nevada Hydro. SAMTF/FOF&P appear to agree that Nevada Hydro will become a public utility if a CPCN is issued, but raise substantive questions as to whether Nevada Hydro has the financial backing to construct and operate the transmission line, including ensuring that it maintains adequate amounts of liability insurance.

As to whether it must seek a CPCN for LEAPS at this Commission, Nevada Hydro contends that because FERC has jurisdiction over hydroelectric power projects, this Commission's jurisdiction is preempted and any requirements under §§ 1001 et seq. must necessarily be superseded. Nevada Hydro explains that while a CPCN was issued for the Helms Pumped Storage Project, it concludes that PG&E voluntarily applied for a CPCN here, but that such action was not required. FRONTLINES argues that the issue of whether or not a CPCN is required for LEAPS is irrelevant to the matter before us; i.e., whether the proposed transmission line should be certificated. FRONTLINES

explains that transmission line projects such as TE/VS and pumped storage projects with associated tie-lines, such as Helms and LEAPS are distinguishable. FRONTLINES argues that LEAPS is an independent project that should be considered by the Commission if and when a CPCN for LEAPS is tendered. The proposed line is a stand-alone project and Nevada Hydro represents that it will transmit non-LEAPS power to the public. SAMTF/FOF&P agree that this issue is not ripe, but instead should be determined generically in Order Instituting Rulemaking (R.) 10-12-007, the Commission's rulemaking on electricity storage technologies and approaches. In comments, both FRONTLINES and SAMTF/FOF&P argue that recent FERC action has rendered the LEAPS application moot. These parties urge the Commission to abandon its intent to include LEAPS in the environmental assessment of the TE/VS transmission line. CBD, EVMWD, and Pecora point out that development contracts between Nevada Hydro and EVMWD give Nevada Hydro the right to own all generation produced by LEAPS.

### **Discussion**

Based on Commission precedent, we conclude that if the CPCN is granted by the Commission, Nevada Hydro will become a public utility, pursuant to §§ 216 and 218. It is reasonable to take this approach, which mirrors the natural gas industry, as we recognized in D.00-05-048, in which the Commission issued a CPCN for Lodi Gas Storage (*Lodi Gas* decision): "The underlying rationale is that upon receipt of a CPCN, an applicant becomes a gas corporation."<sup>5</sup> The *Lodi Gas* decision recognized the importance of the Legislature's guidance regarding

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<sup>5</sup> D.00-05-048 6 CPUC 3d at 234.

independent gas storage providers and D.93-02-013.<sup>6</sup> While there is no corresponding Commission decision that promotes competition in the transmission arena, we concur that it would create an uneven playing field were the Commission to require that entities must be certificated as public utilities under §§ 216 and 218 prior to applying for a CPCN. Therefore, we find that if a CPCN is issued for the Talega-Escondido/Valley-Serrano transmission line, Nevada Hydro will become a public utility within the meaning of the Pub. Util. Code.

Section 218(a) defines an “electrical corporation” as including every “corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state, except where electricity is generated or or distributed by the producer through private property solely for its own use or the use of its tenants and not for sale or transmission to others.” Here, Nevada Hydro is proposing to construct a transmission line that would be used, for example, to transmit power from the Talega-Escondido line to the Valley-Serrano line and vice versa. In addition, §216(a) states that a “public utility” includes “every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof.” If a CPCN is issued, Nevada Hydro acknowledges that it will become an electrical corporation and that it will dedicate its facilities to public use, consistent with the Pub. Util. Code.

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<sup>6</sup> Id. at 233.

Pursuant to §§ 1001 et seq. and General Order 131-D, when the Commission issues a CPCN, it must, among other factors, consider the environmental effects of the project, community values, the cost-effectiveness of the proposed project, and a project implementation plan. As stated in the Scoping Memo Ruling for Phase 1, substantive issues related to the financial viability of Nevada Hydro, the need for the proposed project and the environmental review of the project are questions we will take up in Phase 2 of this proceeding.

Nevada Hydro has requested certification of the proposed project as a stand-alone project. In Phase 2 of this proceeding, the proposed transmission line will be evaluated on a stand-alone basis with regard to the need for the project and the economics of constructing such a project.<sup>7</sup>

We do not agree that Nevada Hydro must obtain a CPCN for LEAPS prior to constructing the transmission line, as CBD advocates. As we understand it, the future of the LEAPS project at FERC is in question at this time. On July 12, FERC issued an order dismissing the LEAPS application. Parties have 30 days from the date of issuance of that order to appeal this action.<sup>8</sup> While we agree that the Federal Power Act reserves jurisdiction over hydroelectric projects to FERC, we also find that states are not precluded from requesting that the applicant voluntarily seek a concurrent CPCN after the project is certificated by FERC. However, based on the lack of action at FERC, we need not address this issue now. We will determine whether or not Nevada Hydro must seek a CPCN for

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<sup>7</sup> As stated in the Scoping Memo Ruling for Phase 1, the CEQA process will include the whole of the action, including LEAPS.

<sup>8</sup> <http://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=12704739>

LEAPS, if and when that project is certificated by FERC, assuming that Nevada Hydro owns and sells generation from the LEAPS project.

We do not agree with parties who urge us to drop consideration of LEAPS in our CEQA assessment of the TE/VIS transmission line. In reply comments to the proposed decision, Nevada Hydro states that it intends to pursue LEAPS as a project. Consistent with the requirements of CEQA, LEAPS remains a reasonably foreseeable related action of the TE/VIS project and the environmental impacts of the whole of the project must be considered.

**5. Requirement to ensure payment for intervenors and DRA's consultants**

If the proposed transmission line is not certificated by this Commission, we must also consider whether the Pub. Util. Code applies during the pendency of this proceeding. This is an issue of first impression, as previous applicants who have applied for CPCNs before being certificated as a public utility have either not addressed the question of financing for eligible intervenors or partnered with investor-owned utilities.<sup>9</sup>

Nevada Hydro maintains that there is no legal predicate to require it to post a bond or provide some other guarantee of payment for intervenor compensation or reimbursement of DRA consultant expenses. SCE and SDG&E contend that the Pub. Util. Code must be read in its entirety; i.e., if Nevada Hydro will become a public utility upon issuance of a CPCN, then it follows that

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<sup>9</sup> For example, in the *Lodi Gas* matter, no intervenors were found to be eligible for the intervenor compensation program. In D.03-05-038, the Commission authorized Pacific Gas & Electric Company (PG&E) to withdraw A.01-04-012, based, in part, on PG&E's partnership with the Western Area Power Association and Trans-Elect to construct the Path 15 Upgrade.

the intervenor compensation statutes must also apply during the pendency of the proceeding. SCE and SDG&E argue that Nevada Hydro seeks to avoid intervenor compensation statutes by claiming that favorable Code provisions are applicable, while also claiming that unfavorable provisions do not apply. CBD, SAMTF and FOF&P, FRONTLINES, and Pecora concur and agree that a bond should be posted to assure payment to intervenors.

DRA's comments primarily address expert witness costs and request an assurance that all of those costs would be paid by Nevada Hydro. DRA estimates that a contract with an expert witness in this proceeding will cost approximately \$450,000 but notes that the price may change depending on how issues develop throughout the proceeding. To reimburse its expert witness costs, DRA proposes that the contract be paid by Nevada Hydro consistent with the practices and procedures used in previous major transmission CPCN proceedings. DRA clarifies that these procedures consist of the following steps: 1) expert consultant performs work and submits invoices under the terms and conditions of the agreement approved by the Department of General Services; 2) DRA's contract manager, the Commission's Contracts Office, and the Commission's Fiscal Office approve the invoice for payment; 3) payment is delivered to the consultant; 4) contract officer invoices the CPCN applicant for payment; 5) applicant submits reimbursement payment to the Fiscal Office; and 6) fiscal office directs the reimbursement payment to the DRA budget. However, DRA does not oppose a bond or other guarantee of payment for the estimated cost of the contract.

At the time of filing, FRONTLINES estimated a total of \$300,000 for intervenor compensation costs and recommended the Commission increase this estimate by 50% to accommodate potential future increases. FRONTLINES also

suggests that in order to allow for consideration of complex issues raised in testimony served after initial intervenor compensation budgets were filed and to accommodate potential future litigation, that value should be increased an additional 50%. Thus, FRONTLINES recommends a minimum surety bond value of \$675,000 plus DRA's costs. FRONTLINES maintains these costs are reasonable and in accordance with Public Utilities Code sections 1801, 1801.3, and 1807.

CBD, SAMTF and FOF&P filed joint comments (collectively referred to as CBD) in the Motion for Acceptance of Late Filed Comments on Phase 1 Scoping Memo Ruling.<sup>10</sup> The CBD comments state that the amount of a surety bond provided for this case must ensure that the intervenors and DRA are fully compensated. They suggest a formula for calculating the total amount of the surety bond:

$$\text{Total Amount of Surety Bond} = ((\text{Total Amount of Intervenor Request} + \text{Total Amount of DRA Request}) \times 1.25) \times \text{potential compensable litigation costs} \times 2))$$

The CBD comments further argue that a surety bond is both appropriate and necessary in this proceeding, because Nevada Hydro is attempting to become a public utility, but seeking to avoid associated fiduciary obligations. Furthermore, Nevada Hydro has repeatedly stated that it will not provide intervenor compensation if it does not receive a CPCN.<sup>11</sup> Finally, the CBD comments request that if the Commission determines that a surety bond is not appropriate for this proceeding, then a determination should be made to pay out

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<sup>10</sup> Motion granted by ALJ Ruling dated April 25, 2011.

<sup>11</sup> CBD Comments at 4.

of a general intervenor compensation fund. SCE and SDG&E, however, do not support this proposal, because there is no such fund allotted in the Code. They also emphasize that neither SCE or SDG&E should be responsible for paying intervenors, as existing public utilities ratepayers should not be required to finance a failed third party CPCN application. Nevada Hydro rebuts CBD's allegations, arguing that CBD has mischaracterized and misquoted its source for these assertions.

### **Discussion**

We agree with SCE and SDG&E: given that Nevada Hydro will become a public utility if a CPCN is issued, we must conclude that the requirements of the Pub. Util. Code will apply during the pendency of this proceeding. We must apply the law in a way that harmonizes the various statutory requirements of the Code. The intervenor compensation statutes were enacted to apply to all electric, gas, water, and telephone utilities and the Commission is required to administer these regulations in a way that "encourages the effective and efficient participation of all groups that have a stake in the public utility regulation process."<sup>12</sup> A transmission line proceeding often has many interested parties and intervenors who "have a stake" in the outcome of this matter. It would have a chilling effect on effective participation, if there is not some guarantee that funding will be available to pay those eligible intervenors who are determined to have made a substantial contribution to this proceeding, whether or not a CPCN is issued to Nevada Hydro. In addition, this approach treats all applicants for a transmission CPCN similarly; to hold otherwise would be to impose more

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<sup>12</sup> Section 1801.3(d).

stringent requirements on utility CPCN applicants than on non-utility applicants without any justification for this differential treatment.

We order Nevada Hydro to post a surety or performance bond with a face value of \$550,000, or approximately 1.5 times the current budgets estimated by the three eligible intervenor groups in this proceeding.<sup>13</sup> This is a reasonable amount that should be sufficient to provide funding for the intervenors, including potential costs related to judicial review. We note that Lodi Gas Storage was ordered to post a surety or performance bond in the amount of \$20 million to cover its obligations under the CPCN issued in D.00-05-048.<sup>14</sup> The bond requirement shall remain in effect until the proceeding is completed and Nevada Hydro has compensated all intervenors that the Commission determines have made a substantial contribution to the proceeding. While there is a fund within the Commission's budget to pay intervenors in broad policy rulemakings where there are either numerous or unnamed respondents, this proceeding does not meet the requirements for paying intervenors from this fund.<sup>15</sup>

Section 631 requires every electrical and gas corporation that proposes to construct plant costing more than \$100 million to reimburse the Commission for

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<sup>13</sup> Based on updated filings, the intervenors estimate budgets of approximately \$400,000 to participate in this proceeding. (CBD estimates a budget of \$233,125; FRONTLINES estimates a budget of \$80,750; SAMTF/FOF&P estimate a budget of \$80,190.)

<sup>14</sup> *Lodi Gas* decision, 6 CPUC 3d at 245. The decision further notes that such a requirement is not unusual and that other utilities have voluntarily agreed to surety bonds to cover events that may not be covered by insurance policies.

<sup>15</sup> D.00-01-020 established a fund within the Commission's budget for intervenor awards in quasi-legislative proceedings in which there are either numerous respondents or respondents are not named.

consultants and advisory services for the processing of an application for the certification of the plant. While we acknowledge that Nevada Hydro has readily funded the environmental review process required by CEQA, we observe that this action supports Nevada Hydro's interests, i.e., the application cannot move forward without such funding. In Phase 2, DRA may argue against the need for the transmission line and may dispute certain cost estimates. DRA recommends that the Commission order Nevada Hydro to comply with the reimbursable contract process that is already in place and to cooperate with the Commission's officers and agents for these purposes. We agree that this is a reasonable approach and direct Nevada Hydro to enter into a progressive invoicing and reimbursable contract arrangement with DRA to fund DRA's consultants in this matter.

We conclude that the costs of providing a performance or surety bond and entering into a progressive invoicing and reimbursable contract arrangement with DRA are reasonable costs of doing business for an entity proposing to be certified as a public utility and proposing to build a project now estimated to cost \$684 million.<sup>16</sup>

## **6. Comments on Proposed Decision**

The proposed decision of Administrative Law Judge Minkin in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of

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<sup>16</sup> November 30, 2010 Testimony of Nevada Hydro Witness Drzemiecki, Exhibit 2 indicating Gross Plant Beginning of Year. Gross plant includes costs associated with construction of physical plant, acquisition of rights-of-ways and easements, and financing costs during the construction period.

Practice and Procedure. Nevada Hydro, FRONTLINES, SAMTF/FOF&P, and SDG&E filed opening comments on July 11, 2011. Nevada Hydro, FRONTLINES, and DRA filed reply comments on July 18, 2011. We have made changes throughout the decision in response to these comments, as appropriate. We decline to address issues that will be considered in Phase 2 of this proceeding.

## **7. Assignment of Proceeding**

Michel Peter Florio is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. It is reasonable to consider certain threshold issues before devoting additional resources to this proceeding.

2. In Phase 2 of this proceeding, if a CPCN is issued for the proposed Talega-Escondido/Valley-Serrano transmission line, Nevada Hydro will build a transmission line, proposed to transmit power from the Talega-Escondido line to the Valley-Serrano line, and vice versa.

3. Based on Commission precedent, entities that are granted CPCNs then become public utilities, consistent with the requirements of the Pub. Util. Code.

4. Substantive issues related to the financial viability of Nevada Hydro, the need for the proposed project, and environmental review will be considered in Phase 2.

5. In Phase 2, the proposed transmission line will be evaluated on a stand-alone basis with regard to the need for the project and the economics of constructing this project.

6. We need not determine whether or not Nevada Hydro must seek a CPCN for the LEAPS project at this Commission at this time; instead, we will make this determination if LEAPS is certificated by FERC.

7. It would have a chilling effect on effective intervenor participation, if there is not some guarantee that funding will be available to compensate those intervenors who are determined to have made a substantial contribution to this proceeding, whether or not a CPCN is issued for the proposed transmission line.

8. In D.00-05-048, the Commission ordered Lodi Gas Storage to post a surety or performance bond in the amount of \$20 million to cover its obligations under the CPCN issued in that decision.

9. Intervenors currently estimate their budgets at approximately \$400,000; requiring a surety or performance bond of \$550,000 (approximately 1.5 times the current budgets estimated for intervenor compensation) is likely a sufficient amount to ensure compensation in this matter, including the costs of judicial review, if any.

10. DRA currently estimates that it must hire expert witness services that cost approximately \$450,000.

### **Conclusions of Law**

1. Nevada Hydro will become a public utility, as set forth in §§ 216 and 218, if a CPCN is issued in Phase 2 of this proceeding.

2. While we agree that the Federal Power Act reserves jurisdiction over hydroelectric projects to FERC, states are not precluded from requesting that the applicant voluntarily seek a CPCN at this Commission, after such certification is granted by FERC.

3. Given that Nevada Hydro will become a public utility if a CPCN is issued for the Talega-Escondido/Valley-Serrano transmission line in Phase 2, the

requirements of the Pub. Util. Code will apply during the pendency of this proceeding.

4. We must read the applicable law in a manner that harmonizes the various statutory requirements of the Pub. Util. Code and must ensure that the intervenor compensation statutes are given full effect.

5. Section 631 requires electrical corporations that propose to construct plant costing more than \$100 million to reimburse the Commission for consultants and advisory services for processing an application for certification of the plant.

6. It is reasonable to require Nevada Hydro to provide a performance or surety bond in the amount of \$550,000 and to require the bond to remain in effect until Nevada Hydro has fully compensated all intervenors that the Commission determines have made a substantial contribution to this matter.

7. It is reasonable to require Nevada Hydro to enter into a progressive invoicing and reimbursement arrangement with DRA to fund DRA's consultants in this proceeding.

8. Requiring Nevada Hydro to ensure that funds are available to compensate eligible intervenors and DRA's consultants treats all CPCN applicants similarly and does not impose greater restrictions on utility CPCN applicants than non-utility applicants.

9. It is reasonable to require Nevada Hydro to incur both the costs of providing a bond and the costs required under § 631, because these are reasonable costs of doing business for an entity proposing to be certified as a public utility and proposing to build a project estimated to cost \$353 million in 2007 dollars).

10. No party requested evidentiary hearings in Phase 1 and we determine that hearings are not necessary for this phase of the proceeding.

11. This decision should be effective today, to provide certainty to intervenors and DRA.

**O R D E R**

**IT IS ORDERED** that:

1. Pursuant to Pub. Util. Code §§ 216 and 218, The Nevada Hydro Company shall become a public utility, if a certificate of public convenience and necessity for the Talega-Escondido/Valley-Serrano transmission line is issued in Phase 2 of this proceeding.

2. The Nevada Hydro Company shall provide a surety or performance bond in the amount of \$550,000 that shall remain in effect until it has fully compensated all eligible intervenors determined to have made a substantial contribution to this proceeding.

3. No later than 30 days after the effective date of this decision, The Nevada Hydro Company shall file and serve proof of the bond in this proceeding and shall send a copy of the bond to the Commission's Fiscal Office.

4. The Nevada Hydro Company shall enter into a progressive invoicing and reimbursable contract arrangement with the Division of Ratepayer Advocates (DRA) to fund the expert witnesses and consultants DRA engages under Pub. Util. Code § 631. The Nevada Hydro Company shall file and serve proof of this arrangement when DRA engages its consultant.

5. This proceeding remains open to address Phase 2; however, to the extent that The Nevada Hydro Company does not comply with Ordering Paragraphs 2 and 3, the Commission, on its own motion, shall dismiss this application with prejudice.

This order is effective today.

Dated \_\_\_\_\_ at San Francisco, California.