

ATTACHMENT 5

PUBLIC UTILITIES COMMISSION

505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298



March 12, 2009

Mr. David Kates
The Nevada Hydro Company, Inc.
2416 Cades Way
Vista, California 92083

Re: Fifth Application Completeness Review – Talega-Escondido/Valley-Serrano 500 kV Interconnect Project Proponent’s Environmental Assessment (February 20, 2009 amended version) -- Application No. A.09-02-012 (and No. A.07-10-005)

Dear Mr. Kates:

The California Public Utilities Commission’s (CPUC) Energy Division has conducted its fifth completeness review of The Nevada Hydro Company’s (TNHC) Talega-Escondido/Valley Serrano 500 kV Interconnect Project (TE/VS) Application for a Certificate of Public Convenience and Necessity (CPCN) (A.09-02-012) and the amended Proponent’s Environmental Assessment (PEA) dated February 16, 2009. This document was filed with the CPUC on February 20, 2009, and is referenced herein by the latter date.

The February 20, 2009, amended PEA was to address issues raised in the CPUC’s December 5, 2008 completeness review letter to the Project Proponent (Applicant) regarding the Project Proponent’s revised PEA submitted on November 12, 2008. In addition, the February 20, 2008, amended PEA was to respond to a Ruling issued by Administrative Law (ALJ) Judge Kolakowski on December 30, 2008. The Ruling ordered the Project Proponent to provide, by February 20, 2009, “a full amended application with a complete PEA that complies with all the Commission Energy Division deficiency requirements for conducting CEQA analysis; to provide in comments a compelling argument why the Commission should not dismiss the present application without prejudice; or voluntarily to request the Commission to dismiss the present application without prejudice.”

As has been noted in previous completeness letters, the CPUC’s Energy Division evaluates the completeness of a PEA to ensure that sufficient information has been provided by the Project Proponent for the CPUC to initiate its environmental analysis of the project, as required by the (CEQA).

Based on our review of TNHC’s Application and the February 20, 2009 PEA, the Energy Division concludes that the PEA for the Proposed Project as amended remains seriously incomplete at this time. There are important areas that remain deficient.

The Project Description provided in the PEA lacks sufficient detail regarding critical project elements to allow a clear and comprehensive understanding of all aspects of the Proposed Project. In particular, these deficiencies occur with regard to the location of the proposed Case Springs Substation and details on the proposed 115 kV circuits around Lake Elsinore.

As noted in previous letters, CEQA Guidelines §15124 states that “an accurate, stable, finite project description is an essential element of an informative and legally sufficient EIR under CEQA.” The Project Description, as the basis for subsequent analysis of all aspects of the project, must be accurate and contain sufficient information for a proper review to be undertaken. It must include the information that an interested party would need in order to understand the nature and magnitude of the Proposed Project, including actions to be undertaken and structures to be constructed at specific locations.

If important aspects of a project cannot be described or are missing, or if the project is evolving and not stable, it is premature to initiate the environmental review process.

Also as noted previously, Project Description information that is insufficient, vague, confusing, or missing will result in the need for CPUC to make data requests of the Project Proponent and await responses to those requests. This will delay the environmental review process. In addition, changes to or extensive clarifications of the Project Description at a later date may jeopardize the validity or utility of analyses conducted to that point. Redefining the project would require an amendment of the original application and necessitate re-initiating the environmental review. For these reasons, it is imperative that a complete and accurate description be available when the environmental review commences.

The Project Description must encompass the entire project. This includes project elements that may be constructed by others or that are remote from the main project but necessary for it to operate as intended. It must allow a minimally-informed reader to grasp the nature of the Proposed Project and all of its aspects that may affect the environment if implemented.

In October 2008, at your request, we reviewed a preliminary version of a PEA Supplement and provided comments to you on October 20, 2008. Subsequently, a PEA Supplement was formally submitted on November 12, 2008 and was reviewed by the CPUC. The results of the review and the continuing deficiencies identified in the PEA Supplement were discussed in the CPUC completeness letter of December 5, 2008. Responses to these comments were to be incorporated into the February submittal.

1. Proposed Case Spring Substation location not settled. The December 5, 2008 completeness review letter stated:

“Missing US Marine Corps assurance of Case Springs Substation site availability. TNHC must demonstrate by a written communication from the USMC to TNHC that the Case Springs Substation site can be used as proposed or that there is another agreed upon site. Although there have been discussions between the Applicant and the USMC regarding the proposed Case Springs Substation site on Camp Pendleton, there is no agreement or indication that an agreement is pending. Without concurrence from the USMC regarding the use of its property, the TE/VS project lacks a connection with the SDG&E system. This is a major deficiency.” (original emphasis)

This deficiency continues in the amended PEA submitted on February 20, 2009. The amended PEA notes that TNHC and the USMC have been in communication, and states at page 3 (in the front matter before the Table of Contents):

“TNHC and the US Marine Corps (the “USMC”) have been working together since the Federal Energy Regulatory Commission (“FERC”) brought the parties together during the FERC hydroelectric licensing proceeding for the LEAPS project (FERC PN-11858).”

At TNHC’s request, the USMC, Camp Pendleton sent a letter dated 17 February 2009 to the CPUC regarding the proposed substation. The following are quoted from that letter:

“Several different siting options have been proposed by TNHC and reviewed by Base Staff; but as of this date no specific location has yet to be found that meets the acceptability requirements of all parties”

“While this latest proposed substation location [at the Case Springs Fire Station site] offers a more promising potential than two previously proposed and rejected sites, there are still some unresolved Base mission and operational training concerns that have yet to be fully vetted regarding this site.

Until that process is completed, no final Base decision on the Case Springs Fire Station site can be made.”

“Of greatest interest to the Marine Corps in this matter is that while we are open to continued exploration of siting possibilities for this substation, at the same time we must ensure that any agreed-upon location will be one that results in no negative impacts to the Base mission or our operational flexibility.”

The Federal Energy Regulatory Commission’s Final EIS for the hydroelectric project is dated January 2007; presumably discussions among the parties began in 2006, if not before. Since the subject of a substation on Camp Pendleton was first broached, no resolution has been reached. The PEA states at page 3 that discussions are underway with regard to use of an existing fire station site on Camp Pendleton as the location of the substation, with a replacement fire station to be provided at an as yet undetermined nearby location.¹ The PEA further notes at page 4 that because of “departmental considerations and the complexity in bringing the interests and needs of these operating military entities together” siting plans could not be provided to the Commission by the Project Proponent prior to submitting the amended PEA. The PEA states that an internal USMC meeting is to be scheduled “shortly,” and this “should result in more specificity.”

In two telephone conversations on February 23, 2009, with the Community Plans and Liaison Officer at USMC Camp Pendleton, it was confirmed that as of that date no decision had been made with regard to the siting of a substation on the base, and that evaluations are still taking place. It was clear from these telephone conversations that the USMC may not choose to allow a substation on Camp Pendleton at all.

The December 5, 2008 Completeness Review Details table, page 4, column 3 (in the amended PEA front matter) states that concurrence of the Forest Service and the USMC is provided in amended PEA Attachment 9. In the paper copy provided to the CPUC there is only a December 17, 2008, letter from the USFS. In the electronic version of the amended PEA there are copies of this USFS letter and a letter from the USFS to FERC dated March 29, 2007. There is no letter from the USMC, let alone one demonstrating concurrence from the USMC on the siting of a Case Springs Substation. As noted above, the CPUC has received a letter directly from the USMC stating that the subject of a substation remains under review and resolution of this issue is pending.

Without confirmation of an agreed to substation location and the required information about that site, the description of the TE/VS project remains seriously deficient. As of now, there is no fixed location for an interconnection with the SDG&E system. Therefore, under CEQA, there is no complete proposed project to review. It is not possible to describe accurately the location of the substation (and any replacement fire station), the location of proposed towers and transmission lines leading to the substation, and the environmental conditions and uses at and around these facilities.

Figure 3.1.1-4 in the amended PEA provides a set of 24 air photo-based figures showing the proposed alignment and tower locations. The location of facilities on a number of plates in this figure remains unconfirmed pending a decision by the USMC regarding the Case Springs Substation site. With the confirmation of a specific site, any revised locations of towers leading to the site and of any access roads, work areas, or pull sites will need to be illustrated on revised plates. Any changes on CNF land will require concurrence from the USFS

¹ Construction of a new fire station as mitigation for implementation of the proposed transmission project must be evaluated for environmental impacts as well. Because it is a foreseeable consequence of the project, information would need to be provided about the new fire station and site.

2. Proposed 115 kV project elements inadequately described. The November 2008 PEA supplement introduced new project facilities not included in project descriptions previously provided to the CPUC. These facilities included new 115 kV transmission lines between the proposed Santa Rosa Substation and the existing Elsinore and Skylark Substations, respectively. Minimal and incomplete information was provided for these facilities in the November 2008 PEA supplement. This was identified in our December 5, 2008, letter as a deficiency. This deficiency remains in the February 20, 2009, amended PEA.

Specifically, the December 5, 2008, completeness letter from the CPUC to TNHC states:

“TNHC must provide a complete description of the locations, specifications, tower types, detailed construction requirements and methods, excavation material disposal, and impacts associated with those facilities. This information must be on a par with the level of information required for other aspects of the TE/VS project.” (original emphasis)

The February 20, 2009 PEA provides a new figure, Figure 3.1.1-5 115 kV Corridor Plan (4 sheets), that shows a red line on a 1-inch equals 1,000-foot scale map to indicate where the 115 kV lines would be located.

The amended PEA states in the Project Description, beginning on page 3-172:

“With regard to the 115 KV OHL [overhead line] from Santa Rosa Substation to Skylark & Elsinore Substation, two new 115 kV OHLs on steel or wooden poles will be built from Applicant’s new Santa Rosa Substation to SCE existing:

1. Elsinore Substation along Grand Avenue, Riverside Drive, Collier Street, and Spring Street rights-of-way.
2. Skylark Substation along Grand Avenue and Cordyon Street rights-of- way.

The route is shown on Figure 3.1.1-5: 115 kV Corridor Plan. These typical poles may be seen in Figure 3.6.3-4: Typical 115 kV Steel Poles.

In some of the above mentioned street sections, it may be necessary to transfer the existing low voltage distribution network underground and construct the new 115 KV OHL systems on the existing low voltage lines right-of-way.”

The PEA section cited above is nearly all that is provided in the PEA regarding the proposed 115 kV lines. Figure 3.6.3-4 indicates an alignment corridor, but neither this figure nor the text indicate existing pole spacing, nor the planned pole spacing, heights, or type(s) that would be used for the proposed 115 kV circuits. Absent such information, the nature and location of potential impacts is unknowable.

The cited information at page 3-172ff appears to contradict the discussion at page 18 of the front matter of the PEA. The text at page 18 states that the 115 kV lines would be hung from existing or replacement wooden poles. At page 3-1, the February PEA states that the new circuit would require “new 115 kV wood and/or steel poles along the Grand Avenue, Cordyon Street, Riverside Drive, Collier Street, and Spring Street rights-of-way” (emphasis added). The text at page 3-172ff references steel poles and illustrations of steel poles. Consequently, it is not clear where poles would be located, where new poles would be required, and whether they would be wood or steel. The text also states that in some locations the existing distribution lines will be placed underground and that the new 115 kV line would be installed on the distribution poles or on new poles.

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There is no information provided about where these project elements and activities would be located. There is no information provided in the PEA about where proposed and existing lines would share the rights-of-way and poles, where lines would be underground, where street closures would be required for construction, and where new poles would be required and of what type, spacing, and height. The text does not explain how 115 kV transmission lines would be accommodated on existing local distribution poles.

The PEA suggests that this information is not required. At page 18, the February 20, 2009, amended PEA quotes a part of the CEQA regulations that says, in part, "Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA." CCR §15061(b)(3) This is followed in the PEA text by a discussion stating that the 115 kV lines would be in existing rights-of-way and would be hung on existing wood poles or replacement wood poles, that the ROW is in a highly urbanized area, and that abutting land uses include single- and multi-family residential, commercial, light and heavy industrial, institutional uses, and scattered in-fill vacant lots. It goes on to state that the areas in and abutting the ROW "are highly disturbed and are absent native vegetation." From this information, the Project Proponent offers the conclusion that "Any resulting impacts attributable to these improvements would, therefore, be di minimus and are not further addressed in the PEA."

The 115 kV lines are a part of the entire project and, as such, must be reviewed under CEQA. The lines are not carved out and given an exemption. The Commission, not the Project Proponent, determines if "it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment." Just before the section of CEQA regulations cited by the Project Proponent, the regulations state: "Once a lead agency has determined that an activity is a project subject to CEQA, a lead agency shall determine whether the project is exempt from CEQA." CCR §15061(a). To fulfill its obligations and to determine if there would be significant impacts, the Commission requires the information previously requested of the Project Proponent. This is all the more important precisely because the proposed lines would be in an urbanized area abutting residential and other land uses.

Therefore, with regard to the proposed 115 kV transmission lines, the PEA continues to be seriously deficient. From the amended PEA, the CPUC does not know what is currently carried on the existing wooden poles, where new poles would be required and of what type, whether the existing wooden poles are sufficient to carry a new 115 kV line as proposed, what would become of existing lines currently carried on the poles, whether the proposed 115kV lines are single or double circuit, and other pertinent information sufficient to allow the CPUC to understand exactly what is proposed and where, and what temporary and permanent changes would occur in the environment as a result of the installation of these lines.

Pursuant to the ALJ's ruling of December 30, 2008, the assigned ALJ will determine what action should be taken next.

Sincerely,

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PURA V
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Energy Division CEQA Unit

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March 12, 2009

cc: Julie Fitch, CPUC Energy Division Director
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