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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 500kV Interconnect
Project.

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

**COMMENTS BY ELSINORE VALLEY MUNICIPAL WATER DISTRICT
IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING
REQUIRING COMMENT ON DISMISSING APPLICATION**

JOHN E. BROWN
JENNIFER M. HALEY
BEST BEST & KRIEGER LLP

Attorneys for:
ELSINORE VALLEY MUNICIPAL WATER
DISTRICT

655 West Broadway, 15th Floor
San Diego, CA 92101
Phone: (619) 525-1330
Fax: (619) 233-6118

john.brown@bbklaw.com
jennifer.haley@bbklaw.com

December 16, 2011

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I. INTRODUCTION

Pursuant to Administrative Law Judge (“ALJ”) Angela K. Minkin’s December 1, 2011, Ruling Requiring Comment on Dismissing Application, Elsinore Valley Municipal Water District (“District”) files these comments addressing the dismissal of the Application of The Nevada Hydro Company, Inc. (“TNHC”) for a certificate of public convenience and necessity (“CPCN”) for the transmission project known as the Talega-Escondido/Valley-Serrano 500 kV Interconnect (“TE/VS Project”).

Given its lack of authority to pursue a stand-alone transmission project, the District would not normally provide comments to the California Public Utilities Commission (“Commission”) regarding dismissal of the instant Application.¹ The Office of Planning and Research, however, previously designated the Commission as the California Environmental

¹ See, e.g., California Water Code, §§ 71662, 71663, 71663.5, and 71691, subd. (e).

Quality Act (“CEQA”) lead agency for purposes of analyzing both the Lake Elsinore Advanced Pump Storage (“LEAPS”) Project, which includes the pumped storage facilities over which the District would have clear legal authority,² and the related TE/VS Project. The District’s participation in this proceeding and its instant comments are necessitated by the potential overlap and impact of the TE/VS Project on the overarching LEAPS Project. The District accordingly provides these comments expressing its concerns regarding TNHC’s financial capability to actually construct and maintain the TE/VS Project.

II. BACKGROUND

For over twenty years, the District and TNHC have been contemplating a pumped storage hydroelectric facility located on Lake Elsinore with an upper reservoir located in the mountains in conjunction with transmission lines that would carry the hydroelectric facility’s electricity. In 1997, the District and TNHC executed a development agreement for the development and construction of a pumped storage electricity generation facility and an associated transmission line (“1997 Development Agreement”). Since at least the 1997 Development Agreement, the District and TNHC have been studying the potential construction and operation of a pumped storage hydroelectric facility and an ancillary transmission facility, known as the LEAPS Project. As the steward of Lake Elsinore and in its role as a municipal water district, the District’s

² As the Commission is undoubtedly aware, the Federal Energy Regulatory Commission (“FERC”) recently dismissed the application jointly submitted by the District and TNHC for a LEAPS Project hydropower license. (FERC Order Denying Rehearing of Dismissal of Application dated November 17, 2011 [FERC Docket No. 11858].) However, TNHC has now submitted, and FERC has accepted for filing, another application for the LEAPS Project under a separate docket number. (FERC Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, And Competing Applications dated November 29, 2011 [FERC Docket No. P-14227].) Although the District is not a co-applicant on this latest application, the District found it prudent to submit comments to the Commission, given that an application for the LEAPS Project remains pending before FERC.

involvement in the LEAPS Project stems from, and is dependant upon, the pumped storage hydroelectric facility's potential benefit to Lake Elsinore.

Over time, and in the District's view, TNHC defaulted on its assurances, even failing to pay fees incurred in pursuing the LEAPS Project (as discussed below), despite its contractual obligation to do so. Ultimately, and based on these perceived defaults, the District terminated the 1997 Development Agreement in the summer of 2011.

III. COMMENTS REGARDING DISMISSAL

The District's twenty year history with TNHC related to the LEAPS Project and the associated TE/VS Project, and TNHC's recent comments at the second pre-hearing conference held in this proceeding on November 10, 2011, call into question TNHC's financial viability. As such, the District would not object if the Commission dismisses TNHC's Application, as contemplated in ALJ Minkin's Ruling dated December 1, 2011.

Although the 1997 Development Agreement is now terminated, Section 1.4 of that Agreement imposed an obligation on TNHC to pay for all LEAPS Project development costs, including all necessary entitlements and permits.³ It is the District's view that TNHC was unable to fulfill that obligation. As one example, the District was forced to shoulder TNHC's outstanding debt of \$131,294.68 for fees incurred by the State Water Resources Control Board as a result of processing the Clean Water Act Section 401 water quality certification request for the LEAPS Project (including the associated TE/VS Project). TNHC has repeatedly represented to

³ The Commission expressly acknowledged TNHC's contractual obligation to the District in its briefing submitted to the Office of Planning and Research in connection with the District's Request for Designation of Lead Agency as to the entire LEAPS Project. (See Statement of Contentions of the California Public Utilities Commission in Response to Elsinore Valley Municipal Water District's Request Seeking Resolution of Dispute Regarding California Environmental Quality Act Lead Agency Status for the Talega-Escondido/Valley Serrano 500-

the District and various regulatory agencies that it has an obligation under the 1997 Development Agreement to pay for all costs related to the LEAPS Project and to handle all licensing and permitting obligations.⁴ TNHC has, in fact, paid previous invoices for State Water Board fees for the LEAPS Project on an annual basis, further evidencing its continuing obligation.

Despite TNHC's clear obligation to pay these fees and repeated requests by the State Board of Equalization to do so, TNHC failed to remit payment or to obtain consensus from the State Board of Equalization as to why such fees were owed. To avoid any possible legal action against the District by the State, actions which the State Board of Equalization informed the District were imminent, the District was forced to pay the \$131,294.68 on August 17, 2011, in satisfaction of the amount due to the State Water Resources Board. The District believes that TNHC's failure to honor its debts related to the same project at issue in this proceeding before other regulatory agencies calls into doubt TNHC's ability to follow through with its Application, and ultimately the TE/VS Project.

TNHC's statements at the second pre-hearing conference held on November 10, 2011, and its inability to respond to the chorus of concerns expressed by both ALJ Minkin and the protesting parties, further illustrate the continued ambiguity and lack of clarity in TNHC's Application, especially with regard to TNHC's financial viability. With TE/VS Project costs estimated in excess of a half a billion dollars, TNHC admitted at the second pre-hearing conference that it does not have the resources available to complete and maintain the TE/VS

kV Transmission and Lake Elsinore Advanced Pumped Storage Project dated October 1, 2010, before the Governor's Office of Planning and Research, pp. 8-9.)

⁴ Indeed, in briefing before the Office of Planning and Research, the Commission itself previously asserted both the applicability of the 1997 Development Agreement to the LEAPS Project and TNHC's responsibility to obtain necessary project licenses and entitlements under the Agreement. (See fn. 3, *supra*.)

Project.⁵ TNHC further acknowledged the loss of its previous investment partner (Siemens) and the related unavailability of two key witnesses as a result.⁶ Aside from the financial implications of the loss of Siemens, the sudden unavailability of key witnesses and the lack of apparent replacement witnesses underscore the ambiguity and lack of clarity in TNHC's Application, which was raised by the protesting parties even before the witness unavailability issue came to light.

As to TNHC's financial viability, despite admitting its inability to finance the TE/VS Project on its own, TNHC could not name any investor for the TE/VS Project, instead stating vaguely: "Nevada Hydro has been and is in discussions with significant investors. Those investors with whom they have had conversations and currently do have conversations are to provide the funding for the entirety of the project."⁷ It is the District's view that TNHC's representations regarding having "conversations" with potential investors frankly cannot satisfy the financial showing required under the Public Utilities Code for the requested CPCN to issue. The District is also concerned regarding TNHC's previous request for an extension of time to comply with the requirements of Decision 11-07-36, and ultimate inability to comply with the \$500,000 bonding requirement of that Decision – culminating in TNHC's Petition for Modification of Decision 11-07-36, which was ordered by ALJ Minkin on November 2, 2011.

The District echoes the concerns expressed by ALJ Minkin during the second pre-hearing conference with regard to the needless expenditure of resources, both by the Commission and the

⁵ Transcript of the Second Pre-Hearing Conference in Application 10-07-001 dated November 10, 2011, p. 90:19-27.

⁶ *Id.*, p. 84:18-28.

⁷ Transcript of the Second Pre-Hearing Conference in Application 10-07-001 dated November 10, 2011, p. 87:5-11.

protesting parties, on an Application that is not complete for a project that may never have the funding to actually be built.⁸ In consideration of the continued inability of TNHC to present a complete application, including providing substantive information regarding financing for the construction and maintenance of the TE/VS Project, the District is left with no alternative but to agree that the Application should be dismissed. The District defers to the Commission's judgment regarding whether the dismissal should be with or without prejudice.

IV. CONCLUSION

As set forth above, the District concurs that TNHC's Application should be dismissed as recommended in ALJ Minkin's Ruling dated December 1, 2011.

Respectfully submitted,

/s/ JENNIFER M. HALEY

John E. Brown

Jennifer M. Haley

Best Best & Krieger LLP

Attorneys for:

Elsinore Valley Municipal Water District

655 West Broadway, 15th Floor

San Diego, CA 92101

Phone: (619) 525-1332

Fax: (619) 233-6118

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Id., p. 83:11-27.