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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

Application No. 10-07-001  
(Filed July 6, 2010)

**JOINT COMMENTS OF THE CENTER FOR BIOLOGICAL DIVERSITY,  
SANTA ANA MOUNTAINS TASK FORCE OF THE SIERRA CLUB & THE  
FRIENDS OF THE FOREST (TRABUCO DISTRICT) AND THE SANTA ROSA PLATEAU  
ON THE ADMINISTRATIVE LAW JUDGE'S RULING  
REQUIRING COMMENT ON DISMISSING APPLICATION**

**December 16, 2011**

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**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

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On December 1, 2011 Administrative Law Judge Minkin issued the Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application. In response herein are the Joint Comments of the Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club & the Friends of the Forest (Trabuco District) and the Santa Rosa Plateau on the Administrative Law Judge’s Ruling Requiring Comment on Dismissing Application (“Joint Comments”).

**SUMMARY**

The Application of The Nevada Hydro Company (“TNHC”) for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500kv Interconnect Project (“Application”) should be dismissed with prejudice for the following reasons:

- 1) The Application Fails to Provide an Implementation Plan, Project Construction Management Plan, and Cost Control Plan;
- 2) The Application Fails to Describe the Financial Viability of the Project and Financial Ability of TNHC To Support the Project;
- 3) The Application Fails to Provide the Necessary Experts and Testimony;
- 4) The Application Fails to Provide an Accurate or Stable Project Description and Location;
- 5) The Application Has Not Adequately Demonstrated the Project’s Need

## **1) The Application Fails to Provide an Implementation Plan, Project Construction Management Plan, and Cost Control Plan**

The Public Utilities Code requires that every application for an electric line shall have a “project implementation plan showing how the project would be contracted for and constructed... and major tasks integrated.”<sup>1</sup> The Public Utilities Code further requires that every application include a “design and construction management and cost control plan which indicates the contractual and working responsibilities and interrelationships between the corporation's management and other major parties involved in the project.”<sup>2</sup> The Application relies entirely on TNHC’s relationship with “Siemens Power and Transmission Distribution Company (“SPTD”) serving as the General Contractor under an Engineering, Procurement, and Construction contract.”<sup>3</sup> The Application’s basis for an implementation plan, project construction management plan, contracting, and task integration all rely on the relationship with Siemens, Siemens’ Project Director, and Siemens’ staff.<sup>4</sup> At the Prehearing Conference on November 10, 2011, TNHC noted that Siemens is no longer working with TNHC on this project.<sup>5</sup> With the departure of Siemens there is no basis for TNHC to state it has a complete Application because the Application no longer conforms to the Public Utilities Code and must be dismissed.

Even from the outset the Application was deficient because it never provided a cost control plan. TNHC admits that the Cost Control Plan did not exist at the time it submitted the Application.<sup>6</sup> TNHC cannot now rely on some inchoate Cost Control Plan to be developed with Siemens in a future contract because TNHC is no longer working with Siemens. Regardless, prudence and the Public Utilities Code required that a Cost Control Plan be submitted at the outset, which it was not.

## **2) The Application Fails to Describe the Financial Viability of the Project and Financial Ability of TNHC To Support the Project**

Throughout these proceedings, concerns and questions regarding the underlying finances of the

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<sup>1</sup> Public Util. Code § 1003(b).

<sup>2</sup> Public Util. Code § 1003(e).

<sup>3</sup> Application, App. B at B-1.

<sup>4</sup> Id. at App.B *e.g.* at B-3.

<sup>5</sup> “Siemens [] was going to be the construction manager for the project. Commercial realities of independent transmissions projects such as this is that that relationship is no longer in place.”

<sup>6</sup> Application App. B at B-7 (“The project Cost Control Plan will be set forth in the contract covering engineering,

Project and of TNHC have never been fully resolved. TNHC has repeatedly failed to demonstrate the Project's financial viability and its own financial ability to complete the Project, if it receives approval. Instead the actions of TNHC over the course of these proceedings have only increased those concerns and reinforced our conclusion that TNHC's Application should be dismissed with prejudice.

**A. The Project's Financial Viability has not been Adequately Demonstrated**

TNHC's incomplete Application has made an accurate picture of the total cost and financial viability of the Project nearly impossible. Despite being required to do so by the CPUC, TNHC has still not provided information on all the necessary costs associated with the Project. Rule 3.1(f) of the California Public Utilities Commission Rule of Practice and Procedure requires a "statement detailing the estimated cost of the proposed construction or extension and the estimated annual costs, both fixed and operating associated therewith."<sup>7</sup> The Statement of Cost within Appendix D and E of the Application fails to provide the estimated annual costs, fails to provide the annual operating costs, and fails to provide the dismantling costs for the TE/VS Project.

In addition to failing to disclose key financial information as part of its Application, TNHC also failed to disclose independent economic analysis detailing the financial problems with the Project<sup>8</sup> and a 2009 Grand Jury investigation of the Riverside County Superior Court, which revealed that improper financial assumptions led to the award of the Project to TNHC.<sup>9</sup> The independent economic analysis conducted on the Project on behalf of Elsinore Valley Municipal Water District("EVMWD")<sup>10</sup> revealed that the Project was not economically viable<sup>11</sup> and that TNHC had not produced economic studies

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procurement activities and construction of the project").

<sup>7</sup> See also Public Utilities Code § 1003(c) (cost estimates for financing, construction, operation and dismantling required); General Order 131-D § IX(A)(1)(d).

<sup>8</sup> Attachment 1: *An Economic Evaluation of the LEAPS Project and Associated Transmission For the Elsinore Vale Municipal Water District*, by Samuel A. Van Vactor, Stefan Brown, David Ramberg, Economic Insight, Inc (hereinafter "An Economic Evaluation of the LEAPS Project") (Feb 7, 2006), filed July 30, 2010; see also CBD Protest at 4.

<sup>9</sup> Attachment 2: 2008-2009 Grand Jury Report on the Elsinore Valley Municipal Water District: Lake Elsinore Advanced Pumped Storage Project, Riverside County Superior Court (February 23, 2009) (hereinafter "Grand Jury Report").

<sup>10</sup> EVMWD was the public agency partner for the LEAPS-TE/VS Project that submitted the application with TNHC to the Federal Energy Regulatory Commission.

<sup>11</sup> Attachment 1: *An Economic Evaluation of the LEAPS Project* (Feb 7, 2006). A summary of key findings of the LEAPS Economic Evaluation are: when revenue and cost factors are considered the LEAPS project, as a merchant plant, is not viable at this time; Nevada Hydro's spreadsheet dated July 20, 2005 assumed an on-peak price of \$65 per MWh and an off-peak price of \$25 per MWh. Although these price assumptions might be reasonable under different circumstances, since the California energy crisis ended in 2001, such a high differential has existed on only a few days, and the average differential is far lower; based on 2005 actual prices, in our base case we project that LEAPS would have had annual net energy sales of just \$0.3 million, instead of the \$54.6 million Nevada Hydro calculated.

justifying development of LEAPS or TE/VS.<sup>12</sup> Similarly, the Riverside County Superior Court Grand Jury Investigation revealed that the Project is not economically viable and that EVMWD should account for the over \$4 million dollars in ratepayer funds expended as of 2008 on the Project.<sup>13</sup>

The limited information that TNHC *did* provide on the financial viability of the Project is unreliable and needs to be updated. For example, the Application does not include current assumptions and analysis, such as an accounting for costs in 2010 or 2011 dollars, which would present a more accurate picture of the economic viability of the Project. Instead, the Application uses figures based on 2007 and 2005 dollars, which are inconsistent with one another.<sup>14</sup> TNHC's use of 3-5 year old information to base their assumptions does not reflect the current fiscal conditions related to the Project's construction and the rate of return on electricity rates that would justify the financial viability of the Project.

TNHC has also not provided the basis upon which it will claim cost recovery through the Transmission Access Charge ("TAC") of the California Independent System Operator ("CAISO") before the Commission leaving the ability and mechanisms for cost recovery of the Project uncertain. Indeed, TNHC has argued that it "Should Not Be Required, As A Threshold Matter, To Explain The Legal Basis By Which It Will Claim Cost Recovery Through The CAISO TAC."<sup>15</sup> TNHC argues that the issuance of the CPCN by CAISO will guarantee cost recovery with a conclusory statement without any foundation in fact or the law.<sup>16</sup> However, this guarantee is far from assured. This leaves the question of how TNHC will recapture the project costs so that they can raise investment capital and borrow money for construction. The numerous deficiencies and inconsistency in the financial information provided by TNHC is yet another example of how TNHC has failed to meet its obligation as a Project Applicant to the CPUC.

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<sup>12</sup> Attachment 1: An Economic Evaluation of the LEAPS Project (Feb 7, 2006).

<sup>13</sup> Attachment 2: Grand Jury Report.

<sup>14</sup> The Application states that the "estimated cost of the TE/VS Interconnect project is \$353 million (2007 dollars)" and refers to Application Appendix D to support that conclusion. Application at 14. However, the supporting appendices actually demonstrate a higher cost for the Project totaling \$381 million in 2005 dollars. Application Appendix D § 2.

<sup>15</sup> Motion of The Nevada Hydro Company for Leave to File a Reply Brief in Response to the Reply Briefs of Certain Intervenors, Exhibit A at 2, December 23, 2010.

<sup>16</sup> *Id.* at Exhibit A at 3, December 23, 2010 ("it is patently obvious under the CAISO Tariff, that if the TE/VS Interconnect is certificated in this proceeding the CAISO will have no genuine option on proper application to accord Nevada Hydro participating transmission owner status and enter into a Transmission Control Agreement, and upon determination of a rate by the Federal Energy Regulatory Commission ("FERC"), enter that rate into the CAISO Transmission Access Charge (TAC)").

## **B. The Financial Ability of TNHC to Support Execution and Completion of the Project is Uncertain**

Furthermore, TNHC has not provided information that demonstrates the company's ability to financially support the Project. A cursory review of Appendix 1, Financial Interest, shows that information required by CPUC 3.1(g) to demonstrate financial ability is absent. California Public Utilities Commission Rule of Practice and Procedure Rule 3.1(g) requires that "statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which applicant proposes to finance the cost of the proposed construction or extension." Appendix I consists of internet links to webpages of Siemens AG and Morgan Stanley. Neither of these pages provides specific information on the LEAPS Project, commitments on behalf of Siemens AG or Morgan Stanley that commit to funding the LEAPS Project or TNHC, or references to LEAPS or TNHC at all. Later at the Prehearing Conference on November 10, 2011, TNHC noted that Siemens, who was going to be the construction manager for the project, is no longer working with TNHC on this project.<sup>17</sup> At this time, there is no indication in the Application or from TNHC's subsequent action that TNHC actually has the funds necessary to construct the TE/VS line or that TNHC has made the necessary binding contractual agreements that would provide those funds.<sup>18</sup>

The issue of TNHC's financial capabilities has been repeatedly raised both inside and outside of this proceeding. In particular a September 14, 2010 Ruling, the ALJ asked, "Does Nevada Hydro have the financial ability to complete the project?"<sup>19</sup> Additionally, TNHC has failed to comply with the Commission's order earlier this year requiring them to "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."<sup>20</sup> After requesting an extension and unsuccessfully attempting to comply with the order, TNHC instead choose to substitute the required bond with a less secure and inappropriate letter of credit.<sup>21</sup> Additionally TNHC has failed to

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<sup>17</sup> "Siemens [] was going to be the construction manager [for the project]. Commercial realities of independent transmissions projects such as this is that that relationship is no longer in place."

<sup>18</sup> See Application at 20; Appendix 1, Financial Interest.

<sup>19</sup> ADMINISTRATIVE LAW JUDGE'S RULING SETTING A PREHEARING CONFERENCE TO DISCUSS SCOPE AND SCHEDULE AND CONVENING LAW AND MOTION HEARING AT CONCLUSION OF THE PREHEARING CONFERENCE, Sept. 14, 2010.

<sup>20</sup> D1107036, DECISION REGARDING PHASE 1 ISSUES, July 28, 2011 at 19.

<sup>21</sup> See MOTION OF NEVADA HYDRO COMPANY FOR APPROVAL OF ACTIONS TO COMPLY WITH ORDERING PARAGRAPHS 2 AND 3 OF COMMISSION DECISION 11-07-036, filed Nov. 14, 2011; see also PETITION TO MODIFY DECISION 11-07-036 BY THE NEVADA HYDRO COMPANY, filed Nov. 9, 2011.

compensate its former partner EVMWD for costs associated with this Project.<sup>22</sup>

Based on TNHC's actions throughout the course of this proceeding, it appears to us that TNHC lacks the resources which are required to proceed with the major undertaking of permitting and constructing this proposed transmission line. TNHC's status as a paper-only entity makes them financially ill-equipped to carry out its proposed transmission line.<sup>23</sup> Because TNHC has continued to fail to demonstrate the financial viability of the Project and provide sufficient evidence of the company's financial ability to complete the Project despite ample opportunity and time to do so, the Commission should dismiss their Application with prejudice.

### **3) The Application Fails to Provide the Necessary Experts and Testimony**

TNHC must assure that witnesses and testimony are provided prior to proceeding. In recent responses to discovery TNHC notified the parties that many of the experts proposed would not be available.<sup>24</sup> TNHC further stated that much of the testimony would need to be substituted and replaced.<sup>25</sup> In total, TNHC stated that the testimony of six witnesses either must be replaced completely or modified.<sup>26</sup> Significantly, the testimony affected was used by TNHC to resolve deficiencies and gaps in its Application, particularly concerning the reliability benefits of TE/VS and its financial cost. Because that testimony has now been invalidated, the Application of TNHC is once again woefully inadequate and incomplete.

Witnesses whose testimony must be completely substituted include Fred Depenbrock and Ian Ramsay, who were employees of Siemens and are no longer available to TNHC.<sup>27</sup> As noted above, TNHC is no longer working with Siemens, who was previously a potential construction manager for

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<sup>22</sup> COMMENTS BY ELSINORE VALLEY MUNICIPAL WATER DISTRICT IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUIRING COMMENT ON DISMISSING APPLICATION, filed December 16, 2011 at 3.

<sup>23</sup> See APPLICATION FOR REHEARING OF SAN DIEGO GAS & ELECTRIC COMPANY, September 6, 2011 at 4 ("SDG&E is concerned...with the broader precedent that is suggested if a paper-only proposals submitted from paper-only entities can be held to be the statutory equivalents as 'public utilities'").

<sup>24</sup> Opposition of The Nevada Hydro Company, Inc. To the Motion of Forest Residents Opposing New Transmission Lines to Compel Discovery, October 6, 2011 (TNHC informed the parties that Fred Depenbrock and Ian Ramsay are no longer available as a witness for Nevada Hydro, such that Nevada Hydro lacks access to him required to develop discovery responses.).

<sup>25</sup> Id. ("Nevada Hydro expects to submit substitute testimony concerning the reliability benefits of the proposed project. Because aspects of the testimony of Christine Vangelatos and Doug Bergman rest upon Mr. Depenbrock's testimony to some extent, Nevada Hydro will also submit updated versions of their testimony"; "Because aspects of the testimony of Scott Medla and James Drzemiecki rest upon Mr. Ramsay's testimony to some extent, Nevada Hydro will submit updated versions of their testimony.").

<sup>26</sup> Id. at 1.

<sup>27</sup> Id.

the Project. Depenbrock's testimony dealt with the reliability benefits of the Project and helped to fill in gaps in the Application that were detailed above.<sup>28</sup> As noted by TNHC, "aspects of the testimony of Christine Vangelatos and Doug Bergman rest upon Mr. Depenbrock's testimony to some extent," therefore revisions of their testimony is also necessary.<sup>29</sup> Bergman's testimony touched upon the economic benefits of TE/VS and discussed the method by which such benefits were calculated.<sup>30</sup> Similarly, Vangelatos' testimony discussed economic benefit-cost analysis for the Project, the product cost model and assumptions used to quantify the benefits of the Project.<sup>31</sup> Vangelatos, whose testimony relied upon information from Depenbrock, testified about potential benefits of the Project including reduction in energy cost and net "societal benefits" to California ratepayers.<sup>32</sup> The testimony of Depenbrock, Bergman, and Vangelatos dealt with some of the same issues that were noticeably missing or incomplete in the Application.

The second witness whose testimony requires substitution is Ian Ramsay, who testified about engineering cost estimates of the Project as well as the proposed schedule and the specific components of the Project.<sup>33</sup> Significantly, Ramsay also discussed TNHC's Application and the accuracy of its cost estimates.<sup>34</sup> TNHC stated that it "expects to submit revised, substitute testimony concerning the hard costs of the proposed project," due to the loss of access to Ramsay.<sup>35</sup> Just as with the loss of Depenbrock the loss of Ramsay affects the testimony of other witnesses, in this instance witnesses Scott Medla and James Drzemiecki. Medla testimony detailed the financial viability of the TE/VS transmission line and how the Project will be funded.<sup>36</sup> The testimony dealt with an issue of vital importance that has continued to be unresolved since the filing of the Application. Drzemiecki testified on the revenue requirements for TNHC for its investment in the Project.<sup>37</sup> The testimony of these three witnesses spoke to the larger and significant issue of financial viability of the Project.

With the loss of these witnesses and invalidation of testimony of other witnesses who are dependent on the now unavailable witnesses the Application is woefully inadequate. Had the

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<sup>28</sup> Direct Testimony of Frederick Depenbrock on behalf of The Nevada Hydro Company, served Nov. 30, 2010.

<sup>29</sup> Opposition of The Nevada Hydro Company, Inc. To the Motion of Forest Residents Opposing New Transmission Lines to Compel Discovery, October 6, 2011.

<sup>30</sup> Direct Testimony of Doug Bergman on behalf of The Nevada Hydro Company, served Nov. 30, 2010.

<sup>31</sup> Direct Testimony of Christine Vangelatos on behalf of The Nevada Hydro Company, served Nov. 30, 2010.

<sup>32</sup> *Id.* at 2

<sup>33</sup> Direct Testimony of Ian Ramsay on behalf of The Nevada Hydro Company, 1, served Nov. 30, 2010.

<sup>34</sup> *Id.* at 3-5.

<sup>35</sup> Opposition of The Nevada Hydro Company, Inc. To the Motion of Forest Residents Opposing New Transmission Lines to Compel Discovery, 1, October 6, 2011.

<sup>36</sup> Direct Testimony of E. Scott Medla on behalf of The Nevada Hydro Company, served Nov. 30, 2010.

<sup>37</sup> Direct Testimony of James H. Drzemiecki on behalf of The Nevada Hydro Company, served Nov. 30, 2010.

testimony of these six witnesses not been invalidated, it could have helped fill in the holes in TNHC's Project Application. However faced with the prospect of waiting for TNHC to find suitable substitutes to Depenbrock and Ramsay as well as revise the testimony of Bergman, Vangelatos, Medla, and Drzemiecki in part to compensate for deficiencies in the Application, we feel it is appropriate and justified for the CPUC to reject the current Application with prejudice.

**4) The Application Fails to Provide an Accurate or Stable Project Description and Location**

TNHC has not provided the necessary information in the Application and Proponent's Environmental Assessment ("PEA") regarding the project description and the location of its component parts. The 2009 Opinion Dismissing the Application Without Prejudice referred to the failure of the PEA to provide "sufficient detail regarding critical project elements to allow a clear and comprehensive understanding of all aspects of the proposed Project."<sup>38</sup> The 2010 Application and PEA continue to be similarly deficient.

The Application and PEA do not fully disclose information regarding the whole project including the location of the Case Springs Substation, or a coherent combination of the multiple and conflicting environmental documents that the Application and PEA rely upon. The Public Utilities Code, its implementing regulations, and the California Environmental Quality Act all require a full, accurate, and stable project description.<sup>39</sup>

**a) The Project Description Fails to Describe the Location of the Southern Terminus- the Case Springs Substation**

The current application fails to provide the necessary details and description regarding the Case Springs Substation at the southern terminus of the Project where it would interconnect with the San Diego Gas & Electric system. The 2009 Decision Dismissing the Application Without Prejudice was premised in part on the application's failure to provide the necessary details regarding the Case Springs Substation.<sup>40</sup>

TNHC's application states that southern interconnection with San Diego Gas & Electric's ("SDG&E") grid will take place at a "new substation in the vicinity of United States Marine Corps

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<sup>38</sup> D0904006, Order Dismissing Application Without Prejudice, April 16, 2009, at 4 (referring to March 12, 2009 letter from CPUC staff, Billie Blanchard, to TNHC's David Kates).

<sup>39</sup> Public Util Code § 1003(a); General Order 131-D, § IX(A)(1)(a); 14 Cal. Code Regs. § 15125(a).

<sup>40</sup> D0904006, Attachment 5 at 1.

(USMC) Camp Joseph H. Pendleton.”<sup>41</sup> In early 2009 the USMC definitively denied clearance for the Case Springs substation site on Camp Pendleton when the USMC informed TNHC that “the case is closed on the LEAPS substation with respect to any possibility of it being sited anywhere within an active training area on the Base.”<sup>42</sup>

In light of this the PEA, revised this year, explained that the Case Springs Substation will be located “within land owned by the Fallbrook Land Conservancy (Conservancy), at MP 31.5.”<sup>43</sup> However, the Fallbrook Land Conservancy has refused to allow any of the components of the Project on its property.<sup>44</sup> TNHC’s failure to secure or describe a location for the Case Springs substation at the southern terminus and the crucial interconnection with the lines controlled by San Diego Gas & Electric leaves the Project description and design incomplete, inaccurate, and unstable.

**b) The Project Description Relies on a Shifting and Unstable Mix of Varied Projects**

The Application and PEA rely upon a shifting and unstable project description based upon several separate and independent projects and their associated environmental analysis of varying detail: the Federal Energy Regulatory Commission (“FERC”) Environmental Impact Statement (“EIS”), and the Sunrise Environmental Impact Report (“EIR”)/EIS. The FERC EIS for LEAPS describes the preferred staff alternative as an upper reservoir at Decker Canyon, a powerhouse at the Santa Rosa site, and a transmission line.<sup>45</sup> The LEAPS EIS fails to adequately describe the TE/VS project as proposed by TNHC because the discussion about numerous station upgrades, system upgrades, or whether the Midpoint LEAPS station and Santa Rosa station are synonymous is not included in sufficient detail in the LEAPS EIS.

Similarly, the Sunrise Draft EIR/Draft EIS describes the Project as 31.8 miles of new single-circuit 500 kV transmission line forming the Talega-Escondido to Serrano-Valley 500 kV Interconnect line (TE/VS Interconnect or Lake-Pendleton 500 kV Transmission Line); New 500 kV switching station (Lake Substation); New 500/230 kV substation (Pendleton Substation) within Camp Pendleton; New second Talega-Escondido 230 kV line; and modification of SDG&E’s existing Talega-Escondido

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<sup>41</sup> Application at 4.

<sup>42</sup> Attachment 3: Supplemental Information submitted under P-11858 et. at. Copy of email from USMC to Applicant concerning the decision of Camp Pendleton to disallow the use of Camp Pendleton facilities for the LEAPS project southern substation (March 25, 2009).

<sup>43</sup> PEA at 3-89, 3-137.

<sup>44</sup> Attachment 4: Letter from Fallbrook Land Conservancy to TNHC, April 28, 2011.

<sup>45</sup> FEDERAL ENERGY REGULATORY COMMISSION, FINAL ENVIRONMENTAL IMPACT STATEMENT FOR HYDROPOWER LICENSE, Lake Elsinore Advanced Pumped Storage Project Docket No. P-11858-002. Page 2-18

69 kV transmission circuit (between the existing Pala and Lilac Substations).<sup>46</sup> Again the correlation between the substation upgrades, new substations, and transmission line rights of way in the FERC EIS, Sunrise EIR/EIS, and the Project description is unclear.

Similarly, the PEA contains an unstable and varied mix of mitigation measures that must be incorporated into the Project. The mitigation measures are compiled from different projects, the FERC EIS, Sunrise EIR/EIS, and the PEA.<sup>47</sup> The mitigation measures are not uniformly applied to the Project to permit stable project description. Because TNHC fails to provide a consistent and coherent description of the Project and mitigation measures the Application incomplete.

### **5) The Application Has Not Adequately Demonstrated the Project's Need**

The information upon which TNHC relies to demonstrate need for the Project does not provide an accurate picture of the electrical demand for the San Diego area. The original Application characterized SDG&E's Sunrise Powerlink project as "proposed", when in fact Sunrise Powerlink has received all necessary approvals from the Commission.<sup>48</sup> Once again, the assumptions and analysis in TNHC's Application are inaccurate and must be updated. In TNHC's PLEXOS modeling, TNHC models import capability into the San Diego area as "2500 MW" in the Base Case (without the TE/VS project) and "3500 MW" with the TE/VS project.<sup>49</sup> According to SDG&E, the 2500 MW number is inconsistent with the current all-lines-in-service import capability of 2850 MW, and evidence presented in the Sunrise Powerlink proceeding indicates that when the Sunrise Powerlink is built, import capability into the San Diego area under all-lines-in-service conditions will be increased from the current level of 2850 MW to 4200 MW.<sup>50</sup>

Accordingly, because the Sunrise Powerlink will be placed in-service, TNHC's Base Case (without the TE/VS project) should model San Diego area all lines-in-service import capability at 4200 MW, not 2500 MW. Similarly, TNHC's with TE/VS project case should model San Diego area all lines-in-service import capability at some level above 4200 MW; however, TNHC has failed to provide information in its Application that would allow the Commission to make an accurate determination of what the higher all-lines-in-service import capability would be. TNHC should include information

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<sup>46</sup> Draft Environmental Impact Report/ Environmental Impact Statement and Proposed Land Use Amendment, Sunrise Powerlink Project, SCH #2006091071, DOI Control No. DES-07-58, January 2008 Pages. E.7-1 to E.7-2

<sup>47</sup> PEA at 5-3.

<sup>48</sup> San Diego Gas & Electric (SDG&E) Protest, August 6, 2010 at 11.

<sup>49</sup> Appendix D, Section 3 at 13.

<sup>50</sup> SDG&E Protest at 12.

regarding the potential effect that Sunrise Powerlink will have on the electrical need in the Project area.

Similarly, TNHC should update its information to include the Eagle Mountain Pumped Storage Project in Southern California, which has been issued a preliminary permit by FERC and could also have an effect on the need for the Project.<sup>51</sup> The Application's failure to provide current and accurate information leaves it deficient and it should be dismissed.

## **5) Dismissal With Prejudice is Appropriate**

The extraordinary result of dismissal with prejudice is appropriate in this case. The Project has been before the CPUC for four years as part of three separate proceedings.<sup>52</sup> Unfortunately, despite the continued attempts by TNHC, the continued time and resources of the CPUC, and outside consultants, legal counsel, and experts the Application remains deficient.<sup>53</sup>

### **a) Rejection of Related Proceedings for this Project**

TNHC's difficulties with assuring the permits and approval for this project do not merely extend to their experience at the CPUC. Beginning in 2005 TNHC began to file and withdraw several applications before the California State Water Resources Control Board ("State Board") for water quality certification associated with the LEAPS-TE/VS Project.<sup>54</sup> On October 1, 2009, the State Board denied the application for water quality certification associated with the LEAPS-TE/VS Project.<sup>55</sup> TNHC then filed suit against the State Board for their denial and sought a writ of mandate to direct the State Board to set aside its order and either allow Nevada Hydro to withdraw and resubmit its application or hold an adjudicatory hearing.<sup>56</sup> That litigation is ongoing without any resolution regarding the state permitting process and TNHC still has outstanding debt obligations associated with

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<sup>51</sup> FERC Website, Licensing, <http://www.ferc.gov/industries/hydropower/gen-info/licensing/issued-pre-permits.xls>.

<sup>52</sup> A0710005, 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, filed Oct. 9, 2007; A0902012, 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, filed Feb. 20, 2009; A1007001, 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, filed July 6, 2010.

<sup>53</sup> As outlined in these comments and Decision 09-04-006 dated April 16, 2009.

<sup>54</sup> Attachment 5: Federal Energy Regulatory Commission, Order Denying Rehearing, Project No. 11858-004, Issued November 17, 2011 (hereinafter "FERC Order Denying Rehearing"). Available at [http://elibrary.ferc.gov/idmws/file\\_list.asp?accession\\_num=20111117-3026](http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20111117-3026)

<sup>55</sup> Id. at 4.

<sup>56</sup> Id.; *The Nevada Hydro Company v. State Water Resources Control Board* (San Diego Superior Court No. 37-2011-

that filing that it has refused to repay.<sup>57</sup>

TNHC has also been in an ongoing dispute with its former co-applicant for the LEAPS-TE/VS Project, EVMWD.<sup>58</sup> This ongoing dispute led to the termination of the 14 year old Development Agreement between TNHC and EVMWD.<sup>59</sup> It also prompted the dismissal of the associated Federal Energy Regulatory Commission application for the LEAPS-TE/VS Project.<sup>60</sup> Finally, TNHC has applied for and withdrawn the TE/VS project from the CAISO process prompting to the CAISO to leave the TE/VS project out of the transmission planning process.<sup>61</sup>

Even worse, TNHC's bidding, contracting, and transparency with the LEAPS-TE/VS Project has been called into question through Grand Jury proceedings in the Riverside County Superior Court.<sup>62</sup> The 2009 Grand Jury Report noted that EVMWD had commissioned two economic evaluations that both concluded the LEAPS-TE/VS project was "not economically viable."<sup>63</sup> The Grand Jury Report also resulted in three major recommendations: 1) EVMWD must require due diligence in establishing future contracts such as LEAPS, in order to avoid relying on sole bidders for contracts;<sup>64</sup> the LEAPS project is not economically viable;<sup>65</sup> EVMWD should provide an itemized accounting of the four million dollars spent on the LEAPS Project.<sup>66</sup>

#### **b) Dismissal**

Given the significant resources that have been expended by government agencies, the public, and TNHC itself and the problematic past of this Project the CPUC has been more than generous with time and resources. The Project was initiated over 14 years ago through a failed partnership between EVMWD and TNHC and to once again come to the point of an incomplete application is both unfortunate and unnecessary. It is time for the CPUC to reject this application with Prejudice and use its limited time and resources with more viable projects and applicants.

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00088797-CU-WM-CTL) filed April 1, 2011.

<sup>57</sup> COMMENTS BY ELSINORE VALLEY MUNICIPAL WATER DISTRICT IN RESPONSE TO ADMINISTRATIVE LAW JUDGE'S RULING REQUIRING COMMENT ON DISMISSING APPLICATION, filed December 16, 2011 at 3

<sup>58</sup> Attachment 5: FERC Order Denying Rehearing.

<sup>59</sup> Id. at 10.

<sup>60</sup> Id.

<sup>61</sup> Attachment 6, California Independent System Operator, 2010 Final California ISO Transmission Plan, April 7, 2010, at 362-363 available at <http://www.aiso.com/2771/2771e57239960.pdf>

<sup>62</sup> Attachment 2: Grand Jury Report.

<sup>63</sup> Id. at 3.

<sup>64</sup> Id. at 1, 5.

<sup>65</sup> Id. at 5

Should the CPUC determine to dismiss this application without prejudice once again we respectfully request that CPUC staff assure strict adherence to the standards of the Public Utilities Code, General Order 131-D, and the CPUC's Rules of Practice and Procedure in future applications by TNHC. In addition, given the Project's troubled history with this applicant, we think the following standards must also be met prior to acceptance of any future application of this Project by this applicant: testimony must contain a showing that there is a signed contract with the expert that the expert will be available for cross examination in hearings; a signed contract with a project management and construction management company to support the Project; substation site designations demonstrate something more than intention and contain a legally binding document; posting of a 10 million dollar bond to demonstrate that TNHC has the resources to compensate DRA, the intervenors, CPUC CEQA staff, and their own experts, consultants, and contractors as well other expenses such as workshops; a certified report of TNHC's net worth and liquidity as well as the amount an outside partner is willing to invest in the CPCN and CEQA process; confirmation that the Project is integrated into the CAISO and CPUC grid planning exercises; binding commitments to ownership or leasehold rights to property required for the Project; a contractual relationship with a utility or other organization with grid responsibility which can fulfill the role of Public Utility or TNHC's own designation of Public Utility.

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<sup>66</sup> Id.

Thank you for your consideration of these comments.

Respectfully submitted,

/s/ JONATHAN EVANS

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