Decision PROPOSED DECISION OF ALJ MINKIN (Mailed 3/16/2009)

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 09-02-012 (Filed February 20, 2009) Application 07-10-005 (Filed October 9, 2007)

DECISION DISMISSING APPLICATION WITHOUT PREJUDICE

Summary

This decision dismisses Application (A.) 09-02-012 and A.07-10-005 without prejudice. The Nevada Hydro Company (Nevada Hydro or Applicant) has not provided the required environmental documents that comply with General Order (GO) 131-D and the Commission's Rules of Practice and Procedure. As a result, we cannot deem this application complete and we cannot carry out our statutory responsibilities under the California Environmental Quality Act. We recognize that the Project may have potential benefits and we encourage Applicant to take the time and invest the necessary resources to develop an updated and revised application that includes a complete Proponent's Environmental Assessment that fully addresses all of our concerns, including those specified in the Commission Staff's deficiency letter dated March 12, 2009.

Background

On October 9, 2007, Nevada Hydro filed A.07-10-005 requesting that the Commission authorize the issuance of a Certificate of Public Convenience and

Necessity (CPCN) for the Talega-Escondido/Valley-Serrano 500-Kilovolt (kV) Interconnect Project (Project). In response to the assigned Administrative Law Judge's (ALJ) ruling dated December 30, 2008, Nevada Hydro filed an amended CPCN application with a supplemented Proponent's Environmental Assessment (PEA) on February 20, 2009. Consistent with the Chief ALJ's ruling of February 26, 2009, the amended application was given a new docket number, A.09-02-012, which is now the lead docket for this proceeding, and the proceedings were consolidated.

Nevada Hydro filed its original 2007 application without a PEA.[1] The Commission's rules require that a PEA be submitted with an application for a CPCN. (See Rule 2.4(b).) Nevada Hydro subsequently filed a "draft" PEA and Staff reviewed that document.[2] The Commission's Staff issued a review letter on November 16, 2007 to Nevada Hydro identifying and explaining the deficiencies in the Draft PEA (Attachment 1).

Nevada Hydro filed its Revised PEA on February 8, 2008. On March 6, 2008, Staff issued a second review letter concluding that the February 8, 2008 Revised PEA was incomplete based upon a number of factors, including inadequacies with the descriptions of the location of the Project, environmental setting and mitigation measures as those factors relate to required system upgrades, reasonably foreseeable future phases, and related projects (Attachment 2).

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[1] Nevada Hydro also filed a minor amendment to the application itself on November 2, 2007 to correct a typographical error.

[2] This PEA was titled a "Draft PEA" by Nevada Hydro but was formally filed in the present proceeding, and hence is the first PEA.

On July 29, 2008, Nevada Hydro filed a Second Revised PEA, and served a Notice of Availability to the service list in this proceeding.

On August 18, 2008, Staff issued a third review letter to Nevada Hydro noting that the Second Revised PEA was incomplete, in that it still lacked sufficient details to allow a clear and comprehensive understanding of all aspects of the Project, and that the Project description information was insufficient, vague, confusing or missing (Attachment 3). As a result, Staff requested that the deficient sections be replaced in a supplement, with the other sections remaining as filed.

While preparing its response to the August 18, 2008 Staff review letter, Nevada Hydro requested an informal review of work in progress and provided Staff with a hard copy of its work in progress on September 24, 2008. After review of this informal document, Staff provided comments in a letter dated October 20, 2008 outlining deficiencies in the document.

On November 12, 2008, Nevada Hydro filed a Supplement to its July 29, 2008 Second Revised PEA, and served a Notice of Availability to the service list in this proceeding. That Supplement included new elements to the Project, specifically both 115-kV and 12.5-kV lines, which were not part of the original application or Project described in the prior environmental documents.

On December 5, 2008, Staff issued a fourth review letter[3] to Nevada Hydro noting that the PEA was still incomplete, still lacked sufficient details to allow a clear and comprehensive understanding of all aspects of the Project, and that the Project description was still insufficient, vague, confusing or missing

[3] Although the letter is titled as the third review, it is the fourth overall.

(Attachment 4). To avoid confusion between the various submittals from Nevada Hydro, Staff recommended that the November 12, 2008 Supplement be modified and edited to address the deficiencies identified in that letter. Staff further recommended that the entire amended supplement be submitted, rather than providing a separate amendment to the Supplement.

On December 30, 2008, the ALJ issued a ruling ordering Nevada Hydro to either file by February 17, 2009 a full amended application with a complete PEA that complies with all of the requirements for conducting CEQA analysis; to provide in comments a compelling argument why the Commission should not dismiss the present application without prejudice; or to voluntarily request that the Commission dismiss the present application without prejudice. Interested parties were provided an opportunity to reply to Nevada Hydro's comments, if any.

Nevada Hydro filed its amended application on February 20, 2009 in compliance with the December 30 ruling.[4] As noted above, the amended application was assigned a new docket number, A.09-02-012, and A.09-02-012 and A.07-10-005 are now consolidated. On March 12, 2009, after carefully reviewing the new PEA included with A.09-02-012, Staff issued yet another deficiency letter stating numerous reasons why the PEA remains incomplete. (Attachment 5.)

Discussion

Because the PEA has never been deemed complete, A.07-10-005 has remained open for more than 17 months during which time no Commission

[4] The Commission's Docket Office accepted the amended application for filing on February 20, 2009. We consider Nevada Hydro's filing to be timely.

action could take place. Environmental review cannot proceed on the application until the application is deemed complete. Substantial time and other resources have been expended by Staff, consultants, and interested parties in evaluating these incomplete documents. In addition, as the Project description has evolved, it appears that the Project has changed to include additional facilities not specifically set forth in the original application.

In deeming the supplemental PEA filed with A.09-02-012 as incomplete, several previously-identified deficiencies remain uncorrected. Most importantly, as Staff noted on March 12, "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." Without this detailed Project description, we cannot move forward with the environmental scoping process. Again, substantial time and other resources have been expended. We decline to continue to expend our resources on this particular application in efforts which have not led to fruitful results.[5] Moreover, substantial amounts of money have been spent on these efforts.

As the assigned ALJ stated in her ruling of December 30, 2008, "[s]hould Staff determine that Nevada Hydro's amended application and PEA remain seriously deficient in the description of the Project such that environmental review cannot be reasonably initiated, the Administrative Law Judge shall respond with a proposed decision to dismiss the application without prejudice."

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[5] We note that parties to this proceeding also must use resources to review the amended application and PEA carefully and determine whether and how to respond or intervene. For example, the California Unions for Reliable Energy filed a reply to the amended application on February 26, 2009.

We affirm that ruling here and we now dismiss A.09-02-012 and A.07-10-005 without prejudice. We recognize the potential benefits of this Project and urge Applicant to take the time and invest the necessary resources to ensure that any future applications brought before us are updated and complete and comply with all required statutes, rules, and General Orders.

Pursuant to Rule 2.5, Nevada Hydro paid a deposit of $714,000 to reimburse the Commission and its consultants for the expenses associated with environmental review. We direct Staff to refund any remaining monies from the deposit of $714,000, collected in October 2007.

Comments on Proposed Decision

The proposed decision of the ALJ 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 Practice and Procedure. Comments were filed jointly by the Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club, Friends of the Forest (Trabuco District), and the Santa Rose Plateau on April 6, 2009. Reply comments were filed by John Pecora on April 13, 2009. These parties recommend that we dismiss the application with prejudice or provide mandatory direction for resubmission. We have made changes to the proposed decision, as appropriate.

Assignment of Proceeding

Rachelle B. Chong is the assigned Commissioner and Angela K. Minkin is the assigned ALJ in this proceedings.

Findings of Fact

1. On October 9, 2007, Nevada Hydro filed A.07-10-005 without the required PEA and requested that the Commission issue a CPCN for the Talega-Escondido/Valley-Serrano 500-kV Project.

2. Nevada Hydro submitted "draft" and "revised" PEAs on February 8, 2008, July 29, 2008, and November 12, 2008.

3. Commission Staff worked diligently to review all submitted PEAs and attempted to work with Nevada Hydro to correct the noted and substantial deficiencies. Staff deficiency letters were provided to Nevada Hydro on November 16, 2007, March 6, 2008, August 18, 2008, October 20, 2008, and December 5, 2008.

4. The assigned ALJ properly issued a ruling on December 30, 2008, ordering Nevada Hydro to either to file a full amended application with a complete PEA; to file comments providing compelling arguments for why the present application should not be dismissed without prejudice; or to voluntarily request that the Commission dismiss the present application without prejudice.

5. Nevada Hydro filed an amended application in response to the December 30 ruling. The amended application was given a new docket number, A.09-02-012, and A.09-02-012 and A.07-10-005 were consolidated.

6. Staff has carefully and thoroughly reviewed the revised PEA submitted with A.09-02-012 and, by letter issued on March 12, 2009, has informed Applicant that the PEA is still incomplete, particularly with regard to the necessary detailed description of the Project and critical project elements.

7. Despite considerable resources expended by Commission Staff, consultants, and Applicant, these efforts have not led to a PEA that can be deemed complete.

8. We affirm the assigned ALJ's finding in the December 30, 2008 ruling that provided notice to Applicant that the ALJ would prepare a proposed decision dismissing this application without prejudice if our Staff determined that the amended PEA remained seriously deficient in the description of the Project.

9. Nevada Hydro paid a deposit of $714,000 in October 2007, to reimburse the Commission for expenses associated with the environmental review of the Project.

Conclusions of Law

1. In order to allow the Commission to discharge its duties and obligations under CEQA, Commission Staff must deem complete Nevada Hydro's application for a CPCN.

2. Nevada Hydro has not met its obligations under CEQA, GO 131-D, and Rule 2.4(b).

3. A.09-02-012 and A.07-10-005 should be dismissed without prejudice. If Nevada Hydro decides to file a new application, it should ensure that the application and PEA fully and completely comply with the requirements established by CEQA, GO 131-D, and Rule 2.4(b). Any new application and PEA must also cure the specific deficiencies identified in the Commission Staff's most recent deficiency letter, dated March 12, 2009. Those deficiencies relate to project components involving the Case Spring Substation location as well as the proposed 115-kV transmission line.

4. Pursuant to Rule 2.5(c), the balance of the remaining funds paid by Applicant to reimburse the Commission for preparation of the environmental documents should be promptly refunded.

5. This order should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Nevada Hydro Company's application for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano

500-Kilovolt Interconnect Project first filed on October 9, 2007 as Application (A.) 07-10-005 and then filed on February 20, 2009 as A.09-02-012, are dismissed without prejudice. If Applicant files a new application for this Project, Applicant shall ensure that the application and the associated Proponent's Environmental Assessment shall fully and completely comply with the requirements under the California Environmental Quality Act, General Order 131-D, and Rule 2.4(b). In addition, any new application and Proponent's Environmental Assessment must also cure the specific deficiencies identified in the Commission Staff's most recent deficiency letter, dated March 12, 2009. Those deficiencies relate to project components involving the Case Spring Substation location as well as the proposed 115-kV transmission line.

2. Within 30 days of the date of this decision, Staff shall work with Fiscal Office to refund the remaining balance of the deposit paid by Applicant pursuant to Rule 2.5(c).

3. A.09-02-012 and A.07-10-005 are closed.

This order is effective today.

Dated _____, at San Francisco, California.