



Commission.<sup>3</sup> The compliance filing included a detailed explanation of the several factors that the CAISO and SDG&E took into account in establishing the revised milestone dates, including the use of Nevada Hydro's requested date for the In-Service Date to be used in the LGIA. Nevada Hydro's protest seeks different dates for three other milestone dates without any explanation of their relevance and without addressing any of the considerations the CAISO and SDG&E described as forming the basis for their specification of these dates in the LGIA. Nevada Hydro's request for different dates should be rejected as unsupported, unjustified, and illogical.

#### **I. ANSWER**

In its protest, Nevada Hydro asserts that the CAISO and SDG&E have inserted Nevada Hydro's proposed In-Service Date into the LGIA but have not used its currently proposed dates for the Initial Synchronization Date, the Trial Operation date, and the Commercial Operation Date. Nevada Hydro characterizes this action as having "unilaterally, unreasonably, and inexplicably added over a year to the schedule for reaching Commercial Operations" and as providing for "the passage of more than a year before the line would be placed into service."<sup>4</sup>

This characterization is unfounded. The CAISO and SDG&E included a detailed explanation in the transmittal letter for the February 26 compliance filing how and why the milestone dates incorporated in the LGIA were chosen – and

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<sup>3</sup> Unless otherwise defined herein, terms used with initial capitalization have the meanings set forth in the LGIA or in the Master Definitions Supplement, Appendix A to the CAISO Tariff.

<sup>4</sup> Nevada Hydro protest at 2.

how they were determined from information provided by Nevada Hydro in a logical application to the provisions of the LGIA. The incorporation of Nevada Hydro's proposed alternative milestone dates into the LGIA would produce illogical terms for the LGIA, and Nevada Hydro has made no effort in its protest to dispute the logic of the milestone dates chosen by the CAISO and SDG&E.

As pointed out in the transmittal letter for the February 26 compliance filing, the CAISO and SDG&E have concluded that it is necessary to clarify the mixture of milestone dates for Nevada Hydro's transmission facilities and generating facility in the LGIA, recognizing that the Commission has directed that the In-Service Date associated with the transmission facilities is the appropriate date on which to base the construction schedule of the Interconnection Facilities and Network Upgrades in this particular special LGIA. In fact, as a matter of definition in Article I of the LGIA, the "Initial Synchronization Date," the "Trial Operation" date, and the "Commercial Operation Date" are applicable only to the interconnection of Nevada Hydro's generating facility, and not to its transmission facilities. It is only the "In-Service Date" that is defined to apply to the earlier of the two. Consequently, it would be inconsistent with the terms of the LGIA to incorporate dates from Nevada Hydro's schedule for its transmission facilities into the LGIA as the dates for the milestones for the "Initial Synchronization Date," the "Trial Operation" date, and the "Commercial Operation Date."

To account for the accurate use of these defined terms – and for the logic of their use in the body of the LGIA, SDG&E and the CAISO have incorporated separate listings of the milestone dates for Nevada Hydro's transmission facilities

and its generating facility in LGIA Appendix B to provide a complete picture of the intended course of construction of Nevada Hydro's two-phased, combined project. The CAISO and SDG&E have established these separate dates for the construction schedules for Nevada Hydro's transmission facilities and generating facility from the separate projected schedules provided by Nevada Hydro itself in a conference call on February 10, 2009. Nevada Hydro's protest now seeks to use only the dates it provided to the CAISO and SDG&E regarding the construction schedule for its transmission facilities and to ignore the later dates for the construction schedule for its generating facility. This approach is inconsistent with what is still the primary function of the LGIA as an interconnection agreement for a generating facility and would introduce illogical results in the application of the provisions of the LGIA.

The CAISO and SDG&E have conceded that SDG&E's obligations with regard to construction of Network Upgrades under the LGIA should be based on Nevada Hydro's requested In-Service Date for its transmission facilities. While SDG&E has expressed its doubts whether it or Nevada Hydro will be able to meet that date,<sup>5</sup> the CAISO and SDG&E have incorporated that date into the

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<sup>5</sup> The CAISO's and SDG&E's previous submittals in this proceeding have raised significant concerns with regard to the feasibility of Nevada Hydro's proposed dates for both aspects of its combined project. To date, despite opportunities presented in its protest and elsewhere, Nevada Hydro has not responded to those concerns, particularly those pertaining to pending state and federal regulatory approvals. The Commission has also acknowledged these concerns in its January 29 Order. See January 29 Order at 2, including n.3. Furthermore, Nevada Hydro's proposed in-service date for its transmission facilities appears further in doubt due to two recent developments. First, on March 16, 2009, an administrative law judge for the California Public Utilities Commission issued a proposed decision which would dismiss, without prejudice, Nevada Hydro's application (A.09-02-012 and A.07-05-005) for the issuance of a certificate of public convenience and necessity for the proposed transmission facilities. Second, as reflected in this Commission's pending docket governing Nevada Hydro application for a hydro-electric license, Docket No. P-11858, the U.S. Marine Corps apparently has determined that Nevada Hydro will

LGIA, and SDG&E's obligations regarding that date will be governed by the provisions of the LGIA. As noted by the CAISO and SDG&E in the transmittal letter for the February 26 compliance filing, the milestones in LGIA Appendix B.4 for SDG&E's construction of Network Upgrades other than Stand Alone Network Upgrades have been revised to align them as closely as possible with the milestone dates provided by Nevada Hydro associated with its transmission facilities. SDG&E has committed to incorporate these milestones in the LGIA pursuant to SDG&E's right under the LGIA (particularly Articles 5.5 and 5.6) to propose and adhere to its own milestones for the construction process for its non-Stand Alone Network Upgrade facilities, subject to the requirement that SDG&E act "as soon as practicable" following the satisfaction of the conditions set forth in those Articles.

The use of Nevada Hydro's proposed alternative dates for the other three milestone dates at issue – the Initial Synchronization Date, the Trial Operation date, and the Commercial Operation Date – would place Nevada Hydro at risk of breach of provisions of the LGIA if those dates are not specified for the construction of the generating facility. For example, LGIA Article 5.10 provides:

The Interconnection Customer shall submit initial specifications for the Interconnection Customer's Interconnection Facilities and Large Generating Facility, including System Protection Facilities, to the Participating TO and the ISO at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date ....

If Nevada Hydro specifies the Initial Synchronization Date as a date related to the construction of its transmission facilities, it will be in default of this provision of the

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not receive its authorization to locate a substation integral to the transmission facilities as proposed by Nevada Hydro.

LGIA if it cannot submit the initial specifications for its generating facility in accordance with this milestone.

In addition, LGIA Article 8.2 provides:

Prior to the Initial Synchronization Date of each Electric Generating Unit, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to the Parties, shall be installed by the Interconnection Customer, or by the Participating TO at the Interconnection Customer's expense, ....

It would make no sense in the application of this provision of the LGIA to use an Initial Synchronization Date related to Nevada Hydro's transmission facilities.

As another example, LGIA Article 24.4 provides:

Prior to the Trial Operation date, the Parties shall supplement their information submissions described above in this Article 24 with any and all 'as-built' Electric Generating Unit information or 'as-tested' performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist.

If a date related to Nevada Hydro's transmission facilities is used for the Trial Operation date, then there will be no "as-built" generating facility information available to satisfy this provision of Article 24.4.

Yet another example is found in the provisions of LGIA Article 5.10.3, which states:

Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Participating TO and Interconnection Customer agree on another mutually acceptable deadline, the Interconnection Customer shall deliver to the Participating TO and ISO 'as-built' drawings, information and documents for the Interconnection Customer's Interconnection Facilities and the Electric Generating Unit(s) ...."

If the Commercial Operation Date is based on a date for the construction of Nevada Hydro's transmission facilities, Nevada Hydro will not be able to satisfy

the requirement of Article 5.10.3 to deliver “as-built” drawings for its generating facility following that date.

Finally, contrary to the assertions in Nevada Hydro’s protest, the CAISO and SDG&E incorporated Nevada Hydro’s milestone dates for the “commercial operation” of both its transmission facilities and its generating facility into LGIA Appendix B in anticipation that the “commercial operation” date for Nevada Hydro’s transmission facilities would be a significant milestone in this special LGIA, in addition to the defined “Commercial Operation Date” for Nevada Hydro’s generating facility. With this incorporation both of Nevada Hydro’s proposed In-Service Date and its “commercial operation” date into LGIA Appendix B, the CAISO and SDG&E have accommodated the purpose of Nevada Hydro’s requested milestone dates while still maintaining the logical application of the rest of the LGIA consistent with the dates for construction and interconnection of Nevada Hydro’s generating facility. Based on the foregoing explanation of the purpose and use of the identified milestone dates, it would be illogical and inconsistent with the other provisions of the LGIA to incorporate additional dates from the construction schedule for Nevada Hydro’s transmission facilities, as proposed by Nevada Hydro in its protest.

## II. CONCLUSION

The CAISO and SDG&E urge the Commission to reject the position of Nevada Hydro and accept the LGIA as filed.

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Dated: April 14, 2009

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## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 14<sup>th</sup> day of April 2009.

*/s/ Anna Pascuzzo*

Anna Pascuzzo