

I. INTRODUCTION AND BACKGROUND

The Lake Elsinore Advanced Pumped Storage (“LEAPS”) project is a proposed pumped storage facility seeking to interconnect to the CAISO controlled grid at two points of interconnection: one, to the north, to SCE’s system, and the other, to the south, to the system of San Diego Gas & Electric Company (“SDG&E”). As a result of this arrangement, two LGIAs have been developed for the LEAPS project to provide for interconnection service by both SCE and SDG&E. As a result of issues that have arisen in these individual negotiations, the SDG&E LGIA was filed well before the LGIA for SCE.

A substantial factual and decisional history with respect to the LEAPS project has developed in the context of the SDG&E LGIA. The ISO will not attempt to repeat the entirety of that history here, but rather, refers generally to the relevant SDG&E LGIA dockets: ER08-654 and ER12-1312. However, for purposes of this current filing, it is important to understand that Nevada Hydro plans to construct and interconnect the LEAPS project to SCE and SDG&E through a line known as the TE/VS Interconnect. Over several years, Nevada Hydro has undertaken efforts to build the TE/VS Interconnect to serve not only as a generation tie-line for the proposed LEAPS pumped-storage facility but also as a stand-alone transmission line. With respect to the status of the TE/VS Interconnect as a stand-alone transmission line, the Commission has made clear, in the context of the SDG&E LGIA, that this is a separate project from the LEAPS facility, and that the Commission’s approval of the SDG&E LGIA for LEAPS did not absolve Nevada Hydro from the need to obtain the relevant

approvals (such as siting authority from the California Public Utility Commission or approval through the ISO's transmission planning process) in order to construct the TE/VS Interconnect as a stand-alone transmission line.

Unfortunately, in the seven years since Nevada Hydro submitted its interconnection request to the ISO, Nevada Hydro has failed to achieve any significant milestones in developing either the LEAPS project or the TE/VS Interconnect, including the milestones set forth in the SDG&E LGIA regarding the LEAPS facility. As a result, the ISO and SDG&E determined that it is not feasible for the LEAPS project to achieve commercial operation within 10 years of the date that it submitted its interconnection request (April, 2005), and requested that Nevada Hydro provide assurances that it could comply with the terms of the LGIA.³ Nevada Hydro failed to do so, and therefore, the ISO and SDG&E filed a notice of termination with the Commission in Docket No. ER12-1312 on March 21, 2012.

Despite the failure of Nevada Hydro to develop the LEAPS project, Nevada Hydro nevertheless requested that the ISO and SCE file an unexecuted version of the SCE LGIA with FERC. As the ISO explained in footnote 3 of its transmittal letter for the filing of the SCE LGIA, Section 11.3 of the LGIP required Nevada Hydro to either execute the SCE LGIA or request the ISO and SCE to file the SCE LGIA in unexecuted form. Given Nevada Hydro's request to file the unexecuted LGIA, the ISO was obligated to make a filing thereof within 10

³ Section 3.5.1 of the ISO's LGIP provides that the In-Service Date for a generator "may succeed the date the Interconnection Request is received by the CAISO by a period of up to ten years, or longer where the Interconnection Customer, the applicable Participating TO, and the CAISO agree, such agreement not to be unreasonably withheld."

business days of Nevada Hydro's request, and the ISO did so on March 21st. However, based on Nevada Hydro's failure to achieve any of the fundamental commercial or regulatory predicates to developing, constructing and placing the LEAPS project into service, the ISO does not see a realistic path for the LEAPS project to achieve commercial operation within any reasonable timeframe, and certainly not within the 10-year period from the date of the interconnection request. Perhaps most significant is the fact that the Elsinore Valley Municipal Water District has terminated its agreement with Nevada Hydro to jointly develop the LEAPS project. As the Commission recognized in its order denying rehearing of the LEAPS permit application, Nevada Hydro's assertion that it could operate the project without the District's cooperation "does not seem promising," given that the LEAPS project would need to utilize District facilities.⁴

Based on these facts, as well as Nevada Hydro's continuing emphasis, in both formal and informal communications, on the merits and timeline for the TE/VS project, it has become abundantly clear that Nevada Hydro's goal in continuing to pursue the generator interconnection process with both SDG&E and SCE is to attempt to use these processes to develop and interconnect the TE/VS Interconnect as a stand-alone transmission line. Such an outcome would be inconsistent with the purpose of the generator interconnection process, which is to ensure that proposed generators can be interconnected to the ISO Controlled Grid safely, reliably, and efficiently. The generator interconnection process was never intended and not designed to address issues of development, construction and deployment of large-scale customer-owned transmission

⁴ *The Nevada Hydro Company, Inc.*, 137 FERC ¶ 61,133 (2011) at n. 16.

projects. Instead, the proper mechanism for considering such proposals is the ISO's transmission planning process. Therefore, in considering the SCE LGIA, the Commission should continue to be clear that the purpose of the LGIA is to interconnect the LEAPS project, and that the development of the separate TE/VS project cannot use the LGIA process to bypass the ISO's transmission planning process and other relevant regulatory requirements.

In summary, the ISO's March 21 filing was made solely in satisfaction of the requirement set forth in Section 11.3 of the LGIP for the ISO to file an unexecuted LGIA at the request of the customer. Due to the fact that the LEAPS project seems to have no realistic path to commercial operation in its current configuration, the ISO would not oppose a Commission decision rejecting the SCE LGIA in its entirety, but in any case, the Commission should reject Nevada Hydro's attempts to modify the LGIA to serve as the mechanism to develop and interconnect the TE/VS as a stand-alone transmission line.

II. ANSWER

A. The LGIA that the ISO Has Filed for Commission Acceptance in This Proceeding Is Separate from the Large Generator Interconnection Agreement that the ISO Proposes to Terminate In a Related Proceeding

Nevada Hydro acknowledges that LEAPS is subject to two Large Generator Interconnection Agreements: (1) the new, unexecuted Large Generator Interconnection Agreement among Nevada Hydro, the ISO, and SCE for the interconnection of the LEAPS project to the transmission system owned by SCE, which the ISO filed for Commission acceptance in this proceeding; and (2) an existing Large Generator Interconnection Agreement that the Commission

accepted in 2009 for the interconnection of the LEAPS project to the transmission system owned by SDG&E, which the ISO proposes to terminate in Docket No. ER12-1312-000 (referred to below as the “SDG&E Large Generator Interconnection Agreement”).⁵ Nevertheless, Nevada Hydro argues that it “should be treated no differently than if it were subject to a single LGIA.”⁶ Thus, according to Nevada Hydro, it should “not be expected to proceed with the development or make financial commitments with respect to” the interconnection to the SDG&E system until the interconnection to the SCE system (including the LGIA) is complete,⁷ and the SCE LGIA should also be revised to include provisions regarding the SDG&E Large Generator Interconnection Agreement.⁸

The Commission should reject these arguments by Nevada Hydro. No provision in the SDG&E Large Generator Interconnection Agreement, as accepted by the Commission, makes the development of the LEAPS project or Nevada Hydro’s financial commitments contingent upon the completion of the SCE LGIA. In this regard, Article 30.4 of the SDG&E Large Generator Interconnection Agreement contains an integration clause which reflects the fact that the written SDG&E Large Generator Interconnection Agreement, including all appendices and schedules attached thereto, constitutes the entire agreement among the Parties with reference to the subject matter thereof, including but not

⁵ The SDG&E Large Generator Interconnection Agreement was accepted in *Nevada Hydro Co. and California Independent System Operator Corp.*, 129 FERC ¶ 61,098 (2009).

⁶ Nevada Hydro at 10.

⁷ *Id.*

⁸ *Id.* at 11-12, 18 and Attachment 1.

limited to the milestone dates set forth in Appendix B to that Large Generator Interconnection Agreement. Article 30.4 of the separate SCE LGIA contains the same integration clause for that LGIA.

Moreover, in the proceeding regarding the SDG&E Large Generator Interconnection Agreement, the Commission noted the ISO's statement that "the connection with SoCal Edison [*i.e.*, SCE] will likely involve similarly extensive Interconnection Facilities and Network Upgrades"⁹ but the Commission did not indicate that Nevada Hydro's obligations under the SDG&E Large Generator Interconnection Agreement were contingent upon Nevada Hydro's obligations under the SCE LGIA that was then being negotiated among Nevada Hydro, the ISO, and SCE. Indeed, the Commission accepted the currently effective version of the SDG&E Large Generator Interconnection Agreement without stating that its acceptance was subject to any future proceedings regarding the SCE LGIA. Nowhere in the Commission orders addressing the SDG&E Large Generator Interconnection Agreement did the Commission provide that the effectiveness of the SDG&E Large Generator Interconnection Agreement depends on the subsequent completion and execution of the SCE LGIA.

Thus, there is no merit to Nevada Hydro's argument that it should be excused from its obligations under the SDG&E Large Generator Interconnection Agreement until the interconnection to the SCE system upgrades is completed, nor should the SCE LGIA be revised to include provisions making it contingent upon the SDG&E Large Generator Interconnection Agreement.

⁹ *California Independent System Operator Corp.*, 126 FERC ¶ 61,078, at P 3 fn.2 (2009).

B. The Commission Should Reject Nevada Hydro’s Proposal to Tie the Dates in Appendices A and B to the SCE LGIA to the In-Service Date for the TE/VS Interconnect Project

Nevada Hydro argues that the schedules for posting security set forth in Sections 9 and 10 of Appendix A to the SCE LGIA, and the milestone dates set forth in Appendix B to that LGIA, should be revised. Nevada Hydro “proposes simply using the in-Service date for the TE/VS Interconnect, and sequencing dates in advance of the achievement of this date for all schedules in Appendix A, Sections 9 and 10 and in Appendix B.”¹⁰ In this regard, Nevada Hydro states that it “filed an application for a Certificate of Public Convenience and Necessity (‘CPCN’) with the California Public Utilities Commission (‘CPUC’). This application was accepted and is being processed in CPUC docket A.10-01-001.”¹¹ Nevada Hydro also states that it “now believes that it could have the TE/VS Interconnect energized within 14 months.”¹²

The Commission should reject Nevada Hydro’s proposal. Nevada Hydro does not mention that it is the party who suggested the milestone dates now specified in Appendix B: in particular, the In-Service Date and Initial Synchronization Date of October 1, 2013, the Trial Operation Date of October 17, 2013, and the Commercial Operation Date of December 31, 2013.¹³ The ISO and SCE simply accepted these dates proposed by Nevada Hydro, which

¹⁰ Nevada Hydro at 14-18 and Attachment 1.

¹¹ Nevada Hydro at 4.

¹² *Id.* at 9.

¹³ The ISO’s e-mail records include a draft red-lined version of the SCE LGIA sent by Nevada Hydro on March 24, 2011 that includes Nevada Hydro’s revisions to include the above-listed milestone dates in Appendix B.

Nevada Hydro now wishes to change again. Nevada Hydro's purpose in suggesting these revised dates is clearly aimed at using the SCE LGIA as mechanism to develop the TE/VS transmission project. The Commission should deny this attempt at an end-run around the ISO's transmission planning process.

Moreover, Nevada Hydro's suggestion that it could have the TE/VS Interconnect line energized within 14 months is misleading in the extreme, given that Nevada Hydro has failed to achieve any significant developmental milestones with respect to the TE/VS Interconnect. Most recently, on April 3, 2012, the presiding administrative law judge in a California Public Utilities Commission ("CPUC") proceeding issued a proposed decision ("April 3 Proposed Decision") dismissing without prejudice Nevada Hydro's application for a CPCN for the TE/VS Interconnect project.¹⁴ The April 3 Proposed Decision explains that dismissal is based on Nevada Hydro's persistent inability to provide the CPUC with sufficient project information to assess the application:

The [CPUC] cannot afford to squander its resources on applications that, despite over 18 months of work, remain vague and speculative as to financing plan and indeed the project description itself. Nevada Hydro has had ample opportunity in this application and in previous applications to develop its project description and financing plan appropriately, and to confirm that it can present its case-in-chief that includes with specificity how it will interconnect with both SDG&E and SCE's systems and that the CAISO will accept control as the grid operator. This has not occurred. In sum, despite months of work and resources expended by this [CPUC], the parties, and the project proponent itself, Nevada Hydro has not yet provided the [CPUC] with a full and complete application that would allow us to assess the economics and need of the proposed

¹⁴ The April 3 Decision, which was issued over a week before Nevada Hydro filed its protest, is provided in Attachment A hereto and is available on the CPUC's website at <http://docs.cpuc.ca.gov/published/proceedings/A1007001.htm>. The actual docket for the CPUC proceeding is A.10-07-001, not A.10-01-001 as asserted by Nevada Hydro.

project. Because its financial wherewithal to proceed with the project is not readily apparent, we dismiss this application.¹⁵

In addition, the April 3 Proposed Decision set forth a series of conditions that Nevada Hydro is required to meet before a new application can be submitted to the CPUC, including hosting a technical workshop to address issues regarding the TE/VS Interconnect project and providing any preliminary application to the CPUC Energy Division Staff for its review and approval.¹⁶ Even if Nevada Hydro were to submit a new application to the CPUC that satisfies the requirements, the CPUC proceeding that culminated with Nevada Hydro's application being dismissed by the April 3 Decision lasted over 18 months,¹⁷ and Nevada Hydro provides no reason to believe that a proceeding on any new Nevada Hydro application would be any shorter.

In addition to the CPCN, the TE/VS Interconnect project must meet ISO and Commission requirements before it could achieve its In-Service Date. In an order issued in 2009 in the LEAPS project proceeding, the Commission clarified "the need for study of the proposed TE/VS Interconnect under CAISO's transmission planning process,"¹⁸ which would first require a finding of need by the ISO. Moreover, to obtain rate recovery, Nevada Hydro would have to obtain ISO acceptance of an application to become a Participating Transmission Owner,

¹⁵ April 3 Decision at 10.

¹⁶ *Id.*

¹⁷ See <http://docs.cpuc.ca.gov/published/proceedings/A1007001.htm> (indicating that CPUC proceeding A.10-007-001 began on July 20, 2010).

¹⁸ *Nevada Hydro Co. and California Independent System Operator Corp.*, 129 FERC ¶ 61,098, at P 25.

execute the Transmission Control Agreement, and file and receive Commission approval of its transmission revenue requirement.

Given these facts and circumstances, the Commission should reject Nevada Hydro's proposal to tie the dates in Appendices A and B to the In-Service Date for the TE/VS Interconnect project. Nevada Hydro has no basis on which to propose any future date as a possible date by which the TE/VS Interconnect project might be in-service, least of all within 14 months.

C. The Commission Should Reject Nevada Hydro's Proposed Revisions Regarding the Interconnection Customer's Interconnection Facilities and the Point of Interconnection

Nevada Hydro argues that revisions should be made to the description in Appendix A of the SCE LGIA regarding the Interconnection Customer's Interconnection Facilities and to the Point of Interconnection.¹⁹ The Commission should reject those proposed revisions. Nevada Hydro ignores the fact that only the Interconnection Customer's Interconnection Facilities listed in the SCE LGIA have been studied. Nevada Hydro proposes to change the Interconnection Customer's Interconnection Facilities to interconnection facilities that have not been studied, which would be a Material Modification under Section 4.4 of the LGIP. Similarly, changing the Point of Interconnection as proposed by Nevada Hydro would be a Material Modification under that same section of the LGIP.

Further, Nevada Hydro states that it has "requested facilities adjacent to Alberhill . . . required to realize the blackstart capabilities of the LEAPS facility, as this functionality requires additional equipment under Nevada Hydro's control

¹⁹ Nevada Hydro at 12-14 and Attachment 1.

outside the fence of SCE facilities.” Nevada Hydro proposes revisions to the LGIA to give it “space ‘across the fence’ from SCE facilities.”²⁰ These proposed revisions raises serious safety and reliability issues. SCE, not Nevada Hydro, is a Participating Transmission Owner, and thus SCE, not Nevada Hydro, should be responsible for the control and operation of facilities and equipment at or near the substation for the LEAPS project. Therefore, Nevada Hydro’s proposal to revise the LGIA to allow Nevada Hydro to install and operate additional facilities and equipment to provide black start capability should be rejected.

III. CONCLUSION

For the reasons explained above, the Commission should either reject the unexecuted LGIA filed in this proceeding on March 21, 2012 in its entirety, or accept it as filed.

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced 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 Washington, D.C. this 26th day of April, 2012.

/s/ Bradley R. Miliauskas
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