

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**The Nevada Hydro Company, Inc.)**

**Docket No. EL18-131-000**

**MOTION TO INTERVENE AND PROTEST OF THE  
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION  
IN RESPONSE TO PETITION FOR DECLARATORY RULING**

The California Independent System Operator Corporation (“CAISO”) submits this protest<sup>1</sup> to the petition for declaratory ruling filed by the Nevada Hydro Company, Inc. (“Nevada Hydro”) on March 9, 2018. Nevada Hydro asks the Federal Energy Regulatory Commission (Commission) to issue a declaratory order that: (1) the Lake Elsinore Pumped Storage (“LEAPS”) facility is a transmission facility as established in the Commission’s 2017 policy statement regarding cost recovery for storage resources;<sup>2</sup> and (2) LEAPS is entitled to cost-based rate recovery under the CAISO’s Transmission Access Charge (“TAC”). For the reasons set forth below, the Commission should deny Nevada Hydro’s request.

**I. INTRODUCTION AND EXECUTIVE SUMMARY**

The \$2 billion LEAPS project consists of two primary components: a proposed 500 MW pumped storage facility to be located on Lake Elsinore in Riverside, California and the Talega-Escondido/Valley-Serrano 500 kV

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<sup>1</sup> The CAISO submits this filing pursuant to Rules 211 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.214 (2017).

<sup>2</sup> *Utilization of Electric Storage Resources for Multiple Services When Receiving Cost-Based Rate Recovery*, 158 FERC ¶ 61,051 (2017) (“*Storage Policy Statement*”).

Interconnect (“TE/VS Interconnection”), a 30-mile transmission line that will interconnect the pumped storage facility to the transmission systems owned by Southern California Edison Company (“SCE”) and San Diego Gas and Electric Company (“SCG&E”). The LEAPS project entered the CAISO’s generator interconnection queue in 2005 and has a large generator interconnection agreement (LGIA) with the CAISO and SCE and an LGIA with the CAISO and SG&E. LEAPS has a hydroelectric license application pending before the Commission.

Both the TE/VS Interconnection and pumped storage facility were the subject of a previous request for transmission rate incentives under Order No. 679.<sup>3</sup> Although the Commission approved certain rate incentives for the TE/VS Interconnection, it denied the requested incentives for the pumped storage facility. The Commission based this decision on its determination that it would be inappropriate to require the CAISO to assume operational control over the facility and a finding that Nevada Hydro failed to distinguish the benefits offered by LEAPS from other pumped hydro facilities that did not receive rolled-in transmission pricing.<sup>4</sup>

In its current petition, Nevada Hydro contends that it now satisfies the Commission’s criteria for storage to operate as transmission per the *Western*

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<sup>3</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

<sup>4</sup> *The Nev. Hydro Co., Inc.*, 122 FERC ¶ 61,272 (2008).

*Grid Development* decision<sup>5</sup> and the 2017 *Storage Policy Statement* because Nevada Hydro, not the CAISO, will maintain operational responsibility for LEAPS, and Nevada Hydro will credit any revenues that it receives as a result of “incidental participation in California’s wholesale power markets” against its transmission revenue requirement.<sup>6</sup> Nevada Hydro does not seek any transmission rate incentives in its current petition, but rather explains that it is filing the petition merely “to remove uncertainty regarding the eligibility of LEAPS to be studied as a transmission facility in the CAISO transmission plan for cost-based rate recovery through its TAC like other wholesale transmission facilities.”<sup>7</sup> Nevada Hydro alleges that such uncertainty exists because of what it describes as the CAISO’s “long standing position that pumped storage hydroelectric facilities should always be evaluated as generating resources and load, but never as electric transmission.”<sup>8</sup>

There is no need for a declaratory order because the Commission has already found that storage resources can be transmission facilities and, contrary to Nevada Hydro’s assertion, the CAISO has not taken a position that storage resources, including pumped storage projects such as LEAPS, are ineligible to be evaluated in its transmission planning process as potential transmission assets. The CAISO has explicitly recognized that under the appropriate

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<sup>5</sup> *Western Grid Development, LLC*, 130 FERC ¶ 61,056, *reh’g denied*, 133 FERC ¶ 61,029 (2010) (“*Western Grid Development*”).

<sup>6</sup> Nevada Hydro Petition at 15.

<sup>7</sup> *Id.* at 16.

<sup>8</sup> *Id.* (footnote omitted).

circumstances a storage resource can be evaluated and approved through the CAISO's transmission planning process as a transmission asset eligible for cost-based rate recovery. During the past several years, the CAISO has considered several storage projects in its transmission planning process as potential transmission assets. Indeed, in its most recently completed transmission plan, the CAISO approved two projects as transmission assets that contain an energy storage component to meet identified reliability needs. As such, the notion that the CAISO has refused to consider storage resources as potential transmission assets is simply false. For the aforementioned reasons, there is no need for the Commission to "remove uncertainty regarding the eligibility of LEAPS" to participate in the CAISO's transmission planning process as a potential transmission solution, and the Commission should deny Nevada Hydro's petition.

More concerning, however, is Nevada Hydro's concerted effort to attempt to demonstrate not only that Nevada Hydro should be *eligible* for consideration as a potential transmission asset (which is not in dispute), but also that Nevada Hydro should be *selected* in the CAISO's transmission planning process. Most of Nevada Hydro's pleading and exhibits are devoted to extolling the merits of LEAPS as a solution to assumed CAISO transmission needs. Nevada Hydro is essentially asking the Commission to presume that Nevada Hydro will be selected even before the CAISO has determined whether there is a specific transmission need the project meets, what exactly that transmission need is, what the more efficient or cost-effective solution to meet any such need is, where the solution should be located, and before the CAISO has undertaken any

requisite competitive solicitation process. This is squarely at odds with the transmission planning process provisions of the CAISO's tariff and Commission policy and precedent requiring that projects eligible for regional rolled-in transmission cost recovery must first be selected through an open and non-discriminatory transmission planning process. The Commission should reject Nevada Hydro's attempt to "pick a winner" through means extrinsic to the CAISO's Commission-approved transmission planning procedures.

The Commission also should deny Nevada Hydro's request to require the CAISO to "file an explanation for the Commission's review" if it does not select the LEAPS project in the transmission planning process. In the transmission planning process, the CAISO explores alternatives and explains why it selected a particular solution instead of other solutions. In this respect, it is inappropriate to accord Nevada Hydro special treatment not contemplated in the CAISO tariff compared to other solutions the CAISO considers in the planning process. To the best of the CAISO's knowledge, the Commission has never required an independent system operator to file for Commission review an explanation of its transmission planning process determinations, and Nevada Hydro provides no justification as to the need for such a special measure applicable only to Nevada Hydro. If Nevada Hydro is unsatisfied with the outcome of the transmission planning process and believes that the CAISO has acted contrary to its tariff or Commission policy, it can seek appropriate relief from the Commission.

## **II. MOTION TO INTERVENE**

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 250 Outcropping Way, Folsom, California. The CAISO is an independent transmission system operator operating the transmission systems of its participating transmission owners. The CAISO is a balancing authority and coordinates the ancillary services and electricity markets and conducts transmission planning functions within its balancing authority area.

The CAISO operates under the terms of the CAISO tariff, which is on file with the Commission. The CAISO is responsible for administering a regional transmission planning process in accordance with its Commission-approved tariff. Nevada Hydro's requested declaratory order directly involves the inputs to, steps in, and the outcome of the CAISO's transmission planning process. Accordingly, the CAISO has a direct and substantial interest in this proceeding and requests that it be permitted to intervene with full rights of a party. Because no other party can adequately represent the CAISO's interests in this proceeding, the CAISO's intervention is in the public interest and should be granted.

## **III. COMMUNICATIONS**

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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#### IV. PROTEST

##### A. THERE IS NO CONTROVERSY OR UNCERTAINTY NECESSITATING A DECLARATORY ORDER STATING THAT LEAPS IS A TRANSMISSION ASSET

The Commission recognizes that storage resources can potentially fit into one or more of the traditional asset functions of generation, transmission, and distribution.<sup>9</sup> As such, beginning with its decision in *Western Grid Development*,<sup>10</sup> the Commission has permitted storage resources to be treated as transmission assets when those resources fulfill a transmission function and are selected in an appropriate transmission planning process. In *Western Grid Development*, the Commission determined that a proposed battery storage devices located at various points on the transmission grid to address system reliability needs such as providing voltage support and relieving thermal overloads would constitute transmission facilities. The storage devices were thus

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<sup>9</sup> *Storage Policy Statement*, 158 FERC ¶ 61,058 at P 2.

<sup>10</sup> 130 FERC ¶ 61,056 at PP 43-45.

eligible to receive certain transmission rate incentives because it would be operated in a manner more akin to a transmission facility than a generator.<sup>11</sup> However, the Commission conditioned the grant of incentives on the CAISO's approval of the project in the CAISO's transmission planning process.<sup>12</sup> The Commission re-emphasized this approach in the *Storage Policy Statement* and provided guidance as to how applicants seeking cost-based recovery while providing separate market-based services could address concerns regarding double recovery of costs, adverse market impacts, and ISO/RTO independence.

Nevada Hydro's petition does not involve a request for any particular transmission incentives, or indeed, for any incentives at all. Rather, Nevada Hydro asks the Commission to declare that LEAPS is a "wholesale transmission facility." The purpose of a petition for declaratory order is to "terminate controversy or remove uncertainty."<sup>13</sup> However, it is well-settled that storage projects, when they function as transmission assets, meet an identified transmission need as specified in the tariff, and are selected in an appropriate transmission planning process, can be treated as transmission for purposes of cost recovery. Therefore, it is not clear what controversy or uncertainty exists for the Commission to resolve here. Further, consistent with past practice, the Commission should not prejudge these matters in a declaratory order.

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<sup>11</sup> *Id.* at PP 45-52.

<sup>12</sup> *Id.* at P 16.

<sup>13</sup> 18 C.F.R. §385.207(a) (2).

Nevada Hydro nevertheless asserts that there is uncertainty regarding the eligibility of LEAPS to be studied as a transmission facility in the CAISO transmission plan for cost-based rate recovery through its Transmission Access Charge like other transmission facilities. Nevada Hydro alleges that this uncertainty exists “because of the CAISO’s long-standing position that pumped storage hydroelectric facilities should *always* be evaluated as generating resources and load, but *never* as electric transmission.”<sup>14</sup> This assertion mischaracterizes the CAISO’s stated positions and ignores the CAISO’s actual treatment of storage projects in its transmission planning process.

Nevada Hydro points to several statements made by the CAISO in transmission planning process documents and Commission filings.<sup>15</sup> Nevada Hydro has carefully cherry-picked these statements, and it is clear in context that none of them supports the position that Nevada Hydro ascribes to the CAISO.

Nevada Hydro first cites to CAISO statements that it can select storage projects in its transmission planning process as alternatives to transmission or as generation. Nevada Hydro appears to assume that a statement that storage projects are eligible to be considered under one construct necessarily implies that they are precluded from consideration under others. This, however, does not logically follow and ignores the CAISO’s actual practice of studying storage

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<sup>14</sup> Nevada Hydro Petition at 16 (emphasis added; footnote omitted).

<sup>15</sup> *Id.* at 16, n. 44.

projects as transmission assets in its transmission planning process. Thus, these statements provide no support for Nevada Hydro's assertion.<sup>16</sup>

Nevada Hydro also cites a statement from the CAISO's comments in the Commission's 2016 storage technical conference docket in which the CAISO stated that "while the CAISO is enthusiastic about the role energy storage projects may play in renewables integration . . . these services are clearly not transmission services."<sup>17</sup> Nevada Hydro reads this statement out of context. The surrounding discussion makes clear that the CAISO was not suggesting that storage resources were ineligible to participate in the CAISO's transmission planning process as potential transmission assets. Indeed, on the same page as the statement cited by Nevada Hydro, the CAISO notes that in the past several years it had studied numerous battery storage projects as potential transmission assets.<sup>18</sup> A review of the CAISO's comments shows that the CAISO was merely stating that it envisioned a limited role for a framework that utilizes an "energy storage device as exclusively as a transmission asset."<sup>19</sup> As further reflected in its comments, the CAISO supported multi-use applications for storage and believed that the best role for storage in addressing renewables integration was

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<sup>16</sup> As explained below, the CAISO has examined storage proposals as potential transmission assets in a number of its transmission planning cycles.

<sup>17</sup> Comments of the California Independent System Operator Corporation, Docket No. AD16-25-000) (filed Dec. 14, 2016) at 1-2 ("2016 Storage Comments").

<sup>18</sup> *Id.* at 2.

<sup>19</sup> *Id.*

through existing procurement and market mechanisms,<sup>20</sup> pursuant to which resources can provide local capacity and flexible capacity services (e.g., quick start and fast ramping).<sup>21</sup> In the *Storage Policy Statement*, the Commission appears to agree that storage resources provide more value to the extent they can provide multiple services, not just transmission service. To that end, the CAISO has recently initiated a new stakeholder process to enable storage resources providing transmission service to also provide market-based services.<sup>22</sup>

Nevada Hydro also ignores that the CAISO's 2016 Storage Comments noted that consistent with the Commission's holding in *Western Grid Development*, the CAISO had studied a number of potential energy storage projects as reliability solutions "ranging from transmission asset models to local

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<sup>20</sup> To date, storage has had significant success in procurements by California load-serving entities, with 174 MW of stand-alone storage and 1.5 MW of storage installed in conjunction with solar currently in operation on the CAISO's system. The California Public Utilities Commission ("CPUC") website tracks utility procurement of storage: <http://www.cpuc.ca.gov/General.aspx?id=3462>. There also are nearly 5,000 MW of stand-alone storage and another 4,500 MW of storage planned in conjunction with generators utilizing various fuel types in the CAISO's interconnection queue.

<sup>21</sup> To integrate effectively the increasing quantities of variable energy resources on the system, the CAISO established a flexible resource adequacy capacity requirement for load serving entities (LSEs). LSEs procure flexible capacity pursuant to bilateral contracts. CAISO Tariff, Section 40.10. The California Public Utilities Commission and local regulatory authorities oversee such procurement. The flexible capacity resources procured by LSEs have must-offer obligations for specified hours of the day, minimum run times, and a minimum number of starts daily and monthly. The CAISO markets also have a flexible ramping product to ensure the market can procure sufficient ramping capability from eligible resources, both upward and downward, to meet production swings caused by variable energy resources.

<sup>22</sup> See CAISO Issue Paper *Storage as a Transmission Asset: Enabling transmission-connected storage assets providing regulated cost-of-service-based transmission service to also access other market revenue streams* (March 30, 2018), available at <http://www.aiso.com/Documents/IssuePaper-StorageasaTransmissionAsset.pdf>.

resources participating in markets” although none of those projects were identified as needed in their respective planning cycles.<sup>23</sup> Based on this experience, the CAISO concluded that increased electric storage development is more likely to be driven by market opportunities and bilateral procurement, rather than treatment as cost-based transmission assets.<sup>24</sup> However, the CAISO did not preclude storage projects from being evaluated and selected in the transmission planning process as potential transmission assets.

To the contrary, the CAISO has considered nearly thirty storage projects as potential transmission assets in its transmission planning process since 2009.<sup>25</sup> At the time the CAISO filed its 2016 Storage Comments, it had not yet selected any storage projects as fulfilling an identified need in the transmission planning process. However, in the 2017-2018 transmission plan, the CAISO selected two storage projects submitted during the annual request window as satisfying identified reliability needs, and the CAISO Board approved them as transmission assets.<sup>26</sup>

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<sup>23</sup> 2016 Storage Comments at 2.

<sup>24</sup> *Id.* at 3.

<sup>25</sup> See, e.g., California ISO 2013-2014 Transmission Plan at 104, available at [http://www.caiso.com/Documents/Board-Approved2013-2014TransmissionPlan\\_July162014.pdf](http://www.caiso.com/Documents/Board-Approved2013-2014TransmissionPlan_July162014.pdf) (noting that the CAISO received a number of energy storage proposals to mitigate reliability issues which were proposed as rate-based transmission assets); California ISO 2016-2017 Transmission Plan at 71,86, available at [http://www.caiso.com/Documents/Board-Approved\\_2016-2017TransmissionPlan.pdf](http://www.caiso.com/Documents/Board-Approved_2016-2017TransmissionPlan.pdf) (discussing two battery storage projects that were submitted as “transmission solution[s]”).

<sup>26</sup> California ISO 2017-2018 Transmission Plan at 128-129 (recommending the Oakland Clean Energy Initiative, which includes a minimum of 10 MW of storage, in order to address thermal overloads in the Oakland area); 142 (recommending cancellation of a previous reconductoring project and approval of a revised project involving the use of a 7MW energy storage device to address overloads on the Reedley 70 kV system). The California ISO 2017-

In addition, in the 2018-2019 planning process, pursuant to Section 24.3.3 (a) of the CAISO's tariff, the CAISO sent a market notice to interested parties seeking suggestions about demand response programs and generation or non-transmission alternatives that should be included as assumptions in the study plan. In response, Nevada Hydro proposed the LEAPS project as a potential transmission solution. Despite the fact that this was not the window for submitting proposed transmission solutions, the CAISO acknowledged Nevada Hydro's submission in its Final 2018-2019 Study Plan (page 26) and suggested that Nevada Hydro consider submitting the project in the 2018 Request Window specifying the CAISO-identified reliability constraints the project could mitigate. The CAISO also stated that it would consider the submission as an economic study request. Thus, allegations that the CAISO will not study storage in general, or LEAPS in particular, as potential transmission assets are patently false.<sup>27</sup>

CAISO tariff section 24.4.3 allows stakeholders to submit solutions for reliability-driven needs in the Phase 2 Request Window, which for the 2018-2019 planning cycle will open on August 15, 2018. Nevada Hydro can utilize this step in the transmission planning process to demonstrate that its project meets an identified reliability need. As indicated above, the CAISO will also treat Nevada

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2018 Transmission Plan is available at [http://www.caiso.com/Documents/BoardApproved-2017-2018\\_Transmission\\_Plan.pdf](http://www.caiso.com/Documents/BoardApproved-2017-2018_Transmission_Plan.pdf).

<sup>27</sup> California ISO 2018-2019 Transmission Planning Process Unified Planning Assumptions and Study Plan (March 30, 2018) ("Final 2018-2019 Study Plan"), available at <http://www.caiso.com/Documents/Final2018-2019StudyPlan.pdf>. The CAISO made the same recommendations to another party that identified a potential transmission project in response to the CAISO's request. Final 2018-2019 Study Plan at 26. CAISO tariff section 24. 4.3 requires stakeholders to submit solutions for reliability-driven needs in the Phase 2 Request Window.

Hydro's proposal as an economic planning study request and will process it in accordance with tariff section 24.3.4, which sets forth the process by which the CAISO undertakes economic planning studies. First, the CAISO will review all requests for economic planning studies and then determine whether to designate a request as a High Priority Economic Planning Study for consideration under the comprehensive transmission plan.<sup>28</sup> Tariff section 24.3.4.1 specifies the criteria the CAISO considers in making this decision. In accordance with the schedule and procedures set forth in the business practice manual, the CAISO will post to its website the list of selected High Priority Economic Planning Studies.<sup>29</sup> As appropriate, the CAISO will perform up to five High Priority Planning Studies and retains the discretion to perform more.<sup>30</sup> Market participants may also conduct economic planning studies not designated as High Priority Economic Planning Studies at their own request at their own expense.<sup>31</sup>

The Commission has emphasized that the purpose of transmission rates such as the CAISO's TAC is to recover the costs of transmission facilities, not the costs of bundled services.<sup>32</sup> Although the Commission, in the *Storage Policy Statement*, clarified that it is permissible for projects to receive both cost and

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<sup>28</sup> CAISO tariff section 24.3.4.1

<sup>29</sup> CAISO tariff section 24.3.4.2.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Storage Policy Statement* at 3 (citing *The Nev. Hydro Co. Inc.*, 122 FERC ¶ 61,272 (2008)).

market-based compensation for different services, the Commission did not address the detailed implementation issues relating to this policy.

Even if the CAISO ultimately selects LEAPS in the CAISO's transmission planning process, there remain significant issues that would need to be addressed and resolved involving the treatment of market versus cost-based recovery and ensuring continued CAISO independence from market participants. For instance, the CAISO does not currently have a tariff process for offsetting transmission rates with market revenues. As indicated above, the CAISO has initiated a stakeholder process regarding how to enable storage resources approved as transmission assets to provide both transmission services and provide market-based services. Through this process, the CAISO and its stakeholders will need to determine how to appropriately balance the need to avoid double-recovery of costs while ensuring that market participation by resources subject to cost-based recovery through transmission rates does not distort competitive outcomes. The Commission recognized in the *Storage Policy Statement* that these types of issues would need to be addressed in connection with proposals for resources that could receive market-based revenues for certain services and cost-based recovery for others.

In any event, it is clear from both the CAISO's statements and its actual conduct of its transmission planning process that the CAISO has not taken a position that storage, including pumped storage, is ineligible for evaluation as a potential transmission asset in the CAISO's transmission planning process. Regarding LEAPS in particular, as indicated above, the CAISO has explicitly

recognized that Nevada Hydro can offer LEAPS into the transmission planning process for the 2018-2019 cycle as a potential transmission asset and explained how it can do so. Therefore, there is no controversy or uncertainty meriting the requested declaratory order, and the Commission should deny Nevada Hydro's petition.

**B. THE COMMISSION SHOULD REJECT ANY ATTEMPT TO INFLUENCE OR PRE-DETERMINE THE OUTCOME OF THE CAISO'S TRANSMISSION PLANNING PROCESS**

In addition to requesting that the Commission determine that LEAPS is eligible to participate in the CAISO's transmission planning process as a wholesale transmission facility, Nevada Hydro also requests that the Commission find that LEAPS is entitled to cost-based rate recovery under the CAISO's tariff."<sup>33</sup> It is not entirely clear what relief Nevada Hydro is seeking here. On its face, this request could simply be read as an alternative framing of its petition that LEAPS be eligible for consideration as a transmission asset in the CAISO's planning process. However, Nevada Hydro devotes the majority of its filing and accompanying testimony and exhibits not to eligibility issues, but rather arguing why LEAPS *should be* selected in the CAISO's transmission planning process. Nevada Hydro goes so far as to suggest that because it has already "completed the CAISO's work," it is reasonable to expect that the CAISO will select LEAPS in its transmission planning process.<sup>34</sup> Nevada Hydro argues that if LEAPS is not

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<sup>33</sup> Nevada Hydro Petition at 1.

<sup>34</sup> *Id.* at 40.

selected, then the Commission should require the CAISO to “file an explanation of its reasons in this docket for the Commission’s review.”<sup>35</sup>

The lack of any real controversy over LEAPS’s eligibility to participate in the CAISO’s transmission planning process as a potential transmission asset, and the voluminous number of pages devoted to arguing why LEAPS *should* be selected, conveys the impression that the primary purpose of Nevada Hydro’s petition appears to be less about resolving any uncertainty regarding the ability of LEAPS to obtain comparable treatment in the CAISO’s transmission planning process and more about influencing or pre-determining the outcome of the CAISO’s 2018-2019 transmission planning process. The Commission should summarily reject any such attempt because it is contrary to the CAISO’s Commission-approved tariff and Commission policy.

Commission policy provides that transmission projects eligible for cost-based recovery should be selected through an open, transparent, and coordinated transmission planning process. In Order No. 890, the Commission required all public utility transmission providers to adopt a transmission planning process that satisfies eight key principles, including openness and transparency.<sup>36</sup> In Order No. 1000, the Commission required that each public utility transmission provider participate in a regional transmission planning

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<sup>35</sup> *Id.*

<sup>36</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

process that produces a regional transmission plan with the criteria set forth in Order No. 890.<sup>37</sup> The Commission also required increased opportunities for non-incumbent participation in the transmission process, such as through adopting competitive solicitation processes.<sup>38</sup>

The Commission has made clear that even in cases when it approves transmission rate incentives, such approvals are not meant to prejudge the findings of any particular transmission planning process.<sup>39</sup> Indeed, the incentives are typically conditioned on approval of the transmission project as a needed project in the applicable planning process. In *Western Grid Development*, for instance, the Commission conditioned the grant of transmission incentives on the approval of those projects in the CAISO's transmission planning process, noting that this condition would ensure that Western Grid provided "adequate and sufficiently detailed data on the Projects to be properly considered by the CAISO."<sup>40</sup> Consistent with this precedent, the merits of and need for a particular project are properly presented and evaluated in the appropriate transmission planning process, not through filings such as Nevada Hydro's petition.

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<sup>37</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶61,044 (2012), *aff'd sub nom., S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

<sup>38</sup> See Order No. 1000 at PP 225, 253.

<sup>39</sup> See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031, at P 42 (2009) (*Green Power Express*) ("ruling on a request for incentives pursuant to Order No. 679 does not prejudge the findings of a particular transmission planning process or the siting procedures at state commissions")(citation omitted); see also *Green Energy Express, LLC*, 129 FERC ¶ 61,165 at P 13.

<sup>40</sup> *Western Grid Development*, 130 FERC ¶61,056 at P 16.

In this case, the appropriate planning process is the CAISO's comprehensive transmission planning process as set forth in Section 24 of the CAISO tariff. The Commission has approved this process and found that it satisfies the planning principles in Order Nos. 890 and 1000, including those regarding transparency and comparability.<sup>41</sup>

The CAISO conducts its transmission planning process in three phases. In the first phase, the CAISO develops planning assumptions and a study plan using data from the previous planning cycle and a number of other specified considerations. During this phase, the CAISO also solicits requests for economic planning studies. In the second phase, the CAISO conducts the applicable studies and identifies which conceptual solutions should be included in the transmission plan. As part of this second phase, the CAISO provides a request window during which interested parties may propose transmission solutions and non-transmission alternatives to meet needs identified by the CAISO in its reliability studies as well as certain other potential needs. Finally, in phase three, the CAISO conducts a competitive solicitation for any regional transmission facilities identified in the transmission plan that are not upgrades to existing transmission facilities.

The CAISO is concerned that Nevada Hydro appears to want to short-circuit this process by asking the Commission to essentially presume that LEAPS

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<sup>41</sup> See *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283, at PP 46, 104 (2008), *order denying reh'g and on compliance*, 127 FERC ¶ 61,172 (2009), *order on compliance*, 130 FERC ¶ 61,048 (2010), *order on compliance*, Docket Nos. OA08-62-006 and OA08-62-007 (May 25, 2010) (delegated letter order). See also *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013), *order on clarification and compliance*, 146 FERC ¶ 61,198 (2014), *order on reh'g and compliance*, 149 FERC ¶ 61,249 (2014).

is the more efficient or cost-effective solution to satisfy one or more transmission planning needs, which have yet to even be identified in the planning process, based on Nevada Hydro's own analysis that has not been vetted or evaluated in the planning process.

The LEAPS project comprises a pumped storage unit and a transmission line. Nevada Hydro's benefits study appears to rely heavily on revenues from providing market-based services (e.g., energy market sales, regulation, load following, capacity, spinning and other reserves, ramping) as support for its argument as to why the overall project should be treated as a transmission asset providing transmission service.<sup>42</sup> These types of services are procured through the CAISO's markets or through bilateral contracts under the resource adequacy program and other procurement programs established by the California Public Utilities Commission ("CPUC") and other local regulatory authorities. The Commission has recognized that these types of services are market services, not transmission services.<sup>43</sup> As such, they should not be the basis for finding that a particular storage resource qualifies as a transmission asset or is providing a needed transmission service.

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<sup>42</sup> See Nevada Hydro Petition at 6-7. Nevada Hydro also points to the ability of the project to relieve transmission congestion "between major load pockets." *Id.* at 19. This attribute appears to be based mainly on the TE/VS transmission line that Nevada Hydro has proposed to construct, rather than the pumped storage facility.

<sup>43</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, 162 FERC ¶ 61,127, PP 4, 70, 76 (2018); *Storage Policy Statement* at PP 1, 6, 10-11; *Western Grid*, 130 FERC ¶ 61,056 at PP 46,50-51. *Transmission Technology Solutions, LLC, et al.*, 135 FERC ¶ 61,077 at PP 85, 87 (2011).

The Commission should reject any suggestion that the CAISO should take the results of Nevada Hydro's benefits studies at face value and not independently evaluate them, or that the Commission should pre-determine the outcome of the CAISO's planning process. That would be contrary to the CAISO tariff and the Commission's transmission planning policy, as articulated in Order Nos. 890 and 1000, *Western Grid Development*, and other transmission incentives cases. It is the CAISO's role as the independent transmission provider, not market participants', to conduct the necessary assessments to identify specific planning needs and to evaluate and determine which projects more efficiently or cost-effectively address those needs based on the factors set forth in the CAISO tariff. Also, a facility's eligibility to be treated as a transmission facility should be based on its ability to provide transmission services and meet transmission needs, not its ability to provide market-based services.

If Nevada Hydro believes that the CAISO has failed to follow its tariff properly in performing its planning functions, it is free to raise such allegations in a complaint to the Commission.<sup>44</sup> The Commission should not, however, entertain any request to preempt the CAISO's transmission planning process through the instant declaratory petition. The Commission has emphasized that the purpose of its transmission planning policy is to ensure an open, transparent

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<sup>44</sup> However, with respect to the 2018-2019 process, any such assertions would be entirely premature as the CAISO has not even conducted its initial studies in the current planning cycle, much less identified needs and recommended solutions to satisfy those needs.

and non-discriminatory process for identifying transmission and non-transmission solutions to meet planning needs.<sup>45</sup> Picking a winner based solely on an analysis prepared by a project sponsor before the process has barely begun is fundamentally inconsistent with those objectives. Moreover, even if the CAISO did identify a need for a LEAPS-like pumped storage project through its transmission planning process, that project would be subject to competitive solicitation as a regional transmission facility.<sup>46</sup> As such, there is no guarantee that Nevada Hydro would ultimately be selected as the developer.

Nevada Hydro nevertheless attempts to make a case for its presumed selection by claiming that it is merely “completing the CAISO’s work” in terms of identifying a need for additional pumped storage in California, based on the methodology that the CAISO utilizes to conduct economic evaluations of potential transmission upgrades.<sup>47</sup> The “work” that Nevada Hydro refers to consists of a supplemental analysis that the CAISO performed on an

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<sup>45</sup> See Order No. 1000 at P 1 (stating that the reforms in that rule are intended to build on the open and transparent planning process adopted in Order No. 890 and address opportunities for undue discrimination by transmission providers). See also Order No. 1000-A at P 188 (“Order No. 1000’s transmission planning reforms are intended to ensure that there is an open and transparent regional transmission planning process that produces a regional transmission plan.”); *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181, at P 2 (2014) (“[T]he Commission, in Order No. 1000[,] required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things . . . describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan[.]”)

<sup>46</sup> CAISO tariff section section 24.5.1 (detailing the CAISO’s competitive solicitation process). A regional transmission facility is a transmission facility that is not a local transmission facility, a location-constrained resource interconnection facility, or a merchant facility. A local transmission facility is a facility that operates at a voltage below 200 kilovolts. The only regional transmission facilities that are not subject to competitive solicitation are upgrades to existing transmission facilities.

<sup>47</sup> Nevada Hydro Petition at 31.

informational basis in conjunction with its 2016-2017 transmission planning cycle. As a result of that study, the CAISO concluded that additional pumped storage projects would provide significant system benefits, such as reducing renewables curtailments, thereby lowering the amount of additional renewable capacity needed to meet California's 50 percent RPS target. However, as the CAISO explained in the 2016-2017 transmission plan, this analysis was not conducted as part of the CAISO's transmission needs analyses using the planning criteria set forth in Section 24 of the CAISO tariff.<sup>48</sup> Rather, it was a separate analysis performed in order to help the industry better understand the potential benefits of increased pumped storage participation.

This contradicts Nevada Hydro's assertion that the CAISO found a "specific need" for pumped storage in the context of its transmission planning process.<sup>49</sup> Such needs are specifically identified only in the transmission planning process, not in general studies. Also, the CAISO said nothing in its informational analysis about the nature of these services in terms of whether they are more appropriately compensated through transmission rates or market-based mechanisms, and it certainly did not endorse any particular project, such as LEAPS, as necessary to meet an identified need. This is significant because the benefits that the CAISO identified in its informational analysis would incrementally diminish as more pumped storage capacity is added to the system.

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<sup>48</sup> California ISO 2016-2017 Transmission Plan at 205 ("These studies are provided on an informational basis only and *are not the basis for identifying needs or mitigations for ISO Board of Governor approval in this planning cycle.*"(emphasis added)).

<sup>49</sup> Nevada Hydro Petition at 13.

Nevada Hydro's analysis appears to simply assume, without explanation or justification, that LEAPS would have priority over all other potential storage projects.

Because the CAISO's informational study did not analyze any identified transmission planning need, Nevada Hydro's characterization of the analysis that it includes with its petition as merely "complet[ing] CAISO's work" is incorrect.<sup>50</sup> In accordance with its tariff, the CAISO will conduct in the 2018-2019 planning cycle the high-priority economic studies selected pursuant to Section 24.3.4 and any additional studies that the CAISO concludes are necessary to address congestion and other specified economic issues.<sup>51</sup> As noted above, the CAISO stated in its study plan that it would treat Nevada Hydro's submission of LEAPS as an economic study request and also recommended that Nevada Hydro submit LEAPS in the Phase 2 request window if it meets an identified reliability need in the planning process. However, it is simply not true that the CAISO has already commenced a study as to whether LEAPS or any other proposed project would meet a specified need under Section 24, and the CAISO certainly has not made any findings along these lines.

Nevada Hydro also points to general statements the CAISO made to the CPUC, including correspondence that the CAISO sent to the CPUC in which the

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<sup>50</sup> *Id.* at 31. Of course, even if Nevada Hydro was correct that the CAISO had already identified a specific need for pumped storage in the context of its transmission planning process, there is no guarantee that LEAPS would constitute the preferred solution or that Nevada Hydro would be selected as the developer through a competitive solicitation.

<sup>51</sup> See CAISO tariff section 24.4.6.7 (listing the conditions that the CAISO can use as the basis of economic studies to determine whether additional transmission solutions are needed).

CAISO expressed a need to work together to implement solutions to ensure the successful integration of increasing levels of renewable resources and noting the significant role that energy storage could play in this effort.<sup>52</sup> Again, Nevada Hydro reads too much into these statements. Although the CAISO has, and continues, to support the increased deployment of energy storage as a means to facilitate meeting the state's renewal portfolio standard goals in the most efficient manner possible, such support is not equivalent to a finding that any particular storage project meets an identified transmission planning need pursuant to the criteria set forth in Section 24 of the CAISO tariff. Nor does it demonstrate that such project constitutes the more efficient or cost-effective solution to meet such need or that competitive solicitation is unnecessary.

To the contrary, the CAISO's statements to the CPUC are entirely consistent with its position, discussed above, that the development of storage on the CAISO's system should proceed mainly pursuant to market-based compensation mechanisms or through bilateral procurement. If eligibility for rate recovery through rolled-in transmission rates depended solely on whether a particular type of resource provides important benefits to the system, there would be little to no role for markets. As such, Nevada Hydro's expansive view of what constitutes a transmission need is at odds with not only the CAISO tariff, but also the Commission's long-standing policy of relying, whenever possible, on market-

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<sup>52</sup> See Nevada Hydro Petition at Exhibit 1. Nevada Hydro also attaches comments filed by the CAISO in a CPUC proceeding indicating that California would benefit from additional storage resources such as pumped storage. *Id.* at Exhibit 2.

based mechanisms, and limiting cost-based recovery to specific and narrowly-confined circumstances.<sup>53</sup> Moreover, Nevada Hydro's assertion that the CPUC has no role to play in fostering the development of energy storage is not credible particularly given the CPUC's oversight of resource adequacy procurement by its jurisdictional load serving entities, the robust storage procurement programs the CPUC has established, and that the context of the issues involves ensuring the success of the state's renewable portfolio standard policies.

Nevada Hydro also points to the CAISO's statement in its supplemental storage analysis that developing pumped storage resources would need other sources of revenues other than "net market revenues" and that those other revenues could be developed through policy decisions. Nevada Hydro suggests that the Commission's *Storage Policy Statement* was such a "policy decision," and because the CAISO markets do not compensate pumped storage for all of the benefits they provide, cost-based recovery is appropriate.<sup>54</sup> Nevada Hydro's apparent view that cost-based recovery should serve as the presumptive policy solution to address a lack of sufficient revenue streams is overly constrained and short-sighted. Although the Commission recognized that storage resources could potentially receive both market-based and cost-based compensation for different services, the *Storage Policy Statement* did not suggest that cost-based

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<sup>53</sup> See, e.g., *Blumenthal, Conn. Att'y Gen. v. ISO New England Inc.*, 117 FERC ¶ 61,038, at P 58 (2006) (noting a preference to avoid out-of-market RMR payments where possible); *ISO New England Inc.*, 144 FERC ¶ 61,204, at P 42 (2013) ("We find that, as a general matter, market-based solutions are preferable to out-of-market solutions[.]"); *ISO New England Inc.*, 152 FERC ¶ 61,190, at P 45 (2015) ("[T]he Commission continues to prefer market-based mechanisms as a means of ensuring just and reasonable rates, [but] has recognized that out-of-market solutions might be appropriate in certain circumstances[.]"),

<sup>54</sup> Nevada Hydro Petition at 13-14.

compensation should serve as a substitute for more robust market-based mechanisms.

With its stakeholders, the CAISO has developed and continues to enhance participation models for energy storage resources and distributed energy resource aggregations. The non-generator resource model and other market participation models support electric storage resource participation in CAISO markets. Likewise, the CAISO's distributed energy resource provider framework, which the Commission accepted in 2016, formalizes the distributed energy resource provider as a CAISO market participant and provides an effective model for aggregations of distributed energy resources to participate in the CAISO's market.<sup>55</sup> These efforts mirror the Commission's own policy. Most notably, in February of this year the Commission issued Order No. 841, its final rule aimed at enhancing the ability of storage resources to participate in organized electricity markets by ensuring that those markets appropriately value the participation of storage resources based on their physical and operational characteristics.<sup>56</sup> The Commission did not suggest in this or other previous storage initiatives that cost-based compensation should serve as a substitute to facilitating the ability of storage resources to effectively participate in wholesale electricity markets. To the contrary, the Commission has sought to expand and

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<sup>55</sup> As noted above, significant storage capacity has already begun to come online in California.

<sup>56</sup> *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, FERC Stats. & Regs. ¶31,398 (2018) (Electric Storage Participation Final Rule).

enhance the participation of storage in wholesale electricity markets in proceedings such as one leading to the Electric Storage Participation Final Rule.<sup>57</sup>

For these reasons, the Commission should decline to entertain Nevada Hydro's attempts to pre-determine the outcome of the CAISO's transmission planning process. In particular, the Commission should reject Nevada Hydro's request to require the CAISO to "file an explanation for the Commission's review" if it does not select the LEAPS project in the transmission planning process. To the best of the CAISO's knowledge, the Commission has never required an independent system operator to file for separate Commission review an explanation of its transmission planning process determinations, and Nevada Hydro provides no justification of a need for such an extraordinary measure. If Nevada Hydro believes that the CAISO has acted contrary to its tariff or Commission policy in performing its transmission planning responsibilities, it can seek appropriate relief from the Commission such as through a complaint under Section 206 of the Federal Power Act. The Commission, however, should not adopt procedural requirements in addition to those contained in the current planning process merely because Nevada Hydro is convinced of the merits of its own project.

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<sup>57</sup> See, e.g., *Frequency Regulation Compensation in the Wholesale Organized Power Markets*, FERC Stats. & Regs. ¶31,324 (2011) (instituting rules to require ISOs and RTOs to compensate resources providing frequency regulation, such as storage resources, based on the actual service provided, including both capacity and performance payments).

## V. CONCLUSION

For the reasons explained above, the CAISO respectfully requests that the Commission deny Nevada Hydro's petition for declaratory order.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in 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 Folsom, California, this 9<sup>th</sup> day of April, 2018.

/s/ Martha Sedgley  
Martha Sedgley