

ALSTON & BIRD LLP

601 Pennsylvania Avenue, N.W.
North Building, 10th Floor
Washington, DC 20004-2601

202-756-3300
Fax: 202-756-3333

Bradley R. Miliauskas

Direct Dial: 202-756-3405

Email: bradley.miliauskas@alston.com

January 18, 2006

VIA ELECTRONIC FILING

The Honorable Magalie R. Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: The Nevada Hydro Company, Inc.
Docket Nos. ER06-278-000 and ER06-278-001

Dear Secretary Salas:

Attached please find the Motion for Leave to Intervene and Comments of the California Independent System Operator Corporation, submitted in the captioned proceeding.

Please contact the undersigned in this matter.

Respectfully submitted,

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas
Alston & Bird LLP
601 Pennsylvania Avenue, N.W.
North Building, Tenth Floor
Washington, D.C. 20004

I. COMMUNICATIONS

Please address all communications concerning this proceeding to the following persons:

Anthony J. Ivancovich*
Assistant General Counsel,
Regulatory
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7296

Sean A. Atkins*
Bradley R. Miliauskas
Alston & Bird LLP
601 Pennsylvania Avenue, NW
North Building, 10th Floor
Washington, DC 20004
Tel: (202) 756-3300
Fax: (202) 756-3333

* Individual designated for service pursuant to Rule 203(b)(3),
18 C.F.R. § 203(b)(3).

II. BACKGROUND

On December 1, 2005, as supplemented on December 22, 2005, TNHC filed the Rate Request with the Commission. In the Rate Request, TNHC proposes to pursue completing the development, financing, construction, and operation of TNHC's proposed Talega-Escondido/Valley-Serrano 500 kV Interconnect project ("TE/VS Interconnect") and Lake Elsinore Advance Pump Storage ("LEAPS") project (collectively, the "Project"). If approved and constructed, the proposed Project would be located in southern California. As described by TNHC, the TE/VS Interconnect project is the "wires" (transmission) component of the Project and the LEAPS project is the "non-wires" (generation) component of the Project. TNHC states that it anticipates that the Project would be placed into service, and the incremental capacity created thereby would be transferred to the CAISO's operational control, in stages beginning in late 2007.

TNHC requests that both the TE/VS Interconnect project and the LEAPS project be treated as “Commission jurisdictional transmission assets” and requests the following rate treatment for the combined Project: (1) an initial post-tax return on equity of 14.5%; (2) an assumed or target 50/50 capital structure for at least the first three years of service; and (3) a three-year rate moratorium.

The Commission issued a Notice of Filing requesting that motions to intervene and other submittals concerning TNHC’s original Rate Request in the December 1, 2005 filing (“December 1 TNHC Filing”) be submitted by December 22, 2005, and issued a Notice of Filing requesting that motions to intervene and other submittals concerning TNHC’s Rate Request, as amended and supplemented by the December 22, 2005 filing (“December 22 TNHC Filing”), be submitted by January 12, 2006.

III. STATEMENT OF ISSUES

In accordance with Rule 203(a)(7), 18 C.F.R. § 385.203(a)(7), the CAISO provides this Statement of Issues.

1. Whether the CAISO has an interest in the captioned proceeding that justifies granting the CAISO’s motion to intervene.
2. Whether the Commission should permit the CAISO to intervene out of time, given the CAISO’s interest in the proceeding, the early stage of the proceeding, and the absence of any disadvantage to any entity or undue prejudice or delay resulting from the Commission’s granting the CAISO’s motion to intervene. See *Entergy Services, Inc.*, 113 FERC ¶ 61,040, at P 36 (2005); *Duke*

Energy Vermillion, LLC, 109 FERC ¶ 61,370, at P 5 (2004);
Transcontinental Gas Pipe Line Corp., 79 FERC ¶ 61,205, at P
61,951 (1997).

3. Whether Commission approval of the Rate Request or the rate principles set forth therein is premature in light of the facts that the CAISO has not determined whether the TE/VS Interconnect project is needed and that TNHC has not justified its request for cost-based rate treatment for the non-wires component of the proposed Project.

IV. BASIS FOR MOTION TO INTERVENE

The CAISO is a non-profit public benefit corporation organized under the laws of the State of California and is responsible for the reliable operation of a grid comprising the transmission systems of Southern California Edison Company (“SCE”), San Diego Gas & Electric Company (“SDG&E”), Pacific Gas and Electric Company, and the Cities of Vernon, Pasadena, Anaheim, Azusa, Banning, and Riverside, California, and of Trans-Elect NTD Path 15, LLC and the Western Area Power Administration, Sierra Nevada Region, with regard to the Path 15 transmission lines in California.

TNHC proposes that the Project be sited entirely within California, that the TE/VS Interconnect project connect SCE and SDG&E transmission lines, and that the incremented capacity created by the Project be transferred to the operational control of the CAISO in stages beginning in late 2007. Transmittal Letter for December 1 TNHC Filing at 1. TNHC also states that it will submit to

the CAISO Governing Board requests for approvals concerning the Project. *Id.* at 4, 11. Accordingly, the CAISO has a unique interest in any Commission proceeding concerning the issues raised in the captioned proceeding that cannot be adequately represented by any other party. Indeed, because the Rate Request concerns a proposed Project within the CAISO Control Area which TNHC states will have numerous benefits to the CAISO for managing the California transmission grid (Transmittal Letter for December 1 TNHC Filing at 24), the CAISO is an essential party in this proceeding.

V. MOTION TO INTERVENE OUT OF TIME

Due to an administrative oversight, the CAISO did not submit a motion to intervene in this proceeding before now. The CAISO requests that it be permitted to intervene given its interest in the proceeding. Moreover, given the early stage of the proceeding, no entity will be disadvantaged by the Commission's granting of the CAISO's motion to intervene, and granting the motion will not cause undue prejudice or delay. The Commission has frequently granted out-of-time motions to intervene in similar circumstances. *See, e.g., Entergy Services, Inc.*, 113 FERC ¶ 61,040, at P 36 (2005); *Duke Energy Vermillion, LLC*, 109 FERC ¶ 61,370, at P 5 (2004); *Transcontinental Gas Pipe Line Corp.*, 79 FERC ¶ 61,205, at P 61,951 (1997) ("the Commission liberally allows late intervention at the early stages of its proceedings").

VI. COMMENTS

TNHC asks the Commission to accept the Rate Request and approve the rate principles set forth therein no later than January 2006. Transmittal Letter for December 1 TNHC Filing at 1-2, 5. The Commission should not grant TNHC's requests because they are premature and raise issues that need to be resolved before the relief requested in the Rate Request or any other approvals related to the Project can be given.²

A. The CAISO Has Not Yet Determined Whether a Need Exists for the TE/VS Interconnect Project.

The CAISO is currently unable to make, and has not yet made, any of the necessary determinations under its Tariff for evaluating whether it should approve the "wires" component of the Project, *i.e.*, the TE/VS Interconnect project. Section 3.2.1 of the CAISO Tariff states that "[a] Participating TO or any other Market Participant may propose a transmission system addition or upgrade. The [CA]ISO will determine that a transmission addition or upgrade is needed where it will promote economic efficiency or maintain System Reliability as set forth below [in the Tariff]." At present, the CAISO is not in a position to make the determination of need required by Section 3.2.1 with regard to the TE/VS Interconnect project. The interconnection system impact study for the TE/VS Interconnect project is not scheduled to be completed until the end of March 2006, and it is always possible there will be a delay in the completion of

² Moreover, TNHC states that, "in parallel with" its filings with the Commission in this proceeding, TNHC is making a request to the CAISO Governing Board ("Board") to approve the Project. Transmittal Letter for December 1 TNHC Filing at 4, 11. TNHC asserts that "[t]he Board is expected to consider whether to approve the Project on reliability and/or economic grounds in the near future" (*id.* at 11). In fact, due to the unanswered questions discussed below, TNHC cannot have a reasonable expectation that the Board will be able to act quickly.

that study. Moreover, the TE/VS Interconnect project is not the only potential transmission system addition or upgrade that is being contemplated in the region. In that regard, there are three potentially competing transmission projects in the region for the CAISO to evaluate – the TE/VS Interconnect project, the SDG&E Sunrise Powerlink project, and the GreenPath project. It is uncertain whether all three of these projects would be approved and built. For these reasons, TNHC has no basis for being certain that the CAISO will approve the TE/VS Interconnect project pursuant to Section 3.2.1, let alone approve it anytime soon.³ The CAISO submits that the Commission should not take any actions which could be construed as pre-judging which of the three projects should be built.

B. The Commission Should Not Grant Incentive Rate Treatment to Transmission Projects Before the CAISO Approves Such Projects.

In its January 11, 2006 comments on the Commission's proposed rulemaking regarding transmission incentives in Docket No. RM06-4, the CAISO urged the Commission to adopt rules that require that a utility to demonstrate that proposed transmission projects are justified on either reliability or economic grounds. Comments of the CAISO on Notice of Proposed Rulemaking, Docket

³ The CAISO's evaluation of the TE/VS Interconnect project may be compared with the CAISO's evaluation of the upgrade to the Path 15 transmission lines. In the Commission proceeding concerning the proposed Path 15 upgrade, the CAISO explained that, based on its assessment of the market power mitigation and system reliability benefits of the upgrade, the CAISO "generally support[ed] proposals to upgrade Path 15," but that a number of issues and potential concerns needed to be resolved, and an assessment of the costs and benefits of the Path 15 upgrade needed to be completed, before the CAISO could consider giving its full support to the proposed upgrade. See Motion to Intervene and Comments of the CAISO, Docket No. ER02-1672-000 (May 21, 2002), at 3-7. The CAISO needs to take a similarly careful approach to determinations concerning the TE/VS Interconnect project.

No. RM06-4-000 (Jan. 11, 2006), at 4-8. Specifically, the CAISO recommended that the Commission should either deny or, at a minimum, carefully review, any proposal for rate incentives for transmission facilities that have not been found to be needed by an independent system operator (“ISO”) or regional transmission organization (“RTO”). While the transmission system in general is in need of substantial upgrading, ratepayers should not be required to shoulder the costs of any rate incentives associated with projects that do not provide demonstrated reliability or economic benefits and which have not been found by the ISO or RTO to be needed. Further, granting incentives for projects that are not needed for economic or reliability reasons could lead to inappropriate and inefficient development of the transmission system. The Commission should apply that policy in the instant case. It is premature to approve an incentive rate treatment for the proposed TE/VS Interconnect project (the wires component of the Project), because the CAISO has not yet determined whether the project is justified on either reliability or economic grounds.

C. TNHC Has Not Justified its Request for Cost-Based Rates for the Non-Wires Component of the Project.

TNHC requests that the Commission treat the entire Project as “Commission jurisdictional transmission assets” and grant the requested rate treatment (including a regulated return on equity) for both the wires and non-wires components of the Project. Transmittal Letter for December 1 TNHC Filing at 3, 5. TNHC has failed to justify its request for cost-based rates for the non-wires component of the project.

TNHC is proposing that both the TE/VS Interconnect and LEAPS projects be included in rate base. The CAISO has not yet developed a general position on whether it is appropriate to give a project such as LEAPS (a proposed pump storage resource that will act as a generation facility) cost-based rate treatment. Also, under TNHC's proposal it is unclear to the CAISO how that resource would function within the context of the CAISO's market-based environment. For example, it is not clear how the CAISO could or would dispatch LEAPS based on economic merit order. Further, it is unclear whether LEAPS would participate in the market (and if so, how LEAPS would participate and be settled for market transactions) or whether LEAPS would be the subject of a Participating Generator Agreement with the CAISO. Because of these open issues, TNHC has not at this time justified its request that the non-wires component of the Project receive cost-based rates.

VII. CONCLUSION

Wherefore, the CAISO respectfully requests that the Commission grant its motion to intervene out of time in the captioned proceeding, allow the CAISO to participate in the proceeding with full rights as a party thereto, and order action consistent with the comments filed herein.

Respectfully submitted,

Anthony J. Ivancovich
Assistant General Counsel,
Regulatory
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

/s/ Sean A. Atkins
Sean A. Atkins
Bradley R. Miliauskas
Alston & Bird LLP
601 Pennsylvania Avenue, NW
North Building, 10th Floor
Washington, DC 20004

Dated: January 18, 2006

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 18th day of January, 2006.

/s/ Anthony Ivancovich
Anthony Ivancovich