

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

California Independent System
Operator Corporation

Docket No. ER08-654-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO THE PROTEST OF THE NEVADA HYDRO COMPANY**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213, the California Independent System Operator Corporation (“CAISO”) respectfully moves for leave to answer and answers the protest of The Nevada Hydro Company (“Nevada Hydro”) filed in this docket on April 1, 2008 (“Protest”). This docket concerns an unexecuted Large Generator Interconnection Agreement (“LGIA”) among the CAISO, Nevada Hydro, and San Diego Gas & Electric Company (“SDG&E”).

The CAISO recognizes that, unless authorized by the Commission, the Commission’s Rules of Practice and Procedures preclude an answer to protests. However, the Commission has accepted answers that are otherwise prohibited if such answers clarify issues in dispute¹ or to assist the Commission.² The CAISO submits that this answer will clarify key issues regarding the In-Service Date under the LGIA, and provide important and much needed context, to assist the Commission’s deliberation in this proceeding.

As discussed in more detail below, Nevada Hydro’s protest raises issues which could impact, if not outright undermine, the CAISO’s Commission approved Transmission Expansion and Planning Process.³ In particular, the CAISO believes, if accepted by the Commission, Nevada Hydro’s protest could, in effect, “bootstrap” regulatory approval of the Talega-Escondido/Valley-Serrano Interconnect project (the “TE/Vs Interconnect”) to Commission approval of the LGIA. Both the Commission and the CAISO have a significant interest in ensuring the independence and integrity of the CAISO’s transmission planning process is maintained. Accordingly, the CAISO respectfully requests that the Commission accept this answer.

¹ *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (2000); *Eagan Hub Partners, L.P.*, 73 FERC ¶ 61,334 at 61,929 (1995).

² *El Paso Electric Co.*, 72 FERC ¶ 61,292 at 62,256 (1995),

³ See CAISO FERC Electric Tariff, Appendix EE.

I. SUMMARY

The CAISO responds to three issues included in the Nevada Hydro Protest. The Protest objects to proposed provisions concerning the In-Service Date, but has presented no valid basis for adopting the In-Service Date proposed by Nevada Hydro. Specifically, Nevada Hydro's suggestion that the requested June 2010 In-Service Date is necessary for the TE/VS Interconnect is not consistent with Section 5.1 of the LGIA and should be rejected.⁴ Nevada Hydro also protests provisions with respect to the Option to Build. Nevada Hydro's request to exercise its option to assume responsibility for the design, procurement and construction under Section 5.1.3 of the Large Generator Interconnection Procedures ("LGIP") must be limited to Interconnection Facilities and Stand Alone Network Upgrades. Finally, the sequencing of cost payments to which Nevada Hydro refers does not prevail over the main body of the LGIA absent modification of Section 11.5 of the LGIA, which modification Nevada Hydro has not justified.

II. ISSUES PRESENTED BY THE UNEXECUTED LGIA AND THE NEVADA HYDRO PROTEST.

As explained in the March 11, 2008 transmittal letter, the unexecuted LGIA submitted by the CAISO and SDG&E for approval raises four issues for consideration by the Commission: 1) the appropriate In-Service Date for the pumped hydro storage generating facility; 2) the request by Nevada Hydro for the option to self-build some or all of the Reliability Network Upgrades identified through the LGIP process; 3) certain changes proposed by Nevada Hydro to the cost estimates provided by SDG&E; and 4) changes to the body of the *pro forma* LGIA requested by Nevada Hydro.

Throughout the LGIA process, the CAISO has not taken a position with respect to Nevada Hydro's request for the option to self-build nor Nevada Hydro's proposed changes to the cost estimates provided by SDG&E. As to the In-Service Date, the CAISO has not provided its own estimated date but has previously noted that the date proposed by Nevada Hydro is not achievable. Finally, the CAISO does not believe that Nevada Hydro has presented any compelling arguments that would warrant changes to the body of the LGIA.

In its protest, Nevada Hydro raised four issues:

1. In-Service Date and Option to Self-Build.

Nevada Hydro contends that SDG&E has unreasonably and unjustly refused to accept a June 2010 In-Service Date for the TE/VS Interconnect and

⁴ The CAISO notes that the requested In-Service Date is six months later than the date currently included in the Interconnection Request.

to allow Nevada Hydro to self-build the upgrades.⁵ Nevada Hydro asserts that SDG&E's position is inconsistent with Sections 5.1 and 5.1.3 of the LGIA and interferes with both Nevada Hydro's ability to compete and its hearings before the California Public Utility Commission.

2. Cost Estimates.

Nevada Hydro argues that SDG&E has unreasonably insisted on inflated cost estimates and unreasonably denied Nevada Hydro's request that Appendix A also include Nevada Hydro's estimates. Nevada Hydro argues that an inflated cost estimate could adversely affect Nevada Hydro. It states that inflated estimated costs may inflate actual costs, because potential vendors would likely look to the estimated costs as an accepted benchmark in developing their bids. It also asserts that the estimated costs could affect its proceedings before the California Public Utilities Commission ("CPUC").

3. Cost Advancement Milestones.

Nevada Hydro contends that SDG&E's refusal to specify issuance of a license to construct the hydro facility as a milestone for advancement of certain costs is unreasonable and discriminatory. It notes SDG&E's willingness to specify other milestones for sequenced cost advancement.

4. Cost Payment Sequencing.

Nevada Hydro asks that, to ensure that the sequencing of cost payments to which the parties agreed (with the exception of the hydro licensing milestone) is given effect, Appendix A should state that it prevails over the more general language (providing for up-front payment) in the main body agreement.

III. STATEMENT OF FACTS

Nevada Hydro is proposing to build a pumped hydro storage generating unit, the Lake Elsinore Advanced Pumped Storage ("LEAPS"), and to interconnect it to the CAISO Controlled Grid at points on both the SDG&E system and the Southern California Edison Company ("SCE") system. In order to interconnect LEAPS to both the SDG&E and SCE systems, Nevada Hydro is proposing to build an approximately three-mile gas-insulated underground line from the proposed Lake Elsinore Pump Powerhouse facility to a new switching facility. The three-mile line will then be connected at the switching facility to a new 500 kV overhead transmission line that will extend 12.7 miles to the north and connect to the SCE Valley-Serrano 500 kV line at the SCE Lee Lake

⁵ The CAISO notes that the requested In-Service Date is six months later than that previously requested.

substation. The three-mile line will also extend 16.5 miles to the south and connect to a new 500 kV substation at Camp Pendleton. At that point the SDG&E 230 kV Talega-Escondido line will loop into the new Camp Pendleton substation, connecting the new 500 kV line to the SDG&E system. The new 500 kV line proposed by Nevada Hydro is known as the TTE/VS Interconnect.

The proposed LEAPS and TE/VS Interconnect projects have spawned a myriad of applications before the Commission, CAISO, CPUC, and California Energy Commission (“CEC”). These applications have sought various approvals for LEAPS and the TE/VS Interconnect both as individual and combined projects, and, judging by Nevada Hydro’s Protest, the distinctions between these submissions have become increasingly muddled as shown by the following chronology:

- 1) On February 2, 2004, Nevada Hydro and the Elsinore Valley Municipal Water District, as co-applicants, filed an application with the Commission for the licensing and permitting of LEAPS, which *included the TE/VS Interconnect as a primary line for the generation project.*⁶
- 2) On April 26, 2005, Nevada Hydro applied to the CAISO pursuant to Section 25 of the CAISO Tariff to interconnect the LEAPS generation facility to the CAISO Controlled Grid pursuant to the CAISO LGIP. This LGIP application, and resulting process, has considered both the SDG&E and SCE portions of the Interconnection Facilities and Network Upgrades necessary to interconnect LEAPS to the CAISO Controlled Grid, but *not the TE/VS Interconnect.* The LGIA filed in this docket covers the SDG&E Interconnection Facilities and Network Upgrades, as well as Nevada Hydro’s Interconnection Facilities.⁷ The LGIA among Nevada Hydro, SCE and the CAISO is still under negotiation.
- 3) During 2005, *the combined LEAPS and TE/VS Interconnect projects* were submitted by Nevada Hydro to the CAISO for study along with two other transmission projects as part of CAISO South Regional Transmission Plan for 2006 (“CSRTP”) pursuant to Section 24 of the CAISO Tariff.⁸ For the purposes of that study

⁶ *Lake Elsinore Pumped Storage Project* FERC Docket No. P-11858-002. The Final Environmental Impact Statement for the Project was issued in January 2007. See also Nevada Hydro’s Motion to Intervene and Protest (“Protest”), page 8.

⁷ Appendix A to the LGIA, Section A.1(a) identifies the Interconnection Customer’s Interconnection Facilities as an on-site substation, a three-mile underground 500kV line, and a 15.5 mile overhead 500 kV line, which is effectively the portion of the TE/VS Interconnect necessary to connect the LEAPS project to SDG&E’s system.

⁸ The other two projects were the Sunrise Powerlink 500 kV transmission line project proposed by SDG&E and the Tehachapi Transmission 500 kV transmission line project proposed by SCE.

process, Nevada Hydro requested that the CAISO consider the LEAPS generation facility to be “advanced transmission technology” and placed under the CAISO’s Operational Control such that all of the costs of the project would be recovered through the CAISO’s Transmission Access charge.⁹

- 4) On December 1, 2005, Nevada Hydro filed with the Commission under Section 205 of the Federal Power Act a request for approval of rate incentives for *both TE/VS and LEAPS*, including Transmission Access charge recovery for the costs of LEAPS as advanced transmission technology, consistent with the submission of the combined projects to the CAISO for study at approximately the same time. By Order issued on November 17, 2006, the Commission deferred ruling on the merits of the rate incentives, and requested additional information. The Commission directed the CAISO to conduct a stakeholder process to explore the operational and management aspects of Nevada Hydro’s proposal.¹⁰
- 5) In July 2006, the CAISO presented the Sunrise Powerlink Transmission project (“Sunrise”) to the CAISO Board of Governors for approval but deferred further study of the combined LEAPS and TE/VS Interconnect until the Commission issued a determination on the cost recovery aspects of LEAPS.¹¹
- 6) In November 2006, as amended in February, 2007, Nevada Hydro submitted a Participating Transmission Owner (“PTO”) application with the CAISO seeking to transfer operational control of *both LEAPS and the TE/VS Interconnect* to the CAISO. The CAISO deferred any final action on this application pending an Order from the Commission in ER06-278 regarding operational control issues associated with LEAPS.
- 7) On October 9, 2007, Nevada Hydro filed an application with the CPUC for a Certificate of Public Convenience and Necessity (“CPCN”) *for the TE/VS Interconnect as a stand-alone transmission project*. That proceeding is still in the initial stages and a schedule

⁹ Nevada Hydro made its request based on Section 1223 of the Energy Policy Act of 2005 that refers to pumped storage plants as advanced transmission facilities.

¹⁰ *The Nevada Hydro Company, Inc.*, 117 FERC ¶ 61,204 (2006). On May 1, 2007, the CAISO reported its conclusion that the Commission should not permit recovery of the costs of the LEAPS generation facility through the Transmission Access charge and should not require the CAISO to assume operational control of the generation facility. See Comments of the CAISO in response to the November 17, 2006, Order on Rate Request, Docket No. ER06-278 (May 1, 2007).

¹¹ See the August 31, 2006 Memorandum to the CAISO Board of Governors at <http://www.caiso.com/1864/1864c65c58620.pdf>

for issuance of a final decision has not yet been established by the CPUC.¹²

- 8) On January 23, 2008, *Nevada Hydro submitted the TE/VS Interconnect to the CAISO for study as a stand-alone 500 kV transmission project pursuant to CAISO Tariff Section 24*. The CAISO has not yet initiated its stakeholder process for consideration and study of the TE/VS Interconnect project.
- 9) In an order issued March 24, 2008, the Commission granted in part Nevada Hydro's request for incentive rate treatment for the TE/VS Interconnect. The Commission allowed Nevada Hydro an incentive equity return set within the upper end of the zone of reasonableness to be determined through a subsequent proceeding under section 205 and a hypothetical 50 percent equity/50 percent debt capital structure during the construction period. The Commission ruled, however, that the LEAPS generation facility may not be operated or managed by the CAISO and may not be functionalized as transmission for rate recovery purposes.¹³

IV. ANSWER.

A. In-Service Date

As is clear from the above chronology, Nevada Hydro has requested review and approval of its LEAPS and TE/VS Interconnect projects in a variety of combinations before a variety of forums. However, for the purposes of establishing the In-Service Date for LEAPS in the instant LGIA proceeding (Number 2 above), which involves *only the LEAPS generating facility, associated SDG&E Interconnection Facilities and Network Upgrades, and Nevada Hydro's Interconnection Facilities*, Nevada Hydro has, in its Protest, attempted to insert policy arguments involving its TE/VS Interconnect project that are not only irrelevant for purposes of this proceeding, but address issues under consideration in other proceedings – in particular the CAISO's Tariff Section 24 review of the TE/VS Interconnect. As discussed in further detail below, Nevada Hydro should not be permitted to cobble together regulatory and CAISO processes that clearly focus on discreet aspects of the LEAPS and TE/VS Interconnect projects not relevant to this proceeding in the hopes of obtaining an outcome that would otherwise not be available.

The In-Service Date raises issues concerning the CAISO's LGIP and transmission planning process. Although the CAISO has not taken a position

¹² CPUC Application No. 07-10-005.

¹³ *Nevada Hydro Company*, 122 FERC ¶ 61,272 at PP 1, 47, 51, 82-87.

concerning the appropriate In-Service Date, it has a significant interest in ensuring that the independence and integrity of its transmission planning process is maintained. Accordingly, the CAISO believes issues raised in Nevada Hydro's protest related to the In-Service Date deserve discussion.

As an initial matter, Nevada Hydro is correct that under Section 5.1 of the LGIA, the Interconnection Customer has the right to specify the In-Service Date. The CAISO believes such rights should be respected, provided they are reasonably exercised for legitimate purposes. In this case, however, the CAISO believes that Nevada Hydro is proposing revisions to the In-Service Date as a means for circumventing the CAISO's transmission planning process as set forth in Section 24 of the CAISO's Commission approved Tariff. Indeed, Nevada Hydro admits as much in its protest:

Nevada Hydro seeks an in-service date for the LGIA upgrades of June 30, 2010, *in order to enable that same in-service date for the TE/VS Interconnect.* This date is eighteen months earlier than the planned in-service date for LEAPS, which is December 2011. The LGIA Filing would unnecessarily and unproductively delay commencement of the TE/VS Interconnect service for the eighteen month difference.¹⁴

What is striking about Nevada Hydro's protest in general, and the above quotation in particular, is the lack of any reference to the CAISO's transmission planning process, which pursuant to the CAISO's Tariff is a necessary step in the approval process for the TE/VS Interconnect.

Moreover, Nevada Hydro does not even pretend that LEAPS will be capable of providing back feed power – the defined milestone for the In-Service Date – by the proposed June 2010 date.¹⁵ In so doing, Nevada Hydro effectively argues that the definition of In-Service Date should be modified to accommodate a transmission project not under consideration in the LGIP process but currently being evaluated by the CAISO as a stand-alone project under a separate section of the CAISO Tariff. Such a modification to the LGIA is inappropriate and would turn the LGIP on its head, particularly since the LGIA defines Nevada Hydro's Interconnection Facilities as "sole use facilities."

Concerns that Nevada Hydro now has regarding the timing for approval of the TE/VS Interconnect could have been avoided had Nevada Hydro submitted the TE/VS Interconnect to the CAISO as an independent transmission project around the time of its Interconnection Request in April of 2005. Instead, Nevada Hydro has consistently sought to have the combined LEAPS-TE/VS Interconnect

¹⁴ Nevada Hydro Protest at 2 (emphasis added).

¹⁵ Nevada Hydro Protest at 2.

project approved as a transmission facility under the CAISO's Operational Control and to recover the costs of the LEAPS generation facility under the Transmission Access charge rather than through the markets.

Now, in its Protest, Nevada Hydro continues its pattern of urging regulatory action without first going through appropriate procedures for proper study and evaluation of its project. Nevada Hydro attempts to seek advantage from the dueling regulatory proceedings created by its own confusing re-characterization of its project. In seeking action here, Nevada Hydro asks the Commission to cut short the CAISO study process for the transmission line, which is just underway following Nevada Hydro's application to the CAISO for review of the TE/VS Interconnect as a stand-alone transmission line on January 23, 2008.

The CAISO has studied the LEAPS project extensively, but always as a combined project, where the economic and reliability studies/engineering studies are different and the benefits and reliability issues were considered for the project as a whole; no evaluation of the stand-alone project was requested and none was conducted.

In addition, the CAISO staff did not submit Sunrise to the CAISO Board "instead" of the TE/VS Interconnect "without any meaningful comparative evaluation" as Nevada Hydro claims. Ignoring for a moment the irrelevancy of this claim to the LEAPS LGIA, the CAISO has never suggested, that approval of one project determined the timing of, or precluded consideration of, approval of the other projects. The CAISO staff did not substitute the Sunrise Powerlink for LEAPS; rather, the CAISO staff submitted the Sunrise Powerlink to the CAISO Board because the study was complete and it was ready to be submitted. The CAISO did not submit LEAPS at the same time for one reason only, because Nevada Hydro had chosen to present it as a combined project for inclusion in the CAISO's Transmission Access charge, and that request was novel and not considered by the Commission. The CAISO did not feel that it had authority to proceed without Commission clarification on whether a combined project of the sort proposed by Nevada Hydro would be appropriately considered "transmission." The Commission resolved that issue in its March 24, 2008, order, concluding that the generation portion of the project should not be considered transmission for inclusion in the Transmission Access charge.

Now that Nevada Hydro has submitted a request for approval of the TV/ES Interconnect as a stand-alone transmission project, the CAISO can proceed to evaluate that project. Because the CAISO has not completed that evaluation, and because of the competing concerns discussed above, the CAISO takes no position at this time on the appropriate In-Service Date for the LEAPS facility or what might ultimately be the "in-service date" for the TE/VS Interconnect. The CAISO notes, however, that the TE/VS study process is in its early stages and will involve a stakeholder process as contemplated by the

CAISO's Order 890 tariff compliance filing and Transmission Planning BPM. Moreover, it is not certain CAISO staff will recommend the project to the CAISO Board and, even assuming it is recommended, the project may not be approved by the CAISO Board.

For the reasons discussed above, the Commission should reject Nevada Hydro's proposed revision to the In-Service Date. Nevada Hydro had other options and now its arguments against "a one size fits all" In-Service Date should be rejected.

B. Option to Build

Section 5.1.3 of the LGIA limits this option to the construction of Interconnection Facilities and Stand Alone Network Upgrades. The CAISO will take no position on this issue provided Nevada Hydro and SDG&E are able to identify the upgrades accordingly.

C. Cost Payment Sequencing

Section 30.2 of the LGIA provides that the main-body of the LGIA prevails over any attachment. However, Section 11.5 of the LGIA appears to provide the flexibility for Nevada Hydro and SDG&E to reach agreement with respect to this issue without modification of Section 11.5 and achieve the desired result. Accordingly, the CAISO respectfully requests that the Commission support any such agreement between SDG&E and Nevada Hydro without modification of Section 11.5 as it would be unnecessary under the circumstances.

V. CONCLUSION

The CAISO requests that the Commission accept this Answer and take into consideration the comments included herein.

Respectfully submitted,

/s/ Michael E. Ward

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list for the captioned proceeding, in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC, on this 16th day of April, 2008.

/s/ Michael E. Ward
Michael E. Ward