

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

)	Docket Nos.	ER06-278-000
)		ER06-278-001
)		ER06-278-002
The Nevada Hydro Company, Inc.)		ER06-278-003
)		ER06-278-004
)		ER06-278-005
)		ER06-278-006

**MOTION FOR CLARIFICATION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 212 of the Federal Energy Regulatory Commission (“Commission”) Rules of Practice and Procedure (“Rules”),¹ the California Independent System Operator Corporation (“CAISO”) requests clarification of the Commission’s March 24, 2008 order accepting in part and denying in part The Nevada Hydro Company Inc.’s (“Nevada Hydro”) request for rate incentives for its proposed Talega-Escondido/Valley-Serrano Interconnect project (the “TE/VS Interconnect”).² Specifically, the CAISO requests that the Commission clarify that the March 24 Order does not render unnecessary or otherwise obviate the CAISO’s Transmission Expansion and Planning Process³ as it relates to the proposed TE/VS Interconnect.

I. BACKGROUND

In Order 679 (as modified by Order 679-A), the Commission established certain rate-incentives to encourage investment in transmission infrastructure.⁴ Pursuant to section 219 of the Federal Power Act (“FPA”), the purpose of these rate-incentives is to benefit consumers by

¹ 18 C.F.R. § 385. 212 (2007).

² *The Nevada Hydro Company, Inc.*, 122 FERC ¶ 61,272 (2008) (“March 24 Order”).

³ See CAISO FERC Electric Tariff, Appendix EE.

⁴ See *Promoting Transmission Investment through Pricing Reform*, 116 FERC ¶ 61,057 (adopting Order 679); *Promoting Transmission Investment through Pricing Reform*, 117 FERC ¶ 61,345 (adopting Order 679-A).

helping to ensure reliability and reduce the cost of delivered power.⁵ Procedurally, a public utility may request incentive-based rate treatment in a filing pursuant to section 205 of the FPA or in a petition for declaratory relief that precedes a section 205 filing. In either case, incentive-based rates will be approved by the Commission only if found to be “just and reasonable and not unduly discriminatory or preferential.”⁶ As to the timing for making a request for incentive-based rate treatment, an applicant may file a request while a project is being considered as part of a regional planning process. However, in such situations, the Commission “may make any requested rate treatment contingent upon the project being approved under the regional planning process.”⁷

In December 2005, Nevada Hydro filed what it characterized as a “partial” section 205 application requesting approval of incentive-based rates for the TE/VS Interconnect.⁸ At the time Nevada Hydro filed its request, a formal application to approve the TE/VS Interconnect as a stand-alone project had not yet been made to the CAISO.⁹ In fact, it was not until January 2008 that Nevada Hydro submitted the TE/VS Interconnect to the CAISO for evaluation as a stand-alone transmission project. Previously, Nevada Hydro had requested that the CAISO study the TE/VS Interconnect in combination with the Lake Elsinore Advanced Pumped Storage (“LEAPS”) project and that the combined projects be treated as a transmission asset under the operational control of the CAISO.

The TE/VS Interconnect study process is currently in its early stages and will involve a stakeholder process as contemplated by the CAISO’s Order 890 tariff compliance filing and

⁵ 16 U.S.C § 824s(a) (2007).

⁶ 16 U.S.C § 824s(d) (2007).

⁷ *Promoting Transmission Investment through Pricing Reform*, 116 FERC ¶ 61,057 at note 39.

⁸ *See The Nevada Hydro Company, Inc.*, 117 FERC ¶ 61,204 (2006) (“November 17 Order”).

⁹ November 17 Order, 117 FERC ¶ 61,204 at P 15.

Transmission Planning BPM. Accordingly, the CAISO has not completed its Tariff process for reviewing and approving the TE/VS Interconnect.¹⁰ In responding to claims that the Commission should not approve incentive-based rates until the CAISO has approved the TE/VS Interconnect, Nevada Hydro acknowledged that Commission approval of incentive-based rates would “neither preempt CAISO or state planning nor predetermine their outcome.”¹¹

In its March 24 Order, the Commission granted, in part, Nevada Hydro’s request for incentive-based rates. Specifically, the March 24 Order grants Nevada Hydro an incentive equity return to be set after the filing of a subsequent section 205 application, and a hypothetical 50 percent equity/50 percent debt capital structure during the construction of the project. In doing so, the Commission found that Nevada Hydro had adequately demonstrated the TE/VS Interconnect would “ensure reliability, consistent with the requirement of Order No. 679.”¹² Although the Commission found that the TE/VS Interconnect would ensure reliability, the Commission also recognized that “competing proposals [had] been submitted to the CAISO regional planning group for review” and that, in light of these other proposals, its approval of incentive-based rates “is *not* an endorsement of Nevada Hydro’s proposal over any other proposal.”¹³

Despite this language, Nevada Hydro now contends that the CAISO Tariff requirement requiring participation in the CAISO’s planning process has been, in effect, preempted by the Commission. Specifically, by letter to the CAISO dated April 7, 2008, Nevada Hydro asserts that the March 24 Order renders the CAISO’s Transmission Expansion and Planning Process

¹⁰ See November 17 Order, 117 FERC ¶ 61,204 at P 9 (footnote omitted).

¹¹ Response of The Nevada Hydro Company (January 27, 2006) at 8.

¹² March 24 Order, 122 FERC ¶ 61,272 at P 27.

¹³ March 24 Order, 122 FERC ¶ 61,272 at note 42 (emphasis added).

unnecessary as it relates to the TE/VS Interconnect.¹⁴ Based on this assertion, Nevada Hydro states that the CAISO’s “next step is to schedule the TE/VS Interconnect Project for CAISO Board approval, without further delay.” In addition to mischaracterizing the March 24 Order, this assertion contradicts previous statements made by Nevada Hydro to the Commission that Commission approval of incentive-based rates would not preempt the CAISO’s transmission planning process.¹⁵

II. REQUESTED CLARIFICATION

As discussed above, while the March 24 Order finds that Nevada Hydro has met the requirements of Order 679 to be eligible for incentive-based rates, the March 24 Order also provides that the Commission is not endorsing the TE/VS Interconnect over other proposals submitted to the CAISO regional planning group for review. Nonetheless, Nevada Hydro reads the March 24 Order to mean that the Commission has preempted the CAISO Tariff requirement that the TE/VS Interconnect be evaluated pursuant to the CAISO’s FERC-approved planning process and that the CAISO Board must grant the TE/VS Interconnect the necessary authorizations pursuant to that process, even though the project has not yet been through the review under the CAISO’s FERC-approved Order 890 transmission evaluation process.¹⁶ However if Nevada Hydro’s interpretation of the Commission’s March 24 Order is correct, there would be no factual basis upon which CAISO Management could make a recommendation to the Board. Thus, the logical result of Nevada Hydro’s proposed interpretation is a complete circumvention of the CAISO’s transmission planning process in this instance, including the

¹⁴ A copy of Nevada Hydro’s April 7, 2008 letter is attached hereto as Attachment A.

¹⁵ See *supra* note 11.

¹⁶ Among other requirements, Order 890 mandates that Regional Transmission Organizations and Independent System Operators employ “an open, transparent, and coordinated transmission planning process.” *Preventing Undue Discrimination and Preference in Transmission Service*, 118 FERC ¶ 61,119 (2007) at P 3.

Board approval process.

Accordingly, to avoid confusion and ensure that the CAISO's Transmission Expansion and Planning Process is appropriately applied in this instance, the CAISO requests that the Commission clarify whether the March 24 Order obviates the need for the CAISO's transmission planning process as it relates to the evaluation of the proposed TE/VS Interconnect.

III. CONCLUSION

WHEREFORE, the CAISO respectfully requests that the Commission grant this motion for clarification, as set forth herein.

Respectfully submitted,

By: /s/ Judith B Sanders

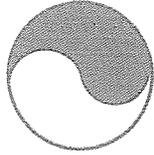
Judith B. Sanders

Senior Counsel

Counsel for the California Independent System
Operator Corporation

April 21, 2008

ATTACHMENT TO
APRIL 21, 2008
MOTION FOR CLARIFICATION OF CALIFORNIA ISO
ER06-278-000, et al



THE HYDRO COMPANY, INC.

DBA THE NEVADA HYDRO COMPANY, INC.

April 7, 2008

Mr. Ali Asraf Chowdhury
Director of Regional Transmission
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630

**RE: Comments CAISO Section 24 Draft Study Plan for
Talega-Escondido/Valley-Serrano 500 kV Interconnect Project
FERC: PN-11858-002, ER06-278-006
CPUC: 07-10-005, DEIS 0191F**

Dear Mr. Chowdhury,

Thank you for providing us with a your Draft Study Plan for the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project ("TE/VS Interconnect") as required under the provision of ISO Tariff section 24 (now apparently Appendix EE), and as required in response to our filing for the above project under that tariff section. We appreciate your efforts in preparing the draft and this letter provided in response to your draft.

As I understand the tariff provisions, §24 allows us to propose a transmission system addition, and provides the California Independent System Operator ("CAISO") with guidance to determine if the proposed project is "needed" (§24.1). Our filing was in accordance with this provision. The study plan proffered by the CAISO is to determine if the line is "needed."

Sec. 24.1 states that "need" can be based on any of the following justifications:

1. Promote economic efficiency
2. Maintain system reliability
3. Satisfy the requirements of an LCRIF
4. Maintain long-term CRRs

The evaluation of reliability driven projects is described in §24.1.2. Under this provision, the evaluation is only to also "consider lower cost alternatives to the construction of transmission additions . . ."

FERC, in their recent Order under ER06-278-006, relative to our proposed rate incentives has determined, in paragraph 27, the following: "We therefore find that Nevada Hydro, through independent evidence provided in this proceeding, has adequately demonstrated that its TE/VS Interconnect Project will ensure reliability, consistent with the requirement of Order No. 679."

In paragraph 23, FERC describes the requirements of Order No. 679 (emphasis added):

Order No. 679 provides that a public utility may submit a petition for declaratory order or a filing under FPA section 205 to obtain incentive rate treatment for transmission infrastructure investment that satisfies the requirements of FPA section 219 [16 USC §824s (2007)], i.e., the applicant must demonstrate that the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.

Order No. 679 also establishes a rebuttable presumption (as modified by Order No. 679-A) for: (i) a transmission project that results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (ii) a project that has received construction approval from an appropriate state commission or state sitting authority.

Order No. 679-A also clarifies the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., regional planning process, a state commission, or sitting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion.

Finally, FERC concluded further, in paragraph 33: "As mentioned earlier, the proposed TE/VS Interconnect Project will be the first 500 kV link between the SCE and SDG&E's systems and provide 1000 MW of much needed import capability to the distressed southern California region. The effect of a project involves factors such as improving reliability or reducing congestion costs, and, as we note in the previous section, Nevada Hydro has satisfied this showing through independent studies."

I believe a fair reading of these paragraphs is that FERC has concluded that TE/VS Interconnect Project is justified by assuring reliability. This justification is based on "a fair and open regional planning process" and that this process has "in fact" considered that "the project ensures reliability." FERC advised that it looked to the results produced in the 2003 Southwest Transmission Expansion Plan ("STEP") and to a report prepared by USE when they were under contract to us. Of course, as you and I know, the ISO reached similar conclusions on this project before STEP, in the Valley-Rainbow proceeding and after STEP, in the CSRTP process. We are also aware that the CAISO has recently concluded differently, in connection with its support for the Sunrise project sponsored by San Diego Gas & Electric. On the other hand, the California Energy Commission has identified TE/VS Interconnect Project, as one of several "strategic resources that require specific, swift, and priority consideration by state regulators (2007 Strategic Transmission Investment Plan, CEC-700-2007-018CTF, October, 2007).

As the CAISO and other market players participated in this docket at FERC, all of this information is in the FERC record, and FERC reached its conclusion considering the full record. Note also that FERC staff reached a similar conclusion in the Final Environmental Impact Statement it prepared in connection with the licensing proceedings for our Lake Elsinore Advanced Pumped Storage Project in FERC docket PN-11858.

Mr. Ali Asraf Chowdhury
April 7, 2008

page 3

As a result, we believe that FERC has concluded that we have completed the evaluation processes that would otherwise be required by CAISO Tariff §24 and consequently your study plan is no longer necessary. We believe that your next step is to schedule the TE/VS Interconnect Project for CAISO Board approval, without further delay.

If you have formed different conclusions, we look forward to discussing them with you prior to you taking any further actions. In any case, we look forward to working with you and your associates to obtain full support of the CAISO for the TE/VS Interconnect.

Very truly yours,



Rexford J Wait, Vice President
The Nevada Hydro Company
FERC PN-11858-002, ER06-278-006,
CPUC 07-10-005

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document has been served upon each person designated on the official service list compiled by the Secretary in this proceeding via electronic mail or first-class mail.

Dated at Folsom, California this 21st day of April, 2008.

/s/ Charity N. Wilson
Charity N. Wilson