123 FERC ¶ 61,140
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation Docket No. ER08-654-000

ORDER CONDITIONALLY ACCEPTING INTERCONNECTION AGREEMENT

(Issued May 9, 2008)

1. On March 11, 2008, San Diego Gas & Electric Company (SDG&E) and the California Independent System Operator Corporation (CAISO) filed an unexecuted Large Generator Interconnection Agreement (LGIA)[1] to provide for the interconnection of a hydroelectric facility and an associated transmission line being proposed by the Nevada Hydro Company, Inc. (Nevada Hydro). This order conditionally accepts the LGIA, effective May 11, 2008, as discussed below.

I. Background

2. On April 26, 2005, Nevada Hydro applied to the CAISO pursuant to section 25.1 of the CAISO Tariff to interconnect the LEAPS Project to the CAISO grid. Nevada Hydro's project consists of two projects, the Lake Elsinore Advanced Pumped Storage facility (LEAPS or LEAPS Project) which is a pumped hydro storage facility with an installed generating capacity of 500 MW, and the TE/VS Interconnect project which is a 30-mile 500 kV transmission line (together, Combined Project). The TE/VS Interconnect will run north/south between San Diego Gas & Electric Company's (SDG&E) transmission system and Southern California Edison's (SCE) system, and a separate line will generally run east/west and connect the LEAPS Project to the TE/VS Interconnect near its midpoint. Once complete, the TE/VS Interconnect could carry power from LEAPS to SCE and SDG&E or allow third parties to sell power from SCE to SDG&E and vice versa.

3. The TE/VS Interconnect will interconnect to SDG&E's portion of the CAISO grid at a new Case Springs 230 kV substation. The scope of the complete interconnection includes looping the Serrano-Valley 500 kV line into the 500 kV bus at the Lee Lake substation and looping the Talega-Escondido line into the 230 kV bus at the Camp

[1] CAISO and SDG&E filed two unexecuted LGIAs. The first consists of SDG&E's preferred version and the second is the CAISO's standard LGIA, without the detail SDG&E's LGIA provides on the protested portions, discussed below.

Pendleton Case Springs substation.[2] The Combined Project at the time of filing had several project approvals pending state and federal regulatory review. If those approvals are granted, Nevada Hydro expects that it can energize the LEAPS project by August 2011 and the TE/VS Interconnect by June 2010.[3]

4. The CAISO, in coordination with SDG&E, performed the studies governed by CAISO's Large Generator Interconnection Procedures (LGIP) adopted pursuant to Order No. 2003,[4] which identified the system modifications or additions necessary to interconnect the LEAPS project to SDG&E's portion of the CAISO Controlled Grid and estimated the cost of the Interconnection Facilities and the required Network Upgrades. After negotiations concerning the terms of the LGIA reached an impasse, Nevada Hydro requested an unexecuted LGIA to be filed with the Commission. SDG&E, CAISO, and Nevada Hydro were unable to reach agreement on: (1) the appropriate in-service date; (2) the option to build; (3) the inclusion of Nevada Hydro's cost estimates; and (4) the inclusion of certain milestones and the sequencing of payments.[5]

II. Notice of Filings and Responsive Pleadings

5. Notice of the application was published in the *Federal Register*, 73 Fed. Reg. 14,791 (2008), with interventions and protests due on or before April 1, 2008. On

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[2] CAISO notes that the connection with SCE will likely involve similarly extensive Interconnection Facilities and Network Upgrades.

[3] For example, the LEAPS Project is pending before this Commission, the United States Forest Service and the California Public Utilities Commission (CPUC). Both the TE/VS Interconnect and SDG&E's Sunrise Powerlink project are pending review before the CPUC for a Certificate of Public Convenience and Necessity. The TE/VS Interconnect is also pending approval from CAISO pursuant to section 24 of CAISO's open access transmission tariff (OATT).

[4] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 at P 34 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (March 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (January 4. 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005), *affirmed sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[5] In the original filing, CAISO noted that it does not take any position with respect to the first three issues and that it concurs with SDG&E on the fourth issue. In its answer, CAISO states that it believes the in-service date Nevada Hydro proposed is not achievable and that Nevada Hydro has not met the requisite showing to support non-conforming changes to CAISO's LGIA.

April 1, 2008, Nevada Hydro filed a motion to intervene and protest. On April 16, 2008, SDG&E and CAISO filed answers to Nevada Hydro's protests. On May 1, 2008 Nevada Hydro filed an answer to CAISO's and SDG&E's answers.

III. Discussion

A. Procedural Matters

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the timely, unopposed motion to intervene serves to make Nevada Hydro a party to this proceeding.[6]

7. Rule 213(a) of the Commission's Rules of Practice and Procedure[7] prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We will accept CAISO's and SDG&E's answers because they have provided information that assisted us in our decision-making process. We are not persuaded to accept Nevada Hydro's answer to CAISO's and SDG&E's answers and will, therefore, reject it.

B. Analysis

1. In-Service Date

8. Article 1 of the CAISO LGIA defines "In-Service Date" as the "date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Participating TO's Interconnection Facilities to obtain back feed power."[8] Nevada Hydro requests that the Commission accept a non-conforming in-service date determined by the date the TE/VS Interconnect could become operational (i.e., by June 30, 2010) rather than date the LEAPS Project needs back feed power. SDG&E and CAISO argue that Nevada Hydro's in-service date in the LGIA should be August 2011, to reflect the estimated date at which the LEAPS Project will have gained regulatory approval and be ready to provide power to the grid.

9. CAISO recognizes that article 5.1 of the CAISO LGIA allows the Interconnection Customer to specify the in-service date. Nevertheless, CAISO notes that 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. CAISO argues that Nevada Hydro's protest addresses issues under consideration in other proceedings and, in particular, section 24 of CAISO's OATT for review of the TE/VS Interconnect. CAISO concludes

[6] 18 C.F.R. § 385.214 (2007).

[7] 18 C.F.R. § 385.213(a)(2) (2007).

[8] CAISO LGIA art. 1.

that Nevada Hydro is proposing unreasonable timeframes in this proceeding as a means of circumventing the CAISO's transmission planning process as set forth in section 24 of its OATT.

10. CAISO believes that allowing the TE/VS Project to be made effective earlier than and separate from the LEAPS Project while it is currently being evaluated as a stand-alone transmission project is inappropriate and would turn the LGIP on its head, particularly since the LGIA defines Nevada Hydro's Interconnection Facilities as "sole use" facilities.

11. SDG&E argues that Nevada Hydro is seeking to shortcut the procedures in the LGIP by requesting an earlier start date. SDG&E argues that the TE/VS Interconnect is either part of the transmission infrastructure necessary to interconnect the LEAPS facility, or it is a transmission project that should be pursued via the appropriate procedural venue. SDG&E concludes that there is no basis under the LGIP for Nevada Hydro to receive an earlier effective date for a project that is ancillary to the very reason the LGIA will be in place, i.e., to allow the LEAPS Project to interconnect with the CAISO-controlled grid.

12. We agree with Nevada Hydro that, in these unique circumstances, it is appropriate to grant Nevada Hydro's request for a non-conforming in-service date to allow the LGIA to reflect the start date of the TE/VS Interconnect rather than the LEAPS Project. As we note above, the circumstances here are unique. Unlike most interconnection agreements subject to Order No. 2003, Nevada Hydro's project is really two separate projects with distinct benefits and attributes; a transmission line that will offer third party access and a pumped hydro facility that will offer generating capacity. Another distinguishing quality of this project is that the TE/VS Interconnect can be made operational before the LEAPS project. As we noted in our order in Docket No. ER06-278,[9] the TE/VS Interconnect could provide reliability benefits to Southern California. Nevada Hydro estimates that the TE/VS Interconnect could be operated approximately fourteen months before the LEAPS Project, due to siting and permitting processes.

13. As we have previously recognized, non-conforming changes to an individual LGIA are warranted where a filing presents "reliability concerns, novel legal issues, or other unique factors."[10] For the reasons above, we conclude that Nevada Hydro has sufficiently demonstrated that a non-conforming in-service date is appropriate here to allow the TE/VS Interconnect to have an earlier in-service date than the LEAPS Project.

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[9] *The Nevada Hydro Co., Inc.*, 122 FERC ¶ 61,272, at P 26-7 (2008).

[10] *Midwest Indept. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,123 (2006); *accord MidAmerican Energy Co.*, 116 FERC ¶ 61,018 (2006); *Midwest Indept. Transmission Sys. Operator, Inc*., 112 FERC ¶ 61,067 (2005); *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (*PJM*); *El Paso Elect. Co.*, 110 FERC ¶ 61,163, at P 4 (2005); *see also* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 913-15.

Although we agree with SDG&E's reading of the LGIA, based on the unique facts presented here, we do not agree that strict conformance to the LGIA text produces a just and reasonable result in this case. Not only would adherence to the LGIA in-service date delay any reliability benefits that could flow from the TE/VS Interconnect by more than a year, but such a delay could also cause ratepayers financial harm, to the extent the TE/VS Interconnect reduces congestion costs. Moreover, no party has pointed to any harm that would flow from allowing Nevada Hydro to have an earlier in-service date for the TE/VS Interconnect. Accordingly, we will require CAISO to file a non-conforming LGIA that revises the definition of "in-service date" as necessary to accommodate the Combined Project. The revised non-conforming LGIA also must include, consistent with article 5.1 of the CAISO LGIA,[11] the in-service date requested by Nevada Hydro.

14. With respect to CAISO's argument that our approval of an earlier in-service date could place a "thumb on the scale" in CAISO's proceeding in favor of the TE/VS project, we clarify that our acceptance of this non-conforming in-service date should not have any bearing on CAISO's proceeding under section 24 of its OATT. Our acceptance of Nevada Hydro's proposed in-service date is based on the conclusion that, because of the dual-purpose nature of the facilities in question, a non-conforming change to CAISO's LGIA is just and reasonable. All else being equal, Nevada Hydro should not have to wait idly for the construction schedule for the LEAPS project to catch up with the TE/VS Interconnect based on the definition of "in-service date" alone. As we note above, even though we acknowledge that the TE/VS Interconnect could provide reliability benefits, our decision in this proceeding is confined to the justness and reasonableness of the interconnection agreement before us. Our conclusion to allow an earlier in-service date so that Nevada Hydro can begin moving forward with the TE/VS Interconnect is intended to assist in the development of necessary infrastructure; however, our findings cannot be construed as an opinion on the relative merits of this or competing transmission projects. Those decisions rest with the CPUC and CAISO.

2. <u>Option to Self-Build</u>

15. Nevada Hydro and SDG&E disagree over whether the CAISO LGIA affords Nevada Hydro the option to self-build. SDG&E argues that an in-service date of August 2011 is reasonable because that is the earliest possible date the LEAPS Project could go into service. It argues that the option to build is inapplicable here because it estimates that it will be able to comply with this timeframe. Further, if we determine that Nevada Hydro can self-build, SDG&E requests us to make clear that the CAISO LGIA only allows Nevada Hydro to build the Stand Alone Network Upgrades identified in section A.4, Table A.1 to Appendix A. CAISO takes no position on this issue.

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[11] "Unless otherwise mutually agreed among the Parties, the Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date . . . ." CAISO LGIA art. 5.1.

16. Nevada Hydro argues that the option to build under article 5.1 of the LGIA is an appropriate remedy here since SDG&E has found its proposed dates unacceptable. We agree.

17. Article 5.1.3 of the CAISO LGIA states that "[i]f the dates *designated by the Interconnection Customer* are not acceptable to the Participating TO, the Participating TO shall so notify the Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, the Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of the Participating TO's Interconnection Facilities and Stand Alone Network Upgrades. . . ."[12] This article affords Nevada Hydro the right to propose relevant milestones for completion of the project. If these milestones are not acceptable to SDG&E, article 5.1.3 provides that, after a notice period, and, unless the parties agree otherwise, Nevada Hydro "shall have the option" to build.[13] This article does not allow a transmission owner to deny an interconnection customer the option to build because the transmission owner believes some alternative in-service date is more reasonable. Accordingly, we reject SDG&E's argument and conclude that the plain language of article 5.1.3 of the CAISO LGIA grants Nevada Hydro the option to build.

3. Specification of Cost Estimates

18. Nevada Hydro claims that the differences between its estimates for the costs of the LGIA upgrades and the cost estimates SDG&E has provided should be included in Appendix A of the LGIA. SDG&E estimates the costs of the upgrades and other work to be performed under the LGIA at $133,263,000.[14] Nevada Hydro estimates the costs of the same work at $74,394,000.[15] Nevada Hydro argues that SDG&E may be using inflated cost estimates to give its competing transmission project a competitive advantage over the TE/VS Interconnect in proceedings before the CAISO and CPUC.

19. SDG&E responds that the cost estimates Nevada Hydro takes issue with are immaterial. It argues that the final, actual costs are the only costs relevant for purposes of assessing charges and credits for the overall costs of the facilities. It objects to including Nevada Hydro's cost estimates because it claims that its cost estimates are reasonable because they are based on its lengthier record of experience.

20. Although, this issue is not squarely addressed by the LGIA language or Order No. 2003, we see no harm in allowing Nevada Hydro's cost estimates to be included in Appendix A. We believe SDG&E's most persuasive argument, that such preliminary

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[12] *See* CAISO LGIA art. 5.1.3 (emphasis added).

[13] *Id*.

[14] SDG&E's LGIA Filing, Appendix A, section A.4, Table A:1.

[15] Nevada Hydro Protest, Decl. Robert Bakondy, Ex. III.

estimates are immaterial to the actual costs and timing, actually militates in favor of allowing the estimates to be included in Appendix A. Thus, even though we are not expressing any opinion whatsoever about the accuracy of either company's cost estimates, we do not read Order No. 2003 or CAISO's LGIA to preclude the second set of cost estimates proffered by Nevada Hydro to be included in Appendix A.

4. Milestones and Sequencing of Payments

21. At the outset of this proceeding, the parties disagreed about the sequencing of certain payments and the inclusion of certain project milestones in Appendix B. Nevada Hydro requests that the LGIA Appendices include milestones related to the licensing of the LEAPS Project and make clear that article 11.5 of the LGIA will allow Nevada Hydro to submit payment associated with the necessary upgrades using a schedule that reflects the sequencing of activities rather than requiring an immediate advance of cash and the posting of security for the entire estimated cost of the upgrades. SDG&E's answer, however, makes clear that it is willing to concede its objections to Nevada Hydro's requests on these points. Thus, since SDG&E and CAISO are willing to amend Appendix B to make these changes, it appears these disagreements are resolved.

5. Non-Conforming Changes

22. As discussed above, our approval of this LGIA is conditional upon CAISO revising the LGIA and resubmitting a new LGIA consistent with this order. We direct CAISO to revise the in-service date in the LGIA to reflect the in-service date of the TE/VS Interconnect and to re-file this revised LGIA as a non-conforming LGIA. These revisions should also include a restatement of the milestone dates for advancement of costs, as well as Nevada Hydro's cost estimates.

The Commission orders:

CAISO's filing is accepted, effective May 11, 2008, on the condition that CAISO refiles within 30 days of the date of issuance of this order an LGIA consistent with this order.

By the Commission. Commissioner Kelly concurring in part with a separate statement attached.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corp. Docket No. ER08-654-000

(Issued May 9, 2008)

KELLY, Commissioner, *concurring in part*:

I support this order, but I also note my dissent in part regarding certain incentives granted to Nevada Hydro for the proposed TE/VS Interconnect in a recent Commission order.[16] While I support the request for the TE/VS Interconnect to go into service at an earlier date, I reiterate my previous concerns here. Nevada Hydro's request to tie the LGIA in-service date to the date that the TE/VS Interconnect could become operational, rather that the day the LEAPS Project needs back feed power, highlights the fact that the Commission's ruling on incentives in the earlier order, in the absence of a clear future for the LEAPS Project, was premature. The Commission should be cognizant of these issues in any future Federal Power Act section 205[17] filing to include rate incentives in transmission rates for the TE/VS Interconnect.

Accordingly, I concur in part with this order.

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Suedeen G. Kelly

[16] *See The Nevada Hydro Co., Inc.*, 122 FERC ¶ 61,272 (2008).

[17] 16 U.S.C. § 824d (2000 & Supp. V 2005).

Document Content(s)