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09-14-10
10:29 AM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of The Nevada Hydro Company for a Certificate of Public Convenience and Necessity for the Talega-Escondido/Valley-Serrano 500 kV Interconnect Project.

Application 10-07-001
(Filed July 6, 2010)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING A PREHEARING CONFERENCE TO DISCUSS SCOPE AND
SCHEDULE AND CONVENING LAW AND MOTION HEARING AT
CONCLUSION OF THE PREHEARING CONFERENCE**

1. Summary

As noticed on September 3, 2010, a prehearing conference (PHC) has been convened for Wednesday, September 22, 2010 at 10 a.m. at Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California 94102. This ruling provides additional information on the issues to be discussed at the PHC. Parties shall be prepared to discuss these issues and possible schedules at the PHC.

Because I have questions regarding Nevada Hydro Company's motion to file certain pages related to its financial statements under seal, I will convene a law and motion hearing at the conclusion of the PHC.

2. Procedural Background

On July 6, 2010, the Nevada Hydro Company (Nevada Hydro) filed an application requesting that the Commission issue a certificate of convenience and

necessity (CPCN) for the construction and operation of the Talega-Escondido/Valley-Serrano (TE/VS) 500 kilovolt (kV) Interconnect transmission line. Decision (D.) 09-04-006 dismissed similar Applications (A.) (A.07-10-005 and A.09-02-012), because Nevada Hydro had not included a complete Proponent's Environmental Assessment (PEA) that addressed concerns identified by the Commission's Energy Division staff.

Nevada Hydro explains that these concerns have been addressed and the Energy Division Project Manager now considers the most recently filed Application and PEA to be complete for purposes of environmental review that will be undertaken under the California Environmental Quality Act (CEQA). The Commission will now undertake an independent evaluation of the proposed project and its potential impacts, as required by CEQA.

Protests have been timely filed by Southern California Edison Company (SCE), Elsinore Valley Municipal Water District, Center for Biological Diversity, Friends of the Forest (Trabuco District), the Santa Rosa Plateau, and the Santa Ana Mountains Task Force of the Sierra Club (jointly, Conservation Groups), John Pecora, Linda Lou and Martin Ridenour, Frontlines, Fresian Focus, LLC, Joan Fernandez, Joseph Fernandez and the Fernandez Trust (jointly, Fresian), San Diego Gas & Electric Company (SDG&E), and the Division of Ratepayer Advocates (DRA). On August 16, 2010, Nevada Hydro filed a reply to the protests.

3. Need for the Project

Pursuant to Pub. Util. Code § 1001 et seq., Nevada Hydro may not proceed with its proposed project absent certification by the Commission that the present or future public convenience and necessity require it. As a basis for granting a CPCN, the Commission must consider community values, recreational and park

areas, historical and aesthetic values, and the influence on the environment. (Pub. Util. Code § 1002(a)). The review process established by the California Environmental Quality Act (CEQA) is the primary vehicle for this review. I discuss the CEQA process below.

In terms of need, the Commission must consider whether the project is needed to enhance the reliability of the transmission grid, to improve the economics of the transmission system, or to ensure that renewable energy can be delivered to load centers. Nevada Hydro states that the TE/VS Interconnect Project is necessary to provide additional high-voltage capacity to reduce congestion on the California Independent System Operator grid, provide additional import capacity to SDG&E to enhance San Diego's access to renewable resources, provide additional import capacity to SDG&E to increase reliability, provide SDG&E with a 500 kV interconnection with SCE and enhance integration and reliability of the California Independent System Operation (CAISO) transmission grid, provide potential future options for expansion of the CAISO grid in Southern California, enhance local electrical facilities and systems to serve demand and reliability with in the Lake Elsinore area; and provide access to the planned pumped storage facility. In this proceeding, Nevada Hydro is also seeking to become an electrical corporation as that term is defined under Pub. Util. Code § 218, and would therefore be subject to Commission jurisdiction.

Nevada Hydro has co-applied with the Elsinore Valley Municipal Water District at the Federal Energy Regulatory Commission (FERC) for a license under the Federal Power Act to construct and operate the Lake Elsinore Advanced Pumped Storage (LEAPS) facility at Lake Elsinore. As I understand it, that application is currently pending at FERC, and mediation has been ordered.

The formal proceeding will focus on the issuance of the CPCN and the need for the project. If need is identified, we will then consider how the need may best be met by various alternatives, as evaluated according to the framework established by Pub. Util. Code § 1001 et seq.

4. CPCN and Environmental Review Process

CEQA requires the lead agency to conduct a review to identify environmental impacts of the project, and ways to avoid or reduce environmental damage, for consideration in the determination of whether to approve the project or project alternative. CEQA precludes the lead agency from approving a proposed project or project alternative unless that agency requires the project proponent to eliminate or substantially lessen all significant effects on the environment where feasible, and determines that any unavoidable remaining significant effects are acceptable due to overriding considerations.

Staff will prepare the required environmental documents; however, I note that the budget impasse has precluded travel by staff. Here, I expect that an Environmental Impact Report (EIR) will eventually be issued. An EIR is an informational document to inform the Commission, and the public in general, of the environmental impacts of the proposed project and alternatives, design a recommended mitigation program to reduce any potentially significant impacts, and identify, from an environmental perspective, the preferred alternative. Commission Staff and its consultants will issue a Draft EIR (DEIR) for public comments.

The purpose of the CEQA process is to inform the Commission and the public in general, of the environmental impacts of the proposed project and alternatives, to design a recommended mitigation program to reduce any potentially significant impacts, and to identify, from an environmental

perspective, the preferred alternative. CEQA requires that, prior to approving the project or a project alternative, the lead agency must certify that the Final Environmental Impact Report (FEIR) was completed in compliance with CEQA, that it reviewed and considered the FEIR prior to approving the project or a project alternative, and that the FEIR reflects the Commission's independent judgment. (Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.) Based on this review, the Commission may approve the utility's proposed project, an alternate project, or no project.

The CEQA review will evaluate the proposed project and other alternatives that can address the project objectives, as well as a no project alternative.¹ The FEIR will identify the environmentally superior project or alternative. The FEIR is an important informational document that the Commission will utilize in deciding whether to grant Nevada Hydro's request. Upon completion of the FEIR, the Commission will be in a position to effectively evaluate the various alternatives presented, weigh the costs and benefits offered by different alternatives, assess the environmental impacts of the different alternatives, and ultimately determine whether ratepayer funding should be authorized for the TE/VS project.

The DEIR and the FEIR will be admitted into the formal record of the proceeding as reference items. CEQA requires that, prior to approving the project or a project alternative, the lead agency must certify that the EIR was completed in compliance with CEQA, that it reviewed and considered the EIR

¹ The CEQA review is expected to include public meetings in the local project area to provide information about the proposed project and solicit local input on the project scope, potential alternatives, and potential environmental impacts.

prior to approving the project or a project alternative, and that the EIR reflects our independent judgment. (Pub. Res. Code § 21082.1(c)(3), CEQA Guidelines § 15090.)

5. Potential Issues:

Parties have raised several issues in their protests. In my view, there maybe certain threshold issues that must be considered prior to reviewing the need for the project and even prior to the environmental work being undertaken, which I discuss below. Protestants have generally raised the following issues, which I have grouped into categories:

5.1. Threshold Issues:

Must Nevada Hydro be approved as an electrical corporation as that term is defined under Pub. Util. Code § 218 before going forward with this application?

Is the TE/VS project financially viable? Does Nevada Hydro have the financial ability to complete the project? Should the motion to file financial documents under seal be granted?

Should this proceeding be stayed until FERC-ordered mediation is concluded?

Should the Commission consider these threshold issues on an initial basis, prior to considering other issues related to need and environmental review?

5.2. Issues Related to Need:

Has Nevada Hydro demonstrated that this project is needed?

Is interconnection with SCE and SDG&E systems necessary? What benefit does this interconnection provide?

If interconnection is necessary, what are the updated cost estimates of proposed transmission facilities and upgrades to SDG&E's and SCE's systems;

what is the plan for serving distribution-level loads through the 115 kV additions to the SCE system and impacts on SCE, CAISO, or WECC systems.

Are updated assumptions and analysis required? For example, SDG&E states that updated analysis required, since certain other proposed projects may not be built.

How have benefits of the project been determined and are these properly assessed?

Have the appropriate economic benefits and production costs analyses been assessed, as required by D.06-11-018?

Has there been an adequate determination of Load Serving Entity Resource Adequacy capacity costs?

Should approval of the TE/VS Project be made contingent on the development and certification of LEAPs by FERC?

Should the costs be updated and are the proposed costs reasonable?

5.3. Environmental Issues:

Have the substation locations been described properly?

What is the range of alternatives that must be considered in the EIR, including the “no wires” alternative?

Have all projects been identified that must be considered in order to ensure the whole of the action is addressed for CEQA purposes?

6. Convergence of CEQA Process and Formal Proceeding

The environmental review process and the consideration of need, economics, and other issues associated with the CPCN essentially occur on parallel tracks. Any interested person who has concerns about the

environmental implications of the proposed project should write to the Project Manager and request to be included on the CEQA mailing list.

I anticipate that many individuals and entities may be interested in participating in the environmental review process only. In order for comments to be incorporated into the administrative record, those individuals and entities must follow the instructions included in the DEIR, once that document is issued. Comments on environmental documents should **not** be sent to the ALJ, the assigned Commissioner or other Commissioners, or filed with the Commission's Docket Office, nor should comments in the environmental review process be served on other parties.

7. Discussion at PHC

Parties should be prepared to discuss the preliminary categorization for this proceeding, the issues identified in this ruling, identify other issues to be considered, the need for additional evidence and the schedule for service of testimony, and the schedule for evidentiary hearings. In addition, I would like the parties to consider whether it would be useful to pursue Alternative Dispute Resolution (ADR) to narrow or resolve disputed issues prior to evidentiary hearings. Nevada Hydro has requested an expedited schedule, but that does not appear possible, given the issues to be considered and the impact of the budget impasse. Discovery can begin now. Parties should refer to Article 10 in the Commission's Rules of Practice and Procedure.

8. Motion for Leave to File Under Seal

On July 6, 2010, pursuant to Rule 11.4, of the Commission's Rules of Practice and Procedure, Nevada Hydro filed a motion requesting permission to file under seal certain information related to Rule 3.g(1). Rule 3.1(g) requires that an applicant seeking a CPCN must provide "statements or exhibits showing the

financial ability of the applicant to render the proposed service together with information regarding the manner in which applicant proposes to finance the cost of the proposed construction or extension.” No party filed a response to Nevada Hydro’s motion.

I have reviewed Nevada Hydro’s request and, on this review, I do not see the need to grant confidentiality. However, I intend to address the motion at the end of the PHC on September 22, 2010. Nevada Hydro should be prepared to testify with specificity as to why this information is confidential and why it should be sealed under Pub. Util. Code § 583 and General Order 66-C. I will entertain motions to clear the hearing room or to seal the evidentiary record; however, I prefer to address this issue on the record, to the extent practicable.

9. Service List

I will update and establish a new service list for this proceeding at the PHC. Appearance status will be granted only to those who attend the PHC and indicate a plan to participate actively in the proceeding through presentation of testimony, cross-examination, or submission of briefs. Individuals who simply want to monitor what is occurring in the formal proceeding will not receive party status, but instead will be placed on the Information Only section of the service list. Persons employed by the State of California are also non-parties and will be placed on the State service list. DRA may designate an Appearance for the service list.

Please keep in mind that it is my policy to place only one representative for each party on the Appearance portion of the service list. Parties seeking to place multiple people on the service list should identify which individual will be their appearance. This information will be used to develop a new service list for the proceedings. After the PHC, the official service list shall be posted on the

Commission's web site, www.cpuc.ca.gov, as soon as practicable. If you do not wish to become an appearance, cannot attend the PHC, and wish only to monitor the proceeding, you may wish to subscribe to the proceeding:

<http://subscribecpuc.cpuc.ca.gov/>.

In addition to the official service list, the Energy Division will establish an environmental review service list. Individuals with an interest in the environmental review of the proposed project should be on the environmental review service list. All persons who have sent letters to the Director of the Energy Division have been added to the environmental review service list. To be added to the environmental review service list, contact Andrew Barnsdale at bca@cpuc.ca.gov. Please note that if you are only on the environmental review service list, you will not automatically be placed on the formal service list for this application. Again, if you do not intend to participate in the formal proceeding, please do not request Appearance status.

10. Filing and Service List

For this proceeding, all formally filed documents must be electronically filed with the Commission's Docket Office. If parties have concerns about this, please raise them at the PHC. For more information about electronic filing, please see the updated User Guide on our website at:

ftp://ftp.cpuc.ca.gov/static/Efile_User_Guide_3-12-08.PDF.

In order to ensure timely delivery of documents and conserve resources, we will follow the electronic service protocols set forth in Rule 1.10 of the Commission's Rules of Practice and Procedure. This Rule requires service of documents to be performed electronically, in a searchable format, unless the appearance or state service list member did not provide an email address. If no email address was provided, service should be made by United States mail.

Parties should provide concurrent e-mail service to all persons on the service list, including those listed under "Information Only." Any document that is filed must also be served electronically. Testimony is entered into the record through the evidentiary hearing process and for that reason is only served, not filed.

11. Intervenor Compensation

The PHC will be held on September 22, 2010. Pursuant to § 1804(a)(1), a customer who intends to seek an award of compensation should file and serve a notice of intent to claim compensation not later than 30 days after that date. A separate ruling will address eligibility.

12. Ex Parte Communications

As a reminder, this proceeding has been preliminarily categorized as ratesetting and it has been preliminarily determined that evidentiary hearings will be held. We will discuss the categorization and need for hearings at the PHC. Unless the categorization and need for hearings are changed in the scoping memo ruling, the ex parte provisions of Pub. Util. Code § 1701.3 and Rule 8.2(c) and Rule 8.3 are applicable and must be followed.

Therefore, **IT IS RULED** that:

1. A PHC is scheduled for September 22, 2010 at 10 a.m. at the Commission's Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, CA 94102.
2. At the PHC, parties should be prepared to discuss the scope of the proceeding, schedule, and any other procedural matters necessary for the expeditious processing of the case.
3. Nevada Hydro shall be prepared to testify with specificity as to the reasons it requests that certain financial information be filed under seal. The law and motion hearing shall be convened at the conclusion of the PHC.

4. Those individuals and entities who wish to participate in the environmental review process only shall follow the protocols established by the Commission's Project Manager.

5. A service list will be established at the PHC. Those who wish to become Appearances shall demonstrate how they intend to actively participate in the proceeding.

6. Those who do not wish to become Appearances and cannot attend the PHC, but wish to monitor the proceeding may subscribe to the proceeding: <http://subscribecpuc.ca.gov/>.

7. One service list request shall be submitted on behalf of all representatives of a given party.

8. The electronic filing protocols delineated at ftp://ftp.cpuc.ca.gov/static/Efile_User_Guide_3-12-08.PDF and the electronic service protocols adopted by the Commission in Rule 1.10 of the Commission's Rules of Practice and Procedure shall govern this proceeding.

Dated September 14, 2010, at San Francisco, California.

/s/ ANGELA K. MINKIN

Angela K. Minkin
Administrative Law Judge

INFORMATION REGARDING SERVICE

I have provided notification of filing to the electronic mail addresses on the attached service list.

Upon confirmation of this document's acceptance for filing, I will cause a Notice of Availability of the filed document to be served upon the service list to this proceeding by U.S. mail. The service list I will use to serve the Notice of Availability of the filed document is current as of today's date.

Dated September 14, 2010, at San Francisco, California.

/s/ CRISTINE FERNANDEZ
Cristine Fernandez

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074 or TDD# (415) 703-2032 five working days in advance of the event.