

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

Application No. 10-07-001
(Filed July 6, 2010)

**REPLY BRIEF ON THRESHOLD ISSUES
OF SANTA ANA MOUNTAINS TASK FORCE OF THE SIERRA CLUB
& FRIENDS OF THE FOREST (TRABUCO DISTRICT) AND THE SANTA ROSA PLATEAU**

December 10, 2010

Gene Frick
On behalf of Santa Ana Mountains Task Force of the Sierra Club (SAMTF) &
Friends of the Forest (Trabuco District) And the Santa Rosa Plateau (FOF&P)
4271 Baggett Drive
Riverside, CA 92505
gfrick@cosmoaccess.com

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Pursuant to Rule 13.11 of the Rules of Practice and Procedure, and the October 6, 2010 Ruling of Administrative Law Judge (“ALJ”) Minkin, Santa Ana Mountains Task Force of the Sierra Club (“SAMTF”) and Friends of the Forest {Trabuco District} and the Santa Rosa Plateau (“FOF&P”) submit this reply brief on the threshold issues posed in the ruling.

Introduction

This proceeding has as its focal point the creation of a public utility for the purpose of providing cost effective, reliable and environmentally sound electric power to the rate paying public. As such it is subject to both general and specific legislation, Commission rules and decisions.

In addition to specific legislation relating to public utilities the legislature has granted wide ranging and general powers to the Commission to conduct its business that is germane to public utilities or incipient public utilities insofar as this has the potential to impact rate payers. So even though The

Nevada Hydro Corporation (“TNHC”) is not a public utility subject to regulation by the Commission, the Commission has accepted the CPCN application with the understanding that the application must conform to the same standards as those applied to an application by a public utility and that hearings will be conducted under the same rules as they would be if they applied to a public utility. There is no discussion that these are matters over which the Commission has control through the application of its general powers.

The proceeding has already been complicated by the fact that TNHC along with Elsinore Valley Municipal Water District (“EVMWD”) are co-applicants at the Federal Energy Regulatory Commission (“FERC”) for a project [FERC docket P-11858] which has elements which overlap this application for a CPCN for Talega-Escondido/Valley-Serrano 500-kV Interconnect (“TE/VS”).

Brief item #1 The question is at what time TNHC will become a public utility if at all.

Several opening briefs have pointed out that the Public Utility Code defines an electric public utility as owning, operating and managing electric power infrastructure (“electric plant”), dedicated to supplying electric service to rate payers. While by definition this qualifies any such entity as a public utility, the law does not specifically restrict public utility designation to only such entities.

TNHC points to the example where the Commission designated Lodi Gas Storage (“LGS”) as a public utility even though LGS did not at the time own any infrastructure which served the public [TNHC opening brief on item #1 at 3]. In doing so TNHC accepts the fact that the Commission did not have specific legislated authority to grant LGS public utility status when it did, but that the Commission found that it had authority under its broad power to further the interests of affected rate payers by granting LGS public utility status when it did.

While there may be important details between the two cases which it may become necessary to consider in detail, we do not attempt that here. What is important is the acceptance by TNHC of the legal theory.

We hold that the same theory gives to the Commission the authority to determine that TNHC is not a viable candidate for public utility status as we argued in our opening brief [Our opening Brief item #1 at 5]

Brief items #3 & #4 Should TNHC be responsible for Intervenor Compensation and post a bond to guarantee that they make timely payments?

Having accepted the broad powers of the Commission with respect to item #1, TNHC now

denies those powers to the Commission with respect to Intervenor Compensation. While Intervenor Compensation legislation is imposed on public utilities, it does not specifically prohibit that same imposition on non-public utilities using the same process as a public utility does to gain approval for an application for a CPCN; anymore than it prohibits the Commission from designating an entity a public utility prior to it owning electric infrastructure dedicated to public service.

In using its broad powers the Commission must make a determination on a case by case basis as how to best serve the public interest. It has been made abundantly clear that the public interest is best served by the Intervenor Compensation policy, so the Commission should decide that fairness dictates that TNHC be responsible for payment.

TNHC anticipates profits connected to completion of the TE/VS project should it be approved. In doing so they take advantage of the American entrepreneurial spirit of capital development. However that same spirit allows for pricing which will compensate for the risks associated with such ventures. While sometimes successfully accomplished, there is general agreement that those who may profit should not pass the cost of risks along to the paying public prior to the venture's success (the concept of capital profit at the expense of socialized costs).

The Commission recognized this principle in the LGS decision when they imposed a \$20 million surety/performance bond on LGS [D0005048 at 33]. The Commission has the same authority to impose a bond on TNHC.

Brief Item #2 Should a CPCN be required for LEAPS.

We argued in our opening brief that because there are other ongoing pumped storage projects in California which may be prejudiced by a decision on this point and because electric storage is currently a critical issue in California (AB2514) and at FERC (docket AD10-13), that this point should be decided at another time in a different venue.

However both EVMWD and TNHC have opened an old sore with respect to “LEAPS”. As it turns out there is more than one definition of “LEAPS”, depending on who is doing the talking and what point they are trying to make. On the one hand there is the generic “LEAPS” which is like any other pumped storage project with a dam, water reservoir, and reversible pumps/generators and on the other hand there is the FERC application (docket P-11858) “LEAPS” defined from the beginning as including TE/VS as an essential component. For the sake of discussing this point we call the generic Lake Elsinore Advanced Pumped Storage, “LEAPS” ;and the FERC application for the Lake Elsinore Advanced Pumped Storage Project, “LEAPSP”.

There have been 5 FERC dockets that we know of concerning pumped storage at Lake Elsinore, specifically P-11261, P-11266, P-11504, P-11646 and P-11858. All of these can be referred to as “LEAPS”, not all included TE/VS as an essential component. The idea to include TE/VS as a component of “LEAPSP” appears to have originated with Enron. One of the first usages of “LEAPS” did not refer to the project {and here we quote directly from the application for the preliminary permit under P-11858} “LAKE ELSINORE ADVANCED PUPM STORAGE, L.L.C. (“LEAPS”) a wholly-owned subsidiary of Enron North America Corp.” It referred not to a project but an L.L.C. [FERC docket P-11858 accession # 20000915-0122].

By the time FERC accepted the project application for filing in January, 2005 the project was called “Lake Elsinore Advanced Pumped Storage Project” and would consist of amongst other things “(4) about 30 miles of 500 kV transmission line connecting the project to an existing transmission line owned by Southern California Edison located north of the proposed project and to an existing San Diego Gas & Electric Company transmission line located to the south.” [FERC docket P-11858 accession # 20050125-3043]. To our knowledge neither EVMWD nor TNHC has made any attempt to redefine what the project would consist of.

Our concern remains that one or the other will return to FERC to seek approval of the application as defined and we believe that the Commission should petition FERC to resolve the issue.

Respectfully submitted,

/s/ GENE FRICK

GENE FRICK

Representative of Santa Ana Mountains Task Force of the Sierra Club (SAMTF) &
Friends of the Forest (Trabuco District) And the Santa Rosa Plateau (FOF&P)
4271 Baggett Drive
Riverside, CA 92505
gfrick@cosmoaccess.com

December 10, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of
**CONCURRENT BRIEF ON THRESHOLD ISSUES
Of SANTA ANA MOUNTAINS TASK FORCE OF THE SIERRA CLUB
& FRIENDS OF THE FOREST (TRABUCO DISTRICT) AND THE SANTA ROSA PLATEAU**

to the official service list in A.10-07-001 by using the following service:

E-Mail Service: sending the entire document as an attachment to all known parties of record who provided electronic mail addresses.

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Executed on December 10, 2010 at Riverside, California.

/s/ GENE FRICK

Gene Frick

SERVICE LIST

A1007001

Podgorsky@wrightlaw.com
morand@wrightlaw.com
robert.kang@sce.com
PSzymanski@SempraUtilities.com
Charity.Schiller@bbklaw.com
gfrick@cosmoaccess.net
AirSpecial@aol.com
johnpecora100@ca.rr.com
gXH@cpuc.ca.gov
jevans@biologicaldiversity.org
mrw@mrwassoc.com
e-recipient@caiso.com
Jennifer.Haley@bbklaw.com
jsanders@caiso.com
Njacobsen@waterboards.ca.gov
rkanz@waterboards.ca.gov
sophie.akins@bbklaw.com
jbuse@biologicaldiversity.org
grasse@curegroup.org
fmobasheri@aol.com
garcia@electricpowergroup.com
case.admin@sce.com
dkates@sonic.net
liddell@energyattorney.com
KO'Beirne@SempraUtilities.com
CentralFiles@SempraUtilities.com
john.brown@bbklaw.com
k.estenger@jdlincoln.com
merllr@verizon.net
merllr@verizon.net
ryoung@evmwd.net
environment@cox.net
cem@newsdata.com
stephen.velyvis@msrlegal.com
bca@cpuc.ca.gov
ang@cpuc.ca.gov
mey@cpuc.ca.gov
nms@cpuc.ca.gov