

126 FERC ¶ 61,078
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket Nos. ER08-654-001
ER08-654-002

ORDER GRANTING CLARIFICATION, IN PART, DENYING REHEARING, AND
CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued January 29, 2009)

1. On May 9, 2008, the Commission issued an order conditionally accepting an unexecuted Large Generator Interconnection Agreement (LGIA) between Nevada Hydro Company, Inc. (Nevada Hydro), California Independent System Operator Corporation (CAISO) and San Diego Gas & Electric Company (SDG&E).¹ The LGIA provided for the interconnection of a hydroelectric facility and an associated transmission line proposed by Nevada Hydro. On June 9, 2008, SDG&E filed a request for clarification or, in the alternative, rehearing of the May 9 Order, and CAISO submitted a revised LGIA, in compliance with the May 9 Order. This order grants clarification, in part, denies rehearing and conditionally accepts the compliance filing.

Background

2. Nevada Hydro's project consists of two components, 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 (collectively, Combined Project). The TE/VS Interconnect will run north-to-south between SDG&E's and Southern California Edison Company's (SoCal Edison) transmission systems, and a separate line will generally run east-to-west and connect the LEAPS Project to the TE/VS Interconnect near its midpoint. Once complete, the TE/VS Interconnect could carry power from

¹ *California Independent System Operator Corp.*, 123 FERC ¶ 61,140 (2008) (May 9 Order).

LEAPS to SoCal Edison's and SDG&E's systems or allow third parties to sell power between those systems. On April 26, 2005, Nevada Hydro applied to CAISO, pursuant to section 25.1 of the CAISO tariff, to interconnect the LEAPS Project to the CAISO grid.

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 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. 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 These studies 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.

5. On May 9, 2008, the Commission issued a conditional acceptance of the LGIA, subject to CAISO revising and submitting a new, non-conforming LGIA to include the

² The CAISO notes that the connection with SoCal Edison will likely involve similarly extensive Interconnection Facilities and Network Upgrades.

³ For example, the LEAPS Project is the subject of proceedings pending before this Commission, the United States Forest Service, and the California Public Utilities Commission. The TE/VS Interconnect is pending review before the California Public Utilities Commission for a Certificate of Public Convenience and Necessity. The TE/VS Interconnect is also pending approval from the CAISO pursuant to section 24 of CAISO's open access transmission tariff (OATT).

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 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).

TE/VS Interconnect in-service date, a restatement of the milestone dates for the advancement of costs, and Nevada Hydro's cost estimates. In addition, the Commission affirmed Nevada Hydro's option to self-build.⁵

I. Compliance Filing (ER08-654-002)

6. On June 9, 2008, CAISO submitted a compliance filing containing a revised LGIA that includes the in-service date that the Commission approved in the May 9 Order, Nevada Hydro's cost estimates, and project milestones that reflect the timeline that SDG&E believes is necessary for construction of the required Network Upgrades.⁶ In addition, CAISO states that it recognized Nevada Hydro's option to self-build.⁷

7. Notice of the CAISO's filing was published in the *Federal Register*, 73 Fed. Reg. 34,924 (2008), with protests and interventions due on or before June 30, 2008. Nevada Hydro filed a protest.

8. Nevada Hydro protests CAISO's revised LGIA, requesting that the Commission order CAISO to adopt Nevada Hydro's milestones for construction of the required network upgrades and use Nevada Hydro's estimated project costs, rather than SDG&E's, as the basis for calculating security due under the LGIA.⁸ On July 15, 2008, CAISO and SDG&E filed answers to Nevada Hydro's Protest.⁹

⁵ May 9 Order, 123 FERC ¶ 61,140 at P 13.

⁶ CAISO June 9, 2008 Compliance Filing Part 1, Docket No. ER08-654-002, at 4-5 (CAISO Transmittal Letter); *see also* CAISO June 9, 2008 Compliance Filing Part 2, Docket No. ER08-654-002, Appendix B.1(v); *id.* Appendix A.4 Table A.1; *id.* Appendix B (CAISO Revised LGIA).

⁷ CAISO Transmittal Letter at 6.

⁸ Nevada Hydro June 30, 2008 Protest, Docket No. ER08-654-002, at 6, 11, 13 (Nevada Hydro Protest).

⁹ CAISO July 15, 2008 Motion for Leave to Answer and Answer of the California Independent System Operator Corporation to the Protest of the Nevada Hydro Company, Docket No. ER08-654-002; SDG&E July 15, 2008 Motion for Leave to Answer and Answer of San Diego Gas & Electric Company to the Protest of the Nevada Hydro Company, Docket No. ER08-654-000.

II. Request for Clarification or, Alternatively, Rehearing (ER08-654-001)

9. In response to the May 9 Order, SDG&E requests clarification of the same issues that Nevada Hydro protests in the compliance proceeding.¹⁰ SDG&E requests clarification of the milestones, because the Commission's adoption of a June 30, 2010 in-service date for a project involving three years of design, procurement and construction, according to SDG&E, would necessitate backing up milestones to dates that have already passed.¹¹ As to the security requirements, SDG&E considers Nevada Hydro's estimated project costs too low and contends that such estimates impermissibly shift the risk of the cost of upgrades onto SDG&E.¹² SDG&E therefore requests clarification that the parties may use only SDG&E's cost estimates for the purpose of determining Nevada Hydro's ongoing security requirements.¹³ On June 24, Nevada Hydro filed an answer to SDG&E's petition for clarification, asking for milestones that are not backed up to dates that have already passed.¹⁴ Nevada Hydro also argues against adopting SDG&E's estimated project costs and urges that its own estimates be considered.¹⁵

III. Discussion

10. Because the protest to the compliance filing and the request for clarification cover the same subject matter and employ similar arguments, we respond to both in the following discussion.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2008), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept CAISO's or SDG&E's answers and will, therefore, reject them. In addition, Rule 713(d)(1) prohibits answers to requests for rehearing. *Id.* § 385.713(d)(1). We therefore reject Nevada Hydro's Answer as well.

¹⁰ SDG&E June 9, 2008 Petition for Clarification, or Alternatively, Rehearing, Docket No. ER08-654-001, at 1, 5-6 (SDG&E Petition for Clarification).

¹¹ *Id.* at 3.

¹² *Id.* at 5.

¹³ *Id.* at 1.

¹⁴ Nevada Hydro June 24, 2008 Response to the Motion for Clarification of San Diego Gas & Electric Company, Docket No. ER08-654-000, at 1-2 (Nevada Hydro Answer).

¹⁵ *See id.* at 2-3.

A. Milestones

12. SDG&E requests clarification of the milestones to be used in the revised LGIA, because some are backed up to dates that have already passed.¹⁶ CAISO included these milestones based on SDG&E's assumption that the TE/VS Interconnect will take three years to complete and on its belief that any other milestones would delay the June 30, 2010 in-service date.¹⁷ SDG&E argues that either the in-service date is itself infeasible or the milestones that occurred before submission of the revised LGIA must not be given legal effect.¹⁸ Therefore, SDG&E requests clarification that it will not be prejudiced by – or found noncompliant with – the revised LGIA due to milestones that have already passed.¹⁹ Nevada Hydro, however, requests milestones that are not backed up to passed dates.²⁰

13. We find that the milestones included by CAISO in its compliance filing are unreasonable. Simply put, the milestones in the revised LGIA are unreasonable because they include milestones and associated dates that have already passed and are therefore infeasible. Furthermore, the May 9 Order explicitly gives Nevada Hydro the right to propose milestones.²¹ If SDG&E disagrees with these milestones, then it must notify Nevada Hydro and allow it to proceed with the self-build option.²² Thus, SDG&E must either agree to new milestones, designed to effectuate Nevada Hydro's designated in-service date, or allow Nevada Hydro to self-build.²³ Under the self-build option, the

¹⁶ SDG&E Petition for Clarification at 1, 4, 5-6.

¹⁷ *Id.* at 3.

¹⁸ *Id.* at 3-4. SDG&E refers, in particular, to the milestones in its revised LGIA that occurred before June 9, 2008. *Id.* at 4.

¹⁹ *Id.* at 4.

²⁰ *See* Nevada Hydro Protest at 4-6.

²¹ May 9 Order, 123 FERC ¶ 61,140 at P 17 (discussing CAISO Revised LGIA art. 5.1.3).

²² May 9 Order, 123 FERC ¶ 61,140 at P 17. In the May 9 Order, the Commission concluded that the CAISO LGIA grants Nevada Hydro the option to self-build. *Id.* No party has requested rehearing on this issue.

²³ If Nevada Hydro were to exercise its option to self-build, then it could unilaterally select milestone dates for the construction of the Participating Transmission Owner's Interconnection Facilities and the Stand Alone Network Upgrades. *Id.*; *see also* CAISO Revised LGIA art. 5.1.3.

LGIA does not allow SDG&E to propose and adhere to its own milestones.²⁴ Accordingly, CAISO's compliance filing does not comply with the intent of the May 9 Order on this issue, and CAISO must resubmit proposed milestones consistent with our findings herein.

14. In addition, the May 9 Order noted that SDG&E and Nevada Hydro agree that LGIA article 11.5 allows Nevada Hydro to pay for upgrades using a schedule that reflects the sequencing of activities.²⁵ However, the sequencing of activities in the revised LGIA includes some backdated milestones.²⁶ Since we reject the backdated milestones, to the extent that the rejected milestones entail backdated payments, they are unreasonable as well.

15. Finally, SDG&E states that without clarification and further direction, it does not understand how either party can reasonably expect to effectuate the June 30, 2010 in-service date.²⁷ SDG&E premises this request on its belief that the project will take three years to complete.²⁸ However, Nevada Hydro proposes a shorter period, designed to meet its in-service date, for the construction of facilities that it would self-build.²⁹ In

²⁴ While this pertains to the Participating Transmission Owner's Interconnection Facilities and the Stand Alone Network Upgrades, it does not hold true for other Network Upgrades, such as the Participating Transmission Owner's Reliability and Delivery Network Upgrades, which the Interconnection Customer has no right to construct. *See, e.g.,* CAISO Revised LGIA Appendix A.2(b)(i), (ii); *id.* art. 5.1.3; Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 353. These must be built by SDG&E and funded by Nevada Hydro. *See* CAISO Revised LGIA art. 11.3.

²⁵ May 9 Order, 123 FERC ¶ 61,140 at P 21.

²⁶ *See* CAISO Transmittal Letter at 5 ("The timelines that SDG&E believes are necessary for construction of the required Network Upgrades consistent with meeting Nevada Hydro's In-Service Date result in establishing some milestones, including several milestones associated with required payments of financial security and other matters, at dates that have already passed.").

²⁷ SDG&E Petition for Clarification at 3.

²⁸ *Id.* at 3-4.

²⁹ Nevada Hydro Protest at 6 ("Obviously, the construction period will be shorter than 3 years if it is to fulfill the [in-]service date for the TE/VS Interconnect phase as the May 9 Order mandates.").

light of Nevada Hydro's ability to self-build, SDG&E's concern is unwarranted.³⁰ If Nevada Hydro does not self-build, the milestone dates will be left to the parties to negotiate in good faith.³¹ If Nevada Hydro and SDG&E then fail to reach an agreement on acceptable milestones for construction, SDG&E must assume responsibility for construction of the required interconnection facilities and network upgrades.³²

B. Cost Estimates

16. SDG&E considers Nevada Hydro's estimated project costs too low, claiming that they unfairly shift the risk of the project onto SDG&E and leave it liable for the deficiency should actual cost exceed the estimates.³³ Therefore, SDG&E requests clarification that the parties must use its estimates to determine Nevada Hydro's ongoing security requirements. SDG&E also requests Commission authorization of a footnote to LGIA Appendix A to the effect that Nevada Hydro's cost estimates are provided for informational purposes only.³⁴

³⁰ We note that Nevada Hydro's application for a Certificate of Public Convenience and Necessity (CPCN) is still pending before the California Public Utilities Commission (CPUC). The CPUC has required Nevada Hydro to file by February 17, 2009 (1) a new, amended application that complies with all deficiency requirements, (2) comments that persuade the CPUC as to why it should not dismiss the application with prejudice, or (3) a request to dismiss the application without prejudice. *See 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, Administrative Law Judge's Ruling Related to The Nevada Hydro Company's Nov. 12, 2008 Proponent's Environmental Assessment Filing*, A.07-10-005, at 1-6 (CPUC Dec. 30, 2008). While this raises the possibility that Nevada Hydro may prove incapable of meeting its own milestones, the LGIA allows for this possibility and provides the interconnection customer with flexibility to adjust its in-service, initial synchronization and commercial operation dates accordingly. *See CAISO Revised LGIA* at 83.

³¹ *See* CAISO Revised LGIA art. 5.1.4.

³² *See id.*; *see also id.* art. 5.1.1.

³³ SDG&E Petition for Clarification at 5.

³⁴ *See id.* at 6.

17. For its part, Nevada Hydro asserts that security requirements based solely on SDG&E's estimates would disregard the thrust of the May 9 Order on this issue,³⁵ and asks the Commission to deny SDG&E's request.³⁶ Nevada Hydro implies that the Commission would not have called for the inclusion of Nevada Hydro's estimates in the LGIA had it not intended for them to be used to determine the security amounts.³⁷

18. Nevada Hydro not only asks the Commission to deny SDG&E's request but, in its protest of the compliance filing, seeks clarification in its own right.³⁸ Specifically, Nevada Hydro views the May 9 Order as focused on the sequencing of security payments, not on their amount.³⁹ As a result, Nevada Hydro considers CAISO's reliance on SDG&E's estimates in the LGIA unresponsive to the May 9 Order on this issue.⁴⁰ Further, Nevada Hydro sees nothing in the May 9 Order to favor the use of SDG&E's cost estimates over its own, and it urges the Commission to adopt a new approach to determine the security requirements.⁴¹

19. Instead of relying solely on SDG&E's estimates, Nevada Hydro suggests using the midpoint between its own and SDG&E's estimates to determine its pre-bid security posting requirements.⁴² Nevada Hydro then recommends using the amounts of the bids themselves to determine such requirements after bid selection.⁴³ Finally, Nevada Hydro

³⁵ See Nevada Hydro Protest at 9-11. The May 9 Order allowed for the inclusion of Nevada Hydro's estimates in Appendix A to the revised LGIA. See May 9 Order, 123 FERC ¶ 61,140 at P 18-20.

³⁶ *Id.* at 9-12.

³⁷ *Id.* at 2-3; see also *id.* at 10-11 (“[T]here is no reason to conclude that the Commission intended that security amounts be based upon SDG&E's estimates and in disregard of Nevada Hydro's estimates. That disregard is contrary to the Commission's direction in the May 9 Order.”) (citation omitted).

³⁸ *Id.* at 11.

³⁹ *Id.* at 9-10.

⁴⁰ Nevada Hydro Protest at 10-11.

⁴¹ *Id.*

⁴² *Id.* at 11.

⁴³ *Id.*

advocates truing up any security postings made prior to bid selection to the actual, selected bids.⁴⁴ Nevada Hydro requests that the Commission order CAISO to amend the revised LGIA to reflect this approach.⁴⁵

20. The May 9 Order observed that neither Order No. 2003 nor the LGIA perfectly address whose cost estimates should be included in the LGIA.⁴⁶ In addition, the Commission noted SDG&E's statement that preliminary estimates were immaterial.⁴⁷ Based on both points, the Commission found it harmless to include Nevada Hydro's estimates in the LGIA.⁴⁸ But now that the revised LGIA actually includes both parties' estimates, the parties present the more precise question of whose cost estimates should determine the amount of security required.⁴⁹

21. One of the policy objectives of Order No. 2003 is to bring generation into national markets to meet growing demand and to promote increased competition.⁵⁰ Progress in this area not only necessitates standardized interconnection procedures but a proper balancing of the risk associated with the financing and development of new facilities.⁵¹

⁴⁴ *Id.*

⁴⁵ Nevada Hydro Protest at 11, 13.

⁴⁶ May 9 Order, 123 FERC ¶ 61,140 at P 20.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ In the May 9 Order, the Commission noted that if Nevada Hydro were to exercise its option to self-build, it would not be required to post security for the construction of the transmission owner's interconnection facilities or the stand alone network upgrades. *See id.* P 17; CAISO Revised LGIA art. 5.1.3; Nevada Hydro Protest at 11-12. But Nevada Hydro has not unequivocally stated its intention to self-build, so the Commission has addressed those issues here. While Nevada Hydro has stated that "everyone . . . believes [it] will actually build the Interconnection Facilities and Network Upgrades," Nevada Hydro Protest at 9, Nevada Hydro itself remains uncommitted. *See id.* at 11-12 (discussing what would happen "if Nevada Hydro self-builds") (emphasis added). Moreover, Nevada Hydro has asked the Commission to decide these issues "in the event that, as matters unfold, SDG&E performs any part of the construction." *Id.* at 12.

⁵⁰ Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 6.

⁵¹ *See id.* P 33.

⁵² After the facilities begin commercial operation, the transmission provider reimburses the interconnection customer for the cost of the network upgrades.⁵³

22. This balance also requires the interconnection customer to obtain security to protect the transmission provider from default during the design, procurement and construction phase.⁵⁴ But this particular demand on the interconnection customer is coupled with certain protections. First, the interconnection customer need only provide security for discrete portions or components of the project.⁵⁵ Second, the amount of security initially provided for each portion is reduced for every dollar the interconnection customer pays the transmission provider for such portion,⁵⁶ and the transmission provider must refund the interconnection customer to the extent that estimated cost exceeds actual cost.⁵⁷ These protections prevent the interconnection customer from having to provide too much security, lessening its financial exposure.⁵⁸

23. These are the protections that Order No. 2003 affords the interconnection customer. Order No. 2003 does not protect the interconnection customer by requiring its input in the formulation of the security amounts. On the contrary, the purchase of

⁵² *Id.* P 10.

⁵³ *See id.* P 10, 35.

⁵⁴ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 585, 593; CAISO Revised LGIA art. 11.5.

⁵⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 596; CAISO Revised LGIA art. 11.5, 12.1, 12.3.

⁵⁶ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 596; CAISO Revised LGIA art. 11.5.

⁵⁷ Order No. 2003, FERC Stats. & Regs. ¶ 31,146, Appendix C Standard Large Generator Interconnection Procedures (LGIP) Appendix 6 Standard Large Generator Interconnection Agreement Article 12.2; CAISO Revised LGIA art. 12.2.

⁵⁸ Similarly, in Order No. 2003, the Commission resisted calls to extend the 30-day window in which the interconnection customer must provide the transmission owner with a reasonable form of security. *See* Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 593.

security is meant to protect the transmission provider or owner,⁵⁹ which has greater incentive to ensure that the security purchased is meaningful. To the extent, then, that SDG&E's estimates exceed actual cost, Nevada Hydro will receive its protection not by reducing the amount of security it must provide at the outset, but in reducing the amount of security that it must provide as it makes payments.

24. The Commission therefore grants SDG&E's request and clarifies that the parties should use SDG&E's cost estimates for ascertaining the amount of security Nevada Hydro must post. In rejecting Nevada Hydro's cost estimates, we note that the May 9 Order merely called for the inclusion of Nevada Hydro's estimates in the revised LGIA.⁶⁰ We did not specify how those estimates would be used to determine security amounts.⁶¹

25. In conclusion, the Commission accepts CAISO's revised LGIA submitted in compliance with the May 9 Order, on the condition that CAISO submit a restatement of project milestones consistent with the discussion above.

C. Substitution of Reliable Advanced Transmission Technology

26. In its protest, Nevada Hydro also requests clarification that the LGIA allow the substitution of reliable advanced transmission technology.⁶² The Commission denies the request. Nevada Hydro raises this issue in its protest to CAISO's compliance filing submitted in Docket No. ER08-654-002, in response to the May 9 Order. The May 9 Order concerned only the in-service date of the TE/VS Interconnect, the milestones for advancement of costs, and the specification of cost estimates.⁶³ Because the May 9 Order did not address such issues as the substitution of reliable advanced transmission technology, the issue Nevada Hydro raises is beyond the scope of this proceeding.

⁵⁹ See, e.g., Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 430 (requiring that "any guarantee meet the Transmission Provider's creditworthiness standards," "any letter of credit be issued by a financial institution reasonable [sic] acceptable to the Transmission Provider," and that "any surety bond be issued by an issuer reasonable [sic] acceptable to the Transmission Provider.").

⁶⁰ May 9 Order, 123 FERC ¶ 61,140 at P 20 ("[W]e see no harm in allowing Nevada Hydro's cost estimates to be included in Appendix A.").

⁶¹ See *id.*

⁶² Nevada Hydro Protest at 12.

⁶³ See May 9 Order, 123 FERC ¶ 61,140 at P 22.

The Commission orders:

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

(B) SDG&E's request for clarification is granted, in part, and its request for rehearing denied, as discussed in the body of this order.

By the Commission. Commissioner Kelliher is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.