

133 FERC ¶ 61,155  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
John R. Norris, and Cheryl A. LaFleur.

The Nevada Hydro Company, Inc.

Docket No. ER06-278-007

ORDER DENYING REHEARING

(Issued November 18, 2010)

1. Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric Company (SDG&E), and Southern California Edison Company (SoCal Edison) (collectively, Filing Parties) filed a joint petition for rehearing of a March 24, 2008 Commission order<sup>1</sup> accepting in part and denying in part The Nevada Hydro Company, Inc.'s (Nevada Hydro) request for transmission rate incentives for its proposed TE/VS Interconnect<sup>2</sup> and Lake Elsinore Advanced Pump Storage project (LEAPS facility). The request for rehearing is limited to the Commission's ruling on Nevada Hydro's allowed return on equity (ROE).<sup>3</sup> This order denies rehearing but clarifies that Nevada Hydro will not be limited to using a region-wide proxy group consisting only of members of the Western Electricity Coordinating Council (WECC) in a subsequent rate filing pursuant to section 205 of the Federal Power Act (FPA).<sup>4</sup> This order further clarifies that the Commission does not require up-front ROE determinations<sup>5</sup> in all cases and has made no

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<sup>1</sup> *The Nevada Hydro Company, Inc.*, 122 FERC ¶ 61,272 (2008) (March 2008 Order).

<sup>2</sup> The Talega-Escondido/Valley-Serrano Interconnect project (TE/VS Interconnect) is a 30-mile, 500 kV transmission line that will connect SDG&E's transmission system with SoCal Edison's system.

<sup>3</sup> Filing Parties April 23, 2008 Petition for Rehearing, Docket No. ER06-278-007 (Filing Parties Petition).

<sup>4</sup> 16 U.S.C. § 824(d) (2006).

<sup>5</sup> For purposes of this order, up-front ROE determinations include those situations in which the Commission makes ROE determinations following a paper hearing process,  
(continued...)

determination whether to adopt an up-front ROE determination in connection with Nevada Hydro's anticipated section 205 filing.<sup>6</sup> Whether we will make an up-front ROE determination will depend on the facts and circumstances of the individual cases.

## **I. Background**

2. On December 1, 2005, as amended on December 22, 2005, Nevada Hydro submitted a filing, pursuant to section 205 of the FPA, to request approval of certain rate incentives that it states will enable it to attract financing for the LEAPS facility and the TE/VS Interconnect (Combined Project). On November 17, 2006, the Commission issued an order that deferred ruling on the merits of the rate incentives requested by Nevada Hydro, pending the submission of additional information.<sup>7</sup> In particular, the CAISO was directed to convene a stakeholder process to explore primarily the operational/management aspect of Nevada Hydro's proposal for the LEAPS facility. On December 18, 2006, and May 1, 2007, Nevada Hydro and the CAISO submitted compliance filings in response to the November 2006 Order.

3. The March 2008 Order accepted Nevada Hydro's requested rate incentives for the proposed TE/VS Interconnect, granting it an incentive equity return set within the upper end of the zone of reasonableness to be determined through a subsequent proceeding under section 205 of the FPA and a hypothetical 50 percent equity/50 percent debt capital structure during the construction period. However, the Commission denied Nevada Hydro's request for full recovery of Construction Work in Progress (CWIP), abandonment costs and a three-year rate moratorium. The Commission also found that the LEAPS facility could not be operated and/or managed by CAISO or functionalized as

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as well as situations in which the ROE determination is made on the basis of a review of a party's filing and any protests.

<sup>6</sup> On April 21, 2008, the California Independent System Operator Corporation (CAISO) filed a Motion for Clarification of the March 2008 Order. The Commission granted the CAISO's request for clarification in an order issued November 2, 2009. *Nevada Hydro Company, Inc.; Cal. Ind. Sys. Operator Corp.*, 129 FERC ¶ 61,098 (2009).

<sup>7</sup> *The Nevada Hydro Company, Inc.*, 117 FERC ¶ 61,204 (2006) (November 2006 Order). The procedural history from the date of Nevada Hydro's initial filing to the issuance of the November 2006 Order is set forth in the November 2006 Order.

transmission for rate recovery purposes.<sup>8</sup> The Commission also determined that the LEAPS facility was ineligible for incentive rate treatment pursuant to Order No. 679.<sup>9</sup>

## **II. Request for Rehearing**

4. The Filing Parties argue that the Commission erred by: (1) directing Nevada Hydro to use a proxy group excluding utilities located outside of the WECC; and (2) mandating the use of an up-front ROE determination methodology in Nevada Hydro's subsequent FPA section 205 filing to implement rates for the TE/VS Interconnect.<sup>10</sup> No other issues were raised by the Filing Parties' request for rehearing and no other requests for rehearing were filed.

### **A. Regional Proxy Groups**

5. The Filing Parties state that the use of regional proxy groups distorts the discounted cash flow analysis (DCF) of the comparable group of utilities used to gauge an applicant's requested ROE. In particular, the Filing Parties argue that the WECC region-wide proxy group fails to include all of the relevant risk factors facing a utility, belying the applicant's true cost of equity. Specifically, the Filing Parties note that western utilities operate under different market structures, rely on different portfolios of power supply resources, experience diverse climates, and are sometimes governed by different market rules.<sup>11</sup> Instead of a regional proxy group, the Filing Parties urge the Commission to either adopt a national sample or eliminate its requirement of a WECC-only proxy group.<sup>12</sup>

### **Commission Determination**

6. Our primary finding in the March 2008 Order was that, based on the evidence provided by Nevada Hydro, the Commission was unable to conclude that Nevada

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<sup>8</sup> See March 2008 Order, 122 FERC ¶ 61,272 at P 1.

<sup>9</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>10</sup> Filing Parties Petition at 6-7.

<sup>11</sup> *Id.* at 11-12.

<sup>12</sup> *Id.* at 16-17.

Hydro's requested returns are within the range of reasonable returns.<sup>13</sup> We further concluded that Nevada Hydro has not provided sufficient evidence in support of its proposed proxy group.<sup>14</sup>

7. In a concurrently issued order on rehearing in the *Atlantic Path 15* proceeding, we clarify our policy on proxy group composition.<sup>15</sup> As explained in that order, the Commission's obligation is to ensure that a filing company's proxy group consists of companies with comparable risks to those facing the applicant.<sup>16</sup> While geographic proximity may be a relevant factor in identifying companies with comparable risks, it is not the sole basis for inclusion of companies in a proxy group. Thus, the Commission will not mandate that a proxy group must be composed of companies in the same geographic region as the filing company.

8. Elaborating on this point, we also note in today's *Atlantic Path 15* rehearing order:

[T]he question of which companies should be included in a proxy group is properly resolved based on the facts and circumstances of each case. In some cases, a filing company may rely solely on companies in its region to form a proxy group and to perform its DCF analysis, after demonstrating that these companies have comparable risk to the filing company. In other cases, a filing company may identify companies with comparable risk by looking beyond its geographic region. The filing company must, of course, fully support its choice of a proxy group, and intervenors are free to challenge the reasonableness of the filing company's choice.<sup>17</sup>

We decline to prejudge the proxy group that Nevada Hydro should utilize when Nevada Hydro submits its FPA section 205 filing to establish its rates and proposed ROE for the TE/VS Interconnect.

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<sup>13</sup> March 2008 Order, 122 FERC ¶ 61,272 at P 46.

<sup>14</sup> *Id.* (citing *Trans-Allegheny Interstate Line, Co.*, 119 FERC ¶ 61,219, at P 40 (2007)).

<sup>15</sup> *Atlantic Path 15, LLC*, 133 FERC ¶ 61,153 (2010).

<sup>16</sup> *See id.* P 13.

<sup>17</sup> *Id.* P 14.

9. Accordingly, the Filing Parties' request for rehearing is denied. The Commission will address the reasonableness of a proxy group in the course of Nevada Hydro making a FPA section 205 filing to establish its rates and proposed ROE for the TE/VS Interconnect.

**B. Up-Front ROE Determination**

10. The Filing Parties also argue that the Commission should not mandate the use of an up-front ROE determination in Nevada Hydro's subsequent FPA section 205 filing to implement its rates for the TE/VS Interconnect.<sup>18</sup> While entities seeking incentive rate treatment may benefit from quick ROE decisions in order to finance their projects, the Filing Parties consider this rationale inapplicable to general rate cases, where according to Filing Parties, filing parties do not face pressing financing needs.

11. Second, the Filing Parties posit that applicants in general rate cases that are willing to undergo the scrutiny of a hearing should be able to develop their own proxy group. Third, the Filing Parties contend that a difference exists between the focus of a general rate case and an incentive rate case, and that this difference requires different procedures. The Filing Parties describe the focus of an incentives case as ensuring that ROE does not exceed the range of reasonable returns. On the other hand, they believe that the focus of a general rate case is to establish a range of reasonable returns and to place the ROE of the applicant within that range. In general rate cases, the Filing Parties urge that the inquiry requires a more tailored analysis of the comparable group. The Filing Parties also argue that applicants that are willing to forego the benefits of an up-front ROE analysis should have the flexibility to propose alternative screening criteria from those set forth in *Atlantic Path 15*.

**Commission Determination**

12. In response to Filing Parties argument that we should not require an up-front ROE determination in Nevada Hydro's subsequent FPA section 205 filing, we clarify that our decision to make an up-front ROE determination will depend on the facts and circumstances of each individual case. The Commission also finds that it would be premature to decide at this time how we will proceed in processing Nevada Hydro's FPA section 205 filing

13. Nonetheless, we affirm that the Commission retains discretion to make up-front ROE determinations if the record before it is sufficient to make such a summary finding. Recently, in *Pioneer Transmission LLC*,<sup>19</sup> the Commission rejected the claim that it must

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<sup>18</sup> Filing Parties Petition at 17.

<sup>19</sup> 130 FERC ¶ 61,044 (2010) (*Pioneer*).

always order trial-type hearings in ROE cases. As the Commission noted in *Pioneer*, federal courts have held that a formal trial-type hearing is unnecessary where there are no material facts in dispute.<sup>20</sup> The Commission further emphasized that it is not sufficient for a protesting party merely to allege an issue of disputed fact—parties “must make an adequate proffer of evidence to support them.”<sup>21</sup> The *Pioneer* order emphasized, “The Commission is only required to provide a trial-type hearing if the material facts in dispute cannot be resolved on the basis of written submissions in the record.”<sup>22</sup>

14. The same principles that the Commission articulated in *Pioneer* may also be applied to general rate cases. If we are able to make summary determinations based on the written record, then we are not required to establish trial-type evidentiary hearing procedures. If intervenors believe that a trial-type hearing is more appropriate than an up-front ROE determination in general rate cases or incentive rate cases, we will consider such arguments on a case-by-case basis. Likewise, where filing companies themselves request that the Commission establish hearing procedures, we will consider those requests as well.

15. In light of this clarification with respect to the Commission’s approach to making up-front ROE determinations, we deny the Filing Parties’ request for rehearing. Whether we will make an up-front ROE determination in Nevada Hydro’s subsequent FPA section 205 filing will depend on the facts and circumstances presented by that filing.

The Commission orders:

The Commission denies the requests for rehearing filed by PG&E, SDG&E, and SoCal Edison, as discussed in the body of this order.

By the Commission.

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>20</sup> *Id.* P 35 (citing *Moreau v. FERC*, 982 F.2d 556, 568 (D.C. Cir. 1993)). See also, e.g., *Blumenthal v. FERC*, 613 F.3d 1142, 1144 (D.C. Cir. 2010).

<sup>21</sup> *Pioneer*, 130 FERC ¶ 61,044 at P 35 (quoting *Cerro Wire & Cable Co. v. FERC*, 677 F.2d 124, 129 (D.C. Cir. 1982)).

<sup>22</sup> *Id.* n.73.