

129 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Nevada Hydro Company, Inc.
California Independent System Operator Corporation

Docket Nos. ER06-278-007
ER08-654-003
(not
consolidated)

ORDER ON COMPLIANCE

(Issued November 2, 2009)

1. On January 29, 2009, the Commission issued an order conditionally accepting a revised Large Generator Interconnection Agreement (LGIA) among The Nevada Hydro Company, Inc. (Nevada Hydro), the California Independent System Operator Corporation (CAISO), and San Diego Gas & Electric Company (SDG&E).¹ The revised LGIA provided for the interconnection of a hydroelectric facility and an associated transmission line proposed by Nevada Hydro. On February 26, 2009, the CAISO and SDG&E submitted a second revised LGIA, in compliance with the January 2009 Order (CAISO February 26 Compliance Filing). In addition, on June 22, 2009, Nevada Hydro submitted a letter requesting formal waiver of the CAISO tariff, based on the record and Commission orders previously issued in Docket Nos. ER08-654 and ER06-278.
2. This order accepts the CAISO's compliance filing in Docket No. ER08-654-003, effective May 11, 2008. This order also grants the CAISO's request for clarification in Docket No. ER06-278-007, and rejects Nevada Hydro's tariff waiver request.

I. Background

3. Nevada Hydro's proposed 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,

¹ *California Independent System Operator Corp.*, 126 FERC ¶ 61,078 (2009) (January 2009 Order).

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.

4. The TE/VS Interconnect will interconnect to SDG&E's portion of the CAISO grid at a new Case Springs 230 kV substation. As of the January 2009 Order, the Combined Project had approvals pending before this Commission, the United States Forest Service, and the California Public Utilities Commission. According to the CAISO, the TE/VS Interconnect is not actively being studied within the CAISO's transmission planning process, under section 24 of the CAISO's Open Access Transmission Tariff (OATT). On April 16, 2009, the California Public Utilities Commission dismissed Nevada Hydro's application for a Certificate of Public Convenience and Necessity for the TE/VS Interconnect without prejudice.²

5. The CAISO, in coordination with SDG&E, performed the studies governed by the CAISO's Large Generator Interconnection Procedures (LGIP), adopted pursuant to Order No. 2003.³ After negotiations concerning the terms of the LGIA reached an impasse, Nevada Hydro requested an unexecuted LGIA to be filed with the Commission. On May 9, 2008, the Commission issued a conditional acceptance of the LGIA, subject to the CAISO revising and submitting a new, non-conforming LGIA to include the 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.⁴

6. On June 9, 2008, the CAISO submitted a compliance filing containing a revised LGIA that included the requisite in-service date, Nevada Hydro's cost estimates, and project milestones reflecting the timeline that SDG&E believed necessary for

² California Public Utilities Commission, decision issued April 16, 2009, available at http://docs.cpuc.ca.gov/PUBLISHED/FINAL_DECISION/99913-04.htm.

³ *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).

⁴ *California Independent System Operator Corp.*, 123 FERC ¶ 61,140 (2008) at P 13.

construction of the required network upgrades.⁵ In addition, the CAISO recognized Nevada Hydro's option to self-build.⁶ The January 2009 Order accepted the revised LGIA, on the condition that the CAISO submit a restatement of the project milestones⁷ and clarified the use of SDG&E's cost estimates in the revised LGIA.⁸

II. Notice of Filing and Responsive Pleadings

7. Notice of the CAISO's filing was published in the *Federal Register*, 74 Fed. Reg. 15475 (2009), with protests and interventions due on or before April 17, 2009. Nevada Hydro filed a protest.

8. Nevada Hydro protests the CAISO's second revised LGIA, requesting that the Commission order the CAISO to amend Appendix B to reflect Nevada Hydro's selected initial synchronization, trial operation and commercial operation dates.⁹ On April 14, 2009, the CAISO filed an answer to Nevada Hydro's protest.¹⁰

III. Discussion

A. Procedural Matters

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest, unless otherwise ordered by the decisional authority. We will accept the CAISO's answer because it has provided information that assisted us in our decision-making process.

⁵ 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 (Revised LGIA).

⁶ CAISO February 26 Compliance Filing at 6.

⁷ January 2009 Order, 126 FERC ¶ 61,078 at P 13, 25.

⁸ *Id.* P 24.

⁹ Nevada Hydro March 30, 2009 Protest, Docket No. ER08-654-002, at 2 (Nevada Hydro Protest).

¹⁰ CAISO April 14, 2009, Answer, Docket No. ER08-654-002 (CAISO Answer).

B. The CAISO's Compliance Filing

10. The CAISO's February 26 Compliance Filing contains a second revised LGIA that includes the January 4, 2011 in-service date requested by Nevada Hydro, but different initial synchronization, trial operation and commercial operation dates from those selected by Nevada Hydro.¹¹

11. The CAISO states that it must also conduct further studies under section 4.4 of its large generator interconnection procedures to determine whether Nevada Hydro's extension of its milestone dates constitutes a material modification of its project that would adversely impact lower-queued interconnection customers.¹² Last, SDG&E and the CAISO contend that the CAISO must still evaluate the TE/VS Interconnect on a stand-alone basis, pursuant to the CAISO transmission planning process.¹³ The CAISO explains that SDG&E evaluated the TE/VS Interconnect only in conjunction with the LEAPS facility, and that it did not examine whether the network upgrades described in the LGIA were sufficient to safely and reliably support the TE/VS Interconnect as a stand-alone facility.¹⁴

1. Milestones

12. Nevada Hydro notes that the CAISO has agreed to its proposed in-service date for the TE/VS Interconnect. However, Nevada Hydro takes issue with the initial synchronization, trial operation, and commercial operation dates that the CAISO has included in the LGIA. Nevada Hydro asks the Commission to direct the CAISO to resubmit the LGIA with Nevada Hydro's proposed dates which are earlier than those proposed by the CAISO, on the ground that they provide for the passage of more than a year before the TE/VS Interconnect would be placed into service.¹⁵ Nevada Hydro does not explain how these three dates are relevant to the TE/VS Interconnect.

¹¹ CAISO February 26 Compliance Filing, at 1-2; CAISO February 26 Compliance Filing, LGIA Appendix B.1, Docket No. ER08-654-003 (Second Revised LGIA).

¹² CAISO February 26 Compliance Filing at 2.

¹³ *Id.* at 9.

¹⁴ *Id.* at 2, 9.

¹⁵ Nevada Hydro Protest at 2.

13. According to the CAISO, under the terms of the LGIA, the initial synchronization, trial operation and commercial operation dates pertain only to the LEAPS facility, not to the TE/VS Interconnect. Specifically, the CAISO argues that the initial synchronization date is “the date upon which an Electric Generating Unit is initially synchronized and upon which Trial Operation begins.”¹⁶ According to the CAISO, the trial operation period is when “the Interconnection Customer is engaged in on-site test operations and commissioning of an Electric Generating Unit prior to Commercial Operation.”¹⁷ Finally, the CAISO asserts that the commercial operation date refers only to an electric generating unit and facility, not to stand-alone transmission lines.¹⁸

14. The CAISO states that it is necessary to clarify the mixture of milestone dates for Nevada Hydro’s transmission facilities and generating facility in the LGIA, recognizing that the Commission has directed that the in-service date associated with the transmission facilities is the appropriate date on which to base the construction schedule of the interconnection facilities and network upgrades in this LGIA.¹⁹ The CAISO argues that it has incorporated separate listings of the milestone dates for Nevada Hydro’s transmission facilities and its generating facility in order to account for the accurate use of the terms “initial synchronization date,” “trial operation period,” and “commercial operation date.”

15. The CAISO further states that the dates included in the LGIA related to the construction schedule for the generating facility were provided by Nevada Hydro itself in a conference call among the CAISO, SDG&E and Nevada Hydro on February 10, 2009.²⁰ The CAISO argues that it is inconsistent to use only the dates Nevada Hydro provided regarding the construction schedule for its transmission facilities, as would be the case under Nevada Hydro’s protest, and ignore the later dates associated with the construction schedule for the generating facility. The CAISO notes that such a result would be inconsistent with the primary function of the LGIA as an interconnection

¹⁶ See Second Revised LGIA, art. 1, Definitions, at 5. In addition, the LGIA defines an Electric Generating Unit as “an individual electric generator and its associated plant and apparatus whose electrical output is capable of being separately identified and metered.” *Id.* at 3.

¹⁷ *Id.* at 9.

¹⁸ *Id.* at 3.

¹⁹ CAISO Answer at 3.

²⁰ *Id.* at 4.

agreement for a generating facility and would introduce illogical results in the application of provisions of the LGIA.²¹

2. Adverse Impact on Lower-Queued Interconnection Customers

16. The CAISO states that in the course of discussing this matter, Nevada Hydro has requested an extension of the milestone dates it had previously proposed in order to reflect a change in the overall schedule for its project. The CAISO indicates that it has reflected the extension in Appendix B to the CAISO's February 26 Compliance Filing. The CAISO further states that the extension of the milestone dates requested by Nevada Hydro move the projected commercial operation date for the LEAPS Project more than three years beyond the commercial operation date in Nevada Hydro's interconnection request and used in the interconnection studies performed for the LEAPS Project.²²

17. The CAISO states that, while the new milestone dates requested by Nevada Hydro have been incorporated into the LGIA provided by the CAISO along with its February 26 Compliance Filing, the CAISO considers it necessary at this time to undertake additional studies pursuant to section 4.4 of the LGIP to determine whether the extension constitutes a material modification of Nevada Hydro's proposed project that might result in an adverse impact on lower-queued interconnection customers.²³

18. The CAISO goes on to discuss the possible implications of a finding that the new milestone dates requested by Nevada Hydro result in an adverse impact on a lower-queued interconnection customer. Upon such a finding the CAISO would expect to advise Nevada Hydro of the need to remedy the adverse impact. The CAISO anticipates that Nevada Hydro might claim that it is entitled to an extension on the basis that the Commission proceedings on this matter constituted a *force majeure* situation, which could excuse it from responsibility for any adverse impact on lower-queued interconnection customers. The CAISO disagrees that Commission proceedings constitute a *force majeure* situation. The CAISO states that it would propose to amend the LGIA to make Nevada Hydro responsible for any necessary network upgrades resulting from a finding of adverse impacts on lower-queued interconnection customers, and consider seeking a waiver of any provisions of the CAISO's LGIP or LGIA that

²¹ *Id.*

²² CAISO February 26 Compliance Filing at 8.

²³ *Id.*

might require Nevada Hydro to withdraw and resubmit its interconnection request in connection with the possible amendment to the current LGIA.²⁴

3. Commission Determination

19. With respect to the milestone dates, Nevada Hydro does not explain in its protest what concerns it has with respect to the dates applicable to the LEAPS facility. Nevada Hydro bases its protest on the premise that the CAISO's dates will delay the TE/VS Interconnect, yet Nevada Hydro fails to explain how the dates apply to the transmission facility or why the differing dates applicable to the generating facility would result in any delay to the transmission facility. Nor does Nevada Hydro argue that the CAISO's dates are inaccurate as they relate to the generating facility. As a result, we find Nevada Hydro's protest misplaced and deny its request. We accept the CAISO's second revised LGIA in compliance with the January 2009 Order.

20. The Commission recognizes that a lengthy extension of the milestone dates for an interconnection customer's project can warrant additional interconnection studies to determine the cost and impacts of interconnection.²⁵ However, the CAISO's expressed concerns regarding the possible results of additional studies and treatment of those possible results in the interconnection process are speculative at this time. Accordingly, we decline to address any issues that may or may not arise as a result of the additional interconnection studies that result from extensions to the milestone dates for Nevada Hydro's interconnection request.

IV. The CAISO's Request for Clarification and Nevada Hydro's Request for Tariff Waiver

21. On June 22, 2009, Nevada Hydro submitted what it termed a formal request for waiver from the CAISO's tariff, for both the TE/VS Interconnect and LEAPS facility.²⁶ Nevada Hydro bases its request on the record and Commission orders in two dockets: ER08-654 and ER06-278.

22. On March 24, 2008, in Docket No. ER06-278, the Commission granted Nevada Hydro an incentive equity return,²⁷ based on a finding that its project would enhance

²⁴ *Id.* at 8-9.

²⁵ *See infra.* at P 23.

²⁶ Nevada Hydro Waiver Request at 2.

²⁷ *The Nevada Hydro Co.*, 122 FERC ¶ 61,272, at P 47, 49-51, Ordering Para. (A) (2008) (March 2008 Order).

reliability.²⁸ On April 21, 2008, the CAISO requested clarification that this aspect of the March 24 Order did not obviate the need for the CAISO to study the TE/VS Interconnect pursuant to the CAISO's transmission planning process.²⁹ Nevada Hydro opposed the CAISO's request, and asked the Commission to clarify that further CAISO studies were unnecessary and foreclosed, in light of earlier CAISO studies of the combined project that found reliability benefits of the TE/VS Interconnect as a stand-alone project.³⁰

A. Procedural Issues

23. Because Nevada Hydro – and the CAISO – have referenced transmission planning and tariff waiver issues in Docket No. ER08-654-003,³¹ we will resolve those arguments here. This order does not, however, address any other issues in Docket No. ER06-278-007. The Commission will respond to those remaining issues in a separate order, to be issued at a later date.

24. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Nevada Hydro's answer because it has assisted us in our decision-making process.

B. Commission Determination

1. Docket No. ER06-278-007

25. The CAISO has requested clarification of whether the Commission's March 2008 Order obviates the need for study of the proposed TE/VS Interconnect under CAISO's transmission planning process.³² It does not. In the March 2008 Order, the Commission found that the TE/VS Interconnect would ensure reliability in the context of determining whether the project deserved transmission rate incentives under Order No. 679. That analysis has no bearing on the CAISO's transmission planning process, so our finding would not render unnecessary or foreclose that process. Whether a project has

²⁸ *See id.* P 22-24, 26-27.

²⁹ CAISO Motion for Clarification, Docket No. ER06-278-007, April 21, 2008, at 2, 5 (CAISO Motion).

³⁰ Nevada Hydro Answer May 6, 2008, Docket No. ER06-278-000, at 2.

³¹ *See supra* note 13.

³² CAISO Motion at 5.

demonstrated reliability and congestion benefits in connection with Commission consideration of granting an incentive rate does not address the transmission planning purpose of evaluating the project relative to other alternatives.³³ We therefore grant the CAISO's request for clarification and deny Nevada Hydro's request for clarification.

2. Docket No. ER08-654-003

26. Nevada Hydro has requested waiver of the CAISO tariff to avoid further study under the CAISO's transmission planning process.³⁴ However, the issue in this proceeding is whether the CAISO's revised LGIA complies with the January 2009 Order, and not the CAISO's transmission planning process.³⁵

27. In the January 2009 Order, we accepted the CAISO's revised LGIA, on the condition that the CAISO re-file a further revised LGIA with non-backdated project milestones.³⁶ The CAISO's February 26 Compliance Filing contains an agreed-upon in-service date, but to Nevada Hydro's proposed milestone dates adds new dates for initial synchronization, trial operation and commercial operation of the LEAPS facility.³⁷

28. In light of our finding that these three new dates do not pertain to the TE/VS Interconnect, the sole issue remaining is whether the CAISO has complied with the Commission's January 2009 directive with respect to the in-service date. We conclude

³³ See March 2008 Order, 122 FERC ¶ 61,272 at n.42, (explaining that the Commission recognizes that competing proposals have been submitted to the CAISO regional planning group for review and stating that the Commission's findings do not constitute an endorsement of Nevada Hydro's proposal over any other proposal).

³⁴ See Nevada Hydro Waiver at 1-2; *see also* Nevada Hydro Answer at 9-10.

³⁵ Nevada Hydro filed its waiver request in Docket No. ER08-654-003, which concerns the appropriate milestone dates in the parties' LGIA. And yet Nevada Hydro bases its waiver request on various difficulties with the CAISO transmission planning process. According to the CAISO, the only milestone dates affected by the transmission planning process are the project milestones other than the in-service date. *See* CAISO February 26 Compliance Filing at 9; *see also id.* Appendix B.1. Because we find these dates inapplicable to the TE/VS Interconnect, it is not apparent what relevance CAISO's transmission process has to this proceeding.

³⁶ See January 2009 Order, 126 FERC ¶ 61,078 at P 1, 8, 12-13, Ordering Para. (A).

³⁷ See Second Revised LGIA, Appendix B.1.

that it has. As a result, we find Nevada Hydro's request beyond the scope of this proceeding.

The Commission orders:

The CAISO's compliance filing is accepted, effective May 11, 2008.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.