

131 FERC ¶ 61,124
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The Nevada Hydro Company, Inc.
California Independent System Operator Corporation

Docket Nos. ER06-278-008
ER08-654-004
(not
consolidated)

ORDER DENYING REHEARING

(Issued May 7, 2010)

1. On December 1, 2009, Elsinore Valley Municipal Water District (Elsinore) filed a request for clarification or, in the alternative rehearing of a November 2, 2009 Commission order.¹ That order accepted a compliance filing² by the California Independent System Operator Corporation (CAISO) in Docket No. ER08-654-003 and granted the CAISO's request for clarification and denied Nevada Hydro's request for tariff waiver in connection with Docket No. ER06-278-007.³ This order denies Elsinore's request for clarification and rehearing.

I. 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

¹ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,098 (2009) (November 2009 Order).

² The compliance filing, submitted on February 26, 2009, consisted of a second revised large generator interconnection agreement (LGIA) among the California Independent System Operator Corporation (CAISO), The Nevada Hydro Corporation, Inc. (Nevada Hydro), and San Diego Gas & Electric Company (SDG&E).

³ The CAISO filed its Motion for Clarification in Docket No. ER06-278-007 on April 21, 2008. Nevada Hydro included a request for waiver from the CAISO tariff in comments it filed in Docket No. ER06-278-007 on June 22, 2009.

facility with an installed generating capacity of 500 MW, and the Talega-Escondido/Valley-Serrano Interconnect project (TE/VS Interconnect), which is a 30-mile, 500 kV transmission line. The TE/VS Interconnect will run north-to-south between SDG&E's and Southern California Edison Company's (SoCal Edison) transmission line, and a separate line will generally run east-to-west and connect the LEAPS Project to the TE/VS Interconnect near its midpoint.

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 CAISO, in coordination with SDG&E, performed the studies related to the combined LEAPS Project and TE/VS Interconnect, as governed by the CAISO's large generator interconnection procedures. On February 26, 2009, the CAISO and SDG&E submitted under Docket No. ER08-654-003 a second revised LGIA,⁴ which the Commission accepted in the November 2009 Order.

4. On March 24, 2008, the Commission issued its order accepting in part and denying in part Nevada Hydro's requested rate incentives for the proposed TE/VS Interconnect, under Docket No. ER06-278.⁵ Pacific Gas and Electric Company (PG&E) and SoCal Edison filed a request for rehearing of the March 2008 Order.⁶ In addition, on April 21, 2008, the CAISO filed a motion for clarification under Docket No. ER06-278-007.

5. The CAISO's motion for clarification stated that Nevada Hydro's interpretation of the March 2008 Order would circumvent the CAISO's transmission planning process.⁷ Accordingly, the CAISO asked the Commission to clarify whether the March 2008 Order

⁴ The CAISO, SDG&E and Nevada Hydro had engaged in discussions regarding the LGIA, including the filing of an unexecuted LGIA and an earlier revised LGIA. The CAISO and SDG&E filed the second revised LGIA in compliance with the Commission's order in *Calif. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,078 (2009).

⁵ *The Nevada Hydro Company Inc.*, 122 FERC ¶ 61,272 (2008) (March 2008 Order).

⁶ PG&E and SoCal Edison's request for rehearing remains pending before the Commission and was not addressed in the November 2009 Order.

⁷ CAISO motion for clarification, Docket No. ER06-278-007 (April 21, 2008), at 4, citing a letter that Nevada Hydro sent to the CAISO, dated April 7, 2008 and attached to the CAISO's motion for clarification.

obviates the need for the CAISO's transmission planning process as it relates to the evaluation of the proposed TE/VS Interconnect.⁸

6. On June 22, 2009, Nevada Hydro filed a pleading in both Docket Nos. ER06-278 and ER08-654, requesting waiver from the CAISO's tariff (Tariff Waiver Request). The Tariff Waiver Request explained that Nevada Hydro's projects have been removed from the CAISO's 2009 transmission plan and that it is Nevada Hydro's position that "it is not possible" to obtain a completed LGIA, or gain Participating Transmission Owner status, much less obtain CAISO "Board Approval" for Nevada Hydro's project. As a result, Nevada Hydro sought a waiver from the CAISO's tariff in order to allow Nevada Hydro's Project to proceed without following the requirements of the CAISO tariff.

II. The Commission's November 2009 Order

7. The issues raised by Nevada Hydro in connection with the CAISO's February 26, 2009 compliance filing related to certain milestone dates proposed by the CAISO in the LGIA. Specifically, the CAISO proposed dates for initial synchronization, trial operation and commercial operation different from those selected by Nevada Hydro.⁹ In addition, the CAISO indicated that the CAISO was required to conduct further studies under section 4.4 of the CAISO's large generator interconnection procedures to determine whether Nevada Hydro's extension of its milestone dates constitutes a material modification of Nevada Hydro's project that would adversely impact lower-queued interconnection customers.¹⁰

8. Nevada Hydro's protest requested that the Commission direct the CAISO to resubmit the LGIA with Nevada Hydro's proposed initial synchronization, trial operation and commercial operation dates. Nevada Hydro did not explain how the three milestone dates are relevant to the TE/VS Interconnect.¹¹

9. The November 2009 Order accepted the CAISO's compliance filing in Docket No. ER08-654-003, finding that Nevada Hydro's protest was misplaced. The Commission declined to address any issues related to the additional interconnection

⁸ *Id.* at 5.

⁹ *See* November 2009 Order, 129 FERC ¶ 61,098 at P 10.

¹⁰ *Id.*

¹¹ *Id.* P 12.

studies that result from extensions to the milestone dates for Nevada Hydro's interconnection request.¹²

10. The Commission granted the CAISO's request for clarification in Docket No. ER06-278-007, finding that the Commission's March 2008 Order¹³ does not obviate the need for study of the proposed TE/VS Interconnect under the CAISO's transmission planning process. We also denied Nevada Hydro's request for clarification and its request for waiver of the CAISO's tariff.¹⁴

11. Other than the transmission planning and tariff waiver, the Commission explicitly declined to address any remaining issues in Docket No. ER06-278-007.¹⁵

III. Elsinore's Request for Clarification or Rehearing of the November 2009 Order

12. On December 1, 2009, Elsinore submitted a Request for Clarification, or in the Alternative, Rehearing (Elsinore Request) of the November 2009 Order. Elsinore filed the Elsinore Request in Docket Nos. ER06-278, ER08-654 and Project No. 11858.¹⁶

13. The Elsinore Request noted that the November 2009 Order was issued in unconsolidated docket numbers ER06-278 and ER08-654. Elsinore noted that it is an intervenor in Docket No. ER06-278 and indicated that Elsinore seeks clarification or rehearing in that docket. Elsinore requested intervention in Docket No. ER08-654 "[t]o the extent necessary for the Commission to consider this pleading."

14. Elsinore asks the Commission to clarify, or alternatively grant rehearing, to the effect that the November 2009 Order does not endorse TE/VS as a stand-alone project and does not endorse the CAISO's suggestion that the CAISO will analyze the TE/VS

¹² *Id.* P 12-13.

¹³ *The Nevada Hydro Co.*, 122 FERC ¶ 61,272 (2008).

¹⁴ November 2009 Order, 129 FERC ¶ 61,098 at P 25-26.

¹⁵ *Id.* P 23.

¹⁶ Project No. 11858 is the application for Commission approval of the LEAPS Project and ancillary facilities, including the TE/VS Interconnect. The November 2009 Order did not address Project No. 11858. Accordingly, Elsinore's claims regarding Project No. 11858 are not addressed in this order.

interconnection on a stand-alone basis.¹⁷ Elsinore argues that consideration of TE/VS as a stand-alone project is inconsistent with the application in Project No. 11858.¹⁸

IV. Subsequent Pleadings

15. On December 22, 2009, Nevada Hydro filed a Motion for Extension of Time. Subsequently, on January 5, 2010, Nevada Hydro filed an answer to the Elsinore Request.

16. On January 6, 2010, the Commission issued a Combined Notice of Filings, which included Notice of Nevada Hydro's Response to Request for Clarification (Notice). The Notice was published in the *Federal Register*, 75 Fed. Reg. 2532-2533 (2010), with comments due on or before January 26, 2010.

17. On January 26, 2010, SoCal Edison and SDG&E filed comments based on the Commission's Notice. In addition, on January 26, 2010, Elsinore filed an answer to the Nevada Hydro answer.

V. Discussion

A. Elsinore's Motion for Intervention and Request for Rehearing in Docket No. ER08-654

18. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden on the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. Elsinore has not met this higher burden of justifying its late intervention.¹⁹

19. In light of our decision to deny Elsinore's late motion to intervene, we will dismiss Elsinore's request for rehearing. Because Elsinore is not a party to this proceeding, it lacks standing to seek rehearing of the Commission's order in Docket No. ER08-654 under the Federal Power Act and the Commission's regulations.²⁰

¹⁷ See Elsinore Request at 3, 18.

¹⁸ See *Id.* generally, at 4-11.

¹⁹ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,250, at P 7 (2003).

²⁰ See 16 U.S.C. § 825(a) (2006); 18 C.F.R. § 385.713(b) (2009); *Southern Company Services, Inc.*, 92 FERC ¶ 61,167 (2000).

B. Procedural Matters

20. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2009), prohibits answers to requests for rehearing, and therefore we will reject the answers.

21. The Commission's Notice was unnecessary. Because Nevada Hydro's answer is prohibited by Rule 713(d)(1), as discussed above, the Commission had no reason to issue notice that it had been filed. The Commission, therefore by this order rescinds the Notice.

22. The January 26, 2010 Comments filed by PG&E and SoCal Edison both cited the Commission's Notice as authority for their filing. In light of our rescission of the Notice, PG&E's and SoCal Edison's Comments are both answers to Nevada Hydro's answer and, as explained above, are rejected.

C. Commission Determination

23. The Commission considers Elsinore's pleading to be a request for rehearing in Docket Nos. ER06-278 and ER08-654. As discussed above, Elsinore's request for rehearing in Docket No. ER08-654 is dismissed for lack of standing.

24. The November 2009 Order granted the CAISO's request in Docket No. ER06-278-007 for clarification that the March 2008 Order did not obviate the need for study of the TE/VS Interconnect under the CAISO's transmission planning process. In addition, the November 2009 Order denied Nevada Hydro's request for a waiver from the CAISO's tariff. Finally, the November 2009 Order accepted the CAISO's compliance filing as in compliance with the March 2008 Order.

25. With respect to Elsinore's claims in ER06-278, it has not demonstrated how the findings of the November 2009 Order are unreasonable or unlawful in connection with the acceptance of the CAISO's compliance filing. Furthermore, while the application in Project P-11858 contemplates both the LEAPS Project and the TE/VS Interconnect, as well as associated facilities, Elsinore has not demonstrated that the possibility of the TE/VS Interconnect being considered as a stand-alone project by the November 2009 Order renders that order unlawful or unreasonable in finding that the March 2008 Order does not obviate the need for study of the TE/VS Interconnect under the CAISO's transmission planning process or by denying Nevada Hydro's request for a tariff waiver. Consideration of Elsinore's concerns regarding the Commission's treatment of Project P-11858 is appropriately considered within that Docket and is not addressed by this order.

The Commission orders:

Elsinore's request for clarification or rehearing is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.