BEFORE THE PUBLIC UTILTIES 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. 07-10-005 [filed October 9, 2007]

PROTEST AND MOTION TO BECOME A PARTY

Jacqueline Ayer

Date: November 13, 2007

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INTRODUCTION

Pursuant to Rules 1.4, 2.6, and 11.1 of the California Public Utilities Commission (the Commission) Rules of Practice and Procedure, I respectfully submit this Protest and Request for Hearing and Motion to Become a Party in the Matter of The Nevada Hydro Company's ("TNHC") Application for a Certificate of Public Convenience and Necessity ("CPCN") pertaining to the transmission project referred to as the Talega-Escondido/Valley-Serrano 500-kV Interconnect ("TE/VS line").

STATEMENT OF INTEREST

As an owner of the only private property within the Cleveland National Forest that is threatened with potential eminent domain action by the TE/VS project, and as an owner of surrounding properties that will be adversely impacted by the LEAPS project, I have a direct and substantial interest in the outcome of this project.

STATEMENT OF ISSUES AND CONCERNS

I have concerns that the CPCN application submitted by TNHC for the Talega-Escondido/ Valley-Serrano (TE/VS) transmission line is seriously and substantially deficient, it was not properly noticed, and it provides no inherent need or justification for the project. It also appears that TNHC lacks both standing and the financial resources necessary to construct the project. For these reasons, I protest this Application and seek leave to become a party on the basis that it

fails to comply to §§ 1001, et seq. of the California Public Utilities Code, the Commission's General Order 131-D ("GO 131-D"), and the Commission's Rules of Practice and Procedure. I ask that the Commission reject this CPCN Application as being non-compliant with statutory requirements. My specific concerns are detailed in the following sections.

1. TNHC's Application Lacks Substantial Content

The TNHC CPCN application completely sidesteps every disclosure obligation imposed by the California Public Utility Code, GO 131-D, and the Commission's Rules of Practice and Procedure. For example:

1.1 The Application Lacks Detail and a Proponent's Environmental Assessment (PEA)

Section IX of GO 131-D requires that every CPCN application include a detailed description of the proposed transmission facilities including tower design, right of way details, route justification, environmental documentation, etc. No such information was provided by TNHC with the CPCN application and in fact most of this information was also omitted from the Final Environmental Impact Statement (EIS) prepared by the Federal Energy Regulatory Commission (FERC) pursuant to the LEAPS-TE/VS hydro dam license application (FERC Docket P-11858). In fact, in the FERC action, most of the transmission line was rerouted just three months before the final EIS was certified. The "detail" provided for this re-alignment consisted of a single page letter of notice accompanied by a low resolution map. This "detail" may be acceptable to FERC in their licensing actions, but it does not comply with the Commission's General Orders and Rules of Practice and Procedure and it is not acceptable to the citizens of California.

1.2 The Application lacks the Requisite Financial Disclosure Requirements.

Section 1003 of the California Public Utility Code requires that every application for a CPCN demonstrate the "financial impact of the plant, line, or extension construction on the corporation's ratepayers, stockholders, and on the cost of the corporation's borrowed capital." Rule 3.1 of the Commission's Rules of Practice and Procedure also requires that CPCN applications include "statements or exhibits showing the financial ability of the applicant to render the proposed service together with information regarding the manner in which applicant proposes to finance the cost of the proposed construction or extension." The CPCN application submitted by TNHC does not satisfy ANY of these requirements:

1. TNHC does not have ratepayers per se, so this issue is ignored by TNHC even though it is certain that TNHC will accrue revenue from ratepayers within California under the Transmission Access Charge (TAC).
2. TNHC is a privately held corporation[1] with stock shares that have $0.00 book value. As a consequence, the worth of the company is dubious. The TNHC CPCN application gives no indication of the impact of the proposed project on corporate stockholders.
3. TNHC does not intend to borrow construction capital, and instead appears to rely on partners that "represent significant sources of financial ability" [Appendix I]. From this vague description of financial wherewithal, these "partners" will apparently pay all the bills, and TNHC will own the project [Appendix A]. However, a review of financial information provided by the "partner" websites reveals that none of these "partners" have allocated any financing for this project in their projected budgets. Moreover, the three "partners" identified will not participate in the TE/VS project in any partnership capacity, towit:

    - In recent press releases, TNHC claims a financial partnership with Morgan Stanley that was cemented by the formation of a new corporate entity known as LEAPS Hydro LLC. However, this entity is not the project applicant, nor is it even mentioned anywhere in the CPCN application. If Morgan Stanley intends to provide investment capital and, toward that end, has formed a corporate partnership with TNHC, why isn't this corporation participating in the CPCN process? The Commission must take a very dim view of these claims of financial support by Morgan Stanley, since the TNHC certainly provides no evidence of such in the CPCN application.

    - Siemens is not a partner; Siemens is designated as the "General Contractor under an Engineering, Procurement, and Construction contract" [Appendix B]. It is clear that Siemens will participate in this project as a paid contractor, and not an invested partner.

    - Elsinore Valley Municipal Water District has executed a Development Agreement with TNHC in support of the LEAPS project, however, this Development Agreement clearly indicates that EVMWD will not contribute financially to the project[2]. Although TNHC claims that EVMWD is a project partner with significant financial resources, the Commission is advised that, under the existing agreement, EVMWD financial resources will NOT be invested in constructing or otherwise developing any portion of the LEAPS-TE/VS project.

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[1] Corporate stock is issued in the name of The Hydro Company, a Nevada Corporation doing business in California as TNHC. Nevada Hydro has 25,000 shares of stock with a $0.0 par value.

[2] EVMWD-TNHC Development Agreement executed May 15, 1997

1.3 TNHC Has Never Demonstrated Financial Ability to Construct the Project

TNHC's vague assurances of financial support within the CPCN application is consistent with documentation filed with the FERC [Dockets P-11858 and ER06-278] and with the California Independent Systems Operator (CAISO)[3]. Despite the obvious lack of financial ability, FERC and the US Forest Service (USFS) have lumbered on with the LEAPS-TE/VS permitting process. In doing so, both agencies have apparently forgotten that federal law demands that the project applicant clearly demonstrate the financial ability to complete the project with the initial application.[4] The Commission must not make the same mistake, and not waste the public's time and effort in addressing a project that has no financial future. TNHC's intentionally vague discussion of proposed financing for TE/VS gives the Commission a clear and unambiguous indication that this project is financially adrift with no competent oversight or control. TNHC must provide substantial evidence that the project is fully funded *forthwith*, or the Commission should move swiftly to deny the application with prejudice.

1.4 TNHC has historically failed to produce Detailed Information Pursuant to LEAPS-TE/VS

The Commission should not expect that TNHC will actually produce the project financial, environmental and design details before any deadline established by statute or ruling. A quick review of FERC Docked P-11858 reveals TNHC's persistent habit of requesting multiple time extensions without producing anything substantive. It is certain that TNHC will behave similarly in the Commission's CPCN proceeding, and in so doing, they will once again waste the public's time, energy and resources.

2. TNHC Did Not Comply With The Commission's CPCN Notice Requirements

Section XI of GO 131-D requires all CPCN applicants to provide notice to "All owners of land on which the proposed facility would be located and owners of property within 300 feet of the right-of-way as determined by the most recent local assessor's parcel roll available to the utility at the time the notice is sent". Evidence that TNHC did not comply with this notice requirement is found in Appendix H, which reveals that no property owners in Orange County were provided any notice of this CPCN action! According to the FERC EIS, there are properties in Orange

[3] See page 2 of TNHC PTO Application Submitted to CAISO on February 20, 2007 [although the application appears to have been signed by the TNHC representative on November 9, 2006].

[4] 18CFR4.41(e)(8) requires all applicants seeking a FERC license for a major unconstructed dam to demonstrate financial ability. 36CFR251.54(d)(3) requires all applicants seeking a USFS special use permit demonstrate financial ability.

County that will be directly affected by this project (and even threatened with eminent domain), but TNHC did not identify them or send them any notice. In addition, as of November 12, 2007, I have not received notice of TNHC's CPCN application, even though I am specifically identified as an affected Riverside County property owner in Appendix H. It appears doubtful that TNHC actually did provide the required notice to the property owners identified in Appendix H of the CPCN application.

4. TE/VS Will Not Increase SDGE Import Capacity by 1000 MW.

In their CPCN application, TNHC insists that the TE/VS line will increase SDGE's import capacity by 1,000 MW. This claim has never been substantiated through system studies, and even FERC acknowledges that the TE/VS import capability is uncertain, and assigns it a value of 750 MW[5]. CAISO has determined that the TE/VS project will provide only a 500 MW capability.[6] It is therefore clear that the economic benefits ascribed to the TE/VS project by TNHC's experts are both speculative and substantially over-predictive, since they are based upon an unrealistic 1,000 MW import capability.

5. TE/VS Will Not Adequately Address SDGE Import Capacity Needs

TNHC's presents a persuasive argument that SDGE needs of additional transmission capacity to supply energy to the San Diego area. This is no surprise, since this is precisely the argument advanced by SDGE to justify the CPCN application for the Sunrise Powerlink project[7]. In fact, portions of TNHC's project justification discussion are lifted verbatim from SDGE's CPCN application. However, TNHC does not provide any factual argument that TE/VS is best suited (or even well suited) to address SDGE import needs. TNHC also ignores the fact that TE/VS delivers power nowhere near San Diego and at a voltage which is useless. TE/VS delivers 500 kV power to a 230 kV line, therefore it requires the installation of a 230/500 kV substation. TE/VS also dumps the power in the middle of nowhere, forcing SDGE to add a 47 mile long 230 kV circuit to make the project viable. TNHC's purpose and need statement assiduously avoids the fact that TE/VS could be constructed at 230 kV and placed underground or otherwise configured to avoid the significant impacts of 500 kV infrastructure.

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[5] The Final EIS prepared by FERC pursuant to the LEAPS license [Docket P-11858] establishes a TE/VS import capacity of only 750 MW [Page E-79, response 277].

[6] Errata to the rebuttal testimony of the CAISO Corporation Submitted July 12, 2007 in the matter of the Application of SDGE Company for a CPCN for the Sunrise Powerlink Project [A.06-08-010].

[7] The Application of SDGE Company for a CPCN for the Sunrise Powerlink Project [A.06–08–010]

TNHC cites additional benefits of the TE/VS project that are equally questionable, such as:

1) "Allow access to generation resources to the north and west that would otherwise be impractical to access" [pg 11]. Presumably, these generation resources are located in, and already provide electricity to, the SCE territory. Since SCE is actively pursuing new transmission infrastructure to access additional resources, how does TNHC conclude that existing resources in SCE territory will now be diverted to SDGE?

2) Allow completion of the "existing 500 kV bulk transmission backbone" that runs from Oregon but does not connect with the San Diego Area [pg 11]. Perhaps TNHC is unaware that TE/VS will not bring 500 kV power anywhere near the San Diego area; in fact TE/VS just barely crosses the Riverside County Border. If it is indeed necessary to bring more 500 kV power close to San Diego, then TE/VS fails compared to Sunrise, because it stops nearly 50 miles short of San Diego, whereas Sunrise delivers 500 kV power within 10 miles of San Diego.

3) "provide the San Diego area access to renewable resources located throughout the Western United States". While this issue is addressed in depth in subsequent sections, it is briefly pointed out here that TE/VS will neither be connected to, nor located anywhere near, any renewable resources. In fact, it is obvious that SDGE is actively seeking renewable resources from the east to successfully meet RPS goals, and toward that end, TE/VS is useless. TNHC should refrain from making such specious claims that cannot be substantiated with solid facts and arguments.

There are other deficiencies in TNHC's project justification [page 10], which relies primarily on Appendix B of the Final EIS prepared by FERC and the Draft "Strategic Transmission Investment Plan" (STIP) recently released by the California Energy Commission (CEC). In fact, neither of these documents successfully establish a fundamental need for the TE/VS project:

5.1 The FERC EIS Includes False Statements Regarding SDG&E's Need for A 500 kV Line

The essential justification offered by the EIS for constructing TE/VS at 500 kV is "because the SDGE expansion plan calls for the addition of this [southern junction] line at 500-kV" [EIS Appendix B-6]. This statement is false[8], as is the conclusion that SDGE requires the TE/VS line be constructed at 500 kV[8]. The only possible reason that remains for constructing TE/VS at 500 kV is to send LEAPS power north to SCE. However, SCE neither wants nor needs LEAPS power, so a 500 kV line to transport LEAPS power is not legitimate. Other false assertions included in the EIS to justify TE/VS at 500 kV are:

[8] Chapter VII of Supplemental Testimony re A.06-08-010 submitted to the Commission by SDGE January 26 2007. Pg 25 clearly shows that SDGE's plan is not to expand the TE Line to 500 kV to accommodate TE/VS.

1) That SDG&E is constrained to consider only 500 kV options because "all practical 230 kV alternatives [for increasing import capability] have been exhausted" [EIS Appendix B-21]. As indicated previously, SDGE plans to accommodate any increased import capacity created by TE/VS via a 230 kV line, therefore this statement is obviously false.

2) Even if a 230 kV line would work in the short term, "SDG&E would still have to build the line at 500 kV" to integrate it with long term expansion needs [Appendix B-21]. A simple review of the proposed SDG&E Sunrise Power Link project (Sunrise) exposes this statement as untrue, since the Sunrise project exclusively delivers 230 kV power to the urban portions of western San Diego County.

5.2 The STIP Overestimates Project Benefits, Underestimates Cost & Overlooks Deficiencies

The STIP advances the myth that TE/VS will provide 1,000 MW of import capability into the San Diego area[9]. The STIP makes this claim based solely on TNHC's unsubstantiated assertion and despite the fact that (as discussed previously) both FERC and CAISO believe the TE/VS import capability to be much lower. In addition, the STIP underreports the cost of SDGE and SCE upgrades to integrate the LEAPS-TE/VS project at only $118 million[9] even though the combined SCE and SDGE estimate is actually $200[10]. Worse yet, this estimate is an order of magnitude less than the interconnection cost estimated by SDGE in a separate filing to the Commission[11]. The STIP claims LEAPS-TE/VS will complement the Sunrise Powerlink[12] despite findings by CAISO[13] and FERC [14] that the incremental benefit of TE/VS in addition to the Sunrise Powerlink is only a few hundred MW of added import capacity. Rather than acknowledge that the small increase in import capability provided by TE/VS is not justified by the cost, CEC ignores the entire issue. CEC also cites CAISO's general support of LEAPS in 2004 as a project that should be considered;[12] this citation gives the false impression that CAISO approves TE/VS as a stand alone project. CEC does not temper these statements with cautionary remarks which acknowledge that CAISO has never performed a TE/VS system analysis[15], and that recent CAISO testimony directly contradicts CEC's claims of substantial TE/VS benefits.[15] As a final absurdity, the STIP committee asserts that TNHC agrees with the committee's

9 Page 105 of the STIP

10 See footnote 147 of the STIP

11 Page 26 of Chapter VII of Supplemental Testimony submitted by SDGE January 26, 2007 re A.06-08-010

12 Page 106 of the STIP

13 CAISO's Comparative Evaluation for New 500 kV Transmission Lines into San Diego [Kyei] (5/17/2004)

14 Appendix B of the FERC EIS

15 Pg 14 & 30 of Errata to CAISO testimony submitted to the Commission July 12, 2007 re A.06-08-010.

conclusion that TE/VS should proceed, as if the Committee's conclusions are somehow made more credible by acknowledging TNHC's approval! In deciding to include TE/VS in the STIP, the CEC clearly relied on biased and inaccurate information provided by TNHC, who's self serving interest in STIP Committees efforts is patently obvious. CEC admits that it has not participated in FERC's LEAPS proceedings[16], and indeed it appears that TNHC has selectively presented the STIP committee with only those documents which support TNHC's claims. While the CEC may consider it unnecessary to conduct a thorough, independent, and unbiased assessment of TE/VS, the Commission should not. I urge the Commission to avoid such complacency in the interest of the ratepayers and Citizens of California.

6. Testimony Provided by TNHC Experts Are Not Credible

Several elements of the Expert testimony provided TNHC are substantially flawed:

6.1 Expert Mingxia Zhang Does Not Establish an Appropriate Base Case

The "base case" is initially established by expert Mingxia Zhang to be "consistent with CAISO's position in the Sunrise proceeding" (whether or not this is true will be left to others). Then, Dr. Zhang inexplicably adds an additional 2,500 MW of wind energy from the Tehachapi Wind Resource Area (TWRA) to the base case generator load with no justification. For the record, CAISO and others have established the maximum wind generation capacity of the TWRA at 4,500 MW. According to previous studies developed by the Commission (through the Tehachapi Collaborative Study Group [TCSG] and others) and even in separate proceedings now before the Commission, virtually all of the TWRA generation load is ostensibly committed to SCE and PG&E to meet their RPS goals (although it now appears that the City of Los Angeles [LADWP] is also vying for TWRA power). There is simply no justification for the base case assumption that somehow 2,500 MW of TWRA power will end up in San Diego.

Moreover, according to the 2006 CAISO South Regional Transmission Plan (CSRTP), it appears that SDGE does not require TWRA power to meet their 2010 RPS goals[17]. Finally, it must be noted that the 4,500 MW of wind energy capacity identified for the TWRA is a theoretical maximum; the actual TWRA production capacity will probably not exceed

[16] Page 108 of the STIP

[17] The CSRTP purports that SDGE requires an additional 572 MW of renewable energy to meet their 2010 RPS goals. The CSRTP also reports that the Salton Sea area will produce 745 MW of renewable energy by 2010, which is nearly 50% more than SDG&E requires.

2,500 MW[18]. Taken together, these factors confirm the improbability that SDGE will rely on ANY renewable energy from the TWRA, let alone 2,500 MW. The supposition that SDGE will extract more than half of the TWRA generation built into the base case by Dr. Zhang is simply insupportable.

6.2 The TE/VS Import Capacity Assumption is Baseless and Unrealistic

Expert Phillipe Auclair provided testimony regarding benefits that TE/VS will provide to SDGE in meeting the Commission's local capacity requirements (LCR). In determining the LCR benefit, expert Auclair employed CAISO's methodology, but improperly doubled the import capacity assumption from 500 MW to 1,000 MW based only on TNHC's opinion. The expert provides no technical discussion or engineering justification for this increase, and instead asserts that the change was made "to reflect TNHC's estimate of the import capacity of the line"[Appendix D page 43]. Expert Auclair continues with "the LCR benefits of the CAISO's bundled Green Path + LEAPS + TE/VS alternative is associated entirely with the TE/VS transmission line" and "this 1000 MW incremental import capacity is twice that assumed by the CAISO testimony" From this, expert Auclair declares that TE/VS will have a 5 year cost recovery. These assertions are not substantiated, and in fact they contradict citations made by FERC that either TE/VS or the Imperial Valley-San Diego will increase the import capacity by 750 MW import capacity, and together they increase the import capacity by 950 MW[19]. Expert Auclair's testimony also contradicts various CAISO findings described previously. The apparent willingness to adopt modeling assumptions and skew analytical results based solely on a client's grandiose and unsubstantiated claims certainly calls into question expert Auclair's credibility and technical competency.

6.3 LEAPS-TE/VS Will Not Provide SDGE With Any RPS Benefits Or Access To Renewables

The testimony from both experts retained by TNHC continues to perpetuate the myth that the combined LEAPS-TE/VS project will provide RPS benefits ostensibly by firming intermittent sources such as wind energy. In fact, the only way that the combined project can provide this benefit is if the water pump system were configured to operate exclusively on renewable energy. This is precisely the approach adopted by LADWP for their Castaic pumped storage plant. For

[18] The 4,500 MW capacity assumes that all TWRA generator turbines are simultaneously operating at maximum capacity on a continual basis. It does not consider the fact that wind turbines typically operate at a 30% capacity or less (as evidenced by pg 59 of the Second Report prepared by the Tehachapi Collaborative Study Group) .

[19] Section 1 and Appendix B of FERC EIS.

the record, the LEAPS water pumps are not configured to operate on renewable power; they are designed to operate on electricity provided by the grid. TNHC and the other project proponents have no plans to configure LEAPS to operate on renewable power now or in the future, therefore the project WILL NOT provide RPS benefits, and any claim that it will is **FALSE.** TNHC's experts also assert that TE/VS will increase SDGE access to renewables. There is no basis for this claim since TE/VS is neither connected to, or located near, any existing or planned renewable resources. Even CAISO reports that "the RPS benefits of a standalone TE/VS line would be zero."[20] Simply put, TNHC's claim that TE/VS will improve SDGE's RPS goals either alone or in tandem with LEAPS is **FALSE**. That will never change, no matter how loudly TNHC asserts it, and no matter what "expert" TNHC hires to perpetuate it.

6.4 LEAPS-TE/VS Will not Integrate Intermittent Resources or Facilitate State GHG Policy

Expert testimony from Phillipe Auclair asserts that the combined project will integrate intermittent resources such as solar and wind energy [Appendix D, page 33]. However, and as discussed previously, TNHC has made no arrangements to operate the water pumps with intermittent energy sources, so this claim is false. Expert Auclair also claims that the project will facilitate compliance with the California's Greenhouse Gas policy [Appendix D, page 45], apparently because it will employ renewable energy to operate the water pumps. However, the combined project is not now, nor will it be in the future, configured to operate on renewable power. In fact, the combined project will actually INCREASE greenhouse gas emissions because it requires 20% more electricity during the pumping stage than it releases during the generation stage. Therefore, Expert Auclair's testimony pertaining to these benefits are **FALSE**.

7. TNHC Fails To Report Obvious Material Financial Interests Of The Project Partners

TNHC reports no "material financial interests of its directors, members, partners and/or any associated or affiliated company, in transactions connected to the construction of the TE/VS transmission project [Appendix J]. However, according to Appendix B of the CPCN application, Siemens will serve as the General Contractor and have overall responsibility for the project engineering and construction phases. Siemens will also manufacture and deliver much of the infrastructure demanded by the project. It is certain that Siemens will be paid large sums for this

[20] Page 54 of Errata to the rebuttal testimony of the California Independent System Operator Corporation Submitted July 12, 2007 in the matter of the Application of San Diego Gas & Electric Company for a Certificate of Public Convenience and Necessity for the Sunrise Powerlink Transmission Project Application 06-08-010.

Contracted effort, thus it is obvious that Siemens does in fact have "a material financial interest … in transactions connected to the construction of TE/VS". Of course, this would not be a problem if Siemens were merely identified as a contractor hired for this project. However, TNHC has specifically identified Siemens as a financial partner [Appendix I]. Therefore, it is certain that TNHC does in fact have "material financial interests" that should be reported in Appendix J, but for some reason TNHC did not do so.

8. Cost Estimates Presented In The Application are Unclear and Internally Inconsistent

According to Appendix D, Section 2 of the CPCN application, the TE/VS estimated project cost (in $2005) is either $393,316,800 or $381,082,875, depending on which alignment is selected. These numbers come directly from the FERC EIS, and therefore do not include the cost to modify or upgrade the existing SCE and SDGE lines. According to Appendix E of the CPCN application, the project will cost $353,500,500, and there is nothing to indicate whether it is based on 2005 dollars, or if it includes costs to modify or upgrade the existing SCE and SDGE lines. On page 14 of the CPCN application, TNHC asserts that the cost of the TE/VS Interconnect project is $353 million in 2007 dollars, and that this cost includes transmission lines and upgrades to both the SCE and SDG&E systems. One wonders

1) Why the page 14 cost estimate is much lower than the EIS estimate even though it includes the necessary upgrades of the SCE and SDGE transmission lines?
2) What is the source of the Appendix E cost estimate and is it also the source of the page 14 estimate?
3) How can a project that cost more than $380 million in 2005 now cost 353 million in 2007?
4) SDGE estimates the cost to upgrade the Talega-Escondido line to accommodate TE/VS is $1,895 million (nominal $ including AFUDC)[21]. Why will these upgrades cost SDGE so much money, yet cost TNHC virtually nothing?

9. Consideration of Sunrise Powerlink in the TNCH CPCN Application is Ambiguous

It is not clear from the CPCN application whether TNHC considers the Sunrise Powerlink project to be an alternative to TE/VS or an unrelated necessary project which complements TE/VS. There is no doubt that Sunrise Powerlink is an alternative to TE/VS, and it is certain that the Commission should regard it as such. However, it is not clear that TNHC is of the same opinion, since the CPCN application claims "The TE/VS Interconnect and the Sunrise project proposed by SDG&E and now under review by the Commission are complementary" [page 16]. TNHC also

[21] Page 26 of Chapter VII of Supplemental Testimony submitted by SDGE January 26, 2007 re A.06-08-010

claims that a combination of Sunrise and TE/VS can "become the default path for importing power from Arizona as well as for directing the mass of renewable resources into San Diego" [page 16]. While it seems apparent that Sunrise can serve in this capacity, it is not clear how TE/VS will contribute to this benefit. It is not possible to determine TNHC's intentions regarding the Sunrise Powerlink at this time, because the substantive discussion of project alternatives is relegated to the Proponents Environmental Assessment (which TNHC failed to submit with the CPCN application). I urge the Commission to properly consider that the Sunrise Powerlink is an alternative to TE/VS, and it is not the complementary project that TNHC claims.

10. TNHC Claims That TE/VS Will Not Compete With Other Public Utilities

On page 17, the CPCN application claims "TNHC does not intend to operate the TE/VS Interconnect (or LEAPS) in a manner that would compete with any other utilities, corporations, persons, or other entities. TNHC intends to have the CAISO operate the line and determine access for the entire foreseeable life of the line pursuant to the CAISO Tariff." It is certain that, when operated, the TE/VS line will carry electricity that would otherwise be carried by transmission infrastructure owned by others. Therefore, TE/VS operation will increase revenues accrued to TNHC, and decrease revenue accrued to other public utilities. This operating model defines the very essence of competition, thus TNHC's assertion that it does not intend to operate in a competitive manner is absurd on its face! The only way that TE/VS could avoid "competing" with other Participating Transmission Owners (PTOs) is if CAISO limited TE/VS operation to exclusively those instances in which all other transmission lines are fully committed. Only under this scenario can it be assured that TE/VS operation will not reduce the revenue stream to other public utilities, since the transmission lines operated by these other utilities would be completely congested. TNHC offers no evidence that any such arrangement has been made with CAISO, therefore the Commission should reject this claim that TE/VS will not compete with other service providers.

11. The Application Improperly Seeks to Include LEAPS in the TE/VS EIR

In their CPCN application, TNHC instructs the Commission to prepare a TE/VS CEQA document which also include LEAPS as a project component [pages 4 & 8] The contention that LEAPS is a component of the TE/VS project and therefore must be included in the CEQA analysis is problematic for a number of reasons:

11.1 CEQA Enjoins the Commission from Including LEAPS as a TE/VS Project Component.

In contemplating the TE/VS EIR, the Commission must properly define the project scope and extent in accordance with CEQA requirements. Pursuant thereto, the Commission must not consider LEAPS as a component of the project itself, rather as a separate and distinct project which may or may not happen irrespective of TE/VS. TE/VS is a stand alone project which is proceeding independently from LEAPS, therefore the Commission cannot consider LEAPS to be some future outgrowth of the TE/VS transmission line. While §15378 of the CEQA Guidelines does require that the Commission consider the project to include "the whole of an action", the California Supreme Court has held that a project EIR need only consider an action to be part of the "project" if such action is somehow caused by the proposed project[22]. In applying this legal test, it is clear that the 500 kV TE/VS line will not cause or even make possible the LEAPS project, since the FERC EIS acknowledges that LEAPS merely requires a much shorter, 230 kV connection to transmit power to the grid. In fact, more than a decade of documentation and filings before the FERC clearly establish that LEAPS does not require the 500 kV TE/VS interconnect to operate[23]. It is firmly established that TE/VS and LEAPS are mutually exclusive projects proceeding along their own paths with no interdependencies, so they cannot be considered by the Commission as staggered phases of a single project.

The Commission has historically taken the position that generators are considered entities that are separate from the transmission grid and which merely supply electricity to the grid; they are never considered to be integrated components of the grid. For example, in considering Segments 2 and 3 of SCE's Tehachapi Transmission Project, the Commission determined that SCE's transmission infrastructure is a project which is separate and distinct from the Tehachapi wind generators. The EIR prepared pursuant thereto definitively establishes that transmission lines and generation sources are two separate projects and NOT two parts of a single project for the purpose of CEQA. This determination was made even though the primary purpose of Segments 2 and 3 was to "Accommodate potential renewable power generation in the Tehachapi area"[24]

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[22] Laurel Heights Improvement Association v Regents of the University of California (1988) 47 Cal3d 376.

[23] LEAPS has existed as a proposed FERC project for nearly 20 years, and for most of that time, it was anticipated that LEAPS power would be transmitted to SDGE with 230 kV infrastructure (or less). It is only in the most recent FERC action [Docket P-11858] initiated in 2005 that TNHC suddenly and suspiciously claims that LEAPS can only be served by 500 kV infrastructure *even though* the Appendix B-5of the EIS contradicts this..

[24] Page A-4 of the Final EIR/EIS Prepared Pursuant to SCE's CPCN Application A.04-12-008

In the EIR/EIS prepared for this project, the Commission properly recognized that the incremental effects of probable future generation projects on a transmission line project should be addressed in the cumulative impacts section of the EIR[25] and are not considered as a component of the transmission project itself. This determination cannot now be reversed simply because TNHC will own the TE/VS line, and may, possibly, in the far distant future, be a partial owner of LEAPS as well. It should not be inferred from this discussion that LEAPS does not merit an EIR; in fact the opposite is true. However, LEAPS must be addressed in a separate CEQA review process, probably under the jurisdiction of the State Water Quality Control Board.

11.2 Under CEQA, LEAPS Can Only Be Considered In Terms Of Cumulative Project Impacts

If the Commission determines that LEAPS is a potential project which merits consideration, then such consideration must focus on the extent to which LEAPS impacts are "cumulatively considerable" in relation to TE/VS impacts. CEQA clearly establishes that the impacts of any project which is separate and distinct from the proposed project can be considered only in terms of how they cumulatively contribute to the proposed project impacts[25]. Moreover, the Commission's analysis of LEAPS' cumulative impacts are specifically constrained by CEQA Guidelines §15130(a)(1): "a cumulative impact consists of an impact which is created as a result of the combination of the project evaluated in the EIR together with *other* projects causing *related* impacts. *An EIR should not discuss impacts which do not result in part from the project evaluated in the EIR."*

Correspondingly, the Commission's TE/VS EIR should only consider impacts of LEAPS that are related to potentially significant impacts created by the TE/VS project. Thus, in preparing the TE/VS EIR, the Commission should not consider the impact of LEAPS on Lake Elsinore water quality unless it is also determined that TE/VS will have a potentially significant impact on Lake Elsinore water quality. Similarly, the Commission should not consider the seismic, geologic, hydraulic, biotic, aquatic or habitat impacts created by the inundation of the LEAPS upper reservoir in the TE/VS cumulative impact analysis because TE/VS will not create any such inundation. In effect, the Commission's consideration of impacts created by LEAPS in the TE/VS EIR is specifically limited to addressing only those impacts which are related to impacts that are created by TE/VS itself.

[25] CEQA Guidelines §15064(h)

11.3 The Commission Cannot Serve as Lead Agency if LEAPS Is Included in the TE/VS EIR

The criteria for determining lead agency is "the public agency with the greatest responsibility for supervising or approving the project as a whole"[26]. When more than one agency meets the criteria, "the agency which will act first on the project in question shall be the lead agency"[26]. If, for some reason, LEAPS is included as a component of the TE/VS project for the purposes of CEQA, then it is certain that the State Water Resources Control Board (SWRCB) and not the Public Utilities Commission is the public agency with greatest responsibility for supervising or approving the project as a whole, since it must issue a Water Quality Certification (WQC) for both LEAPS *and* TE/VS. Conversely, the Commission's participation is limited to the transmission line.

The SWRCB has also taken action in the LEAPS project long before the Commission's involvement as evidenced by the multiple WQC applications submitted by TNHC to the SWRCB over the last several years. The reason they have not been processed by the SWRCB is because TNHC will not provide the information required to process the permits and complete the necessary CEQA review. It is certain that the Commission is NOT the first public agency to act in this project, and in fact TNHC's CPCN application clarifies that the SWRCB is holding the entire FERC licensing process in abeyance [Page 7]. It is also certain that, if LEAPS is included as a TE/VS component the Commission will NOT have the greatest responsibility for approving the project as a whole. In this scenario (which I believe is inconsistent with CEQA anyway), SWRCB is de jure the Lead Agency under CEQA.

11.4 Including LEAPS in the EIR Artificially Constrains the Alternatives Considered in CEQA

The determination that LEAPS is a TE/VS component for the purpose of CEQA will improperly limit the range of alternatives that the Commission considers for achieving project goals. In the LEAPS-TE/VS project described in the FERC EIS, TE/VS is co-located with LEAPS and it is tightly constrained to a narrow right-of-way through the Cleveland National Forest. It is likely that TNHC intends to similarly constrain TE/VS project alternatives that will be considered in the Commission's EIR (although this cannot be confirmed because TNHC didn't bother to include any maps or figures or even a PEA with their CPCN application). However, the Commission is advised that placing such artificial constraints on the location and configuration

[26] CEQA Guidelines §15051

of TE/VS and it's alternatives constitutes a gross violation of CEQA. FERC does not explain why the EIS only considers TE/VS alternatives that are co-located with LEAPS, but the reason is clear: Under the Federal Powers Act, FERC is prohibited from including transmission infrastructure in a hydro dam license that is not connected to, and a part of, the dam itself. So, FERC artificially constrained the project (and the project alternatives) to only those transmission line configurations which traverse the LEAPS project. The Commission is aware that TE/VS alternatives considered under CEQA cannot be so limited, thus it is anticipated that the spectrum of alternatives that will be contemplated by the Commission will be substantially broadened beyond what was considered in the FERC EIS.

12. The Final EIS Is So Substantially Deficient That It Cannot Be Used To Satisfy CEQA

TNHC offers the FERC EIS as a basis for developing the CPCN CEQA analysis. However, the content of this document is so lacking that it is virtually worthless in this regard. For example:

12.1 The EIS Purpose And Need Statement For The TE/VS Is Flawed

NEPA demands that an EIS "specify the underlying purpose and need to which the agency is responding", thus a properly devised EIS document should have articulated the need to resolve SDGE's congested power import capability and enhance California's transmission grid operation. Instead, the EIS describes the purpose of the TE/VS is to simply meet "the co-applicants objective to provide a north/south interconnection of the transmission grid in Southern California"[27]. Obviously, FERC fails to grasp that ***a purpose and need statement is not made legitimate simply because it reflects an applicant's objective.*** CEQA burdens the Commission with a higher responsibility in defining the project such that it encompasses all viable alternatives. The EIS holds no value in this regard because it is describes a project that is too narrowly defined. I urge the Commission to not avoid their CEQA responsibilities by making the same error.

12.2 The EIS Objectives Are Too Narrowly Defined.

CEQA requires that an EIR contain a clear and concise statement of objectives that will determine the range of alternatives that are selected for detailed analysis[28]. CEQA further expects that the Statement of Objectives not be defined so narrowly so as to preclude

[27] Page 2-27 of the Final EIS for the LEAPS-TE/VS project.

[28] CEQA Guidelines §15142(b)

consideration of viable project alternatives[29]. Adequate alternatives can only be identified if the projects objectives accurately reflects the actual project purpose and need, because these objectives are not limited by unnecessary requirements that serve to artificially reduce the spectrum of viable alternatives considered. For example, the EIS project objective included the requirement that the TE/VS line operate at 500 kV and that it be co-located with LEAPS. The EIS offers no substantive reason for these requirements; and in fact it is obvious that a 230 kV line would have been perfectly adequate. Thus, by imposing unnecessary and even useless project requirements, the EIS artificially limits the project environmental review process and improperly ignores viable project alternatives. Therefore, the Commission should not rely on the project scope, objectives, purpose, and need statements provided in FERC's Final EIS, since they are defined to narrowly to comply with CEQA.

12.3 The FERC EIS does not consider any alternative to the actual TE/VS project.

TNHC claims that the EIS presents various TE/VS project alternatives. However, the Commission is advised that the EIS does not consider transmission line project alternatives, rather it only considers routing alternatives. TNHC mistakenly assumes that proposing minor route alterations in a transmission line project actually satisfies the CEQA requirement that alternatives to the project itself be developed. Obviously, the EIS alternatives analysis is substantial deficient under CEQA, therefore the Commission should disregard the EIS alternatives analysis **in its entirety**.

13. Other CEQA Concerns Regarding The Proposed TNHC TE/VS Project

Aside from whether or not the EIS provides any basis for developing the requisite CEQA documents, this project raises other concerns that were not addressed in the EIS.

13.1 The CEQA Analysis must consider new Alignment Options and Line Configurations.

The Commission's CEQA analysis must anticipate several options omitted from the EIS such as: 1) Transmission alignments that do not coincide with LEAPS; 2) Lower voltage alternatives; 3) More extensive undergrounding of the TE/VS line at 230kV and 500 kV (particularly since nearly half of the October 2007 fires in Southern California were attributed to high voltage lines); and 4) Actual alternatives to the project itself rather than just alternative project configurations.

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[29] Kings County Farm Bureau v. City of Hanford 221 CalApp.3d.692

30 Los Angeles Times Front page November 4, 2007

13.2 New Alternatives Proposed in the EIR will Compel the USFS to Prepare a new EIS

Because the USFS is obligated to consider a Special Use Permit in connection with the Commission's TE/VS project, and because the TE/VS EIR must consider alternatives that will deviate substantially from those considered in the EIS, the U.S. Forest Service shall be required to generate an entirely new EIS prior to issuing a Special Use Permit for the TE/VS. CEQA Guidelines §15222 states: "To avoid the need for the federal agency to prepare a separate document for the same project, the Lead Agency must involve the federal agency in the preparation of the joint document". Therefore, in order to comply with CEQA, the Commission shall be required to prepare a joint EIR/EIS with the USFS for the TE/VS CPCN application.

13.3 FERC's EIS Scoping/Outreach Efforts do not Comply With CEQA (or even NEPA).

In the CPCN application, TNHC claims that "the EIS represents FERC's extensive scoping and outreach efforts" [page 9] and that "FERC and USFS conducted a public scoping process to identify issues and alternatives" [page 17]. While it is true that FERC and USFS did embark on these efforts, TNHC fails to explain that many of the property owners affected by the TE/VS line were never notified regarding these "extensive scoping and outreach efforts". In fact, just 3 months before the Final EIS was issued, FERC radically altered the transmission alignments considered in the EIS; in some cases they were moved several miles. The property owners affected by this action were given less than 30 days to provide comments and, in many instances, they were completely unaware of the project until they received the notice. These property owners were never given the opportunity to participate in the project scoping phase, they did not participate in any public meetings due to lack of notice, and they certainly were not included in FERC's "extensive outreach efforts". I urge the Commission to disregard FERC's public scoping and outreach efforts, because they specifically omitted property owners now affected by this proposed CPCN. The Commission should consider these efforts to be inadequate for the purpose of complying with CEQA notice requirements.

13.4 The EIS Improperly Defers Consideration of Project Impacts and Mitigation Measures

The Draft EIS identifies and discusses project impacts only in a very vague and general manner, and they are not analyzed in terms of how they specifically apply to the proposed project. Worse yet, the EIS specifically acknowledges that mitigation measures for these impacts will only be developed after the project is approved. While FERC may determine that such an approach complies with NEPA, it is certainly not acceptable for the Commission's CEQA review.

13.5 The EIS Disregards Substantial Issues Of Concern Raised By Public Agencies.

In the CPCN application, TNHC indicates that FERC received comments from other reviewing agencies, and incorporated them into the final EIS, thus giving the impression that the agency review requirements mandated by NEPA could possibly satisfy CEQA requirements as well. However, a close evaluation of FERC's responses to these comments reveals that nearly all substantive comments were essentially ignored. Take for example some of the comments on the EIS provided by the Environmental Protection Agency and the responses given by FERC:

> EPA Comment: "The Final EIS should expand the alternatives analysis to consider other alternatives sites and technologies and sustainable approaches within a reasonable market area that could practicably meet the project purpose"
> FERC response: "Our alternatives analysis is adequate"
>
> EPA Comment: "The Draft EIS does not provide sufficient information to demonstrate that any of the build alternatives represent the least environmentally damaging practicable alternative to meet the project purpose"
> FERC Response: "The draft and final EIS include a sufficient level of detail to assess the potential effects of the proposed project on environmental resources in the project area."
>
> EPA Comment: "The Final EIS should describe the monitoring and reporting that will be required, identify all terms and conditions of the FERC license related to monitoring requirements, and discuss all implementation and effectiveness monitoring that will be conducted by the appropriate agencies."
> FERC Response: "We have added text to section 5 of the final EIS to provide more guidance on the monitoring activities". In fact, this "guidance" merely directs the co-applicants to develop various monitoring plans at some unspecified later time, and it does not actually address any of the concerns raised by EPA in this comment.
>
> EPA Comment: "Additional information should be provided in the Final EIS regarding impacts to wetlands and other waters of the United States, water quality, habitat, air quality, and mitigation and monitoring requirements".
> FERC Response: None Found
>
> EPA Comment: "The Final EIS should discuss appropriate mitigation measures for those impacts that are unavoidable"
> FERC Response: None Found
>
> EPA Comment: "Defining project purpose is a key component of an alternatives analysis because it determines the range of alternatives that the applicant needs to consider. The project purpose needs to be general enough to provide for the analysis of a sufficient range of alternatives.."
> FERC Response: None Found.
>
> EPA Comment: "The Final EIS should discuss appropriate mitigation measures for those impacts that were unavoidable."

FERC Response: None Found

EPA Comment: "NEPA Implementation Regulations require that the EIS identify and discuss appropriate mitigation measures not already included in the proposed action or alternatives. Therefore, the Final EIS should identify and describe all appropriate mitigation measures and contingency measures…"
FERC Response: None Found

14. Other Inaccuracies, Inconsistencies, and Problems Noted in the Application:

Pg 3: "LEAPS will firm and store renewable energy (primarily wind energy)"
This statement is **FALSE**. To store renewable energy, the LEAPS reversible pump turbines must be configured to operate on renewable power while operating in pump mode (such as the system planned by LADWP to operate the Castaic pumped storage plant). The simple fact is that no arrangements have been made for LEAPS to operate on renewable power: no Power Purchase Agreements have been signed, and no plans have been developed to install a dedicated connection between LEAPS and a renewable energy source. This claim is utterly without merit.
Pg 8: "Under the LGIA procedures set forth in the CAISO Tariff, both SCE and SDG&E have identified upgrades needed for their existing transmission system assets in order to accommodate
the interconnection and operation of LEAPS. These upgrades will require that each company obtain approval from the Commission in the form of individual CPCN filings".
According to the CPCN application, TNHC intends to own and operate the TE/VS line and according to various FERC and CAISO filings, TNHC intends to have TE/VS constructed and fully operating years before LEAPS is completed. Obviously, the TE/VS interconnect between SCE and SDG&E will be established well before LEAPS is ready for interconnection to the grid. Therefore, it appears that LEAPS will not be interconnected to either SCE or SDG&E, rather it will be interconnected via a Gen-Tie on the TE/VS line (which will be owned and operated by TNHC). So why does TNHC assert that SCE and SDG&E must obtain individual CPCNs to interconnect with LEAPS when in fact neither of these utilities will be the PTO responsible for the interconnection? According to Appendix U of the CAISO Tariff, it is the responsibility of the PTO to coordinate generator interconnection under the LGIP. As the TE/VS PTO, will it not be TNHC's responsibility to identify and complete the upgrades necessary to accommodate interconnection of LEAPS?

Pg. 15: "TNHC will be submitting a Participating Transmission Owner ("PTO") application for the TE/VS Interconnect to the CAISO and will be seeking the CAISO Board approval in the near future".

It seems quite odd that TNHC would submit this CPCN application BEFORE applying for PTO status. It is even stranger that TNHC would submit a CPCN application for the project before CAISO has even performed any system studies of the project. That is not the typical approach adopted by credible public utilities such as SCE. In fact, SCE did not move forward with a CPCN application or any public outreach efforts regarding their Tehachapi Renewables Transmission Project (TRTP) until after CAISO approved the project on January 24, 2007. TNHC is certainly not proceeding in any logical or organized manner regarding this project, and one questions whether or not TNHC actually understands the process at all.

Pg 17: "the TE/VS Interconnect will lie predominantly within the Cleveland National Forest in Orange County and will interconnect with SCE and SDG&E in Riverside and Orange Counties, respectively"

From this description, it appears that the TE/VS project proposed by TNHC in the CPCN application differs substantially from the project described in FERC's EIS. In the EIS, the transmission line lies predominantly within the Cleveland National Forest in Riverside County, with only a small portion located in Orange County. In addition, the project interconnects with SCE and SDG&E in Riverside and San Diego Counties, respectively. Unfortunately, TNHC failed to include maps, figures, or transmission alignment data with the CPCN application, so this inconsistency cannot be resolved.

Pg. 19 "TNHC will not need separate eminent domain hearings before it may commence acquisition of rights-of-way through private property."

TNHC assumes that the Commission will find the need for TE/VS to be so compelling as to constitute a public necessity. It also appears the TNHC believes CAISO control of TE/VS eliminates the possibility that TE/VS will provide competitive services. Just because TE/VS is controlled by an independent body does not mean it will not compete with other transmission lines. Unless all transmission lines are fully congested, there is no question that operating TE/VS to carry grid power at any level will reduce the power transmitted on competing lines owned by others. TE/VS will effectively take business from other transmission owners, thus TE/VS will provide competitive services. TNHC cannot avoid eminent domain hearings.

15. TNHC Does Not Qualify to Participate in a Commission CPCN Action

GO 131-D specifies CPCN procedures and reporting requirements that must be met by public utilities before constructing any major project. TNHC does not qualify for the CPCN process:

15.1 TNHC is not an Electrical Corporation

Section 218 of the California Public Utilities Code defines an Electrical Corporation as "every corporation or person owning, controlling, operating, or managing any electric plant for compensation within this state". "Electric plant" includes all real estate, fixtures and personal property owned, controlled, operated, or managed in connection with or to facilitate the production, generation, transmission, delivery, or furnishing of electricity for light, heat, or power, and all conduits, ducts, or other devices, materials, apparatus, or property for containing, holding, or carrying conductors used or to be used for the transmission of electricity for light, heat, or power. TNHC does not own, control, operate, or manage anything that could be considered an electric plant, therefore it is not in fact an Electrical Corporation.

15.2 TNHC is not a Public Utility

Section 216 of the California Public Utilities Code defines a Public Utility as "every common carrier, toll bridge corporation, pipeline corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, sewer system corporation, and heat corporation, where the service is performed for, or the commodity is delivered to, the public or any portion thereof." TNHC is not an Electrical Corporation and it neither performs a service for, or delivers a commodity to, the public. Therefore TNHC is not a Public Utility.

15.3 TNHC Has Not Complied with the CPCN Biennial Reporting Requirements

Section VI of GO 131-D requires every Public Utility intending to construct any electric transmission line facilities that will operate in excess of 200 kV within 15 years to furnish a "statement detailing the economic assumptions used to project all construction expenditures and annual operating costs, including the methodology, assumptions, sources and authorities associated therewith for a 15 year period" These reports must be submitted biennially, and identify operating revenues, expenses and incomes, earnings and dividends for common stock, annual capital requirements, kilowatt-hour sales estimates, gross revenues, etc. TNHC has never prepared or submitted any such information, thus even if it were considered a "Public Utility" (which it is not), TNHC still would not meet the CPCN filing qualifications clearly stipulated in GO 131-D.

16. Summary

The TNHC CPCN application does in fact contain a considerable amount of content that is replete with inaccuracies, falsehoods, and factual embellishments. The only thing lacking in TNHC's application is simply all the information required by the California Public Utilities Code, the Commission's Rules of Practice and Procedure and GO 131-D. The fact is that TNHC is nothing more than a few people who are working out of a shoebox and trying to bootstrap themselves into the transmission business by promising big things that they simply *will not deliver*. The Commission has an obligation to the ratepayers and the citizens of California to act swiftly and decisively in dispatching CPCN applications submitted by obvious dilettantes and amateurs like TNHC.

NOTICE AND COMMUNICATIONS

All correspondence, pleadings, notices, orders, and other communications in this proceeding should be addressed to the following:

Jacqueline Ayer

CONCLUSION

For reasons mentioned above, I respectfully request that the Commission deny with prejudice the TNHC CPCN application as submitted.

Respectfully Submitted

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November 13, 2007 JACQUELINE AYER