

BEFORE THE PUBLIC UTILITIES 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)
)

Proceeding No. A.10-07-001

(Filed July 6, 2010)

RESPONSE OF
FRIESIAN FOCUS, LLC, THE FERNANDEZ TRUST, AND
JOSEPH AND JOAN FERNANDEZ TO THE APPLICATION OF
THE NEVADA HYDRO COMPANY FOR A CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY

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Dated: August 5, 2010

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PUBLIC CONVENIENCE AND NECESSITY

Pursuant to Rules 1.14 and 2.6 of the California Public Utilities Commission’s (“CPUC”) Rules of Practice and Procedure, I respectfully submit this response to The Nevada Hydro Company’s (“TNHC”) application for a Certificate of Public Convenience and Necessity concerning TNHC’s proposed Talega-Escondido/Valley-Serrano Interconnect Project¹ on behalf of Friesian Focus, LLC, The Fernandez Trust and Joseph And Joan Fernandez (collectively “Fernandez Parties”).

I. STATEMENT OF INTEREST

In March 2005, Friesian Focus, LLC purchased an approximately 40-acre parcel (APN 932-030-018) located at 43975 Tenaja Road, Riverside, California 92562, for \$2.2 million. Since then, Joseph and Joan Fernandez have worked diligently to develop and improve the property for use both as a residence and a business; with a primary house, guest house and pool, various corrals, pastures and riding areas, and a 15-stall barn and office complex to facilitate the importation, keeping and breeding of rare Friesian horses in connection with their successful business, Friesian Focus, LLC. Their efforts have resulted in stunning improvements and the work

¹ All further references to TNHC’s pending application for a for a Certificate of Public Convenience and Necessity (“CPCN”), including its associated Proponent’s Environmental Assessment (“PEA”), are referred to herein as the “Application.”

is slated to finally be complete by September 1, 2010. Once complete, they intend to move horses into the new facilities and entertain clients and conduct business on-site full time.

When the Fernandez Parties were in the process of purchasing this 40-acre parcel, neither the previous owner nor their realtor or escrow agent informed them of the proposed LEAPS project, let alone the fact that it included plans to construct nearly 32 miles of high voltage transmission lines in the vicinity. In fact, one of the alternative transmission line alignments proposed in the LEAPS Draft EIS prepared by FERC (Alternative 4) proposed the placement of high voltage transmission lines *directly along the entire length of their property's southern boundary*. While the alignment recommended in the Final EIS prepared by FERC does not advance this specific alternative alignment, it still proposes high voltage transmission lines and towers to be located in the adjacent National Forest approximately .25 - .50 miles from the southwest corner of the Fernandez Parties' 40-acre parcel. Given statements in TNHC's Application that the proposed transmission line mirrors that advanced in the Final EIS prepared by FERC, the Fernandez Parties' concerns about the project's impacts to their property, business and the surrounding environment persist.

Understandably, the prospect of having to live and work in the shadows of such large industrial facilities is very disconcerting, especially considering the Fernandez Parties' plans to grow and support their business of keeping, breeding and selling rare Friesian horses on the property. Without question, the proximity of the transmission lines to the Fernandez Parties' property, home and growing business will directly and adversely effect the Fernandez Parties and their interests, which include a sincere interest in preserving the wide open spaces and protecting the pristine environmental conditions of the area and adjacent National Forest lands. In order to protect these interests and ensure the Project's environmental impacts are properly identified and mitigated or avoided outright, the Fernandez Parties submit this response in order to become a party to this proceeding pursuant to CPUC Rule of Practice and Procedure 1.4 and participate therein going forward to ensure the project's compliance with all applicable laws.

II. STATEMENT OF ISSUES AND CONCERNS

The Fernandez Parties have monitored and participated in both the FERC proceeding concerning the LEAPS project, as well as the prior CPUC proceeding for this transmission line, and have consistently raised issues regarding the inconsistent and inadequate environmental review performed to date by FERC and TNHC. Now, in this new proceeding, the Fernandez Parties intend to do the same to ensure that all adverse environmental impacts are identified and either reduced to levels of insignificance or avoided outright through mitigation measures and/or alternatives pursuant to all applicable laws.

That is, if and when the Application is deemed complete and the proceeding advances to the preparation of an EIR in compliance with CEQA. As it stands now, a discussion of the Project's specific environmental impacts and/or the listing of the many inadequacies contained in TNHC's PEA would be putting the proverbial cart before the horse. This is so because TNHC has failed to comply with the detailed requirements contained within the CPUC order dismissing TNHC's prior application and several of the requirements applicable to any applicant seeking a CPCN. Those significant deficiencies are further detailed below.

A. **TNHC Failed to Cure Deficiencies the Commission Specifically Requested be Addressed Before the Filing of a New Application.**

In its April 16, 2009 decision dismissing THNC's prior application for this same project without prejudice, the Commission clearly highlighted a number of lingering deficiencies that would need to be resolved before it could accept an application for this project as complete. Despite this clear direction, however, TNHC's new application still fails to address at least two of those deficiencies. Namely, the need to (i) confirm the United States Marine Corps' willingness to make available a specific site for the southern-most substation (Case Springs) proposed as a component of TNHC's transmission line project, and (ii) to accurately and completely describe the project's proposed 115 kV transmission line components with sufficient detail to enable a clear understanding and environmental review of those components.

With respect to the first deficiency, TNHC's Application vaguely states at page 4 that the project proposes an interconnection with SDG&E at a "new substation *in the vicinity* of United States Marine Corps Camp Joseph H. Pendleton." The purpose of this vague statement – to obfuscate – is made clear by the fact that the remainder of the Application is devoid of the requested written confirmation that the United States Marine Corps' is willing to make space available for the Case Springs substation. This type of gamesmanship not only frustrates the Commission's job, it stands in stark contrast to the last written word(s) from the United States Marine Corps which unequivocally denied any such willingness by noting that "the case is closed on the LEAPS substation with respect to *any possibility* of it being sited anywhere within an active training area of the Base."² The Commission should reject TNHC's Application until such time as the requested confirmation is provided, or, if the Case Springs substation is to be located elsewhere, until the Application is supplemented to accurately describe the new location and analyze all associated impacts in the PEA.

As for the second deficiency, TNHC's Application continues to describe the project's proposed 115 kV transmission line components in an inconsistent and unclear manner. To the lay reader, it remains extremely difficult to understand exactly what is proposed with respect to this transmission line component. In sum, TNHC's blatant disregard of the direction in the Commission's prior decision dismissing the previous application requires that this Application be rejected and deemed incomplete. Moreover, the Fernandez Parties recommend that the Commission not provide TNHC numerous opportunities to cure these ongoing deficiencies as it did previously, and seriously consider dismissing the Application *with prejudice* should TNHC persist in its unresponsiveness to these key questions.

² See March 5, 2009 email from Larry Rannal (Marine Corps) to Greg Kahlen (TNHC agent) submitted to the FERC docket in its LEAPS proceeding, and included as Attachment 3 to the protest filed in this proceeding by the Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club and Friends of the Forest (Trabuco District) and the Santa Rosa Plateau.

B. TNHC Failed to Provide Required Financial Information and Demonstrate Its Ability to Carry Out the Project.

Further, TNHC's Application fails to comply with several key requirements applicable to all applicants, namely, the requirement found in the CPUC Rules 2.3 and 3.1 regarding financial statements and information necessary to determine the economic viability of the project as well as the economic health of the applicant and its financial ability to complete the project. TNHC's Application lacks the required financial statement, discusses project costs inconsistently, and superficially names Siemens AG and Morgan Stanley as project financiers without any evidence, let alone substantial evidence, of those entities' funding commitments. This failure to clearly address the project's cost and demonstrate TNHC's ability to provide all necessary funds is fatal when considered against the backdrop of two public reports both of which conclude that TNHC's project is not economically viable.³

In addition to its concerns about the project's effect on its property and the surrounding environment, the Fernandez Parties are equally concerned about whether there is even a need for 30 plus miles of new high voltage transmission lines (in the National Forest or elsewhere) and whether TNHC has the practical wherewithal and financial ability to construct and operate such a massive utility infrastructure project. Even a cursory review of TNHC's application leads one to conclude that there is no such need and that TNHC is severely inexperienced and underfunded. On these bases alone, the CPUC should reject the application and demand additional information before even considering the project proposed therein.

Despite CPUC rules requiring detailed financial information demonstrating an applicant's ability to finance such projects, TNHC's application is completely devoid of the required information and statements but for a single page buried in Appendix I containing an

³ See Attachments 1 and 2 attached to the protest filed in this proceeding by the Center for Biological Diversity, Santa Ana Mountains Task Force of the Sierra Club and Friends of the Forest (Trabuco District) and the Santa Rosa Plateau. Those attachments contain: (i) *An Economic Evaluation of the LEAPS Project and Associated Transmission for the Elsinore Valley Municipal Water District*, by Samuel A. Van Vactor, Stefan Brown, David Ramberg, Economic Insight, Inc. (Feb 7, 2006); and (ii) 2008-2009 Grand Jury Report on the Elsinore Valley Municipal Water District: Lake Elsinore Advanced Pumped Storage Project, Riverside County Superior Court (February 23, 2009).

unsupported assertion that TNHC's partners (not itself) represent significant sources of financial ability. The aforementioned Commission rules require that applicants demonstrate the financial ability to render the proposed service together with information regarding the manner in which the project will be financed. Simply providing links to websites for Siemens AG and Morgan Stanley falls far short of this requirement, especially when those websites make no mention whatsoever of proposals to finance this project, let alone include any specific financial information related to the transmission lines at issue here.

More realistically, the "partners" TNHC relies on exclusively to assert its financial ability are more aptly described as potential project contractors (Siemens) or investment brokers (Morgan Stanley), and in any event, are certainly not co-applicants along with TNHC. Without evidence regarding their concrete financial contributions to and guarantees supporting the project, Siemens and Morgan Stanley are, at best, potential players whose participation in the project is, at best, contingent on TNHC receiving all the various state and federal approvals, permits and licenses required to move the project forward. Such uncertain, unspecified and contingent "partners" do not provide the public or CPUC with anywhere near the level of information necessary to confidently assess and insure the project's success.

C. The Application Provides an Inadequate Project Description and Impact Analysis.

Last but not least, the Fernandez Parties take issue with the adequacy of TNHC's description of the project and analysis of its impacts. As most CEQA practitioners know, the hallmark of and key starting point to a legally adequate environmental review document is an accurate, stable, and finite project description. The Application's project description is anything but, and instead offers a patchwork project description that draws from various project components analyzed in *other* documents such as FERC's Final EIS for LEAPS, the Commission's Draft and Final EIRs for the Sunrise project. The problem with this approach is that it presents a confusing mix of project components that precludes a clear understanding of the whole of the project now being proposed.

On a more fundamental level, any effort to rely on FERC's Final EIS for LEAPS or the Commission's Draft and Final EIRs for the Sunrise project to comply with the requirements of CEQA would violate several fundamental CEQA concepts including the requirements to fully identify and mitigate all potentially significant impacts and assess and analyze a reasonable range of project alternatives. FERC's EIS is fatally flawed in these regards in that it completely defers any meaningful assessment of the project's environmental impacts and development of effective mitigation measures. Further, the alternatives analysis in FERC's EIS is similarly woefully inadequate in that it fails to consider alternative transmission alignments or methods (e.g., undergrounding), or any non-wires alternatives (e.g., distributed generation, energy efficiency, demand response strategies and technology improvements)

At a minimum, the potentially adverse fire, health (electromagnetic fields), environmental, safety and aesthetic impacts of the proposed transmission lines must be thoroughly addressed in a new and separate environmental impact report prepared in compliance with CEQA. And real project alternatives, including plans to relocate the proposed transmission lines away from the National Forest (or place them underground), must be identified and analyzed alongside TNHC's proposed project regardless of their cost or ability to meet all of TNHC's constrained project objectives. Given the fact that transmission lines are routinely suspected and often times the proven cause of many of the most damaging fires in southern California in recent years, the Fernandez Parties are particularly concerned about fire and safety impacts associated with TNHC's proposed transmission lines. This concern is exacerbated by the remote location and rugged conditions through which the lines are proposed to run south of Lake Elsinore. As the Fernandez Parties are all too aware, there is really only one way in and out of the Tenaja area where their subject property is located. These dangers and safety issues are real and pressing, and mandate that the Commission objectively analyze alternative routes for the transmission lines (e.g., existing rights of way such as Interstate 15) and/or the prospect of placing the lines completely underground, especially in areas of high fire danger or with challenging fire safety ingress and egress issues.

D. Schedule of Proceedings.

Given the significant issues outlined herein which require substantial modifications before the Commission can deem the Application complete, the Fernandez Parties object to the expedited schedule proposed by TNHC. If and when the Application's inadequacies are rectified and the Commission deems the Application complete, the Fernandez Parties would be happy to provide their position regarding a reasonable schedule for this proceeding.

III. CONCLUSION

Based on the foregoing, and on the inadequacies described by the other protests filed to date, TNHC's Application should be deemed incomplete and/or rejected outright until it is significantly modified to comply with CEQA and to demonstrate the requisite information concerning the project's need, benefits, costs and financial viability and backing. By filing this response, the Fernandez Parties respectfully request to become parties to this proceeding and that all documents filed herein be served on their legal counsel at the address listed below.

Dated: August 5, 2010

Respectfully submitted,

MILLER, STARR & REGALIA

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of the **RESPONSE OF FRIESIAN FOCUS, LLC, THE FERNANDEZ TRUST, AND JOSEPH AND JOAN FERNANDEZ TO THE APPLICATION OF THE NEVADA HYDRO COMPANY FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY** on the service list for A.07-10-001 and A.09-02-012 on all parties identified on the attached service lists, which is consistent with the Commission's official service list for this proceeding as of today's date. Service was effected by one or more means indicated below:

Transmitting copies via e-mail to all parties who have provided an e-mail address and via first class mail to the remainder of the service list

Executed this 5th day of August, 2010, at Walnut Creek, California.

/s/ Nancy Troche

Nancy Troche



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