

**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

Application No. 10-07-001  
[filed July 6, 2010]

**PROTEST OF FOREST RESIDENTS OPPOSING  
NEW TRANSMISSION LINES (“FRONTLINES”)**

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**Date: August 2, 2010**

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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, Forest Residents Opposing New Transmission Lines (“FRONTLINES”) respectfully submits this Protest in the Matter of The Nevada Hydro Company's (“TNHC”) Application for a Certificate of Public Convenience and Necessity (“CPCN”) for the Talega-Escondido/Valley-Serrano 500-kV Interconnect (“TEVS”).

**STATEMENT OF INTEREST**

FRONTLINES is an Unincorporated Association of residents and private property owners within and in the vicinity of the Cleveland National Forest (“CNF”) who will be adversely impacted by the proposed project. Each and every member of FRONTLINES has a direct and substantial interest in the outcome of this project.

**STATEMENT OF ISSUES AND CONCERNS**

FRONTLINES has concerns that the CPCN application submitted by TNHC for the TEVS transmission line is substantially deficient, it is insufficient to satisfy even the minimum requirements imposed by the California Environmental Quality Act (“CEQA”), and it fails to demonstrate any 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,

FRONTLINES protests this Application and seeks 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. FRONTLINES’ specific concerns are detailed in the following sections.

### **1. TNHC’s Application Lacks Substantial Content**

The TNHC CPCN application fails to meet the content requirements imposed by the California Public Utility Code, GO 131-D, and the Commission’s Rules of Practice and Procedure. For example:

#### **1.1 The CPCN Application fails to demonstrate that the project is necessary or even justified.**

TNHC’s primary basis for claiming that the TEVS project is “needed” is simply that the California Independent System Operator (“CAISO”) and the California Energy Commission (“CEC”) have stated that TEVS will improve system reliability [see Section V(A) of the CPCN application]. However, the CAISO has never actually assessed the reliability benefits (or any other benefits) of the TEVS project. In fact, the CAISO has never even analyzed the TEVS project, let alone approved it. Similarly, TNHC claims that the CEC identified TEVS to be an important transmission project in the 2007 Integrated Energy Policy Report Proceeding (“IEPR”), yet the CEC never even mentions TEVS in their final IEPR document (even though it discusses other major transmission projects such as Sunrise, Tehachapi, Green Path, etc.). In fact, the CEC has *never* conducted any detailed analysis of the TEVS project, and affirms no certainty that TEVS will actually provide the benefits that TNHC claims it will [see the cursory discussion provided on Pages 96-99 of the 2007 STIP].

Other dubious claims made by TNHC to justify a “need” for the TEVS project are equally questionable. For instance:

1) TNHC claims that TEVS will provide the San Diego area with “access to renewable resources located throughout the Western United States” and allow the SDGE control area “access to generation resources to the north and west that would otherwise be impractical to access” [pg 11]. These statements are disingenuous at best. The fact is, TEVS does not access any generation sources (renewable or otherwise), therefore it cannot and will not provide San Diego with access to any renewable resources anywhere in the United States. Moreover, TNHC infers with these statements that SDGE is somehow obligated to connect San Diego with renewable resources. No such regulatory obligation exists. In fact, to meet their RPS obligation, SDGE is only required to bring renewable generation to the CAISO-controlled grid; it is *NOT* required to bring renewable generation it directly to San Diego.

2) TNHC claims that TEVS will 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]. The fact is, TEVS does *NOT* bring 500 kV power anywhere near San Diego, and in fact it barely crosses the San Diego County line. What TEVS *does* do is dump 500 kV power onto an existing 230 kV line many many miles from San Diego, and it forces SDGE to accept power that it does not need at a voltage that it does not want onto an existing line that is not sufficiently robust to accommodate the connection.

3) TNHC’s claim that SDGE’s long term resource plan somehow justifies the development of the TEVS project is a complete fabrication (see last paragraph of Page 13). It is true that SDGE’s long term resource planning efforts in 2003 and 2004 did rely on a second 500 kV grid interconnection in the SDGE service area; however this planning objective has already been met by SDGE’s Sunrise project (which the Commission approved in 2008). SDG&E’s long term resource plans *never* recommended the TEVS project or any project that even resembles TEVS. It is simply astounding that TNHC would claim that it did.

1.2 “Expert” testimony provided in the Application is replete with untruths and inaccuracies

THNC’s CPCN application cites “expert” testimony from one Dr. Mingxia Zhang, who claims that TEVS will address San Diego’s transmission constraints and provide reliability and ancillary services benefits based on a PLEXO model analysis. Dr. Zhang asserts that the PLEXO base model is essentially the same as the models used by CAISO for evaluating transmission systems and markets [see page 2 line 17], but this is simply untrue. For instance, Dr. Zhang’s base model excludes the 500 kV Sunrise transmission project that is now under construction and which the Commission approved specifically for the purpose of addressing San Diego’s transmission constraints (see D.08-12-058). Dr. Zhang’s PLEXO modeling approach is inherently inconsistent with CAISO’s standard modeling procedures (wherein the base case analysis includes all major transmission lines that have been approved). Existing Commission records clearly demonstrate that inclusion of the Sunrise project in the PLEXO base model would fundamentally alter the results in a manner which refutes Dr. Zhang’s assertion that TEVS provides reliability and ancillary services benefits to the ratepayer (see the record of the Sunrise Proceeding A.06-08-010).

THNC’s CPCN application also cites “expert” testimony from Philippe Auclair, who claims that the 1,000 MW import capacity of TEVS will provide all sorts of economic and ratepayer benefits. “Expert” Auclair fails to provide any basis for assuming that TEVS will achieve a 1,000 MW import capacity. In fact, Auclair admits that he simply used “TNHC’s estimate of the import capacity of the line”. “Expert” Auclair further concludes that the economic benefits of

TEVS will allow TNHC to recover all TEVS costs in less than 5 years. The problem with “expert” Auclair’s testimony is that it is based entirely on the (false) assumption that TEVS will provide a 1,000 MW transmission capacity. “Expert” Auclair makes no attempt to substantiate (through system studies) the claim that TEVS line will increase SDGE’s import capacity by 1,000 MW. In fact, Auclair readily admits that TNHC instructed him to use a 1,000 MW transmission capacity for TEVS even though CAISO assumes TEVS will only provide a 500 MW transmission capacity (see page 20 line 6 of Auclair’s testimony). It is also noted that “expert” Auclair’s assumption contradicts statements in the FEIS that either TEVS or the Imperial Valley-San Diego (aka Sunrise) would increase the import capacity by 750 MW, and together they would only increase the import capacity to San Diego by 950 MW<sup>1</sup>. Clearly, the economic benefits ascribed to the TEVS project by “expert” Auclair are speculative and substantially over-predictive, since they are based upon an unrealistic import capability assumption. These facts substantially undermine “expert” Auclair’s credibility and clearly demonstrate that he lacks even a reasonable level of technical competency.

### 1.3 The Sunrise Project already accommodates the “needs” that TEVS is intended to address

On pages 11-13 of their CPCN application, TNHC attempts to justify their proposed TEVS project by identifying numerous transmission concerns that TEVS will supposedly address (such as grid reliability in the San Diego area, system outages, renewable resource access, etc.). However, TNHC fails to disclose the fact that the concerns listed in their CPCN application are virtually identical to those raised by SDGE to justify approval of the Sunrise project. In fact, portions of TNHC’s project justification discussion are lifted verbatim from SDGE’s CPCN application submitted for Sunrise<sup>2</sup>. We note that it was specifically for the purpose of addressing these concerns that the Commission approved the Sunrise project in the first place. Naturally, the Commission cannot rely on this same list of concerns to approve TEVS because doing so would clearly acknowledge that the Commission erred in approving Sunrise. Implicit in TNHC’s argument that TEVS is necessary to address SDGE grid reliability and renewable access issues is

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<sup>1</sup> Section 1 and Appendix B of FERC FEIS.

<sup>2</sup> The Application of SDGE Company for a CPCN for the Sunrise Powerlink Project [A.06–08–010]

the assumption that Sunrise is insufficient for this purpose, and the corollary conclusion that the Commission's approval of Sunrise was therefore improper.

1.4 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 with stock shares that have \$0.00 book value<sup>3</sup>. The actual worth of the company is dubious at best. Moreover, the CPCN application gives no indication of the impact of the proposed project on corporate stockholders.
3. It appears that TNHC does not intend to borrow construction capital, and instead will 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 100% of the entire project [see Appendix A]. However, a review of financial information provided on the websites hosted by these supposed "partners" reveals that none of these "partners" have allocated any financing for this project in their projected annual budgets. The Commission must take a very dim view of TNHC's claims of financial support for this project since the CPCN application provides no evidence of such support. The fact is, none of TNHC's "partners" will actually participate in the TE/VS project in any partnership capacity, to wit:

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<sup>3</sup> According to Appendix A, 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.

- In various 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. The Commission cannot simply accept TNHC’s claim of a financial partnership with Morgan Stanley without proof, and it certainly cannot approve an entirely new transmission corridor based on this unsubstantiated claim of financial wherewithal.
- 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 as a vested partner. Even more disturbing, the applicant (TNHC) is only responsible for the “Project Plan” (whatever that is), while Siemens (who is not a partner but a paid contractor) is wholly responsible for the project “budget, schedule, and scope of work”. The Commission simply cannot approve any project management strategy wherein the applicant bears little or no responsibility for actually completing the project itself.

#### 1.5 TNHC Has Never Demonstrated Any 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 CAISO<sup>4</sup>. Despite the obvious lack of financial ability, FERC and the U.S. Forest Service (“USFS”) have lumbered on with the LEAPS-TEVS 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.<sup>5</sup> The Commission must not make the same mistake, and it should 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 TEVS 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 and immediately to deny the application.

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

TNHC claims that, at the time the CPCN application was submitted, it had no “material financial interests of its directors, members, partners and/or any associated or affiliated company, in

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<sup>4</sup> 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].

<sup>5</sup> 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.

transactions connected to the construction of the TE/VS transmission project” to report [see Appendix J]. However, according to Appendix B of the CPCN application, Siemens will serve as the General Contractor with 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 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, TNHC’s partners do in fact have “material financial interests” that should have been reported in the CPCN application.

### *1.7 TNHC Fails to Allocate Sufficient Property Acquisition Funds.*

Although much of the proposed project is located on public lands controlled by either the U.S. Forest Service or the Military, it will require TNHC to acquire substantial areas of land that is privately held. THNC has not provided sufficient budget for the private property acquisition that will be required.

## **2. The FERC FEIS Includes False Statements Regarding SDGE’s Need for A 500 kV Line**

TNHC expects the Commission to rely substantially on the conclusions pertaining to the TEVS that were developed by the FERC in the FEIS that was prepared for the LEAPS project.

However the Commission is advised 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” [FEIS Appendix B-6]. This statement is false<sup>6</sup>, as is the conclusion that SDGE requires the TEVS line be constructed at 500 kV<sup>6</sup>. The only possible reason for constructing TEVS at 500 kV is to send power north from SDGE to SCE. However, none of the reports or studies cited by TNHC indicates that this is a likely scenario, thus a 500 kV line is simply not legitimate. Other false assertions included in the EIS to justify TEVS at 500 kV are:

1) The FEIS claims that SDG&E is constrained to consider only 500 kV options because “all practical 230 kV alternatives [for increasing import capability] have been exhausted” [FEIS Appendix B-21]. This statement is patently false. As clarified in the record of the Sunrise Proceeding, interconnection of the TEVS by SDGE will only occur only at 230 kV, thus “all practical 230 kV alternatives” for SDGE have *not* been exhausted.

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<sup>6</sup> 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.

2) The FEIS claims that, 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]. This statement is patently false. As clarified in the record of the Sunrise Proceeding, SDGE has no long term or short term plans to expand 500 kV service to any location at or near the proposed TEVS line. In fact, the Sunrise project itself relies exclusively on 230 kV power in the entire western portion of San Diego County.

### **3. Cost Estimates Presented In The Application are Unclear and Internally Inconsistent**

According to Appendix D, Section 2 of the CPCN application, the estimated TEVS project cost (in 2005 dollars) 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. Clearly, TNHC has no idea of what the TEVS project may cost; they even seem to believe that the FERC overestimated the project cost. We note that, according to SDGE, the cost to upgrade the SDGE line to interconnect TEVS will exceed *\$1.8 Billion*<sup>7</sup>, so TNHC’s claim (on page 14) that it will cost less than half a billion to construct TEVS and upgrade SDGE’s system is CLEARLY wrong.

### **4. 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 TEVS line will carry electricity that would otherwise be carried by transmission infrastructure owned by others. Therefore, TEVS 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!

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<sup>7</sup> Page 26 of Chapter VII of Supplemental Testimony submitted by SDGE January 26, 2007 re A.06-08-010

## **5. TNHC Improperly Seeks to Include LEAPS in the TEVS EIR**

In their CPCN application, TNHC instructs the Commission to prepare a TEVS CEQA document which also include LEAPS as a project component [last line of footnote 3 on page 4 and top of page 9]. The contention that LEAPS is a component of the TEVS project which must be included in the CEQA analysis is problematic for a number of reasons:

### **5.1 CEQA Enjoins the Commission from Including LEAPS as a TEVS Project Component.**

In contemplating the TEVS EIR, the Commission must properly define the project and clarify the project scope and extent in accordance with CEQA requirements. By TNHC's own admission, LEAPS is not a component of the TEVS project itself, rather it is a separate and distinct project which may or may not be constructed irrespective of TEVS. TEVS is a stand-alone project for which TNHC seeks approval from the Commission independent of any action on LEAPS. More to the point, LEAPS is *not* some future outgrowth of the TEVS transmission line. The TEVS line will not cause or even make possible the LEAPS project, as evidenced by the FERC FEIS conclusion that LEAPS merely requires a short 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 proposed TEVS project to operate *at all*<sup>8</sup>.

While §15378 of the CEQA Guidelines does require that the Commission define a project to include “the whole of an action”, the California Supreme Court holds that a project EIR should only consider an action to be part of the “project” if such action is somehow caused by the project<sup>9</sup>. Applying this legal test, it is clear from the FERC record that TEVS will not “cause” LEAPS to exist, thus LEAPS cannot be considered to be a part of the TEVS project. Simply put, TEVS and LEAPS are mutually exclusive projects proceeding along their own paths with no interdependencies, thus they cannot be considered by the Commission as staggered phases of a single project. At most, the Commission can consider LEAPS to be a potential cumulative action and *not* a part of the TEVS project itself.

Making a clear distinction between the elements that comprise a CEQA “project” and the elements that comprise a potential cumulative action is crucial to developing a proper foundation

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<sup>8</sup> LEAPS has existed as a proposed FERC project for nearly 20 years, and throughout that time, it has been held that LEAPS power can and would be transmitted to SDGE with 230 kV infrastructure (or less). The FEIS prepared by FERC confirms this (see Appendix B-5). Yet despite this clear record, TNHC claims that LEAPS must be served by a 500 kV line that interconnects SCE with SDGE.

<sup>9</sup> Laurel Heights Improvement Association v Regents of the University of California (1988) 47 Cal3d 376.

for the final decision that is made. In the case of TEVS, drawing a clear distinction between the proposed transmission line “project” and a possible (though unlikely) cumulative generation projects ensures that the Commission will not make crucial transmission project decisions (such as routing, configuration, voltage, etc.) based on the mere possibility of a future generation project. This is particularly true when the possible future generation project is not actually dependent on the TEVS project proposed by TNHC (as shown in Appendix B of the FERC FEIS).

Aside from the plain language of the CEQA statute and various court decisions, it is noted that the Commission has *always* considered transmission facilities to be separate and distinct projects from the generation facilities they serve. The Commission has *never* considered independent generation projects to be an integrated component of any proposed transmission “project”, rather they are relegated to a discussion of potential cumulative actions. This is precisely how the Commission considered generation projects in the Tehachapi Wind Resources Area in their recently approved Tehachapi Renewable Transmission Project (“TRTP”) and the Antelope Valley Transmission Projects (“ATP”). It was also the approach adopted by the Commission to address the Rumorosa Wind project in their approval of the Sunrise transmission project. The precedent that a potential future generation facility is not an element of any proposed transmission “project” has been firmly established by the Commission in prior decisions, and it cannot now be tossed aside by the Commission simply because TNHC has requested it.

#### 5.2 The Commission Cannot Serve as Lead Agency if LEAPS Is Included in the TEVS EIR

The criteria for identifying the Lead Agency under CEQA are established by Section 15051 of the CEQA Guidelines as “the public agency with the greatest responsibility for supervising or approving the project as a whole”. If LEAPS is included as a component of the TE/VS project for the purposes of CEQA, then Section 15051 of the CEQA guidelines demands that the State Water Resources Control Board (SWRCB) be the Lead Agency rather than the Commission. This is because the SWRCB must issue a Water Quality Certification (WQC) for both LEAPS *and* TEVS and is therefore the public agency with greatest responsibility for supervising or approving the project as a whole. Conversely, if the “project” is limited to just the TEVS line, the Commission should legitimately serve as Lead Agency, since it would indeed have the greatest responsibility for approving/supervising the project.

Moreover, when more than one agency meets the eligibility criteria for Lead Agency, the CEQA guidelines declare that “the agency which will act first on the project in question shall be the lead agency”. This provision also affirms that, if the TEVS “project” includes LEAPS, then the SWRCB must be the Lead Agency under CEQA since SWRCB has previously acted on the LEAPS project long before the Commission became involved in the issue. It is certain that the Commission was not and is not the first California public agency to act on the TEVS and in fact TNHC’s CPCN application clarifies that the SWRCB is holding the entire LEAPS licensing process in abeyance [Page 7]. Certainly pursuant to CEQA, the SWRCB is de jure the Lead Agency for any TEVS project which involves LEAPS.

### 5.3 Including LEAPS in the TEVS “Project” Will Artificially Constrain the Alternatives Analysis

The determination that LEAPS is a TEVS component for the purpose of CEQA will improperly limit the range of alternatives that the Commission considers for achieving project goals. In the FERC project described in the FEIS, TEVS is co-located with LEAPS and it is tightly constrained to a narrow right-of-way through the Cleveland National Forest. TNHC has similarly constrained the TEVS project alternatives in their CPCN application. The Commission is advised that placing such artificial constraints on the location and configuration of TEVS alternatives constitutes a gross violation of CEQA.

FERC does not explain why the FEIS only considers TEVS 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’s analysis was statutorily constrained to a transmission line configuration which was co-located with LEAPS because this is the only configuration that the FERC has authority to approve. CEQA will not allow the Commission to impose such artificial constraints on the alternative analysis that will be conducted for the proposed TEVS project, thus the spectrum of alternatives that will be contemplated in this proceeding will be substantially broader than what was considered in the FERC FEIS.

### **6. The FERC FEIS Is So Substantially Deficient That It Cannot Be Used To Satisfy CEQA**

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

### 6.1 The FEIS Purpose And Need Statement For The TEVS Is Flawed

The FEIS states that the purpose of the TEVS is simply to meet “the co-applicants objective to provide a north/south interconnection of the transmission grid in Southern California”<sup>10</sup>.

Obviously, FERC fails to grasp that a project need statement cannot simply reflect the wishes of the project proponent, rather it must specify the fundamental purpose and need to which the agency is responding. In other words, ***a project purpose and need statement is not made legitimate simply because it reflects an applicant’s desire.*** CEQA burdens the Commission with a responsibility to properly define a project purpose in a manner that ensures it encompasses all reasonable project alternatives; obviously, the FEIS holds no value in this regard.

### 6.2 The FEIS 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<sup>11</sup>. CEQA further demands that the Statement of Objectives not be defined so narrowly as to preclude consideration of viable project alternatives<sup>12</sup>. Adequate alternatives can only be identified if the project objectives accurately reflect the actual project purpose and need; eliminating unnecessary conditions from the project objective statements ensures that the spectrum of viable alternatives is not artificially reduced. For example, the FEIS project objective statement includes the requirement that TEVS operate at 500 kV and that it be co-located with LEAPS. The FEIS does not explain or justify these conditions; rather they are imposed by fiat. Surprisingly, Appendix B of the FEIS clearly shows that the TEVS project proposed by TNHC is *not* necessary to accommodate LEAPS. Nonetheless, FERC relies on these unnecessary requirements as the basis for eliminating reasonable project alternatives that have substantially lower associated impacts. CEQA prevents the Commission from making a similar mistake. The Commission cannot rely upon the FEIS project scope, objectives, purpose, or need statements because they are too narrowly defined to comply with CEQA and they impose unnecessary project requirements which ultimately stunt the environmental review process and artificially limit the project alternatives that are considered.

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<sup>10</sup> Page 2-27 of the Final EIS for the LEAPS-TE/VS project.

<sup>11</sup> CEQA Guidelines §15142(b)

<sup>12</sup> Kings County Farm Bureau v. City of Hanford 221 CalApp.3d.692

6.3 The FERC EIS does not consider any alternative to the actual TEVS project.

TNHC claims that the FEIS presents various TEVS project alternatives. However, the Commission is advised that the FEIS does not consider transmission line project alternatives other than a trivial and incomplete consideration of the “no project” alternative. In fact, the FEIS only considers minor alterations to the project routing. TNHC mistakenly presumes that FERC’s consideration of minor changes to a proposed transmission line route will actually satisfy the CEQA requirement that the Commission consider alternatives to the project itself. Simply put, the FEIS alternatives analysis is substantially deficient under CEQA, therefore the Commission should disregard the FEIS alternatives analysis **in its entirety**.

**7. Other CEQA Concerns Regarding The Proposed TEVS Project**

Aside from whether or not the FEIS provides any basis for developing the requisite CEQA documents, TNHC’s proposed TEVS project raises other concerns not addressed in the FEIS.

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

The Commission’s CEQA analysis must anticipate several options omitted from the FEIS such as: 1) Transmission alignments that do not coincide with LEAPS (for example along existing rights of way nearer Interstate 15); 2) Lower voltage alternatives; 3) More extensive undergrounding of the TE/VS line at 230kV and 500 kV; and 4) Actual alternatives to the project itself rather than just alternative project configurations.

7.2 New Alternatives Considered Under CEQA will Compel the USFS to Prepare a new FEIS

Because the USFS is obligated to consider a Special Use Permit in connection with the Commission’s TEVS project, and because the TEVS EIR must consider alternatives that will deviate substantially from those considered in the FEIS, the USFS shall be required to generate an entirely new FEIS prior to issuing a Special Use Permit for the TEVS. 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 TEVS CPCN application.

7.3 FERC’s EIS Scoping/Outreach Efforts Did 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 TEVS line were never notified regarding these “extensive scoping and outreach efforts”. In fact, just 3 months before the FEIS was issued, FERC radically altered the transmission alignments considered in the FEIS. The numerous property owners affected by this action (including the members of FRONTLINES) 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 shortly before all public comment opportunities ended. 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”. The Commission should disregard FERC’s public scoping and outreach efforts, because they specifically omitted property owners affected by the proposed project and are therefore inadequate for the purpose of complying with CEQA notice requirements.

#### 7.4 The FEIS Improperly Defers Consideration of Project Impacts and Mitigation Measures

The FEIS 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 FEIS 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.

#### 7.5 The FEIS 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 would satisfy CEQA requirements as well. However, a close evaluation of FERC’s responses to these comments reveals that nearly all substantive comments from other government agencies were essentially ignored. Take for example comments on the EIS provided by the Environmental Protection Agency (“USEPA”) 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 specifically avoids addressing any 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

EPA Comment: “The Final EIS should discuss appropriate mitigation measures for those impacts that are unavoidable”

FERC Response: None

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.

EPA Comment: “The Final EIS should discuss appropriate mitigation measures for those impacts that were unavoidable.”

FERC Response: None

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

### **8. Other Inadequacies, Inaccuracies and Inconsistencies in TNHC’s CPCN Application:**

The Commission is advised that TNHC has not submitted an application to the USFS for a Special Use Permit (“SUP”) to construct TEVS<sup>13</sup>. Thus it is inappropriate for the Commission to take any action on TNHC’s CPCN application for TEVS unless and until TNHC submits the requisite application for the project to the USFS. Beyond this, we note other problems, such as:

*Pg 4: “LEAPS will firm and store renewable energy (primarily wind energy)” 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). TNHC has made no arrangements to operate LEAPS on renewable power and has provided no evidence or testimony to support the claim that LEAPS will store and firm renewable energy. Nearly all of the large scale renewable energy projects now proposed in Southern California rely on solar energy and will therefore deliver high value, on-peak energy that is rarely (if ever) stored. TNHC’s claims in this regard are 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 the TE/VS interconnect and LEAPS. These upgrades will require that each company obtain approval from the Commission in the form of individual CPCN filings. Thus, the [EIR] document should address (1) the TE/VS Interconnect, (2) LEAPS, and (3) necessary network upgrades to be constructed by the utilities under the LGIAs”. FALSE*

To be clear, Large Generator Interconnection Agreement (“LGIA”) procedures pertain to new **generation** facilities, not transmission facilities. The proposed TEVS line is a transmission facility, thus TNHC’s assertion that it will be connected to SCE and SDGE via the LGIA is patently false. According to information submitted by TNHC to the FERC and the Commission

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<sup>13</sup>FRONTLINES understands that EVMWD applied for a stand-alone TEVS permit, but the USFS has not acted on this permit application, and will not act on it until the FERC has either approved or denied the LEAPS application. In an email, the USFS writes: “We cannot act on that [EVMWD TEVS application] until FERC denies the [LEAPS] license. We cannot entertain another application for a different party [TNHC] until the first applicant [EVMWD] has asked to withdraw the application”.

in other proceedings, TEVS will be constructed and operated many years before the LEAPS project is constructed (if indeed LEAPS is ever constructed). It is therefore certain that, if completed, LEAPS will be interconnected to the TNHC-owned TEVS line via a short Gen-Tie line; LEAPS will *never* be interconnected to SCE or SDGE. According to Appendix U of the CAISO Tariff, it is the responsibility of the PTO to coordinate generator interconnection under the LGIP. Since TNHC is the TEVS PTO (see footnote 4), it will be TNHC's responsibility under the CAISO Tariff to identify and complete the upgrades necessary to accommodate interconnection of LEAPS. Thus TNHC's conclusion that SCE and SDGE will be required to obtain individual CPCNs to interconnect LEAPS is incorrect since neither of these utilities will be the PTO responsible for the interconnection.

Incredibly, TNHC's asserts that the Commission must include LEAPS in the CEQA review of the TEVS project based upon these completely erroneous statements. The fact is, the Commission has no legal or technical basis for including LEAPS in the CEQA analysis of the TEVS "project". TNHC's weak and transparent claim that the Commission must include LEAPS in the TEVS "project" CEQA analysis is absurd on its face.

*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" FALSE*

From this description, it appears that the TEVS project described in TNHC's CPCN application differs substantially from the project described in FERC's FEIS. In the FEIS, the transmission line lies predominantly within the Cleveland National Forest in Riverside County, and the portion located within Orange County is largely located on *private* lands. In addition, the FEIS concludes that TEVS connects with SCE in Riverside County and SDG&E in San Diego County and *not* Orange County.

*Pg. 19 "Assuming that the CPCN is granted, TNHC may not need separate eminent domain hearings before it may commence acquisition of rights-of-way through private property." FALSE*

TNHC persists in the notion that CAISO control of TEVS eliminates the possibility that TEVS will provide competitive services. Just because TEVS 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 TEVS at any level will reduce the power transmitted on competing lines owned by others. TEVS will effectively take business from other transmission owners, thus TEVS will provide competitive services. TNHC cannot avoid eminent domain hearings.

## **9. 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:

### **9.1 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. TNHC is therefore not an Electrical Corporation.

### **9.2 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 does not perform a service for, or deliver a commodity to, the public. TNHC is not a Public Utility.

### **9.3 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.

### **10. Summary**

The considerable content of the TNHC CPCN application is replete with inaccuracies, falsehoods, and factual embellishments. Other than a factual basis, the thing most lacking in TNHC’s application is all the information required by the California Public Utilities Code, the Commission’s Rules of Practice and Procedure and GO 131-D. With this CPCN application, TNHC attempts to bootstrap themselves into the transmission business by promising a project that they simply *cannot and will not deliver*. The Commission has an obligation to the ratepayers of California to swiftly and decisively reject TNHC’s CPCN application.

### **NOTICE AND COMMUNICATIONS**

All correspondence, pleadings, notices, orders, and other communications in this proceeding should be sent electronically to Jacqueline Ayer at:

[AirSpecial@aol.com](mailto:AirSpecial@aol.com).

Documents that cannot be sent electronically can be mailed to FRONTLINES at this address:

c/o Rene Powers  
40701 Ortega Highway  
Lake Elsinore, CA 92530

Respectfully Submitted

/s/ Jacqueline Ayer  
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August 2, 2010

## CERTIFICATE OF SERVICE

I, Jacqueline Ayer, certify that I have on this 2<sup>nd</sup> day of August, 2010 caused a copy of the foregoing

### **PROTEST OF FOREST RESIDENTS OPPOSING NEW TRANSMISSION LINES (“FRONTLINES”)**

to be served on all known parties to A.10-07-001 listed on the most recently updated service list (below) available on the California Public Utilities Commission website.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 2<sup>nd</sup> day of August, 2010 PST in Okinawa, Japan.

/s/ Jacqueline Ayer  
Jacqueline Ayer

### SERVICE LIST FOR A.10-07-001 AS OF AUGUST 2, 2010 (1:03AM PST)

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