

164 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Kevin J. McIntyre, Chairman;
Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

Nevada Hydro Company, Inc.

Docket No. EL18-131-000

ORDER DISMISSING PETITION FOR DECLARATORY ORDER

(Issued September 20, 2018)

1. On March 9, 2018, Nevada Hydro Company (Nevada Hydro) petitioned the Commission for a declaratory ruling that finds that (1) the Lake Elsinore Advanced Pumped Storage (LEAPS) facility is a transmission facility consistent with the Commission's *Western Grid*¹ order and the Commission's 2017 policy statement regarding cost recovery for storage resources;² and (2) LEAPS is entitled to cost-based rate recovery under the California Independent System Operator Corporation's (CAISO) Transmission Access Charge (TAC). In this order, we dismiss the petition for the reasons discussed herein.

I. Background

Nevada Hydro Petition

2. Nevada Hydro's proposed \$2 billion LEAPS project will consist of two primary components: (1) a 500 MW pumped storage facility to be located on Lake Elsinore in Riverside, California; and (2) the Talega-Escondido/Valley-Serrano 500 kV Interconnect (TE/VS Interconnection), a 30-mile transmission line that will interconnect the pumped storage facility to the transmission systems owned by Southern California Edison Company (SoCal Edison) and San Diego Gas & Electric Company (SDG&E). The LEAPS project entered CAISO's generator interconnection queue in 2005 and has large generator interconnection agreements (LGIA) with CAISO and SoCal Edison and with

¹ *Western Grid Dev., LLC*, 130 FERC ¶ 61,056, *reh'g denied*, 133 FERC ¶ 61,029 (2010) (*Western Grid*).

² *Utilization of Electric Storage Resources for Multiple Services When Receiving Cost-Based Rate Recovery*, 158 FERC ¶ 61,051 (2017) (*Storage Policy Statement*).

CAISO and SDG&E. LEAPS' hydroelectric license application is pending before the Commission in Docket No. P-14227-003.

3. Both the pumped storage facility and TE/VS Interconnection were the subject of a previous request for transmission rate incentives pursuant to Order No. 679.³ Although the Commission approved certain rate incentives for the TE/VS Interconnection, it denied Nevada Hydro's requested incentives for the pumped storage facility because it was ineligible for transmission rate incentives under Order No. 679.⁴ In *Nevada Hydro*, the Commission determined that it would be inappropriate to require CAISO to assume operational control over the facility in the manner described by the applicant at that time and found that Nevada Hydro failed to distinguish the benefits offered by LEAPS from other pumped hydro facilities that had not been granted rolled-in transmission pricing.⁵

4. In the instant petition, Nevada Hydro contends that it now satisfies the Commission's criteria for storage to operate as a transmission facility, consistent with *Western Grid* and the *Storage Policy Statement*. Specifically, Nevada Hydro explains that it, not CAISO, will maintain operational responsibility for LEAPS. Nevada Hydro asserts that, consistent with *Western Grid* and the Commission's guidance in the *Storage Policy Statement*, it will develop and implement operating procedures with CAISO to operate LEAPS as a traditional transmission facility to ensure that it does not adversely affect CAISO's independence and non-discriminatory services.⁶ Nevada Hydro proposes that it will become a Participating Transmission Owner (PTO) in CAISO and operate LEAPS as a transmission facility under the direction of CAISO through the Transmission Control Agreement. Therefore, Nevada Hydro contends that it will operate LEAPS in the same way that other PTOs in CAISO operate their transmission facilities.

³ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ *Nevada Hydro Co., Inc.*, 122 FERC ¶ 61,272 at PP 1, 28-85 (2008) (*Nevada Hydro*). With respect to the TE/VS Interconnection, the Commission granted Nevada Hydro an incentive equity return and a hypothetical 50 percent equity/50 percent debt capital structure during the construction phase. However, the Commission denied Nevada Hydro's request for full recovery of construction work in progress, abandonment costs, and a three-year rate moratorium for the TE/VS Interconnection.

⁵ *Id.* P 83.

⁶ Petition at 20-21.

5. In support of its claim to operate LEAPS as a transmission facility, Nevada Hydro lists the tasks and operational activities that it will perform.⁷ Nevada Hydro states that LEAPS will operate as a wholesale transmission facility that will transport stored energy to serve retail load, similar to a transmission line, and will provide voltage support that is necessary for the operation of the transmission system, just like the storage project at issue in *Western Grid*.⁸ Nevada Hydro also states that, through its storage capability, LEAPS will be able to transmit electricity to both SoCal Edison and SDG&E to alleviate existing transmission constraints.⁹ Finally, Nevada Hydro asserts that LEAPS is designed to (1) be used by CAISO to resolve transmission and system reliability issues when the system is experiencing over-generation conditions; (2) maintain reliability when other transmission facilities are out of service for maintenance; and (3) provide grid resilience as the grid relies increasingly on intermittent resources. Specifically, Nevada Hydro argues that LEAPS will provide a number of services, including voltage support, thermal overload protection, frequency regulation, load following, balancing renewable generation, ramping/regulation services, black start service, mitigation of transmission outages/contingency reserves, inertial response, relief of transmission congestion between major load pockets, and cycling/ramping protection of thermal generation.¹⁰

6. Nevada Hydro asserts that, as was the case with the facilities in *Western Grid*, LEAPS will not participate in CAISO's wholesale power markets as a market participant and thus will remain revenue neutral with respect to any incidental wholesale power sales.¹¹ Nevada Hydro further states that CAISO will play no role in decisions about whether to offer LEAPS into the markets, the parameters for such offers, or the scheduling of market services from LEAPS. While Nevada Hydro intends to develop and implement operating procedures with CAISO to operate LEAPS as a traditional transmission facility, as explained above, Nevada Hydro notes that CAISO will not have any role in directing LEAPS to pump water for storage or other plant operations. Nevada Hydro states it will be solely responsible for these decisions, and that this implements the Commission's guidance in the *Storage Policy Statement*.¹²

⁷ *Id.* at 21-22.

⁸ *Id.* at 17.

⁹ *Id.* at 18.

¹⁰ *Id.* at 19.

¹¹ *Id.* at 23.

¹² *Id.* at 24.

7. Nevada Hydro explains that it also will credit any revenues that it receives as a result of “incidental participation in California’s wholesale power markets” against its transmission revenue requirement.¹³ Nevada Hydro further explains that it does not seek any transmission rate incentives; rather, it seeks “to remove uncertainty regarding the eligibility of LEAPS to be studied as a transmission facility in the CAISO transmission plan for cost-based rate recovery through its [TAC] like other wholesale transmission facilities.”¹⁴ Nevada Hydro alleges that such uncertainty exists due to CAISO’s “long standing position that pumped storage hydroelectric facilities should always be evaluated as generating resources and load, but never as electric transmission.”¹⁵

II. Notice of Filing and Responsive Pleadings

8. Notice of the petition was published in the *Federal Register*, 83 Fed. Reg. 12,185 (2018), with interventions and protests due on or before April 9, 2018. On April 4, 2018, SoCal Edison filed a motion to intervene and a request for extension of time to submit comments. On April 9, 2018, the Commission issued a notice extending the due date for interventions, comments, and protests to April 13, 2018.

9. California Public Utilities Commission (CPUC) filed a notice of intervention. Timely motions to intervene were filed by Ameren Services Company; California Department of Water Resources State Water Project; CAISO; California Municipal Utilities Association (CMUA); Calpine Corporation; City of Los Angeles Department of Water and Power; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); City of Santa Clara, California and the M-S-R Public Power Agency; Modesto Irrigation District; Northern California Power Agency (NCPA); and Transmission Agency of Northern California (TANC). Pacific Gas and Electric (PG&E) filed a timely motion to intervene and comments. CAISO, CMUA, CPUC, NCPA, Six Cities, SoCal Edison, and TANC filed protests. On April 24, 2018, Nevada Hydro filed an answer to the comments and protests.

10. In general, protestors argue that CAISO’s regional transmission planning process (TPP), not the instant petition, should determine whether LEAPS is a transmission

¹³ *Id.* at 15.

¹⁴ *Id.* at 16.

¹⁵ *Id.*

facility¹⁶ and is needed to address a transmission constraint.¹⁷ Some protestors argue that the relief requested in the petition is not adequately supported and would be premature and disruptive because the proposed cost recovery mechanism for LEAPS has the potential to distort CAISO's energy and ancillary services markets and bilateral market for capacity resources.¹⁸ Protestors also contend that there is no policy or conceptual issue that needs to be addressed via declaratory order. They argue that *Western Grid* establishes that an electric storage asset that exclusively meets transmission reliability needs as a regulated transmission facility can be classified as a transmission facility.¹⁹

11. More specifically, CAISO asserts that it is its role as independent transmission provider, not market participants' role, to identify specific transmission needs and to evaluate and determine which projects more efficiently or cost-effectively address those needs.²⁰ CAISO further argues that a facility's eligibility to be treated as a transmission facility should be based on its ability to provide transmission services and meet transmission needs, not its ability to provide market-based services.²¹ CAISO states that its support for the increased deployment of energy storage resources as a means to facilitate meeting the state's renewal portfolio standard goals is not equivalent to a finding that any particular electric storage project meets an identified transmission need. Nor, according to CAISO, does it demonstrate that such a project constitutes the more efficient or cost-effective solution to meet such need or that competitive solicitation is unnecessary.²²

12. CAISO also argues that Nevada Hydro appears to seek to short-circuit CAISO's TPP by asking the Commission to presume, based on Nevada Hydro's own analysis, that LEAPS is the more efficient or cost-effective solution to satisfy one or more transmission

¹⁶ See, e.g., PG&E Comments at 3; CPUC Protest at 5; CAISO Protest at 4, 12-13, 16-17.

¹⁷ See, e.g., SoCal Edison Comments and Protest at 3; CAISO Protest at 13.

¹⁸ See, e.g., Six Cities Protest at 2-3; CPUC Protest at 7; NCPA Protest at 3.

¹⁹ PG&E Comments at 4; CAISO Protest at 4.

²⁰ CAISO Protest at 21.

²¹ *Id.*

²² *Id.* at 25.

planning needs, which have yet to be identified, vetted, or evaluated in the TPP.²³ CAISO argues that the Nevada Hydro benefits study included in the petition appears to rely heavily on revenues from providing market-based services (e.g., energy market sales, regulation, load following, capacity, spinning and other reserves, ramping) as support for its argument that the overall project should be treated as a transmission asset providing transmission service.²⁴ CAISO argues that the Commission should reject any suggestion that CAISO should take the results of Nevada Hydro's benefits studies at face value and not independently evaluate them or that the Commission should pre-determine the outcome of CAISO's TPP.²⁵

13. The CPUC also contends that LEAPS should be considered through the TPP to determine whether it is a transmission facility. The CPUC argues that the TPP would model the nuances of the project's implementation and the impacts to the CAISO-managed system for all TPP participants to analyze. The CPUC points out that, in comparison, the submission by Nevada Hydro in this proceeding, with the testimony of one expert witness in support of approval of a \$2 billion project, is insufficient to justify the size of Nevada Hydro's request.²⁶ SoCal Edison asserts that participation in the TPP would enable CAISO to determine whether the proposed LEAPS facility meets the integration requirements of the Transmission Control Agreement, which is required of project sponsors in order to turn transmission facilities over to CAISO's operational control.²⁷

14. With respect to the need for LEAPS, the CPUC asserts that, like CAISO, it has procedures for forecasting electrical generation and storage needs and anticipating procurement necessities. CPUC states that it has concluded that it is unlikely that procurement of pumped storage will be the most cost efficient means of meeting reliability, grid integration, or greenhouse gas reduction targets between now and 2030.²⁸ Similarly, CMUA argues that the Commission should respect the integrated resource planning and procurement process underway in California, which is considering the economics of pumped storage. According to CMUA, attempting to broadly socialize the

²³ *Id.* at 20.

²⁴ *Id.* at 21.

²⁵ *Id.*

²⁶ CPUC Protest at 7.

²⁷ SoCal Edison Comments and Protest at 3-4.

²⁸ *See* CPUC Protest at 7-8 (discussing its Decision (D.) 18-02-018).

costs of pumped-storage projects would undermine those deliberations.²⁹ CMUA further contends that CAISO must find that LEAPS must be subject to a competitive process to determine whether, in light of its projected benefits, its costs are reasonable compared to the costs and benefits of other alternatives for meeting the identified need.³⁰

15. Relatedly, Six Cities argue that the nature of the claimed benefits for LEAPS and Nevada Hydro's statements regarding the manner in which it intends to operate LEAPS do not necessarily support cost recovery for the project through transmission rates. Six Cities note that the majority of benefits estimated for LEAPS assume provision of capacity, energy, or ancillary services. Six Cities question whether the analysis of LEAPS's benefits should instead be limited to those associated with specific transmission services, as the Commission directed in *Western Grid*. Six Cities also assert that, if some of the services that LEAPS is offering to provide could reasonably be classified as transmission-related, while other services are more appropriately classified as capacity, energy, or ancillary services, there are questions as to the appropriate methods for allocating and/or recovering the costs associated with providing the different types of services.³¹ According to Six Cities, the Commission should give CAISO and its stakeholders the opportunity to address these issues through the TPP and a related stakeholder process.³² Finally, Six Cities submit that Commission action on the petition at this time could cut short and prematurely narrow CAISO and stakeholder evaluation of the complex issues raised by Nevada Hydro's proposed treatment of the LEAPS Project.

16. Responding to Nevada Hydro's discussion of *Western Grid*, NCPA argues that the Commission implicitly distinguished the *Western Grid* proceeding from LEAPS, concluding that the facilities in *Western Grid* were unique thus far in terms of how Western Grid proposed to utilize storage technology to mimic a wholesale transmission function.³³ NCPA states that *Western Grid* was a discrete project that the Commission found to be similar to capacitors, which the Commission already determined to be transmission equipment.³⁴ NCPA contends that LEAPS, however, is a \$2 billion pumped storage project that carries out a myriad of functions—far more than the batteries project

²⁹ CMUA Protest at 8-9.

³⁰ CMUA Protest at 8 (citing CAISO TPP Business Practice Manual § 4.4.3.2).

³¹ Six Cities Protest at 8-9.

³² *Id.*

³³ NCPA Protest at 7 (citing *Western Grid*, 130 FERC ¶ 61,056 at P 43).

³⁴ *Id.* (citing *Western Grid*, 130 FERC ¶ 61,056 at P 47).

at issue in *Western Grid*. According to NCPA, the Commission considered the specific technical operating details of both projects and concluded that the facts and circumstances in *Western Grid* were sufficiently distinguishable from those in *Nevada Hydro* to justify a different result.³⁵

17. Regarding the need for a Commission finding at this time, CAISO asserts that the purpose of a petition for declaratory order is to “terminate controversy or remove uncertainty.”³⁶ CAISO argues that it is well-settled that electric storage projects, when they function as transmission assets and are selected in an appropriate transmission planning process to meet an identified transmission need, can be treated as transmission for purposes of cost recovery.³⁷ CAISO contends that it is not clear, therefore, what controversy or uncertainty exists for the Commission to resolve in the petition.

18. CAISO further argues that, contrary to Nevada Hydro’s assertion, CAISO has not taken the position that electric storage resources, including pumped storage projects such as LEAPS, are ineligible to be evaluated in the TPP as potential transmission assets. CAISO argues that, in *Western Grid*, the Commission determined that the storage devices were eligible to receive certain transmission rate incentives because they would be operated in a manner more akin to a transmission facility than a generator.³⁸ However, the Commission conditioned the grant of incentives on CAISO’s approval of the project in the TPP. Citing comments it previously submitted on the Commission’s 2016 electric storage technical conference,³⁹ CAISO notes that in the past several years it had studied numerous battery storage projects as potential transmission assets, but it envisioned a limited role for a framework that utilizes an “energy storage device” exclusively as a transmission asset. CAISO asserts that the Commission appears to agree in the *Storage Policy Statement* that storage resources provide more value to the extent they can provide multiple services, not just transmission services.⁴⁰ Relatedly, PG&E explains that, in the recently concluded 2017-18 TPP, two PG&E-proposed storage projects were considered

³⁵ *Id.* at 7-8 (citing *Western Grid*, 130 FERC ¶ 61,056 at P 48; *Nevada Hydro*, 117 FERC ¶ 61,204 (2006)).

³⁶ CAISO Protest at 8 (citing 18 C.F.R. § 385.207(a)(2) (2018)).

³⁷ *Id.* at 8 (referring to *Western Grid*).

³⁸ *Id.* (citing *Western Grid*, 130 FERC ¶ 61,056 at PP 45-52).

³⁹ *Id.* at 10; *see also* CAISO Dec 14, 2016 Comments, Docket No. AD16-25-000, at 1-2.

⁴⁰ CAISO Protest at 10.

and approved as components of cost-effective solutions to meet transmission reliability needs.⁴¹ Thus, PG&E asserts that the TPP provides an opportunity for cost-effective storage to move forward, obviating the need for the Commission to order CAISO to consider electric storage resources in its TPP.⁴² NCPA cautions, however, that there is a distinction between the smaller types of projects CAISO has already approved as transmission alternatives and the inclusion of a 500 MW resource greatly resembling (and previously conceived as) a traditional generation project.⁴³

19. On June 11, 2018, Nevada Hydro filed an answer to these comments and protests, reiterating the arguments from its petition.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁴ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

21. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority.⁴⁵ We will not accept Nevada Hydro's answer filed in this proceeding because it has not provided information that has assisted us in our decision-making process.

B. Commission Determination

22. We dismiss Nevada Hydro's petition and find that a request to designate LEAPS as a transmission facility is premature at this time. LEAPS has not been studied in the CAISO TPP to determine whether it addresses a transmission need identified through that process, and, if such a need were met, how the facility would be operated. Absent such

⁴¹ See CAISO Board Approved 2017-2018 Transmission Plan, at 128-29, 141, http://www.aiso.com/Documents/BoardApproved-2017-2018_Transmission_Plan.pdf.

⁴² PG&E Comments at 4.

⁴³ NCPA Protest at 5.

⁴⁴ 18 C.F.R. § 385.214 (2018).

⁴⁵ *Id.* § 385.213(a)(2).

information, the Commission cannot make a reasoned decision on whether LEAPS is a transmission project and thus eligible for cost-recovery under the TAC.

23. Requiring LEAPS to be reviewed through the CAISO TPP is consistent with the Commission's policy that regional transmission planning processes should identify transmission needs and solutions in a coordinated, nondiscriminatory process that is open to all interested stakeholders.⁴⁶ CAISO's TPP, as described in its tariff, provides stakeholders an open and transparent process to identify transmission constraints that may be resolved through specific proposals and to comment on potential solutions.⁴⁷ On this point, we note that CAISO has committed to studying LEAPS as a transmission proposal, both as a means to address reliability needs (if it is submitted in an appropriate request window of CAISO's TPP and if the proposal specifies the CAISO-identified reliability constraints the project could mitigate), and as an economic planning study request.⁴⁸ We expect CAISO will adhere to this commitment. Given the uncertainty over whether LEAPS will meet identified transmission needs in the CAISO TPP, and, if so, how CAISO would require LEAPS to be operated to meet those needs, we can only determine whether or not LEAPS is a transmission facility after it has been studied through the CAISO TPP. In this regard, we agree with CAISO's argument that there is no controversy or uncertainty necessitating a declaratory finding at this time.

24. Furthermore, contrary to Nevada Hydro's assertions, the *Storage Policy Statement* does not provide guidance for determining whether a particular electric storage resource is a transmission facility eligible for cost recovery through transmission rates. Rather, the *Storage Policy Statement* provides guidance only with respect to issues that must be addressed if an electric storage resource seeks to receive cost-based rate recovery for certain services, whether through transmission rates or any other cost-based rate, while also receiving market-based revenues for providing separate market-based services.⁴⁹

⁴⁶ See generally *Transmission Planning and Cost Allocation by Transmission Owner and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁴⁷ See, e.g., CAISO Tariff, Sec. 24.4.3 (stakeholders may submit solutions for reliability-driven needs); Sec. 24.3.4 (economic planning studies).

⁴⁸ CAISO Protest at 13-14.

⁴⁹ Specifically, the Commission explained in the *Storage Policy Statement* that, if an electric storage resource seeks to recover its costs through both cost-based and market-based rates concurrently, the following issues should be addressed: (1) the potential for combined cost-based and market-based rate recovery to result in double recovery of costs

Whether the Commission will approve any particular form of cost-based rate recovery, through transmission rates or otherwise, is a separate matter. Because an electric storage resource may not readily fit into only one of the traditional asset functions of generation, transmission, or distribution, the Commission has addressed the classification of electric storage resources on a case-by-case basis.⁵⁰ As a result, an electric storage resource that seeks a finding from the Commission that it is a transmission facility eligible to recover its costs through transmission rates must demonstrate why it should be considered a transmission facility.⁵¹ In this regard, we find that Nevada Hydro's arguments that LEAPS is a transmission facility are too general to support such a finding in the absence of specific, transmission planning process-identified transmission needs and an explanation of how LEAPS will operate to address those particular transmission needs.

25. Because this threshold demonstration of whether LEAPS will address transmission needs identified through the CAISO TPP cannot yet be made, we also dismiss as premature Nevada Hydro's request for a ruling that LEAPS is entitled to cost-based rate recovery through the CAISO TAC. If the CAISO TPP ultimately identifies LEAPS as a more efficient or cost-effective solution to identified transmission needs, and Nevada Hydro wishes to seek cost recovery through the CAISO TAC, then Nevada Hydro must demonstrate to the Commission how the manner in which LEAPS would operate to address the identified need in the TPP makes it a transmission facility, such as through a filing for cost recovery under Federal Power Act section 205⁵² that sets forth the revenue requirement that Nevada Hydro proposes to include in the CAISO TAC.

by the electric storage resource owner or operator to the detriment of cost-based ratepayers; (2) the potential for cost recovery through cost-based rates to inappropriately suppress competitive prices in the wholesale electric markets to the detriment of other competitors who do not receive such cost-based rate recovery; and (3) the level of control in the operation of an electric storage resource by a Regional Transmission Organization/Independent System Operator that could jeopardize its independence from market participants. *Storage Policy Statement*, 158 FERC ¶ 61,051 at PP 9, 13.

⁵⁰ See, e.g., *Western Grid*, 130 FERC ¶ 61,056 at P 44.

⁵¹ In *Western Grid*, the Commission found that, based on the specific circumstances and characteristics of the facilities at issue in *Western Grid*, they would be wholesale transmission facilities subject to the Commission's jurisdiction if operated as Western Grid described. *Western Grid*, 130 FERC ¶ 61,056 at PP 46-47.

⁵² 16 U.S.C. § 824d (2012).

The Commission orders:

Nevada Hydro's petition for declaratory order is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.