

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Nevada Hydro, Inc.

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Project No. 15261-001

**THE NEVADA HYDRO COMPANY, INC.'S ANSWER TO COMMENTS ON
PRELIMINARY PERMIT APPLICATION**

The Nevada Hydro Company, Inc. (“Nevada Hydro”) hereby files this answer to comments received in response to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) April 8, 2022 Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications. No competing applications were filed in response to FERC’s notice. Nevada Hydro does not object to any of the motions to intervene. Nevada Hydro does wish to respond to certain of the comments contesting the permit application in order to update interested stakeholders on the status of Nevada Hydro and its plans for the Lake Elsinore Advanced Pumped Storage Project (“Project”).

I. BACKGROUND

As many of the commenters pointed out, this Project has a long history. FERC issued a Final Environmental Impact Statement for an earlier version of the Project in 2007.¹ FERC then dismissed the license application for the Project due to unresolved

¹ Final Environmental Impact Statement for the Lake Elsinore Advanced Pumped Storage Project, Project No. 11858-000 (issued Jan. 30, 2007).

disputes over the scope of the Project between the then co-applicants, Nevada Hydro and Elsinore Valley Municipal Water District (“Water District”).²

In 2017, Nevada Hydro filed a second license application for the Project.³ On August 27, 2020, the Commission issued a Notice of Anticipated Schedule for Lake Elsinore Advanced Pumped Storage Project which indicated that the Commission expected to issue a Notice of Ready for Environmental Analysis (“REA Notice”) by December 11, 2020.⁴ Issuance of the REA Notice means that the Commission has the information it needs to proceed with its National Environmental Policy Act (“NEPA”) analysis.⁵

Because a portion of the Project will be located within the Cleveland National Forest, in addition to a FERC license the Project will require a special use authorization from the U.S. Forest Service (“Forest Service”) under the Federal Land Policy and Management Act (“FLPMA”). As a large infrastructure project requiring multiple federal approvals, the Project was approved to be a “covered project” under the Fixing America’s Surface Transportation Act, Title 41 (commonly referred to as “FAST-41”),⁶ intended to improve consultation and coordination among government agencies for such infrastructure projects. The Forest Service agreed to be a cooperating agency with FERC on the NEPA document.

² *Lake Elsinore Advanced Pumped Storage Project*, 136 FERC ¶ 62,033, *reh’g denied*, 137 FERC ¶ 61,133 (2011).

³ This license application is docketed as FERC Project No. 14227.

⁴ Notice of Anticipated Schedule for Lake Elsinore Advanced Pumped Storage Project, Project No. 14227-003 (issued Aug. 27, 2020).

⁵ See 18 C.F.R. § 5.22 (2021).

⁶ Pub. L. No. 114-94, tit. XLI, 129 Stat. 1312, 1741-62 (Dec. 4, 2015) (codified at 42 U.S.C. § 4370m et seq.).

On December 11, 2020, the Commission issued its Scoping Document 2 (“SD2”) for the Project.⁷ In the SD2, FERC noted that the environmental review process was paused pending Nevada Hydro’s completion of several studies that the Forest Service required to analyze the proposed Project under FLPMA and NEPA, and stated that upon completion of the studies, the environmental review process would resume with the issuance of the REA Notice and an updated process schedule.⁸

Based on lack of progress between Nevada Hydro and the Forest Service in resolving the study disputes, FERC dismissed Nevada Hydro’s license application in a December 9, 2021 letter order “without prejudice” to resubmitting the application “with all requested information.”⁹ Nevada Hydro sought rehearing and stay of the letter order on the grounds that Nevada Hydro had a state court-supervised change in management and funding commitment to complete the studies required by the Forest Service, and that Nevada Hydro had been working collaboratively with the Forest Service to address its concerns.¹⁰ Nonetheless, the Commission denied Nevada Hydro’s request for rehearing and stay and upheld the dismissal.¹¹

Because the Project site was now open for development, Nevada Hydro filed an application for a preliminary permit to secure the site pending its ongoing discussions

⁷ Scoping Document 2 for Lake Elsinore Advanced Pumped Storage Project, Project No 14227-003 (issued Dec. 11, 2020).

⁸ *Id.* at 58.

⁹ Letter from Vince Yearick, Director, FERC Division of Hydropower Licensing, to Rexford Wait, Nevada Hydro Company, Inc., Project No. 14227-003 (issued Dec. 9, 2021).

¹⁰ Request for Rehearing of the Nevada Hydro Company or, In the Alternative, Motion for Temporary Stay of Dismissal of its License Application in the December 9, 2021 Letter Order, Project No. 14227-005 (filed Jan. 7, 2022) (“Nevada Hydro Rehearing Request”).

¹¹ *Nev. Hydro Co., Inc.*, 178 FERC ¶ 61,218 (2022).

with the Forest Service.¹² The Project description in the permit application is essentially the same as Project No. 14227 given Nevada Hydro's need to file quickly. However, as discussed further below, Nevada Hydro is in the process of reconfiguring elements of the Project in response to concerns raised by the Forest Service and other stakeholders.

The Project will be an important addition to the California grid. Renewable energy development in California will continue to grow exponentially in the coming decades. Large-scale energy storage is essential for successful integration of variable energy resources like solar and wind while maintaining reliable grid operations. The Project will use off-peak or excess energy to pump water from the existing Lake Elsinore to the upper reservoir during periods of low electrical demand or high intermittent generation supply. The Project will provide an economical supply of peaking capacity as well as ancillary services, including load following, system regulation through spinning reserve, and immediately available standby generating capacity, among others.

The Project also offers an opportunity to materially enhance the multipurpose use of Lake Elsinore. The Project will include a water treatment facility and a supplemental oxygen injection system to improve water quality in the lake. It will provide revenues to the Water District, which is responsible for managing the lake, through purchase of water required for Project start-up and for annual make-up water to counter evaporation and ensure Lake Elsinore remains at a viable level. In addition, Nevada Hydro is working with its dam design consultants to evaluate increasing the capacity of the upper reservoir without substantially changing the reservoir design. This would increase the "dead

¹² Application for Preliminary Permit for the Lake Elsinore Advanced Pumped Storage Project, Project No. 15261-000 (filed Feb. 8, 2022).

storage” capacity in the upper reservoir to enable more water to be purchased and stored when available, so that it can be used to augment Lake Elsinore water levels during periods of drought.

Nevada Hydro is confident that the Project can be designed and constructed in a way that provides all these benefits while minimizing adverse impacts to the community.

II. ANSWER TO COMMENTS

The Commission received a number of comments and motions to intervene in opposition to the permit application. The vast majority of comments addressed potential Project impacts of construction and operation, and therefore are outside the scope of this permit proceeding.¹³ Other comments criticized the adequacy of Nevada Hydro’s past engagement with stakeholders, suggested Nevada Hydro should reinstate the pre-application consultation and study process, and questioned Nevada Hydro’s financial resources to complete the license application process. Although not directly relevant to the Commission’s issuance of a preliminary permit in this docket, Nevada Hydro will take the opportunity to respond to some of these comments in the interest of furthering a dialogue on the future of the Project.

¹³ See, e.g., *Green Energy Storage Corp*, 150 FERC ¶ 61,042, at P 10 (2015) (opposition to the construction of the project is outside the scope of the preliminary permit proceeding); *Tomlin Energy LLC*, 169 FERC ¶ 61,037 at P 8 (2019) (explaining that concerns about impacts of project operation are premature at the permit stage); *Alaska Power Co., Inc.*, 138 FERC ¶ 62,130 at P 7 (2012) (stating that concerns over the project’s impact on fish and wildlife resources and the cumulative impacts of basin development are premature at the permit stage); *SV Hydro, LLC*, 173 FERC ¶ 62,047 at P 5 (2020) (declining to address as premature commenter claims that the upper reservoir could fail and endanger residents and infrastructure downstream; that the initial fill water may be unavailable because it is subject to private and public ownership; and that the proposed project could be an impediment to accessing iron ore deposits).

A. Transmission Line Route and Configuration

As previously reported,¹⁴ Nevada Hydro retained GridBright, Inc. to conduct a study of alternative transmission line routes and configurations. That study is complete. Based on the study, Nevada Hydro will propose new Project primary transmission lines that avoid traversing National Forest lands by interconnecting via urban routes to existing high voltage transmission lines. Nevada Hydro will propose to move the northern and southern routes to the east to urban routings. This will avoid the Cleveland National Forest and the Temescal Valley, will align with existing transmission corridors, and will reroute the lines to where underground installation is more practical.

Nevada Hydro also will propose to reduce the capacity of both the northern and southern transmission lines from 500 kilovolts (“kV”) to 230 kV, which will facilitate burial of the lines where practical.

Many of the comments on the permit application raised concerns about the northern transmission line route through the Cleveland National Forest and the adverse impacts of overhead transmission lines. Nevada Hydro’s proposed changes will go a long way to address those concerns.

B. Nevada Hydro’s Financial Resources

Some commenters questioned the financial ability of Nevada Hydro to conduct the necessary studies and complete the license application process. As the Commission and stakeholders know, at the time of dismissal of its license application for Project No.

¹⁴ Nevada Hydro Rehearing Request at 10.

14227, Nevada Hydro had been placed in receivership due to disputes between the shareholders of Nevada Hydro over ownership and management of the company.¹⁵

The litigation has now been settled and the receivership dissolved.¹⁶ Under the settlement, Daytona Power Corporation (“Daytona”), previously a minority shareholder and primary investor in the Project, is now the majority shareholder and will manage the company going forward. Daytona and Nevada Hydro have entered into a funding agreement by which Daytona has committed the funding to complete studies and take the other remaining steps necessary to obtain a FERC license for the Project.

C. Restarting the Pre-Application Process and Stakeholder Consultation

Some commenters objected to reinstatement of Nevada Hydro’s license application for Project No. 14227 and suggested Nevada Hydro should start the pre-application process over from the beginning under the Commission’s Integrated Licensing Process (“ILP”).¹⁷ This is neither necessary nor appropriate.

As noted above, FERC’s order dismissed Nevada Hydro’s license application “without prejudice” to Nevada Hydro refile it with all the information requested by the Forest Service. Nevada Hydro will work with the Forest Service to determine what additional information the Forest Service requires in light of Nevada Hydro’s proposed changes to the Project. Nevada Hydro will then refile its license application with the Commission. To restart the pre-application process from the beginning, particularly

¹⁵ *Id.* at 8-9.

¹⁶ Stipulation and Order to Discharge Receiver and Dismiss Action with Prejudice, *Daytona Power Corp. v. The Hydro Co.*, Case No. A-21-839925-B, Eighth Judicial Dist. Court, Clark County, Nevada, (June 30, 2022).

¹⁷ *See* 18 C.F.R. Part 5.

utilizing the front-loaded ILP, would cause inordinate delay and would be an enormous waste of resources for Nevada Hydro, the Commission, and interested stakeholders.

Nevada Hydro's refiled license application will differ in certain respects from its 2017 application and from its pending preliminary permit application. Many of these changes will be in response to concerns raised by the Forest Service and interested stakeholders. It is typical for a license application to evolve in response to such concerns.¹⁸ However, Nevada Hydro is also considering other changes to the Project. As mentioned, it is evaluating increasing the volume of the upper reservoir to provide additional water storage and allow stabilization of water levels in Lake Elsinore in times of drought.

In addition, after consultation with GridBright, Inc. and other experts, Nevada Hydro will propose to reduce the discharge and filling time of the upper reservoir to approximately five hours, by increasing the installed capacity from 500 megawatts to 1,000 megawatts. This can be accomplished by adding two (four total) reversible Francis-type pump-turbine units to the underground powerhouse. Adding the two units will not increase the size of the powerhouse or the volume required per discharge. Neither will it alter the proposed upper reservoir design or water conduit system. As a result of this change the Project will better utilize water resources by generating more power during critical demand periods.

¹⁸ See 18 C.F.R. § 4.35(e)(4) (amendments to an application to satisfy requests of resource agencies or Indian tribes or concerns of the Commission are not "material amendments" constituting a new application filing).

Nevada Hydro is aware that any changes to the previous Project proposal will need to be supported by appropriate studies and analyses in the refiled license application. To the extent the Commission determines that such changes constitute a “material amendment” to the application, FERC has established procedures which do not involve restarting the entire pre-application process from the beginning.¹⁹

Several commenters complained that Nevada Hydro has a history of failing to consult adequately with stakeholders. As noted previously, Nevada Hydro is now under new management. David Pfeiffer and Paul Anderson have a long, demonstrated history of success dealing with stakeholders in complex, large-scale projects. New management is committed to meaningful engagement with resource agencies, Tribes, and other stakeholders before and after refiling the license application with FERC. This will help ensure that impacts are appropriately mitigated and Project benefits are shared by those most affected by the Project. New management has also engaged with the Forest Service prior to, and since, dismissal of the license application regarding the Forest Service concerns about the Project and the studies necessary to support the Forest Service evaluation of the Project under FLPMA and NEPA. This commitment to meaningful engagement is demonstrated by completion of the transmission study and the resulting Project reconfiguration which will significantly reduce the impacts to Forest Service lands and adjacent landowners.

III. CONCLUSION

For all the above reasons, the Commission should grant Nevada Hydro a new preliminary permit to secure the Project site while it develops a modified Project proposal

¹⁹ See 18 C.F.R. § 4.35(c)(3) (Commission will reissue public notice of a materially amended application).

and revised license application. Nevada Hydro believes that the reconfigured Project will help to alleviate many of the concerns raised by stakeholders through the years and in their comments on the preliminary permit application. Nevada Hydro commits to work collaboratively with stakeholders to further avoid and mitigate Project impacts, maximize Project benefits, and improve public knowledge and acceptance of the Project.

Respectfully submitted,

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CERTIFICATE OF SERVICE

Pursuant to Rule 2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this 1st day of July, 2022.

/s/ Lorielle Morgan
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