

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

Nevada Hydro, Inc.

)

Project No. 15261-000

**ANSWER OF THE NEVADA HYDRO COMPANY, INC. TO AMENDMENT TO
MOTION TO INTERVENE AND MOTION TO DISMISS PRELIMINARY
PERMIT APPLICATION**

The Nevada Hydro Company, Inc. (“Nevada Hydro”), pursuant to Rule 213 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure,¹ files this answer to the amended motion to intervene and motion to dismiss preliminary permit application filed on July 15, 2022 by the Pechanga Band of Indians (“Pechanga Band”).²

The Pechanga Band timely filed its original motion to intervene and comments on June 6, 2022³ in response to Nevada Hydro’s preliminary permit application for the Lake Elsinore Advanced Pumped Storage Project No. 15261 (“Project”). As stated in its previous answer,⁴ Nevada Hydro does not object to the Pechanga Band as a party to this proceeding. However, Nevada Hydro opposes the Pechanga Band’s current filing on both procedural and substantive grounds.

¹ 18 C.F.R. § 385.213 (2021).

² Amendment to Motion to Intervene and Comments of the Pechanga Band of Indians and Motion to Dismiss Preliminary Permit, Project No. 15261-000 (filed July 15, 2022) (“Pechanga Band’s July 15 Filing”).

³ Motion to Intervene and Comments of the Pechanga Band of Indians, Project No. 15261-000 (filed June 6, 2022).

⁴ The Nevada Hydro Company, Inc.’s Answer to Comments on Preliminary Permit Application, Project No. 15621-001 (filed July 1, 2022) (“Nevada Hydro’s Answer”).

I. ANSWER

A. The Pechanga Band's So-Called Amendment to Its Motion to Intervene Should Be Dismissed as an Improper Answer to an Answer.

The Commission's rules prohibit filing of an answer to an answer "unless otherwise ordered."⁵ Although styled as an "amendment" to its June 6, 2022 motion to intervene, the Pechanga Band's July 15 Filing is an undisguised response to Nevada Hydro's Answer. Further, the Commission's rules do not provide for amendments to motions to intervene.⁶

The Pechanga Band's filing provides no additional information that would be helpful to the Commission's decision-making in this proceeding.⁷ To the contrary, as discussed below, the Pechanga Band misinterprets the purpose of a preliminary permit and the scope of FERC's review when it acts on permit applications. As a consequence, its comments are irrelevant to the permit proceeding. The Commission should dismiss the Pechanga Band's July 15 Filing as an unauthorized answer to an answer.

B. The Commission Should Deny the Pechanga Band's Motion to Dismiss the Preliminary Permit Application.

Even if the Commission were to entertain the Pechanga Band's July 15 Filing, it should deny the Pechanga Band's motion to dismiss Nevada Hydro's preliminary permit application.

⁵ 18 C.F.R. § 385.213(a)(2).

⁶ See 18 C.F.R. § 385.214.

⁷ See *Cube Yadkin Generation LLC*, 173 FERC ¶ 61,236 at P 13 (2020); *Tomlin Energy LLC*, 169 FERC ¶ 61,037 (2019); *Columbia Basin Hydropower*, 154 FERC ¶ 62,030 at P 6 n.7 (2016); *N.Y. State Elec. & Gas Corp. v. N.Y. Indep. Sys. Operator, Inc.*, 102 FERC ¶ 61,299 at P 20 (2003); *Entergy La., Inc.*, 92 FERC ¶ 61,052 (2000).

The sole purpose of a preliminary permit under Part I of the Federal Power Act is to secure priority of application for a license while the permittee obtains the data and performs the acts required to determine the feasibility of the project and to support an application for a license.⁸ A preliminary permit does not authorize the permittee to access land, undertake any land-disturbing activities, or construct the project.⁹ Consequently, issues regarding project construction and operation are appropriately raised at the license application stage.¹⁰

The Pechanga Band's concerns regarding the permit application focus on asserted potential adverse impacts associated with construction and operation of the Project.¹¹ These objections are simply not material to the question of whether the Commission should grant a preliminary permit to Nevada Hydro. They may be material once Nevada Hydro refiles its license application in Project No. 14227, but the permit will become moot once the Commission reinstates the license application.¹²

The Pechanga Band further bases its motion to dismiss on the proposed changes to the Project Nevada Hydro outlined in its filing. Nevada Hydro offered this information in good faith to assure stakeholders like the Pechanga Band that it was being responsive to their concerns and was willing to reconfigure significant features of the Project when it refiles its license application with FERC. The Pechanga Band asserts these proposed

⁸ 18 C.F.R. § 4.80.

⁹ *Ortus Power Res. Colo., LLC*, 179 FERC ¶ 62,103 at PP 5, 7 (2022).

¹⁰ *Id.* at P 7.

¹¹ Pechanga Band's July 15 Filing at 4-10.

¹² *See Ortus Power Res. Colo., LLC*, 179 FERC ¶ 62,103 at Ordering Paragraph (A) (permit term ends on the date a development application submitted by the permittee has been accepted for filing).

changes trigger the need to restart the Commission's pre-filing consultation process from the beginning.¹³

Once again, the Pechanga Band conflates the purpose of a preliminary permit with the Commission's licensing process. The preliminary permit does not dictate how a potential applicant will conduct pre-filing consultation, which of the Commission's licensing processes it will use, or what studies to conduct. In any case, as Nevada Hydro has explained, it is typical for project proposals to evolve during the course of a license proceeding and the Commission has procedures for assuring there is an opportunity for public comment on material changes to an application.¹⁴

Regarding the Pechanga Band's criticism that Nevada Hydro has failed adequately to consult with it in the past,¹⁵ Nevada Hydro's new management intends fully to live up to its commitment to engage in meaningful consultation with stakeholders, including the Pechanga Band, in moving forward with the Project.¹⁶ That will include consultation with the Pechanga Band concerning any impacts of the Project on its Traditional Cultural Properties. It will also include consultation on proposed Project changes, including the Project generating capacity and volume of the upper

¹³ Pechanga Band's July 15 Filing at 6-7.

¹⁴ Nevada Hydro's Answer at 8-9.

¹⁵ Pechanga Band's July 15 Filing at 9.

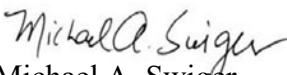
¹⁶ See Nevada Hydro's Answer at 9.

reservoir.¹⁷ Thus, the Pechanga Band will not be “blindfolded”¹⁸ as to how to participate in the licensing process once the license application for Project No. 14227 is reinstated.

II. CONCLUSION

For the reasons discussed above, Nevada Hydro requests that the Commission: (1) dismiss the Pechanga Band’s July 15 Filing as an improper answer to an answer; or (2) if it does not dismiss the filing, deny the Pechanga Band’s motion to dismiss Nevada Hydro’s preliminary permit application.

Respectfully submitted,


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DATED: July 29, 2022

¹⁷ The Pechanga Band’s July 15 Filing (at 4) quotes a California Independent System Operator Corporation (“CAISO”) filing from 2019 in FERC Docket No. EL19-81 stating that Nevada Hydro had not demonstrated that the Project would provide economic benefits as a *transmission* asset. This, of course, is entirely irrelevant to whether the Project as a *generation* asset would provide reliability and other benefits to the California grid, as the Commission ultimately will determine in the FERC license decision.

¹⁸ Pechanga Band’s July 15 Filing at 7.

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 29th day of July, 2022.

/s/ Mealear Tauch
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