

For these reasons, I concur in part with today's order.

William L. Massey,
Commissioner.

Brownell, Commissioner, *concurring*:

1. We are adopting behavioral rules for market participants in the electric and natural gas markets. No one can question the good intention behind these behavioral rules. As I have stated before, if there are violations of our rules, regulations or policies, we must be willing to punish and correct.

Concurrently, if there is misconduct by market participants that is intended to be anticompetitive, we must have the ability to remedy those market abuses.

2. Conversely, when we originally proposed behavioral rules, I had a number of concerns. I was concerned that the use of vague terms would create uncertainty and, thereby, undermine the good intentions of the rules. I feared that subsequent applications of the proposed behavior rules to real world actions could result in overly proscriptive "rules of the road" that will dampen business innovation and creative market strategies. The net effect would be less competition and the associated higher costs to consumers. I was concerned that we may be proposing a model that simply does not fit with the larger lessons we have learned in fostering competition over the past two decades, particularly in the gas market.

3. It is difficult to strike the right balance. I have carefully weighed the comments and believe the revisions and clarifications to the proposed behavioral rules achieve the appropriate balance. We clarify that these rules do not impose a "must offer" requirement. We revise the definition of manipulation to relate to actions that are "intended to or foreseeably could" manipulate markets. We add the exclusion that action taken at the direction of an RTO or ISO does not constitute manipulation.

4. Commenters also challenge the sufficiency of the term "legitimate business purpose" in distinguishing between prohibited and non-prohibited behavior. We clarify that transactions with economic substance, in which a seller offers or provides a service to a buyer where value is exchanged for value, are not prohibited behavior. Behavior driven by legitimate profit maximization or that serves important market functions is not manipulation. Moreover, I think it is important to recognize that scarcity pricing is the market response to a supply/demand imbalance that appropriately signals the need for infrastructure. For example, the high prices of 2000-2001 that reflected supply/demand fundamentals resulted in the first new power plants being constructed in California in ten years; price risk being hedged through the use of long-term contracting; and renewed efforts to correct a flawed market design.

5. We have also adopted measures that require accountability. A complaint must be brought to the Commission within 90 days after the calendar quarter that the manipulative action was alleged to have occurred. The 90-day time limit strikes an appropriate balance between providing sufficient opportunity to detect violations and the market's need for finality. The Order

also places a similar time limit on Commission action. As a matter of prosecutorial policy, the Commission will only initiate a proceeding or investigation within 90 days from when we obtained notice of a potential violation through either a hotline call; conversations with our enforcement staff; or notification from a market monitor.

6. While these rules are designed to provide adequate opportunity to detect, and the Commission to remedy, market abuses and are clearly defined so that they do not create uncertainty, disrupt competitive commodity markets or prove simply ineffective, competitive markets are dynamic. We need to periodically evaluate the impact of these behavior rules on the electric and natural gas markets. We have directed our Office of Market Oversight and Investigation to evaluate the effectiveness and consequences of these behavioral rules on an annual basis and include their analysis in the State of the Market Report.

Nora Mead Brownell.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, Protests, Recommendations, and Terms and Conditions

November 17, 2003.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

- a. *Type of Application*: Conduit Exemption.
- b. *Project Nos.*: 12475-000 and 12476-000.
- c. *Date filed*: October 20, 2003.
- d. *Applicant*: Southern Nevada Water Authority (Authority).
- e. *Names of Projects*: Sloan Small Conduit Hydroelectric Project and Sloan Las Vegas Valley Water District (LVVWD) Interconnection Small Conduit Hydroelectric Project.
- f. *Location*: The projects would be located, respectively, in an existing Rate-of-Flow Control (ROFC) station upstream of the Sloan Pumping Plant, and in a 130-K ROFC station that is planned to be constructed downstream, on the outlet side of the Sloan Pumping Plant, in eastern Las Vegas, Clark County, Nevada. The Authority's water is diverted from the Colorado River via Lake Mead.
- g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791a- 825r.
- h. *Applicant Contact*: Mr. Rodney J. Clark, Southern Nevada Water

Authority, 1900 East Flamingo Road, Suite 170, Las Vegas, NV 89119, (702) 862-3428.

i. *FERC Contact*: James Hunter, (202) 502-6086.

j. *Status of Environmental Analysis*: The applications are ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

k. *Deadline for filing responsive documents*: The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, motions to intervene, protests, recommendations, terms and conditions, and prescriptions concerning the applications be filed with the Commission by December 17, 2003. All reply comments must be filed with the Commission by January 2, 2004.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

l. *Description of Projects*: The proposed Sloan Project would consist of: (1) A generating unit with a rated capacity of 607 kilowatts replacing the pressure dissipating valve in a 54-inch pipeline in the ROFC station, and (2) the other two pipelines in the station, to be used as bypass facilities. The average annual energy production would be 3.2 gigawatt hours. The proposed Sloan LVVWD Project would consist of: (1) A generating unit with a rated capacity of 600 kilowatts installed in lieu of a pressure dissipating valve in one of two pipelines in the 130-K ROFC station serving LVVWD Zone 1985, and (2) the other Zone 1985 pipeline in the station, to be used as a bypass facility. The average annual energy production would be 1.95 gigawatt hours. Power produced by the two projects would help offset the energy requirements of operating the Sloan Pumping Plant.

m. The filings are available for review and reproduction at the Commission in the Public Reference Room, Room 2A, 888 First Street, NE., Washington, DC 20426. The filings may also be viewed on the web at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits (P-12475 or P-12476) in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov. For TTY, call (202) 502-8659. Copies are also available for review and reproduction at the address in item h. above.

n. *Development Application*:—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

o. *Notice of Intent*: A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Protests or Motions to Intervene*: Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

q. All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the

heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the applications directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to either application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in the proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend the Project Boundaries and Soliciting Comments, Motions To Intervene, and Protests

November 17, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: Amendment of license to change project boundary.

b. *Project No.*: 2674-014.

c. *Date Filed*: October 21, 2003, supplement filed November 12, 2003.

d. *Applicant*: Green Mountain Power Corporation (GMP).

e. *Name of Project*: Vergennes Hydroelectric Project.

f. *Location*: The Vergennes Hydroelectric Project is located on Otter

Creek in the City of Vergennes, Addison County, Vermont.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791a-825r.

h. *Applicant Contact*: Ms. Harriet King, King & King, PO Box 879 Prentiss House, 4219 Main Street, Waitsfield, Vermont 05673, telephone (802) 496-4371 or Mr. Jon Soter, P.E., Manager of Corporate Services, Green Mountain Power Corporation, 163 Acorn Lane, Colchester, VT, 05446, telephone (802) 864-5731.

i. *FERC Contact*: Robert Shaffer, telephone (202) 502-8944, e-mail Robert.Shaffer@ferc.gov.

j. *Deadline for filing comments and or motions*: December 19, 2003.

k. *Description of Request*: The licensee proposes to amend the project's boundary due to the proposed sale of about 1.9 acres of land, which consist of: (1) The Grist Mill Island (about 0.5 acres); and (2) two parcels of land, one is located on the easterly side of Canal Street (0.2 acres) and the other on the west side of Canal Street (1.2 acres). The land proposed for sale contains buildings listed on the National Register and is located within the Vergennes Historic District. The licensee states that the subject buildings are currently vacant and none is used in connection with the operation of the project.

l. *Locations of the Application*: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov, for TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will