148 FERC ¶ 61,139
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Morongo Transmission LLC Docket No. EL14-40-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 25, 2014)

1. On April 17, 2014, as amended on April 18, 2014, Morongo Transmission LLC (Morongo Transmission) filed a Petition for Declaratory Order (Petition) requesting approval of its proposed ratemaking methodology in connection with its participation in the West of Devers Upgrade Transmission Project (Project). The Project was developed by Southern California Edison Company (SoCal Edison), and a portion of the Project crosses the Morongo Indian Reservation (Morongo Reservation) in Riverside County, California. For the reasons discussed below, we will grant the Petition.

I. Background

2. In its Petition, Morongo Transmission[1] explains that the Project represents a major enhancement to the California Independent System Operator Corporation (CAISO) regional grid because it will advance the integration of the CAISO market, increase competitive opportunities, reduce congestion and losses, and improve system reliability. Also, it will provide a platform for further expansion of the transmission grid and interconnection of new generation, especially renewable energy.

3. The Project includes the removal of approximately 48 miles of existing transmission lines and appurtenant facilities (Existing Facilities) and their replacement with new single and double-circuit 220 kV transmission lines and appurtenant facilities.

---

[1] Morongo Transmission is a Delaware limited liability company formed for the purposes of investing and participating in the Project. The majority ownership interest in Morongo Transmission is held by the Morongo Band of Mission Indians (Morongo Band), a federally-recognized American Indian Tribe exercising jurisdiction over lands within the boundaries of the Morongo Reservation. The remainder of Morongo Transmission is owned by Coachella Partners LLC, a Delaware limited liability company formed for the purposes of facilitating and investing in the Project. Petition at 10-11.

The Project will allow SoCal Edison to increase power transfer capability from approximately 1,600 MW to 4,800 MW, thereby enabling full deliverability of electric energy from proposed renewable generation in the area to the CAISO-controlled grid.[2]

4. CAISO approved the Project under its generator interconnection process by executing Large Generation Interconnection Agreements that identified the Project as needed to safely interconnect new generation. Also, the CAISO Transmission Planning Process has confirmed that the Project is necessary to facilitate California's achievement of its 33 percent Renewable Portfolio Standard goal by 2020.[3]

5. Morongo Transmission explains that SoCal Edison seeks to route the Project through a portion of the Morongo Reservation after determining that bypassing the Morongo Reservation would be significantly more costly[4] and time-consuming, and would have a greater adverse impact on Southern California's environment than proceeding through the Morongo Reservation.[5] However, using this route required SoCal Edison to obtain the consent of the Morongo Band for the renewal and extension of the right to utilize lands of the Morongo Reservation for transmission lines and appurtenant facilities. After several years of negotiations, an agreement was reached for 50-year rights-of-way and easements for the Project and for the continued use of SoCal Edison's existing facilities on the Morongo Reservation while the Project is being completed. As a part of the agreement, SoCal Edison and Morongo Transmission entered into a Development and Coordination Agreement under which Morongo Transmission has an option to provide project financing to SoCal Edison for up to $400 million in exchange for a thirty-year leasehold interest in a portion of the Project's transfer capability.

---

[2] *Id.* at 8. Morongo Transmission explains that CAISO's generation interconnection studies showed that, without the upgrades that will be part of the Project, the Existing Facilities will not be able to accommodate full deliverability of proposed additional generation located in and around Blythe and Desert Center, California, where approximately 2,329.5 MW of renewable generation is currently anticipated to be developed.

[3] *Id*. at 9 (citing CAISO 2012-2013 Transmission Plan, at 17 (Mar. 30, 2013), *available at* http://www.caiso.com/Documents/BoardApproved2012-2013TransmissionPlan.pdf).

[4] Morongo Transmission represents that routing the Project through the Morongo Reservation will avoid an estimated increase of more than 50 percent in Project costs. *Id*. at 3.

[5] *Id*. at 12.

Morongo Transmission will fund its share of the costs as prepaid leasehold rent for a *pro rata* share of the Project's transfer capability.[6]

6. While Morongo Transmission is not currently a public utility, it anticipates filing an application with CAISO to become a Participating Transmission Owner (Participating TO) prior to commencement of the Project. Once it becomes a Participating TO, Morongo Transmission will file a Transmission Owner Tariff with the Commission for its leasehold interest in the transfer capability of the Project.

II. <u>Petition</u>

7. Morongo Transmission proposes a rate methodology that recovers capital costs on a levelized fixed basis over a 30 year period and recovers actual operating expenses on a formulaic basis. Morongo Transmission asserts that pre-approval of its proposed rate methodology is essential for its financing. Morongo Transmission also states that it intends to finance its participation in the Project using 100 percent debt.[7]

8. Specifically, Morongo Transmission requests that the Commission approve: (1) the use of a hypothetical capital structure of 50 percent debt and 50 percent equity; (2) the use of a proxy return on equity equal to SoCal Edison's authorized return on equity (including a 0.5 percent adder for being a Participating Transmission Owner in the CAISO); (3) the use of a 30-year levelized fixed rate for recovery of Morongo Transmission's capital requirements; and (4) the use of a formula rate to recover Morongo Transmission's actual operating costs.[8]

9. Morongo Transmission asserts that its proposed levelized rate methodology will benefit consumers and will support the use of a 30-year depreciable life in two ways. First, Morongo Transmission states that this approach will lock in fixed return levels for both debt and equity components of the hypothetical capital structure as of the operational date of the Project. These locked in rates will remain in place for the full 30-year term of Morongo Transmission's participation in the Project. Thus, Morongo Transmission asserts that consumers will have substantial benefits from having assured rate stability associated with locked-in capital costs over 30 years. Second, Morongo Transmission states that, without levelization, consumers would be charged substantially more in the early years of the Project's operation and less in later years as the Project is gradually depreciated. That is, because the transmission benefits of the Project will be constant over time, and the associated monetary benefits will very likely increase as

---

[6] *Id*. at 2.

[7] Petition at 16; Helsby Affidavit at PP 17-18.

[8] Petition at 19-24; Helsby Affidavit at PP 11-24.

utility costs rise, the front end loading of cost recovery, which would occur in the absence of a levelized approach, would mismatch project benefits and costs over time.

10. In addition to the identified benefits, Morongo Transmission states that, under its proposed cost recovery mechanism, the rate for the levelized capital recovery proposal will be no higher than SoCal Edison's Representative Rate.[9] That rate is then amortized over the thirty-year term of the lease on a level basis each year based on fixed and variable parameters to produce a theoretical annual amount.[10] SoCal Edison's Representative Rate results in a onetime snapshot of its rate at the time the Project commences commercial operation.[11]

11. Morongo Transmission requests that the Commission approve this rate methodology now, subject to Morongo Transmission making the appropriate future filings pursuant to section 205 of the Federal Power Act.[12] Morongo Transmission asserts that the proposed rate methodology is consistent with methodologies that the Commission has allowed for companies making investments in new transmission infrastructure to benefit the public.[13] In addition, Morongo Transmission states that the Commission has affirmed that entities that are willing to assume significant risks and burdens to begin incurring significant costs in order to get major new transmission facilities approved and constructed should be permitted to file for advance approval of conceptual rate treatments at the outset of the project development process so they can have reasonable certainty of cost recovery.[14]

---

[9] Petition at 5, 19. Morongo Transmission explains that SoCal Edison's Representative Rate is the rate that SoCal Edison could recover on Morongo Transmission's capital investment at the time of commercial operation of the Project. The Representative Rate functions as a cap on the capital investment portion of the Project that Morongo Transmission may seek to recover from transmission customers located in the CAISO control area and is calculated using a theoretical annual rate for the 57-year depreciable life that SoCal Edison could recover for the Project's capital investment at the time of commercial operation.

[10] *Id*. at 19.

[11] *Id*. at 21.

[12] 16 U.S.C. § 824d (2012).

[13] Petition at 17.

[14] *Id*. at 17-19.

III. **Notice of Filing and Responsive Pleadings**

12. Notice of the Petition was published on April 29, 2014 in the *Federal Register*, 79 Fed. Reg. 23,972 (2014), with interventions and protests due on or before May 19, 2014. Timely motions to intervene were filed by SoCal Edison, Modesto Irrigation District and the City of Santa Clara, California. An intervention out of time was filed by the California Public Utilities Commission (CPUC). Timely motions to intervene and comments were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities) and M-S-R Public Power Agency (M-S-R). Subsequently, motions for leave to answer and answers were filed by Morongo Transmission, SoCal Edison and M-S-R.

13. Six Cities state that they do not oppose Morongo Transmission's filing and comment that there appear to be tangible benefits to CAISO ratepayers associated with the Morongo Transmission-SoCal Edison transaction.[15]

14. M-S-R argues that Morongo Transmission's petition is premature. M-S-R asserts that, because the Project will not be completed until 2019 or 2020, Morongo Transmission may not execute its option under the lease until the project nears commercial operation and, therefore, it may be five or more years before it is known whether Morongo Transmission will have an interest in the Project. Accordingly, Morongo Transmission will not be required to submit its section 205 filing for another five or more years. Also, M-S-R argues that, before the Commission may determine the reasonableness of the petition, many facts need to be known, such as the financing of the proposed bonds, the bond interest rate, and the proxy rate of return.[16] Additionally, M-S-R argues that, while the Petition asserts that Morongo Transmission will cap its recovery such that customers pay no more than they would have if SoCal Edison retained its interest in the project, the Petition does not include a mechanism to ensure that customers are protected from higher rates. M-S-R concludes that the Commission should decline to rule on this Petition, and notes that the Commission has traditionally declined to issue declaratory orders when essential facts and circumstances are not before it.[17]

15. To the extent that the Commission rules on the Petition, M-S-R asserts that the Commission should require Morongo Transmission to amortize the costs of the Project over its full 57-year life. According to M-S-R, Morongo Transmission's proposed 30-

---

[15] Six Cities' Comments at 3.

[16] M-S-R Protest at 7-12.

[17] *Id*. at 8 (citing *City of Boulder, Colorado*, 144 FERC ¶ 61,069 (2013); *Turlock Irrigation District v. Pacific Gas and Electric Co*., 64 FERC ¶ 61,183, *reh'g denied*, 65 FERC ¶ 61,016 (1993); *Camille E. Held*, 57 FERC ¶ 61,080 (1991)).

year recovery of its share of the Project's rate base results in rates that are higher than SoCal Edison's rates during the term of Morongo Transmission's lease. M-S-R contends that this increased rate is inconsistent with the premise that ratepayers will not pay more than they would have if SoCal Edison retained its interest in the project.[18] M-S-R also argues that, without a mechanism to ensure rates are no higher than SoCal Edison's rates, its proposed accelerated recovery will create a generational shift, that is, customers taking service today will pay more for use of an asset than they otherwise would pay and customers taking service in 30 years will not be required to pay a return of capital costs for Morongo Transmission's share of the asset.[19] M-S-R notes that Morongo Transmission cites to *Citizens Energy Corporation*[20] to support its 30-year accelerated capital recovery. M-S-R argues that in *Citizens Energy* there was more certainty regarding the term of the bonds and financing costs, and that the project was only months away from the start of construction. M-S-R asserts that Morongo Transmission does not know what the actual costs will be in five or six years, nor does it know how long the term will be for the bonds. M-S-R concludes that the Commission should reject the proposed accelerated recovery and require Morongo Transmission to amortize its capital commitments over the full 57-year life of the project.[21]

IV. Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant the CPUC's motion to intervene out of time given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. However, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2014), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers from Morongo Transmission, SoCal Edison or M-S-R and will, therefore, reject them.

---

[18] *Id*. at 10-11.

[19] *Id*. at 11.

[20] *Citizens Energy Corp.*, 129 FERC ¶ 61,242 (2009) (*Citizens Energy*).

[21] M-S-R Protest at 11-12.

B. Substantive Matters

17. We will address the merits of the Petition at this time because we are not persuaded by M-S-R that the Petition is premature. Commission consideration and approval of the Petition early in the Project's development process will provide a level of regulatory certainty that is reasonable in this instance.[22] As Morongo Transmission explains, the Project's success is dependent upon it receiving regulatory approvals of the methodology by which Morongo Transmission will recover its operating expenses and capital requirements. Specifically, regulatory approvals are necessary for Morongo Transmission to secure financing for its participation in the Project. Moreover, Morongo Transmission explains that the negotiated 50-year rights-of-way and easements necessary for the Project could be terminated by the Morongo Band if the Project does not receive the necessary regulatory approvals. Given these circumstances, we conclude that it is appropriate to respond to the Petition at this time.

18. We find that Morongo Transmission's proposed capital cost recovery methodology is reasonable in this context for this transaction. The Commission has approved the use of hypothetical capital structures as an appropriate ratemaking mechanism for fostering new transmission and, specifically, has stated that it will allow "the use of hypothetical structures to improve access to capital markets for transmission investment and for specific projects when shown to be necessary for project financing."[23] Moreover, the Commission has specifically approved the use of a hypothetical capital structure for public power Participating TOs[24] as well as municipal electric utility participants that have relied upon non-equity financing to finance a project, as Morongo Transmission proposes to do here.[25]

19. For the purposes of financing the Project, Morongo Transmission seeks to implement a capital cost recovery methodology that uses a hypothetical capital structure of 50 percent debt and 50 percent equity. The Commission has approved this debt to

---

[22] *See W. Area Power Admin*. 99 FERC ¶ 61,306, at 62,280 (2002) (*Western*) (finding that is was not premature to grant capital structure several years in advance of anticipated transmission project completion date); *see also Trans Bay Cable LLC,* 112 FERC ¶ 61,095 (2005); *Tallgrass Transmission*, 125 FERC ¶ 61,248 (2008).

[23] *Promoting Transmission Investment Through Pricing Reform*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, at P 91, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

[24] *See Western*, 99 FERC ¶ 61,306 at 62,280; *Citizens Energy*, 129 FERC ¶ 61,242 at P 22-26; *City of Vernon, California*, 109 FERC ¶ 63,057, at PP 110-119 (2004), *aff'd*, 111 FERC ¶ 61,092 (2005).

[25] *See New England Power Pool*, 92 FERC ¶ 61,020, at 61,041 (2000).

equity ratio for other major transmission construction projects.[26] Here, as Morongo Transmission explains, its proposed investment represents a significant capital commitment for a company of its size, especially with its use of an all-debt financing structure.[27] Given these considerations, we find that the hypothetical capital structure is reasonable for Morongo Transmission to obtain financing for its participation in the Project.

20. Further, we find that the 30-year levelized fixed rate of recovery of capital requirements requested by Morongo Transmission is reasonable.[28] In support of its use of a levelized approach, Morongo Transmission states that, because the transmission benefits of the Project will be constant over time, the "front-end loading" of cost recovery under traditional cost of service ratemaking would mismatch Project benefits with costs. We find that Morongo Transmission's proposed levelized approach is reasonable in the context of rate recovery for a single asset and will ensure a constant revenue stream. Additionally, although M-S-R argues that the Commission should reject the proposed accelerated recovery and require Morongo Transmission to amortize its capital commitments over the full 57-year life of the project, we conclude that financing the Project over 30 years is reasonable in the context of this case. We agree with Morongo Transmission that a longer depreciable life will increase the financing costs of the Project and, thus, erode the benefits that will flow from the Project. We also note that Morongo Transmission and SoCal Edison have entered into a lease agreement with a 30-year term. Given these facts, we find that Morongo Transmission's request to use a 30-year depreciable life for its capital cost recovery is reasonable in the context of this case.[29]

21. Based on Morongo Transmissions submissions, we understand that Morongo Transmission is not requesting approval of its specific return on equity or the proposed terms of its lease agreement at this time. Therefore, we find that Morongo Transmission's return on equity, based on SoCal Edison's current authorized return on equity, is subject to a future section 205 filing. We will review Morongo Transmission's requested rate of return when it makes the necessary section 205 filing. We note that this

---

[26] *See Western*, 99 FERC ¶ 61,306 at 62,280; *Citizens Energy*, 129 FERC ¶ 61,242 at P 22; *see also Potomac-Appalachian Transmission Highline, LLC,* 122 FERC ¶ 61,188, at P 55 (2008); *Tallgrass Transmission*, 125 FERC ¶ 61,248 at P 68; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 119 (2009).

[27] Petition at 23; Helsby Affidavit at P 22.

[28] The Commission has approved capital cost recovery periods that were less than the physical life of the facilities. *See, e.g.*, *Westar Energy, Inc.*, 122 FERC ¶ 61,268 (2008) (finding a 15-year accelerated-depreciation schedule to be appropriate).

[29] *See Citizens Energy*, 129 FERC ¶ 61,242 at P 23.

approach is consistent with Morongo Transmission's Petition in which it states that it is not seeking pre-approval for any component or input to its formula rate.[30]

The Commission orders:

Morongo Transmission's petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[30] Petition at 5.