

152 FERC ¶ 61,017
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

TransCanyon DCR, LLC

Docket No. ER15-1682-000

ORDER ON PARTICIPATING TRANSMISSION OWNER TARIFF AND RATE
INCENTIVES PROPOSAL, AND ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES

(Issued July 6, 2015)

1. On May 7, 2015, TransCanyon DCR, LLC (TransCanyon) filed a request to recover certain transmission rate incentives pursuant to sections 205 and 219 of the Federal Power Act¹ (FPA) and Order No. 679,² as well as a proposed Participating Transmission Owner Tariff (TO Tariff), including a proposed return on equity (ROE) and forward-looking formula rate template designed to calculate its annual transmission revenue requirement for the new 500 kV Delaney to Colorado River Transmission Line (Project).³ In addition, TransCanyon requests authorization to use the formula rate template, including the ROE and the hypothetical capital structure and regulatory asset incentives, by yet-to-be formed subsidiaries of TransCanyon, LLC,⁴ for future projects developed under CAISO's Order No. 1000⁵ competitive solicitation process.

¹ 16 U.S.C. §§ 824d, 824s (2012).

² *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

³ TransCanyon has submitted a bid for the Project pursuant to California Independent System Operator Corporation's (CAISO) competitive bidding process, but a developer has not yet been selected.

⁴ TransCanyon, LLC is the sole owner of TransCanyon. Transmittal at 2.

⁵ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011),

(continued ...)

2. In this order, we grant TransCanyon's requested incentive rate package for the Project finding that it satisfies the Commission's nexus test, subject to a compliance filing as discussed below. As also discussed below, we conditionally accept, and suspend for a nominal period to become effective July 6, 2015, subject to refund, and set for hearing and settlement judge procedures, TransCanyon's proposed TO Tariff, including its proposed ROE and formula rate template. We also grant TransCanyon's request for authorization to use the formula rate template, including the ROE and the hypothetical capital structure and regulatory asset incentives, by yet-to-be formed subsidiaries of TransCanyon, LLC, for future projects developed under CAISO's Order No. 1000 competitive solicitation process, subject to the outcome of the hearing and settlement judge procedures.

I. Background

3. In Order No. 1000, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs (OATT) to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection; and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation. The Commission also required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation.⁶ In response to the requirements of Order No. 1000, CAISO established a process under which eligible transmission developers may submit bids to develop and construct transmission projects that have been designated in CAISO's comprehensive transmission plan for competitive bidding.⁷

order on reh'g, Order No. 1000-A, 139 FERC ¶ 61,132 (2012), *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).

⁶ *Id.* P 313.

⁷ *See California Indep. Sys. Operator, Corp.*, 143 FERC ¶ 61,057 (2013), *order on clarification and compliance*, 146 FERC ¶ 61,198 (2014), *order on reh'g and compliance*, 149 FERC ¶ 61,249 (2014).

4. As stated in the application submitted here, TransCanyon is a subsidiary of TransCanyon, LLC, which is a joint venture entity whose membership interests are equally held by Berkshire Hathaway Energy Corporation and Bright Canyon Energy Corporation (Bright Canyon).⁸ TransCanyon, LLC was formed to develop and own transmission projects in the western interconnection, including CAISO's balancing authority area. TransCanyon, in turn, was formed to construct, own, and operate the proposed Project and, in November 2014, TransCanyon submitted a competitive bid for the Project in response to CAISO's competitive solicitation.⁹ TransCanyon states that it expects CAISO to select the approved project sponsor for the proposed Project by August 2015.¹⁰ If selected as the project sponsor, TransCanyon states that it expects to commence construction of the proposed Project in 2018 and place it into service in 2020.¹¹

5. The Project was identified and included in CAISO's 2013-2014 transmission plan as an economically-driven transmission project, and later approved by the CAISO Board of Governors because of its economic benefits, its potential to increase the deliverability of renewable generation from the Imperial Valley area in California, and its ability to enhance reliability by reducing the risk of overloading key transmission paths into California. The proposed Project consists of a new, single-circuit 500 kV AC overhead transmission line approximately 115 miles in length, connecting the Delaney Substation in Arizona, which is currently under construction by APS, to the existing Colorado River Substation in California owned by Southern California Edison Company (SoCal Edison). TransCanyon states that CAISO estimates the cost of the Project to be \$300 million.¹²

⁸ Transmittal at 4-5. Bright Canyon and Arizona Public Service Company (APS) are both subsidiaries of Pinnacle West Capital Corporation.

⁹ Following the submission of this original bid, in February, 2015, TransCanyon and SoCal Edison successfully submitted a collaborative bid for the Project using the collaboration process afforded under CAISO's tariff. *Id.* at 12.

¹⁰ An approved project sponsor is the person or entity designated under the CAISO Tariff to construct, finance and own transmission additions or upgrades. *See* CAISO Tariff, Appendix A – Definitions.

¹¹ Transmittal at 2.

¹² *Id.*

II. TransCanyon's Filing

6. TransCanyon seeks Commission approval of its proposed TO Tariff, which includes a forward-looking cost-of-service formula rate template and implementation protocols designed to calculate its annual transmission revenue requirement for inclusion in CAISO's transmission access charge. TransCanyon explains that the formula rate template would allow it to recover costs associated with the proposed Project, should TransCanyon be selected as the project developer. As detailed below, TransCanyon requests a base ROE of 10.6 percent and certain incentives for the Project pursuant to Order No. 679.

7. In addition, TransCanyon requests that the Commission authorize future use of the formula rate, including the ROE, and the regulatory asset for pre-commercial costs and the hypothetical capital structure incentives, pursuant to section 205 of the FPA,¹³ by yet-to-be formed subsidiaries of TransCanyon, LLC, for future projects developed under CAISO's competitive solicitation process.

III. Notice of Filing and Responsive Pleadings

8. Notice of TransCanyon's filing was published in the *Federal Register*, 80 Fed. Reg. 27,300 (2015), with interventions and comments due on or before May 28, 2015. SoCal Edison filed a motion to intervene.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), its timely, unopposed motion to intervene serves to make SoCal Edison a party to this proceeding.

B. Substantive Matters

1. Transmission Incentives

a. Summary of Incentives Requested

10. TransCanyon requests authorization pursuant to Order No. 679 to utilize five rate incentives for the Project: (1) inclusion of 100 percent of Construction Work In Progress (CWIP) in its rate base (CWIP incentive); (2) recovery of all prudently-incurred pre-

¹³ 16 U.S.C. § 824d (2012).

commercial costs not capitalized and included in CWIP and authorization to establish a regulatory asset for such costs (regulatory asset for pre-commercial costs incentive); (3) a hypothetical capital structure of 50 percent debt and 50 percent equity to be used until the Project achieves commercial operation (hypothetical capital structure incentive); (4) recovery of prudently-incurred costs in the event that the Project must be abandoned for reasons outside of TransCanyon's control (abandoned plant incentive); and (5) a 50 basis point ROE adder for TransCanyon's participation in CAISO Regional Transmission Organization (RTO) (RTO participation incentive).¹⁴ TransCanyon notes that the requested incentives would not be effective unless TransCanyon is selected by CAISO as the approved project sponsor for the Project, or any subsequent project if TransCanyon is not awarded the Project by CAISO.¹⁵

b. FPA Section 219 Requirement

11. In the Energy Policy Act of 2005,¹⁶ Congress added section 219 to the FPA,¹⁷ directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by TransCanyon. Additionally, in November 2012, the Commission issued the Transmission Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.¹⁸

¹⁴ Transmittal at 3. TransCanyon also provided a technology statement noting that TransCanyon will utilize several advanced technologies in the development of the Project; however, TransCanyon is not requesting a technology incentive. *Id.* at 36.

¹⁵ *Id.* at 4. CAISO's tariff includes a mechanism through which a nonincumbent transmission developer that is an approved project sponsor may recover Commission-authorized transmission revenue requirements associated with projects under construction prior to the time the facilities are turned over to CAISO operational control.

¹⁶ Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

¹⁷ 16 U.S.C. § 824s (2012).

¹⁸ See *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (*Transmission Incentives Policy Statement*).

12. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of FPA section 219, i.e., the applicant must show that “the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion.”¹⁹ Order No. 679 established the process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if:

- (1) the transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.²⁰

The Commission also stated that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding.”²¹

13. An applicant seeking to obtain a transmission rate incentive must also demonstrate a nexus between the incentives being sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant.²² Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

14. In the Transmission Incentives Policy Statement, the Commission announced its expectation that an applicant seeking an ROE incentive would demonstrate: (1) that the proposed project faces risks and challenges that are not either already accounted for in the

¹⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

²⁰ *Id.*

²¹ *Id.* P 57; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

²² Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

applicant's base ROE or addressed through risk-reducing incentives; (2) that it is taking appropriate steps and using appropriate mechanisms to minimize its risk during project development; (3) that alternatives to the project have been, or will be, considered in either a relevant transmission planning process or another appropriate forum; and (4) applicants are expected to commit to limiting the application of the ROE incentive to a cost estimate.²³

15. The Transmission Incentives Policy Statement lists a few examples of the types of projects that could satisfy the first criterion, i.e., that the proposed project faces risks and challenges that are not either already accounted for in the applicant's base ROE or addressed through risk-reducing incentives. They are projects that:

(1) relieve chronic or severe grid congestion that has had demonstrated cost impacts to consumers; (2) unlock location constrained generation resources that previously had limited or no access to the wholesale electricity markets; or (3) apply new technologies to facilitate more efficient and reliable usage and operation of existing or new facilities.²⁴

i. TransCanyon's Filing

16. TransCanyon states that the Project qualifies for incentives under Order No. 679 because it was identified and approved through CAISO's transmission planning process, a fair and open transmission planning process that evaluates whether identified transmission projects will enhance reliability and/or reduce congestion. TransCanyon states that based upon its evaluation, CAISO estimated that the Project in 2020 (the estimated in-service date for the Project) will provide \$23 million in production cost savings and \$1 million in transmission loss reduction savings. Additionally, CAISO estimates the Project will provide capacity benefits of \$30 million in 2020, between \$86 to \$128 million during the first six years of service, and \$9 million per year from 2026 through the end of its 50-year assumed economic life. Further, CAISO determined that the Project will enhance regional reliability by reducing flows on key transmission paths and providing policy benefits by increasing deliverability from the Imperial Valley area.²⁵

²³ See *Transmission Incentives Policy Statement*, 141 FERC ¶ 61,129 at PP 20, 24-30.

²⁴ *Id.* P 21.

²⁵ Transmittal at 13-14 (citing CAISO 2013-2014 Transmission Plan at 259-268).

ii. Commission Determination

17. We find that TransCanyon is entitled to the rebuttable presumption that the Commission established in Order No. 679 with respect to the threshold requirement of section 219 for the Project, as the CAISO planning process through which the Project was approved evaluates whether identified transmission projects will enhance reliability and/or reduce congestion.²⁶

c. Order No. 679 Nexus

18. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is “tailored to address the demonstrable risks or challenges faced by the applicant.”²⁷ The regulations under section 219 require a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.

i. TransCanyon’s Filing

19. TransCanyon states that there is a nexus between the incentives requested here and the risks and challenges faced in constructing the Project. TransCanyon explains that because the Project resulted from CAISO’s transmission planning process, TransCanyon submitted a bid with specific cost containment measures that may result in unrecoverable costs to TransCanyon; therefore, TransCanyon asserts that its bid inherently carries more risk with it than the usual cost-of-service approach.²⁸ TransCanyon states that the CAISO transmission planning process results in robust competition among qualified

²⁶ *Id.* at 13 (citing Exhibit No. TCY-200, Direct Testimony of Mr. Robert Smith, at 7-8); *Pacific Gas & Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014) (“Here, the Project was selected under an open and nondiscriminatory regional transmission planning process, and identified in CAISO’s 2012-2013 Transmission Plan as necessary to address reliability concerns in the Greater Fresno area. Therefore, we find that, because the Project is necessary to ensure grid reliability and was selected under a Commission-approved regional transmission planning process, the Project meets the rebuttable presumption and satisfies the above-noted requirements of section 219.”).

²⁷ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

²⁸ Transmittal at 13.

applicants, which TransCanyon explains required it to accelerate ahead of the project award and cost recovery, certain development aspects of the Project in preparing its application. Further, TransCanyon explains that the scope of the Project poses significant challenges and, if it is selected as the approved project sponsor, the Project will be the first transmission facility that TransCanyon will construct and place into service. According to TransCanyon, the Project will require it to expend significant sums during the pre-construction and construction phases without another available source of income for the new company. TransCanyon asserts that the Project will also pose financial and logistical challenges because TransCanyon has no direct business history, credit rating, debt repayment history, or regular cash flow. TransCanyon states that the absence of established financial strength will cause lenders to closely examine the expected future cash flows under the formula rate approved by the Commission. Thus, according to TransCanyon, the incentive rate treatments requested herein will significantly enhance the company's overall financial strength and, as a result, lower the cost of financing and the cost of the Project to customers.²⁹

20. TransCanyon explains that it will need to address regulatory challenges when developing the Project. TransCanyon states that the proposed route for the Project will require acquisition of rights-of-way across federal, state, and private lands in Arizona and California. TransCanyon states that the Project will likely be considered a major federal action requiring preparation of an environmental impact statement in accordance with the National Environmental Policy Act of 1969.³⁰ TransCanyon states that it will need to receive authorizations from the California Public Utilities Commission and the Arizona Corporation Commission. Further, according to TransCanyon, any environmental mitigation ordered by permitting agencies will extend the construction time and increase construction expenses.³¹

(a) **Regulatory Asset for Pre-Commercial Costs Incentive**

21. TransCanyon requests authorization to establish a regulatory asset in which to book certain pre-commercial costs that are not capitalized and included in CWIP, for the Project that will be incurred up to the date that charges are assessed to CAISO customers

²⁹ *Id.* at 15-17, 19.

³⁰ *Id.* at 17.

³¹ *Id.* at 17-19.

under the formula rate.³² The regulatory asset would include all prudently-incurred costs prior to TransCanyon's formula rate template taking effect but that are not capitalized or included in CWIP.

22. TransCanyon states that the regulatory asset for pre-commercial costs incentive is necessary so that it can record and recover, in an appropriate manner, necessary startup and Project development costs that are not capitalized or included in CWIP, but are incurred before such prudently-incurred expenses can be recovered under the formula rate as current expenses.³³ TransCanyon contends that the ability to book such costs into a regulatory asset prior to TransCanyon's annual transmission revenue requirement being included in the CAISO's transmission access charge will provide up-front regulatory certainty, improve coverage ratios used by rating agencies to determine credit quality, and reduce its interest expense.³⁴

23. TransCanyon also seeks authorization to amortize the regulatory asset for the Project over five years, beginning when the Project becomes operational and costs are assessed to customers under the formula rate, and to accrue monthly carrying charges at the weighted cost of capital on the regulatory asset balances beginning on the date the Commission authorizes the creation of the regulatory asset until the regulatory asset is included in rate base.³⁵

(b) CWIP Incentive

24. TransCanyon requests authorization to include 100 percent of CWIP in its rate base. TransCanyon explains that the Project, estimated to cost \$300 million, will require a substantial amount of capital expenditures during the construction period. TransCanyon asserts that the CWIP incentive will alleviate TransCanyon's financial condition by providing predictable and stable levels of cash flow during the construction

³² TransCanyon states that these costs could include, for example, engineering expenses, development surveys, attorney and consultant fees, administrative expenses, travel expenses and costs to support planning and bid development activities. *Id.* at 23.

³³ *Id.* at 24.

³⁴ *Id.*

³⁵ *Id.*

period which will, in turn, lower the cost of borrowing capital to finance construction.³⁶

25. TransCanyon states that it will not accrue an allowance for funds used during construction (AFUDC) in FERC Account 107, Construction Work in Progress, for the Project or any future project for which the Commission grants the CWIP incentive;³⁷ therefore, TransCanyon states that it meets the Commission's regulations to employ accounting procedures that will ensure that wholesale customers will not be charged for both capitalized AFUDC and corresponding amounts of CWIP.³⁸ TransCanyon proposes to follow Commission precedent with respect to accounting treatment for recovery of 100 percent of CWIP by including footnote disclosures in the FERC Form 1 that: (1) explain the impact of the transmission rate incentives it receives insofar as the incentives provide for a deviation from the general requirements of the USofA; (2) include details of amounts of AFUDC not capitalized because of the transmission rate incentives for the current year and the previous two years, and the sum of all years impacted by the incentives; and (3) include a partial balance sheet consisting of the Assets and Other Debits section of the balance sheet to include the amounts not capitalized because of the transmission rate incentive.³⁹

(c) **Hypothetical Capital Structure Incentive**

26. TransCanyon proposes the use of a hypothetical capital structure consisting of 50 percent debt and 50 percent equity until the Project achieves commercial operation.⁴⁰ Once the Project achieves commercial operation, TransCanyon states that it will use its actual capitalization in the formula rate. TransCanyon argues that a hypothetical capital structure will allow it to offset risks of the Project, and it notes that the challenge of

³⁶ *Id.* at 19-20; Exhibit No. TCY-300, Direct Testimony of Lee R. Nickloy at 10-11.

³⁷ Exhibit No. TCY-300, Direct Testimony of Lee R. Nickloy at 10-11.

³⁸ Exhibit No. TCY-600, Direct Testimony of Jason La Benz at 6-7.

³⁹ *Id.* at 6 (citing *See American Transmission Co., LLC.*, 107 FERC ¶ 61,117, at PP 16-17 (2004); *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at P 52 (2012) (*Transource Missouri*); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248, at P 80 (2008) (*Tallgrass Transmission*); *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219 (2007), *order on reh'g*, 121 FERC ¶ 61,009 (2007)).

⁴⁰ Transmittal at 21-22 (citing Exhibit TCY-300, Direct Testimony of Lee Nickloy, at 6).

raising capital during the construction period may result in the actual capital structure deviating from time to time. TransCanyon states that it will initially operate with capital infusions from its parent company, as borrowing requirements will be relatively modest. However, TransCanyon contends that as construction of the Project progresses, significant borrowings as well as additional capital contributions will be required. TransCanyon asserts that the Commission has approved hypothetical capital structures with an equity component greater than the 50 percent equity requested by TransCanyon in the instant filing.⁴¹ As such, TransCanyon argues that its requested hypothetical capital structure is reasonable and appropriate to provide certainty and improve the access to capital.

(d) **Abandoned Plant Recovery Incentive**

27. TransCanyon seeks authorization to recover prudently-incurred costs in the event the Project must be abandoned for reasons outside of TransCanyon's reasonable control. TransCanyon asserts that the Project faces a number of environmental, regulatory, siting, and right-of-way acquisition risks that could lead to the eventual abandonment of the Project. TransCanyon contends that authorizing the abandonment incentive will help it achieve needed financing for the Project on reasonable terms by removing such risks that lenders and shareholders may have to bear in the event that the Project must be abandoned. TransCanyon commits to submit a subsequent FPA section 205 filing supporting the costs it seeks to recover if the Project is abandoned.⁴²

(e) **RTO Participation Incentive**

28. TransCanyon requests a 50 basis point adder to its base ROE for its participation in CAISO. TransCanyon states that, in Order No. 679, the Commission stated that it will approve the RTO participation incentive "for public utilities that join and/or continue to be a member of an ISO, RTO, or other Commission-approved Transmission Organization."⁴³ TransCanyon explains that if it is selected as the approved project sponsor, it will become a member of CAISO, transfer operational control of the Project to

⁴¹ *Id.* at 22-23 (citing *Transource Missouri*, 141 FERC ¶ 61,075 at P 66; *Green Power Express LP*, 127 FERC ¶ 61,031, at P 72 (2009); *Primary Power, LLC*, 131 FERC ¶ 61,015, at P 141 (2010); *Atlantic Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 121 (2011)).

⁴² *Id.* at 21.

⁴³ *Id.* at 25 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86).

CAISO once it is constructed and placed into service, and recover the costs of the Project from CAISO customers through the inclusion of TransCanyon's annual transmission revenue requirement in the CAISO transmission access charge.

ii. Commission Determination

29. We consider, below, whether the total package of incentives requested satisfies the nexus test. In applying the nexus test, we find that TransCanyon has sufficiently demonstrated that the requested risk-reducing incentives and RTO participation incentive are warranted, as discussed further below.

(a) Regulatory Asset for Pre-Commercial Costs Incentive

30. We grant TransCanyon's request, in the event that it is selected as the approved project sponsor for the Project, to establish a regulatory asset for all prudently-incurred pre-commercial costs for the Project that are not capitalized and included in CWIP, including pre-commercial costs of permitting and consulting activities, as discussed more fully below.

31. In Order No. 679, the Commission allowed project developers to defer and then amortize (expense) pre-commercial operations costs that were not capitalized, including the types of preliminary survey and investigation costs recordable in Account 183, Preliminary Survey and Investigation Charges. The Commission also noted that it will entertain proposals to defer and amortize other types of costs on a case-by-case basis. TransCanyon proposes to defer and amortize permitting, consulting, and legal costs related to the Project, as well as costs related to the formation of TransCanyon. We authorize TransCanyon to record a regulatory asset for such pre-commercial, prudently-incurred costs. We find that this incentive appropriately addresses the risks and challenges of the Project, because this incentive will provide TransCanyon with added up-front regulatory certainty, reduce interest expenses, and assist in the construction of the Project. Therefore, we find TransCanyon's recovery of such costs for the Project to be appropriate, and we grant its request to establish a regulatory asset for the pre-commercial costs of the Project.

32. We also grant TransCanyon's request to accrue a carrying charge from the effective date of the regulatory asset until the asset is included in its rate base. However, as discussed below in the Participating Transmission Owner Tariff section, we require TransCanyon to restrict the compounding of interest such that it does not result in a higher amount of interest than is allowed for AFUDC.⁴⁴ Further, TransCanyon must

⁴⁴ See discussion *infra* P 58.

record all associated carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Nonoperating Income. Further, we authorize TransCanyon to amortize the regulatory asset and related carrying charges associated with the Project by debiting Account 566 and crediting Account 182.3, consistent with Commission precedent.⁴⁵ We accept TransCanyon's proposal to amortize the regulatory asset over five years, consistent with rate recovery. Accordingly, we accept, subject to the aforementioned directive, TransCanyon's proposed effective date of July 6, 2015 to allow it to establish the regulatory asset, and begin accruing carrying charges

33. While we authorize TransCanyon to record its prudently-incurred costs as a regulatory asset, TransCanyon must make a section 205 filing to demonstrate that the pre-commercial and formation costs are just and reasonable before it includes them in its rate base. In that filing, TransCanyon must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred but were deferred consistent with the authorization granted herein. In response to the section 205 filing, entities will be able to challenge the reasonableness of these costs at that time.

(b) CWIP Incentive

34. We grant TransCanyon's request to include 100 percent of CWIP in rate base for the Project if it is selected as the approved project sponsor. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred, transmission-related CWIP in rate base.⁴⁶ As affirmed in the Transmission Incentives Policy Statement, the CWIP incentive serves as a useful tool to ease the financial pressures associated with transmission development by providing up-front regulatory certainty, rate stability, and improved cash flow, which in turn can result in higher credit ratings and lower capital costs.⁴⁷ We find that allowing TransCanyon to include 100 percent of CWIP in rate base will further the goals of FPA section 219 as it "removes a disincentive to construction of transmission, which can involve very long lead times and considerable risk to the utility that the project may not go forward."⁴⁸

⁴⁵ Transmittal at 24 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 154 (2008)).

⁴⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 29, 117.

⁴⁷ *Transmission Incentives Policy Statement*, 141 FERC ¶ 61,129 at P 12.

⁴⁸ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 117.

35. We agree that the cost and lengthy construction period involved in completing the Project may strain TransCanyon's cash flow and put upward pressure on TransCanyon's ability to finance construction. Granting the CWIP incentive will help ease this pressure and reduce project cost by providing upfront certainty, improved cash flow, and reduced borrowing costs as TransCanyon moves forward with each project.⁴⁹ Inclusion of CWIP in its rate base "balance[s] the need for companies to recover carrying costs in a timely manner with the Commission's cost responsibility principle, while reducing the rate impacts of new transmission projects on customers."⁵⁰

36. Further, we find that TransCanyon has demonstrated that it has appropriate accounting procedures and internal controls in place to prevent recovery of AFUDC on CWIP costs that are also included in the rate base. TransCanyon states that it will not accrue AFUDC in FERC Account 107, Construction Work in Progress, for the Project and any future project for which the Commission grants the CWIP incentive. We accept TransCanyon's proposed accounting procedures and use of footnote disclosures to provide comparability of financial information.⁵¹ We note that Commission policy requires TransCanyon to also have sufficient accounting controls and procedures to ensure that unpaid accruals properly recorded in the work orders are excluded from transmission rate base.⁵²

37. A public utility may accrue AFUDC on eligible construction expenditures properly recorded in Account 107, Construction Work in Progress, or include such amounts in rate base when authorized by the Commission. This practice compensates a public utility for its out-of-pocket construction costs. However, it would be inappropriate to accrue AFUDC or include in rate base and earn a return on amounts charged to Account 107 that have not been paid. Therefore, we grant TransCanyon's proposal to include 100 percent CWIP in rate base, subject to TransCanyon submitting a compliance filing, within 30 days of the date of this order, that details the accounting controls and procedures it will use to identify and remove unpaid accruals from rate base.

⁴⁹ See, e.g., *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 56 (2012); *MidAmerican Energy Co.*, 137 FERC ¶ 61,250, at P 53 (2011).

⁵⁰ See, e.g., *Boston Edison Co.*, 109 FERC ¶ 61,300, at P 31 (2004).

⁵¹ See *Transource Missouri*, 141 FERC ¶ 61,075, at P 52; *American Transmission Co.*, 107 FERC ¶ 61,117, at PP 16-17 (2004).

⁵² *PJM Intrconnection, L.L.C. and Commonwealth Edison Co.* 147 FERC ¶ 61,157 (2014); *PJM Intrconnection, L.L.C. and Pub. Serv. Elec. and Gas Co.*, 147 FERC ¶ 61,142 (2014).

Additionally, we note that TransCanyon's accounting controls and procedures may be subject to scrutiny through Commission audit or rate review.

38. Further, as a result of the Commission approving rate incentives, TransCanyon must also submit FERC-730 reports annually.⁵³

(c) **Hypothetical Capital Structure Incentive**

39. We grant TransCanyon's request to use a hypothetical capital structure of 50 percent debt and 50 percent equity if TransCanyon is selected as the approved project sponsor for the Project. We find that TransCanyon has demonstrated that the requested hypothetical capital structure is tailored to address the risks and challenges of its investment in the Project. The requested hypothetical capital structure will aid TransCanyon in raising capital during the construction phase of the Project, and will assist TransCanyon in maintaining low debt costs while its actual debt-to-equity ratio varies.

40. Moreover, the requested hypothetical capital structure is consistent with the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process, thereby encouraging competition.⁵⁴ As the Commission held in *XEST* and *XETD*, nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers.⁵⁵ Allowing nonincumbent transmission developers to utilize a hypothetical capital structure will help level the playing field

⁵³ FERC-730 annual reports must be filed by public utilities that have been granted incentive rate treatment for specific transmission projects. 18 C.F.R. § 35.35(h) (2014). These reports contain actual, projected and incremental transmission investment information. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 358, 367.

⁵⁴ See, e.g., Order No. 1000-A, 139 FERC ¶ 61,132 at P 87 (“[T]he Commission seeks to make it possible for nonincumbent transmission developers to compete in the proposal of more efficient or cost-effective transmission solutions.”).

⁵⁵ *Xcel Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182, at P 22 (2014) (*XEST*); *Xcel Energy Transmission Development Co., LLC*, 149 FERC ¶ 61,181, at P 13 (2014) (*XETD*).

between incumbent and nonincumbent transmission developers in the Order No. 1000 competitive solicitation process.⁵⁶

(d) **Abandoned Plant Recovery Incentive**

41. We grant TransCanyon's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Project if it is selected as the approved project sponsor, provided that the abandonment is a result of factors beyond TransCanyon's control, which must be demonstrated in a subsequent FPA section 205 filing for recovery of abandoned transmission facilities costs.⁵⁷ As we have explained in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.⁵⁸ In addition, as TransCanyon has demonstrated, we find that approval of the abandonment incentive will both attract financing for the Project and protect TransCanyon from further losses if the Project is cancelled for reasons outside TransCanyon's control.

42. As indicated above, we will not determine the justness and reasonableness of TransCanyon's recovery of costs for abandoned electric transmission facilities, if any, until TransCanyon seeks such recovery in a future FPA section 205 filing.⁵⁹ Order No. 679 specifically reserves the prudence determination for the later FPA section 205 filing that every utility is required to make if it seeks abandoned plant recovery.⁶⁰

(e) **RTO Participation Incentive**

43. We grant TransCanyon's request for a 50 basis point adder to its base ROE for its participation in CAISO, consistent with previous Commission orders.⁶¹ We note that our

⁵⁶ See *Transource Kansas, LLC*, 151 FERC ¶ 61,010, at 25 (2015) (*Transource Kansas*); *XEST*, 149 FERC ¶ 61,182 at P 22.

⁵⁷ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

⁵⁸ *Id.* P 163.

⁵⁹ *Primary Power*, 131 FERC ¶ 61,015 at P 124.

⁶⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

⁶¹ See, e.g., *Transource Kansas*, 151 FERC ¶ 61,010 at P 46; *MidAmerican Cent. California Transco, LLC*, 147 FERC ¶ 61,179, at P 45 (2014); *Transource Missouri*, 141 FERC ¶ 61,075 at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64.

approval of this incentive is based on TransCanyon's commitment to become a member of CAISO and transfer operational control of the Project to CAISO once the Project has been placed in service.

2. Participating Transmission Owner Tariff

a. Summary of TransCanyon's Request

44. In addition to the requested rate incentives, TransCanyon filed an initial TO Tariff, which includes a proposed cost-of-service formula rate template and proposed implementation protocols. TransCanyon states that its proposed TO Tariff is consistent with the tariffs of other CAISO participating transmission owners and modified to fit TransCanyon's unique circumstances. Specifically, the proposed TO Tariff describes TransCanyon's unique circumstances as a non-load serving participating transmission owner with no end-use customers. The proposed TO Tariff provides that transmission service over TransCanyon's system shall be provided only to eligible customers as defined in CAISO's Tariff.

45. The charges and rates are described in section 5 of the proposed TO Tariff. That section states that TransCanyon's transmission revenue requirement will be determined in accordance with its formula rate and explains that TransCanyon's transmission revenue requirements will be used to develop the access charges set forth in the CAISO Tariff. The proposed section also requires TransCanyon to maintain a transmission revenue balancing account with an annual transmission revenue balancing account adjustment that will ensure that all transmission revenue credits and adjustments for any over- or under-recovery of its transmission revenue requirement flow through to transmission customers. Furthermore, the proposed section provides that TransCanyon owns the transmission service rights with respect to its share of the Project and other projects it develops.

46. The proposed TO Tariff also provides that TransCanyon will not provide ancillary services directly to the transmission customer, and that the transmission customer will be required to meet their ancillary services requirements in accordance with the CAISO Tariff. Finally, the proposed TO Tariff delineates TransCanyon's obligations and the procedures for when a third party requests to interconnect or requests a transmission expansion.

47. As part of its proposed TO Tariff, TransCanyon also requests approval of its proposed ROE and formula rate template, which will be used to calculate its annual transmission revenue requirement.

48. With respect to the ROE, TransCanyon requests a base ROE of 10.6 percent in addition to the 50 basis point incentive ROE for RTO participation. TransCanyon states that it calculated this ROE in accordance with the standards adopted by the Commission in Opinion No. 531.⁶² Specifically, TransCanyon explains that it applied the two-step discounted cash flow (DCF) analysis, while also evaluating the cost of equity using the risk premium, capital asset pricing model, and expected earnings analyses. TransCanyon's DCR method establishes a zone of reasonableness of 6.48 percent to 10.93 percent. TransCanyon states that a base ROE at the top end of the zone of reasonableness is justified due to, according to TransCanyon, anomalous capital market conditions.⁶³ Moreover, TransCanyon asserts that a 10.6 percent base ROE will enable it to attract the necessary capital that is critically important for TransCanyon as a new entrant focused on the development of transmission assets through competitive solicitation.

49. The formula rate is a forward-looking formula, whereby TransCanyon forecasts the values that will populate the formula rate template for each calendar year, and later determines a true-up of the forecasted values after the actual data become available on the FERC Form No. 1. Any adjustments will be reflected in the following year's annual transmission revenue requirement.⁶⁴

50. TransCanyon explains that the formula rate template provides for the recovery of a return on rate base, taxes other than income taxes, depreciation expense, and operation and maintenance expenses, less revenue credits. The formula rate template includes stated values for post-employment benefits other than pensions, depreciation rates, ROE, and capital structure during the construction phase of the Project. TransCanyon states that tax obligations incurred through its operations will be passed through and reported on the tax returns of its corporate parents; thus, for ratemaking purposes, the formula rate template treats TransCanyon as a corporation and provides for an income tax allowance, which TransCanyon states is consistent with Commission precedent. TransCanyon states that its proposed formula rate is similar to formula rates previously accepted by the Commission.⁶⁵

⁶² Transmittal at 28.

⁶³ *Id.*

⁶⁴ *Id.* at 26-27.

⁶⁵ *Id.* at 26-28 (citing *Transource Missouri, LLC*, 143 FERC ¶ 61,104 (2013) and *Tallgrass Transmission, LLC*, 132 FERC ¶ 61,114 (2010)).

51. Moreover, TransCanyon states that it may receive business and administrative services from its affiliates and from third party providers. TransCanyon explains that its affiliates will invoice TransCanyon pursuant to intercompany service agreements for business and administrative services performed on TransCanyon's behalf.⁶⁶ TransCanyon explains that costs incurred by TransCanyon's affiliates pursuant to service agreements will be assigned to TransCanyon on the basis of direct billing or allocation.⁶⁷ Costs for services that are requested by and benefit only TransCanyon will be billed directly to TransCanyon.⁶⁸ Moreover, TransCanyon explains that due to the shared nature of allocated costs, such costs cannot be directly billed to an individual company. Therefore, TransCanyon will use a two-factor allocation formula based on an equal weighting of assets and payroll.⁶⁹

b. Commission Determination

52. We conditionally accept TransCanyon's proposed TO Tariff, suspend it for a nominal period to become effective July 6, 2015, subject to refund, and set it for hearing and settlement judge procedures. Our preliminary analysis indicates that TransCanyon's proposed base ROE and formula rate template have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that, as part of the proposed TO Tariff, the proposed base ROE and formula rate template raise issues of material fact that cannot be resolved based on the record before us and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

⁶⁶ Third parties will invoice TransCanyon for services rendered pursuant to contractual agreements.

⁶⁷ TransCanyon explains that allocated costs are those costs that are billed to multiple affiliates using an allocation formula. TransCanyon provides the following examples of services whose costs are allocated or shared: monitoring and expertise regarding activities at key state and federal agencies; regulatory compliance requirements; and tax and accounting expertise and compliance. Exhibit No. TCY-600, Direct Testimony of Jason La Benz at 9-10.

⁶⁸ TransCanyon states that such services will be provided to TransCanyon in a manner consistent with Commission, California Public Utilities Commission, and Arizona Corporation Commission affiliate rules.

⁶⁹ Exhibit No. TCY-600, Direct Testimony of Jason La Benz at 9-10.

53. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁷⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

54. While we set TransCanyon's proposed TO Tariff for hearing and settlement judge procedures, we do provide the following guidance:

55. We find that TransCanyon's proposed formula rate implementation protocols are transparent and would provide TransCanyon's customers with sufficient information and procedural safeguards to facilitate the annual review of the inputs to the formula rate template. Further, we find that the formula rate implementation protocols are consistent with the formula rate guidelines set forth by the Commission in *Midcontinent Indep. Sys. Operator*.⁷¹

56. Because TransCanyon does not currently have transmission assets, there is no historical data to support a depreciation study. In the past, the Commission has accepted formula rates that use a corporate affiliate's Commission-approved depreciation rates for a transmission joint venture start-up.⁷² We find that, as APS is a nearby affiliate company with numerous transmission facilities, APS's depreciation rates would be an appropriate proxy for TransCanyon to adopt in determining its proposed depreciation rates.

57. With respect to the formula rate template, we note that during the hearing and settlement judge procedures, TransCanyon should confirm that Line 13 (Net

⁷⁰ 18 C.F.R. § 385.603 (2014).

⁷¹ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014); *see also Transource Wisconsin, LLC*, 149 FERC ¶ 61,180, at 41 (2014) (*Transource Wisconsin*).

⁷² *See XEST*, 149 FERC ¶ 61,182 at P 66; *see also Transource Kansas*, 151 FERC ¶ 61,010 at P 51.

Transmission Plant in Service) is calculated by subtracting Line 9 from Line 5. We likewise direct TransCanyon to affirm that Line 14 (Net General and Intangible Plant in Service) is calculated by subtracting Line 10 from Line 6. As currently stated, these calculations are not clear.⁷³

58. Next, we note that TransCanyon proposes to accrue a monthly carrying charge on the regulatory asset balance, including the balance of deferred carrying costs, at the weighted average cost of capital rate. Consistent with Commission precedent, the appropriate carrying charge on the regulatory asset should not result in a higher amount of interest than is allowed for AFUDC.⁷⁴ TransCanyon must demonstrate that accruing the carrying charge at the weighted average cost of capital will not result in a higher amount of interest than is allowed for construction expenditures that accrue for AFUDC. Therefore, the hearing and settlement judge procedures should consider how TransCanyon may restrict the compounding of interest such that it does not result in a higher amount of interest than is allowed for construction expenditures that accrue for AFUDC.⁷⁵

59. In addition, we note that Line 52 (Total Other Taxes) appears to sum Line 48 which does not include a value; therefore, the hearing and settlement judge procedures should consider whether Line 48 must be excluded from Total Other Taxes. Moreover, we note that it is unclear from where Line 71 (Transmission Plant Included in OATT Ancillary Services) is derived; therefore, the hearing and settlement judge procedures should identify the appropriate Transmission Plant Included in OATT Ancillary Services.

60. Finally, we note that TO Tariff, Appendix III, Attachment 2, Lines 180 – 182 concerning post-retirement benefits other than pension are unsupported. Note B states

⁷³ TransCanyon's formula rate template is included under Appendix III of the TO Tariff.

⁷⁴ See, e.g., *MidAmerican Central California Transco, LLC*, 147 FERC ¶ 61,179 at P 34.

⁷⁵ We note that the Commission's requirements for AFUDC restrict the compounding of interest to no more frequent than semi-annually. See *Amendments to Uniform System of Accounts for Public Utilities and Licensees and for Natural Gas Companies (Classes A, B, C and D) to Provide for the Determination of Rate for Computing the Allowance for Funds Used During Construction and Revisions of Certain Schedule Pages of FPC Reports*, Docket No. RM75-27, Order No. 561, 57 FPC 608, 612 (1977), *reh'g denied*, Order No. 561-A, 59 FPC 1340 (1977), *order on clarification*, 2 FERC ¶ 61,050 (1978) (Order No. 561).

that “[t]he attached Actuarial Study (9/30/2014) supports PBOP expenses of \$14,186,241 for 2014, however the 2015 expenses are estimated to be negative \$22,000,000 when the 2015 Study is issued later this year” and that “Labor Dollars are from the 2014 Actuarial Study page 29.” We note that the actuarial study was not provided in the record. Therefore, the hearing and settlement procedures should evaluate the referenced Actuarial Study as support for Lines 180 – 182.

61. Finally we note that to the extent that costs will be allocated or directly billed from TransCanyon’s parent company or any of its affiliates, the cost allocation manuals submitted in TransCanyon’s filing do not sufficiently describe the allocation factors and how they are calculated. Accordingly, the hearing and settlement judge procedures should consider the appropriate methodology for the allocation of those costs.⁷⁶ In addition, we note that to the extent that there are sales of non-power goods and services among affiliates, TransCanyon must comply with its obligations under section 35.44(b)(1) of the Commission’s Regulations.⁷⁷

3. Request for Authorization to Replicate Formula Rate, ROE, and Incentive Rate Treatments

a. TransCanyon’s Request

62. TransCanyon states that TransCanyon, LLC, through future subsidiaries, will participate in additional competitive solicitation in California, and explains that given the timeframes in the CAISO bidding process it would not be reasonable for TransCanyon, LLC to litigate a formula rate case in advance of each bidding opportunity. TransCanyon therefore requests that the Commission authorize future use of the formula rate and implementation protocols, including the ROE, the regulatory asset for pre-commercial costs and the hypothetical capital structure incentives, pursuant to section 205 of the FPA, for future projects by yet-to-be formed subsidiaries of TransCanyon, LLC (TransCanyon’s parent company), participating in CAISO’s competitive solicitation process. TransCanyon asserts that its proposal is consistent with the approach accepted

⁷⁶ See *Repeal of the Public Utility Holding Company Act of 1935 and Enactment of the Public Utility Holding Company Act of 2005*, Order No. 667, FERC Stats. & Regs. ¶ 31,197, at P 151 (2005), *order on reh’g*, Order No. 667-A, FERC Stats. & Regs. ¶ 31,213, at PP 39-42, *order on reh’g*, Order No. 667-B, FERC Stats. & Regs. ¶ 31,224 (2006), *order on reh’g*, Order No. 667-C, 118 FERC ¶ 61,133 (2007) (describing Commission’s authority to require the filing of cost-allocation agreements).

⁷⁷ 18 C.F.R. § 35.44(b)(1) (2014).

by the Commission in *Transource Kansas*⁷⁸ and *Transource Wisconsin*.⁷⁹ TransCanyon states that at such time as the CAISO awards a project to a future TransCanyon, LLC subsidiary through an Order No. 1000 competitive solicitation process, that entity will then make a 205 filing to incorporate the approved formula rate into the CAISO Tariff.

63. Specifically, TransCanyon requests authorization for the portability of the ROE to include the 50 basis point RTO participation incentive for each TransCanyon, LLC subsidiary.⁸⁰ TransCanyon asserts that authorization for the RTO participation incentive is warranted because each TransCanyon, LLC subsidiary will turn over operational control of any transmission assets to CAISO.⁸¹

64. TransCanyon also seeks certainty with regard to incentive rate treatments that will be available to any TransCanyon, LLC subsidiary at the time it bids on a project so that it can accurately reflect any authorized incentives in the financial components of the entity's bid, including the itemized project revenue requirements. TransCanyon asserts that the same challenges it faces regarding bid development and financing would also apply to a future TransCanyon, LLC subsidiary.⁸² Thus, TransCanyon seeks the portability of the regulatory asset for pre-commercial costs and hypothetical structure incentives, which it argues is a reasonable adaptation of the Commission's incentive rate policies and practices to the new circumstance of a competitive transmission developer selection process.⁸³

b. Commission Determination

65. We conditionally grant TransCanyon's request for use of the proposed formula rate and ROE by the yet-to-be-formed TransCanyon, LLC subsidiaries, subject to the outcome of the hearing and settlement judge procedures. We find that there is no reason

⁷⁸ Transmittal at 33 (citing *Transource Kansas, LLC*, 151 FERC ¶ 61,010).

⁷⁹ *Id.* (citing *Transource Wisconsin*, 149 FERC ¶ 61,180).

⁸⁰ *Id.* at 34.

⁸¹ *Id.* (citing, e.g., *MidAmerican Cent. California Transco, LLC*, 147 FERC ¶ 61,179, at P 45 (2014); *Transource Missouri*, 141 FERC ¶ 61,075 at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64).

⁸² *Id.* (citing Exhibit TCY-300, Direct Testimony of Lee Nickloy at 16).

⁸³ *Id.*

to open a new proceeding to re-litigate the justness and reasonableness of a formula rate that is identical to the one being accepted in the instant filing.⁸⁴ We clarify, however, that the TransCanyon, LLC subsidiaries will each be subject to the resultant ROE that is determined through the hearing and settlement judge procedures ordered above, or any subsequent ROE that is ordered by the Commission.

66. We also grant TransCanyon's request to allow future TransCanyon, LLC subsidiaries to use the hypothetical capital structure and regulatory asset for pre-commercial costs incentives approved in this proceeding for TransCanyon. We note that the Commission has previously held that incentives granted under Order No. 679 can also be granted under the Commission's section 205 authority under certain circumstances, such as to promote important public policy goals. In particular, the Commission has exercised its section 205 authority to grant certain incentives to nonincumbent transmission developers competing in the Order No. 1000 competitive solicitation process, just as TransCanyon seeks to do here.⁸⁵ Consistent with the Commission's determinations in *XEST*, *XETD*, *Transource Wisconsin*, and *Transource Kansas*, we find that granting the regulatory asset for pre-commercial costs and hypothetical capital structure incentives in this instance for future use by TransCanyon LLC's yet to be formed subsidiaries furthers the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process. Moreover, we find that because the rationale for granting these incentives to future TransCanyon, LLC subsidiaries would be identical to the rationale adopted in this proceeding, and because the Commission has fully considered the incentives issue in this proceeding, the issue need not be re-litigated through further section 205 or section 219 filings.⁸⁶ As discussed above, if and when CAISO awards a project to a TransCanyon, LLC subsidiary through CAISO's competitive solicitation process, the TransCanyon, LLC subsidiary will be expected to make a joint section 205 filing to incorporate the formula rate into the CAISO Tariff.

67. We note that the Commission's policy goal of placing nonincumbent transmission developers on a level playing field with incumbent transmission owners in the Order No. 1000 competitive solicitation process is only relevant to projects eligible for bidding through Order No. 1000 competitive solicitation processes. Consequently, TransCanyon

⁸⁴ *Transource Kansas*, 151 FERC ¶ 61,010 at P 81; *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 63.

⁸⁵ See *XEST*, 149 FERC ¶ 61,182 at P 33; *XETD*, 149 FERC ¶ 61,181; *Transource Wisconsin*, 149 FERC ¶ 61,180 at P 16; *Transource Kansas*, 151 FERC ¶ 61,010 at P 15.

⁸⁶ *Transource Kansas*, 151 FERC ¶ 61,010 at P 82.

may only apply the hypothetical capital structure and regulatory asset for pre-commercial costs incentives to projects that are developed through CAISO's competitive solicitation processes.

68. Moreover, as discussed above, while we will allow TransCanyon to record its prudently-incurred costs as a regulatory asset, TransCanyon must make a section 205 filing to demonstrate that the pre-commercial costs are just and reasonable before it includes them in rates. In any subsequent section 205 filing, TransCanyon must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable to expense in the period incurred but were deferred consistent with the authorization granted herein, and entities will be able to challenge the reasonableness of costs at that time.

The Commission orders:

(A) TransCanyon's requested rate incentive treatment package for the Project is hereby granted, subject to a compliance filing due within 30 days of the date of this order, as discussed in the body of this order.

(B) TransCanyon's proposed TO Tariff is hereby conditionally accepted for filing, suspended for a nominal period to become effective July 6, 2015, subject to refund, and subject to hearing and settlement judge procedures, as discussed in the body of this order.

(C) TransCanyon's request for yet-to-be-formed subsidiaries of TransCanyon, LLC to replicate the formula rate template, ROE, and regulatory asset for pre-commercial costs and hypothetical capital structure incentives is hereby granted, subject to the outcome of the hearing and settlement judge procedures, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R., Chapter I), a public hearing shall be held concerning the TransCanyon's proposed TO Tariff, including the propose base ROE and formula rate template reflected therein. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2014), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this

order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.