

154 FERC ¶ 61,009  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

NextEra Energy Transmission West, LLC

Docket Nos. ER15-2239-000  
ER15-2239-001

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

(Issued January 8, 2016)

1. On July 22, 2015, NextEra Energy Transmission West, LLC (NEET West) filed a request to recover certain transmission rate incentives pursuant to sections 205<sup>1</sup> and 219<sup>2</sup> of the Federal Power Act (FPA) and Order No. 679,<sup>3</sup> as well as a proposed participating transmission owner tariff (TO Tariff), including a proposed return on equity (ROE) and forward-looking formula rate template and implementation protocols designed to calculate its annual transmission revenue requirement for inclusion in the California Independent System Operator Corporation's (CAISO) transmission access charge. In this order, we grant in part and deny in part NEET West's requested transmission rate incentives. We also accept and suspend, for a nominal period, subject to condition, NEET West's proposed TO Tariff, to become effective October 20, 2015, subject to refund. Finally, we establish hearing and settlement judge procedures regarding NEET West's proposed base ROE.

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<sup>1</sup> 16 U.S.C. § 824(d) (2012).

<sup>2</sup> 16 U.S.C. § 824s (2012).

<sup>3</sup> *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).

## I. Background

2. In Order No. 1000,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

3. NEET West is a subsidiary of NextEra Energy Transmission, LLC, which is a subsidiary of NextEra Energy Capital Holdings, Inc. NEET West states that it was formed to develop, construct, finance, own, operate, and maintain new high-voltage electric transmission facilities in CAISO, and will become a transmission-owning member of CAISO as soon as the CAISO Tariff and governing documents permit. NEET West also states that it was recently awarded the 230 kV +300/-100 MVAR Suncrest Reactive Power Project (Suncrest Project) and the 230/70 kV Estrella Substation Project (Estrella Project) (collectively, the Projects) for development as a result of CAISO's competitive transmission developer selection process.

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<sup>4</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *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).

<sup>5</sup> Order No. 1000, FERC Stats. Regs. ¶ 31,323 at P 313.

<sup>6</sup> *See California Indep. Sys. Operator, Corp.*, 143 FERC ¶ 61,057 (2013), *order on clarification and compliance*, 146 FERC ¶ 61,198, *order on reh'g and compliance*, 149 FERC ¶ 61,249 (2014).

4. NEET West states that CAISO identified a policy-driven need in CAISO's 2013-2014 Transmission Plan for 300 MVAR of dynamic reactive power support connecting to San Diego Gas & Electric Company's (SDG&E) existing Suncrest Substation.<sup>7</sup> NEET West states that the Suncrest Project consists of a +300/-100 MVAR Static VAR Compensator (SVC) device housed in a new SVC substation and a 230 kV tie-line connecting the SVC substation to the Suncrest substation. NEET West states that it was selected as the project developer by CAISO on January 6, 2015, and that CAISO's determination was predicated, in part, on the binding construction cost and operation and maintenance (O&M) cost containment commitments included in NEET West's competitive bid.<sup>8</sup> According to NEET West, it signed an Approved Project Sponsor Agreement (APSA) for the Suncrest Project with CAISO on May 7, 2015, and the APSA memorialized the cost containment commitments it made in its competitive bid.<sup>9</sup>

5. NEET West states that CAISO identified a reliability-driven need in CAISO's 2013-2014 Transmission Plan to reinforce the 70kV system in the Templeton and Estrella areas.<sup>10</sup> NEET West states that the Estrella Project will consist of a new 230/70/12 kV substation, new 230/70 kV transformers, and reconductoring and looping of the existing transmission lines owned by Pacific Gas & Electric Company (PG&E).<sup>11</sup> NEET West states that it was selected as the project developer by CAISO on March 11, 2015, and that CAISO's determination was predicated, in part, on the binding construction cost and O&M cost containment commitments included in its competitive bid.<sup>12</sup> According to

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<sup>7</sup> Transmittal at 3; Ex. NWT-101 at 289-291.

<sup>8</sup> *Id.*; Ex. NWT-101 at 15-16; Ex. NWT-102 at 34-40, 46. NEET West committed to a binding construction cost cap of \$42,288,000 and a binding O&M cost cap for the first five years following commencement of commercial operation.

<sup>9</sup> Transmittal at 3-4.

<sup>10</sup> Transmittal at 4.

<sup>11</sup> *Id.* NEET West states that it will be responsible for those elements of the Estrella Project that were subject to the competitive transmission developer selection process, such as construction of the new Estrella 230/70 kV substation and installation of a new 230/70 kV transformer, while PG&E will be responsible for the 70 kV bus-work and termination equipment and modifications to existing facilities, which were not eligible for competitive bidding.

<sup>12</sup> *Id.*; Ex. NWT-100 at 15-16; Ex. NWT-103 at 76-79. NEET West committed to a binding construction cost cap of \$24,539,000 and a binding O&M cost cap for the first five years following commencement of commercial operation.

NEET West, it executed an APSA with CAISO for the competitive components of the Estrella Project that reflects the cost containment commitments included in its competitive bid.<sup>13</sup>

## II. NEET West's Filing

6. NEET West seeks approval of its proposed TO Tariff, which includes a forward-looking cost-of-service formula rate template and implementation protocols (together, Formula Rate) designed to calculate its annual transmission revenue requirement for inclusion in CAISO's transmission access charge. NEET West explains that the TO Tariff is consistent with the tariffs on file for other CAISO participating transmission owners, and that the Formula Rate has been modeled after those that the Commission has recently accepted.<sup>14</sup> As detailed below, NEET West requests a base ROE of 10 percent, a 50 basis point adder for participation in a Regional Transmission Organization (RTO), and certain incentives for the Projects, pursuant to Order No. 679 or, in the alternative, pursuant to section 205 of the FPA.

7. In addition, NEET West requests that the Commission act without setting the base ROE or other part of the proposed TO Tariff for hearing and settlement judge procedures. NEET West states that the proposed base ROE was a foundational element in its bid, which included cost containment commitments, that CAISO accepted in the competitive transmission developer selection process, and that NEET West's proposed base ROE is conservative in light of the significant cost containment risks it will face as a competitive developer of the Projects. NEET West states that the Commission should determine that there is no need for a hearing when a bid including cost containment commitments is paired with a reasonably assumed cost of equity. According to NEET West, a hearing and settlement process would likely cause material delays and uncertainty in resolving the base ROE, which should be avoided in light of the aggressive project milestones for the Suncrest Project.<sup>15</sup>

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<sup>13</sup> Transmittal at 5.

<sup>14</sup> Transmittal at 5-8 (citing *MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179 (2014); *MidAmerican Cent. Cal. Transco, LLC*, 151 FERC ¶ 61,251 (2015); *Citizens Sunrise Transmission LLC*, 138 FERC ¶ 61,129 (2012); *Trans Bay Cable, LLC*, 130 FERC ¶ 61,028 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306 (2008), *reh'g denied*, 133 FERC ¶ 61,154 (2010); *Trans-Elect NTD Path 15, LLC*, 117 FERC ¶ 61,214 (2006), *reh'g denied*, 119 FERC ¶ 61,093 (2007)).

<sup>15</sup> NEET West states that once it enters into all necessary agreements, it expects to begin to recover a revenue requirement through the CAISO transmission access charge in

(continued...)

### III. Notice of Filing and Responsive Pleadings

8. Notice of NEET West's filing was published in the *Federal Register*, 80 Fed. Reg. 45,209 (2015), with interventions and comments due on or before August 12, 2015. Timely motions to intervene were filed by TransCanyon, LLC and the City of Santa Clara, California. The California Public Utilities Commission (CPUC) filed a notice of intervention. Transmission Agency of Northern California (TANC); Modesto Irrigation District;<sup>16</sup> the California Department of Water Resources State Water Project (CDWR); and Six Cities<sup>17</sup> each filed motions to intervene and protests. CAISO and PG&E both filed motions to intervene and comments. M-S-R Public Power Agency filed a motion to intervene and adoption of position.<sup>18</sup> Transource Energy, LLC; Southern California Edison Company; and SDG&E filed motions to intervene out-of-time. NEET West filed an answer to protests and comments. CAISO filed an answer to the protest of Six Cities, to which Six Cities filed a motion for leave to answer and answer.

9. On October 6, 2015, the Commission advised NEET West that its filing was deficient and additional information would be necessary to evaluate its submission.<sup>19</sup> On October 22, 2015, NEET West requested, and was later granted, a two-week extension of time for the filing of its response.<sup>20</sup> NEET West filed its response<sup>21</sup> on November 10, 2015.

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2017, the year in which it expects to place its first asset, the Suncrest Project, into service. Transmittal at 13.

<sup>16</sup> Modesto Irrigation District adopts and incorporates into its pleading the protest submitted by TANC.

<sup>17</sup> Six Cities consist of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

<sup>18</sup> M-S-R Public Power Agency adopts and incorporates into its pleading the protest submitted by TANC.

<sup>19</sup> *NEET West*, Deficiency Letter, Docket No. ER15-2239-000, at 2 (issued October 6, 2015) (Deficiency Letter).

<sup>20</sup> *See NEET West, Notice of Extension of Time*, Docket No. ER15-2239-000 (October 27, 2015).

<sup>21</sup> NEET West, November 10, 2015 Deficiency Response (Deficiency Response).

10. Notice of NEET West's Deficiency Response was published in the *Federal Register*, 80 Fed. Reg. 72,430 (2015), with interventions and comments due on or before December 1, 2015. SDG&E filed comments in response to the Deficiency Response.

#### **IV. Discussion**

##### **A. Procedural Matters**

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene and the notice of intervention 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) (2015), we will grant Transource Energy, LLC's; Southern California Edison Company's; and SDG&E's late-filed motions to intervene given their interests in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept NEET West's, CAISO's, and Six Cities' answers because they have provided information that assisted us in our decision-making process.

##### **B. Substantive Matters**

###### **1. Transmission Incentives**

###### **a. Summary of Incentives Requested**

13. NEET West requests authorization pursuant to Order No. 679 for the following five incentive rate treatments for the Projects: (1) recovery of 100 percent of prudently incurred costs, including costs related to the Projects that have been incurred prior to the date of filing, in the event a Project must be abandoned for reasons outside NEET West's reasonable control (abandoned plant incentive); (2) recovery of all pre-commercial costs that are not capitalized through establishment of a regulatory asset to include all such expenses that are incurred in connection with the Projects prior to the time costs first flow through to customers pursuant to CAISO's transmission access charge and authorization to amortize the regulatory asset over five years thereafter (regulatory asset incentive); (3) use of a hypothetical capital structure of 50 percent debt and 50 percent equity until the first project achieves commercial operation (hypothetical capital structure incentive); (4) a 50 basis point ROE adder for NEET West's participation in CAISO (RTO participation incentive); and (5) an incentive ROE adder equal to the difference between 10 percent and NEET West's base ROE, to be applied only if NEET West's base ROE is

determined to be below 10 percent and in no case to exceed 150 basis points (conditional ROE incentive).

**b. FPA Section 219 Requirement**

14. In the Energy Policy Act of 2005,<sup>22</sup> Congress added section 219 to the FPA,<sup>23</sup> 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 NEET West. Additionally, in November 2012, the Commission issued the Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.<sup>24</sup>

15. 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.”<sup>25</sup> 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.<sup>[26]</sup>

The Commission also stated that “other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce

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<sup>22</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

<sup>23</sup> 16 U.S.C. § 824s (2012).

<sup>24</sup> See *Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Policy Statement).

<sup>25</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

<sup>26</sup> *Id.*

congestion by presenting [to the Commission] a factual record that would support such a finding.”<sup>27</sup>

16. 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.<sup>28</sup> 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.

17. In the 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 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.<sup>29</sup>

18. The 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.<sup>30</sup>

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<sup>27</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

<sup>28</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

<sup>29</sup> *See* Policy Statement, 141 FERC ¶ 61,129 at PP 20, 24-30.

<sup>30</sup> Policy Statement, 141 FERC ¶ 61,129 at P 21.

**i. NEET West's Filing**

19. NEET West states that the Projects qualify for the rebuttable presumption under Order No. 679 because they were identified and approved through CAISO's transmission planning process, which evaluates whether identified transmission projects will enhance reliability and/or reduce congestion. Specifically, NEET West states that CAISO's 2013-2014 Transmission Plan identified the Suncrest Project as a policy-driven project needed to address loading and voltage concerns "caused by renewable generation along the borders of California and Arizona and Nevada, and ... import[s] through the West of River transmission path."<sup>31</sup> NEET West also states that the plan identified the Estrella Project as a reliability-driven project needed to "mitigate the thermal overloads and voltage concerns identified in the Los Padres 70 kV system."<sup>32</sup> NEET West states that the Commission has previously held that a project approved through the CAISO transmission planning process satisfies the rebuttable presumption established in Order No. 679.<sup>33</sup>

**ii. Commission Determination**

20. We find that NEET West 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 Projects, as the CAISO transmission planning process through which the Projects were approved evaluates whether identified transmission projects will enhance reliability and/or reduce congestion.<sup>34</sup>

**c. Order No. 679 Nexus**

21. 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

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<sup>31</sup> Transmittal at 15 (citing Ex. NWT-101 at 190).

<sup>32</sup> *Id.* (citing Ex. NWT-101 at 89).

<sup>33</sup> *Id.* (citing *Citizens Energy Corp.*, 129 FERC ¶ 61,242, at P 16 (2009). *See also* *MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at P 24 (2014)).

<sup>34</sup> *See, e.g., Pacific Gas & Elec. Co.*, 148 FERC ¶ 61,195, at P 14 (2014) (finding that a project needed for reliability and selected in CAISO's Commission-approved transmission planning process met the rebuttable presumption).

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.”<sup>35</sup> 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. NEET West’s Filing**

22. NEET West states that there is a nexus between the incentive rate treatments sought and the risks and challenges that NEET West faces in developing each of the Projects. NEET West explains that it made binding cost containment commitments as part of its successful bids for the Projects that may result in unrecoverable costs; therefore, NEET West asserts that its bids add considerable risks for investors compared to the traditional cost-of-service model because of the possibility that cost overruns will be unrecoverable. NEET West states that the Projects will be the first transmission projects it will construct and place into service, and that it will expend significant sums during the pre-construction and construction phases without another available source of income for the new company. NEET West asserts that this poses financial and logistical challenges because it has no direct business history, credit rating, debt repayment history, or regular cash flow. NEET West also contends that the scope of the Projects poses significant challenges. NEET West explains that, in considering the scope of a project for which an applicant seeks incentives, the Commission has previously compared the size of a proposed investment to a company’s current transmission plant-in-service or the company’s average annual transmission investment.<sup>36</sup> NEET West states that the estimated capital cost of approximately \$42 million for the Suncrest Project and \$23 million for the Estrella Project will be significant given that the company will have no transmission plant in-service at the time.<sup>37</sup> Thus, according to NEET West, the

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<sup>35</sup> Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

<sup>36</sup> Transmittal at 16 (citing *N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,035, at P 27 (2012); *Allegheny Energy Inc.*, 116 FERC ¶ 61,058, at P 64 (2006), *reh’g denied*, 118 FERC ¶ 61,042 (2007); *PPL Elec. Utils. Corp.*, 123 FERC ¶ 61,068, at P 32 (2008), *reh’g denied*, 124 FERC ¶ 61,229 (2008); *Cent. Me. Power Co.*, 125 FERC ¶ 61,182, at P 78 (2008); *Pepco Holdings, Inc.*, 124 FERC ¶ 61,176, at P 64 (2008), *reh’g denied*, 139 FERC ¶ 61,144 (2012)).

<sup>37</sup> Transmittal at 16, 19. NEET West states that much of the pre-construction engineering and permitting work for the \$23 million Estrella Project will occur prior to the time that NEET West anticipates first recovering revenues related to the Suncrest Project through the CAISO Transmission Access Charge in 2017.

incentive rate treatments requested herein will significantly enhance the company's overall financial strength with respect to execution of the Projects.

23. NEET West also explains that it will need to address regulatory challenges when developing the Projects. According to NEET West, there are numerous federal, state, and local permits it anticipates it will need to secure to complete construction of the Projects. NEET West states that it will also need to work with local landowners and incumbent utilities to achieve the necessary site control and easements to construct the Projects. NEET West asserts that permitting and site control delays are typically outside the control of the developer and carry a risk that it could lose the right to develop the Projects. NEET West contends that CAISO can terminate an APSA with an approved transmission developer and identify a replacement developer in the event that "CAISO determines that the proposed completion date has been delayed beyond the date upon which the transmission solution was found to be needed."<sup>38</sup> NEET West further notes that, while CAISO administered its competitive transmission developer selection process consistent with its tariff, there is potential risk that another applicant that was not awarded the Projects, or other interested stakeholders, will seek to have CAISO reconsider its determination or file some other regulatory or judicial action that would affect NEET West's development of the Projects.<sup>39</sup>

**ii. Commission Determination**

24. We consider, below, whether the total package of incentives requested satisfies the nexus test. In applying the nexus test, we find that NEET West has sufficiently demonstrated that certain requested risk-reducing incentives and the RTO participation incentive are warranted, as discussed further below. However, we find that NEET West has not provided adequate support for its requested conditional ROE incentive and, therefore, deny it.

**(a) Abandoned Plant Incentive**

25. NEET West seeks authorization to recover prudently incurred costs in the event the Projects must be abandoned for reasons outside of NEET West's reasonable control. NEET West asserts that the Projects face a number of environmental, regulatory, siting, and land rights acquisition risks that could lead to the eventual abandonment of the Projects. NEET West asserts that there may be a heightened risk of challenges to

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<sup>38</sup> *Id.* at 18 (citing CAISO OATT, § 24.6.2, Delay in the Transmission Solution In-Service Date, Version 3.0.0).

<sup>39</sup> Transmittal at 17-20.

CAISO's selection of NEET West to develop the Projects given that these are some of the first CAISO projects for which the transmission developer has been selected through the competitive transmission developer selection process. NEET West also states that CAISO may determine in a future planning cycle that the Suncrest Project or Estrella Project is no longer needed.<sup>40</sup> NEET West contends that the abandoned plant incentive will help eliminate the risk that lenders and shareholders may have to bear substantial costs for transmission projects that are cancelled for reasons outside of NEET West's control.<sup>41</sup>

### **Commission Determination**

26. We grant NEET West's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Projects, provided that the abandonment is a result of factors beyond NEET West's control, which must be demonstrated in a subsequent FPA section 205 filing for recovery of abandoned electric transmission facilities costs.<sup>42</sup> As the Commission has 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.<sup>43</sup> We agree that NEET West faces certain environmental, regulatory, and siting risks that could lead to abandonment of the projects. In addition, as NEET West has demonstrated, we find that approval of the abandonment incentive will both attract financing for the Projects and protect NEET West from further losses if the Projects are cancelled for reasons outside NEET West's control.

27. As indicated above, we will not determine the justness and reasonableness of NEET West's recovery of costs for abandoned electric transmission facilities, if any, until NEET West seeks such recovery in a future FPA section 205 filing.<sup>44</sup> Order No. 679

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<sup>40</sup> *Id.* at 22 (citing *PJM Interconnection, LLC and Potomac-Appalachian Transmission Highline, L.L.C.*, 141 FERC ¶ 61,177 (2012)).

<sup>41</sup> Transmittal at 21-22.

<sup>42</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

<sup>43</sup> *Id.* P 163.

<sup>44</sup> *Primary Power, LLC* 131 FERC ¶ 61,015, at P 124 (2010).

specifically reserves the prudence determination for the later FPA section 205 filing that a public utility is required to make if it seeks abandoned plant recovery.<sup>45</sup>

**(b) Regulatory Asset Incentive**

28. NEET West requests authorization to recover all prudently incurred pre-commercial costs that are not capitalized, and to establish a regulatory asset in which it will accrue all costs not capitalized that have been incurred to date and up to the date that charges are assessed to CAISO customers under the Formula Rate.<sup>46</sup> NEET West also seeks authorization to amortize the regulatory asset for the Projects over five years, beginning in the first year when the Projects become operational and costs are assessed to customers under the Formula Rate, and to accrue monthly carrying charges 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 the rate base.<sup>47</sup>

29. NEET West states that the regulatory asset incentive is necessary so that it can record and recover, in an appropriate manner, necessary startup and development costs for the Projects that are not capitalized, but are incurred before such prudently-incurred expenses can be recovered under the Formula Rate as current expenses. NEET West contends that the ability to book such costs into a regulatory asset prior to its annual transmission revenue requirement being included in CAISO's transmission access charge will provide up-front regulatory certainty, improve cash flow, improve coverage ratios, and reduce interest expense.<sup>48</sup>

**(1) Protests and Comments**

30. With respect to NEET West's request for a regulatory asset incentive, CDWR argues that NEET West will charge customers through a regulatory asset that is opaque, and, therefore, the Commission should require NEET West to make a section 205 filing

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<sup>45</sup> Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

<sup>46</sup> NEET West notes that such costs could include, for example, engineering and consultant fees, legal fees, administrative expenses, travel expenses, development surveys, and costs to support planning activities, but excludes costs associated with preparation and submission of NEET West's CAISO bid applications for the Projects. *Id.* at 27.

<sup>47</sup> Transmittal at 27-28.

<sup>48</sup> *Id.*

before including a regulatory asset in rates to demonstrate that pre-commercial costs are costs that otherwise would have been chargeable as expenses.<sup>49</sup>

## (2) Commission Determination

31. We grant NEET West's request to establish a regulatory asset for all prudently-incurred pre-commercial costs for the Projects that are not capitalized. We find that this incentive appropriately addresses the risks and challenges of the Projects, because it will provide NEET West with added upfront regulatory certainty, reduce interest expenses, improve coverage ratios, and assist in the construction of the Projects. Therefore, we find NEET West's recovery of such costs incurred before the date charges are assessed to CAISO customers under the Formula Rate for the Projects to be appropriate, and we grant NEET West's request to establish a regulatory asset for the Projects.

32. We grant NEET West's request to accrue a carrying charge from the effective date of the regulatory asset until the asset is included in its rate base. We also accept NEET West's proposal to amortize the regulatory asset over five years, consistent with rate recovery.<sup>50</sup> Once NEET West begins to include the regulatory asset in rate base as part of its revenue requirement, it will earn a return on the unamortized balance of the regulatory asset and must stop accruing carrying charges on such regulatory asset.<sup>51</sup>

33. NEET West must record all associated carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Non-Operating Income.<sup>52</sup> Consistent with Commission precedent, we authorize NEET West to amortize the regulatory asset and related carrying charges associated with the Projects by debiting

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<sup>49</sup> CDWR Protest at 12 (citing *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 68 (2015)).

<sup>50</sup> See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031, at P 59 (2009); *Primary Power*, 131 FERC ¶ 61,015 at P 117.

<sup>51</sup> See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031 at P 60; *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 at P 84.

<sup>52</sup> See *Revisions to Uniform Systems of Accounts to Account for Allowances under the Clean Air Act Amendments of 1990 and Regulatory – Created Assets and Liabilities and to Form Nos. 1, 1-F, 2 and 2-A*, Order No. 552, FERC Stats. and Regs., Regulations Preambles 1991-1996 ¶ 30,967, at 30,825 (1993) (requiring that deferred returns and/or carrying charges accrued on regulatory assets be credited to Account No. 421, Miscellaneous Non-Operating Income).

Account 566 and crediting Account 182.3.<sup>53</sup> Further, the appropriate carrying charge should not result in a higher amount of interest than is allowed for construction expenditures that accrue an allowance for funds used during construction (AFUDC).<sup>54</sup> The Commission's requirements for AFUDC restrict the compounding of interest to no more frequent than semi-annually.<sup>55</sup> Therefore, we will require NEET West to restrict the compounding of interest to no more frequently than semi-annually when accruing carrying charges. Accordingly, we accept, subject to the aforementioned directives, effective October 20, 2015, NEET West's proposal to allow it to establish the regulatory asset, and begin accruing carrying charges.

34. While we authorize NEET West to record its prudently-incurred costs as a regulatory asset, NEET West must make a section 205 filing to demonstrate that the pre-commercial costs are just and reasonable before it includes them in its rate base. In that filing, NEET West 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.

(c) **Hypothetical Capital Structure Incentive**

35. NEET West proposes the use of a hypothetical capital structure consisting of 50 percent debt and 50 percent equity until the first of the Projects (scheduled to be the Suncrest Project in 2017) achieves commercial operation. NEET West contends that use of a hypothetical capital structure of 50 percent debt and 50 percent equity is consistent with its representation to CAISO concerning its assumed cost of capital in the competitive bids submitted for the Projects. NEET West states that it will initially operate with capital infusions from its parent company. However, NEET West contends

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<sup>53</sup> See *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 154 (2008).

<sup>54</sup> See *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 71 (2012) (requiring DATC to restrict the compounding of interest to no more frequently than semi-annually).

<sup>55</sup> 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 as construction of the Suncrest Project progresses, significant borrowings as well as additional capital contributions will be required, and, therefore, the precise debt-to-equity ratio will vary as new debt and equity is invested. NEET West asserts that the Commission has approved hypothetical capital structures with an equity component greater than the 50 percent equity requested by NEET West in the instant filing.<sup>56</sup> As such, NEET West argues that its requested hypothetical capital structure is reasonable and appropriate to provide certainty and improve the access to capital. Once the Suncrest Project achieves commercial operation, NEET West states that it will use its actual capital structure in the Formula Rate.<sup>57</sup>

### **Commission Determination**

36. We grant NEET West's request to use a hypothetical capital structure of 50 percent debt and 50 percent equity for the Projects. We find that NEET West has demonstrated that the requested hypothetical capital structure is tailored to address the risks and challenges of developing the Projects. The requested hypothetical capital structure will aid NEET West in raising capital during the construction phase of the Project, and will assist NEET West in maintaining low debt costs while its actual debt-to-equity ratio varies.

37. Moreover, 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.<sup>58</sup> We grant this request because we find that a hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent

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<sup>56</sup> Transmittal at 28-29 (citing *MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179, at P 38 (2014); *Transource Missouri, LLC*, 141 FERC ¶ 61,075, at P 66 (2012); *Green Power Express LP*, 127 FERC ¶ 61,031 at P 72; *Primary Power, LLC*, 131 FERC ¶ 61,015 at P 141; *Atl. Grid Operations A LLC*, 135 FERC ¶ 61,144, at P 121 (2011); *MidAmerican Cent. Cal. Transco, LLC*, 151 FERC ¶ 63,009 (2015)).

<sup>57</sup> Transmittal at 28-29; *see also* Ex. NWT-300 at 14.

<sup>58</sup> *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*).

transmission developers in the Order No. 1000 competitive solicitation process, thereby encouraging competition.<sup>59</sup>

(d) **RTO Participation Incentive**

38. NEET West requests a 50 basis point adder to its base ROE for its participation in CAISO. NEET West 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 [Independent System Operator (ISO)], RTO, or other Commission-approved Transmission Organization.”<sup>60</sup> NEET West explains that it will become a member of CAISO, transfer functional control of transmission facilities to CAISO once placed into service, and recover the costs of the Projects from CAISO customers through the inclusion of NEET West’s annual transmission revenue requirement in CAISO’s transmission access charge.<sup>61</sup>

**Commission Determination**

39. We grant NEET West’s request for a 50 basis point adder to its base ROE for its participation in CAISO, consistent with previous Commission orders.<sup>62</sup> We note that our approval of this incentive is based on NEET West’s commitment to become a member of CAISO and transfer operational control of the Projects to CAISO once the Projects have been placed in service.

(e) **Conditional ROE Incentive**

40. NEET West requests a conditional ROE incentive adder equal to the difference between 10 percent and the base ROE in its Formula Rate, to be applied only if the base ROE is determined to be below 10 percent, and in no case to exceed 150 basis points. NEET West states that the purpose of the conditional ROE incentive is to provide greater

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<sup>59</sup> *ATX Southwest, LLC*, 152 FERC ¶ 61,193, at P 30 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 87).

<sup>60</sup> Transmittal at 32 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86).

<sup>61</sup> Transmittal at 32.

<sup>62</sup> 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.

assurance that it will earn the 10 percent ROE that was the foundation for its successful competitive bids for the Projects. In the event that NEET West's base ROE is established at a level below 10 percent, NEET West submits that the Suncrest Project and the Estrella Project each warrant a risk-based incentive ROE adder to bring the base ROE, including such adder, to 10 percent. However, NEET West asserts that the conditional ROE incentive is not an unconstrained guarantee of a 10 percent ROE for the Projects under all circumstances. NEET West notes that the total 10.5 percent ROE, including the RTO participation incentive, must be within the zone of reasonableness, and that, in the event its base ROE is established at a level below 8.5 percent, NEET West would only be allowed to add a maximum of 150 basis points to the base ROE, also subject to the limitations imposed by the zone of reasonableness.<sup>63</sup>

41. NEET West asserts that each of the Projects' bids included a binding cap on capital expenditures, and a commitment to cap O&M expenditures during the first five years of commercial operation. Therefore, NEET West contends that investors face a significant risk of unrecoverable cost overages for the Projects, and that such risks are not mitigated by the other requested incentives. Further, NEET West claims that considering an ROE risk adder for projects awarded competitively on the basis of binding cost containment commitments represents a significant departure from the risk profile of the traditional utility, where under cost of service ratemaking, all prudently incurred costs related to used and useful transmission facilities are presumed recoverable.<sup>64</sup>

42. NEET West states that it merely asks to preserve the essential underpinnings of the competitive bargain struck between itself and CAISO through CAISO's Order No. 1000-compliant transmission planning and developer selection process. According to NEET West, it would be inequitable to require it to adhere to cost containment commitments included in the bids for the Projects, and then question the assumed ROE incorporated into the same bids. NEET West argues that, if consumers are to benefit from the important rate protections afforded by cost containment commitments, by lessening their risk of paying for increased costs on transmission projects, there must be a willingness to recognize the inherent risks to developers that offer such commitments and honor the ROE assumptions underlying those commitments. NEET West states that it would be discouraged from proposing cost containment commitments in the future if the Commission declines to approve the requested conditional ROE incentive.<sup>65</sup>

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<sup>63</sup> Transmittal at 22, 24.

<sup>64</sup> *Id.* at 22-23.

<sup>65</sup> Transmittal at 23-24.

43. NEET West also contends that the Projects both satisfy criteria identified in the Policy Statement for ROE incentive applications. In support of the Projects meeting 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), NEET West argues that the conditional ROE incentive is only needed in the case that its base ROE is established at a level below 10 percent. If established at a level of 10 percent or higher, NEET West argues that its base ROE would address the risks and challenges, particularly the cost containment-related risks, of the Projects. However, if established at a level below 10 percent, NEET West contends that the conditional ROE incentive is needed to mitigate NEET West's cost containment risks for the Projects and to bridge the gap between the bargain struck in CAISO's competitive transmission developer selection process and the base ROE. NEET West also asserts that the Suncrest Project results in increased deliverability of location-constrained generation resources, and therefore, is a type of project warranting an incentive ROE under the Policy Statement.<sup>66</sup> NEET West further argues that none of the other incentives requested in its application offer specific protection to investors in the event it must expend more than its binding cost commitments on the Projects.<sup>67</sup>

44. Regarding the second criterion (i.e., that an applicant takes appropriate steps and uses appropriate mechanisms to minimize its risks during project development), NEET West claims that it will implement best practices in project management and procurement for the Projects.<sup>68</sup> However, NEET West notes that it is not fully possible to mitigate unexpected costs or adverse outcomes in the development of the Projects and that the requested conditional ROE incentive is the only incentive that addresses shifting the risk of cost overages from CAISO customers to NEET West's equity owners.<sup>69</sup>

45. As to the third criterion of the ROE incentive analysis (i.e., consideration of alternatives), NEET West states that as part of CAISO's transmission planning process, the Projects were weighed against alternatives, and thus, NEET West asserts, this demonstration has been made.<sup>70</sup>

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<sup>66</sup> *Id.* at 25 (citing Policy Statement, 141 FERC ¶ 61,129 at P 21).

<sup>67</sup> Transmittal at 24-25.

<sup>68</sup> *Id.* at 25 (citing Ex. NWT-100 at 29).

<sup>69</sup> Transmittal at 25-26.

<sup>70</sup> *Id.* at 26 (citing CAISO 2013-2014 Transmission Plan, Ex. NWT-101 at 1).

46. Finally, NEET West notes that the conditional ROE incentive is even more restrictive than the fourth criterion in the Policy Statement (i.e., commitment to cost estimates), as the binding cost containment in NEET West's successful bid for the Projects requires it to forego all return on and all return of costs in excess of its commitments.<sup>71</sup>

**(1) Protests and Comments**

47. With regards to NEET West's request for a conditional ROE incentive for the Projects, protesters generally argue that the three, non-ROE risk-reducing incentives sought by NEET West (the abandoned plant, regulatory asset, and hypothetical capital structure incentives) are sufficient for addressing project development risk, and that an additional incentive ROE adder is not warranted. For instance, TANC claims that the abandoned plant incentive reduces environmental, regulatory, siting, and land acquisition risks, while the regulatory asset incentive provides upfront regulatory certainty, improves cash flow during construction, improves coverage ratios, and reduces interest expense.<sup>72</sup> CDWR contends that, because NEET West borrows at a significantly lower rate than its cost of equity, any incremental risk associated with its cost containment commitments is mitigated by its requested hypothetical capital structure incentive.<sup>73</sup> While Six Cities also note that the development and financial risks cited by NEET West are addressed through the other risk-reducing incentives sought, they also claim that certain financial risk is addressed by NEET West's use of a forward-looking formula rate template to recover transmission revenue requirements for the Projects.<sup>74</sup>

48. Protesters agree that the conditional ROE incentive sought by NEET West does not fit the criteria the Commission established for granting incentive ROE adders. For instance, Six Cities state that the Projects are routine transmission upgrades of modest size and scope that entail no special complexity or risk that warrant ROE incentives.<sup>75</sup> TANC argues that the Projects are not the types of projects the Commission stated would warrant a project-specific incentive ROE as only portions of the Suncrest Project and the

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<sup>71</sup> Transmittal at 27.

<sup>72</sup> TANC Protest at 11-12.

<sup>73</sup> CDWR Protest at 11 (stating that if NEET West structures its capital structure to include more than 50 percent debt, then it would realize a higher ROE than is warranted).

<sup>74</sup> Six Cities Protest at 5-6.

<sup>75</sup> *Id.* at 2.

Estrella Project were eligible for competition under the competitive transmission developer selection process.<sup>76</sup> TANC also broadly argues that using an ROE adder to compensate for the difference between the just and reasonable ROE the Commission determines and the requested 10 percent base ROE does not reflect the type of legitimate risk the Commission's policy recognizes for granting incentive ROE adders.<sup>77</sup> CDWR contends that, because NEET West did not choose to participate in a joint ownership arrangement to further reduce its risk of cost overruns, NEET West did not meet the Commission's required showing to "demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development."<sup>78</sup>

49. Protesters challenge the nexus NEET West attempts to establish between its cost containment commitments and the resultant risk it contends the ROE adder would mitigate. CDWR, for instance, states that NEET West was already rewarded for its cost containment commitment when CAISO selected it to build the Projects and that NEET West cannot now contend that it needs an additional reward for voluntarily taking that risk.<sup>79</sup> Six Cities similarly note that within the competitive transmission developer selection process, NEET West was not compelled to cap costs but voluntarily decided to commit to binding cost caps as a business decision to improve its bids.<sup>80</sup> TANC argues that the Commission has not authorized utilities to seek an ROE adder to make up for operating costs that for whatever reason may not be recoverable.<sup>81</sup>

50. Protesters argue that the cost assumptions incorporated into NEET West's bids and accepted by CAISO should not limit the Commission's obligation to determine just and reasonable rates. TANC argues that the Commission, not an ISO, is the legal authority for determining the just and reasonable rate in accordance with the Commission's rate setting policies and precedent. TANC adds that the FPA is in place to protect the consumer, not project developers from the consequences of voluntarily

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<sup>76</sup> TANC Protest at 12 (citing Policy Statement, 141 FERC ¶ 61,129 at PP 21-22 and Ex. NWT-100 at 11).

<sup>77</sup> TANC Protest at 11.

<sup>78</sup> Policy Statement, 141 FERC ¶ 61,129 at P 24.

<sup>79</sup> CDWR Protest at 8.

<sup>80</sup> Six Cities Protest at 6.

<sup>81</sup> TANC Protest at 11.

submitting binding bids.<sup>82</sup> Six Cities similarly argue that the fact that a potential project sponsor makes a certain assumption in its bid documents to CAISO about a rate component such as a ROE should not result in the Commission simply rubber-stamping those assumptions without further scrutiny. Six Cities contend that developers should know that the Commission has ultimate authority to assess and approve rates as just and reasonable, and the Commission should not approve an incentive ROE simply because CAISO and a project sponsor have “struck a bargain” during the course of transmission planning activities.<sup>83</sup>

51. Protesters generally disagree with NEET West’s assertion that its participation in the CAISO competitive transmission developer selection process should have some bearing on approval of its requested conditional ROE incentive. Six Cities argue that NEET West’s participation in the competitive transmission developer selection process itself does not justify an incentive ROE because the process is entirely voluntarily and that NEET West chose to expend financial resources without the guarantee of being selected.<sup>84</sup> According to CDWR, the Commission has already found that the risks and challenges associated with participating in CAISO’s competitive transmission developer selection process do not warrant an ROE incentive.<sup>85</sup>

52. With regards to NEET West’s statement that future cost containment commitments would be discouraged if the Commission denies the conditional ROE incentive, CDWR notes that many potential project sponsors have made binding cost containment commitments during CAISO’s competitive transmission developer selection process without being guaranteed a minimum ROE, and, therefore, there is no evidence such an incentive is necessary.<sup>86</sup> CDWR argues that such commitments are made because they make bids more competitive, and thus more likely to be selected by CAISO, and because transmission developers believe they can profitably develop a project within those constraints. TANC also contends that the conditional ROE incentive is not needed

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<sup>82</sup> *Id.* at 14.

<sup>83</sup> Six Cities Protest at 5.

<sup>84</sup> *Id.* at 6.

<sup>85</sup> CDWR Protest at 9 (citing *San Diego Gas & Elec. Co.*, 151 FERC ¶ 61,011, at P 33 (2015)).

<sup>86</sup> CDWR Protest at 11.

to level the playing field between incumbent transmission owners and nonincumbent transmission developers as other incentives requested achieve that purpose.<sup>87</sup>

53. Although they support measures such as binding cost caps that are intended to impose some degree of discipline on transmission development costs, Six Cities question whether committing to cap certain expenditures provides meaningful value to ratepayers if developers expect to make up the difference through an incentive ROE. Six Cities note that shareholders may be exposed to losses in the event that either capital costs or O&M expenses exceed the capped levels, but that NEET West is incited to adhere to cost caps and has the ability to control development costs to ensure that the caps are not exceeded. On the other hand, Six Cities note that ratepayers are guaranteed to pay all of the conditional ROE incentive for the life of the Projects, and therefore, providing cost caps in exchange for long term ROE adders may be a bad deal for ratepayers.<sup>88</sup>

54. CDWR notes that NEET West has not committed to an ROE cap of 10 percent, and that nothing prevents it from requesting a higher ROE when the cost of capital increases in the future. CDWR argues that it is not just and reasonable to allow NEET West's shareholders to lock in an ROE "floor" of 10 percent without having to commit to any ROE "ceiling."<sup>89</sup>

55. CAISO verifies that it awarded the Projects to NEET West based on its binding commitment in its project sponsor application to such cost caps, and that NEET West agreed to abide by these cost caps in section 10.1.1 of the APSAs. Furthermore, CAISO explains that, under section 2.3.1 of the APSAs, section 10.1.1 survives termination of an APSA, and therefore, these caps will serve to limit the amounts that NEET West includes in the transmission revenue requirement that it submits to CAISO regardless of whether its TO Tariff includes the caps. CAISO asks that the Commission confirm this understanding.<sup>90</sup> Further, while CAISO comments that it supports NEET West's request for the abandoned plant incentive, it states that it does not take a position on requests for rate incentives regarding ROE and capital structure.<sup>91</sup>

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<sup>87</sup> TANC Protest at 13-14 (citing *Transource Kansas, LLC*, 151 FERC ¶ 61,010, at P 15 (2015) (*Transource Kansas*)).

<sup>88</sup> Six Cities Protest at 4.

<sup>89</sup> CDWR Protest at 10.

<sup>90</sup> CAISO Comments at 4-5.

<sup>91</sup> *Id.* at 3-4.

(2) Answers

56. In its answer, NEET West argues that authorizing the conditional ROE incentive is not synonymous with cessation of Commission oversight. NEET West states that the Commission will ensure that its requested incentive rate treatments are just and reasonable, consistent with the requirements of section 219 of the FPA.<sup>92</sup> NEET West reiterates that use of a conditional ROE incentive is constrained by the total ROE for the Projects' remaining in the zone of reasonableness. NEET West adds that since the conditional ROE incentive is triggered if the base ROE is below 10 percent, this provides greater certainty concerning its total ROE than if NEET West had requested an unconditional incentive of 150 basis points.<sup>93</sup> NEET West also states that the inclusion of a 10 percent base ROE assumption in the bids is informative with respect to the return necessary to attract capital to the Projects in light of the risk posed, but that it does not expect the Commission to simply "rubber stamp" its proposal. Therefore, NEET West asserts that it established a fully developed, independent demonstration of why a 150 basis point incentive is warranted, consistent with Order No. 679 and the Policy Statement.<sup>94</sup>

57. NEET West further argues that its cost containment risks should not be disregarded on the basis that submitting binding cost caps was a voluntary decision. NEET West notes that any utility's cost of capital reflects risks associated with management and investment decisions that are discretionary, and yet these risks are not disregarded in establishing a utility's regulated cost of capital because they are voluntary. In fact, NEET West argues, the Order No. 1000 nonincumbent transmission developer reforms clearly envisioned voluntary participation by nonincumbent transmission developers for the purpose of soliciting more attractive proposals than the then-prevailing utility self-build full cost-of-service model for transmission development.<sup>95</sup> NEET West argues that invoking the protesters' rationale would require the Commission to consider none of NEET West's development risks because it was not required to bid on the Projects at all. NEET West notes that there is nothing in the Policy Statement to suggest that a conditional ROE incentive premised on the risks associated with binding cost

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<sup>92</sup> NEET West Answer at 11-12.

<sup>93</sup> *Id.* at 12-13.

<sup>94</sup> *Id.* at 13-14.

<sup>95</sup> NEET West Answer at 15 (citing *Pub. Serv. Elec. & Gas Co. v. PJM Interconnection, LLC*, 151 FERC ¶ 61,229, at 62,501 (2015) (LaFleur, C. concurring)).

containment would be inconsistent with the flexible approach the Commission has adopted.<sup>96</sup>

58. NEET West states that the value of protecting ratepayers from the real risks of unanticipated cost escalations is large compared to the modest conditional costs associated with the conditional ROE incentive. Using the Suncrest Project as an example, NEET West asserts that its net present value analysis demonstrates that ratepayers “break even” on a 20 basis point conditional ROE incentive over the life of the asset in the event of a cost overrun of \$386,061.<sup>97</sup> In the event NEET West’s base ROE were established at 8.5 percent, and the conditional ROE incentive were applied at its maximum 150 basis point value over the life of the Suncrest Project, NEET West states that its analysis shows ratepayers would break even in the event of a \$3.24 million cost overrun. NEET West further states that it has agreed to underground a portion of the tie-line connecting the Suncrest Project to an existing substation at an estimated incremental cost of \$5 million. NEET West argues that, because the need to underground the tie-line was not known at the time it submitted its bid, the incremental costs were not factored into the calculation of a binding cost cap and such an event demonstrates the value of project cost caps to ratepayers.<sup>98</sup>

59. NEET West argues that the other risk-mitigating rate treatments do not address the same risks that the conditional ROE incentive addresses. NEET West argues that the hypothetical capital structure incentive addresses only the issue of variability of capital structure during the construction period, and the abandoned plant incentive addresses risks associated with failure to complete a project outside of the developer’s reasonable control. According to NEET West, such risks are distinct from the risks associated with non-recovery of prudently incurred capital or O&M costs for completed, in-service projects as a result of operation of the cost containment commitments.<sup>99</sup>

60. NEET West states in its answer that it fully agrees with CAISO as to the binding nature of the cost caps, and will not seek to recover any costs incurred above the relevant caps through the Formula Rate. NEET West states that it does not object to CAISO’s

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<sup>96</sup> NEET West Answer at 14-19.

<sup>97</sup> *Id.* at 20.

<sup>98</sup> *Id.* at 19-21.

<sup>99</sup> *Id.* at 21-23.

request that the Commission confirm the understanding that the cost containment commitments reflected in the APSAs are binding.<sup>100</sup>

61. In its answer, CAISO responds to Six Cities' and TANC's arguments against NEET West's proposed ROE and conditional ROE incentive, stating that CAISO did not strike any deal with NEET West and has not determined or negotiated the just and reasonable return on equity for NEET West. CAISO states that such rates are solely subject to the Commission's approval, and that CAISO has in no way sought to supersede the Commission's ratemaking authority.<sup>101</sup>

62. Six Cities claim in their answer that CAISO's answer should be directed at NEET West, which originally made claims regarding striking a bargain regarding future rates. Six Cities states that it has not made inaccurate assertions, but is merely picking up claims made by NEET West in its filing. Six Cities contend that, like CAISO, they were troubled by NEET West's claims of a putative "bargain" with CAISO relating to NEET West's future ROE and agree that selection of a transmission developer should not result in a "bargain" between CAISO and the developer. Therefore, Six Cities argue that the Commission should reject NEET West's claims that a "bargain" between itself and CAISO justifies an ROE incentive, as CAISO has now confirmed that no such bargain exists.<sup>102</sup>

### (3) Deficiency Letter and Response

63. The Deficiency Letter requested information to aid the Commission in evaluating NEET West's request for the conditional ROE incentive, as well as the requested 10 percent base ROE. The Deficiency Letter requested information regarding the extent to which the O&M and construction cost caps to which NEET West committed in its APSAs with CAISO were actually binding going forward.<sup>103</sup> The Deficiency Letter also requested that NEET West clarify whether it is committing to not request a base ROE of more than 10.0 percent in the future for the Projects, and explain why the contingency amount included in its bid was not adequate to insulate equity owners from the risks of cost overruns, among other things.

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<sup>100</sup> *Id.* at 3-4.

<sup>101</sup> CAISO Answer at 3.

<sup>102</sup> Six Cities Answer at 3.

<sup>103</sup> Deficiency Letter at 2-3.

64. In its Deficiency Response, NEET West attached the APSAs and additional information it had provided to CAISO regarding the cost caps. Although it submitted its bid and other pre-award information, NEET West emphasized that the APSAs contain the legally controlling provisions that pertain to the agreed upon cost caps.<sup>104</sup> Section 10.1 of both APSAs incorporate by reference those cost caps, and section 10.1.1 specifies:

The Approved Project Sponsor agrees that it shall not seek, for recovery through its Transmission Revenue Requirement, higher costs than the maximum costs specified in, or determined in accordance with, any cost cap or other binding cost containment measures as specified in Appendix E,<sup>[105]</sup> except for costs incurred to comply with any additional specifications of the CAISO or Interconnecting PTO beyond the functional requirements for the transmission facility that the CAISO issued for the competitive solicitation.<sup>[106]</sup>

65. NEET West states that the approved project sponsor may use its discretion in allocating costs to particular cost categories as needed during the term of the APSAs, as long as the total cost does not exceed \$42,288,000 for the Suncrest Project and \$24,539,000 for the Estrella Project, and, in addition, the O&M costs for the first five years of operation will be capped at \$360,000 per year for each of the Projects.<sup>107</sup> NEET West further explains that pricing may be adjusted prior to the completion of construction to reflect changes to the projects that the CPUC or another governmental or regulatory body directs. Section 5.9.3 of the APSAs governs such changes, which could include changes in design, location, schedule, or other changes in the projects that formed the basis of the binding cost cap proposals.<sup>108</sup> NEET West goes on to state:

If the change ordered by the siting agency or other government or regulatory body results in the estimated costs subject to the binding cost

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<sup>104</sup> Deficiency Response at 4.

<sup>105</sup> Appendix E in both the Estrella and the Suncrest APSAs contains the agreed upon cost caps for each project.

<sup>106</sup> Deficiency Response, Attachments 1 and 2.

<sup>107</sup> Deficiency Response at 7. After five years, “the approved project sponsor reserves the option of requesting [the Commission’s] approval for a different rate.” *Id.* at 10.

<sup>108</sup> Deficiency Response at 7, 10.

containment being greater than the binding cost cap, or delays the [projects] beyond the original schedule, the approved project sponsor shall consult with CAISO prior to incurring such costs to determine if the [projects are] still viable. If [they are] still viable, the approved project sponsor and the CAISO shall discuss and agree on the cost adjustment and amendment to [the] APSA[s].<sup>109</sup>

66. The Deficiency Letter also sought information regarding the type and potential scope of costs that NEET West may and may not recover in excess of the construction cost caps for the Projects.<sup>110</sup> In response, NEET West points to section 5.9.3 of the APSAs, and the fact that a siting agency, for example, may modify a project's facilities. NEET West emphasizes that, in accordance with section 10.1.1, cost caps are limited to costs incurred to construct the "functional requirements" of the project that CAISO issued for competitive bidding, and "additional specifications" not included in that project solicitation, but that CAISO or the interconnecting transmission owner subsequently directs, are not subject to the binding cost caps.<sup>111</sup> For example, NEET West states that if CAISO or PG&E (as the interconnecting transmission owner) directs it to install a distribution transformer on the 70 kV bus instead of the 230 kV bus, this may be the type of "additional specification" that would not be subject to the cost caps listed in Appendix E.<sup>112</sup>

67. As to changes that the CPUC or another regulatory body direct, NEET West repeats that such changes would need to be discussed with CAISO before any new costs were incurred.<sup>113</sup> NEET West clarifies that "[a]ny circumstance unrelated to changes

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<sup>109</sup> *Id.* at 7.

<sup>110</sup> Deficiency Letter at 2.

<sup>111</sup> Deficiency Response at 11.

<sup>112</sup> *Id.*, n.10. NEET West states that PG&E requested the scope change described above for its non-competitive portion of the Estrella Project, but it is not currently clear how the change will impact NEET West's work. NEET West points out that either CAISO or PG&E may direct it to incorporate "additional specifications" to accommodate the change.

<sup>113</sup> *See supra* note 109. For example, if the CPUC requests a scope change that would cause NEET West to exceed the construction cost caps established for the Suncrest Project, then NEET West would have to alert CAISO, and CAISO would need to determine whether the Suncrest Project is still viable. If so, then CAISO and NEET West

(continued...)

directed by the CPUC or other governmental or regulatory bodies specified in Appendix E of the APSA that could cause costs to increase beyond the cost cap would not be recoverable,” such as equipment or material cost increases.<sup>114</sup>

68. In addition to information regarding NEET West’s commitment to cost caps, the Deficiency Letter also requested that NEET West provide a net present value analysis that demonstrates the benefit ratepayers would receive from avoiding cost overruns compared to the various degrees by which NEET West would benefit, based on several alternative scenarios.<sup>115</sup> Attachment 6 to NEET West’s Deficiency Response details this analysis. NEET West states that “[f]or each \$1 million of cost overrun that is excluded from [the] rate base and absorbed by NEET West’s equity investors ... ratepayers will enjoy a net present value benefit of \$1 million.”<sup>116</sup> NEET West also points out that if the base ROE is increased from 9.9 percent to 10 percent, the net present value of the cost to ratepayers over the life of both projects would be \$405,000.<sup>117</sup> NEET West states that, at present, it already anticipates a \$5 million cost overrun associated with the Suncrest Project. According to NEET West, if this cost overrun is incurred by NEET West and excluded from the annual revenue requirement (due to the construction cost caps), then the net present value of the ratepayer benefit would be equivalent to \$5 million. NEET West states that this translates to an 8.77 percent allowed ROE for both projects combined or a reduction of 123 basis points from the 10 percent ROE that NEET West proposes.<sup>118</sup>

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would agree to new costs and amend the relevant portions of the APSA. Deficiency Response at 12.

<sup>114</sup> Deficiency Response at 12.

<sup>115</sup> Deficiency Letter at 3. The alternative scenarios involve the difference between a 10 percent base ROE and a hypothetical base ROE that NEET West would otherwise receive but for the conditional ROE.

<sup>116</sup> NEET West states that this “analysis looks at the combined revenue requirement of both projects, and assumes NEET West’s proposed 50 percent equity capitalization and proposed base ROE of 10 percent, and a discount rate equivalent to the after-tax rate of return. Deficiency Response at 14.

<sup>117</sup> *Id.*

<sup>118</sup> Deficiency Response at 15.

69. With regard to O&M expenses, NEET West states that the binding cap of \$360,000 per year for each project precludes it from recovering any amount in excess of the cap for expenses chargeable to the 500 and 900 account series in the Uniform System of Accounts. NEET West states that, as with construction cost caps, the O&M caps are caps on recovery of actual costs and do not fix recovery, i.e., NEET West will recover the lower of actual O&M costs or the cap in any given year.<sup>119</sup>

70. In response to whether it was committing to not request a base ROE of more than 10 percent at any time in the future for the Projects, NEET West states that commitments regarding later requests for changes to the base ROE were not discussed in negotiations with CAISO or included in the APSAs. Although NEET West states that it could envision a more restrictive arrangement limiting in some way its ability to increase the base ROE applicable to the Projects above 10 percent, undertaking a significant long-term capital market risk is problematic when the commitment is not reciprocal. NEET West notes that the Commission or a third party would remain free at any time to file a section 206 complaint seeking a total ROE for the Projects below 10 percent, regardless of any incremental basis points applied by operation of the conditional ROE incentive.<sup>120</sup>

71. NEET West also submitted detailed projected revenue requirement calculations to CAISO for the Projects to verify that NEET West utilized a 10.5 ROE assumption in its bids. NEET West states that the APSAs do not provide exceptions to the binding construction cost cap but instead define a process by which NEET West and CAISO may negotiate a cost adjustment in the event of a change that a regulatory or governmental body directs. NEET West also states that there are no known or anticipated changes directed by any regulatory or governmental body and therefore no revised revenue requirement was submitted with the Deficiency Response. NEET West notes that, despite the \$5 million cost increase associated with undergrounding the transmission line for the Suncrest Project, there is no impact on the revenue requirement projections submitted with NEET West's bids for the Suncrest Project because "the cost overages will be written off below the line rather than recovered from ratepayers."<sup>121</sup>

72. While it included a contingency cost category for both of the Projects, NEET West states that contingencies are included to address likely but unknown cost increases that arise in some areas of project execution. According to NEET West, even with the best

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<sup>119</sup> *Id.* at 16.

<sup>120</sup> *Id.* at 18 (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 21 (D.C. Cir. 2002); *Pub. Serv. Elec. & Gas Co.*, 124 FERC ¶ 61,303, at P 18 (2008)).

<sup>121</sup> Deficiency Response at 19-20.

project planning, it is impossible to estimate with complete accuracy all individual elements of project execution, including the impact of weather, progress of work, precise material and labor costs, commodity price changes, and minor design changes, among other things. NEET West states that it calculated the contingencies for the Projects based on its past experiences in project development. NEET West states, “[i]t is expected that the contingency amounts will be spent for each project, but it is not known in advance on what cost items.”<sup>122</sup>

73. However, NEET West contends that the contingency cost category is not designed to include and allow for recovery of unanticipated expenditures. As an example, NEET West refers to an approximately \$5 million cost for undergrounding the transmission line for the Suncrest Project, which it states was unknown and not contemplated at the time it submitted its bid with the construction cost cap. NEET West argues that, even if there were room in the contingency cost category for unanticipated expenditures, the cost of undergrounding the transmission line is more than twice the amount allocated to contingency in the capped cost estimate. Therefore, NEET West concludes that the inclusion of a contingency cost category only provides minimal protection for unanticipated cost increases.<sup>123</sup>

#### (4) Comments on Deficiency Response

74. In its December 1, 2015 comments in response to NEET West’s Deficiency Response, SDG&E cites to section 10.1.1 of the APSA,<sup>124</sup> and states that an argument could be made that NEET West may be able to classify more costs under costs “incurred to comply with any additional specifications of the CAISO or Interconnecting PTO,” and therefore have them be exempt from costs caps.<sup>125</sup> SDG&E expresses concern that the Commission might be called upon to resolve disputes as to what qualify as “additional specifications,” and therefore potentially allow NEET West to recover more costs than seemed to be initially agreed upon in the APSAs.<sup>126</sup> Additionally, SDG&E states that while it understands NEET West’s desire to try to insulate itself from some unforeseen costs, it nonetheless notes that NEET West’s choice to include cost commitments in its

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<sup>122</sup> *Id.* at 25.

<sup>123</sup> *Id.*

<sup>124</sup> *See supra* note 106.

<sup>125</sup> SDG&E Comments at 2-3.

<sup>126</sup> *Id.* at 3.

proposal was a business decision that it made purportedly to get an advantage in the competitive transmission developer selection process. SDG&E worries that if there are too many exceptions to the caps, future transmission developers might be encouraged to submit “lowball” bids, and then attempt to recover those costs through loopholes in an APSA.<sup>127</sup> Finally, SDG&E notes that it is unclear whether CAISO and NEET West can agree to amend the APSA between themselves for any reason they agree upon, not just to respond to governmental action, and allow for the recovery of costs above the cost caps.<sup>128</sup>

#### (5) Commission Determination

75. We find that NEET West has not provided adequate support for its requested conditional ROE incentive and, therefore, deny it. For example, we have similar concerns as some protesters that the conditional ROE incentive proposal does not strike the appropriate balance between the risk assumed by NEET West and the risk assumed by ratepayers. While NEET West’s cost containment commitments protect ratepayers from certain construction cost increases and O&M cost increases for a specified term,<sup>129</sup> the conditional ROE incentive would shift to ratepayers cost increases in the form of a potential premium on the ROE if NEET West’s base ROE is determined to be below a specified level. Moreover, while NEET West’s proposal would initially preserve the bargain it struck with CAISO, there is no commitment by NEET West to cap its base ROE over time, thus potentially changing the bargain of its initial commitment.

76. We note that our rejection of NEET West’s requested conditional ROE incentive is based on the specific facts and circumstances of this case. We also recognize that, as discussed further below, this case highlights broader policy considerations related to the potential benefits of cost containment proposals in the context of competitive transmission development. We intend to convene a technical conference in the future to explore further such issues, including how they relate to the Policy Statement.

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<sup>127</sup> *Id.* at 4.

<sup>128</sup> SDG&E Comments n.1.

<sup>129</sup> Regarding CAISO’s request concerning the binding nature of the cost caps, we note that NEET West responded by stating that it agreed with CAISO and will not seek to recover any costs incurred above the relevant caps through the Formula Rate. As NEET West and CAISO are both parties to the APSAs for the Projects, we expect that the parties would abide by the terms set forth and mutually agreed upon in the APSAs.

77. One such policy consideration involves whether and how risks associated with cost containment proposals relate to the first expectation set forth in the Policy Statement. The Commission explained in the Policy Statement that an applicant seeking an incentive ROE would need to demonstrate 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.<sup>130</sup> NEET West argues that its cost containment risk is not adequately addressed absent the specific base ROE level (10 percent) determined by NEET West. Other than justifying this ROE level by basing it on the ROE that it submitted as a bid assumption within the competitive transmission developer selection process, NEET West does not make a distinction as to why cost containment-related risks would not be accounted for in a base ROE level below 10 percent and yet would be accounted for in a base ROE of 10 percent. We find that this issue warrants further consideration outside the context of this case.

78. Another such policy consideration involves whether and how risks voluntarily assumed through submittal of a cost containment proposal relate to the second expectation set forth in the Policy Statement. In the Policy Statement, the Commission explained that it expects an applicant seeking an ROE incentive based on a project's risks and challenges to demonstrate that it is taking appropriate steps and using appropriate mechanisms to minimize its risks during project development.<sup>131</sup> Here, NEET West voluntarily submitted cost caps to make its bids to CAISO more attractive, which exposes NEET West's shareholders to risks they would not have faced absent the cost caps. We intend to explore in the above-noted technical conference whether and how voluntarily assuming this type of risk is consistent with minimization of risk envisioned by the Policy Statement.

## **2. Participating Transmission Owner Tariff**

### **a. Summary of NEET West's Request**

79. In addition to the requested rate incentives, NEET West filed an initial TO Tariff, which includes a proposed cost-of-service formula rate template and proposed implementation protocols. NEET West states that its proposed TO Tariff is consistent with the tariffs of other CAISO participating transmission owners and modified to fit NEET West's unique circumstances.<sup>132</sup> Specifically, the proposed TO Tariff describes

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<sup>130</sup> Policy Statement, 141 FERC ¶ 61,129 at P 20.

<sup>131</sup> *Id.* P 24.

<sup>132</sup> Transmittal at 5-6 (citing *MidAmerican Cent. Cal. Transco, LLC*, 151 FERC ¶ 61,251 (2015); *Citizens Sunrise Transmission LLC*, 138 FERC ¶ 61,129 (2012); *Trans*

(continued...)

NEET West's unique circumstances as a non-load serving participating transmission owner with no end-use customers. According to NEET West, the proposed TO Tariff provides that transmission service over NEET West's system shall be provided only to eligible customers as defined in the CAISO tariff.

80. The charges and rates are described in section 5 of the proposed TO Tariff. That section states that NEET West's transmission revenue requirement will be determined in accordance with its Formula Rate and explains that NEET West's transmission revenue requirements will be used to develop the access charges set forth in the CAISO tariff. The proposed section also requires NEET West 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 NEET West owns the transmission service rights with respect to its share of the Projects and other projects it develops.<sup>133</sup>

81. As part of its proposed TO Tariff, NEET West also requests approval of its proposed formula rate template and implementation protocols, which will be used to calculate its annual transmission revenue requirement. The Formula Rate is a forward-looking formula, whereby NEET West 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.<sup>134</sup> NEET West 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 Projects. NEET West states that tax

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*Bay Cable, LLC*, 130 FERC ¶ 61,028 (2010); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,306 (2008), *reh'g denied*, 133 FERC ¶ 61,154 (2010); *Trans-Elect NTD Path 15, LLC*, 117 FERC ¶ 61,214 (2006), *reh'g denied*, 119 FERC ¶ 61,093 (2007)).

<sup>133</sup> Transmittal at 7. The proposed TO Tariff also provides that NEET West 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 NEET West's obligations and the procedures for when a third party requests to interconnect or requests a transmission expansion.

<sup>134</sup> Transmittal at 8.

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 NEET West as a corporation and provides for an income tax allowance, which NEET West states is consistent with Commission precedent.<sup>135</sup>

82. NEET West also requests approval of implementation protocols for populating and updating the formula rate template. NEET West states that the protocols are transparent and provide its customers with sufficient information and procedural safeguards to facilitate the annual review of the inputs to the template. NEET West asserts that the protocols govern the specific procedures for notice, requests for information, and reviews and challenges to the annual update. Specifically, NEET West states that by June 30 of each year (the Publication Date), it will calculate and publish its actual transmission revenue requirement for the preceding Rate Year and the true-up adjustment, with interest, to be applied during the subsequent Rate Year (the Annual Update).<sup>136</sup> According to NEET West, interested parties have 120 calendar days from the Publication Date to serve reasonable information requests on NEET West, and NEET West will make reasonable efforts to respond to such requests within 10 business days. NEET West also states that the protocols allow interested parties 150 days from the Publication Date to submit preliminary written challenges, and that if NEET West and any interested party have not resolved such challenges within 60 days, the interested party may, within 30 calendar days thereafter, file a formal challenge with the Commission.<sup>137</sup>

83. NEET West explains that, as a new entity with no assets yet in service, it lacks an operating history upon which to base a depreciation study. NEET West states that, consistent with Commission precedent, it has adopted the depreciation rates of its Texas affiliate, Lone Star Transmission, LLC (Lone Star), which is a transmission service provider in the Electric Reliability Council of Texas, Inc. (ERCOT).<sup>138</sup> NEET West states that once it places the Projects in service, it will be similar to Lone Star in that it

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<sup>135</sup> *Id.* (citing *Green Power Express LP*, 127 FERC ¶ 61,031, at P 110 (2009); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 151 (2008) (*PATH*), *reh'g denied*, 135 FERC ¶ 61,141 (2011)).

<sup>136</sup> NEET West provides for a January to December Rate Year in its implementation protocols.

<sup>137</sup> Transmittal at 12-13.

<sup>138</sup> NEET West notes that the assets of its affiliate, Lone Star, are within the ERCOT footprint, and therefore the Public Utility Commission of Texas approved Lone Star's depreciation rates.

will own exclusively new facilities rather than a mix of old and new facilities like other transmission-owning entities in the NextEra family, and, therefore, it will be appropriate to use Lone Star's depreciation rates as a proxy.<sup>139</sup>

84. NEET West also notes that it does not have dedicated employees, and will rely on the employees of its affiliates to provide services for the Projects through affiliate service agreements.<sup>140</sup> The Deficiency Letter requested that NEET West explain its practices related to allocation of costs between NEET West and its parent company and any affiliates and to provide any documentation related to such support services. In response, NEET West states that no agreements have been executed, but provided three Corporate Support Services Agreements to serve as examples of the service agreements that will be entered into between NEET West and three affiliate service providers.<sup>141</sup>

85. With respect to the ROE, NEET West requests a base ROE of 10 percent with an additional 50 basis point ROE adder for RTO participation. NEET West states that in calculating this ROE, it considered the Commission's most recent guidance and policy objectives, including the guidance provided in Opinion No. 531.<sup>142</sup> NEET West states that it relied on the two-stage discounted cash flow (DCF) model to establish a zone of reasonableness of 7.08 percent to 12.31 percent. NEET West states that it also evaluated the cost of equity using alternative benchmark methodologies as the Commission found them informative in evaluating the placement of the ROE within the zone of reasonableness.<sup>143</sup> NEET West also asserts that the anomalous capital market conditions that prompted the Commission to approve an ROE within the top half of the DCF zone in Opinion No. 531 persist. NEET West contends that, using the Commission's recent guidance, its analysis supports a base ROE of 10.43 percent, which results from placing the ROE halfway between the median and top end of the zone of reasonableness. However, NEET West notes that it is only requesting an ROE of 10 percent as it has a considerable interest in reaching a prompt resolution to this proceeding, and because the

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<sup>139</sup> Transmittal at 9.

<sup>140</sup> See Ex. NWT-300 at 11.

<sup>141</sup> Deficiency Response at 22, 24.

<sup>142</sup> Transmittal at 9 (citing *Coakley v. Bangor-Hydro Elec. Co.*, Opinion No. 531, 147 FERC ¶ 61,234, *order on paper hearing*, Opinion No. 531-A, 149 FERC ¶ 61,032 (2014), *reh'g denied*, Opinion No. 531-B, 150 FERC ¶ 61,165 (2015) (*Coakley*)).

<sup>143</sup> Transmittal at 9 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 146).

10 percent base ROE reflects the same capital cost assumptions that were incorporated into its competitive bids for the Projects.

**b. Protests**

86. With respect to NEET West's proposed TO Tariff, protesters generally request that the Commission establish hearing and settlement judge procedures to allow time for further evaluation of the TO Tariff and Formula Rate.<sup>144</sup> Although NEET West relies on the same justification and support for its Formula Rate as was used in the recent MidAmerican Central California Transco (MidAmerican) filing in Docket No. ER14-1661-000, PG&E notes that the settlement of the MidAmerican case relied on numerous conferences, data requests from Commission Trial Staff and intervenors, and discussions with MidAmerican staff and its witnesses regarding the formula, which resulted in technical corrections and changes to the formula.<sup>145</sup> TANC also argues that the fact that a particular protocol provision was included in a settlement package for MidAmerican does not necessarily mean that it would be appropriate for inclusion in NEET West's protocols.<sup>146</sup> CDWR argues that NEET West's proposed Formula Rate deserves closer scrutiny because it is new, untested, and will not be used until 2017, just prior to when the Suncrest Project goes into operation. CDWR contends that, as a new entity, NEET West has no historical financial data that could be used to populate the formula and test whether it produces just and reasonable rates.<sup>147</sup> CDWR also comments that one way to mitigate the risk to customers of a new, untested formula is to establish a sunset provision that would, after an appropriate length of time, cause the existing formula to terminate and require NEET West to make another section 205 filing.<sup>148</sup>

87. PG&E also states that NEET West's TO Tariff is unclear, as the language in section 5.5 does not clearly specify how NEET West will track interest in its transmission revenue balancing account. PG&E argues that it needs the opportunity to have NEET

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<sup>144</sup> PG&E Comments at 3; CDWR Protest at 12-13; Six Cities Protest at 6-7; TANC Protest at 20.

<sup>145</sup> PG&E Comments at 3.

<sup>146</sup> TANC Protest at 20.

<sup>147</sup> CDWR Protest at 12.

<sup>148</sup> *Id.* at 13 (citing *MidAmerican Cent. Cal. Transco, LLC*, 151 FERC ¶ 61,251 (2015); *San Diego Gas & Elec. Co.*, 147 FERC ¶ 61,150 (2014); *S. Cal. Edison Co.*, 145 FERC ¶ 61,103 (2013)).

West clarify its methodology and provide a workbook demonstrating the tracking of the transmission revenue balancing account, including the interest calculation for the annual determination of the transmission revenue balancing account.<sup>149</sup>

88. CDWR also argues that NEET West has not fully explained its arrangement to purchase services from other NextEra affiliates, and therefore nothing in NEET West's filing would allow customers to identify any abuse of the affiliate arrangement.<sup>150</sup>

89. TANC also contests NEET West's assertion that its implementation protocols are consistent with the protocols of MidAmerican, which the Commission recently accepted.<sup>151</sup> TANC contends that, while MidAmerican's protocols provide that Annual Updates will contemporaneously be submitted to the Commission as an informational filing on the same day as they are posted on CAISO's website, NEET West proposes to only submit the Annual Update to the Commission as an informational filing at the end of the Review Period. Given that NEET West has not explained the need to delay the submission of the Informational Filing, TANC argues that the reasonableness of that delay should be further explored in hearing and settlement judge procedures. TANC further argues that NEET West's protocols differ from MidAmerican's protocols on the types of information requests that are permitted in reviewing Annual Updates and on the issues that can be raised in a Preliminary Challenge.<sup>152</sup> At the same time, TANC contends that NEET West omitted a provision from its protocols regarding the prudence of actual costs and expenditures, including the prudence of procurement methods and cost control methodologies, which is not consistent with Commission precedent and further demonstrates the need for hearing and settlement judge procedures.<sup>153</sup>

90. With respect to the base ROE, protesters generally claim that NEET West's proposed base ROE is inconsistent with precedent because the Commission typically

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<sup>149</sup> PG&E Comments at 4.

<sup>150</sup> CDWR Protest at 12.

<sup>151</sup> TANC Protest at 17-18 (citing *MidAmerican Cent. Cal. Transco, LLC*, 147 FERC ¶ 61,179 (2014) (order setting hearing and settlement procedures on TO Tariff); *MidAmerican Cent. Cal. Transco, LLC*, 151 FERC ¶ 61,251 (2015) (order approving settlement)).

<sup>152</sup> TANC Protest at 17-19.

<sup>153</sup> *Id.* at 20 (citing *Westar Energy*, 150 FERC ¶ 61,203, at P 17 (2015) and *Midcontinent Indep. Sys. Operator, Inc.*, 143 FERC ¶61,149, at P 90 (2013)).

requires that the ROE for a single utility of average risk should be set at the median value of the range of reasonable returns.<sup>154</sup> Protesters contend that NEET West's base ROE does not merit an upward adjustment due to anomalous conditions. TANC contends that current market conditions do not warrant an upward adjustment from the median because Treasury bond yields no longer reflect historically low levels in the same manner that justified an upward adjustment in the *Coakley* proceeding.<sup>155</sup> CDWR argues that NEET West's witness relies on the rationale that the Federal Reserve's Quantitative Easing program contributes to anomalous conditions, but notes that the Federal Reserve ceased this program prior to the beginning of the study period in the instant filing. CDWR also argues that, while NEET West's witness focuses on price-to-earnings ratios to justify anomalous conditions, no such criterion was used as an indicator of anomalousness in Opinion No. 531.<sup>156</sup> According to CDWR, there are also three errors in NEET West's DCF methodology that result in inflating the base ROE of 8.54 percent: (1) TECO Energy is included in the proxy group despite the announcement that its coal unit would be sold; (2) an outdated second-stage growth rate is used; and (3) the dividend yields of proxy companies are adjusted using only the first-stage growth rate, rather than the blended first- and second-stage growth rates as the Commission did in Opinion No. 531.<sup>157</sup>

**c. Answer**

91. In its answer to protests regarding its Formula Rate, NEET West argues that the Commission can make substantive determinations regarding its Formula Rate without a hearing or settlement judge procedures. NEET West states that only TANC was able to raise any specific concerns regarding the Formula Rate, and those are limited to observations of differences between NEET West's implementation protocols and the protocols resulting from a settlement proceeding. NEET West claims that general assertions about the need for closer scrutiny through hearing and settlement judge procedures do not rise to the level of a material fact issue warranting such relief.<sup>158</sup>

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<sup>154</sup> TANC Protest at 15; CDWR Protest at 6.

<sup>155</sup> TANC protest at 16-17; *see supra* note 142.

<sup>156</sup> CDWR Protest at 7.

<sup>157</sup> *Id.* at 6, n.4.

<sup>158</sup> NEET West Answer at 10-11.

92. In response to PG&E's comments, NEET West states that the language in section 5.5 of the TO Tariff is identical to that in MidAmerican's transmission owner tariff, which was accepted by the Commission following a settlement process. NEET West argues that PG&E was a party to that proceeding and raised no objections to the settlement.<sup>159</sup>

93. NEET West contends that CDWR's suggestion to establish a sunset provision seeks relief that is not available from the Commission. NEET West states that the Commission cannot revoke a public utility's statutory discretion with respect to the timing of its own rate filings under section 205. NEET West argues that, what intervenors appear to desire is the flexibility afforded by settlement judge procedures to obtain an outcome otherwise not available.<sup>160</sup>

94. NEET West claims that its proposed base ROE of 10 percent is just and reasonable, as NEET West's witness demonstrates that economic conditions are sufficiently anomalous to call into question the reliability of the DCF analysis' median in establishing a return sufficient to attract capital. Despite protesters' arguments, NEET West claims that historically low Treasury bond yields, the continued impact of the Federal Reserve's Quantitative Easing policy, and the outcome of alternative benchmark cost of equity methodologies are evidence that anomalous market conditions existed during the study period and warrant making an upward adjustment to the base ROE above the median. According to NEET West, asserting a slight difference in Treasury bond yields during the NEET West study period and those of the Opinion No. 531 study period is not sufficient to demonstrate that capital conditions are materially different. Furthermore, NEET West contends that no party has disputed that the alternative benchmarks suggest an ROE of at least 10 percent is just and reasonable.<sup>161</sup>

95. NEET West also addresses CDWR's protests concerning alleged errors in the DCF methodology. NEET West contends that the Commission elected not to exclude several entities with recent merger and acquisition activity from the proxy group in Opinion No. 531, and therefore it appropriately included TECO Energy in the DCF proxy group.<sup>162</sup> While NEET West contends that it used a long-term growth rate consistent with Opinion No. 531, it also notes that using a smaller growth rate would not

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<sup>159</sup> *Id.* at 11.

<sup>160</sup> *Id.*

<sup>161</sup> NEET West Answer at 5-7.

<sup>162</sup> *Id.* at 8-9 (citing Opinion No. 531, 147 FERC ¶ 61,234 at P 114).

substantially alter its analysis. Similarly, in response to CDWR's notion that NEET West should have used a blended growth rate to adjust the dividend yields, NEET West argues that such a change would only result in a reduction of two basis points. Because it requested a base ROE of 10 percent, which it notes is less than the midway point of the upper end of the range of reasonableness, NEET West claims that concerns about stale long-term growth rates and blended growth rates are not material to addressing NEET West's proposal.

**d. Commission Determination**

96. The Commission accepts and suspends, for a nominal period, subject to condition, the TO Tariff, to become effective October 20, 2015, subject to refund, as discussed below.<sup>163</sup> Additionally, our preliminary analysis indicates that NEET West's proposed base ROE has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we find that, as part of the proposed TO Tariff, the proposed base ROE raises 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.

97. 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.<sup>164</sup> 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.

98. While we set NEET West's proposed base ROE for hearing and settlement judge procedures, we find NEET West's proposed TO Tariff to be just and reasonable, subject

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<sup>163</sup> The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

<sup>164</sup> 18 C.F.R. § 385.603 (2015).

to a compliance filing due within 30 days of the date of this order to address the matters discussed below. We note that the majority of the proposed TO Tariff is similar to the tariffs of other similarly-situated CAISO participating transmission owners.<sup>165</sup> However, NEET West has inserted language between sections 8 and 8.1, 9 and 9.1 and 10 and 10.1 regarding the applicability of these sections of its TO Tariff when it is not the “lead Participating Transmission Owner.” However, this additional language is not included in the transmission owner tariffs of other similarly situated CAISO participating transmission owners and NEET West has offered no justification for inclusion of these unique provisions, nor defined the term “lead Participating Transmission Owner” in the context of these provisions. As a result, NEET West has not demonstrated that these provisions are just and reasonable, and accordingly we direct NEET West to remove the associated language from its TO Tariff in its compliance filing.<sup>166</sup> Additionally, NEET

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<sup>165</sup> See, e.g., *Trans Bay Cable LLC*, 130 FERC ¶ 61,028 (2010) and *Citizens Sunrise Transmission, LLC*, 138 FERC ¶ 61,129 (2012).

<sup>166</sup> In Sections 8, the following language should be removed: “Unless NEET West is the lead Participating TO with respect to an Interconnection, the provisions of Section 8 of this TO Tariff, and its subparts, shall have no application to the Projects or any other High Voltage Transmission Facilities, Low Voltage Transmission Facilities, or Entitlements turned over to the ISO’s operational control by NEET West, and the corresponding provisions of the lead Participating TO’s TO Tariff shall govern.”

In Section 9, the following language should be removed: “Unless NEET West is the lead Participating TO with respect to a required system expansion, the provisions of Section 9 of this TO Tariff, and its subparts, shall have no application to the Projects or any other High Voltage Transmission Facilities, Low Voltage Transmission Facilities, or Entitlements turned over to the ISO’s operational control by NEET West and the corresponding provisions of the lead Participating TO’s TO Tariff shall govern.”

In Section 10, the following language should be removed: “All requests for interconnection with the Projects or any other High Voltage Transmission Facilities, Low Voltage Transmission Facilities, or Entitlements turned over to the ISO’s operational control by NEET West shall be directed to the appropriate entity, with notice of the request provided to NEET West. Unless NEET West is the lead Participating TO with respect to a requested interconnection, the provisions of Section 10 of this TO Tariff, and its subparts, shall have no application to the Projects or any other High Voltage Transmission Facilities, Low Voltage Transmission Facilities, or Entitlements turned over to the ISO’s operational control by NEET West and the corresponding provisions of the lead Participating TO’s TO Tariff shall govern.”

West has listed section 16.12 in its table of contents, but does not include a corresponding section in the body of its proposed tariff. We will require NEET West to eliminate this provision from the table of contents in its compliance filing. Finally, we direct NEET West to revise, in its compliance filing, the term “Patties” so that it reads “Parties” in sections 9.1.3 and 10.6.2. We find that the balance of the proposed TO Tariff is just and reasonable, as it conforms to that of other similarly-situated CAISO participating transmission owners, and we therefore accept those other provisions. With respect to PG&E’s protest, we find that the transmission revenue balancing account referenced in section 5.5 not only accurately mirrors that of other Commission-accepted transmission owner tariffs, but also is consistent with the relevant sections of the CAISO tariff, and we therefore accept it as just and reasonable.<sup>167</sup>

99. We find that NEET West’s proposed implementation protocols in Appendix IV of the TO Tariff are transparent and would provide NEET West’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 the MISO Protocols Order.<sup>168</sup>

100. We disagree with the protests made by TANC regarding NEET West’s implementation protocols. TANC attempts to draw a distinction between NEET West’s protocols and protocols that had been accepted as part of a settlement. However, the Commission is not bound by the parameters for protocols established in an uncontested settlement. The Commission in the MISO Protocols Order established guidelines by which formula rate implementation protocols should be based, and we accept NEET West’s protocols as consistent with that guidance. For instance, we find that, despite TANC’s argument that NEET West has not explained its need to delay submission of the informational filing, the Commission’s guidance does not require that an informational filing be made contemporaneously with posting of the annual update on CAISO’s website. In fact, the Commission previously held that, “[The] informational filing must be made following the time period allowed for parties to review the updates and for transmission owners to respond to information and document requests, and must include

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<sup>167</sup> See, e.g., *Citizens Sunrise Transmission, LLC*, 138 FERC ¶ 61,129 (2012) and CAISO Tariff, Appendix F, Schedule 3, sections 6, 8 and 13 (pertaining, in relevant part, to the calculations of the regional and location transmission revenue requirements, as well as revisions to the transmission revenue balancing account).

<sup>168</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,212 (2014) (MISO Protocols Order); see also *Transource Wisconsin*, 149 FERC ¶ 61,180, at P 41 (2014).

any corrections or adjustments made during that period.”<sup>169</sup> We find that NEET West’s protocols conform to this guidance. We also disagree with TANC’s argument that variations in language between NEET West’s protocols and MidAmerican’s protocols regarding information requests and preliminary challenges should be grounds for establishing hearing and settlement judge procedures. As the Commission previously stated, our finding regarding NEET West’s implementation protocols is based on Commission precedent, and not on the outcome of an uncontested settlement proceeding. We find that, with the exception of the compliance directive noted below, NEET West includes language in section 4c of its implementation protocols that is consistent with the Commission’s guidance in the MISO Protocols Order.

101. We also find that the six factors proposed in section 4c of NEET West’s protocols adequately respond to TANC’s concern regarding the provision of information on procurement methods and cost control methodologies, as factor number five allows interested parties to request information on the prudence of the actual costs and expenditures. The Commission has previously held that such language is sufficient for addressing concerns regarding providing interested parties data and information on procurement methods and cost control methodologies.<sup>170</sup> Further, the Commission has already found that “interested parties must be allowed to obtain upon request information on procurement methods and cost control methodologies used by transmission owners in order to facilitate interested parties’ analysis of whether the transmission owners’ costs were prudently incurred.”<sup>171</sup> Therefore, we find that, although no additional revisions to NEET West’s protocols are necessary, such information would be available to interested parties upon request during the review procedures.

102. In addition, we note that under section 4c of NEET West’s implementation protocols, the term “Annual True-Up” used under factor number two of the numbered list is undefined. We direct NEET West to correct this section to read “whether the Annual Update fails to include data properly recorded in accordance with the protocols” in its compliance filing.

103. Because NEET West does not currently have transmission assets, there is no historical data to support a depreciation study. We find that, as Lone Star is a nearby affiliate company with numerous transmission facilities, Lone Star’s depreciation rates

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<sup>169</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,149, at P 92 (2013); *see also* MISO Protocols Order, 146 FERC ¶ 61,212 at P 72.

<sup>170</sup> MISO Protocols Order, 146 FERC ¶ 61,212 at P 67.

<sup>171</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 143 FERC ¶ 61,149 at P 90.

would be an appropriate proxy for NEET West to adopt in determining its proposed depreciation rates.

104. To the extent that costs are allocated or directly-billed from NEET West's parent company or any of its affiliates, we find that NEET West has not adequately explained the methodology for the allocation or direct-billing of those costs because NEET West has not provided any executed service agreements. NEET West explains that no such agreements have been executed at this point, and provides the Commission with service agreements that are representative of the inter-affiliate agreements that will be entered into between NEET West and its affiliate service providers. However, we find that, in order to properly evaluate the affiliate services provided and determine whether costs of those services are appropriately allocated or billed, NEET West must provide the executed service agreements, along with any supporting cost allocation manuals or other documentation. Therefore, to the extent there are sales of non-power goods and services among affiliates, we direct NEET West to provide the executed service agreements and any supporting documentation, in a compliance filing to be submitted to the Commission prior to the exchange of any goods or services between NEET West and its affiliates, and we remind NEET West of its obligations under section 35.44(b)(1) of the Commission's regulations.<sup>172</sup>

105. While NEET West's Appendix III (formula rate template) of the TO Tariff generally conforms to other Commission-accepted formula rates, there are several variances that NEET West has not explained, as well as errors that NEET West will need to correct in a compliance filing to be submitted within 30 days of the date of this order. Each of these issues is discussed in the following paragraphs.

**e. Formula Rate Corrections**

106. On pages 2 and 3 of Appendix III, the second column is titled "Form No. 1 Page, Line, Col." However, information in this column also references certain attachments and instructions related to calculations. We direct NEET West to correct this column heading to read "Source" to better reflect the content that is referenced.

107. Appendix III, Page 1, Line 3 contains an incomplete reference. While NEET West indicates that the True-up Adjustment is derived from Attachment 5, there is not a specific reference to the line number in Attachment 5 from which a true-up value will be derived. We direct NEET West to revise Appendix III, Page 1, Line 3 to reference Attachment 5, Line 47 (Total Amount of True-Up Adjustment).

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<sup>172</sup> 18 C.F.R. § 35.44(b)(1) (2015).

108. It is unclear how NEET West will derive the Gross Plant (GP) allocator on Page 2, Line 7 and the Net Plant (NP) allocator on Page 2, Line 15 of Appendix III. Also, on Lines 7 and 15 of Column 2, NEET West includes references that state “(GP=1 if plant =0)” and “(NP=1 if plant =0),” respectively. We direct NEET West to revise the formula rate template to describe how the GP and NP allocators will be derived and to clarify the meaning of the references to GP and NP equaling one on lines 7 and 15 of column 2.

109. Column 2 on Page 2, Line 17 of Appendix III is incomplete. While NEET West references Attachment 6a, Line 9 as the source for ADIT, Line 9 of Attachment 6a contains four different values, and it is unclear which value will be incorporated on Page 2, Line 17 of Appendix III. We direct NEET West to revise Attachments 6a and 6b to include column numbers so that such information can be more specifically referenced. Also, we direct NEET West to revise the source column on Page 2, Line 17 of Appendix III to more specifically reference the appropriate column number from Attachment 6a, Line 9.

110. NEET West states that Accumulated Deferred Income Taxes (ADIT) on Page 2, Line 17 of Appendix III is allocated based on the Transmission Plant (TP) allocator, consistent with *XEST* and *Transource Kansas*.<sup>173</sup> However, in both of the cited cases, ADIT is allocated based on the NP allocator. We direct NEET West to revise the allocator used for ADIT on Page 2, line 17 to be the NP allocator, consistent with NEET West’s submitted testimony and Commission precedent, or explain why it should not do so.

111. In Appendix III, Page 2, Line 19, column 2, NEET West references the source for the construction work in progress (CWIP) value as Attachment 2, Line 125. However, it is unclear which columns from Line 125 of Attachment 2 NEET West intends to reference, and therefore, this reference is not clearly defined. We direct NEET West to revise column 2 on Page 2, Line 19 of Appendix III to more specifically reflect which column in Attachment 2, Line 125 will be used to derive a value for Page 2, Line 19 in Appendix III.<sup>174</sup>

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<sup>173</sup> Ex. NWT-300 at 10 (citing *XEST*, 149 FERC ¶ 61,182 and *Transource Kansas*, 151 FERC ¶ 61,010).

<sup>174</sup> Based on the Excel spreadsheet submitted in NEET West’s filing, it appears that NEET West is incorporating into Line 19 of Appendix III the total of the incentive portion of CWIP from Cell G43 of Attachment 2a as opposed to the total CWIP reflected in Cell H43 of Attachment 2a.

112. NEET West states that Attachment 2 and Attachment 11 detail the amortization of the requested regulatory asset, and that the regulatory asset will be amortized to Account 566.<sup>175</sup> However, while NEET West has incorporated elements of the regulatory asset into Appendix III as an adjustment to rate base, Appendix III does not reflect Account 566 and/or the amortized portion of the regulatory asset. We direct NEET West to either explain why these items are not accounted for in Appendix III or revise Appendix III to do so.<sup>176</sup>

113. We note that Appendix III, Page 3, Line 52 (Total Other Taxes) appears to sum Line 48, which does not include a value; therefore, we direct NEET West to make clear in its calculation whether Line 48 must be excluded from Total Other Taxes.

114. We note that it is unclear from where Line 71 (Transmission Plant Included in OATT Ancillary Services) on Page 4 of Appendix III is derived; therefore, we direct NEET West to identify the appropriate determination for Transmission Plant Included in OATT Ancillary Services.

115. Page 4, Lines 80-82 of Appendix III contain references for the sources of the data for long term debt, preferred stock, and common stock. However, the references identify line numbers in Attachment 2 that do not exist. We direct NEET West to revise the references in Page 4, Lines 80-82 to align with the correct line and column numbers in Attachment 2.

116. NEET West states that, prior to issuing debt, its long term debt cost rate will be set at the interest rate estimated to be incurred by NEET West of 1.75 percent, which reflects its affiliate Lone Star's construction loan. In explaining the composition of this cost rate, NEET West states that Lone Star's construction loan is priced at the 3 month LIBOR rate of 25 basis points plus 150 basis points. However, NEET West does not explain or justify why the additional 150 basis points was included as a component of Lone Star's long term debt cost rate. We direct NEET West to explain why the 150 basis points was included within the Lone Star Construction loan, and why it should be equally applicable to establish NEET West's initial long term debt cost rate.

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<sup>175</sup> See Ex. NWT-300 at 11

<sup>176</sup> In the case that Account 566 and the amortized regulatory asset are accounted for under Total O&M and A&G in Appendix III, we note that, in the absence of a fully developed lead-lag study, Commission practice allows for computation of Cash Working Capital by multiplying the Total O&M and A&G expenses less the amount of the amortized regulatory asset by one-eighth.

117. Appendix III, Page 4, Lines 84-87 contain incomplete references. While NEET West incorporates a specific line number to reference the information found in Page 4, Lines 84-87 column (a), there is not a reference to an appropriate column number in Appendix III (i.e., Column (5) (Transmission)). We direct NEET West to revise Lines 84-87 to also reference the column number that will be used to derive the values in column (a) of Lines 84-87.

118. We direct NEET West to revise Page 5, Note D on Appendix III to read “all EEI and EPRI dues and expenses.”

119. We direct NEET West to revise Page 5, Note L of Appendix III to read “The regulatory assets will accrue carrying costs equal to the weighted cost of capital on line 83 until the formula rate is effective as the resulting charges are assessed to customers.”

120. In Attachment 1 (Revenue Credit Workpaper), NEET West identifies Accounts 454, 456, and 456.1 as individual accounts contributing to the Total Revenue Credits amount in Line 7. However, NEET West does not include the FERC Form No. 1 source from which the data for these various accounts will be derived. We direct NEET West to revise Attachment 1 to incorporate references to FERC Form No. 1 that indicate the source of the data for Accounts 454, 456, and 456.1 in Attachment 1.

121. Within Attachment 2, NEET West includes references to “Note A.” It appears that Note A is a source for monthly balance data in the plant in service, accumulated depreciation, and adjustments to rate base worksheets. However, as it currently reads, Note A is unclear as to where the referenced values would be derived. We direct NEET West to revise Note A to clearly describe the source of the monthly balance data.

122. On Attachment 2, NEET West incorporates references to FERC Form No. 1 data under the Source column in lines 48 and 60 for the calculation of Transmission Accumulated Depreciation and in lines 78 and 90 for the calculation of General Accumulated Depreciation. However, these lines reference column b of the FERC Form No. 1, which represents the Total value of Electric Plant in Service, Electric Plant Held for Future Use, and Electric Plant Leased to Others for Transmission under Account 108. We direct NEET West to revise the Source column on lines 48, 60, 78, and 90 to instead reference column c of the FERC Form No. 1, which reflects only Electric Plant in Service.

123. Attachment 2, Line 126 references beginning of year and end of year balances for Land Held for Future Use. It appears that data incorporated in Attachment 2 is supported in Attachment 10, as noted. However, Attachment 10 calculates Land Held for Future Use using 13-month average balances. We direct NEET West to explain the apparent discrepancy between Attachment 2 and Attachment 10 regarding the methodology used to calculate Land Held for Future Use. We direct NEET West to revise the formula rate

template to more clearly demonstrate how the information from Attachment 10 will be incorporated into Attachment 2, and ultimately included in the body of the formula in Appendix III. Also, Attachment 2 separates Land Held for Future Use into Transmission Related and Non-transmission Related accounts. We direct NEET West to explain how NEET West intends to differentiate between Transmission Related and Non-transmission Related Land Held for Future Use within Attachment 2.

124. The column titled “Source” under Line 127 of Attachment 2 does not specifically reference from where in Attachment 7 (Unfunded Reserves) such data will be derived. We direct NEET West to revise this column to more specifically reference such data from Attachment 7. In addition, Attachment 2, Line 127 (Total) does not have a reference under the source column that explains how the total is derived. We direct NEET West to revise this line to more specifically describe how the total will be calculated under line 127.<sup>177</sup>

125. In the text under Line 127 of Attachment 2, NEET West indicates that as part of each annual update it will include a spreadsheet that lists unfunded reserves and “indicates which ones meet the test for crediting to rate base.” However, in the past the Commission has directed entities to revise their formula rate templates to “credit any unfunded reserves against rate base.”<sup>178</sup> NEET West has not described in its filing any rationale for applying a test to determine which unfunded reserves should be credited to rate base. We direct NEET West to either clarify what test will be used in this context and justify why such a test is needed to determine NEET West’s unfunded reserves, or revise Line 127 to indicate that any unfunded reserves will be credited against rate base.

126. In Line 129 of Attachment 2, the columns indicate that Regulatory Commission Expenses in Account 928 will be separated into distinct categories of “Transmission Related” and Non-transmission Related.” We direct NEET West to explain how NEET West intends to allocate Regulatory Commission Expenses between these categories. Also, it appears that NEET West is subtracting the Form No. 1 amount of Regulatory

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<sup>177</sup> Based on the Excel spreadsheet submitted in NEET West’s filing, it appears that Line 20 of Appendix III (Reserves) incorrectly references a cell from Attachment 2a. The current Excel cell reference for Line 20 is H64 of Attachment 2a, which does not coincide with the data from Line 127. It appears that the correct cell reference should be E64 from Attachment 2a given that this cell aligns with the total of the “Amount Allocated” column for Line 127.

<sup>178</sup> See, e.g., *Transource Wisconsin, LLC*, 149 FERC ¶ 61,180, at P 43 (2014) (*Transource Wisconsin*); *XEST*, 149 FERC ¶ 61,182 at P 97; *XETD*, 149 FERC ¶ 61,181 at P 35.

Commission Expenses from the Transmission-Related amount to derive the Non-transmission Related amount. However, there is no clear reference to demonstrate this calculation. We direct NEET West to revise Attachment 2 to indicate how NEET West intends to make this calculation.

127. In Attachment 2, Line 131, NEET West does not specifically demonstrate how it calculates the “Other” amount for General Advertising Expense, Account 930.1. We direct NEET West to revise Attachment 2 to indicate how NEET West intends to make this calculation.

128. In Attachment 2, Materials and Supplies, Lines 133-145, the reference column is incomplete. While Lines 133 and 145 contain column references, and the various account columns contain FERC Form No. 1 references, it is not clear as to where the data for Lines 134-144 would be derived. We direct NEET West to revise Attachment 2, Material and Supplies to specify how any future values for Lines 134-144 will be determined. Also, Line 146 should contain an instruction that identifies how the calculation for the “Total” column will be determined. We direct NEET West to make these changes.

129. On Attachment 2, in the section used to detail Materials and Supplies, NEET West includes a column for “Construction Materials and Supplies”. However, the Commission does not allow such supplies for facilities that are under construction to enter rate base.<sup>179</sup> We direct NEET West to revise Attachment 2, Materials and Supplies, Lines 133-146 to remove the column for “Construction Materials and Supplies” from the total Materials and Supplies to be incorporated into rate base.

130. Attachment 2, Lines 147-150 and Attachment 2 Line 94 reference beginning of year and end of year balances of regulatory asset and unamortized abandoned plant, respectively. It appears that the data incorporated in Appendix III through Attachment 2 is supported from values in Attachment 11, as noted. However, Attachment 11 calculates regulatory asset and abandoned plant using 13-month average balances. We direct NEET West to explain the discrepancy between Attachment 2 and Attachment 11 regarding the methodology used to calculate regulatory asset and abandoned plant balances. We direct NEET West to revise the formula rate template to clearly demonstrate how the information from Attachment 11 will be incorporated into Attachment 2, and ultimately included in the body of the formula in Appendix III.

131. Column titles for Attachment 2, Lines 147-150 “Pre-Commercial and Project Name” do not appear to be related to the data to be included under those columns. We

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<sup>179</sup> *Southwestern Public Service Co.*, Opinion No. 162, 22 FERC ¶ 61,341 (1983).

direct NEET West to clarify and/or revise these column titles to be consistent with the data included under those columns. Also, NEET West references Attachment 11 as a source of data for Lines 147-150 of Attachment 2, but there are no specific references to lines, columns, or instructions. We direct NEET West to revise Lines 147-150 to more specifically reflect the line numbers and columns from Attachment 11. Also, we direct NEET West to revise Attachment 2 to describe how the “Total” column is derived for Lines 147-150.

132. The description in Line 148 of Attachment 2 reading “All amortization of the Regulatory Asset are to be booked to Account 566 over” is incomplete. We direct NEET West to revise the formula rate template to reflect the complete statement.

133. We also note that the calculation of Postretirement Benefits Other than Pension (PBOP) in Attachment 2, Lines 153-161 is unsupported. While Note A references a 2014 actuarial valuation report, the values in Lines 154 and 155 of Attachment 2 are not supported by the portions of the report that have been submitted, nor do instructions in the formula rate template demonstrate how calculations using data provided from the report arrive at the values.<sup>180</sup> We direct NEET West to revise Attachment 2, Lines 154-155 to make the calculations and the data used for such calculations clearer. In addition, it is not clear where the data incorporated in Lines 156 and 158 is derived. To the extent NEET West intends on capturing information for these line items from FERC Form No. 1 or other company records, such references should be clearly noted. We direct NEET West to revise Attachment 2 to include such references. Furthermore, Lines 157 and 159 appear to be derived using the PBOP data included in Attachment 2, Lines 154-157, but there is no instruction to demonstrate how these calculations are made. We direct NEET West to revise Attachment 2, Lines 157 and 159 to clearly note such instructions.

134. Line 188 of Attachment 2 shows the calculation of Average Cost of Debt as Line 186/Line 167. However, Line 167 of Attachment 2 contains multiple potential values. We direct NEET West to specify the column numbers for this calculation.

135. Line 193 of Attachment 2 shows the calculation of Average Cost of preferred stock as Line 191/Line 169. However, Line 169 of Attachment 2 contains multiple potential values. We direct NEET West to specify the column numbers for this calculation.

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<sup>180</sup> For instance, in Line 154, the value reflecting “Labor Dollars” appears to be derived from certain data included in the submitted actuarial report, but NEET West does not specifically indicate how such data from the report is used to calculate total labor dollars. Similarly, in Line 155, there is no instruction to demonstrate how “Cost per labor dollar” is derived.

136. In Attachment 3, Line 7, NEET West includes the reference, “line 1 \* line 6” to demonstrate the calculation of a hypothetical 100 basis point incentive return multiplied by rate base. However, Line 6 contains multiple potential values. We direct NEET West to revise Attachment 3, Line 7 to more clearly reference the appropriate value from Line 6 that NEET West will use to obtain the value for Line 7.

137. In Line 25 of Attachment 3, NEET West calculates the Carrying charge difference for 100 Basis Point of ROE by dividing its incremental return in Line 23 by the Sum of Net Plant, CWIP, Abandoned Plant and Regulatory Assets in Line 24. However, NEET West’s return should account for all rate base items, not just Net Plant, CWIP, Abandoned Plant and Regulatory Asset. We direct NEET West to explain why NEET West is opting to use these rate base categories to calculate its incremental return in Attachment 3 as opposed to dividing its incremental return in Line 23 by Rate Base as found in Appendix III, Line 30, Column (5) or revise Attachment 3 to account for all rate base items.

138. NEET West indicates that Attachment 4 (Transmission Enhancement Charge Worksheet) is a mechanism that allows NEET West the flexibility to recover project-specific incentive ROE adders that may be authorized by the Commission on future projects.<sup>181</sup> However, NEET West does not explain the mechanics of Attachment 4 or explain why specific components of Attachment 4 will be incorporated into Appendix III. We direct NEET West to provide a detailed narrative describing the function of Attachment 4 and explaining a step-by-step approach as to how data is derived and calculated within Attachment 4, including a detailed numerical example. This narrative should also describe how Attachment 3 (Incentive ROE) and Attachment 4 are related and include a hypothetical numerical example detailing that relationship. We also direct NEET West to include revisions to Attachment 4 in the formula rate template that clarify any calculations or data sources that are included within NEET West’s explanation but not detailed as sources or instructions within the attachment. Also, we direct NEET West to specify the sources of the data for Attachment 4, Column F through Column I, Lines 7a through 7i, and to explain why such sources are appropriate.

139. In Attachments 6a and 6b, it appears that the “Total Plant and Labor Related” column in Lines 1-9 and 1-7, respectively, is not accurately titled to reflect all balances that would be incorporated since it appears the “Transmission Related” column would also be summed into the “Total Plant and Labor Related” column. We direct NEET West to revise this heading in Attachments 6a and 6b to read “Total” and indicate in a source column the various related columns that will be summed to generate the values for the “Total” column.

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<sup>181</sup> See Ex. NWT-300 at 16.

140. It is not clear based on the current descriptors and instructions where certain data and calculations for Attachments 6a and 6b are derived. For instance, it appears that the subtotal in Line 4 for the “Transmission Related”, “Plant Related”, and “Labor Related” columns is calculated by summing the values in Lines 1-3 of the respective columns, but Line 4 of Attachments 6a and 6b does not clearly identify how the calculation for “Subtotal” is made. In addition, Line 7 of Attachment 6a (Beginning of Year) and Attachment 6b (End of Year) do not reference how values are derived. For the “Transmission Related” column, it appears the subtotal from Line 4 is used. For the “Labor Related” and “Plant Related” columns, it appears allocators are applied to the subtotal in line 4 of the respective columns to arrive at a value in Line 7. We direct NEET West to revise these attachments to make these calculations clear.

141. Attachments 6a and 6b, Lines 1 and 2 should include the phrase “(enter negative)” after “ADIT – 282” and “ADIT – 283” to ensure that these accounts are appropriately credited against rate base. We direct NEET West to make this change.

142. Attachment 6b, Line 7 does not specifically reference where “End of Year ADIT” is incorporated into Attachment 6a. We direct NEET West to revise the source column in Line 7 to read “Enter in Attachment 6a Line 8.”

143. Lines 28, 56, and 85 in Attachments 6a and 6b include incomplete FERC Form No. 1 references. We direct NEET West to revise these lines to incorporate the appropriate column number in the FERC Form No. 1 that represents Beginning of Year balances or End of Year balances in Attachment 6a and 6b, respectively.

144. Attachments 7, 8, 10, and 11 contain incorrect headings referencing “MidAmerican Central Transco, LLC” and other incorrect attachment numbers. We direct NEET West to revise these headings to remove the inaccurate references.

145. Attachment 7, Column g, Attachment 8, Column j and Attachment 10, Column i incorrectly reference the month of June. We direct NEET West to revise the columns to correctly reference “April 30.”

146. The “General Note” in Attachment 10 is incomplete. We direct NEET West to revise this note so that the complete statement is reflected within the attachment.

The Commission orders:

(A) NEET West’s requested rate treatment incentives of hypothetical capital structure, regulatory asset, abandoned plant, and RTO participation for the Projects are hereby granted, as discussed in the body of this order.

(B) NEET West’s proposed conditional ROE incentive is hereby denied, as discussed in the body of this order.

(C) NEET West's proposed TO Tariff is hereby accepted and suspended, for a nominal period, subject to condition, effective October 20, 2015, subject to refund, as discussed in the body of this order.

(D) NEET West is hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(E) NEET West is hereby directed to submit a compliance filing prior to the exchange of any goods or services between NEET West and its affiliate service providers, as discussed in the body of this order.

(F) 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 NEET West's proposed base ROE reflected therein. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (G) and (H) below.

(G) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2015), 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.

(H) 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.

(I) 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 )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.