

156 FERC ¶ 61,095  
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. ER15-2239-003  
EL16-97-000

ORDER ON COMPLIANCE FILING AND INSTITUTING SECTION 206  
PROCEEDING, COMMENCING PAPER HEARING PROCEDURES, AND  
ESTABLISHING REFUND EFFECTIVE DATE

(Issued August 5, 2016)

1. In this order, we accept, for informational purposes, NextEra Energy Transmission West, LLC's (NEET West) March 23, 2016 compliance filing containing information on the allocation of certain costs to NEET West from its parent companies or affiliates.<sup>1</sup> In addition, we find that NEET West's formula rate protocols may be unjust, unreasonable, unduly discriminatory or preferential because they do not provide for NEET West to include in the annual formula rate update and annual informational filings descriptions and justifications for the allocators used to allocate costs between NEET West and its affiliates, and information indicating the magnitude of such cost allocations by service category or function. Accordingly, we institute a proceeding in Docket No. EL16-97-000 pursuant to section 206 of the Federal Power Act (FPA),<sup>2</sup> as discussed more fully below.

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<sup>1</sup> This order addresses only NEET West's compliance filing and corporate support services agreements filed under Docket No. ER15-2239-003. NEET West previously submitted a separate compliance filing on February 9, 2016 in Docket No. ER15-2239-002, in which NEET West revised its Transmission Owner Tariff and formula rate template and implementation protocols. The Commission accepted the February 9, 2016 compliance filing, subject to condition, on June 16, 2016. *NextEra Energy Transmission West, LLC*, 155 FERC ¶ 61,258 (2016) (June 16 Order).

<sup>2</sup> 16 U.S.C. § 824e (2012).

## I. Background

2. On July 22, 2015, NEET West, a subsidiary of NextEra Energy Transmission, LLC (NEET), which in turn is a subsidiary of NextEra Energy Capital Holdings, Inc., filed with the Commission pursuant to section 205 of the FPA<sup>3</sup> a proposed Transmission Owner Tariff (TO Tariff) consisting of a formula rate template and implementation protocols (together, Formula Rate) designed to calculate its annual transmission revenue requirement that it would receive under the California Independent System Operator Corporation's (CAISO) transmission access charge. NEET West also requested, pursuant to sections 205 and 219<sup>4</sup> of the FPA and Order No. 679,<sup>5</sup> authorization to obtain several transmission rate incentives for two of its CAISO-selected transmission projects.

3. On October 6, 2015, Commission Staff, pursuant to delegated authority, issued a deficiency letter directing NEET West to provide, among other things, "any service agreements between NEET West and its affiliates defining services provided and how costs are properly allocated/billed."<sup>6</sup> In response, NEET West stated that "[n]o such agreements have been executed by NEET West."<sup>7</sup>

4. On January 8, 2016, the Commission accepted and suspended, for a nominal period, the TO Tariff, effective October 20, 2015, subject to condition and refund.<sup>8</sup> The Commission granted in part and denied in part NEET West's requests for certain transmission rate incentives and set NEET West's proposed base rate of return on equity for hearing and settlement judge procedures. The Commission also directed NEET West

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<sup>3</sup> 16 U.S.C. § 824d (2012).

<sup>4</sup> 16 U.S.C. § 824s (2012).

<sup>5</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>6</sup> Deficiency Letter, Docket No. ER15-2239-000, at 5 (issued Oct. 6, 2015).

<sup>7</sup> NEET West Response to Deficiency Letter, Docket No. ER15-2239-001, at 24 (filed Nov. 10, 2015).

<sup>8</sup> *NextEra Energy Transmission West, LLC*, 154 FERC ¶ 61,009 (2016) (January 8 Order).

to submit a compliance filing to revise its TO Tariff and Formula Rate,<sup>9</sup> and, as relevant to this proceeding, the Commission directed NEET West to provide executed service agreements and any supporting documentation prior to the exchange of any goods or services between NEET West and its affiliates.<sup>10</sup>

5. On March 23, 2016, NEET West submitted its compliance filing providing information about the allocation of certain costs among affiliates and included four corporate support services agreements it entered into with NextEra Energy Resources, LLC; NEET; Lone Star Transmission, LLC; and Florida Power & Light Company. NEET West notes that Article 6 of each agreement describes the compensation and billing for non-power goods and services provided to NEET West.<sup>11</sup>

## **II. Notice of Filing**

6. Notice of NEET West's March 23, 2016 filing was published in the *Federal Register*, 81 Fed. Reg. 18,609 (2016), with interventions and comments due by April 13, 2016. None was filed.

## **III. Discussion**

7. In the January 8 Order, the Commission stated, “[t]o 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.”<sup>12</sup> To properly evaluate the affiliate services provided and determine whether the costs of those services are appropriately allocated or billed, the Commission directed NEET West to “provide the executed service agreements, along with any supporting cost allocation manuals or other documentation.”<sup>13</sup> We find that NEET West’s compliance filing here provides sufficient explanation of such inter-affiliate cost allocations for us to accept that filing for informational purposes.

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<sup>9</sup> See June 16 Order, 155 FERC ¶ 61,258 (accepting NEET West’s revised TO Tariff and Formula Rate, subject to condition).

<sup>10</sup> January 8 Order, 154 FERC ¶ 61,009 at P 104.

<sup>11</sup> NEET West Transmittal Letter at 2-3.

<sup>12</sup> January 8 Order, 154 FERC ¶ 61,009 at P 104.

<sup>13</sup> *Id.*

8. However, the Commission recently held that public utilities should include in their formula rate protocols requirements to provide, in their annual formula rate updates and informational filings, certain information about the methodologies for the allocation of costs between affiliates that affect the cost inputs to their formula rates in order to allow interested parties and the Commission to understand the reasonableness of such allocation methodologies and the resulting costs that are recovered through the formula rates.<sup>14</sup> In *PJM*, the Commission accepted formula rate protocols subject to the condition that the transmission developer there, Northeast Transmission Development, LLC (NTD), amend its protocols, to provide for it:

[T]o include in its annual Formula Rate updates and annual informational filings the following: (1) a detailed description of the methodologies used to allocate and directly assign costs between NTD and its affiliates by service category or function for the applicable rate year, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between NTD and each affiliate by service category or function for the applicable period.<sup>15</sup>

9. In the present case, in the January 8 Order, the Commission accepted NEET West's formula rate protocols without conditioning acceptance on revising them to include the terms the Commission required subsequently in *PJM*. It appears that the absence of such requirements in NEET West's formula rate protocols may be unjust, unreasonable, or unduly discriminatory or preferential because the protocols do not provide for NEET West to include in its annual Formula Rate update and annual informational filings descriptions and justifications for the allocators used to allocate costs between NEET West and its affiliates, and information indicating the magnitude of such cost allocations by service category or function. Accordingly, we institute a proceeding in Docket No. EL16-97-000, pursuant to section 206 of the FPA, to examine NEET West's formula rate protocols with respect to this issue.<sup>16</sup>

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<sup>14</sup> *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,097, at P 127 (2016) (*PJM*).

<sup>15</sup> *Id.*

<sup>16</sup> See, e.g., *Transource Wis., LLC*, 155 FERC ¶ 61,302 (2016); *Xcel Energy Transmission Dev. Co., LLC*, 155 FERC ¶ 61,301 (2016).

10. Upon initial review, the concerns identified by the Commission in *PJM* might be addressed by revising NEET West's formula rate protocols to provide for NEET West to include in its annual Formula Rate updates and annual informational filings the following: (1) a detailed description of the methodologies used to allocate and directly assign costs between NEET West and its affiliates by service category or function for the applicable rate year, including any changes to such cost allocation methodologies from the prior year, and the reasons and justification for those changes; and (2) the magnitude of such costs that have been allocated or directly assigned between NEET West and each affiliate by service category or function for the applicable period. We also find that a paper hearing, as ordered below, is the appropriate procedure to resolve this matter.

11. As ordered below, any person desiring to participate in the paper hearing must file a notice of intervention or timely motion to intervene in Docket No. EL16-97-000, as appropriate, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015).

12. We will require NEET West and other interested parties to file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of this section 206 proceeding in Docket No. EL16-97-000. Parties also may file reply briefs in response to parties' initial briefs due within 21 days after the due date of initial briefs.

13. In cases where, as here, the Commission institutes a proceeding under section 206 of the FPA, the Commission must establish a refund effective date that is no earlier than publication of notice of the Commission's initiation of the proceeding in the *Federal Register*, and no later than five months subsequent to that date.<sup>17</sup> Consistent with Commission precedent,<sup>18</sup> we will establish a refund effective date at the earliest date allowed, i.e., the date the notice of the initiation of the proceeding in Docket No. EL16-97-000 is published in the *Federal Register*. The Commission is also required by section 206 to indicate when it expects to issue a final order. We expect to issue a final order in this proceeding within six months of receiving reply briefs, or, assuming NEET West files revisions to its formula rate protocols, within three months of receiving the revisions.

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<sup>17</sup> 16 U.S.C. § 824e(b) (2012).

<sup>18</sup> See, e.g., *PJM Interconnection, L.L.C.*, 90 FERC ¶ 61,137 (2000); *Cambridge Elec. Light Co.*, 75 FERC ¶ 61,177, *clarified*, 76 FERC ¶ 61,020 (1996); *Canal Elec. Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

The Commission orders:

(A) NEET West's March 23, 2016 compliance filing is hereby accepted for informational purposes, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 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), the Commission hereby institutes a proceeding in Docket No. EL16-97-000, concerning NEET West's formula rate protocols, as discussed in the body of this order.

(C) NEET West and other interested parties may file initial briefs no later than 30 days after the publication of notice in the *Federal Register* of the Commission's initiation of the section 206 proceeding in Docket No. EL16-97-000. Reply briefs may be filed no later than 21 days thereafter.

(D) Any interested person desiring to be heard in Docket No. EL16-97-000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, D.C. 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.214 (2015)) within 21 days of the date of issuance of this order.

(E) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation under section 206 of the FPA of the proceeding in Docket No. EL16-97-000.

(F) The refund effective date in Docket No. EL16-97-000 established pursuant to section 206 of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering Paragraph (E) above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.