156 FERC ¶ 61,118
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DesertLink, LLC   Docket No. EL16-68-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued August 19, 2016)

1. On May 11, 2016, DesertLink, LLC (DesertLink) filed a petition for a declaratory order (Petition) seeking authorization for certain transmission rate incentives pursuant to section 219 of the Federal Power Act[1] (FPA) and Order No. 679[2] for the new Harry Allen to Eldorado 500kV transmission project (the Project). In this order, we grant DesertLink's petition.

I. **<u>DesertLink's Filing</u>**

2. DesertLink is a member of the LS Power Group, a power generation and transmission group that specializes in project development, operations management and commercial execution. DesertLink explains that the LS Power Group is actively engaged in new transmission development through affiliates such as DesertLink. DesertLink states that it is a nonincumbent transmission developer whose sole business is to plan, develop, finance, construct, own, operate, and maintain the Project.

[1] 16 U.S.C. § 824s (2012).

[2] *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).

3. In response to the requirements of the Commission's Order No. 1000,[3] the California Independent System Operator Corporation (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. DesertLink states that on December 18, 2014, CAISO so designated the Project under the 2013-2014 transmission plan. DesertLink explains that the Project is exclusively located in Nevada but is connected to the Eldorado substation, which is part of the CAISO-controlled grid.[4] On January 11, 2016, after completion of the CAISO competitive solicitation process, CAISO announced that DesertLink was the Approved Project Sponsor for the Project, with an in-service date of May 2020.[5]

4. DesertLink requests that the Commission grant the following transmission rate incentives, effective July 12, 2016: (1) deferred recovery of all prudently incurred pre-commercial costs through the creation of a regulatory asset (regulatory asset incentive); (2) full recovery of 100 percent of prudently-incurred costs, including pre-commercial expenses and construction costs, if the Project is abandoned for reasons beyond DesertLink's control (abandonment incentive); (3) use of a hypothetical capital structure consisting of 50 percent debt and 50 percent equity until the Project achieves commercial operation (hypothetical capital structure incentive); and (4) a 50-basis point adder to DesertLink's Return on Equity (ROE) for participating in a Regional Transmission Organization (RTO), namely, CAISO (RTO participation incentive).[6]

II. <u>Notice of Filing and Responsive Pleadings</u>

5. Notice of the Petition was published in the *Federal Register*, 81 Fed. Reg. 31,926 (2016), with interventions and comments due on or before June 10, 2016. Timely motions to intervene were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside California (collectively, Six Cities); Southern California Edison

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[3] *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, *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).

[4] Petition at Exhibit 4 (Supplement to the 2013-2014 ISO Transmission Plan; Harry Allen-Eldorado Project Description and Specifications).

[5] Petition at Exhibit 5 (January 11, 2016 CAISO Project Sponsor Selection Report).

[6] Petition at 1, 8-9.

Company; California Department of Water Resources State Water Project; the Modesto Irrigation District; the City of Santa Clara, California together with M-S-R Public Power Agency; Nevada Power Company; and the Northern California Power Agency. A motion to intervene and protest by the Transmission Agency of Northern California (TANC).

III. Discussion

A. Procedural Matters

6. 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 serve to make the entities that filed them parties to this proceeding.

B. Substantive Matters

1. FPA Section 219 Requirements

7. In the Energy Policy Act of 2005,[7] Congress added section 219 to the FPA, 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 DesertLink. Additionally, in November 2012, the Commission issued the Transmission Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[8]

8. 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."[9] Order No. 679 established the process for an applicant to

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

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

[9] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

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.[10]

a. Filing

9. DesertLink states that the Project qualifies for incentives under Order No. 679 because it was identified and approved through a fair and open regional planning process conducted by CAISO,[11] and approved as an economic project, providing more than $400 million in CAISO-estimated production cost reductions, and that the Project was also identified as providing both reliability and renewable integration benefits.[12] DesertLink states that the Project, exclusively located in the State of Nevada, also qualifies for the Order No. 679 rebuttable presumption because the Public Utilities Commission of Nevada issued a Utility Environmental Protection Act permit for it on March 8, 2015.[13]

b. Commission Determination

10. We find DesertLink is entitled to the rebuttable presumption that the Project will ensure reliability or reduce the cost of delivered power by reducing transmission congestion. The CAISO transmission planning process, through which the Project was approved, evaluates whether identified transmission projects will enhance reliability and/or reduce congestion. Specifically, CAISO determined the Project will provide annual production cost benefits of $9.4 million in 2019 to $8.4 million in 2024 and beyond, and annual capacity benefits of $19.7 million in 2020 to $8.8 million in 2025 and beyond.[14]

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[10] *Id.*

[11] Petition at 10.

[12] *Id.*

[13] *Id.* at 11.

[14] *Id.* at 5.

2. Order No. 679 Nexus Test

11. 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 being sought and the investment being made.[15] 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."[16] The Commission requires a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.

a. Filing

12. Desertlink asserts that there is a nexus between the incentives it requests and the risks and challenges faced in constructing the Project. DesertLink explains that the incentives it requests are specifically tailored to address the various risks faced and thus will assist DesertLink in attracting investment.[17] First, DesertLink asserts it faces a variety of financial risks and challenges in the development of the Project.[18] Because it has neither a current rate base nor revenue, DesertLink states the initial investments in the development and construction of the Project will represent negative cash flow, and the Project will represent 100 percent of DesertLink's plant in service.[19]

13. Second, DesertLink states that it is subject to multiple layers of regulatory review involving federal, state, and local agencies, any of which could jeopardize the Project's completion, or add significant additional cost.[20] DesertLink argues that regulatory issues, which may be beyond its control, could extend into the tens of millions of dollars, and cause the Project to be terminated.[21] Further, DesertLink states that it faces competition

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[15] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 48.

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

[17] Petition at 11. DesertLink adds it does not seek an incentive ROE based on the risks and challenges of the Project.

[18] *Id*.

[19] *Id*.

[20] *Id*. at 13, 16. Desert Link enumerated 22 required permits, approvals, and reviews that still must be obtained from various federal, state, and local authorities.

[21] *Id*. at 13.

for investment from other projects that do not have DesertLink's cost containment provisions.[22]

14. Third, DesertLink states that it faces significant risks and challenges in connection with constructing the Project, which increase both the cost of the Project and the risk of delays.[23] DesertLink explains that the Project's alignment is through several highly congested areas of the Las Vegas metropolitan area, necessitating crossings of existing transmission lines and additional detailed engineering and coordination with existing transmission line owners. DesertLink states also that the Project is in an area known to have bedrock very close to the surface, and that one of the most significant risks facing the Project is unknown subsurface conditions, including the depth of the bedrock and the resulting excavation costs.[24] In addition, according to DesertLink, construction of the Project will require mitigation of impacts to several sensitive species, each requiring specific management protocols.[25] DesertLink states that another factor that may increase costs and delays is the potential impacts to unknown cultural and archeological resources along the path of construction.[26]

15. Finally, DesertLink notes other types of risks and challenges that typically face a construction project; material, labor and equipment costs and availability, adverse weather, vandalism, theft and natural disasters.[27] DesertLink stresses that these risks are all magnified for a new transmission utility that requires separate regulatory approvals and no tariff to expense current development activities.[28] Thus, DesertLink asserts that

[22] *Id*. at 12.

[23] *Id*. at 16.

[24] *Id*. at 16-17.

[25] *Id*. at 17.

[26] *Id*. at 18. DesertLink asserts that while a Programmatic Agreement has been established with several local, state, and federal agencies regarding the Project's potential to affect properties eligible for inclusion in the National Register of Historic Places, implementation of the stipulations can increase costs and cause delays.

[27] *Id*.

[28] *Id*.

the incentives are specifically tailored to address all of its enumerated risks, and to thus attract the necessary investment to continue the Project.[29]

b. Commission Determination

16. We find that DesertLink has demonstrated that there is a nexus between the incentives it seeks and the investment being made.[30] Specifically, as discussed in more detail below, we find that DesertLink has demonstrated that its total package of requested incentives is tailored to address the demonstrable risks or challenges faced by DesertLink.[31] While our determination on DesertLink's Petition establishes whether it qualifies for the requested transmission rate incentives, if DesertLink seeks to put these incentives into effect, it must submit a subsequent filing under section 205 of the FPA.[32]

c. Regulatory Asset Incentive

i. Filing

17. DesertLink requests authorization to defer recovery of pre-commercial costs for the Project, incurred to date and going forward, that cannot be capitalized and would otherwise be expensed.[33] DesertLink states that the pre-commercial expenses deferred will include all prudently incurred costs, including, but not limited to, those associated with initial feasibility studies, engineering, consultant and attorney fees, and costs associated with seeking regulatory approvals. DesertLink states that such deferred

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[29] *Id.*

[30] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

[31] Our determination to grant the incentives requested does not rest on DesertLink's cost containment arguments made in this proceeding. We also note that the Commission is exploring the broader policy considerations related to competitive solicitation development processes, cost containment, and the Commission's transmission incentives policy in Docket No. AD16-18-000. *See* Competitive Transmission Development Technical Conference, Docket No. AD16-18-000 (Aug. 3, 2016) (Notice Inviting Post-Technical Conference Comments).

[32] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 77.

[33] Petition at 21 (citing *DCR Transmission*, *LLC*, 153 FERC ¶ 61,295, at P 37 (2015) (*DCR Transmission*)).

pre-commercial costs would be booked as a regulatory asset for subsequent recovery.[34] DesertLink argues that, as the Project has been approved by CAISO for inclusion in the 2013-2014 transmission plan, it is appropriate that all prudently-incurred pre-commercial expenses be allowed for recovery, including those incurred during the regional planning process in order to attain approval of the Project.[35] DesertLink asserts that placing developers at risk for costs incurred prior to approval would unjustly deny full cost recovery for projects that have been selected in a fair and open regional planning process and will inhibit financing.[36]

18. DesertLink proposes to accrue carrying charges on the regulatory asset for deferred pre-commercial expenses, from the effective date of the asset until such time as it is included in rate base, at which time DesertLink proposes to amortize the asset over five years.[37] Further, DesertLink commits that, consistent with Commission precedent, it will restrict the compounding of interest to ensure that such compounding does not result in a higher interest than is allowed for AFUDC.[38] DesertLink states that any deferred cost recovery will be subject to its subsequent submission of a filing under section 205 of the FPA[39] for establishment of its transmission revenue requirement for the Project, in which it will demonstrate that the deferred pre-commercial costs are just and reasonable.[40]

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[34] *Id*.

[35] *Id*.

[36] *Id*.

[37] *Id*. at 22.

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

[39] 16 U.S.C. § 824d (2012).

[40] Petition at 22.

19. DesertLink asserts that the request for deferred cost recovery of pre-commercial expenses addresses the specific circumstances of DesertLink in its Project development. DesertLink argues that, as a non-incumbent transmission developer, it has no transmission tariff and thus does not have any current ability to recover its prudently-incurred development costs through CAISO. DesertLink submits that granting this incentive will provide up-front regulatory certainty, allow the recovery of such costs, prevent the non-recovery of prudently-incurred costs and facilitate financing, and encourage investors to commit the funds necessary to develop the Project.[41]

ii. Commission Determination

20. We grant DesertLink's request to establish a regulatory asset for all prudently-incurred pre-commercial costs for the Project, including pre-commercial costs of permitting and consulting activities.

21. In Order No. 679, the Commission allowed project developers to defer and amortize pre-commercial operations costs that were not capitalized, including the types of preliminary survey and investigation costs recordable in Account 183, Preliminary Survey and Investigation Charges. The Commission also noted that it will entertain proposals to defer and amortize other types of costs on a case-by-case basis.[42] DesertLink proposes to defer and amortize costs related to the development and startup of the Project, including engineering, consulting, and legal costs. We find the regulatory asset treatment of pre-commercial costs appropriately addresses the risks and challenges of the Project, because it provides DesertLink with added upfront regulatory certainty, reduces interest expenses, and assists in the construction of the Project.

22. We also grant DesertLink's request to accrue a carrying charge from the effective date of the regulatory asset until the asset is included in its rate base, and accept DesertLink's commitment to restrict the compounding of interest to ensure that such compounding does not result in a higher amount of interest than is allowed for AFUDC, consistent with Commission precedent.[43] Further, DesertLink must record all associated carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Non-operating Income. Also, we authorize DesertLink to amortize the regulatory asset and related carrying charges associated with the Project by debiting Account 566 and

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[41] *Id*. at 22-23.

[42] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 122.

[43] *See, e.g.*, *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at P 58 (2015); *MidAmerican Central California Transco, LLC*, 147 FERC ¶ 61,179, at P 34 (2014) (*MidAmerican*).

crediting Account 182.3, consistent with Commission precedent.[44] We accept DesertLink's proposal to amortize the regulatory asset over five years, consistent with rate recovery.

23. While we authorize DesertLink to record its prudently-incurred costs as a regulatory asset, when DesertLink submits a filing under section 205 of the FPA[45] for its transmission revenue requirement, it will need to demonstrate that the pre-commercial and formation costs are just and reasonable before it includes them in its rate base. In that filing, DesertLink must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable as expenses in the period incurred, but were deferred consistent with the authorization granted herein.

d. Request for Abandoned Plant Incentive

i. Filing

24. DesertLink requests authority to recover 100 percent of prudently-incurred costs in the event the Project must be abandoned for reasons outside of its control.[46] DesertLink asserts that this incentive supports its goal of securing needed financing by removing the risk that investors may have to bear prudently-incurred costs in the event that the Project is cancelled for reasons outside of DesertLink's control.[47] DesertLink states that the Commission has authorized an applicant to recover 100 percent of prudently-incurred abandoned plant costs as an effective means to encourage transmission development by reducing the risk of non-recovered costs.[48]

25. DesertLink argues that, having borne all the development risk thus far, it is appropriate to shift the risk of future abandonment to the expected beneficiaries of the line because CAISO has approved the Project for inclusion in the 2013-2014 transmission plan.[49] DesertLink argues that its development efforts prior to selection will inure to the

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[44] *See, e.g.*, *DCR Transmission, LLC*, 153 FERC ¶ 61,295 at P 37; *Transource Missouri*, LLC, 141 FERC ¶ 61,075, at P 58 (2012) (*Transource Missouri*); *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 154 (2008).

[45] 16 U.S.C. § 824d (2012).

[46] Petition at 23.

[47] *Id.* at 24.

[48] *Id.* at 23.

[49] *Id.*

ratepayers' benefit by reducing certain risks associated with regulatory review, and thereby reduce the potential that regulatory review will result in abandonment of the Project. However, DesertLink asserts it still faces substantial abandonment risk because it is subject to multiple layers of regulatory review at the federal, state, and local levels.[50]

26. In addition, DesertLink argues it would be difficult to commit its investors' equity and resources to the development of the Project after its inclusion in the CAISO 2013-2014 transmission plan without assurance from the Commission that it could recover its investment in the event the Project were to be cancelled for reasons beyond DesertLink's control. DesertLink admits, however, that the circumstances surrounding abandonment are at this time purely speculative, and thus states that it will make an appropriate FPA section 205 filing at the time of any abandonment demonstrating that any costs had been prudently incurred, and that abandonment was due to events beyond DesertLink's control.

ii. Protest

27. TANC argues that the Commission recently reaffirmed its policy that would allow DesertLink to recover only 50 percent of costs prudently incurred prior to the date of any order granting DesertLink's incentive rate petition.[51] TANC contends that in the *SDG&E* proceeding, the Commission granted a petition for declaratory order to SDG&E for its requested 100 percent recovery of prudently incurred abandoned plant costs for the South Orange County Reliability Enhancement Project, but only for costs incurred following the date of the Commission's order granting the incentive rate treatment. For costs incurred prior to the date of the order, TANC argues, the Commission applied its pre-Order No. 679 precedent in Opinion No. 295.[52]

iii. Commission Determination

28. We grant DesertLink's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Project, provided that the abandonment is a result of factors beyond DesertLink's control.[53] As the Commission has explained, the

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[50] *Id.* at 13-15 (listing regulatory permits and approvals it states it will need for the Project).

[51] TANC Protest at 7 (citing *San Diego Gas & Elec. Co.*, 154 FERC ¶ 61,158, at PP 17-20 (2016) (*SDG&E*)).

[52] *Id.* at 8 (citing *New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016 (1988), *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988)).

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

recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[54] Here, DesertLink explains that the Project will need to obtain a number of approvals from federal, state, and local agencies, as detailed in the Petition, and that the Project faces construction risks, including developing portions of the Project through congested areas of the Las Vegas metropolitan area and a number of crossings of existing high-voltage facilities.[55] In addition, DesertLink has demonstrated that the abandonment incentive will attract financing for the Project and protect DesertLink from further losses if the Project is cancelled for reasons outside DesertLink's control. Based on this information, we conclude that DesertLink has demonstrated that this project is subject to risks and challenges that warrant our finding that it meets the threshold showing for the Order No. 679 nexus.

29. We note that in the event a utility seeks abandoned plant recovery, Order No. 679 specifically requires it to demonstrate the justness and reasonableness of the abandoned transmission facilities costs in a separate FPA section 205 filing.[56] Moreover, in response to TANC's comments, in such a proceeding, abandoned plant recovery is available for 100 percent of prudently-incurred project costs expended on or after the issuance of this order, and 50 percent of prudently-incurred costs prior to the date of this order.[57]

e. RTO Participation Incentive

i. Filing

30. DesertLink requests a 50 basis point adder to its base ROE for RTO participation contingent on DesertLink's overall ROE being within the zone of reasonableness – inclusive of the RTO membership adder – and subject to the overall cap on ROE included

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[54] *Id.* P 163; *see also, e.g.*, *TransCanyon*, 152 FERC ¶ 61,017 at P 41.

[55] *See* Petition at 12-16 (describing regulatory, financial, and construction risks faced by the Project).

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

[57] *See, e.g.*, *SDG&E*, 154 FERC ¶ 61,158, at PP 17-20; *DCR Transmission*, 153 FERC ¶ 61,295 at P 37; *PJM Interconnection L.L.C., et al.*, 142 FERC ¶ 61,156, at PP 52-55 (2013) (*PJM*); Opinion No. 295, 42 FERC ¶ 61,016 at 61,075-078, 61,081 (finding that allocating 50 percent of abandoned plant costs to ratepayers and 50 percent to shareholders reflects a policy decision to equitably balance the interests of ratepayers and investors).

in DesertLink's proposal to CAISO for the Project. DesertLink seeks no other ROE incentives.

31. Desert Link argues that the Commission authorizes the RTO participation adder as an important incentive for newly established transmission developers to participate in an RTO.[58] Moreover, DesertLink explains that it is required pursuant to the terms of CAISO's Approved Project Sponsor Agreement to become a Participating Transmission Owner of CAISO, transfer operational control of the Project to CAISO once it is constructed and placed into service, and recover the costs of the Project to CAISO customers through the inclusion of DesertLink's annual transmission revenue requirement in the CAISO Transmission Access Charge.[59]

ii. <u>Protest</u>

32. TANC requests that the Commission confirm that the requested 50 basis point adder for participation in the CAISO, if granted, would not be available to the Project if it is abandoned prior to the commencement of commercial operations. TANC further asks the Commission to confirm that DesertLink will not begin to recover an ROE and applicable incentives, such as the incentive for CAISO participation, until the Project is placed into service.[60]

iii. <u>Commission Determination</u>

33. We grant DesertLink's request for a 50 basis point adder to its base ROE for its participation in CAISO. Our approval of this incentive is based on DesertLink's commitment to become a member of CAISO and to transfer operational control of the Project to CAISO once the Project is placed in service.[61] In response to TANC, we clarify that, in the event that a project is abandoned, the RTO participation incentive is not available for that project. As the Commission has previously explained, "the facility at issue in an abandoned plant cost recovery situation will not be transferred to the RTO's

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[58] Petition at 24 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86).

[59] *Id.* at 24-25.

[60] TANC Protest at 9.

[61] *See, e.g.*, *TransCanyon*, 152 FERC ¶ 61,017 at P 43; *Transource Kansas LLC*, 151 FERC ¶ 61,010, at P 46 (2015); *MidAmerican*, 147 FERC ¶ 61,179 at P 45; *Transource Missouri*, 141 FERC ¶ 61,075 at P 75; *XEST Energy Southwest Transmission Co., LLC*, 149 FERC ¶ 61,182, at P 64 (2014) (*XEST).*

control, and therefore the benefits from that project's inclusion in an RTO will not materialize."[62]

34. TANC also requests that the Commission clarify that DesertLink will not begin to recover its ROE and applicable incentives, including the RTO Participation Incentive, until the date the Project is placed into service. In response, we note that DesertLink's ROE is not recoverable until the date the Project is placed in service.[63] This order addresses elsewhere the timing of recovery for the pre-commercial costs and abandoned plant incentives.

f. <u>Hypothetical Capital Structure</u>

i. <u>Filing</u>

35. DesertLink proposes the use of a hypothetical capital structure consisting of 50 percent debt and 50 percent equity until the Project achieves commercial operation.[64] Once the Project achieves commercial operation, DesertLink states that it will use its actual capitalization in the formula rate.[65] DesertLink argues that a hypothetical capital structure will allow it to offset risks of the Project, and it notes that the challenge of raising capital during the construction period may result in the actual capital structure deviating from time to time.[66] DesertLink asserts that the Commission has previously found that hypothetical capital structures result in lower debt costs for the company, and assist companies in receiving and maintaining an investment-grade credit rating profile.[67]

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[62] *See, e.g.*, *PJM*, 142 FERC ¶ 61,156 at P 41.

[63] *Northeast Transmission Development, LLC*, 155 FERC ¶ 61,097, at P 97 (2016) (dismissing as moot a request that any RTO participation adder not be awarded until the Project is placed in service specifically because ROE and applicable incentives would not be recoverable until the date the new facilities were placed in service). *See also PJM Interconnection, L.L.C. and Potomac-Appalachian Transmission Highline, L.L.C.*, 141 FERC ¶ 61,177, at P 71 (2012), *reh'g denied*, 153 FERC ¶ 61,308 (2015).

[64] Petition at 25-26.

[65] *Id.* at 25 (citing *Transource Missouri*, 141 FERC ¶ 61,075 at P 66).

[66] *Id.*

[67] *Id*. at 26 (citing *Transource Missouri*, 141 FERC ¶ 61,075 at P 66; *Potomac-Appalachian Transmission Highline, L.L.C.*,, 122 FERC ¶ 61,188, at P 55 (2008), *reh'g granted in part and denied in part*, 133 FERC ¶ 61,152 (2010)).

As such, DesertLink argues that its requested hypothetical capital structure is reasonable and appropriate to provide certainty and improve the access to capital.

ii. Commission Determination

36. We grant DesertLink's request to use a hypothetical capital structure of 50 percent debt and 50 percent equity for the Project. We find that DesertLink has demonstrated that the requested hypothetical capital structure is tailored to address the risks and challenges of its investment in the Project. The requested hypothetical capital structure will aid DesertLink in raising capital during the construction phase of the Project, and will assist DesertLink 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.[68] A hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 competitive solicitation process, thereby encouraging competition.[69]

The Commission orders:

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

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[68] *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017, at PP 39-40; *XEST*, 149 FERC ¶ 61,182, at P 22; *Xcel Energy Transmission Development Co., LLC*, 149 FERC ¶ 61,181, at P 13 (2014) (*XETD*).

[69] *See ATX Southwest, LLC*, 152 FERC ¶ 61,193, at P 30 (2015) (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 87).