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Decision 18-09-030 September 27, 2018

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In The Matter of the Application of  
NEXTERA ENERGY TRANSMISSION  
WEST, LLC for a Certificate of Public  
Convenience and Necessity for the Suncrest  
Dynamic Reactive Power Support Project.

Application 15-08-027

**DECISION APPROVING CERTIFICATE OF PUBLIC CONVENIENCE  
AND NECESSITY FOR THE SUNCREST DYNAMIC REACTIVE  
POWER SUPPORT PROJECT**

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**DECISION APPROVING CERTIFICATE OF PUBLIC CONVENIENCE AND  
NECESSITY FOR THE SUNCREST DYNAMIC REACTIVE  
POWER SUPPORT PROJECT**

**Summary**

This decision grants NextEra Energy Transmission West, LLC a certificate of public convenience and necessity for the Suncrest Dynamic Reactive Power Support Project subject to the mitigation measures identified in the Mitigation Monitoring and Reporting Plan (Attachment 1). As the lead agency for the environmental review, we find and certify that the Environmental Impact Report for this project meets the requirements of the California Environmental Quality Act.

This proceeding is closed.

**1. Procedural Background**

On August 31, 2015, NextEra Energy Transmission West, LLC (NEET West) filed Application (A.) 15-08-027 (Application), which seeks a certificate of public convenience and necessity (CPCN) for the Suncrest Dynamic Reactive Power Support Project (the “Suncrest SVC Project” or “Proposed Project”).

Consistent with Rule 2.16 of the Commission’s Rules of Practice and Procedure, the California Independent System Operator (CAISO)<sup>1</sup> and the Office of Ratepayer Advocates (ORA) filed and served responses to the application on October 5, 2015. No protests were filed. NEET West filed a timely reply to the CAISO and ORA responses on October 15, 2015. CURE (California Unions for

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<sup>1</sup> The Commission’s Docket Office originally rejected the CAISO’s filing due to technical deficiencies. The CAISO resubmitted its filing via a motion for leave to file late. The Commission granted this motion via email ruling on December 4, 2015.

Reliable Energy) filed a motion for party status on March 22, 2016, which was granted on February 3, 2017.

On December 8, 2015, the assigned Administrative Law Judge (ALJ) issued a ruling giving notice of anticipated issues and timing of the prehearing conference (PHC), which would occur after the completion of a draft Environmental Impact Report (EIR).

On December 11, 2015, the Commission's Infrastructure Permitting and California Environmental Quality Act (CEQA) section deemed the Proponent's Environmental Assessment complete.

On January 10, 2017, the ALJ issued a ruling setting a PHC and requesting PHC statements. On February 2, 2017, NEET West filed and served a PHC statement.

On February 7, 2017, the PHC was held to determine parties, discuss the scope, the schedule, and other procedural matters. At the PHC, San Diego Gas & Electric Company (SDG&E) formally requested to become a party, and the ALJ established that parties in the proceeding are NEET West, CAISO, SDG&E, CURE, and ORA.

After the PHC on February 7, 2017, the assigned Commissioner issued a scoping memo and ruling on February 24, 2017, determining the issues to be resolved, and setting the schedule for the proceeding.

On May 16, 2017, parties filed and served opening testimony and related exhibits. On July 18, 2017, parties served rebuttal testimony and related exhibits.

Evidentiary hearings were held on August 28 through 30, 2017 and November 16, 2017.<sup>2</sup>

On February 1, 2018, the ALJ issued an email ruling submitting the Final EIR (FEIR) dated January 2018 into evidence and directing opening and reply briefs.

On March 5, 2018, NEET West, CAISO, CURE, and ORA filed opening briefs.

On April 4, 2018, NEET West, CAISO, CURE, and ORA filed reply briefs.

Upon receipt of reply briefs on April 4, 2018, the non-CEQA phase of the proceeding was submitted for decision.

## **2. Overview of NEET West and the Proposed Project**

In its application, NEET West requested a CPCN for the SVC Project. NEET West is a subsidiary of NextEra Energy, Inc. (NextEra). NEET West was created to build and own transmission assets in the CAISO region.

According to NEET West, the Proposed Project has two primary components:

- 1) A new +300/-100 Megavar (Mvar) static var compensator (SVC) with a rated real power output of 0 megawatts (MW), and a nominal terminal voltage of 230 kilovolt (kV), along with related equipment (collectively the "SVC Facility"), which will be constructed at a previously disturbed site located approximately one mile from the Suncrest Substation, and
- 2) An approximately one-mile 230 kV single-circuit transmission line that will be installed underground in an existing access road

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<sup>2</sup> On March 16, 2017 the ALJ granted CURE's request to add a continuation date of September 7, 2017 to the hearing schedule. On September 6, 2017, original last hearing day of September 7, 2017 was taken off calendar and rescheduled to November 16, 2017 due to lack of availability of key CURE witness.

to connect the SVC Facility to the 230 kV bus at the Suncrest Substation.

NEET West holds an option to purchase the site.

According to NEET West, the Proposed Project is needed to facilitate compliance with the state sponsored California Renewables Portfolio Standard (RPS), by allowing deliverability of 1,000 MW (out of a total of 1,715 MW) of significant renewable electricity generating capacity located in the Imperial Valley area. Because the Proposed Project is needed to achieve compliance with RPS, the Proposed Project is categorized as a “policy-driven” upgrade to the transmission system under the CAISO’s transmission planning process. The CAISO’s 2013-14 transmission planning process provided the impetus for the Proposed Project when the CAISO identified a policy-based need for a 300 Mvar dynamic reactive power support device connected to the Suncrest Substation 230 kV bus.

Consistent with direction provided for in the CAISO Tariff, the CAISO conducted a competitive solicitation for the dynamic reactive power support device identified in its 2013-2014 Transmission Plan. Both NEET West and SDG&E, the local incumbent utility, submitted bids to act as project sponsors. The CAISO evaluated the bids and selected NEET West as the winning project sponsor, primarily due to NEET West’s cost proposal, which included a binding construction cap of \$42,880,000 and robust containment measures limiting the amount for which NEET West will seek cost recovery. The CAISO and NEET West executed an Approved Sponsor Agreement (APSA), which specifies that NEET West will be responsible for design, procurement, installation, and commissioning of the Proposed Project. The completed project will become part of the CAISO-controlled transmission system, and NEET West will operate and maintain the Proposed Project as a Participating Transmission Owner under the

CAISO Tariff. NEET West proposes to use resources and facilities within the NextEra corporate organization to facilitate construction and operation of the Proposed Project. For this arrangement to work, NEET West requests exemptions from certain Commission affiliate transaction rules. They also seek exemptions from certain reporting requirements applicable to public utilities.

The costs of the Proposed Project will be recovered solely through transmission rates as part of the CAISO Transmission Access Charge (TAC), following approval by the Federal Energy Regulatory Commission (FERC), which has jurisdiction over rates for interstate transmission service. FERC has accepted NEET West's transmission owner tariff, approved its formula transmission rate design, and granted its requests for recovery of certain transmission rate incentives, including recovery of prudently occurred costs for abandoned plant, should NEET West abandon the project for reasons outside of its control.

If the Proposed Project is approved, NEET West will build its facilities under the binding construction cap specified in the APSA and will begin construction after the Commission issuance of notice to proceed. In its Application, NEET West originally proposed to achieve commercial operation by May 31, 2017, to meet the CAISO's desired in-service date of June 1, 2017.

### **3. Scope of Issues**

The assigned Commissioner's scoping memo determined the following issues to be within the scope of the proceeding.

1. Does the proposed project serve a present or future public convenience and necessity? (Pub. Util. Code § 1001.)
2. Is there no substantial evidence that the project will have a significant effect on the environment? In the alternative, if there is substantial evidence to that effect:



- a. What are the significant environmental impacts of the proposed project?
  - b. Are there potentially feasible mitigation measures that will eliminate or lessen the significant environmental impacts?
  - c. As between the proposed project and the project alternatives, which is environmentally superior?
  - d. Are the mitigation measures or project alternatives infeasible?
  - e. To the extent that the proposed project and/or project alternatives result in significant and unavoidable impacts, are there overriding considerations that nevertheless merit Commission approval of the proposed project or project alternative?
3. Was the EIR completed in compliance with CEQA, did the Commission review and consider the EIR prior to approving the project or a project alternative, and does the EIR reflect the Commission's independent judgment?
  4. Is the proposed project and/or project alternative designed in compliance with the Commission's policies governing the mitigation of Electromagnetic field (EMF) effects using low-cost and no-cost measures?
  5. What is the maximum prudent and reasonable cost of the proposed project and environmentally superior alternative, if approved?
  6. Does the proposed project comport with federal, state, and Commission's rules, regulations and other applicable standards governing safety, reliability, and competition?
    - a. If the certificate is granted, should the exemptions from certain affiliate transaction rules and reporting requirements set forth in the Commission's General Orders be granted, as requested by NEET West in its application?

#### **4. Project Need**

Pub. Util. Code § 1001 conditions a utility's authority to construct or extend its line, plant or system on it having first obtained from the Commission a certificate that the present or future public convenience and necessity require or will require such construction.

NEET West contends "[h]ere, the record demonstrates that the Proposed Project will serve the public policy-driven need that the CAISO identified through its 2013-2014 transmission planning process for 300 Mvar of dynamic reactive power support connected to the 230 kV bus of SDG&E's Suncrest Substation, in order to meet the RPS."<sup>3</sup> NEET West emphasizes that "[t]he evidence supporting the need for the Proposed Project is uncontroverted, and there is no conflicting testimony."<sup>4</sup>

For various reasons, NEET West believes that the Commission should find that the Proposed Project will meet a present and future public convenience and necessity.

First, NEET West indicates that the record demonstrates a need for the Proposed Project to integrate renewable generation to meet RPS goals. It points out that the CAISO is obligated by statute (Pub. Util. Code §§ 345 and 345.5(b)) to ensure the efficient use and reliable operation of the transmission grid. It uses its annual transmission planning process to identify and plan the development of solutions to meet the future needs of the CAISO controlled grid. As CAISO witness Neil Millar testified: "The CAISO develops the plan in the larger context of supporting achievement of important state energy and environmental policies

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<sup>3</sup> NEET West Opening Brief at 12.

<sup>4</sup> *Ibid.* at 12.

and facilitating the transition to a cleaner, lower emission future, while maintaining reliability through a resilient electric system.”<sup>5</sup> According to the CAISO transmission planning process, the CAISO identifies transmission facilities that are needed for three purposes: reliability, public policy, and economics.

Within this context, the CAISO identified a public policy-driven need for dynamic reactive power support at the Suncrest Substation. The specific policy based purpose of the project is to integrate renewable resources sufficient to meet the State’s RPS requirements.

As Mr. Millar explained:

The voltage support issues were primarily caused by the addition of renewable generation in the Imperial area coupled with the impact of the early retirement of generation in the southern California area, including the San Onofre Nuclear Generating Station (SONGS), and gas-fired generation set to close in compliance with the State’s policy to eliminate coastal water use in once-through cooling.<sup>6</sup>

The CAISO 2013-2014 Transmission Plan points to these issues as a deliverability constraint on renewable resources in the Imperial Valley area. According to NEET West, the addition of dynamic reactive power support at the Suncrest Substation will “result in approximately 1,045 MW of additional renewable generation deliverability available from the renewable zones to the CAISO Controlled Grid.”<sup>7</sup>

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<sup>5</sup> NEET West Opening Brief at 13 citing Exhibit CAISO-2 (Millar Testimony) at 3:1 through 3:4.

<sup>6</sup> NEET West Opening Brief at 14 citing Exh. CAISO-2 (Millar Testimony) at 5:23-30; *see also* Exhibit CAISO-1 (Chen Testimony) at 2:14-23.

<sup>7</sup> NEET West Opening Brief at 15 citing Exh. CAISO-1 (Chen Testimony) at 9:14 through 10:2 and 8:5-7.

Second, NEET West contends that the Proposed Project meets the identified policy need, in conformance with the CAISO Tariff through a competitive solicitation. In its competitive solicitation, the CAISO emphasized its need for 300 Mvar of dynamic reactive power support connected to the Suncrest Substation's 230 kV bus. After evaluating proposals from both NEET West and SDG&E, the CAISO selected NEET West's proposal, based on the CAISO's conclusion that NEET West's proposal would meet the CAISO's identified policy need and was superior because NEET West assumed more risk than SDG&E and agreed to more effective binding measures to limit the potential for any cost increases.<sup>8</sup>

Fourth, NEET West reiterates that the need for the Proposed Project continues to exist as demonstrated through subsequent 2016-2017 transmission planning cycle. According to the CAISO, "the updated analysis confirms the Proposed Project is required to meet California state RPS policy while meeting all applicable system reliability performance requirements in the North American Electric Reliability Corporation [("NERC")] and Western Electricity Coordinating Council [("WECC")] standards and CAISO planning standards grid operation procedures."<sup>9</sup>

Fifth, in addition to the public policy need, the Proposed Project provides additional reliability benefits. Mr. Chen testified that reliability benefits include the following:

An increase in the import capability into the San Diego area, by as much as 306 MW, which makes the grid more reliable

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<sup>8</sup> NEET West Opening Brief at 16 citing Exh. CAISO-2 (Millar Testimony) at 14:18.

<sup>9</sup> NEET West Opening Brief at 17 citing Exh. CAISO-1 at 2:24-28; *see also id* at 15:12-14.

and less constrained, thereby helping the California energy market to import clean renewable energy, avoid oversupply conditions, and access more economic electricity; [footnote omitted]

Positive effects on existing southern California reliability concerns, such as reducing the risks of potential post-transient voltage instability under emergency conditions in the San Diego area and Los Angeles basin by boosting the San Diego Import Transmission system potential Interconnected Reliability Operating Limit by as much as 220 MW, and by deferring or alleviating potential needs for reliability upgrades in San Diego area that are estimated to cost \$48 million to \$136 million.

Reductions in long-term local capacity requirements in the San Diego and Miramar sub-area by about 326 MW and 30 MW, respectively, and

Reducing the potential exposure of cross-tripping SDG&E's 230 kV tie with CENACE (the grid operator for Baja California which is electrically, interconnected with the CAISO and WECC [Western Electricity Coordinating Council] system).<sup>10</sup>

CAISO supports NEET West's justification of need for the project: "No party to this proceeding has questioned the need for the Proposed Project and the CAISO provided substantial, uncontroverted evidence showing the continued need for the Proposed Project to support California's RPS goals."<sup>11</sup>

In contrast, CURE emphasizes that the project is not needed to ensure grid reliability, the location of the Proposed Project is not needed to meet CAISO's 2013-2014 transmission plan goals of facilitating delivery of renewables, and that

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<sup>10</sup> NEET West Opening Brief at 19 citing CAISO-1 (Chen Testimony) at 3:21-23, and 18:24 through 19:7.

<sup>11</sup> CAISO Opening Brief at 2.

the CAISO analysis of competing alternatives was not complete since it did not consider important environmental factors. With respect to this latter point, CURE asserts that “[e]ven if some of the Project’s detrimental effects are ameliorated with mitigation, the environment surrounding the Project will no longer be in its original condition. This is particularly true where, as here, the Project proposes to dig up an entire mile of land to install an underground transmission line.”<sup>12</sup>

In this decision, we note that CURE is the only party challenging the need for the Proposed Project. However, we agree with NEET West and CAISO that CURE’s arguments ignore the substantial evidence by the CAISO’s witnesses that the Proposed Project meets an identified public “policy” driven need to meet the RPS, as well as providing reliability benefits. Benefits of the project were introduced into the record via stipulation and no party contested the CAISO’s analysis nor has any party questioned the need for the Proposed Project. We agree with NEET West and CAISO that a “policy-driven need” rather than “grid reliability” is the legal standard in order for the Proposed Project to be approved through the competitive CAISO transmission selection process. The Commission has approved other “policy-driven” projects in order to accomplish RPS objectives.<sup>13</sup> Based on the policy-driven need to meet the RPS, allow the improved deliverability of renewable generation in the southern California region and provide additional reliability benefits to the southern California grid, NEET West has established the need for the project. Environmental impacts of the Proposed Project do not affect the need for the project as discussed in the following section.

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<sup>12</sup> CURE Opening Brief at 6.

<sup>13</sup> NEET West Reply Brief at 7 citing D.16-08-017, “The West of Devers Upgrade Project.”

## **5. Environmental Impacts of the Proposed Project**

According to the FEIR, the Proposed Project did not identify any significant and unavoidable impacts. “A number of impacts were identified that could be mitigated to a level of less-than-significant.” (See Attachment 1 that summarizes the impacts, mitigation measures, and levels of significance identified in the FEIR.) In its Opening Brief, NEET West states that it “does not object to the mitigation measures identified in the Final EIR, and would accept them as required conditions of the issuance of a CPCN for the Proposed Project.”<sup>14</sup>

## **6. Project Alternatives**

Pursuant to CEQA Guidelines Section 15126.6(a), an EIR must consider a reasonable range of alternatives to the project that would feasibly attain most of the basic project objectives while avoiding or substantially lessening any significant effects of the project. An EIR must also evaluate the environmental impacts of a “no project” alternative.<sup>15</sup>

The EIR evaluated the following four project alternatives:<sup>16</sup>

- No Project Alternative
- Northeast Site Alternative
- Suncrest Substation Alternative
- Overhead Transmission Line Alternative

Following is a general description of the alternatives:

### No Project Alternative:

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<sup>14</sup> NEET West Opening Brief at 22.

<sup>15</sup> See CEQA Guidelines 15126(e).

<sup>16</sup> FEIR at ES-8, ES-9.

Under the No Project Alternative, NEET West would not construct the SVC and underground transmission line and the Proposed Project would not be built. The No Project Alternative would not provide any reactive power at the Suncrest Substation's 230 kV bus and would not meet any of the project objectives.<sup>17</sup>

#### Northeast Site Alternative

Under the Northeast Site Alternative, the SVC would be located approximately 0.3-mile north of Bell Bluff Truck Trail. This site is relatively undeveloped and is accessed via an existing dirt road. Use of this site for the SVC would require a slightly longer (1.4 mile-long) transmission line to connect to the existing Suncrest Substation. This alternative would produce and consume reactive power at the same level as the Proposed Project and would meet all of the project objectives.<sup>18</sup>

#### Suncrest Substation Alternative

Under the Suncrest Substation Alternative, the SVC would be installed within the existing Suncrest Substation and, therefore, the approximately one-mile long transmission line would not be required. SDG&E has indicated that there is room within the existing substation to construct the SVC without expanding the substation footprint. Under this existing alternative, NEET West would construct, own, and operate the SVC. The Suncrest Substation would produce and consume reactive power at the same level as the Proposed Project and would meet all of the project objectives.

#### Overhead Transmission Line Alternative

Under the Overhead Transmission Line Alternative, the SVC would be at the same location as the Proposed Project, but the transmission line would be overhead instead of underground. The overhead

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<sup>17</sup> FEIR at ES-9.

<sup>18</sup> FEIR at ES-9.



transmission line connecting the SVC to the existing Suncrest Substation would be approximately 1 mile in length and would generally parallel Bell Bluff Truck Trail. A 70- to 100- foot-wide transmission line right-of-way would be required to account for the land needed for operations and maintenance, as well as transmission line clearance requirements under CPUC General Order 95.<sup>19</sup>

Eight other alternatives were identified in the EIR but were not carried forward for full analysis. The alternatives carried forward were determined to: 1) meet most of the project objectives; 2) be potentially feasible; 3) avoid or reduce one or more of the Proposed Projects' significant impacts; and 4) not be too speculative or ill-defined. Pursuant to CEQA, the No Project Alternative must be carried forward. The basic objectives of the Proposed Project as evaluated in the EIR were to: 1) Provide reactive support at or connected to the Suncrest Substation; 2) Improve and maintain the reliability of the transmission grid; and 3) Support achievement of the state's RPS by facilitating delivery of a higher percentage of renewable energy generation from the Imperial Valley area to population centers to the west.

## **7. Environmentally Superior Alternative**

According to the FEIR, "[o]f the alternatives evaluated in the FEIR, the No Project Alternative is the environmentally superior alternative because it would avoid all construction-and operation-related impacts of the Proposed Project."<sup>20</sup> However, in cases where the No Project Alternative is the environmentally superior alternative, CEQA guidelines direct that the EIR must identify an

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<sup>19</sup> FEIR at ES-9.

<sup>20</sup> FEIR at ES-9.

environmentally superior alternative from among other alternatives.<sup>21</sup> In response to these guidelines, the FEIR states: “Accordingly, in addition to the No Project Alternative, the Suncrest Substation Alternative is considered to be the environmentally superior alternative.”<sup>22</sup>

According to the FEIR, the Suncrest Substation Alternative would avoid virtually all of the environmental impacts of the Proposed Project. Substantial construction impacts to biological or cultural resources would not occur because this alternative would be located within an existing substation. Also, the Suncrest Substation Alternative would have no substantial impact on aesthetics or hydrology and water quality, and avoids the need for a new 230 kV, one-mile long transmission line. Also, [t]he Suncrest Substation Alternative would still generate some construction-related emissions from transport of equipment and materials to the site and use of construction equipment to install the SVC, but these emissions would be substantially less than under the Proposed Project or any of the other alternatives.”<sup>23</sup>

According to the FEIR, the Suncrest Substation Alternative would be feasible and generate reactive power at the same level as the Proposed Project and meet all the project objectives. Since it would avoid virtually all of the environmental impacts of the Proposed Project, it would be environmentally superior to the Proposed Project.

According to the FEIR:

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<sup>21</sup> State CEQA Guidelines Section 15126.6[e][2].

<sup>22</sup> FEIR at ES-9.

<sup>23</sup> FEIR at ES-10.

These impacts include biological and potential cultural resources impacts from ground-disturbing activities for construction of the SVC and underground transmission line; aesthetic impacts from the SVC and associated facilities; and stormwater/water quality impacts from development of a new impervious surface. As the SVC would be placed within the existing Substation under the Suncrest Substation Alternative, there would be no potential for any of these impacts under this alternative.<sup>24</sup>

As to the other alternatives, the FEIR states that each of them “would reduce one or more environmental impacts of the Proposed Project, but on balance, the environmental effects of these alternatives would be greater than those for the Proposed Project.”<sup>25</sup> Therefore, in this decision, we do not consider it necessary to discuss them in further detail.

In response to the FEIR’s analysis, NEET West asserts that with findings of no significant impacts, Pub. Util. Code § 1002(a) is satisfied, which requires the Commission to consider as a basis for granting a CPCN, community values, recreational and park areas, historical and aesthetic values, and influence on the environment. According to NEET West, “[t]he final EIR shows that the Proposed Project will have no significant adverse effects in these areas.”<sup>26</sup>

CURE asserts that the Suncrest Substation Alternative is the environmentally superior alternative and because this alternative would be located within the existing substation, the majority of the Proposed Project’s significant construction impacts to biological and other resources would simply

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<sup>24</sup> FEIR at ES-10.

<sup>25</sup> FEIR at 10.

<sup>26</sup> NEET West Opening Brief at 21.

not occur. Based on these environmental considerations, CURE believes the Commission should select this alternative.

ORA supports the Proposed Project. However, ORA argues that consistent with the FEIR, “the Commission should also order SDG&E to show cause why the environmentally superior alternative should not be built.”<sup>27</sup> ORA also recommends an all-party mediation to determine the terms under which NEET West could build the environmentally superior alternative and believes SDG&E should provide the information necessary to provide the Commission with a cost estimate.

ORA observes that despite the fact that the NEET West project was located one mile away from the substation, the CAISO selected it as the more competitive cost bid and it should be seriously considered: “Thus, it is NEET West’s Application that is before the Commission, not SDG&E’s. The Commission should reject any attempt by SDG&E to obtain approval for its losing and more expensive bid.”<sup>28</sup>

In describing the overall backdrop of the proceeding, ORA observes SDG&E’s questionable level of participation in the proceeding and cites examples. For example, after NEET West was awarded the SVC project, NEET West approached SDG&E to determine whether the SVC project could be sited within the Suncrest Substation. SDG&E refused. So NEET West was forced to site the project one mile away from the substation. Further, SDG&E did not actively participate in hearings on August 28, 29, and November 16, 2017 but stated that it does not oppose NEET West’s SVC Project. Nor did SDG&E

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<sup>27</sup> ORA Opening Brief at 1.

<sup>28</sup> ORA Opening Brief at 7.

provide responses to NEET West's Data Requests which could be used to determine the cost to site the SVC Project at the Suncrest Substation.<sup>29</sup>

## **8. Certification of the EIR**

Pursuant to CEQA Guidelines § 15090 (a), prior to approving a project the lead agency shall certify that the EIR has been completed in compliance with CEQA, that the decision-making body reviewed and considered the information contained in the EIR prior to approving the project, and that the EIR reflects the lead agency's independent judgment and analysis.

The Commission issued and distributed a Notice of Preparation on January 5, 2016, to inform the public and public agencies of its intent to prepare an EIR for the Proposed Project. The Notice of Preparation opened a 32-day scoping period for the submittal of comments on the scope and content of the EIR. The Commission also contacted 15 tribes to invite their participation in the scoping process. The Commission conducted a public scoping meeting on January 21, 2016 in Alpine, California. Scoping comments were received from four agencies, one organization, and five individuals. Several calls were conducted with the Viejas Band of Kumeyaay Indians, and members of the Viejas Band were present at the public scoping meeting to provide verbal comments.

The Commission issued the draft EIR and distributed a Notice of Availability to the public and public agencies on November 23, 2016, and conducted a public meeting on December 8, 2016. A 107-day comment period was held, which ended on March 11, 2017. The Commission received 12 comment letters (four from public agencies, two from community groups,

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<sup>29</sup> ORA Opening Brief at 1-3.

three from private companies and private organizations, and three from private individuals). In total, 221 pages of comments and 4,214 pages of appended or cited literature were provided in response to the draft EIR. The FEIR was posted to the CEQA review project website on January 31, 2018 at:

<http://www.cpuc.ca.gov/environment/info/horizonh2o/suncrest/index.html>.

The Final EIR documents and responds to all written and oral comments made on the draft EIR, as required by CEQA. As also required by CEQA, the FEIR examines the environmental impacts of the proposed project and a reasonable range of alternatives, including the No Project Alternative; it identifies their significant environmental impacts and the mitigation measures that will avoid or substantially lessen them; and it identifies the environmentally superior alternative pursuant to CEQA. Eight of the twelve alternatives identified in the EIR were dismissed from full consideration because they were speculative or would not have avoided or reduced an environmental impact, met most of the basic project objectives, or been feasible.

We have reviewed and considered the information contained in the FEIR. We find that substantial evidence supports the FEIR's findings, and we certify that the FEIR was completed in compliance with CEQA, that we have reviewed and considered the information contained in it, and that, with the revisions to the mitigation measures reflected in the Mitigation Monitoring and Reporting Plan (MMRP) attached to this order, it reflects our independent judgment.

In its comments on the DEIR, CURE challenged several conclusions about environmental impacts, as discussed in the following section, as well as the alternatives analysis. No other party challenged the adequacy of the FEIR/CEQA compliance.

The Assigned Commissioner's Scoping Ruling instructed parties to present evidence on CEQA issues during the course of the CEQA environmental review process in the form of comments.<sup>30</sup> The FEIR included such comments, including those from CURE, and responded to them. Nonetheless, CURE's additional statements submitted to this proceeding about significant environmental impacts, mitigation measures, and responses in the FEIR are further addressed below. CURE's additional statements do not identify substantial new evidence that the Proposed Project would have a significant adverse impact on the environment after implementation of the mitigation measures included in the MMRP attached to this Order and FEIR.<sup>31</sup>

## **9. Challenges to EIR Conclusions**

### **9.1. Allegations that the Project has Significant Environmental Impacts that the Final EIR Fails to Adequately Disclose and Mitigate**

In its Opening Brief, CURE argues that the Proposed Project continues to have several significant environmental impacts that the FEIR fails to adequately disclose and mitigate. These include alleged impacts to wildlife due to noise and vibration; impacts to groundwater quality due to Project construction blasting; and traffic impacts due to haul trips and noise caused by haul truck brake usage. Although many of these points were raised by CURE in their comments on the

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<sup>30</sup> Scoping Ruling at 7-8.

<sup>31</sup> See "Administrative Law Judge's Ruling Granting Motion of NextEra Energy Transmission West, LLC, to Strike Exhibits to and Related References in the Opening and Reply Briefs of California Unions for Reliable Energy," dated May 10, 2018. In this same ruling, among other things, the ALJ also denied CURE's April 19, 2018 Motion to Set Aside Submission to Reopen the Record to Take Additional Evidence.

draft EIR, and were responded to by CPUC in the FEIR, the CURE Opening Brief indicates that CURE is not satisfied with the FEIR's responses.

#### **9.1.1. Impacts to Wildlife Due to Noise and Vibration**

CURE claims that noise levels during Project construction and operation would substantially adversely affect wildlife species, including possibly resulting in mortality, reduced reproductive success, and long-term displacement from avian nursery sites. CURE claims the FEIR fails to provide any scientific evidence or analysis to support its conclusion that mitigation measures would reduce noise generated during construction of the Proposed Project to a level that would not cause substantial adverse biological effects.

Based on the expertise and scientific knowledge of CPUC and NEET West consultant biologists, implementation of proposed mitigation measures, including a construction-noise mitigation plan, pre-construction surveys for special-status species and nesting birds, and implementation of no-disturbance buffers in the event of positive finds during the surveys, would prevent substantial adverse effects on biological resources from construction noise.

#### **9.1.2. Impacts to Groundwater Quality Due to Project Construction Blasting**

CURE claims blasting would deposit nitrogen and nitrates into fractured rock, which may leach into local groundwater aquifers, causing a significant groundwater pollution impact. According to CURE, the FEIR fails to disclose the extent of blasting that would occur during Project construction, as well as the nature and extent of groundwater contaminants that would be released during blasting activities. Mitigation Measure HAZ-2, which the final EIR asserts will prevent significant impacts from blasting, fails to require any pre-construction evaluation of potential contaminants.



The FEIR describes the extent of blasting that could occur during Project construction as follows: “Based on the information obtained from soil borings performed near the corners of the proposed SVC site and results of the geotechnical investigation performed for the Proposed Project, NEET West anticipates that the SVC site can be excavated by conventional methods, although a minimal amount of hydraulic hammering or blasting may be required.”<sup>32</sup> NEET West asserts, and CPUC concurs, that the precise level of blasting cannot be ascertained prior to excavation. The FEIR reasons that water quality impacts from blasting are unlikely considering that blasting is a common construction method in California and groundwater contamination has generally not been attributed to this practice. Likewise, the Project site is not well-suited to groundwater infiltration, storage, and movement given its position high in the watershed in a dry area that is underlain by dense bedrock. Nevertheless, the FEIR revised the draft EIR Mitigation Measure HAZ-2 to include measures to further ensure that groundwater contamination would be prevented during blasting activities.

### **9.1.3. Traffic Impacts from Haul Trips and Noise from Haul Truck Brake Usage**

CURE claims project construction activities would generate greater numbers of haul truck trips than were disclosed in the draft EIR because the draft EIR analysis improperly assumed that truck trips would be spread out evenly over the entire construction period and did not account for “bulking” of excavated materials. While the FEIR revised its haul truck trip calculations and acknowledges the possibility of bulking, CURE argues the FEIR still

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<sup>32</sup> FEIR at 2-18.

underestimates the number of haul truck trips. CURE argues the Proposed Project would result in 218 haul truck trips per day, which would result in a significant impact. Additionally, due to the steep grades of the roads in the Project vicinity, CURE argues the haul trucks will be required to use loud “jake brakes” on downhill sections which would result in significant adverse noise effects.

The FEIR’s traffic analysis is adequate and appropriate. As noted above, the draft EIR traffic analysis was revised to assume that truck trips would occur during the active construction period, and to incorporate a worst-case scenario with respect to possible bulking. Haul truck trips generated by the Proposed Project during peak grading/excavation activities were conservatively estimated at 62 round trips per day, or, assuming maximum bulking, 112 round trips per day (if anything, these numbers may be over-estimates). Adding this number of trips to average daily traffic volumes on nearby roadways would not result in adverse effects on level of service. Construction traffic effects also would be minimized by Mitigation Measures TR-1, TR-2, and TR-3. Over the long-term, the Proposed Project would not add substantial vehicle trips or traffic to the area, as the new facility would be operated remotely and would typically be unmanned. The particular issue of haul trucks using “jake brakes” on steep grades and generating noise was not raised in the comments on the draft EIR, and therefore is not specifically addressed in the FEIR; however, such noise would be temporary, would not violate the County of San Diego’s Noise Ordinance, and would not be inconsistent with other construction projects in the region. In addition, Mitigation Measure NOI-1 requires the preparation of a Construction-Noise Mitigation Plan that must be approved by the Commission prior to the initiation of construction activities.

**9.2. Allegations that the Final EIR Fails to Require All Feasible Mitigation to Reduce the Project's Significant Environmental Impacts to Less than Significant Levels**

In a similar vein, CURE also argues that the FEIR fails to require all feasible mitigation to reduce the Proposed Project's significant environmental impacts to less than significant levels. Specifically, CURE argues, based on the testimony of its expert witnesses, that the Proposed Project may result in damage to local roads due to the heavy haul truck trips required for Project construction, and that the Project would result in habitat loss for special-status species. CURE argues that feasible mitigation measures exist for both of these alleged impacts, and that the final EIR is inadequate for not including such feasible measures.

**9.2.1. Mitigation for Damage to Roads from Construction Traffic**

CURE argues that heavy haul truck traffic generated during Project construction is likely to damage local roads. In CURE's opinion, the FEIR fails to require any mitigation to address damage to roads from the Project's heavy truck traffic and should include an assessment of the existing pavement condition of the public section of the Project's haul route, and incorporate an additional mitigation measure providing for repair of any damages done by Project trucks during the course of construction.

This issue was not raised in the comments on the draft EIR, and, therefore, is not addressed in the FEIR. CURE's claim that Project construction traffic will result in damage to roads is speculative. We do not anticipate such damage to occur.

### **9.2.2. Mitigation for Habitat Loss for Special-Status Mammals and Reptiles**

CURE claims the FEIR fails to require mitigation for habitat loss for special-status mammals and reptiles, which would occur as a result of the Proposed Project. Mitigation may include replacement habitat, but CURE argues the FEIR must first analyze potentially viable mitigation sites, and determine the appropriate mitigation ratios to reduce impacts from habitat loss to less than significant levels.

As described in the FEIR (*see* Response to Comment A-85), consultant biologists identified that the loss of potential habitat that may be utilized by special-status species will be less than significant based on the fact that no special-status species were observed during surveys conducted in the Project area, the Project footprint is small in relation to local and global ranges and populations of these species, and potential impacts would be minimized through implementation of mitigation measures.

In summary, in response to the environmental inadequacy arguments raised by CURE, we decline to contradict the findings in the FEIR. CURE had the opportunity to be heard regarding environmental impacts throughout the EIR process.

## **10. Infeasibility of Environmentally Superior Alternative**

The FEIR acknowledges that a finding of infeasibility is not required to approve the Proposed Project rather than the environmentally superior alternative. As it explains: “As described further in Master Response 2, the Draft EIR concluded that the Proposed Project would have no significant and unavoidable impacts (*i.e.*, all potentially significant impacts could be mitigated

to levels that are less than significant); therefore, CEQA does not obligate the CPUC to choose the Suncrest Substation Alternative.”<sup>33</sup>

NEET West agrees with this finding and asserts, “[w]here an EIR finds that identified mitigation measures will reduce all environmental impacts of a proposed project below the level of significances, the law is clear that no analysis of alternatives is warranted, including with respect to feasibility.”<sup>34</sup> It further points out that “notwithstanding the Final EIR’s identification of two alternatives as environmentally preferable (the No Project Alternative and the Suncrest Substation Alternative), [footnote omitted] the Commission is not required to consider such alternatives or their feasibility in their final decision.”<sup>35</sup> It points out that the Commission has applied this rule. In Decision (D.) 13-10-025 *Decision Granting San Diego Gas & Electric Company a Permit to Construct the South Bay Substation Relocation Project*, the Commission considered an application by SDG&E to build a new substation. The EIR ranked equally the proposed project and a project alternative that would have utilized the existing substation site.

As NEET West points out, the Commission disagreed with this ranking because the proposed project’s impacts could be avoided or mitigated to less than significant. However, the Commission concluded that this disagreement is immaterial: “Pursuant to CEQA Guidelines § 15092(b), an agency may approve a project for which an EIR was prepared if the project as approved will not have a significant impact on the environment. If the Commission requires the EIR’s identified mitigation measures for the Proposed Project – and we do, as

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<sup>33</sup> FEIR, Vol. 3 at 3-173 (Response to Comment A-12).

<sup>34</sup> NEET West Opening Brief at 30.

<sup>35</sup> NEET West Opening Brief at 30.

discussed below – we need not consider whether project alternatives are environmentally superior to the Proposed Project. (*See, e.g., Rio Vista Farm Bureau Center v. County of Solano*, 7 Cal.Rptr.2d 307, 379, (1992))”<sup>36</sup>

Although not legally required for the above stated reasons, NEET West contends that the record supports a finding that the Suncrest Substation Alternative is infeasible. According to CEQA guidelines “feasible” is “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.”<sup>37</sup> CEQA guidelines also specify that lead agencies should consider “site suitability,” “availability of infrastructure,” and “whether the proponent can reasonably acquire, control, or otherwise have access to the alternative site (or the site is already owned by the proponent.)”<sup>38</sup> NEET West contends that the Substation Substation Alternative, is infeasible because:

- 1) there is no location available to NEET West to install its SVC Facility inside the Suncrest Substation; 2) attempting to force SDG&E to create space for NEET West SVC Facility would delay the start of construction due to potential for litigation and an extended condemnation process; 3) requiring the Suncrest [Substation] Alternative would result in loss of the benefit of the binding construction cap agreed to by NEET West, likely resulting in higher costs to ratepayers; and
- 4) requiring the Suncrest [Substation] Alternative could result in the termination of the APSA under the terms of the CAISO Tariff, which could increase costs to ratepayers if SDG&E is allowed to take over the project, and undermine the goals of

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<sup>36</sup> D.13-10-025 at 15-16.

<sup>37</sup> Pub. Resources Code § 21061.1; CEQA Guidelines, 14 Cal. Code Regs. § 15364.

<sup>38</sup> NEET West Opening Brief at 38 citing CEQA Guidelines, 14 Cal. Code Regs § 15126.6(f)(1).

the CAISO's competitive solicitation process and FERC Order 1000. [footnote omitted]<sup>39</sup>

On the other hand, ORA believes that the environmentally superior alternative is technologically, legally, and economically feasible. ORA argues that the Commission should direct NEET West to require SDG&E to cooperate with NEET West and convey the necessary property and legal rights to NEET West despite many obstacles. ORA cites the Commission authority under Pub. Util. Code §§ 762 and 762.5 to order additions, extensions, and upgrades to the Suncrest Station. It believes that the APSA does not require the CAISO to terminate NEET West's Project if the Commission approves the environmentally superior alternative. ORA recommends that "the Commission should first approve the Project by NEET West, but delay it" so that the CAISO does not find fault with NEET West for any failure to achieve key project development and implementation milestones.<sup>40</sup>

As to the first point, NEET West emphasizes that throughout the proceeding, SDG&E has maintained its refusal to cooperate with NEET West. According to NEET West, SDG&E consistently maintains that there is insufficient space available at the Suncrest Substation for a NEET West Facility, it is not feasible to expand the Suncrest Substation footprint, and SDG&E is not willing to voluntarily convey any real property interests to NEET West for the NEET West Facility, control building or related equipment.<sup>41</sup>

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<sup>39</sup> NEET West Opening Brief at 34-35.

<sup>40</sup> ORA Opening Brief at 13-14.

<sup>41</sup> NEET West Opening Brief 36-39.

As to the second point, NEET West argues that even if ORA's proposal could be implemented, it is likely to result in substantial delay in meeting the CAISO's identified need for the dynamic support project. SDG&E contends that NEET West must initiate a condemnation proceeding in Superior Court to acquire a portion of the Suncrest Substation site using NEET West's power of eminent domain. According to NEET West Witness Kevin Brogan, "estimates that any condemnation action by NEET West to acquire real property rights within the Suncrest Substation would take approximately three to four years from initiation to final judgment" including time allowances for appeals by either side.<sup>42</sup> In response to this claim, ORA claims that the Commission has authority to require SDG&E to convey real property interests to NEET West and thereby obviate the need for condemnation action.<sup>43</sup> However, NEET West asserts that there are no assurances that SDG&E would accept this action and any potential legal challenge could result in a separate basis for delay.

According to NEET West, such delays could have a broader impact on policy-driven projects over time and may put a damper on the confidence of generation developers attempting to move projects forward so that they get the transmission service they need when they come on line. NEET West points out that the Commission has previously considered environmentally superior alternative projects as "infeasible" due to delay based on an extended construction schedule or potential eminent domain proceedings.<sup>44</sup>

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<sup>42</sup> NEET West Opening Brief at 40 citing Exh. NEET West-5 (Brogan Testimony) at 9:8-10 and 9:11-14.

<sup>43</sup> NEET West Opening Brief at 41 citing Exh. ORA-1 (Mee Opening Testimony) at 16:22-24.

<sup>44</sup> NEET West Opening Brief at 42-43 citing D.13-09-004 and D.11-07-011.



As to the fourth point, according to NEET West, requiring NEET West to build the Suncrest Substation Alternative could result in the termination of NEET West as the project sponsor under the APSA. As a result, NEET West asserts that “[e]limination of NEET West as the project sponsor would increase costs to ratepayers. SDG&E’s proposed project was more expensive than NEET West’s Proposed Project when the two were bid into the CAISO solicitation process.”<sup>45</sup> CAISO Witness Neil Millar states, “[i]n addition, any SDG&E built project would not only include SDG&E’s unlimited costs, but also NEET West’s prudently incurred costs to develop the Proposed Project.”<sup>46</sup>

According to NEET West, eliminating NEET West as the project sponsor under the APSA would negate the benefits of the CAISO competitive process: “Under FERC Order 1000 reforms, a competitive process is required to identify and select a more cost-effective solution than would be available if incumbent utilities retained a right of first refusal to build all transmission upgrades.”<sup>47</sup> According to NEET West, if the Commission chose the Suncrest Substation Alternative, the benefits of a lower cost project would be lost, with the result that the incumbent utility would build a project at a total cost that would include its higher costs (without any meaningful cost containment) and the NEET West abandoned plant costs that are approved by FERC. According to NEET West,

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<sup>45</sup> NEET West Opening Brief at 47-48 citing Exh. NEET West-13 (Sheehan Rebuttal Testimony) at 10: 10-11.

<sup>46</sup> NEET West Opening Brief at 48. Such costs would be recoverable through NEET West’s FERC rates as abandoned plant costs.

<sup>47</sup> NEET West Opening Brief at 49.

“[t]his result would be at odds with the goals of the CAISO’s competitive process and FERC Order 1000.”<sup>48</sup>

As to the fourth point, NEET West could not feasibly construct the project inside the Suncrest Substation for the binding construction cap in the APSA. NEET West did not provide a binding cost estimate for a project built inside the Suncrest Substation. If the Commission approved the Suncrest Substation Alternative, the binding construction cap in the APSA would not apply; and under the terms of the APSA, the costs of the Suncrest Substation Alternative would be subject to adjustment. According to NEET West, requiring the Suncrest Substation Alternative would add significant costs, and could exceed the amount of the binding cost cap.<sup>49</sup> According to NEET West Witness Mayers, “at this time, there is too much uncertainty regarding the additional costs that NEET West would have to incur under the Suncrest Substation Alternative to develop an estimate of those additional costs.”<sup>50</sup>

NEET West notes that the incumbent utility SDG&E has not demonstrated a willingness to work together to co-locate facilities or to enter into coordination agreements. NEET West asserts, “[i]f, however, the Commission decides to require NEET West to build its Suncrest Alternative, then the Commission should order and require SDG&E to cooperate with NEET West and convey the

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<sup>48</sup> NEET West Opening Brief at 50.

<sup>49</sup> NEET West Opening Brief at 44.

<sup>50</sup> NEET West Opening Brief at 46 citing Exh. NEET West-14 (Mayers Rebuttal Testimony) at 17:16-18.

necessary property interests to NEET West, in order to facilitate construction of the Suncrest Substation Alternative.”<sup>51</sup>

CAISO acknowledges that the Suncrest Substation Alternative is the environmentally superior alternative. However, it agrees with NEET West and asserts that evidence produced during the course of the proceeding demonstrates that the Suncrest Substation Alternative is infeasible based on both legal and policy grounds:

Legally, the Suncrest [Substation] Alternative would violate the CAISO tariff and FERC precedent because it would require a third party (NEET West) to build the SVC as an upgrade to an existing transmission owner’s substation. In addition, siting the SVC within existing Suncrest Substation would jeopardize NEET West’s ability to complete the project because it would be required to obtain property rights through a condemnation process. Such an arrangement would violate the CAISO tariff and jeopardize NEET West’s ability to complete the project, likely leading to termination of NEET West’s Approved Project Sponsor Agreement (APSA) to build the Proposed Project.<sup>52</sup>

From a policy standpoint, the Suncrest Substation Alternative is infeasible because approving such an alternative could significantly decrease the number of future CAISO-approved transmission projects that are subject to the competitive solicitation process, thereby frustrating the joint Commission and CAISO goal to have a competitive transmission process that provides a “substantial, transparent, predictable, and

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<sup>51</sup> NEET West Opening Brief at 52.

<sup>52</sup> CAISO Opening Brief at 2-3.

verifiable role for cost containment” for transmission projects.<sup>53</sup>

The CAISO acknowledges “the Commission maintains siting authority over transmission facilities, but the Commission should not exercise that authority in a manner that directly contradicts the regulatory framework.”<sup>54</sup> It believes that there is no compelling reason to upset the existing regulatory framework and or jeopardize the CAISO competitive solicitation process, especially when there are no significant and unavoidable environmental impacts associated with the Proposed Project. Because the Proposed Project is justified on a policy driven basis does not mean that project delays are acceptable. The CAISO notes “that the deliverability of renewable projects with summer 2019 in-service dates would be impacted if the Proposed Project is not in place by that time.”<sup>55</sup>

As the FEIR acknowledges, in this decision, we acknowledge that a finding of infeasibility of the environmentally superior alternative is not required to approve the Proposed Project where an EIR finds that identified mitigation measures will reduce all environmental impacts of a proposed project to less than significant levels. In this decision, we agree with ORA that nothing prohibits the Commission from considering and choosing the environmentally superior alternative if it considers this option feasible.

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<sup>53</sup> CAISO Opening Brief at 3 citing Exh. CAISO-2 at 14 (citing the Commission’s comments in Docket No. ER 13-103, which established the competitive solicitation process in the CAISO tariff.)

<sup>54</sup> CAISO Opening Brief at 8.

<sup>55</sup> CAISO Reply Brief at 7.

However, although not required pursuant to CEQA in this case, we find that the environmentally superior alternative is infeasible because of the extensive amount of time it would likely take to resolve the expected legal challenges (e.g., exercise of eminent domain) before construction could commence and policy and other grounds identified by the CAISO and NEET West above. The Suncrest Substation Alternative violates the CAISO Tariff and would differ from FERC precedent because it would require a third party to build the Proposed Project as an upgrade to an existing transmission owner's substation. Critically, implementing the Alternative is expected to involve extensive condemnation proceedings due to SDG&E's unwillingness to cooperate, and this would jeopardize the completion of project and fulfillment of terms of the APSA. As NEET West points out, the record in this proceeding demonstrates that the Suncrest Substation Alternative is not feasible primarily due to delay in meeting project objectives but also due to lack of construction space and site control, potential cost increases, and potentially adverse policy consequences from business uncertainty and resulting jeopardization of future CAISO-approved transmission projects subject to the competitive solicitation process.

Further, we see no reason to contribute to further delay of the project through a Commission mandated order to show cause process that would require SDG&E to explain why the Suncrest Substation Alternative should not be built, explain its refusal to cooperate with NEET West and/or provide revised cost estimates for a Suncrest Substation Alternative that NEET West would build. As confirmed repeatedly in this proceeding, SDG&E is not the applicant and SDG&E's costs to build the project are not relevant. There is no evidence to suggest that such a mediation and order to show cause process would be

productive. Because the Proposed Project does not involve significant environmental impacts, there is no compelling reason to initiate a new proceeding for this purpose and/or create a precedent that could undermine the existing FERC Order 1000 regulatory framework and the CAISO competitive transmission solicitation process.

#### **11. Overriding Considerations**

Pursuant to CEQA Guidelines § 15093, the Commission may only approve a project that results in significant and unavoidable impacts if it finds that there are benefits to the project that outweigh the unavoidable adverse environmental impacts and makes a statement of overriding considerations to that effect. The Proposed Project would not result in any impacts that cannot be avoided or reduced to less than significant. Therefore, we need not state overriding considerations in order to approve the Proposed Project.

#### **12. Electric and Magnetic Fields**

The Commission has examined EMF impacts in several previous proceedings, concluding that the scientific evidence presented in those proceedings was uncertain as to the possible health effects of EMFs.<sup>56</sup> Therefore, the Commission has not found it appropriate to adopt any related numerical standards. Because there is no agreement among scientists that exposure to EMF creates any potential health risk, and because CEQA does not define or adopt any standards to address the potential health risk impacts of possible exposure to EMFs, the Commission does not consider magnetic fields in the context of CEQA and the determination of environmental impacts.

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<sup>56</sup> See D. 06-01-042 and D.93-11-013.

Notwithstanding the Commission's EMF policy to exempt the Proposed Project from consideration of any EMF mitigation,<sup>57</sup> NEET West opted voluntarily to consider several low-cost EMF mitigation measures in designing the proposed project:

- Location of high-current devices such as transformers, capacitors, and reactors near the center of the facility to the extent practicable;
- Location of fencing to maximize distance between the EMF generating equipment and the property fence to the extent practicable; and
- Arrangement of the 230 kV transmission line in a triangular configuration, and installation of the transmission line at a minimum of 36 inches below grade where practicable (though in-ground obstacles along the route of cables may require a flat configuration.)<sup>58</sup>

Although the Proposed Project is sited on and exclusively adjacent to undeveloped land, and is exempt from the requirement for consideration of EMF mitigation, NEET West voluntarily considered and adopted several EMF mitigation measures. We conclude that NEET West's MFMP (Magnetic Field Management Plan) is in compliance with the Commission's EMF low-cost/no-cost measures.

### **13. Maximum Cost Cap for the Proposed Project**

Pub. Util. Code § 1005.5(a) requires that, whenever the Commission grants a certificate to construct an addition to an electrical corporations' plant estimated to cost greater than \$50 million, the Commission can specify a maximum

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<sup>57</sup> See D.06-01-042 ("EMF Guidelines") at 20, Finding of Fact No. 18.

<sup>58</sup> NEET West Opening Brief at 57-58 citing Exh. NEET West-6, Appendix G at G-9.

reasonable and prudent cost for the facility. In this case, however, Pub. Util. Code 1005.5(a) does not apply to the Proposed Project because the Proposed Project is expected to cost less than \$50 million statutory threshold. According to NEET West, “[t]he APSA includes a binding construction cost cap for the Proposed Project of \$42,288,000 (in 2015 dollars).”<sup>59</sup> NEET West states that the APSA allows the maximum cost cap to be exceeded in specific circumstances, but even if one adjusts for inflation, it is unlikely that costs would exceed the \$50 million.

As stated above, it is not necessary for the Commission to adopt a cost cap. However, if the Commission decides to adopt one, “NEET West requests that it be established at \$49 million to allow a contingency amount above NEET West’s binding construction cap.”<sup>60</sup> NEET West explains that the \$42.8 million binding construction cap does not include the impact of inflation, escalation, or additional project costs such as interconnection costs. NEET West contends that “the Commission has approved contingency amounts in the 15 percent range as reasonable.”<sup>61</sup> NEET West observes that establishing the maximum cost for the Proposed Project at \$49 million would allow an incremental amount of \$6,712,000, or 15.87 percent above the amount of the binding construction cap.

NEET West emphasizes that it does not aim to increase its binding construction cap above what is included in the APSA. FERC, under the jurisdiction of the Federal Power Act, would need to approve any amount less than or in excess of the binding maximum cost cap. NEET West seeks a

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<sup>59</sup> NEET West Opening Brief at 59.

<sup>60</sup> NEET West Opening Brief at 60.

<sup>61</sup> NEET West Opening Brief at 60.



contingency fund above the maximum cost cap to avoid the need to seek further authorization from the Commission should its actual costs exceed \$42.8 million. If for some reason its construction costs exceed the construction cap in the APSA, as approved by the Federal Regulatory Commission (FERC), then NEET West seeks permission to file an advice letter to obtain approval for an increase in the cap.

According to ORA, “[i]f the Commission approves the Proposed Project, the Commission should approve \$49 million as the maximum prudent and reasonable cost of the project.”<sup>62</sup> ORA also notes that no party could make an accurate estimate of costs for the environmentally superior alternative because SDG&E would not provide the information needed to do so.

CURE is concerned that “there are a number of factors that are likely to lead to increased Project costs that exceed the cost cap and are likely to flow to ratepayers.”<sup>63</sup> First, it points out that NEET West’s original proposal was based on the use of an overhead transmission line to connect the SVC Facility to the Suncrest Substation. However, after receiving some objections to this plan, NEET West developed an underground option, which may add up to \$5 million more to the cost of the project and use up a considerable amount of contingency funds. Second, CURE observes that interconnection costs and incremental operations and maintenance (O & M) costs for the needed coordination between SDG&E and NEET West will ultimately flow to ratepayers through the TAC. CURE observes that the APSA allows the cap to be exceeded for costs attributed to regulatory requirements. Third, CURE claims that NEET West has made no

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<sup>62</sup> ORA Opening Brief at 7.

<sup>63</sup> CURE Opening Brief at 22.

commitment regarding cost increases attributable to prevailing wages. Fourth, CURE complains that NEET West is not utilizing “new technology” that could be installed at the existing substation that would supposedly be cheaper and result in cost savings to ratepayers. Last, CURE believes that NEET West’s reliance on its affiliates to support the project does not assure that NEET West would be adequately capitalized to address the need of the project.<sup>64</sup>

In response to CURE’s claim that NEET West has failed to meet its burden to demonstrate the maximum reasonable cost of the Proposed Project, NEET West asserts that CURE’s argument is contrary to applicable law (e.g., Pub. Util. Code 1005(a)). A statutory requirement for adopting a maximum reasonable and prudent cost does not apply to the Proposed Project since it is not expected to cost more than \$50 million. NEET West acknowledges that it has agreed to install a more expensive one-mile underground transmission line instead of an overhead transmission line. However, despite this change in the project specifications, ratepayers are still protected from unanticipated increases in construction costs since NEET West bears the burden of resulting construction increases above the cap. NEET West also points out that CURE failed to mention NEET West rebuttal testimony in which NEET West makes the commitment to prevailing wages. NEET West sees no compelling reason to switch to a “hybrid” SVC technology because the Proposed Project uses a proven and effective SVC technology that meets the CAISO’s identified need and functional specifications. Finally, NEET West argues that NEET West’s access to significant resources and economies of scale across the NextEra family of companies will enable it to deliver the Proposed Project in a “safe, timely, and cost-effective” manner.

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<sup>64</sup> CURE Opening Brief at 41.

Even though the statute doesn't require it, in this decision, it is reasonable to establish a maximum cost cap of \$49 million that includes a 15.87 % contingency reserve to allow for the impact of inflation (which the APSA specifically contemplates), and to allow for potential additional project costs that are not directly included in NEET West's construction cap, such as interconnection costs. It does not make sense to force NEET West to adopt new technology options when it had already considered using a "hybrid" SVC, and determined that the hybrid SVC would cost more than the technology that NEET West selected for its Proposed Project.<sup>65</sup>

**14. Adherence with Federal, State, and Commission's Rules, Regulations, and Other Applicable Standards**

According to NEET West, "[t]he testimony shows that NEET West's Proposed Project will conform to applicable rules, regulations, and standard governing safety, reliability, and competition."<sup>66</sup> According to NEET West Witness Daniel Mayers, "NEET West has designed its overhead and underground transmission line facilities according to General Order 95 and General Order 128, CAISO functional specifications, Institute of Electrical and Electronic Engineers guidelines, American National Standards Institute standards, NERC standards, the National Electric Safety Code (NESC), and prudent utility practice."<sup>67</sup> According to NEET West Witness Michael Lannon, "the Proposed Project will be operated and maintained in compliance with applicable Commission and FERC rules and regulations, as well as applicable

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<sup>65</sup> NEET West Reply Brief at 32 citing Opening Brief at 29, citing Exh. NEET West-2 (Mayers Opening Testimony) at 9:16 through 10:21.

<sup>66</sup> NEET West Opening Brief at 66.

<sup>67</sup> NEET West Opening Brief at 67.

NERC reliability standards; WECC requirements; CAISO reliability criteria; health, safety, environmental, and fire protection requirements; codes such as NESC; and OSHA [Occupational Safety and Health Administration] regulations.”<sup>68</sup>

Based on the Applicants’ testimony and briefs, we are persuaded that the Proposed Project comports with applicable rules, regulations, and standards governing safety, reliability, and competition.

**15. Requested Exemptions from Certain Affiliate Transaction Rules and Reporting Requirements**

According to its Application, “NEET West intends to utilize resources and facilities within the NEET and NextEra corporate organization to facilitate the efficient and cost effective financing, development, construction, ownership, operation, and maintenance of the Suncrest SVC Project.”<sup>69</sup> Therefore, as part of its Application, NEET West requests that the Commission grant exemptions from certain affiliate transaction rules that apply to public utilities generally in order for the Proposed Project to benefit from expertise of NEET West affiliates.<sup>70</sup> (*See* D.98-08-035 and D.98-12-075, sometimes referred to as “Original Rules.”)

More specifically, following is a list of proposed NEET West exemptions:

Section V.C.:

A utility shall not share office space, office equipment, services, and systems with its affiliates, nor shall a utility

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<sup>68</sup> NEET West Opening Brief at 68.

<sup>69</sup> NEET West Application at 26. *See* NEET West Opening Brief at 70-71 that describes the proposed reliance on the following NEET West Affiliates: Lone Star Transmission, LLC; NextEra Energy Resources, LLC; NextEra Energy Transmission LLC; and Florida Power & Light.

<sup>70</sup> NEET West Application at 27.

access the computer or information systems of its affiliates or allow its affiliates to access its computer or information systems.

Section V.E.: This section allows joint corporate oversight, governance, support systems, and personnel, but restricts transfer of confidential information and cross subsidization as follows:

As a general principle, a utility, its parent holding company, or a separate affiliate created solely to perform corporate support services may share with its affiliates joint corporate oversight, governance, support systems and personnel. [...] As a general principle, such joint utilization shall not allow or provide a means for the transfer of confidential information from the utility to the affiliate, create the opportunity for preferential treatment or unfair competitive advantage, lead to customer confusion, or create significant opportunities for cross-subsidization of affiliates.<sup>71</sup>

Section V.E. identifies certain services, such as engineering and operations that cannot be shared, (for which NEET West seeks an exemption) and other activities that can be shared including “payroll taxes, shareholder services, insurance, financial reporting, financial planning and analysis, corporate accounting, corporate security, human resources (compensation, benefits, employment policies), employee records, regulatory affairs, lobbying, legal, and pension management.”<sup>72</sup>

Section V.G.:

[A] utility and its affiliates shall not jointly employ the same employees. This Rule prohibiting joint employees also applies to Board Directors and corporate officers, except for the

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<sup>71</sup> NEET West Opening Brief at 72.

<sup>72</sup> NEET West Opening Brief at 73, Footnote 273.

following circumstances: In instances when this Rule is applicable to holding companies, any board member or corporate officer may serve on the holding company and with either the utility or affiliate (but not both)...<sup>73</sup>

NEET West contends that granting these requested exemptions would not undermine the objectives of the Original Rules. According to NEET West, the primary goals of D.97-12-088 (at 9) were to: 1) foster competition; and 2) protect consumer interests. The first goal has already been addressed through the CAISO competitive process in which NEET West was chosen as the approved project sponsor for the Suncrest SVC Project given the following terms: cost recovery is subject to FERC regulation, and cost containment is a critical element of the APSA agreement. Although the Proposed Project will be constructed within the SDG&E territory, "NEET West will not compete with any other utilities, corporations, persons, or entities in connection with the Suncrest SVC Project, and the Suncrest SVC Project will be used by all users of the CAISO-controlled transmission system."<sup>74</sup>

According to NEET West, the second goal regarding protecting consumer interests is also addressed since NEET West will not have any retail customers in California (and therefore will not have access to customer-specific information that could be shared with affiliates), and the CAISO TAC through which it will exclusively recover its costs will be regulated by FERC. The existence of cost containment provisions as discussed above and the type of utility service NEET West will be providing (e.g., improved grid reliability for all users of the CAISO-controlled transmission system) ensure that there is no risk of NEET

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<sup>73</sup> NEET West Application at 28.

<sup>74</sup> NEET West Application at 29.

West exercising market power to the detriment of consumers. NEET West will need to comply with FERC's standards of conduct for transmission facilities.

NEET West also requests exemptions from specific reporting requirements including General Order 65-A, General Order 77-K, and General Order 104-A. NEET West believes that adhering to these certain reporting requirements are not necessary for a public utility that is subject to i) rate regulation by FERC, and (ii) very strict restrictions on the costs that may be recovered in its TAC.

General Order 65-A requires submission of "each financial statement prepared in the normal course of business" and the annual report and other financial statements issued to stockholders...<sup>75</sup>

According to NEET West, "[b]ecause the Commission is not performing a ratemaking function with regard to NEET West, the objectives of Order 65-A are not applicable in this case."<sup>76</sup>

General Order 77-K [now 77-M] requires submission of data on the compensation of officers and employees, dues and donations, and legal fees...<sup>77</sup>

According to NEET West, this information may be useful but is not warranted because the costs associated with the Suncrest SVC Project will be recovered only through the TAC that is subject to FERC approval. Furthermore, strict cost containment provisions contained in the APSA do not permit NEET West to incorporate "improperly incurred costs" into the TAC.

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<sup>75</sup> NEET West Application at 31.

<sup>76</sup> NEET West Application at 31.

<sup>77</sup> NEET West Application at 31.

General Order 104-A requires the filing of an annual report, and the form supplied by the Commission's Energy Division requires information that complements the regulation of cost-based rates by the Commission, such as information on income statements, sales to residential customers (of which NEET West has none), and similar topics...<sup>78</sup>

According to NEET West, "NEET West will provide annual reports and financial information to FERC and this information will be publicly available through FERC processes."<sup>79</sup> Therefore, NEET West does not think that this duplicate reporting is necessary and requests an exemption.<sup>80</sup> NEET West points out that Wild Goose Storage, Inc. (Wild Goose) was granted similar exemptions in a case in which it operated under a regime of market-based rather than cost of service ratemaking.<sup>81</sup>

NEET West also requests a limited exemption from affiliate reporting requirements under Pub. Util. Code § 587 as implemented in D.93-02-019. Apparently, NEET West has no issues with providing information that relates to shared resources between NEET West and its affiliates. However, it requests an exemption that requires information regarding NEET West's affiliates with which it does not share resources.

In response to the proposed exemptions, CURE claims that "NEET West's request is not only contrary to long-standing Commission policies and rules, but

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<sup>78</sup> NEET West Application at 31.

<sup>79</sup> NEET West Application at 31-32 citing D.00-12-030, 2000 WL 33114534 (2000). Also *see* NEET West Opening Briefs at 80-81 for additional cites to other decisions.

<sup>80</sup> In response to data requests from ORA, NEET West provided a lengthy table comparing in detail the requirements of the Commission's Affiliate Reporting Requirements and General Order 104-A with the requirements of FERC Form 1. See NEET West Opening Brief at 78-79.

<sup>81</sup> See D.00-05-048 at 64-66 that exempts Lodi Gas Storage from Affiliate Transaction Rules.



is not narrowly limited, would not promote the goals of the Rules, and is not in the public interest. NEET West's request for a waiver should be denied."<sup>82</sup>

CURE emphasizes that the Rules are designed so that utility affiliates do not gain unfair advantage over other market players and to ensure that ratepayers are not subsidizing unregulated activities. CURE also questions NEET West's reliance on its affiliates because there would be no assurances that NEET West would be adequately capitalized to address the changing needs of its projects.

ORA does not believe that the Commission should exempt NEET West or its affiliates from reporting requirements: "At a minimum, the reporting requirements should apply to NEET West and to those affiliates that NEET West could interact with in order to construct and operate the project."<sup>83</sup> It further opines that "[t]o the extent that any information is similar to reports required by FERC, those same documents could be used to meet Commission reporting requirements."<sup>84</sup>

In this decision, we agree with NEET West that exemptions from the subject affiliate transaction rules V.C., V.E., and V.G. are justified since NEET West will not have any retail customers in California; the Proposed Project resulted from a CAISO solicitation that protects consumer interests by fostering competition, and thus lowering costs, for transmission projects than what would emerge if only incumbent utilities had a right to construct new transmission resources; and there is no apparent risk of cross-subsidization of costs across NEET West Operations in California. Nor is there a risk of customer confusion,

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<sup>82</sup> CURE Opening Brief at 28.

<sup>83</sup> ORA Opening Brief at 7.

<sup>84</sup> ORA Opening Brief at 8.

or privacy violations that the Affiliate Transaction Rules were designed to address. With keen oversight provided by FERC, there is no evidence of the potential for exercise of market power to the detriment of consumers or predatory pricing.

However, exemptions from the affiliate transaction rules in this proceeding do not guarantee that such waivers for other similarly structured and approved transmission projects in California as each request for waiver must be individually considered in the appropriate proceeding. In other words, if this Application were approved, NEET West does not have automatic authority to utilize any waivers authorized in this proceeding to apply to subsequently approved transmission projects in California. In this regard, we agree with CURE that if NEET West were granted utility status in the proceeding, it would be subject to the Affiliate Rules unless waived.

In this decision, we also agree with NEET West that these reporting requirements are also not warranted because the costs are recovered through the TAC, which is regulated by FERC; the APSA includes a strict cap on costs that can be recovered through the TAC; NEET West does not serve retail customers in California so is not in direct competition with the incumbent utility; and NEET West does not have market power or ability to exercise predatory pricing for use of its facilities.

Based on the above analysis, NEET West shall be granted an exemption from Sections V.C., V.E., and V.G. of the affiliate transaction rules specified in D.97-12-088, D.98-08-035, and D.98-12-075 (Affiliate Transaction Rules) so that NEET West may utilize and share resources with its affiliates. NEET West shall be granted an exemption from the Commission's reporting requirements in General Orders 65-A, 77-M, and 104-A. NEET West shall be granted a limited

exemption from the affiliate reporting requirements under Pub. Util. Code § 587 and D.93-02-019 (“Affiliate Reporting Requirements”), except that NEET West shall provide the information listed in the Affiliate Reporting Requirements relating to those affiliates with which NEET West shares resources. Upon request, NEET West shall provide the Commission Staff and ORA with a copy of its FERC Form 1, which will facilitate providing the Commission with the vast majority of the relevant reporting information.

## **16. Conclusion**

NEET West is granted a CPCN to build the Proposed Project, with mitigations identified in the Mitigation Monitoring and Reporting Plan, which is attached to this order as Attachment 1. Based on the policy-driven need to meet the RPS, improved deliverability of renewable generation in the southern California region, and additional reliability benefits to the southern California grid, the Proposed Project serves a public convenience and necessity. The Commission is the lead agency for environmental review, and we find that the EIR for this project meets the requirements of the California Environmental Quality Act. We also conclude that NEET West’s MFMP is in compliance with the Commission’s EMF low-cost/no-cost measures. Furthermore, although CEQA does not require the Commission to consider alternatives or make a finding of infeasibility of the environmentally superior alternative in this case, we conclude that the environmentally superior alternative identified in the FEIR is infeasible for the reasons detailed above. We also conclude that the Commission should approve the Proposed Project to ensure that it is timely constructed to provide the intended policy benefits.

## **17. Comments on Proposed Decision**

The proposed decision of the ALJ in this matter was mailed to the parties in accordance with § 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. NEET West, CAISO, CURE, and ORA filed comments on the proposed decision on August 28, 2018. NEET West, CAISO, and CURE filed reply comments on the proposed decision on September 4, 2018.

In response to comments, the ALJ revised the proposed decision to correct inadvertent errors.

## **18. Assignment of Proceeding**

Liane M. Randolph is the assigned Commissioner and Colette E. Kersten is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. The Proposed Project is needed to facilitate compliance with the RPS by allowing deliverability of renewable electricity generating capacity from the Imperial Valley area.
2. The Proposed Project provides reliability benefits.
3. The Proposed Project originated in the CAISO's 2013-2014 Transmission Plan, when the CAISO identified a policy-based need for a 300 Mvar dynamic reactive power support device connected to the Suncrest Substation 230 kV bus.
4. As confirmed in the FEIR, the proposed project would not have any significant environmental impacts that cannot be mitigated to a less-than-significant level with the mitigation measures identified in the MMRP.
5. Because all impacts of the Proposed Project will be reduced to less than significant levels, CEQA does not require the Commission to consider project

alternatives or make a finding of overriding considerations before approving the Project.

6. The CAISO selected NEET West as the approved project sponsor in a competitive solicitation in which SDG&E submitted a competing bid.

7. After evaluating the bids, the CAISO selected NEET West as the winning project sponsor, due primarily to NEET West's cost proposal, which included a binding construction cost cap and robust cost containment measures limiting the amount for which NEET West will seek recovery.

8. Cost and other features are memorialized in the APSA executed by NEET West and the CAISO.

9. Costs of the Proposed Project will be recovered solely through transmission rates as part of the CAISO's TAC, following approval by the FERC.

10. The record supports a finding that the Suncrest Substation Alternative is infeasible: The Suncrest Substation Alternative would require NEET West to build its SVC Facility at the site of the Suncrest Substation owned by SDG&E. SDG&E suggests that there is no location available at the Substation for a NEET West-owned SVC Facility and will not voluntarily convey property interests to NEET West without time consuming and expensive eminent domain proceedings.

11. The environmentally superior alternative, Suncrest Substation Alternative, if implemented, would have adverse consequences, including delay and potential jeopardization of the CAISO's competitive bidding process in future CAISO annual transmission planning cycles.

12. The mitigation measures in the MMRP in Appendix L in the FEIR are required, with the edits identified for Mitigation Measures BIO-6, BIO-10 on pages 7-43, 7-46, and 7-47; and BIO-12 of the FEIR.

13. The Proposed Project and its identified mitigation measures in the MMRP are feasible.

14. In accordance with Pub. Util. Code 1002(a), the Commission has considered, as a basis for granting the CPCN, community values, recreational and park areas, historical and aesthetic values, and influence on the environment, and confirms that the Proposed Project will not have any significant adverse effects in these areas after mitigation.

15. Although the Proposed Project is sited on and exclusively adjacent to undeveloped land, and is exempt from the requirement for consideration of EMF mitigation, NEET West voluntarily considered and adopted several EMF mitigation measures.

16. The Proposed Project is designed in accordance with the Commission's requirements regarding electromagnetic fields.

17. The Proposed Project comports with applicable rules, regulations, and standards governing safety, reliability, and competition.

18. The Commission has reviewed and considered the information contained in the FEIR.

### **Conclusions of Law**

1. The proposed project serves a present and public convenience and necessity as a public policy-driven upgrade to the CAISO controlled transmission system.

2. The FEIR, with revisions to the MMRP, was completed in compliance with CEQA, and it reflects the Commission's independent judgment and analysis on all material matters.

3. As we require the FEIR's identified mitigation measures for the Proposed Project, which will thereby mitigate all impacts to less than significant, we need

not consider whether any project alternatives are environmentally superior to the Proposed Project.

4. Although CEQA does not require the Commission to consider alternatives or make a finding of infeasibility in this case, we conclude that the environmentally superior alternative identified in the FEIR is infeasible and should be rejected.

5. NEET West's MFMP is consistent with the Commission's EMF policy for implementing no-cost and low-cost measures to reduce potential EMF impacts.

6. Because the Proposed Project will not cost more than \$50 million, Pub. Util. Code § 1005.5 does not require the Commission to adopt a maximum prudent and reasonable cost for the Project, and it is not otherwise necessary to do so.

7. It is reasonable to provide a 15.87 % contingency reserve over the existing binding construction cap of \$ 42.3 million to cover interconnections costs.

8. NEET West's requests for exemptions from certain of the Commission's affiliate transaction rules and reporting requirements are reasonable and should be granted.

9. NEET West should be granted an exemption from Sections V.C., V.E., and V.G. of the affiliate transaction rules specified in D.97-12-088, D.98-08-035, and D.98-12-075 (Affiliate Transaction Rules) so that NEET West may utilize and share resources with its affiliates. It is reasonable to grant these exemptions because NEET West will not have any customers in California, the Proposed Project resulted from a CAISO solicitation that protects consumer interests by fostering competition, and thus lowering costs, for transmission projects than what would emerge if only incumbent utilities had a right to construct new transmission resources, and NEET West's operations in California do not raise issues associated with risks of cross subsidization, exercise of market power, or

customer confusion or privacy violations that the Affiliate Transaction Rules are designed to address.

10. NEET West's requests for exemptions from certain of the Commission's reporting requirements are also reasonable. NEET West should be granted an exemption from the Commission's reporting requirements in GOs 65-A, 77-M, and 104-A.

11. NEET West should also be granted a limited exemption from the affiliate reporting requirements under Pub. Util. Code § 587 and D.93-02-019 (Affiliate Reporting Requirements), except that NEET West should provide the information listed in the Affiliate Reporting Requirements relating to those affiliates with which NEET West shares resources.

12. NEET West's application should be granted. NEET West should be granted a CPCN for the Proposed Project and comply with the MMRP (as revised as indicated above), which is attached to this decision as Attachment 1.

13. The Commission's Energy Division should be permitted to approve requests by NEET West for minor project refinements that may be necessary due to final engineering of the Proposed Project, so long as such minor project refinements are located within the geographic boundary of the study area of the Final EIR and do not, without mitigation, result in a new significant impact based on the criteria used in the Final EIR; conflict with any mitigation measure or applicable law or policy; or trigger an additional permit requirement.

14. NEET West should be assigned a "U" number to be used in filings with and submissions to the Commission.<sup>85</sup>

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<sup>85</sup> The Commission has generally found that entities applying for a CPCN are generally "certificated" as public utilities if and when the project is approved. (See D.11-07-036 "Nevada

*Footnote continued on next page*



15. Any pending motions should be deemed denied.
16. This decision should be effective today.
17. A.15-08-027 should be closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The Final Environmental Impact Report for NextEra Energy Transmission West, LLC's Suncrest Dynamic Reactive Power Support Project is certified as having been completed in compliance with the California Environmental Quality Act, reviewed and considered by the Commission prior to approving the project, and reflective of the Commission's independent judgment.

2. The application of NextEra Energy Transmission West, LLC, (NEET West) shall be granted. NEET West is granted a CPCN for the Proposed Project and shall comply with the Mitigation Monitoring and Reporting Plan, which is attached to this decision as Attachment 1.

3. The maximum cost cap for the Proposed Project is \$ 49 million, which includes a 15.87 % contingency reserve.

4. Next Era Energy Transmission West, LLC (NEET West) is granted an exemption from Sections V.C., V.E., and V.G. of the affiliate transaction rules specified in Decision (D.) 97-12-088, D.98-08-035, and D.98-12-075 (Affiliate Transaction Rules) so that NEET West may utilize and share resources with its affiliates.

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Hydro Decision" at 19 and D.00-05-048 "Lodi Gas Storage Decision"). See relevant discussion in "Administrative Law Judge's Ruling Denying Motions for 1) Interim Decision Granting Public Utility Status and 2) Ruling Identifying the Issues and Establishing a Schedule to Consider Motion for Interim Decision," dated April 8, 2016.

5. NextEra Energy Transmission West, LLC is granted an exemption from the Commission's reporting requirements in General Orders 65-A, 77-M, and 104-A.

6. NextEra Energy Transmission West, LLC West (NEET West) is granted a limited exemption from the affiliate reporting requirements under Pub. Util. Code § 587 and Decision 93-02-019 (Affiliate Reporting Requirements), except that NEET West shall provide the information listed in the Affiliate Reporting Requirements relating to those affiliates with which NEET West shares resources.

7. The Commission's Energy Division may approve requests by NextEra Energy Transmission West, LLC for minor project refinements that may be necessary due to final engineering of the Suncrest Dynamic Reactive Power Support Project, so long as such minor project refinements are located within the geographic boundary of the study area of the Environmental Impact Report (EIR) and do not, without mitigation, result in a new significant impact based on the criteria used in the Final EIR; conflict with any mitigation measure or applicable law or policy; or trigger an additional permit requirement. NextEra Energy Transmission West, LLC shall seek any other project refinements by a petition to modify this decision.

8. NextEra Energy Transmission West, LLC is assigned a "U" number to be used in filings with and submissions to the Commission.

9. All pending motions are deemed denied.

10. Application 15-08-027 is closed.

This order is effective today.

Dated September 27, 2018, at Sacramento, California.

MICHAEL PICKER

President

CARLA J. PETERMAN

LIANE M. RANDOLPH

MARTHA GUZMAN ACEVES

CLIFFORD RECHTSCHAFFEN

Commissioners