

135 FERC ¶ 61,143
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

Desert Southwest Power, LLC

Docket No. EL10-54-000

ORDER CONDITIONALLY GRANTING, IN PART, AND DENYING, IN PART,
PETITION FOR DECLARATORY ORDER

(Issued May 20, 2011)

1. On March 30, 2010, as amended on September 10 and September 24, 2010, Desert Southwest Power, LLC (Desert Southwest) filed a petition for declaratory order (Petition) pursuant to Rule 207 of the Commission's Rules of Practice and Procedure.¹ Desert Southwest requests approval of certain transmission rate incentives for its proposed 118 mile single-circuit 500 kV transmission project (Project) under Federal Power Act (FPA) section 219² and Order No. 679.³ Desert Southwest also requests that the incentives apply to any portion of a second circuit that it may independently fund and construct.⁴ In this order, we find the Project qualifies for incentive rate treatment, subject to conditions discussed below, but we dismiss without prejudice Desert Southwest's request to apply rate incentives to any portion of a second circuit.

¹ 18 C.F.R. § 385.207 (2011).

² 16 U.S.C. § 825s (2006).

³ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

⁴ The second circuit, if constructed, would be funded and under the operational control of the Imperial Irrigation District. To the extent that Desert Southwest independently funds and constructs any portion of the second circuit without Imperial Irrigation District's participation, that portion of the second circuit would be integrated into the transmission grid operated by the California Independent System Operator (CAISO). Desert Southwest Petition at n.8.

I. Background**A. Description of Desert Southwest**

2. Desert Southwest, a limited liability company privately owned by Caithness Energy, L.L.C. and one or more private equity funds managed by ArcLight Capital Partners, LLC, was formed for the sole purpose of developing, financing, and owning the Project. Desert Southwest is the sole owner of the Project. Once construction is complete, Desert Southwest states that the Project will become part of the transmission system operated by CAISO and Desert Southwest will become a Participating Transmission Owner in CAISO.

B. Description of the Project

3. The Project consists of a 118 mile single-circuit alternating current 500 kV transmission line. According to Desert Southwest, the Project will enable the power from location-constrained resources (e.g., wind generation) to be transported from eastern Riverside County, California to load pocket areas in southern California by providing 1,200 to 1,500 megawatts (MW) of new transfer capability. Desert Southwest states that there are more than 5,000 MW of renewable generation additions currently in the CAISO generation interconnection queue for eastern Riverside County, California.

4. Desert Southwest explains that the Project will originate at a new substation near Blythe, California and head west for eight miles to the Colorado River Station where it will intersect with the Palo Verde-Devers No.1 (PVD1) transmission line owned by Southern California Edison Company (SoCal Edison). From there, the Project will continue 110 miles along the I-10 corridor, running parallel to the existing PVD1 line. The terminus of the Project will be SoCal Edison's existing Devers Substation near Palm Springs, California.

5. Desert Southwest estimates the total cost for the Project to be approximately \$350 million and expects to commence construction in mid-2011. The Project's projected in-service date is June 30, 2013. Desert Southwest states that the Project is currently under evaluation by CAISO's transmission planning process as an economic transmission project. Further, it notes that in support of its request to CAISO, it has commissioned an independent evaluation of the Project's economic benefits to ratepayers (Economic Benefit Analysis). Desert Southwest also submits the Economic Benefit Analysis in this proceeding to support its application for incentives.⁵

⁵ Desert Southwest Transmission Project Economic Benefit Analysis Report, Exhibit B to Petition, Docket No. EL10-54-000 (Economic Benefit Analysis).

C. Desert Southwest's Petition

6. Desert Southwest requests Commission approval of the following rate incentives: (1) inclusion of 100 percent Construction Work in Progress (CWIP) in rate base under CAISO's Open Access Transmission Tariff (OATT), subject to Desert Southwest becoming a Participating Transmission Owner; (2) recovery of abandonment costs under CAISO's OATT, subject to Desert Southwest becoming a Participating Transmission Owner; (3) a 50-basis point Return on Equity (ROE) adder for future participation in a qualifying Regional Transmission Organization (RTO); (4) a 100-basis point ROE adder for its structure as an independent transmission company (transco); (5) a 50-basis point ROE adder for overall Project risk and the use of advanced technologies; and (6) a hypothetical capital structure of 50 percent equity and 50 percent debt (50/50 capital structure) until the Project is placed in service.⁶

7. Desert Southwest notes that, since 1999 when the Project was initiated, the Project's sponsors have invested more than \$7 million in development activities, and it expects a similar investment in 2010. In order to not only offset the risks involved but also attract adequate financing, Desert Southwest asserts that regulatory certainty regarding incentive rate treatment is needed.

8. Desert Southwest states that the Project is in an advanced development and permitting stage. It notes that the Project began a joint federal and state permitting process in 2002. In 2005, the Bureau of Land Management issued a Final Environmental Impact Statement, followed by a Record of Decision that granted the necessary project rights-of-way in September 2007. Further, the Project's review pursuant to the California Environmental Quality Act was completed in December 2007. Desert Southwest claims that the Project is one of only two transmission projects in the region that has reached such an advanced permitting stage and can be predictably constructed in the near-term. However, it asserts that the Project still requires siting approvals from multiple federal agencies, as well as the state of California.

9. In its Petition, Desert Southwest states that it has applied to DOE's loan guarantee program for new transmission projects and was accepted in Phase 1 of the program. Desert Southwest states that the DOE loan guarantee would provide lower cost debt and result in savings that would be passed on to California ratepayers. However, Desert

⁶ Desert Southwest originally requested a hypothetical capital structure of 60 percent equity and 40 percent debt (60/40 capital structure) in the Petition. However, in its September 10, 2010 Response to the Commission's request for additional information, Desert Southwest later amended the Petition to request a 50/50 capital structure. Desert Southwest September 10, 2010 Response at 6.

Southwest later notes that since CAISO did not evaluate Desert Southwest's 2009 request for approval of the Project under CAISO's then-existing transmission planning process,⁷ Desert Southwest missed the application closing deadline for Phase II of the program.⁸ As a result, Desert Southwest states that it faces a much greater challenge in financing the Project.⁹

10. Pursuant to Order No. 679, Desert Southwest includes a Technology Statement in its Petition explaining that the Project will use Vindicator® remote laser wind sensor technology (Vindicator technology) that will enable greater integration of intermittent resources.¹⁰ Desert Southwest states that the Vindicator technology will permit the measurement of wind speed and direction data in real-time, which will optimize power yields from wind turbines and reduce downtime. Further, according to Desert Southwest, this data will allow for dynamic line ratings; improve CAISO's forecasting and scheduling; and permit CAISO to more efficiently load the transmission line with power produced by solar and other generators during off-peak hours for wind energy production. The Project will also include a second optical ground wire to allow for use of smart grid technology.

II. Notice of Filing, Responsive Pleadings, and Request for Additional Information

11. Notice of Desert Southwest's Petition was published in the *Federal Register*, 75 Fed. Reg. 18,203 (2010), with interventions, comments, and protests due on April 29,

⁷ On June 4, 2010, in Docket No. ER10-1401-000, CAISO filed proposed amendments to its OATT to implement a revised transmission planning process. On December 16, 2010, the Commission conditionally accepted CAISO's proposed amendments, effective December 20, 2010. *Cal. Indep. Sys. Operator Corp. et al.*, 133 FERC ¶ 61,224 (2010).

⁸ Desert Southwest states that the revised transmission planning process would result in a lengthier process that would preclude Desert Southwest from beginning construction of the Project by September 2011, as required by DOE's loan guarantee program. Desert Southwest Petition at n.23.

⁹ Desert Southwest September 10, 2010 Response, Docket No. EL10-54-000 at 5-6 (Desert Southwest September 10, 2010 Response).

¹⁰ Desert Southwest notes that it also considered advanced conductor technology when the Project was proposed as a radial generator lead line. However, this technology will not be employed because the Project will run in parallel with two other transmission lines, and the impedances must match to justify the additional cost of the technology. Desert Southwest Petition at 29.

2010. The California Public Utilities Commission (CPUC) filed a notice of intervention and protest. Timely motions to intervene, raising no substantive issues, were filed by SoCal Edison and Imperial Irrigation District. Timely motions to intervene, comments, and protests were filed by the California Department of Water Resources State Water Project (SWP); the Modesto Irrigation District; the M-S-R Public Power Agency and the City of Santa Clara, California, d/b/a Silicon Valley Power (together M-S-R/SVP); Transmission Agency of Northern California (TANC); the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities); California Municipal Utilities Association (CMUA); and Northern California Power Agency (NCPA). Desert Southwest filed an answer to protests and comments.

12. On July 28, 2010, the Commission issued a letter requesting additional information regarding Desert Southwest's Petition. Desert Southwest submitted responses on September 10, 2010 and September 24, 2010. Notices of Desert Southwest's responses were published in the Federal Register, 75 Fed. Reg. 57,761 (2010) and 75 Fed. Reg. 61,467 (2010), with interventions, comments, and protests due on September 24, 2010 and October 4, 2010, respectively. No additional comments were filed.

III. Discussion

13. As discussed below, we will grant Desert Southwest the following transmission rate incentives to apply to the Project: (1) 100 percent recovery of its prudently-incurred CWIP costs in rate base, subject to a future FPA section 205¹¹ filing; (2) 100 percent recovery of its prudently-incurred transmission-related costs if the Project must be abandoned due to forces outside of Desert Southwest's control, subject to a future FPA section 205 filing; (3) a combined 150-basis point ROE adder, subject to a future FPA section 205 filing; and (4) a hypothetical capital structure of 50 percent equity and 50 percent debt until the Project is placed in service. We also find that Desert Southwest has failed to support adequately its request for the rate incentives to apply to a potential second circuit and, accordingly, dismiss this request without prejudice.

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the

¹¹ 16 U.S.C. § 825d (2006).

decisional authority. We will accept Desert Southwest's answer because it has provided information that assisted us in our decision-making process.

B. Timing of Commission Action and CAISO's Planning Process

1. Comments

16. Protesters argue that Desert Southwest's Petition is premature because the Project has not received approval from either CAISO or from the CPUC.¹² The CPUC asserts that granting the requested incentives would circumvent CAISO's existing transmission planning process, which best accounts for the needs of CAISO, its members, and customers, and that CAISO and the CPUC should decide which projects are built in California. The CPUC argues that, even if CAISO ultimately approves a transmission project in the vicinity proposed by Desert Southwest, the approved project might differ substantially in size, scope, and risk from the Project, such that the Commission's analysis about whether the Project qualifies for incentives may no longer be applicable. Accordingly, the CPUC requests dismissal of the Petition.

17. Along with CMUA, Six Cities request that the Commission condition the incentives on the Project being approved under CAISO's transmission planning process. Six Cities state that evaluation of the Project through a coordinated and comprehensive planning process is particularly important in light of similarities between the Project and other similarly configured transmission lines.¹³ Six Cities contend that the Commission should not prejudge, in isolation, the possible economic or reliability impacts of the Project, as CAISO will determine whether the Project is needed based upon possible economic and reliability benefits. They also argue that since it is not reasonable to assume that all proposed renewable resources will be developed in a particular area, CAISO's transmission planning process is a better forum for making determinations regarding the reliability and energy needs in California.

18. SWP asserts that granting incentives now invites a substantial risk that ratepayers will have to pay costs for an abandoned project. It argues that the Project will likely not

¹² The CPUC notes that Desert Southwest has not yet sought CPUC authorization for a Certificate of Public Convenience and Necessity, as required for construction of the Project under California state law. CPUC Protest at 4.

¹³ Six Cities point to the PVD1 transmission line owned by SoCal Edison, stating that both projects intend to facilitate the delivery of renewable resources to the Los Angeles basin and that CAISO will determine through the transmission planning process whether these projects are conflicting, duplicative, or otherwise tailored to the load and resource needs of the region. Six Cities Protest at 5-6.

receive its critical funding source, the DOE loan guarantee, if CAISO's proposed amendments to its transmission planning process are adopted. SWP points out that Desert Southwest has low confidence in obtaining the loan guarantee and has stated that a loss of DOE funding may cause the entire Project to become uneconomic. Accordingly, SWP argues that the Commission should defer its decision here until Desert Southwest has reached a level of certainty regarding the DOE funding, pending CAISO approval, and its commitment to go forward with the project or abandon it. Otherwise, SWP argues that Desert Southwest would needlessly expose ratepayers to possible abandonment of the Project, which is a risk more properly borne by the developer. SWP notes that although the Commission has previously granted some incentives (e.g., abandonment and pre-commercial costs) while deferring consideration of others (e.g., CWIP, ROE incentives) for an application it found premature,¹⁴ such an action would be inappropriate here where risks of abandonment are so substantial. Alternatively, SWP suggests that the Commission establish evidentiary hearing procedures to fully evaluate the merits of the requested incentives and hold the matter in abeyance pending the development and filing by Desert Southwest of necessary information.

2. Desert Southwest's Answer

19. Desert Southwest acknowledges that approval of the Project in CAISO's transmission planning process is a critical step in the Project's development. However, it notes that the Commission has approved requests for incentive rate treatment for similarly-situated projects that were still undergoing consideration in a regional planning process¹⁵ and that the Commission has previously determined that granting incentives will not undermine or change the outcome of the regional planning process.¹⁶

3. Commission Determination

20. We will not delay acting on the Petition. Although Desert Southwest acknowledges that approval under CAISO's transmission planning process is critical to the success of the Project, such approval is not a prerequisite to the Commission granting

¹⁴ SWP Protest at 10 (citing *Pacific Gas & Elec. Co.*, 123 FERC ¶ 61,067, at P 37, 40 (2008)).

¹⁵ Desert Southwest Answer at 4-5 (citing *Green Power Express LP*, 127 FERC ¶ 61,031 (2009) (*Green Power*); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009), *order on reh'g*, 130 FERC ¶ 61,044 (2010) (*Pioneer*); *Tallgrass Transmission, LLC*, 125 FERC ¶ 61,248 (2008) (*Tallgrass*)).

¹⁶ Desert Southwest Answer at 5 (citing *Green Power*, 127 FERC ¶ 61,031 at P 42; *Pioneer*, 126 FERC ¶ 61,281 at P 40).

incentives. We have acted on incentive rate requests prior to the conclusion of the applicable regional planning process or before any permits have been issued by the relevant governmental authorities. As we have stated in previous orders, the Commission does not intend to prejudge the outcome of any regional planning process, including CAISO's transmission planning process, or any governmental permitting or similar proceeding, by granting rate incentives under Order No. 679.¹⁷

21. Further, as explained more fully below, we find that Desert Southwest has satisfied FPA section 219's requirement by demonstrating in its Economic Benefit Analysis that the Project will ensure reliability or reduce the price of delivered power by reducing congestion. As a result, we will not condition the grant of incentives on the Project being approved in CAISO's transmission planning process.

22. Finally, regarding SWP's request for a hearing, the parties have not presented an issue of material fact that cannot be resolved on the basis of the written record. The Commission stated in Order No. 679 that "the Commission does not intend to routinely convene trial-type, evidentiary hearings to review ... [transmission incentive requests,] but will attempt to render a decision based on the paper submissions whenever possible."¹⁸

C. Section 219 Requirements

23. In Order No. 679, the Commission stated that an applicant for transmission rate incentives must demonstrate that the facilities for which it seeks incentives satisfy the requirements of FPA section 219 by either ensuring reliability or reducing the cost of delivered power by reducing transmission congestion.¹⁹ The Commission established a rebuttable presumption that a project is eligible for incentives under FPA section 219 if it: (1) results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable to the Commission; or (2) has received construction approval from an appropriate state

¹⁷ See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 42 ("ruling on a request for incentives pursuant to Order No. 679 does not prejudge the findings of a particular transmission planning process or the siting procedures at state commissions"); *Green Energy Express LLC*, 129 FERC ¶ 61,165, at P 13 (2009), *order on reh'g*, 130 FERC ¶ 61,117 (2010) (*Green Energy*); *So. Cal. Edison Co.*, 129 FERC ¶ 61,246, at P 17 (2009), *on compliance and granting partial reh'g*, 133 FERC ¶ 61,108 (2010).

¹⁸ *Id.* P 79.

¹⁹ *Id.* P 57-58.

commission or state siting authority.²⁰ The Commission also stated that it will consider incentive requests for projects that are still undergoing consideration in a regional planning process, but may make any requested incentive rate treatment contingent on the project being approved under the regional planning process.²¹ However, the Commission has determined that a project that does not qualify for the rebuttable presumption may nevertheless satisfy the FPA section 219 standard if the project sponsor presents a factual record supporting a finding that the project is needed to ensure reliability or reduce the price of delivered power by reducing congestion.²² In order to meet this requirement, a project sponsor may present detailed studies, engineering affidavits, or state siting approvals demonstrating that the section 219 criteria are met.²³

1. Desert Southwest's Proposal

24. Desert Southwest states that the Project qualifies for incentive rate treatment under FPA section 219 and Order No. 679 because the Project both reduces the price of delivered power by reducing congestion and ensures reliability.

25. Desert Southwest acknowledges that its pending approval under CAISO's transmission planning process is critical to the success of the Project, but requests Commission approval of the incentives at this time to provide regulatory certainty to existing sponsors and to attract adequate financing. Desert Southwest notes that the Commission has approved requests for incentive rate treatment for projects that are still undergoing consideration in a regional planning process, stating that in each case, the applicant provided comprehensive and clear data and studies to demonstrate the project's reliability or congestion benefits.²⁴

26. Desert Southwest asserts that it has also provided such comprehensive and clear evidence, pointing to its Economic Benefit Analysis to demonstrate that the Project

²⁰ *Id.* In Order No. 679-A, the Commission clarified the operation of this rebuttable presumption by noting that the authorities and/or processes on which it is based (i.e., a regional planning process, a state commission, or siting authority) must, in fact, consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion. Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49.

²¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at n.39.

²² *Id.* P 57.

²³ See *Duquesne Light Co.*, 118 FERC ¶ 61,087, at P 68 (2007); *Green Power*, 127 FERC ¶ 61,031 at P 41.

²⁴ Desert Southwest Petition at 12-13 (citing *Green Power*, 127 FERC ¶ 61,031; *Pioneer*, 126 FERC ¶ 61,281; *Tallgrass*, 125 FERC ¶ 61,248).

satisfies the criteria for obtaining rate incentives. Desert Southwest states that the Economic Benefit Analysis shows that for the year 2013, the Project will result in energy cost savings of more than \$179 million,²⁵ as well as savings for transmission losses of approximately \$3.8 million and a decrease in transmission congestion revenue charges of \$1.4 million. Further, it claims that the Economic Benefit Analysis includes preliminary power flow and contingency analysis studies that indicate that the Project is feasible; has no adverse effects on other transfer capability; does not require additional system upgrades (other than those already proposed by CAISO and the Project); and clearly is required to support the expected renewable generation additions in the region. Desert Southwest asserts that the results from the Economic Benefit Analysis, which provides an analysis of the Project over the course of one full year and uses computer simulation models and settlement cost calculations that are consistent with CAISO's business rules, are indicative of CAISO's forthcoming results from its study of the Project.

27. Desert Southwest states that the Project will reduce the price of delivered power by reducing congestion. It notes that the Project's entire route is located within a critical congestion area that currently requires transmission congestion relief and additional transmission capability. Desert Southwest also expects congestion to dramatically increase due to a substantial amount of new renewable generation development in California. Desert Southwest claims the Project will alleviate transmission losses and congestion on existing lines in the region. Additionally, it asserts that the Project will provide transmission access to more economic renewable energy and expand competition among suppliers, thus also reducing the cost of delivered power.

28. Desert Southwest states that the Project will also ensure reliability of the overall transmission system. It states that there is insufficient transmission capacity to serve all of the existing and proposed generation in the region, arguing that transmission investments such as the Project are required to support reliably the growing demand for energy in southern California or the mandated integration of renewable energy under the state's Renewable Portfolio Standard (RPS).²⁶ Otherwise, it believes that existing facilities, which are already operating at or near full capacity, will be in constant jeopardy

²⁵ The energy cost savings reflects the lower energy price that would be paid by consumers with the Project in service. For the study period, the price reduction was found to be 0.64 \$/MWh on average for the year. The study assumes a significant reduction in fuel cost, as renewable resources (e.g., solar and wind) would replace gas fired plants in Southern California. *See Economic Benefit Analysis at 5, 25.*

²⁶ Desert Southwest notes that a state-mandated RPS required of California's load serving utilities, of 20 percent by 2010 and 33 percent by 2020, will drive development of renewable generation in the region. *Desert Southwest Petition at 14-15.*

of overloading and investments in new generation will be limited. Desert Southwest contends that, by increasing available transfer capability in the region by 1,200 to 1,500 MW,²⁷ the Project will improve the overall system reliability under contingency conditions and will alleviate reliability issues anticipated as a result of the more than 5,000 MW of renewable generation additions currently in CAISO's generation interconnection queue for eastern Riverside County, California. Further, Desert Southwest asserts that the Project also will enhance system reliability because Desert Southwest will transfer operational control of the Project to CAISO. Even absent control by CAISO, however, Desert Southwest states that the Project's additional transfer capability will enhance the reliability of the system by reducing loading on other transmission lines in the area, which will, in turn, improve CAISO's operational flexibility during normal as well as contingency situations.

2. Comments

29. Protesters argue that, in addition to not qualifying for a rebuttable presumption,²⁸ Desert Southwest has also not provided adequate support for its claim that the Project will either reduce the cost of delivered power by reducing congestion costs or enhance reliability.

30. The CPUC argues that a finding of eligibility pursuant to FPA section 219 by the Commission without the presence of a rebuttable presumption has usually occurred in unique circumstances where it would have been difficult for applicants to meet the rebuttable presumption.²⁹ In contrast, the CPUC argues that there is already a clear

²⁷ Desert Southwest states that the actual increase in transfer capability will be based on the Project's path rating assigned by the Western Electricity Coordinating Council. *Id.* at n.4.

²⁸ *See, e.g.*, SWP Protest at 7-8. The CPUC notes that, in addition to not having CAISO approval of the Project, Desert Southwest has also not yet applied for a Certificate of Public Convenience and Necessity from the CPUC. CPUC Protest at 5.

²⁹ The CPUC states that, for instance, in *Green Power*, 127 FERC ¶ 61,031 at P 38, the transmission project fell "outside any current planning process" because the very large scale transmission project (3,000 miles) connected facilities in two different RTOs as well as some non-RTO area, and it would have been difficult for the project to get the approvals needed to qualify for the rebuttable presumption. The CPUC states that in *Pioneer*, 126 FERC ¶ 61,281 at P 4, 10, there was neither a process in place to allocate a cross-border project between the two RTOs nor a formal siting process in the state of Indiana, which made qualification for the rebuttable presumption not feasible. CPUC Protest at 6-7.

process in place for Desert Southwest to receive CAISO and CPUC approval to qualify for the rebuttable presumption, but Desert Southwest has not done so yet.

31. Other protestors contend that where the Commission has found sufficient evidence to satisfy the requirements of FPA section 219 without relying on a rebuttable presumption, the applicant had submitted comprehensive and clear data, including engineering data, testimony, and a load flow analysis so the Commission could verify that the project enhanced reliability or reduced congestion costs.³⁰ In contrast, M-S-R/SVP and TANC assert that Desert Southwest has simply provided a recycled Economic Benefit Analysis and not the comprehensive engineering studies and testimony required.

32. TANC, M-S-R/SVP, and the CPUC also argue that “outside studies” are important to meet the burden of proof under FPA section 219. TANC and M-S-R/SVP point to the submission of an “outside study” by the Brattle Group that confirmed the applicant’s own results in *Green Power*,³¹ and the CPUC argues that in *Green Energy*,³² the Commission rejected the applicant’s claim that its own studies qualified the project under FPA section 219.

33. Additionally, protestors claim that past applicants that were granted incentives provided studies of the impact of their proposed projects on the broader system.³³ M-S-R/SVP and TANC argue that Desert Southwest failed to provide sufficient information regarding other projects in the region, the transmission plans of CAISO, or the impact of the Project on the system as a whole.

34. TANC, M-S-R/SVP, and Six Cities further assert that the Project will be duplicative of existing and potential projects in the area that intend to facilitate the delivery of renewable resources to the Los Angeles basin,³⁴ underscoring the importance

³⁰ TANC Protest at P 21 (citing *Pioneer*, 126 FERC ¶ 61,281, as an example where the applicant submitted witness testimony supporting comprehensive power flow analyses and *Tallgrass*, 125 FERC ¶ 61,248 at P 42, where the applicant commissioned two studies of the proposed project considering the comprehensive plans for transmission expansion in its RTO).

³¹ TANC Protest at P 21; M-S-R-/SVP Protest at P 23 (citing *Green Power*, 127 FERC ¶ 61,031 at P 41).

³² CPUC Protest at 7 (citing *Green Energy*, 129 FERC ¶ 61,165 at P 60).

³³ M-S-R/SVP Protest at P 22-23 (citing *So. Cal. Edison Co.*, 129 FERC ¶ 61,246 at P 25-27; *Green Power*, 127 FERC ¶ 61,031 at P 41).

³⁴ M-S-R/SVP notes that the SoCal Edison 500 kV DVP1 line already serves the area and that SoCal Edison has proposed a second 500 kV line (Colorado River-Devers

(continued...)

of regional planning to ensure that potentially conflicting or duplicative transmission projects are tailored to the needs of the region. The CPUC argues that Desert Southwest's studies are no substitute for CAISO's robust planning process, which will determine the reliability needs of the region, and that Desert Southwest's claims of increased transfer capacity resulting from the Project have not been verified by CAISO. Further, the CPUC says that Desert Southwest has not demonstrated that the Project is the best choice to reduce actual congestion and ensure reliability.

35. Finally, Protestors assert that Desert Southwest proposes to relieve *future* congestion that it envisions will materialize if proposed generation projects are fully developed and fails to explain how the Project will address *current* congestion or reliability problems. TANC states that there is no basis for planning on the assumption that all of the generation in the CAISO queue will come to fruition. Thus, according to protesters, the Project's congestion benefits are too speculative to overcome the lack of a regional process or state approval.

3. Desert Southwest's Answer

36. Desert Southwest agrees that it does not meet the rebuttable presumption that FPA section 219's criteria have been met, but states that the Petition presents evidence that the Project will maintain reliability and/or reduce congestion, thereby independently satisfying FPA section 219's requirements. More specifically, Desert Southwest states that the Project will increase transfer capability in the region by 1,200 to 1,500 MW, which will reduce existing as well as anticipated congestion and thereby reduce the price of delivered power. Further, because the increased transfer capability will be placed under the control of CAISO, the Project will support the reliability of the transmission system by providing operational flexibility. Desert Southwest also asserts that the Project will provide much needed access to significant renewable energy resources and reduce the price of power by encouraging the competitive development of those resources.

37. In response to protesters' concerns that the Economic Benefit Analysis submitted does not take into account CAISO's regional transmission plans, Desert Southwest states that its Economic Benefit Analysis demonstrates that the Project will reduce congestion and contribute to the reliability of the transmission system and therefore is sufficient to justify a finding that the Project satisfies the requirements of FPA section 219.

#2 or CRD2) to serve the region. M-S-R/SVP states that both CRD2 and the Project would run parallel to, and completely duplicate, the portion of DPV1 between Blythe and the Colorado River Substation. *Id.* P 26.

38. With respect to protesters' broader concerns regarding the regional plan, Desert Southwest notes that the Project must still be approved as part of CAISO's transmission planning process and that, as discussed further below, it has conditioned the appropriate rate incentives on CAISO's acceptance of Desert Southwest as a Participating Transmission Owner.³⁵

39. Finally, in response to assertions that anticipated transmission congestion in the region is too speculative to support a finding that the Project will reduce congestion, Desert Southwest argues that while it is true that all of the proposed generation currently in CAISO's queue may not be developed, there will still be significant congestion impacts if even a fraction of those generation facilities are interconnected to what is an already heavily congested system. Additionally, Desert Southwest notes that DOE has found the region to be a critical congestion area in which Southern California needs new transmission capacity to reach generation sources outside the region for reliability, economics, and compliance with the state's RPS.

4. Commission Determination

40. Since the Project has not received approval through CAISO's transmission planning process or received construction approval from the relevant state authorities, Desert Southwest is not entitled to the rebuttable presumption that the Project is needed to ensure reliability or reduce congestion. We disagree with protests that Desert Southwest cannot otherwise demonstrate that it qualifies for incentives pursuant to FPA section 219 if the Project has not received approval in CAISO's transmission planning process or construction approval from the CPUC in order to qualify for the rebuttable presumption. Order No. 679 explicitly permits applicants not meeting the criteria for the rebuttable presumptions to "nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting us a factual record that would support such findings."³⁶ Our review of the record indicates that Desert Southwest has adequately met these requirements.

41. Desert Southwest has submitted a detailed study prepared by an independent consultant, which shows that the Project will enhance the economic efficiency of operating the CAISO system by reducing transmission congestion. We are not persuaded by protesters' arguments that the Economic Benefit Analysis does not amount to comprehensive and clear evidence that the Project ensures reliability or reduces congestion costs. To the contrary, Desert Southwest provided the Commission with an extensive study that included twelve months of congestion data, contingency data for

³⁵ Desert Southwest Answer at 7.

³⁶ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57.

over 140 contingencies at over 65 junctions, power flow under various scenarios, and a table of locational marginal price data for the area with or without the Project, providing the Commission with sufficient data to determine the Project's impact on the region. The contingency data submitted confirms Desert Southwest's claim that the Project will not have adverse effects on other transfer capability or require system upgrades resulting from the additional capacity. Protestors have not submitted specific data that contradicts the data provided by Desert Southwest in support of the Project's ability to ensure reliability.

42. Desert Southwest's Economic Benefit Analysis is distinguishable from prior cases where the applicant's proffered study was deemed insufficient. For instance, in *Green Energy*, the Commission found that an arbitrarily selected four-week sample period of data was too narrow a time period for the Commission to evaluate whether the applicant's projected cost savings associated with reduced congestion were an accurate representation.³⁷ In contrast, the Economic Benefit Analysis provides a large sample window of cost savings by including a full year's worth of data. Additionally, unlike the applicant's study in *Green Energy*,³⁸ but similar to that accepted in *Tallgrass*,³⁹ the Economic Benefit Analysis considers multiple generation construction scenarios that demonstrate the benefit of the Project under numerous generation development scenarios. Desert Southwest's contingency analysis also considers more junctions under various scenarios than that provided in *Green Energy*.⁴⁰ Further, the Economic Benefit Analysis is also more robust than in recent cases in which the Commission found studies accompanying large generator interconnection agreements were insufficient to satisfy section 219 of the FPA.⁴¹

43. We also disagree with the argument that an "outside study," i.e., one not prepared by the applicant, is needed to satisfy FPA section 219's requirements. Although Desert Southwest has submitted a study prepared by an independent consultant, the key element for consideration is whether the applicant presents comprehensive and clear evidence that

³⁷ See *Green Energy*, 129 FERC ¶ 61,165 at P 28, *order on reh'g*, 130 FERC ¶ 61,117 at 18.

³⁸ See *Green Energy*, 130 FERC ¶ 61,117 at 23-24.

³⁹ See Tallgrass Transmission, LLC's filing in Docket No. ER09-35-000, Exh. TGT-102 (Oct. 3, 2008).

⁴⁰ See *Green Energy*, 130 FERC ¶ 61,117 at 25.

⁴¹ See *So. Cal. Edison Co.*, 133 FERC ¶ 61,107, at P 43 (2010); *So. Cal. Edison Co.*, 129 FERC ¶ 61,246 at P 27.

its transmission project ensures reliability or reduces congestion, which may be sufficiently demonstrated with a study prepared by the applicant.⁴²

44. We do not agree with protests that the Economic Benefit Analysis fails to take into account other projects in the area or the impacts of the Project on the broader system. In fact, the study made reasonable assumptions as to the effect of other transmission projects on the power grid in 2014, by modifying the CAISO planning case to some extent to include certain other projects that are expected to be developed as well as a reasonable increase in load at the time of service. The contingency study performed by Desert Southwest also makes reasonable assumptions regarding the topology of the network, expected loading, and likely outages and provides data for an expansive group of junctions in a critically congested area. Additionally, we reiterate that it is the Commission's policy to review each request for incentives on its own merits and on a case-by-case basis.⁴³ Order No. 679 does not require comparison of competing projects in a region but only the assessment of whether the incentive applicant has met the requirements of FPA section 219 and Order No. 679. We therefore dismiss arguments that the Economic Benefit Analysis failed to make reasonable assumptions of the Project in comparison with other proposed projects.

45. In response to concerns that Commission action on this Petition may substitute or influence the decisions to be made by CAISO in its transmission planning process, we note that Desert Southwest has acknowledged that the Project must still be approved as part of CAISO's transmission planning process.⁴⁴ As part of this process, CAISO will determine whether the Project is duplicative or conflicts with existing or other proposed projects and decide which projects are most effective at reducing congestion and ensuring reliability for the region. Nothing in this order changes the manner in which CAISO evaluates projects, nor do our findings regarding Desert Southwest's satisfaction of the requirements under FPA section 219 prejudice the determinations of the regional

⁴² See *Green Energy*, 129 FERC ¶ 61,165 at P 29 (describing previous instances where the Commission has granted requests for rate incentives while relying on internal studies, and, in several cases only, external studies).

⁴³ *ITC Great Plains LLC*, 126 FERC ¶ 61,223, at P 44 (2009) (*ITC Great Plains*) (citing *Pacific Gas & Electric Company*, 123 FERC ¶ 61,067; *Central Maine Power Company*, 125 FERC ¶ 61,079 (2008)).

⁴⁴ If CAISO does not approve the Project in its transmission planning process, then Desert Southwest indicates that further development of the Project may not continue. See Desert Southwest Answer at 13 (“[Desert Southwest] recognizes that approval under CAISO's [transmission planning process] is critical to the success of the Project...”).

transmission expansion plans of CAISO.⁴⁵ Here, we are reviewing only whether the specific project proposed by Desert Southwest meets the requirements for incentives under Commission policy.

D. Nexus Requirement and Requested Incentives

46. In addition to satisfying FPA section 219's requirement that a project ensure reliability or reduce the cost of delivered power by reducing congestion, an applicant must demonstrate that there is a nexus between the incentive sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."⁴⁶

47. As part of the evaluation of whether the incentives requested are tailored to address the demonstrable risks or challenges faced by the applicant, the Commission has found the question of whether a project is "routine" to be particularly probative. In *BG&E*, the Commission provided guidance on the factors that it will consider when determining whether a project is routine.⁴⁷ The Commission stated that it will consider all relevant factors presented by the applicant, including evidence on: (1) the scope of the project (e.g., dollar investment, increase in transfer capability, involvement of multiple entities or jurisdictions, size, effect on region); (2) the effect of the project (e.g., improving reliability or reducing congestion costs); and (3) the challenges or risks faced by the project (e.g., siting, long lead times, regulatory and political risks, specific financing challenges, other impediments). The Commission also explained that when an applicant has adequately demonstrated that the project for which it requests an incentive is not routine, that applicant has shown, for purposes of the nexus test, that the project faces risks and challenges that merit an incentive.⁴⁸

48. Based on the evidence, we find that Desert Southwest has demonstrated that the Project is not routine. We also conclude that Desert Southwest has demonstrated that the total package of incentives, as conditioned in this order, is tailored to the risks and challenges faced by the Project. The nexus between each requested incentive and the particular risks and challenges Desert Southwest faces in connection with the Project are discussed below.

⁴⁵ See *Tallgrass*; 125 FERC ¶ 61,248 at P 43; *Pioneer*, 126 FERC ¶ 61,281 at 40.

⁴⁶ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 40.

⁴⁷ *Baltimore Gas & Elec. Co.*, 120 FERC ¶ 61,084, at P 52-55 (2007), *reh'g denied*, 123 FERC ¶ 61,262 (2008) (*BG&E*).

⁴⁸ *Id.* P 54.

1. Non-Routine Nature of Project

a. Desert Southwest's Proposal

49. Desert Southwest argues that the Project is not routine, since it will require an investment of approximately \$350 million and will increase transfer capability by 1,200 to 1,500 MW. As a result, Desert Southwest states that the Project will reduce future and existing congestion, improve reliability, and facilitate the delivery of power from location constrained renewable energy and other resources in eastern Riverside County, California to load centers in Southern California.

50. Desert Southwest also states that the Project requires numerous siting and permitting approvals from multiple agencies and has a long lead time. While it began the siting and permitting process in 2002, Desert Southwest states that, going forward, the Project's construction will be subject to Bureau of Land Management approval of methods and techniques, as well as negotiation with multiple private landowners. Desert Southwest claims that to date such risks have been unilaterally borne by Desert Southwest and the Project's sponsors but that it must attract additional capital and secure financing in order for the Project to proceed. Desert Southwest argues that the Project's risks and today's difficult economic climate present significant challenges to financing the Project. For these reasons, Desert Southwest states that the Project is not routine and merits incentive rate treatment.

b. Comments

51. Protesters argue that Desert Southwest has not satisfied the nexus test and has not shown that there is anything exceptional or non-routine about the Project. TANC, M-S-R/SVP, and SWP argue that the Project is being built by a single entity in a single state where there is existing transmission already available and planned for the area. Six Cities assert that the Project's desert location does not make it more risky and challenging to complete absent a more detailed showing of unique locational challenges, pointing out that it will be adjacent to an existing transmission line. Six Cities also states that it is unclear why incentives are necessary to mitigate the risks and challenges of a lengthy lead time when seven years of the claimed ten-year lead time already have passed.

52. Six Cities, TANC, the CPUC, and M-S-R/SVP also question Desert Southwest's claim that the Project requires numerous siting and permitting approvals from multiple agencies, given that Desert Southwest states that it has received all the necessary state permits for the Project and its California Environmental Quality Act review was completed in December 2007. The CPUC states that Desert Southwest has not provided any evidence that obtaining the remaining siting and permitting approvals is difficult or non-routine for a California transmission line.

53. Six Cities, TANC and M-S-R/SVP argue that since Desert Southwest's application has been accepted in Phase I of a DOE loan guarantee program, this factor further mitigates the alleged risk the Project faces. SWP states that Desert Southwest has made no attempt at showing that its financing availability depends on the incentives or that its credit rating would suffer without the incentives. To the contrary, SWP argues that Desert Southwest has indicated that the success or abandonment of the Project depends on receiving DOE funding, not whether or not the Commission grants incentive rate treatment. Finally, the CPUC argues that Desert Southwest has provided no evidence that it faces non-routine financing challenges.

54. The CPUC argues that the Project's transfer capability and approximate cost alone do not make the Project non-routine, given that the transfer capacity has not been verified by CAISO and the cost estimate has not been examined by the CPUC in a cost/benefit analysis. Therefore, the CPUC states that these claims should be given little weight in determining if the Project is routine because the actual cost might be lower, which would impact the risk of the investment.

c. Desert Southwest's Answer

55. Desert Southwest responds that the fact that the Project is in an advanced permitting stage does not make it routine. Specifically, Desert Southwest states that the Project will continue to face regulatory hurdles and unexpected risks through the development process, such as the possibility that the Project may now need a Certificate of Public Convenience and Necessity from the CPUC. Desert Southwest further argues that even if a Certificate of Public Convenience and Necessity is not required, the Project continues to face numerous and significant development challenges, including acquiring rights to cross open space deserts from local agencies; complying with local land use regulations; negotiating land rights with private landowners; and constructing the Project in accordance with Bureau of Land Management's requirements.

56. Further, Desert Southwest argues that, contrary to protestors' assertions, the risks associated with developing the Project will not be mitigated by a DOE loan guarantee because Desert Southwest was forced to defer entering Phase 2 of the program. Desert Southwest asserts that as a result of losing the opportunity to receive the DOE loan guarantee, Desert Southwest faces a much greater challenge in financing the Project.

d. Commission Determination

57. Desert Southwest has presented evidence on the Project's scope, as well as the risks and challenges faced by the Project. The Project must receive siting approval from several agencies and will face significant development challenges, such as being subject to Bureau of Land Management's approval of methods and techniques for constructing the Project; and/or obtaining a Certificate of Public Convenience and Necessity from the CPUC. The Project also has a long lead-time, since it is not expected to be in-service

until sometime in 2013, during which it will have exposure to unforeseen circumstances that are outside of Desert Southwest's control. In addition, Desert Southwest has invested approximately \$7 million in the Project prior to obtaining approval and states that it expected to spend an equal amount in 2010, thereby exposing the Project's developers to the risk of being unable to obtain financing in a credit-constrained environment. Further, as clarified by Desert Southwest, it has deferred entering Phase 2 of the DOE loan guarantee program and will continue to face challenges in financing the Project.

58. Additionally, the Project represents an investment of approximately \$350 million by an independently-owned transmission company that will increase transfer capability in the region by 1,200 to 1,500 MW. The Commission has previously found that, in addition to other considerations, construction or enhancement of transmission facilities to provide access to remote, location-constrained renewable resources is not routine.⁴⁹ We find that the Project will provide the following regional benefits: serving location constrained solar and wind energy resources, which will assist in meeting California's RPS goals, and; alleviating reliability issues anticipated as a result of the more than 5,000 MW of renewable generation additions currently in CAISO's generation interconnection queue for eastern Riverside County, California.

59. For these reasons, we find that Desert Southwest has adequately demonstrated that its Project is not routine.

2. Construction Work In Progress

a. Desert Southwest's Proposal

60. Desert Southwest requests 100 percent recovery of its prudently-incurred CWIP costs in rate base. As an independent transmission company without its own rate base, Desert Southwest proposes to recover the Project's CWIP under CAISO's OATT, subject to CAISO's acceptance of Desert Southwest as a Participating Transmission Owner. Desert Southwest states that it would propose a specific ROE level prior to commencement of CWIP recovery in rate base.

61. Desert Southwest explains that it has already invested over \$7 million since 2002 in order to obtain federal and state permits for the Project, and that it faces significant challenges to financing and developing the remainder of the \$350 million project in today's credit constrained economy. Desert Southwest states that the CWIP incentive will provide it with a predictable cash flow and reduce the cost of financing, enabling the Project to move forward in a timely manner. Desert Southwest believes that without the

⁴⁹ *PacifiCorp*, 125 FERC ¶ 61,076, at P 45 (2008).

CWIP incentive, it is likely to incur higher debt service costs and its credit rating will decline.

62. Desert Southwest argues that granting the CWIP incentive will also benefit consumers by providing rate stability. It notes that the Commission has previously determined that allowing a project to recover a return on CWIP in rate base avoids the sharp increase in rates that would occur if all borrowing costs are capitalized and not recovered until the project goes into service.⁵⁰

b. Comments

63. Six Cities state that they generally do not oppose recovery of 100 percent of CWIP costs but contend that the request to recover CWIP costs should be denied absent additional clarification from Desert Southwest of when and how this incentive would be implemented. Six Cities states that Desert Southwest requests authorization for recovery of CWIP costs subject to becoming a Participating Transmission Owner but also indicates that it will not become a Participating Transmission Owner until the Project is completed and operational control has been transferred to CAISO. At that point, according to Six Cities, the full cost of the Project would be eligible for recovery through Desert Southwest's transmission revenue requirement. Six Cities argue that because it is unclear how Desert Southwest would implement after-the-fact CWIP recovery, a clarification of the recovery mechanism by which Desert Southwest proposes to implement this incentive is necessary for Commission authorization.

c. Commission Determination

64. In Order No. 679, the Commission established a policy that allows utilities to include, where appropriate, 100 percent of prudently-incurred transmission-related CWIP in rate base.⁵¹ Order No. 679 noted that this rate treatment will further the goals of FPA section 219 by providing up-front regulatory certainty, rate stability, and improved cash flow for applicants, thereby reducing the pressures on their finances caused by investing in transmission projects.⁵²

65. We find that Desert Southwest has shown a nexus between the proposed CWIP incentive and its investment in the Project. The Project will cost approximately \$350 million and is not expected to go into service until mid-2013. The cost and timing

⁵⁰ Desert Southwest Petition at 20 (citing *Green Power*, 127 FERC ¶ 61,031 at P 67; *ITC Great Plains*, 126 FERC ¶ 61,223 at P 82).

⁵¹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 29, 117.

⁵² *Id.* P 115.

for completing the Project will put pressure on Desert Southwest's finances. Granting the CWIP incentive will help ease this pressure by providing upfront certainty, improved cash flow, and reduced interest expense.

66. Further, Desert Southwest's recovery of 100 percent of CWIP in its rate base will result in better rate stability for customers. As we have previously explained, without including CWIP in rate base, a new project has no direct effect on customer rates until it begins to provide service.⁵³ If the Commission does not allow Desert Southwest to include CWIP in rate base, all of the Project's borrowing costs will be accrued over several years, and then capitalized after the Project goes into service, along with a return of the investment cost through depreciation expense. Such a process would increase customers' bills more significantly than if the Commission were to allow inclusion of CWIP in rate base.⁵⁴ By permitting Desert Southwest to recover CWIP, the Commission is mitigating this potential future rate increase to customers.

67. Our acceptance of Desert Southwest's request to recover 100 percent of CWIP in rate base is conditioned upon Desert Southwest's demonstration in a future FPA section 205 filing that its costs are prudent and result in a just and reasonable rate.⁵⁵ In that filing, Desert Southwest would also need to provide a detailed explanation of its accounting methods and procedures to comply with the Commission's requirements for CWIP inclusion.⁵⁶

68. Desert Southwest also does not have an identifiable base of customers to whom CWIP could be assigned and, accordingly, requests recovery of CWIP in rate base under the CAISO's OATT subject to its acceptance as a Participating Transmission Owner. We note that, pursuant to the CAISO Transmission Control Agreement,⁵⁷ Desert Southwest would not be eligible to become a Participating Transmission Owner and thus would not be able to transfer operational control of any transmission facilities to the CAISO until

⁵³ See, e.g., *American Electric Power Serv. Corp.*, 116 FERC ¶ 61,059, at P 59 (2006), *order on reh'g*, 118 FERC ¶ 61,041, at P 27 (2007).

⁵⁴ See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 67.

⁵⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 118.

⁵⁶ 18 C.F.R. §§ 35.13(h)(38), 35.25 (2010).

⁵⁷ The CAISO Transmission Control Agreement establishes the terms and conditions under which transmission owners become Participating Transmission Owners within the CAISO Control Area.

the Project's construction is complete and it is commercially viable.⁵⁸ However, at that point, the opportunity to obtain risk protection through improved cash flow by recovering in-progress construction costs will already have passed. Accordingly, it is unclear how Desert Southwest intends to implement the CWIP incentive. Thus, if and when Desert Southwest makes the required FPA section 205 filing seeking recovery of CWIP, Desert Southwest must demonstrate how it plans to recover these costs and why the cost allocation method is just and reasonable.

3. Abandoned Plant Cost Recovery

a. Desert Southwest's Proposal

69. Desert Southwest requests recovery of 100 percent of prudently-incurred transmission-related costs if the Project must be abandoned due to forces outside of Desert Southwest's control. Because Desert Southwest does not have its own rate base, it states that abandonment costs would be included in rates under CAISO's OATT, subject to CAISO's acceptance of Desert Southwest as a Participating Transmission Owner. Desert Southwest states that the Project still needs siting approval from multiple federal agencies as well as the state of California and, accordingly, faces significant risk and uncertainty with respect to the Project's development.

b. Comments

70. While several protesters object to the combination of incentives inclusive of the abandonment incentive, no party protests the abandonment incentive individually.

c. Commission Determination

71. In Order No. 679, the Commission found that recovery of costs of abandoned facilities is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.⁵⁹ Such is the case here. We expect that allowing Desert Southwest the opportunity to recover the costs that it prudently incurs will help Desert Southwest finance the Project and will assure potential investors that they will likely be able to recover some part of their investments. Accordingly, we grant Desert Southwest's request for recovery of 100 percent of prudently-incurred costs if the Project

⁵⁸ See CAISO Transmission Control Agreement, FERC Electric Tariff No. 7, section 2.1.2 (Right to Become a Party); section 2.2.3 (Determination of Eligibility); and section 4.1 (under Transfer of Operational Control, TO Facilities and Rights Provided to the ISO).

⁵⁹ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 163.

is abandoned as a result of factors beyond the control of Desert Southwest, conditioned upon Desert Southwest's sufficient demonstrations in a future FPA section 205 filing as described below.

72. We find that Desert Southwest has demonstrated a nexus between the risks of the Project and the need to recover prudently-incurred costs associated with abandonment of the Project. We find that this incentive will be an effective means to encourage the investment in projects that carry a significant amount of development risk. The Project faces risks associated with generation developers' decisions to develop or terminate renewable energy projects in that region. Further, the Project still requires siting approval from several agencies, and/or will need to obtain a Certificate of Public Convenience and Necessity from the CPUC. These factors introduce a significant element of risk, and authorizing the abandoned plant incentive will help lessen this risk by providing Desert Southwest with some degree of certainty as it moves forward.

73. We will not determine the justness and reasonableness of the magnitude of the requested abandoned plant recovery, if any, until Desert Southwest seeks such recovery in an FPA section 205 filing. Order No. 679 specifically requires every utility seeking abandonment recovery to submit such an FPA section 205 filing.⁶⁰ In its FPA section 205 filing, Desert Southwest must demonstrate that the costs were prudently incurred and result in a just and reasonable rate. Protesters that are concerned about their potential exposure to abandoned plant costs will have an opportunity to comment on any proposal to recover such costs if and when Desert Southwest makes the required FPA section 205 filing. Similarly, arguments about whether it was prudent for Desert Southwest to incur specific costs can be raised at that time. At this stage of the proceeding, we are simply granting the abandoned plant recovery incentive, subject to Desert Southwest making the appropriate demonstration in a future section 205 filing.

74. We also note that Desert Southwest does not have an identifiable base of customers to whom abandonment costs could be assigned and that Desert Southwest has requested that abandonment costs be included in rate base under CAISO's OATT subject to its acceptance as a Participating Transmission Owner.⁶¹ Therefore, if the Project is cancelled before it is completed and transferred to CAISO, it is unclear how Desert

⁶⁰ *Id.* P 166.

⁶¹ The Commission has previously granted the abandoned plant cost recovery incentive to independent transmission companies with no identifiable base of customers while noting that a cost allocation method would need to be proposed and approved by the Commission before the applicant would be able to recover any abandoned plant costs. *See ITC Great Plains*, 126 FERC ¶ 61,223 at P 70; *Green Power*, 127 FERC ¶ 61,031 at P 50-52.

Southwest intends to recover the costs it incurred as a non-Participating Transmission Owner. Accordingly, if and when Desert Southwest makes the required FPA section 205 filing seeking abandonment recovery, Desert Southwest must demonstrate why the cost allocation method by which it proposes to recover these costs is just and reasonable.

4. Incentive ROE Adder

a. Desert Southwest's Proposal

75. Desert Southwest requests the following incentive ROE adders: (1) a 50-basis point ROE adder for joining an ISO or RTO in the future; (2) a 100-basis point ROE adder for forming a transco;⁶² and (3) a 50-basis point ROE adder for overall Project risk and the use of advanced technology. Desert Southwest states that it will propose a specific ROE level at the time it makes its FPA section 205 filing as a Participating Transmission Owner under CAISO's OATT. Desert Southwest states that its requested ROE adders are similar to those previously approved by the Commission for comparable projects proposed by merchant developers.

76. Desert Southwest intends to become a Participating Transmission Owner and transfer operational control of the Project to CAISO upon completion of construction of the Project. Desert Southwest states that the Commission has a well-established policy of granting a 50-basis point ROE adder for participation in an RTO, and, therefore, requests that 50 basis points be added to its ROE on the condition that it joins CAISO as a Participating Transmission Owner.

77. Additionally, Desert Southwest requests a 100-basis point adder for its structure as a transco, stating that the Commission has consistently provided a 100-basis point ROE adder for transcos to attract investment in transmission projects. Desert Southwest states that it is an independent, stand-alone transmission company that does not own, control, or have any interests in any electric facilities and does not have a franchised service territory or retail customers. It will sell transmission service on the Project at wholesale. Desert Southwest argues that its for-profit, transmission-only structure is precisely the business model that the Commission seeks to encourage through transmission incentives in order to promote continued investment in new transmission.

⁶² For purposes of transmission investment incentives, a transco is a stand-alone transmission company that has been approved by the Commission and that sells transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility. *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 201.

78. Desert Southwest also requests a 50-basis point adder in recognition of the risks and challenges associated with the Project and for the Project's use of the innovative Vindicator technology. Desert Southwest claims that it faces significant risks in developing the Project as a start-up independent transmission company, as the Project requires substantial investment in private capital and numerous siting, permitting, and regulatory approvals from federal and state agencies. Desert Southwest notes that although progress has been made toward obtaining these approvals, it may need to obtain a Certificate of Public Convenience and Necessity from the CPUC, which will present timing and coordination challenges and raise the risk profile of the Project. Desert Southwest argues that the private capital currently invested in the Project is at risk until more financing is attracted to move forward with development.

79. Finally, Desert Southwest explains that the Project will use Vindicator technology, which is capable of developing a forward-looking light detection and ranging system that is able to measure real-time three dimensional wind speed and direction data at ranges up to 300 meters. Desert Southwest contends that the technology will improve CAISO's forecasting and scheduling, resulting in the reduction of system operating costs and the price for delivered power. The sensors can provide important and accurate heat loss data, which can be used to implement dynamic line ratings. Desert Southwest further states that this technology will allow CAISO to more efficiently load the transmission line with power produced by solar and other generators during off-peak hours for wind energy production. Desert Southwest notes that the Project will have a second optical ground wire cable to allow utilization of smart grid technology as it becomes available in the future.

b. Comments

80. Six Cities, CMUA, and SWP state that Desert Southwest has not demonstrated that 200 basis points in adders are needed to mitigate the Project's risks and challenges, especially considering Desert Southwest's request for 100 percent of CWIP in its transmission rate base and abandoned plant recovery. Six Cities argue that CWIP and the ROE adder incentives are largely intended to achieve the same results. Six Cities also argue that allowing Desert Southwest to recover 100 percent of its prudently-incurred abandoned plant costs effectively eliminates any risks whatsoever to Desert Southwest's investors. TANC and M-S-R/SVP concur, arguing that the CWIP and abandonment incentives will mitigate the existing risks facing Desert Southwest, including risks of cash flow, abandonment, attracting financing, and securing regulatory approval, and that these risks cannot be used as a justification for the ROE adders. Finally, SWP contends that with the DOE loan guarantee in hand, the risks for Desert Southwest's investors would be significantly reduced and there would be no need for the proposed ROE adders.

81. TANC and M-S-R/SVP argue that the requested 50-basis point adder for overall risk is particularly unjustified. TANC and M-S-R/SVP state that Desert Southwest fails to specify which additional regulatory risks it faces that would justify a 50-basis point

adder. TANC and M-S-R/SVP note Desert Southwest's acknowledgement that it has received all the necessary state permits for the Project and that its California Environmental Quality Act review was completed in 2007. Therefore, they are unsure which additional regulatory risks Desert Southwest faces that would justify the 50-basis point adder.

82. TANC and M-S-R/SVP also contest Desert Southwest's claim that the Project will employ advanced transmission technology. They argue that the remote laser wind sensors of the Vindicator technology are not advanced *transmission* technology but *generation* technology that will be mounted on wind turbines to facilitate smarter turbine control for increased power output and reduced turbine stress. They argue that Desert Southwest has not explained how a technology intended to enhance wind generation constitutes an advanced transmission technology. Therefore, TANC and M-S-R/SVP state that Desert Southwest's request for an additional 50-basis point adder for the use of an advanced transmission technology is also unjustified.

83. The CPUC states that the proposed 200-basis point adder would result in unjust and unreasonable rates. The CPUC also argues that Desert Southwest does not provide evidence that the Project is risky and that the proposed adders are unsupported.

c. Desert Southwest's Answer

84. Desert Southwest answers that each incentive is designed to address different risks and challenges. While the CWIP and abandonment incentives offset risks during construction of the Project, the ROE adders address financial risks once the Project becomes operational. Desert Southwest reiterates that the ROE adders are appropriate in this case as they will encourage continued and new investment in the Project, both of which are necessary to its successful development. Desert Southwest counters that the protestors' allegation that the ROE adders will result in an unjust and unreasonable rate is without merit, given that it has yet to propose a specific ROE level. Desert Southwest notes that it intends to propose an ROE level (including adders) that is within the zone of reasonableness in its later FPA section 205 filing.

d. Desert Southwest's Response to Commission Letter

85. In its July 28, 2010 letter, the Commission requested additional information regarding the use of the Vindicator technology in the Project, including information about the placement and number of laser wind sensors to be used; barriers that may exist to introducing the Vindicator technology; and benefits of the technology presented by

Desert Southwest in the Petition, including claims that the technology will result in improved forecasting and scheduling for CAISO and dynamic line ratings.⁶³

86. Desert Southwest responds that the placement of the remote laser wind sensors is based on the design capability of the remote sensors. It states that the Project's transmission towers will be located approximately 1400 feet apart and that the current design plan calls for two remote sensors aimed in opposite directions to be placed on every other transmission tower along the length of the 118-mile Project.⁶⁴ The system will create a "cone" of three-dimensional data on speed, direction, and sheer of the wind in 50 to 100 meter intervals over the entire line. In addition, because the Project will be located in the same corridor as SoCal Edison's DPV1 and Devers-Palo Verde No.2 (DPV2) transmission lines, Desert Southwest asserts that the system can be used to collect data for all three lines. Thus, according to Desert Southwest, the arrangement would result in a highly accurate wind and temperature map across the entire length of the 118-mile transmission corridor.

87. Desert Southwest contends that the real-time accurate temperature and wind data will be made available directly to CAISO and can be used to allow for dynamic line ratings. CAISO could also employ the data to generate accurate heat dissipation calculations that serve as inputs to CAISO's existing scheduling and forecasting models, to enhance their prediction capabilities. According to Desert Southwest, these enhanced scheduling and forecasting abilities will allow CAISO to more efficiently load the Project and the DPV1 and DPV2 lines by scheduling solar on-peak and other generation around wind on-peak and off-peak, in a manner that optimally utilizes all three transmission lines. CAISO can use this information to establish improved protocols for resource forecasting and scheduling, which will reduce congestion on the lines and therefore reduce the price of delivered power. Additionally, through improved forecasting and scheduling, Desert Southwest argues that CAISO will be able to reduce system operating costs associated with curtailments of renewable resources.⁶⁵ Desert Southwest believes

⁶³ Commission's July 28, 2010 Letter, Docket No. EL10-54-000.

⁶⁴ Desert Southwest acknowledges the possibility of a wider separation between the sensors, which it will determine once more detailed information regarding power consumption for the laser wind sensor units becomes available. Desert Southwest September 10, 2010 Response at 3.

⁶⁵ Desert Southwest notes that it has not yet commenced formal discussions with CAISO regarding any joint design activities needed for integrating the remote laser wind sensor technology but states its intent to do so before the end of 2010. It also proposes to work with CAISO and the Western Electricity Coordinating Council (WECC) to develop protocol for implementing dynamic line ratings. *Id.* at 4.

that the real-time data can also be fed into statewide forecasting systems for additional system benefits.

88. Desert Southwest argues that barriers exist to the introduction of Vindicator technology, with the primary barrier being industry acceptance due to insufficient operating experience and the price of installation. Desert Southwest explains that only a very small fraction of transmission lines in the nation employ dynamic line rating technology, but it believes that successful application of this technology for the Project will promote industry acceptance and accelerate installation of the technology in a variety of applications that optimize the power grid.⁶⁶ Further, Desert Southwest argues that although the high price associated with the technology likely creates a barrier to its deployment,⁶⁷ substantial ancillary benefits with respect to co-located transmission lines makes the Project a good opportunity to support the higher costs of the technology. It also reiterates that the Project's use of this technology is a novel application.

89. Desert Southwest notes that while the Vindicator technology was developed primarily to control wind turbines more precisely, the same information used to control turbines also can be used for dynamic line ratings, as described above. By using the Vindicator technology, Desert Southwest anticipates a potential increase of 10 to 20 percent in available transmission capacity with 118-mile continuous monitoring of the environmental aspects of the Project, together with the DPV1 and DPV2 lines, but only if those lines become thermally limited.⁶⁸

90. Finally, Desert Southwest reiterates that, along with several financing, permitting, locational, and regulatory risks that it faces in developing the Project,⁶⁹ use of the

⁶⁶ Desert Southwest clarifies that the manufacturer of the remote laser wind sensor technology is continually testing the technology in a range of applications, including dynamic line ratings, in order to promote industry acceptance and demonstrate successful uses. Desert Southwest September 24, 2010 Supplemental Response, Docket No. EL10-54-000, at 2 (Desert Southwest September 24, 2010 Supplemental Response).

⁶⁷ Desert Southwest notes that the estimated costs for units of the remote laser wind sensor technology for the Project, plus engineering and installation fees is \$21.8 million. Desert Southwest September 10, 2010 Response at 3.

⁶⁸ Desert Southwest clarifies that the Vindicator technology will improve available system capacity for transmission lines that are thermally limited and notes that the transmission lines in the corridor currently are stability limited. Desert Southwest September 24, 2010 Supplemental Response at 2.

⁶⁹ On this point, Desert Southwest expounds that in addition to potentially needing to obtain a Certificate of Public Convenience and Necessity from the CPUC, the Project

(continued...)

innovative Vindicator technology supports the requested 50-basis point ROE adder. It also clarifies that use of an eight percent debt cost in its Economic Benefit Analysis does not reflect the contemplated DOE loan guarantee.

e. **Commission Determination**

91. As discussed above, Desert Southwest requested a total of 200 basis points of incentive ROE adders. Given the size, scope, benefits, and the risks and challenges of the Project, as well as the other incentives that we grant Desert Southwest herein, we will instead grant Desert Southwest a 150-basis point incentive ROE adder.

92. The components of the incentive ROE adder that we grant Desert Southwest are consistent with the Commission's statements in Order No. 679 and subsequent cases. For example, we stated that we would authorize incentive-based rate treatment for public utilities that are or will continue to be members of transmission organizations, when it is justified by the applicant.⁷⁰ Desert Southwest states that it intends to turn over operational control of the Project to CAISO when construction is completed and that it will become a Participating Transmission Owner. We have previously found that granting this incentive is intended to encourage participation in an RTO and is consistent with the stated purpose of FPA section 219.⁷¹ Accordingly, Desert Southwest's commitment to participate in CAISO is one consideration that supports the incentive ROE adder granted here, effective upon the date that the Project is placed in CAISO's operational control and Desert Southwest becomes a member of CAISO.

93. Another consideration that supports the incentive ROE adder granted here is Desert Southwest's status as a transco. In the past, the Commission has encouraged the

must still acquire rights to cross open space deserts from local agencies that are not required to recognize federal actions or designations; comply with local land use regulations as well as a new regulatory regime related to routing through a multiple species habitat conservation plan zone; negotiate land rights with private landowners along the proposed route; and construct the Project in accordance with the Bureau of Land Management's requirements. Desert Southwest September 10, 2010 Response at 2.

⁷⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 326, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86. *See, e.g., Green Energy*, 129 FERC ¶ 61,165 at P 57; *Green Power*, 127 FERC ¶ 61,031 at P 85; *Tallgrass*, 125 FERC ¶ 61,248 at P 58.

⁷¹ *See* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 86; *Green Power*, 127 FERC ¶ 61,031 at P 85 (citing *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073, at P 26 (2007)).

formation of transcos, finding that their unique combination of a for-profit business model and a sole focus on developing transmission assets helps remedy the need for transmission investment. To that end, the Commission has granted an incentive ROE adder to recognize an applicant's transco status.⁷² We find that Desert Southwest qualifies as a transco, as it is an independent, stand-alone transmission company, whose sole purpose is to develop the Project.

94. A final consideration that supports the incentive ROE adder granted here are the risks and challenges of the Project, including those associated with the proposed use of Vindicator technology. Desert Southwest has demonstrated that the Project faces significant financing, regulatory, and technological risks and challenges. In addition to the developmental challenges that the Project faces, including being subject to additional regulatory involvement, a long lead-time, and the risk of being unable to obtain additional financing to complete construction, use of the Vindicator technology introduces challenges to the Project that are worthy of consideration in the overall nexus analysis. For instance, the Vindicator technology should allow for more precise control over the wind turbines interconnected to the Project, resulting in improved forecasting and scheduling of other generation around the on-peak and off-peak periods of wind generation. In addition, as Desert Southwest explains, the Vindicator technology will provide transmission-related benefits, such as dynamic line ratings and more efficient use of the Project and existing transmission lines. Desert Southwest explains that insufficient operating experience with the Vindicator technology, as well as its high price and low industry acceptance, have presented barriers to adopting the technology.

95. For these reasons, we find that Desert Southwest has justified an incentive ROE adder for the project. We also find that an incentive ROE adder of 150 basis points appropriately takes account of Desert Southwest's characteristics discussed above and the distinctive risks and challenges presented by the Project. In making this finding, we also account for the extent to which the other incentives we are granting to Desert Southwest reduce certain of those risks and challenges.

96. Our determination here is subject to Desert Southwest's overall ROE, including the incentive ROE adders granted here, falling within the zone of reasonable returns. That zone of reasonableness will be determined when Desert Southwest makes its future filing under FPA section 205, updating its transmission revenue requirement to reflect the fact that the facilities have been placed in service. Because Desert Southwest must demonstrate that its overall ROE falls within the zone of reasonableness and will result in a just and reasonable rate in its future FPA section 205 filing, we dismiss the CPUC's

⁷² See, e.g., *Green Power*, 127 FERC ¶ 61,031 at P 86; *International Transmission Co.*, 126 FERC ¶ 61,223, at P 93 (2009).

argument that granting Desert Southwest incentive ROE adders will result in an unjust and unreasonable rate.

5. Hypothetical Capital Structure

a. Desert Southwest's Proposal

97. Desert Southwest originally requested that the Commission approve its use of a 60/40 capital structure until the Project is placed into service. However, in its response to the Commission's letter requesting additional information, Desert Southwest amends its Petition to request a 50/50 capital structure.⁷³ Desert Southwest states that it is a start-up independent transmission company with no revenues other than those to be received from the Project. Further, it expects to encounter frequent fluctuations in new financings and equity investments until it can attract adequate financing for the Project. Therefore, Desert Southwest believes that the 50/50 capital structure will facilitate financing by attracting investors and securing capital at a reasonable cost. Desert Southwest notes that once any portion of the Project is placed into service, it will begin using its actual capital structure.

b. Comments

98. Six Cities, TANC, and the CPUC argue that the 60/40 capital structure, in particular, is unjustified, given the potential of DOE funding for the Project and the fact that Desert Southwest has not demonstrated that it will be seeking significant equity investment. More generally, the CPUC asserts that there is no evidence that this Project is so unique or risky to warrant the hypothetical capital structure incentive, thus requiring ratepayers to compensate the company beyond what the actual capital structure supports.

c. Desert Southwest's Answer

99. Desert Southwest answers that as a start-up independent transmission company developing a \$350 million project, it expects cash flows to fluctuate significantly during the Project's construction phase. Without a hypothetical capital structure, Desert Southwest is concerned that it will face higher borrowing costs that could render the Project uneconomic. However, with the hypothetical capital structure, Desert Southwest states that it will have the credit rating and access to credit markets that is vital to the success of the Project.

⁷³ Noting that a 50/50 capital structure is anticipated for the Project in the absence of a DOE loan guarantee, Desert Southwest amends its request because it believes a DOE loan guarantee may no longer be available for the Project. Desert Southwest September 10, 2010 Response at 6.

d. Commission Determination

100. As a preliminary matter, protestors' arguments against the requested 60/40 capital structure are now moot since Desert Southwest has amended the Petition to request a 50/50 capital structure.

101. In Order No. 679-A, the Commission stated that to encourage the development of new transmission investment, it will evaluate each proposal on a case-by-case basis and will not prescribe specific criteria or set target debt to equity ratios for evaluating hypothetical capital structures.⁷⁴ Furthermore, the Commission said that the use of hypothetical capital structures "can be an appropriate ratemaking tool for fostering new transmission in certain relatively narrow circumstances."⁷⁵ The Commission found, however, that adoption of such a hypothetical capital structure would require a demonstration of the required nexus between the need for a hypothetical capital structure and the proposed investment project.⁷⁶

102. We find that Desert Southwest has shown a nexus between using the requested hypothetical capital structure of 50 percent debt and 50 percent equity and its ability to borrow funds during the pre-commercial period for the Project. We will allow Desert Southwest to use the 50/50 capital structure until the Project is placed in service, at which time it will begin using its actual capital structure. Desert Southwest is a stand-alone start-up company that lacks an actual capital structure and will receive no revenues beyond those received from the operation of the Project. Given the estimated cost of the Project, Desert Southwest will need to raise significant levels of new debt and equity capital. Approval of its requested hypothetical capital structure, as amended, will allow Desert Southwest flexibility in financing the Project to allow for prevailing market and regulatory conditions, which should lower the overall cost of capital.⁷⁷

6. Nexus with Total Package of Incentives

103. As we have stated above, the total package of incentives requested must be tailored to address the demonstrable risks or challenges faced by the applicant. This test is fact-specific and requires the Commission to review each application on a case-by-case

⁷⁴ Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 91.

⁷⁵ *Id.* P 93.

⁷⁶ *Id.*

⁷⁷ *See, e.g., Potomac-Appalachian Transmission Highline*, 122 FERC ¶ 61,188, at P 55 (2008). *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 93.

basis. The Commission has in prior cases approved multiple rate incentives for particular projects.⁷⁸

104. We find that, consistent with Order No. 679-A, the total package of incentives is tailored to address the demonstrable risks and challenges faced by Desert Southwest in developing its Project.⁷⁹ Desert Southwest has also explained why it is seeking each incentive and how each is relevant to the proposed Project. Thus, we find that Desert Southwest has shown a nexus for the total package of incentives.

E. Request for Incentives on Potential Second Circuit of Project

1. Desert Southwest's Proposal

105. Desert Southwest notes that it is contemplating a second circuit capable of transferring 1,200 MW, which may be constructed alongside some or all of the Project's proposed route. Desert Southwest estimates that the addition of this second line would bring the estimated cost to more than \$450 million. The second circuit, if constructed, would be funded by and under the operational control of the Imperial Irrigation District. However, Desert Southwest states that to the extent that it independently funds and constructs any portion of the second circuit without Imperial Irrigation District's participation, that portion of the second circuit would be integrated into the CAISO grid. Desert Southwest states that while the Petition do not apply to any portion of a second circuit to be constructed by Imperial Irrigation District, it asks that the requested incentives apply to the portion that Desert Southwest may independently fund and construct.

⁷⁸ See, e.g., *Green Energy*, 129 FERC ¶ 61,165 at P 66 (finding that the applicant demonstrated a sufficient nexus between the risks of the project and the requested incentives, which included deferred recovery of pre-commercial expenses; 100 percent CWIP and abandonment recovery; ROE incentives; and a hypothetical capital structure until the project is placed in service); *Green Power*, 127 FERC ¶ 61,031 at P 89 (finding that 100 percent CWIP, deferred recovery of pre-construction costs, abandonment recovery, and ROE incentives were tailored to the unique challenges faced by the project); *ITC Great Plains*, 126 FERC ¶ 61,223 at P 61 (finding that applicant demonstrated a sufficient nexus between the risks of the project and the requested incentives, which included abandoned plant recovery, 100 percent of CWIP, deferred recovery of pre-construction costs, and ROE incentives).

⁷⁹ See Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 21, 27.

2. Comments

106. Protesters argue that Desert Southwest is not entitled to incentives for any potential second circuit based on its current filing. Six Cities and M-S-R/SVP assert that Desert Southwest has provided insufficient information to justify incentives on the second line and has failed to meet its burdens of proof under FPA section 219 and Order No. 679. TANC suggests that this request be rejected as premature for, among other reasons, a lack of a showing that it would negate congestion or enhance reliability. SWP claims that Desert Southwest's claim is vague, unsupported, and thus should be denied.

107. Six Cities contend that, to the extent that Desert Southwest decides in the future to modify the scope of the Project to encompass a second circuit and wishes to recover transmission incentives, the Commission should require Desert Southwest to file a petition addressing that future project and make the requisite showings required by Commission incentive policy. Six Cities urge the Commission to make clear that material modifications to projects receiving incentive rate treatment must be reevaluated by the Commission to determine if incentives should apply to projects that are significantly expanded, reduced, or otherwise modified in scope. Six Cities argue that transmission owners that have been awarded incentives must have an ongoing responsibility to notify the Commission of material changes to their projects, and such notifications, whether in the form of motions or updated petitions in the original incentives docket, should be duly noticed in accordance with the Commission's regulations. To the extent warranted following the notification, the Commission should establish procedures to evaluate the continuing eligibility of the project as modified for incentives.

3. Commission Determination

108. Desert Southwest has failed to adequately support its request for rate incentives on a potential second circuit of the Project. The Petition provides insufficient information relating to this second circuit; fails to demonstrate that the second circuit qualifies for incentive treatment pursuant to FPA section 219; does not show that the package of incentives requested in this Petition are tailored to the risks of the second circuit; and generally fails to satisfy the requirements of Order No. 679. Accordingly, Desert Southwest's request is dismissed without prejudice.

109. We find that Six Cities' request for clarification is premature. In Order No. 679, the Commission found that if an applicant obtained a declaratory order from the Commission and the applicant's proposal subsequently changed from the facts on which the declaratory order was issued, then the applicant could seek another declaratory order or wait to seek approval of the changes in the later FPA section 205 filing. The

Commission further noted that, in the latter event, an interested party could challenge the changes in the FPA section 205 proceeding.⁸⁰

F. Request for Policy Reconsideration

1. Comments

110. NCPA and CMUA urge the Commission to reconsider how it handles petitions for declaratory orders requesting incentives for transmission projects that have not been approved through their respective regional planning processes, particularly as applied to the markets in California. They note that CAISO is currently engaged in a comprehensive transmission planning process to determine which facilities will be needed to meet the state of California's goal of achieving a resource portfolio containing 33 percent renewable resources by 2020. CAISO will be pre-approving recovery of costs through the CAISO tariff for those projects that are deemed necessary. NCPA argues that such projects will be very low risk, having in place a guaranteed mechanism for recovery of project costs and a guaranteed return on the investment. NCPA and CMUA submit that there is no shortage of independent developers willing to put up capital in order to get the low-risk return on investment.

111. Accordingly, NCPA and CMUA state that while rate incentives may have been necessary in 2005 to promote stagnant transmission investment, it is necessary to reevaluate their role today. They also express concern regarding how incentives increase the overall costs to the consumer of new transmission facilities. NCPA and CMUA contend that transmission projects will likely get built in California without the additional costs to consumers caused by rate incentives.

112. Going forward, NCPA and CMUA urge the Commission to consider mechanisms to ensure that projects selected through CAISO's transmission planning process are developed in the most cost-effective manner possible, including competitive solicitations and procedures if appropriate. NCPA suggests that one aspect of that competition should be price and perhaps commitments about which incentives will be requested. Alternatively, NCPA proposes that entities that demand a right of first refusal and do not wish to compete for the right to build should be required to forego rate incentives.

2. Desert Southwest's Answer

113. Desert Southwest argues that NCPA's and CMUA's policy arguments are outside the scope of this proceeding. Desert Southwest states that it is not requesting a change in

⁸⁰ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 78.

the Commission's incentive policy or precedent, but rather an application of existing policies and precedent to the Project.

3. Commission Determination

114. We reject NCPA's and CMUA's arguments to revisit our transmission incentives policy as impermissible collateral attacks on Order Nos. 679 and 679-A. Congress enacted FPA section 219, and we subsequently issued Order Nos. 679 and 679-A to implement the statute, because the Commission's traditional ratemaking policies may not have been sufficient to stimulate investment in infrastructure to ensure reliability and/or reduce congestion costs. We note, however, that before Desert Southwest can recover any incentives in its rates, it must demonstrate that its rates are just and reasonable under section 205 of the FPA. We also reject NCPA's and CMUA's request to examine CAISO's transmission planning process in the context of Desert Southwest's Petition for transmission incentives as beyond the scope of this proceeding; rather, California's revised transmission planning process was the focus of the Commission's proceeding in Docket No. ER10-1401-000.

The Commission orders:

(A) Desert Southwest is hereby granted the CWIP incentive, abandoned plant incentive, 150-basis point incentive ROE adder, and hypothetical capital structure incentive of 50 percent equity and 50 percent debt, subject to conditions described above, as discussed in the body of the order; and

(B) Desert Southwest's request that the proposed CWIP incentive, abandoned plant incentive, hypothetical capital structure incentive, and incentive ROE adder apply to any portion of a second circuit that may be independently constructed by Desert Southwest is hereby dismissed without prejudice, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.