

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

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

A.15-08-027  
(Filed August 31, 2015)

**REPLY BRIEF OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

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The California Independent System Operator Corporation (CAISO) submits this reply brief pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), and the schedule set forth in the Assigned Commissioner’s Scoping Ruling dated February 24, 2017 (Scoping Ruling). The CAISO, NextEra Energy Transmission West, LLC (NEET West), the Office of Ratepayer Advocates (ORA), and California Unions for Renewable Energy (CURE) filed opening briefs on March 5, 2018.

**I. INTRODUCTION**

**A. Background**

In the present application, NEET West requests that the Commission grant a certificate of public convenience and necessity (CPCN) for the Suncrest Dynamic Reactive Power Support Project (Proposed Project). The Proposed Project provides for the installation of a +300/-100 megavar (Mvar) static var compensator (SVC) to supply dynamic reactive power support to the 230 kilovolt (kV) bus of the existing Suncrest Substation owned by San Diego Gas and Electric Company (SDG&E). The Proposed Project is needed to meet state renewable portfolio standards by allowing the deliverability of renewable electric generating capacity located in the Imperial Valley area. As part of its 2013-2014 Transmission Plan, the CAISO identified a policy-based need for a 300 Mvar dynamic reactive power support device connected to the Suncrest Substation 230 kV bus to facilitate compliance with the California Renewables Portfolio Standard (RPS). The CAISO approved the dynamic reactive power support device as a policy-driven transmission

solution in its 2013-14 Transmission Plan.

Concurrent with its CPCN review, the Commission reviewed the Proposed Project pursuant to the California Environmental Quality Act (CEQA). This review included a public stakeholder process and the development of an Environmental Impact Report (EIR) to consider potentially feasible environmentally superior alternatives to the Proposed Project. The Final EIR (FEIR) evaluated four potential alternatives to the Proposed Project, including one alternative that considered locating a NEET West-built SVC within SDG&E's existing Suncrest Substation (Suncrest Substation Alternative). The FEIR identifies the Suncrest Substation Alternative as the environmentally superior alternative to meet the project objectives.

## **B. Summary of Recommendations**

The CAISO recommends that the Commission approve the Proposed Project because it addresses an important policy-driven need to ensure the deliverability of renewable resources necessary to meet the California RPS. The Commission has consistently acknowledged that meeting the RPS is sufficient to establish need for transmission upgrades.<sup>1</sup> No party contests the policy-driven need for the Proposed Project. In its opening brief, CURE contends that there is no reliability need for the Proposed Project. This assertion is misplaced, because the Proposed Project is necessary to meet policy-driven needs rather than reliability needs.

The Commission should reject the Suncrest Substation Alternative. Though the FEIR identifies the Suncrest Substation Alternative as the environmentally superior alternative, it also notes that the Proposed Project does not have any significant environmental impacts after mitigation. NEET West has agreed to the mitigation measures identified in the FEIR. Therefore, CEQA does not obligate or require the Commission to select the environmentally superior alternative. NEET West is capable of building the Proposed Project in a timely manner, and the Proposed Project provides significant

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<sup>1</sup> See D.16-08-017, *In the Matter of the Application of S. California Edison Co. (U 338-e) for A Certificate of Pub. Convenience & Necessity for the W. of Devers Upgrade Project & for an Interim Decision Approving the Proposed Transaction Between S. California Edison & Morongo Transmission LLC.*, (Aug. 18, 2016), (“We also find that the proposed project is needed to facilitate deliverability for renewable energy resources identified in the Commission's renewable portfolios, in furtherance of California's 33% RPS.”).

economic, policy, and legal benefits compared to the Suncrest Substation Alternative.

Furthermore, the Suncrest Substation Alternative is infeasible. Although the Commission is not required to make an infeasibility finding to approve the Proposed Project, the Suncrest Substation Alternative is infeasible due to legal and policy issues. The Suncrest Substation Alternative would violate the CAISO's Federal Energy Regulatory Commission - approved tariff. If the Commission approves the Suncrest Substation Alternative, it will likely prevent NEET West from constructing the project and could significantly decrease the number of future CAISO-approved transmission projects that are subject to the competitive solicitation process.

## **II. DISCUSSION**

### **A. CURE Presents No Evidence Contesting the Need for the Proposed Project.**

To issue a CPCN for an electric transmission project, the Commission must determine that “the present or future public convenience and necessity require or will require such construction.”<sup>2</sup> The CAISO provided extensive testimony documenting the need for the Proposed Project as a policy-driven transmission solution designed to meet California's RPS goal. The CAISO's testimony supports the position that the Proposed Project will result in 1045 megawatts (MW) of additional renewable generation deliverability from the renewable zones to the CAISO Controlled Grid.<sup>3</sup> This additional deliverability is necessary to facilitate the development of renewable energy resources consistent with Commission-developed RPS portfolios.<sup>4</sup>

In its opening brief—and for the first time in this proceeding—CURE argues that the Proposed Project does not serve a public convenience or necessity. Specifically, CURE argues that the Proposed Project “is not needed for reliability” and, as a result, the Commission should deny NEET West's application for a CPCN.<sup>5</sup> As the only basis for this assertion, CURE cites the CAISO's Selection Report which states that “there is no

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<sup>2</sup> Public Utilities Code Section 1001.

<sup>3</sup> Exhibit CAISO-01 (Chen), p. 8-11.

<sup>4</sup> Exhibit CAISO-01 (Millar), p. 4:19-22.

<sup>5</sup> CURE Opening Brief, p. 2.

imminent, identified reliability need” for the Proposed Project.<sup>6</sup> However, as explained above, the Proposed Project is necessary to facilitate RPS compliance, not to meet imminent reliability concerns. CURE’s argument fundamentally misunderstands the purpose of the Proposed Project, the tariff basis for the CAISO’s approval of the project, and the need the Proposed Project is designed to address.

The Commission has consistently found that CAISO-approved transmission projects that are designed to meet RPS compliance serve the public convenience and necessity. Most recently, the Commission approved the West of Devers 500 kV transmission line because it was “needed to facilitate deliverability for renewable energy resources identified in the Commission’s renewable portfolios, in furtherance of California’s 33% RPS.”<sup>7</sup> CURE makes no attempt to counter the CAISO’s testimony regarding the need for the Proposed Project to meet RPS requirements. The Commission should reject CURE’s argument because it is unsupported by record evidence and irrelevant as to the need stated for the Proposed Project.

Additionally, the CAISO notes that it has presented substantial evidence showing reliability benefits associated with the Proposed Project. Those reliability benefits include (1) increasing import capabilities into the San Diego area by as much as 306 MW; (2) reducing potential post-transient voltage instability under emergency conditions in the San Diego area and Los Angeles Basin; (3) deferring or alleviating potential needs for reliability upgrades in the San Diego area; (4) reducing local capacity requirements in the San Diego area; and (5) reducing the potential exposure of cross-tripping SDG&E’s 230 kV tie with the Baja California grid operator.<sup>8</sup> These reliability benefits do not address an “imminent” potential violation of mandatory reliability standards, but they further support a Commission finding that the Proposed Project serves public convenience and necessity.

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<sup>6</sup> *Id.*, p. 2.

<sup>7</sup> *In the Matter of the Application of S. California Edison Co. (U 338-e) for A Certificate of Pub. Convenience & Necessity for the W. of Devers Upgrade Project & for an Interim Decision Approving the Proposed Transaction Between S. California Edison & Morongo Transmission LLC.*, 13-10-020, 2016 WL 4699448, at \*7 (Aug. 18, 2016).

<sup>8</sup> Exhibit CAISO-01 (Chen), p. 12-20.

**B. CURE’s Speculation Regarding Environmental Impacts in the CAISO’s Competitive Solicitation Process is Irrelevant to Whether the Proposed Project Serves the Public Convenience and Necessity.**

CURE argues that it is “quite possible, or even likely, that, had the CAISO taken environmental considerations into account, the environmental considerations would have swayed the CAISO’s decision.”<sup>9</sup> Presumably, the purpose of this statement is to argue that the CAISO would have selected SDG&E’s proposal in the competitive solicitation process if environmental considerations had been taken into account. This argument is irrelevant to whether the Proposed Project is necessary, which it is.

In any event, the Commission is the entity ultimately responsible for reviewing environmental impacts and it has done so by preparing the FEIR. Environmental impacts may provide potential project alternatives and mitigation measures, but they do not affect the need for the project. By arguing that environmental impacts affect the need for the Proposed Project, CURE conflates the CEQA environment impact review with the CPCN needs analysis.

**C. ORA Provides No Reason To Pursue the Suncrest Substation Alternative.**

ORA argues that the Commission should approve the Proposed Project, but require SDG&E to show cause why the Suncrest Substation Alternative should not be built.<sup>10</sup> At the same time, ORA argues that NEET West must construct the SVC under any alternative.<sup>11</sup> Given that SDG&E has consistently opposed allowing NEET West to build the SVC inside the Suncrest Substation, ORA’s proposal would likely cause significant delay, uncertainty, and additional litigation. There is no compelling reason to undertake such a convoluted effort in the present case.

The FEIR finds that the Proposed Project will have no unmitigated significant environmental impacts and, as a result, the Commission can approve the Proposed Project without finding the environmentally superior alternative infeasible. Furthermore, ORA cannot show that the Suncrest Substation Alternative will cost less than the Proposed

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<sup>9</sup> CURE Opening Brief, p. 4.

<sup>10</sup> ORA Opening Brief, p. 22.

<sup>11</sup> ORA Opening Brief, p. 19.

Project. To the contrary, NEET West has demonstrated that ordering Suncrest Substation Alternative “would likely add significant costs” because it would require “significant additional work to move the SVC facility to the Suncrest Substation.”<sup>12</sup> ORA provides no compelling reason to further pursue the Suncrest Substation Alternative.

**1. The Commission Has Discretion to Approve the Proposed Project without Finding the Suncrest Substation Alternative Infeasible.**

CEQA prohibits a public agency from approving a project that has one or more significant effects on the environment unless “[c]hanges or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment.”<sup>13</sup> If all significant adverse environmental impacts can be mitigated, there is no requirement to consider or approve a project alternative.<sup>14</sup> The FEIR identifies potential significant environmental impacts associated with the Proposed Project, but recognizes that all significant adverse impacts can be mitigated to a level of less-than-significant through mitigation measures.<sup>15</sup> In its Opening Brief, NEET West confirmed that it does not object to the mitigation measures identified in the FEIR and will accept them as required conditions of the CPCN for the Proposed Project.<sup>16</sup> As a result, the Commission has the authority to approve the Proposed Project, and there is no need to further consider the feasibility of project alternatives.<sup>17</sup>

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<sup>12</sup> NEET West Opening Brief, p. 44; Exhibit NEET West-1 (Sheehan Opening Testimony), p. 40:2-5 Exhibit NEET West-13 (Sheehan Rebuttal Testimony), p. 13:1-2; Exhibit NEET West-14 (Mayers Rebuttal Testimony), p. 3:11 through 4:8, and 17:16-20.

<sup>13</sup> Pub. Res. Code Section 21081.

<sup>14</sup> *Laurel Hills Homeowners Assn. v. City of Los Angeles* (1978) 83 Cal.App.3d 515, 521.

<sup>15</sup> FEIR, p. 20-2.

<sup>16</sup> NEET West Opening Brief, p. 25.

<sup>17</sup> D.17-03-029, citing *Laurel Heights Improvement Assn. v. Regents of Univ. of California*, 47 Cal. 3d 376, 391, 764 P.2d 278, 282 (1988), as modified on denial of reh'g (Jan. 26, 1989), 170 Cal. App. 4th 1186, 1207, 88 Cal. Rptr. 3d 625, 639 (2009), as modified (Jan. 30, 2009). (“Before approving the project, the agency must also find either that the project's significant environmental effects identified in the EIR have been avoided or mitigated, or that unmitigated effects are outweighed by the project's benefits.”)



## **2. The Suncrest Substation Alternative Provides No Substantive Benefits Compared to the Proposed Project.**

ORA argues that the Suncrest Substation Alternative is economically feasible because (1) the Commission can ensure a fair cost sharing agreement between SDG&E and NEET West and (2) it will obviate the need for certain project components. ORA fails to provide any evidence that these factors will lower the overall cost of the project to ratepayers. NEET West noted that restudying, reconfiguring and reengineering the Suncrest Substation Alternative would require significant additional work and additional costs.<sup>18</sup> The CAISO further notes that NEET West's binding cost cap for the Proposed Project may be increased if the Commission orders a change that "results in the estimated costs subject to the binding cost containment being greater than the binding cost cap."<sup>19</sup> The Commission should not pursue the Suncrest Substation Alternative to achieve speculative and potentially non-existent cost savings.

In addition, issuing an order to show cause against SDG&E would further delay the project schedule for an indeterminate amount of time. ORA argues that "[d]elay is a common feature of infrastructure projects," but, the fact the previous projects have been delayed is not an argument to further delay the Proposed Project.<sup>20</sup> In testimony, the CAISO noted that the deliverability of renewable projects with summer 2019 in-service dates would be impacted if the Proposed Project is not in place by that time.<sup>21</sup> NEET West anticipates a nine-month construction schedule for the Proposed Project, meaning that even under the best of circumstances, *i.e.*, the Commission approves the Proposed Project within the next few months, the SVC will be in place just months before those generators are expected to be online.<sup>22</sup> Any additional delays would impact the deliverability of those renewable generators.

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<sup>18</sup> NEET West Opening Brief, p. 44-45.

<sup>19</sup> Approved Project Sponsor Agreement (APSA), p. 43.

<sup>20</sup> ORA Opening Brief, p. 14.

<sup>21</sup> Transcript (Millar), p. 160:1-8.

<sup>22</sup> NEET West Opening Brief, p. 26.

ORA notes that the APSA between the CAISO and NEET West “does not require CAISO to terminate a project in the case of delay.”<sup>23</sup> Though technically correct, ORA’s proposed order to show cause would likely cause an indefinite and prolonged delay. Based on this delay alone, the CAISO and NEET West would need to re-evaluate whether NEET West could procure the necessary approvals and property rights necessary to build the project in a timely manner. If not, the project may be terminated so that an alternative could be built in a reasonable time period.<sup>24</sup> Separately, such a project configuration would be inconsistent with the CAISO tariff, as discussed in more detail below.

**D. The Suncrest Substation Alternative is Infeasible Based on Legal and Policy Considerations.**

As the CAISO noted in its Opening Brief, CEQA provides that an agency may find an environmentally superior alternative infeasible on various grounds, including “[s]pecific economic, legal, social, technological, or other considerations.”<sup>25</sup> The Commission has noted that the concept of “feasibility” under CEQA “encompasses ‘desirability’ to the extent that desirability is based on a reasonable balancing of the relevant economic, environmental, social, and technological factors.”<sup>26</sup> An agency’s decision to reject an alternative as infeasible because it is “impractical or undesirable from a policy standpoint” should be upheld so long as the decision is supported by record evidence.<sup>27</sup> As the decision-making body, the Commission is within its rights under CEQA to select the Proposed Project for policy reasons, and it is not required to approve the environmentally superior alternative identified in the FEIR.<sup>28</sup>

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<sup>23</sup> ORA Opening Brief, p. 14.

<sup>24</sup> ORA repeatedly refers to the CAISO’s “threats” to terminate the project if the Commission requires NEET West to build the SVC in SDG&E’s existing substation. *See* ORA Opening Brief, p. 13. The CAISO has never issued any “threats” and it fully agrees that the Commission retains ultimate siting authority over transmission infrastructure projects. The CAISO believes it is obligated to inform the Commission of the CAISO’s tariff requirements, the APSA requirements, and the potential impacts of siting the SVC inside the Suncrest Substation. Failing to inform the Commission of these issues would be irresponsible.

<sup>25</sup> Pub. Resources Code, Section 21081, subd. (a)(3); Cal. Code Regs., tit. 14, Section 15091 (a)(3).

<sup>26</sup> *City of Del Mar v. City of San Diego*, 133 Cal.App.3d 401, 417 (1982).

<sup>27</sup> *California Native Plant Society v. City of Santa Cruz*, 177 Cal.App.4th 957, 1001 (2009).

<sup>28</sup> D.17-03-029, *Order Denying Rehearing of D. 16-08-017*, pp. 3-4. (“Through the feasibility analysis, the Commission may reject an alternate which it deems infeasible, as long as that finding is supported by record evidence.”)

**a. The Suncrest Substation Alternative Is Legally Infeasible.**

The CAISO tariff provides that transmission solutions involving “an upgrade or improvement to, addition on, or a replacement of part of an existing Participating Transmission Owner facility” will be constructed and owned by the Participating Transmission Owner, unless the Participating Transmission Owner agrees to a different arrangement. Upgrades include improvements, additions to, or replacements of a part of an existing facility.<sup>29</sup> Thus, needed transmission solutions that are an improvement, addition to, or replacement of part of an existing facility are to be constructed and owned solely by the Participating Transmission Owner (unless it agrees otherwise), and the CAISO does not, and cannot, put such transmission solutions out to bid in the CAISO’s competitive solicitation process.

If the Commission orders NEET West to construct an SVC within SDG&E’s Suncrest substation, it would constitute an upgrade or addition to SDG&E’s existing transmission facilities. As a result, the CAISO would not be authorized to conduct a competitive solicitation process for such a project. If the Commission orders NEET West to build the Suncrest Substation Alternative, it would be inconsistent with the CAISO tariff requirements. The APSA specifically provides that the CAISO may terminate NEET West’s right to build the project “if the [Commission] orders the Project facilities to be sited within the substation footprint of the Interconnecting [Participating Transmission Owner].”<sup>30</sup> The CAISO included this language in the APSA partially due to its concern that the Commission could order a configuration—like the Suncrest Substation Alternative—that is inconsistent with the CAISO tariff. The CAISO will exercise its right to terminate the APSA if the Commission orders a project configuration that is inconsistent with the CAISO tariff.

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<sup>29</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Utilities*, Order No. 1000 at P 319, FERC Stats. & Regs. ¶31,323 (2011), order on reh’g, Order No. 1000-A at PP 426-27 (2012).

<sup>30</sup> Exhibit NEET West-10 (APSA), p. 44.

**b. The Suncrest Substation Alternative is Infeasible Based on Public Policy Reasons.**

As with approving the Suncrest Substation Alternative, ORA's proposed order to show cause approach would have negative consequences on the CAISO's competitive solicitation process. ORA provides no basis for why the Commission should pursue a show cause order against SDG&E, but rather contends that the Commission has the authority to do so. The Commission's authority is not in question, but there are significant substantive reasons why the Commission should not exercise that authority in a case such as this where the CEQA analysis shows that Proposed Project will have no significant, unavoidable environmental impacts.

The CAISO previously explained that a decision directing NEET West to build the Suncrest Substation Alternative would significantly impact the CAISO's competitive solicitation process, generally causing the CAISO not to conduct a competitive solicitation for transmission solutions if there is a viable project that is an upgrade or addition to existing facilities. Now, ORA argues that the Commission should issue an order to show cause "requiring SDG&E to show why the Commission should not require the [Suncrest Substation Alternative] to be built."<sup>31</sup> The CAISO believes the result of an order to show cause would be very similar to outright approval of the Suncrest Substation Alternative. Such a precedent would establish that the Commission will not approve a new, standalone transmission facility if there is a competing upgrade to an existing facility that could also meet the transmission needs and would have a lower environmental impact.

**III. CONCLUSION**

The Proposed Project is necessary to meet the state's RPS goals and provide deliverability to new renewable generation projects. The public convenience and necessity for the Proposed Project has been well established has not been refuted by record evidence. The Proposed Project will have no significant environmental impacts, thereby meaning that the Commission can approve the Proposed Project without considering the environmentally superior alternatives in the FEIR. Given the significant legal and policy ramifications of the Suncrest Substation Alternative, the CAISO recommends that the Commission certify the

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<sup>31</sup> ORA Opening Brief, p. 11.

FEIR and grant NEET West a certificate of public convenience and necessity for the Proposed Project.

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