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)

OPENING BRIEF OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

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March 5, 2018

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The California Independent System Operator Corporation (CAISO) submits its opening brief in this proceeding pursuant to Rule 13.11 of the Rules of Practice and Procedure of the California Public Utilities Commission (Commission), and the schedule in the Assigned Commissioner's Scoping Ruling dated February 24, 2017 (Scoping Ruling). This brief follows the common briefing outline developed in accordance with the Scoping Ruling, which is organized by the issues identified in the Scoping Ruling. However, the CAISO's opening brief addresses only issue 1, regarding public convenience and necessity, and issue 2.d, regarding the feasibility of alternatives to the proposed project. This opening brief retains the numbering included in the common briefing outline, but omits sections not addressed by the CAISO.

I. INTRODUCTION

In its 2013-14 Transmission Planning Process, the CAISO identified the need for a 300 Mvar dynamic reactive support device connected to the existing Suncrest Substation 230 kilovolt (kV) bus to support the State of California's renewable portfolio standard (RPS) goals. The CAISO tariff requires that regional transmission projects must be awarded based on a competitive solicitation process unless it involves "an upgrade or improvement to, addition on, or a replacement of a part of an existing" transmission facility. The CAISO found that the dynamic reactive support could reasonably be provided as an addition to the existing Suncrest Substation or through a new, standalone facility. Because the dynamic reactive support could reasonably be provided through a new, standalone facility, the

CAISO conducted a competitive solicitation process in accordance with its tariff requirements and the Federal Energy Regulatory Commission's (FERC) Order No. 1000. NextEra Energy Transmission West, LLC (NEET West) was selected in this competitive solicitation process with its proposal to build a 300 Mvar static var compensator (SVC) connected to the Suncrest substation via a new 230 kV transmission line (Proposed Project). NEET West was selected primarily because it proposed a materially lower cost cap and it assumed more cost risk compared to the competing proposal submitted by San Diego Gas & Electric Company (SDG&E).

In 2015, NEET West filed the present application for a certificate of public convenience and necessity (CPCN) to build the Proposed Project. No party to this proceeding has questioned the need for the Proposed Project and the CAISO provided substantial, uncontroverted evidence showing the continued need for the Proposed Project to support California's RPS goals. As a result, the need for the Proposed Project has been firmly established based on evidence on the record in this proceeding.

Concurrent with the CPCN review, the Commission reviewed the Proposed Project pursuant to the California Environmental Quality Act (CEQA). This review includes 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. Evidence produced during the course of this proceeding demonstrates that the Suncrest Substation Alternative is infeasible based on both legal and policy grounds.

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

From a policy standpoint, the Suncrest Substation Alternative is infeasible because approving such an alternative could significantly decrease the number of future CAISO-approved transmission projects that are subject to the competitive solicitation process, thereby frustrating the joint Commission and CAISO goal to have a competitive solicitation process that provides a "substantial, transparent, predictable, and verifiable role for cost containment" for transmission projects.[1]

II. DISCUSSION

A. Issue 1: The Proposed Project Serves an Important Public Convenience and Necessity.

The 2013-14 CAISO Transmission Plan identified a need for a dynamic reactive power device connected to the Suncrest substation as a policy-driven transmission addition to the CAISO Controlled Grid[2] necessary to meet the State of California's RPS goals. The Proposed Project meets the reactive power requirements by installing a +300/-100 Mvar SVC connected to the existing Suncrest Substation via a 1.5 mile 230 kV underground transmission line. The initial driver for the Proposed Project was a post-transient voltage deviation performance concern in the southern California transmission grid based on the 33% RPS goal. The concern was mainly caused by the addition of renewable generation in the Imperial Valley area, coupled with the early retirement of generation in the southern California area, including the San Onofre Nuclear Generating Station (SONGS), and gas-fired generation planned to close in compliance with the State's policy to eliminate coastal water use in once-through cooling.[3]

The CAISO conducted an updated transmission analysis during the course of this proceeding that confirmed the need for the Proposed Project to facilitate RPS compliance.

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[1] Exhibit CAISO-02, p. 14 (citing the Commission's comments in Docket No. ER13-103, which established the competitive solicitation process in the CAISO tariff.)

[2] Terms not otherwise defined herein are defined in the CAISO Tariff, Appendix A.

[3] Exhibit CAISO-01, p. 3.

The Proposed Project will provide several benefits to the CAISO Controlled Grid in the southern California area, which include, but are not limited to:

- increasing renewable generation deliverability from the Imperial, Baja, and Arizona renewable energy zones to the CAISO Controlled Grid by as much as 1045 MW, while ensuring system operation within applicable reliability criteria and the grid operation procedures;
- increasing San Diego power import capability by as much as 306 MW. This increased import capability helps to accommodate more renewable energy by allowing the California wholesale energy market to access lower cost electricity and making the grid operation less constrained to address the oversupply concerns;
- reducing the risk of potential post-transient voltage instability under emergency conditions in the San Diego area and Los Angeles Basin by boosting the San Diego Import Transmission (SDIT) system potential Interconnected Reliability Operating Limit (IROL) by as much as 220 MW;
- providing additional reliability benefits by deferring or alleviating potential needs for reliability upgrades in the San Diego area that are estimated to cost $48 million-$136 million;
- reducing local capacity requirements in the San Diego area and Miramar sub-area by about 326 MW and 30 MW, respectively;
- reducing the potential exposure of cross-tripping SDG&E's 230 kV tie with CENACE,[4] which may jeopardize reliability in the CENACE system and result in potential voltage instability in the Los Angeles Basin and the San Diego area.[5]

The CAISO detailed these benefits in direct testimony that was introduced into the record by stipulation. No party contested the CAISO's analysis nor has any party questioned the need for the Proposed Project. As a result, the public convenience and necessity has been firmly established.

B. Issue 2: There Is No Substantial Evidence that the Proposed Project Will Have a Significant and Unavoidable Effect on the Environment.

1. Issues 2(a) and 2(b): The Proposed Project Will Have No Significant and Unmitigated Environmental Effects.

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,

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4 CENACE is the grid operator for Baja California, which is electrically interconnected with the CAISO and WECC system.

5 Exhibit CAISO-01, p. 4.

or incorporated into, the project which mitigate or avoid the significant effects on the environment."[6] If all significant adverse environmental impacts can be mitigated, there is no requirement to consider or approve a project alternative. In the present case, the FEIR identified potential significant environmental impacts associated with the Proposed Project, but recognized that all significant adverse impacts could be mitigated to a level of less-than-significant through mitigation measures.[7]

Assuming that NEET West agrees to the mitigation measures identified in the FEIR, the CAISO agrees that the proposed project will have no significant and unmitigated adverse environmental impacts. Based on this finding, the Commission has adequate authority to approve the Proposed Project, and there is no need to further consider the feasibility of project alternatives.[8]

2. Issue 2(d): The Suncrest Substation Alternative Is Infeasible.

As discussed above, there is no need for the Commission to consider the feasibility of project alternatives because all of the Proposed Project's adverse environmental impacts can be mitigated to less-than-significant. Notwithstanding this conclusion, there is sufficient record evidence in this proceeding to find that the Suncrest Substation Alternative is infeasible and that Commission has the authority to approve the Proposed Project on the basis of its economic, social, legal, and policy benefits.

a. CEQA Feasibility Analysis

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."[9] CEQA provides two "junctures" for findings regarding the

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6 Pub. Res. Code Section 21081.

7 FEIR, p. 20-2.

8 *See 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.")

9 Pub. Resources Code, § 21081, subd. (a)(3); Cal. Code Regs., tit. 14, § 15091 (a)(3).

feasibility of project alternatives. First, alternatives are determined to be *potentially* feasible in the EIR.[10] Second, in deciding whether to approve the project, the decision maker determines whether an alternative is actually feasible.[11] At that juncture, the decision makers may reject as infeasible alternatives that were identified in the EIR as potentially feasible.[12]

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."[13] 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.[14] 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.[15]

b. Record Evidence Supports a Finding that the Suncrest Substation Alternative is Infeasible.

There is significant evidence demonstrating that approving the Suncrest Substation Alternative would have undesirable legal, policy, and economic ramifications. In this brief, the CAISO primarily addresses the potential legal and policy consequences that would result if the Commission approves the Suncrest Substation Alternative.

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[10] *California Native Plant*, 177 Cal.App.4th at p. 981, 99 Cal.Rptr.3d 572.)

[11] Id. at p. 981, 99 Cal.Rptr.3d 572.

[12] *San Diego Citizenry Grp. v. Cty. of San Diego*, 219 Cal. App. 4th 1, 18, 161 Cal. Rptr. 3d 447, 462 (2013).

[13] *City of Del Mar v. City of San Diego*, 133 Cal.App.3d 401, 417 (1982).

[14] *California Native Plant Society v. City of Santa Cruz,* 177 Cal.App.4th 957, 1001 (2009).

[15] 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.")

c. **The Suncrest Substation Alternative Is Fraught with Legal and Policy Consequences.**

If the Commission approves the Suncrest Substation Alternative it will establish contradictory state and federal regulatory paradigms that will undermine the efficacy of the CAISO's competitive solicitation process. The CAISO's FERC-approved 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. The CAISO included this specific tariff language to comply with FERC Order No. 1000, and FERC approved it as being in compliance.[16] In Order No. 1000, FERC ruled that incumbent transmission owners maintain a federal right of first refusal for upgrades to their own transmission facilities. Upgrades include improvements, additions to, or replacements of a part of an existing facility.[17] 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.

Constructing an SVC within the Suncrest substation, as proposed in the Suncrest Substation Alternative, would constitute an upgrade or addition to the existing transmission facilities.[18] As a result, the CAISO would not be authorized to conduct a competitive

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16 *California Independent System Operator Corporation*, 143 FERC ¶61,057 (2013).

17 *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).

18 At hearing, ORA's witness appeared to argue that a NEET West-built SVC within the Suncrest Substation would not be an upgrade to that facility. (Hearing Transcript at p. 184, lines 24-26). This assertion is incorrect. FERC has clarified that even an addition to existing substation, wholly outside of the existing substation footprint, is properly considered an "upgrade" to an existing transmission facility and is properly not subject to the competitive solicitation requirements of Order No. 1000. *See* Midwest Independent Transmission System Operator, Inc., 147 FERC 61127, P 223 ("We accept MISO's proposed clarifications of when construction of a new substation footprint near an existing substation may be considered an upgrade. MISO's proposal is appropriately limited to circumstances in which the new substation could reasonably be considered an improvement to, addition to, or replacement of, the existing substation, consistent with the requirements of Order No. 1000.")

solicitation process for such a project. The CAISO would be required to assign the project directly to SDG&E. Despite this logical and legal conclusion, the Office of Ratepayer Advocates (ORA) suggests that the Commission ignore the CAISO tariff and right of first refusal maintained in FERC Order No. 1000 because the Commission retains siting authority of transmission facilities.[19] The CAISO does not contest that the Commission maintains siting authority over transmission facilities, but the Commission should not exercise that authority in a manner that directly contradicts the federal regulatory framework. Especially in this case, in which there are no significant and unavoidable environmental impacts associated with the Proposed Project, there is no compelling reason to upset the existing regulatory framework and jeopardize the efficacy of the CAISO's competitive solicitation process.

If the Commission orders NEET West to build the Suncrest Substation Alternative, it would violate the CAISO tariff requirements and constitute an end run around FERC Order No. 1000. Pursuing an approach that violates the CAISO tariff and FERC Order No. 1000 could result in litigation and potential delay in building this needed project. Further, such a decision would set an important regulatory precedent for the CAISO to consider in determining whether future transmission solutions are awarded through the competitive solicitation process. If the Commission selects the Suncrest Substation Alternative because it has the least environmental impact—despite the fact that the FEIR acknowledges that Proposed Project will have no significant, unavoidable environmental impacts—going forward the CAISO would generally not conduct a competitive solicitation for transmission solutions if there is a viable project that is an upgrade or addition to existing facilities. This precedent would establish that CEQA review precludes a new, standalone transmission

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[19] Exhibit ORA-1, p. 10.

facility from being built if there is a competing upgrade to an existing facility that could also meet the transmission needs and would have the least environmental impact.

d. <u>Approval of the Suncrest Substation Alternative Will Likely Result in Termination of NEET West's Opportunity to Construct the Project.</u>

NEET West has raised serious concerns regarding its ability obtain the property rights within the Suncrest Substation necessary to construct the Suncrest Substation Alternative. At a minimum, NEET West expects that obtaining such rights would cause a three-to-four year delay before it could begin construction and associated additional litigation costs of $1.5 to $3 million. If the Commission orders NEET West to construct the Suncrest Substation Alternative and the CAISO determines that NEET West cannot secure necessary approvals or property rights or is otherwise unable to construct the transmission solution approved by the CAISO, Section 24.6.4 of the tariff requires the CAISO "take such action as it reasonably considers appropriate, in coordination with the Participating TO and other affected Market Participants, to facilitate the development and evaluation of alternative solutions." The Approved Project Sponsor Agreement (APSA) between the CAISO and NEET West specifically provides that if the Commission orders the Proposed Project be built within the Suncrest Substation the CAISO "may take such action, including termination of [the APSA] as it determines to be necessary and appropriate" in accordance with the CAISO tariff.[20] The legal and regulatory challenges associated with Suncrest Substation Alternative, in addition to the expected delay and cost increases associated with litigation, would likely be grounds to terminate the APSA.

If NEET West's APSA is terminated, the CAISO believes that the consequence would be that the Suncrest SVC project would ultimately be assigned to the incumbent utility, either through a subsequent solicitation process (in which only SDG&E likely would participate), or by being directly assigned to SDG&E under CAISO tariff.[21] Under these

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[20] Exhibit NEET West-10, Appendix E, p. 43-44.

[21] CAISO Tariff Section 24.6.4 provides that for a policy-driven project "the CAISO shall open a new solicitation for Project Sponsors to finance, own, and construct the transmission solution. Where there is no Approved Project Sponsor, the CAISO shall direct the Participating TO in whose PTO Service Territory or footprint either terminus of the transmission solution is located, to finance, own and construct the transmission solution."

circumstances, the CAISO would have no authority under its tariff to unilaterally impose, or enforce, a binding cost cap or other cost containment measure on SDG&E. The CAISO believes that such a result would frustrate the purpose of the competitive solicitation process and would be contrary to Commission's goal to ensure a "verifiable role for cost containment"[22] in the construction of transmission infrastructure.

III. CONCLUSION

The CAISO recommends that the Commission certify the FEIR and grant NEET West a certificate of public convenience and necessity for Proposed Project.

March 5, 2018

Respectfully submitted,

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22 Exhibit CAISO-02, p. 14 (citing the Commission's comments in Docket No. ER13-103, which established the competitive solicitation process in the CAISO tariff.)