

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA



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

Application 15-08-027
(August 31, 2015)

**REPLY BRIEF
OF THE OFFICE OF RATEPAYER ADVOCATES**

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I. INTRODUCTION AND SUMMARY

The Office of Ratepayer Advocates (ORA) submits this reply brief pursuant to Rule 13.11 of the California Public Utilities Commission's (Commission) Rules of Practice and Procedure and the Administrative Law Judge's (ALJ) E-Mail Ruling Submitting Final Environmental Impact Report (EIR) into Evidence and Directing Opening and Reply Briefs (Ruling) issued on February 1, 2018. In Application (A.) 15-08-027, NextEra Energy Transmission West, LCC's (NEET West) seeks a Certificate of Public Convenience and Necessity (CPCN) for the Suncrest Static Volt-Ampere Reactive Compensator project (SVC Project).

The Final EIR found that the Environmentally Superior Alternative is to build the SVC Project inside the Suncrest Substation, which is owned and operated by San Diego Gas & Electric Company (SDG&E).¹ Although SDG&E also bid on this project², it lost the bid because CAISO found that NEET West's binding cost containment measures were more robust and it assumed more of the risk for cost increases. Additionally, SDG&E told NEET West that it was not willing to allow NEET West to construct the Environmentally Superior Alternative. Thus, NEET West's proposed project would site the SVC Project one mile away. NEET West argues that SDG&E's refusal to cooperate with NEET West in constructing the SVC Project within the Suncrest Substation means that the Environmentally Superior Alternative is infeasible.³ The CAISO agrees with NEET West's conclusion.⁴ California Unions for Reliable Energy (CURE) agrees that

¹ The Environmentally Superior Alternative would construct the SVC Project within SDG&E's Suncrest Substation footprint. California Public Utilities Commission (CPUC), Final EIR NextEra Energy Transmission West's Proposed Suncrest Dynamic Reactive Power Support Project, January 2018 (Final EIR), p. 20-13.

² Although SDG&E is a party and does not oppose this project, it has not filed testimony, produced a witness, cross-examined witnesses, or filed an opening brief. Hearing Transcript (HT) Vol. 1, 22: 12-16.

³ NEET West Opening Brief, pp. 33-35.

⁴ CAISO Opening Brief, p. 5.

the Suncrest Substation Alternative is the Environmentally Superior Alternative, however, it asks that the Commission deny this application.⁵

The Environmentally Superior Alternative is feasible. Therefore, the Commission should approve this project, but it should also issue an Order to Show Cause directing SDG&E to show why NEET West should not build the Environmentally Superior Alternative. Once the Order is issued, the Commission should delay implementation of the approved Proposed Project to give parties time to engage in a mediation to come to an agreement on the terms under which NEET West could construct the Environmentally Superior Alternative. During this time, SDG&E should provide NEET West with the information it failed to previously provide so that NEET West can determine what steps it must take to site the SVC Project within the substation and so that it can compare the costs of the Environmentally Superior Alternative with the Proposed Project. If agreement is not possible or the Commission is satisfied with SDG&E's showing, NEET West may begin construction of the Proposed Project.

The California Environmental Quality Act (CEQA) does not prohibit the Commission from ordering the construction of the Environmentally Superior Alternative. Contrary to NEET West's claims,⁶ the Commission may issue an order requiring construction of the Environmentally Superior Alternative pursuant to California Public Utilities Code (Cal. Pub. Util. Code) §§ 762 and 762.5.⁷ Ordering the construction of the Environmentally Superior Alternative is consistent with the Federal Energy Regulatory Commission's (FERC) Order 1000 because it maintains NEET West's right to build the most efficient and cost effective project, as determined by the California Independent System Operator's (CAISO) competitive process.⁸ Lastly, if NEET West exceeds the

⁵ CURE Opening Brief, pp. 20-23.

⁶ NEET West Opening Brief, p. 37.

⁷ FERC Order 1000 specifically preserved states' authority over matters relevant to siting, permitting and construction. See FERC Order 1000, para. 107.

⁸ FERC Order 1000, para. 284, <https://www.ferc.gov/whats-new/comm-meet/2011/072111/E-6.pdf>.

maximum prudent and reasonable cost set by the Commission, it should require NEET West to file a Tier 3 advice letter to amend that amount.

II. JURISDICTION

NEET West argues that the Commission can meet its obligations under Cal. Pub. Util. Code § 1002 through the Final EIR's findings.² However, in the decisions cited by NEET West, the Commission specifically identified which portions of the Final EIR's findings corresponded to the Commission's review of the criteria under Cal. Pub. Util. Code § 1002.¹⁰

As stated in ORA's opening brief, the Commission has an obligation, independent of the CEQA, to consider community values, recreational and park areas, historical and aesthetic values, and influence on the environment as a basis for granting a CPCN.¹¹ Thus, the Commission must make separate findings specific to the factors in Cal. Pub. Util. Code § 1002. Consistent with this obligation, in Decision (D.) 17-09-040, the Commission modified its previous decision on rehearing in order to clearly discuss how Cal. Pub. Util. Code § 1002 factors were considered and to add findings of fact and conclusions of law regarding that discussion.¹² Additionally, the Commission has used the factors under Cal. Pub. Util. Code § 1002 to reject or conditionally grant CPCNs independent of the results of an EIR.¹³ Therefore, if the Commission chooses to use the Final EIR to make findings under Cal. Pub. Util. Code § 1002, it must specifically reference how those issues correspond to its obligations under Cal. Pub. Util. Code § 1002 and indicate that in its findings of fact and conclusions of law.

² NEET West Opening Brief, p. 21, citing D. 16-08-017 and D.16-10-005.

¹⁰ *Application of S. California Edison Co. (U 338-e) for a CPCN for the W. of Devers Upgrade Project* (D.16-08-017) (2016) 2016 WL 4699448, p. 8; *Application of San Diego Gas & Elec. Co. (U902e) for A CPCN for the Sycamore- Penasquitos 230 Kilovolt Transmission Line Project* (D.16-10-005), (2016) 2016 WL 6248047, p. 4-5.

¹¹ ORA Opening Brief p. 9, citing *Application of Southern California Edison for CPCN for Kramer-Victor Transmission Line* (D.90-09-059) (1990) 37 CPUC 2d 413, 453.

¹² *Application of SDG&E (U 902 e) for A CPCN for the S. Orange County Reliability Enhancement Project* (D. 17-09-040) (2017) 2017 WL 4548165, pp. 3-4.

¹³ *In Re Lodi Gas Storage, L.L.C.* (D. 04-05-034) (2004) 2004 WL 1368189, pp. 3-4.

III. DISCUSSION

ORA only responds to select portions of the agreed upon briefing outline in its reply brief.

A. The proposed project has significant environmental impacts and, therefore, the Commission should approve the Environmentally Superior Alternative.

1. The environmentally superior alternative is feasible

a) Nothing prohibits the Commission from considering and choosing the Environmentally Superior Alternative.

NEET West argues that where a Final EIR finds that the identified mitigation measures will reduce all environmental impacts of a proposed project below the level of significance, the Commission is not required to further consider alternatives.¹⁴ While the Commission may not be required to consider other alternatives besides the proposed project if significant impacts can be mitigated, nothing prohibits the Commission from doing so. The Legislature intended CEQA to be interpreted to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.¹⁵ In accordance with that intent, as well as other cited authority, Commission staff noted that an alternative which avoids an impact altogether is preferable to minimization or compensation of environmental impacts and that this interpretation is consistent with the basic purposes of CEQA.¹⁶ California environmental law also dictates that public agencies should not approve projects, as proposed, if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant

¹⁴ NEET West Opening Brief, p. 30.

¹⁵ *California Oak Foundation v. City of Santa Clarita* (2005) 133 Cal.App.4th 1219, 1225.

¹⁶ California Public Utilities Commission (CPUC), Final EIR NextEra Energy Transmission West's Proposed Suncrest Dynamic Reactive Power Support Project, January 2018 (Final EIR), Vol. 2-Comments and Responses to Comments on Draft EIR, pp. 2-21 to 2-22, citing California Coastal Commission's Procedural Guidance for Evaluating Wetland Mitigation Projects in California's Coastal Zone, Memorandum of Agreement between the Department of the Army and the Environmental Protection Agency Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines, and CEQA Guideline § 15002(a)(2), http://www.cpuc.ca.gov/environment/info/horizonh2o/suncrest/docs/CPUC%20Suncrest%20FEIR_Volume%203_Combined.pdf.

environmental effects of such projects.¹⁷ Here, Commission staff has determined that the Environmentally Superior Alternative would be preferable to any mitigation options because it is a feasible alternative which substantially lessens significant environmental impacts of the project by avoiding those impacts altogether.¹⁸

A court may find that an agency abused its discretion under CEQA if it finds that the EIR is not sufficient as an informational document or by reaching factual conclusions unsupported by substantial evidence.¹⁹ The Final EIR performed a rigorous study of the alternatives and mitigation options. This included a study of 12 alternatives with a discussion of why the Suncrest Substation Alternative was environmentally superior, why other options were not feasible, and finally, why other options were not chosen as environmentally superior.²⁰ Thus, the Commission's Final EIR is adequate, complete, and a good faith effort at full disclosure. Therefore, the Environmentally Superior Alternative is supported by substantial evidence and the Commission is not precluded from choosing it over any other alternative or mitigation measure.

b. The Commission cannot rely on SDG&E's arguments that there is no space in the Suncrest Substation.

There is space in the Suncrest Substation for the SVC Project.²¹ NEET West relies on SDG&E's claims that there is not enough space in Suncrest Substation, but this is only supported by reference to the National Safety Code regarding clearance space.²² ORA refuted the necessity of these clearance requirements in its opening testimony²³ and

¹⁷ Cal. Pub. Resources Code § 21002.

¹⁸ Final EIR, p. 20-13-20-17.

¹⁹ *Cleveland National Forest Foundation v. San Diego Association of Governments* (2017) 17 Cal.App.5th 413, 427.

²⁰ Final EIR 20-1 - 20-17.

²¹ Final EIR, p. 20-12; HT Vol. 1, 31:16-22; 33:14-17.

²² NEET West Opening Brief, p. 36; see also ORA Exhibit 1A, Attachment 2, SDG&E Data Request. Response to ORA Set 1 Question 2, p. 5.

²³ ORA Exhibit 1, pp. 8-10; ORA Exhibit 1AC, pp.8-9.

NEET West’s own witness, Daniel Mayers, expressed doubt as to whether these clearance requirements were necessary.²⁴

SDG&E claims, in a data request response, that this clearance space requirement means that a NEET West-constructed SVC Project is not feasible because it would occupy space needed for future expansion in its existing substation.²⁵ However, in its response to ORA’s Data Request, SDG&E stated that, “since the time of the CAISO bid, SDG&E has become aware of a new hybrid SVC [static var compensator] technology ... that will meet the CAISO requirements of the project...with its distinguished small footprint, it makes it more favorable as it doesn’t take up any planned future substation expansion.”²⁶ This statement makes it unclear whether SDG&E actually requires additional space for future expansion or whether SDG&E knowingly bid on a project which it knew would impede its ability to expand in the future. This ambiguity further highlights the need for the Commission to issue an Order to Show Cause requiring SDG&E to show why it cannot cooperate with NEET West to build the Environmentally Superior Alternative.

c. Condemnation is not necessary under Cal. Pub. Util. Code §§ 762 and 762.5.

NEET West argues that condemnation is necessary to construct the Environmentally Superior Alternative because SDG&E is unwilling to voluntarily convey any real property interests to NEET West.²⁷ However, this is not the case. The Commission has the authority to require SDG&E to work with NEET West to construct the Environmentally Superior Alternative. Specifically, under Cal. Pub. Util. Code §§ 762 and 762.5, the Commission, on its own motion, may hold a hearing to determine whether NEET West should build the SVC Project within the Suncrest Substation. Cal.

²⁴ HT Vol. 1, 88:13-18.

²⁵ ORA Exhibit 1A, Attachment 2, SDG&E Data Request Response to ORA Set 1 Question 2, p. 5.

²⁶ ORA Exhibit 1A, Attachment 2, SDG&E Data Request Response to ORA Set 1 Question 2, p. 4.

²⁷ NEET West Opening Brief, pp. 39-40.

Pub. Util. Code § 762 states that the Commission may make such an order when, after a hearing it:

... finds that additions, extensions, repairs, or improvements to, or changes in, the existing plant, equipment, apparatus, facilities, or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that new structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities.²⁸

The Commission's authority under Cal. Pub. Util. Code § 762 depends on the extent to which the utility has dedicated or devoted its property to public use. One method used to determine the extent of the dedication is by considering the service territory of water, gas, electric, and telephone utilities.²⁹ When a utility acquires permission to operate within the boundaries of a specific area, it is agreeing to serve all customers within that area.³⁰ Through its CPCN, SDG&E has agreed to provide adequate service to all customers within its service territory. Additionally, SDG&E constructed its Suncrest Substation to provide electric service to the customers within its service territory.

Where a utility has voluntarily dedicated its facilities to render services to customers in a specific area, the Commission's "power to 'order additions, extensions, repairs, and improvements' within the scope of dedication is extensive."³¹ In *Greyhound Lines, Inc. v. Public Utilities Commission*, the court affirmed that the Commission had properly exercised this power where the Commission required Greyhound to reroute its services and construct additional stations along its already existing route.³² Similarly here, the Commission has extensive power to order any additions, extensions, repairs, and

²⁸ Cal. Pub. Util. Code § 762. NEET West is requesting public utility status through this Application, p. 6.

²⁹ *Greyhound Lines, Inc. v. Public Utilities Commission*, (1968) 68 Cal.2d 406, 414-416.

³⁰ *California Water & Tel. Co. v. Public Utilities Commission*, (1959) 51 Cal. 2d 478, 492-493.

³¹ *Greyhound Lines, Inc. v. Public Utilities Commission*, (1968) 68 Cal.2d 406, 414-416.

³² *Id.*; See also *In Re Pacific Tel. and Tel. Co.* (D. 83-09-024) (1983) 12 CPUC 2d 525, Conclusions of Law 1, requiring Pacific to sell its customer premises equipment to its customers.

improvements to SDG&E's facilities because SDG&E has already dedicated its facilities, including the Suncrest Substation, for public use to render service to its customers within its service area.

Additionally, in *Atchison Topeka & Sante Fe Railway Co. v. Railroad Commission of California*, the court upheld the Commission's decision to require two railroad companies to acquire and dedicate to public use property necessary for the construction of union station.³³ The court affirmed that the Commission would not require the carriers to pay more than the "amount necessary to furnish proper facilities to perform its duty to the public."³⁴ Thus, the court found that this requirement did not take their property for public use without just compensation because the Commission proposed that the carriers would pay a proportionate amount of the cost to erect the facility.³⁵ Therefore, condemnation is not necessary to construct the Environmentally Superior Alternative because under Cal. Pub. Util. Code §§ 762 and 762.5 the Commission may require joint coordination and may determine the amount each utility must bear.

d. Delay does not make the Environmentally Superior Alternative infeasible.

As stated in ORA's opening brief, the Commission has, in the past, modified projects after the CAISO approved a different design or route despite the possibility of delay.³⁶ NEET West argues that the Commission has previously found project alternatives to be infeasible because it would result in construction delays.³⁷ However, the projects NEET West cites to support its argument are dissimilar to the SVC Project.

³³ *Atchison Topeka & Sante Fe Railway Co. v. Railroad Commission of California* (1930) 209 Cal. 460, 476.

³⁴ *Atchison Topeka & Sante Fe Railway Co. v. Railroad Commission of California* (1930) 209 Cal. 460, 474-5.

³⁵ *Atchison Topeka & Sante Fe Railway Co. v. Railroad Commission of California* (1930) 209 Cal. 460, 475.

³⁶ ORA Opening Brief, p. 17.

³⁷ NEET West Opening Brief, p. 42.

For example, D. 13-09-004 granted Southern California Edison Company (SCE) a permit to construct the Lakeview Substation Project to meet a reliability need.³⁸ In doing so, the Commission found the Environmentally Superior Alternative infeasible based on delay because the project was intended to “serve existing and long-term projected electrical demand requirements, and to improve reliability and system operational flexibility.”³⁹ In contrast, the CAISO and NEET West have both stated that the SVC Project is a policy-driven, rather than a reliability-driven, project.⁴⁰ Additionally, it is notable that even in D.13-09-004, where the project was required to meet a reliability need, the Commission stated that, “project delay caused by the Phased Construction Alternative [the Environmentally Superior Alternative] does not, in and of itself, render it infeasible.”⁴¹

The second decision cited by NEET West, D.11-07-011, is also inapplicable here. In that proceeding, the Commission granted SCE a permit to construct the Colorado River Substation expansion project specifically for the purpose of interconnecting the 1000 megawatt Blythe Solar Power Project and the 250 megawatt Genesis Solar Energy Project to the CAISO-controlled transmission grid.⁴² The Commission found that the delay associated with one of the studied alternatives could prevent the Blythe Solar Power Project from receiving \$2.1 billion in Department of Energy financing.⁴³ The Genesis Solar Energy Project already had a power purchase agreement with Pacific Gas and Electric Company (PG&E) and a delay raised the possibility that renewable energy that PG&E was relying on to meet Renewable Portfolio Standards (RPS) might not be

³⁸ *SCE (U338e) Permit to Construct Elec. Facilities with Voltages Between 50 Kv & 200 Kv: Lakeview Substation Project* (D.13-09-004) (2013) 2013 WL 5275815, p. 7.

³⁹ D.13-09-004, p. 7.

⁴⁰ CAISO Exhibit 1, p. 2; NEET West Opening Brief, p. 2.

⁴¹ D.13-09-004, p. 18.

⁴² *SCE (U338e) Permit to Construct Elec. Facilities: Colorado River Substation Expansion Project* (D.11-07-011) (2011) 2011 WL 3202420, p.2.

⁴³ D.11-07-011, p. 17.

available if the line was not approved and constructed.⁴⁴ Based on these two solar power projects, the Commission found that one of the studied alternatives would cause an unacceptable delay.⁴⁵ These two solar power projects were also included in the supplemental EIR as connected actions for the Colorado River Substation expansion project; therefore their environmental impacts were evaluated and mitigation measures identified.⁴⁶ Here, the CAISO listed a number of benefits that SVC Project will provide to the CAISO Controlled Grid in the southern California area; however, it does not identify a specific project associated with the SVC Project.⁴⁷ Additionally, the Final EIR does not name a specific project as part of the project purpose or objectives.⁴⁸ No party has provided evidence of specific projects which are relying on the SVC Project in a similar manner as the Blythe Solar Power Project and the Genesis Solar Energy Project.⁴⁹ D.11-07-011 is not controlling here.

e. FERC Order 1000 intends to promote competition while preserving state siting authority.

CAISO argues that the approval of the Environmentally Superior Alternative will result in contradictory state and federal regulatory paradigms.⁵⁰ However, this argument ignores the overarching purpose of the FERC Order 1000 as well as the authority specifically reserved to states within that Order.

In interpreting FERC Order 1000, the Commission should adhere to principles of statutory interpretation and look to the entire substance of the Order to determine its

⁴⁴ D.11-07-011, p. 18.

⁴⁵ However, the Commission found that parties' inability to meet their contractual commitments is not determinative of the infeasibility of the environmentally superior project alternatives. D.11-07-011, p. 18.

⁴⁶ CPUC, Supplemental EIR Colorado River Substation Expansion, B-11-B-16.

http://www.cpuc.ca.gov/environment/info/aspen/dpv2/sfeir/b_projdesc.pdf.

⁴⁷ CAISO Exhibit ISO- 1, p. 3; CAISO Opening Brief, p. 4.

⁴⁸ Final EIR, p. ES-1.

⁴⁹ HT Vol. 2, 160:5-8.

⁵⁰ CAISO Opening Brief, p. 7.

scope and purpose.⁵¹ In doing so, the Commission must construe words in question in context, keeping in mind the Order’s nature and obvious purposes.⁵² FERC found that there was a need for it to promulgate Order 1000 because it found that the incumbent transmission developers’ right-of-first refusal was resulting in new transmission entrants being either barred from the planning process altogether or deterred from submitting proposals by the threat of losing the rights to their project.⁵³ Therefore, FERC stated that the reforms adopted in Order No. 1000, including the removal of the federal right of first refusal:

work together to ensure an opportunity for more transmission projects to be considered in the transmission planning process on an equitable basis and increase the likelihood that those transmission facilities selected in a regional transmission plan for purposes of cost allocation are the most efficient or cost-effective solutions available.⁵⁴

FERC Order 1000 encourages competition in transmission project development so that the most efficient or cost effective projects will be constructed and the Order should be construed towards that end.

In adopting the reforms of Order 1000, FERC did not remove states’ siting authority for transmission solutions. FERC stated specifically, “we acknowledge that there is longstanding state authority over certain matters that are relevant to transmission planning and expansion, such as matters relevant to siting, permitting, and construction ... nothing in this final rule involves an exercise of siting, permitting, and construction authority.”⁵⁵ Additionally, FERC stated that Order 1000 “in no way involves an exercise

⁵¹ *New Cingular Wireless PCS, LLC v. Public Utilities Commission* (2016) 246 Cal.App.4th 784, 795, citing *People v. Cole* (2006) 38 Cal.4th 964, 974–975.

⁵² *Palmer v. Stassinis* (N.D. Cal. 2004) 348 F.Supp.2d 1070, 1078.

⁵³ FERC Order 1000, para. 3; see also para. 285, stating, “federal rights of first refusal deprive customers of the benefits of competition in transmission development, and associated potential savings. Competitive transmission developers risked losing their investment to incumbent transmission developers through the right of first refusal after developing a transmission project that it proposed in a regional transmission process.

⁵⁴ FERC Order 1000, para. 11.

⁵⁵ FERC Order 1000, para. 107.

of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities.”⁵⁶ Therefore, FERC concluded that Order 1000 did not create any conflicts between federal and state requirements, such as Commission rules or CEQA.⁵⁷

FERC Order 1000’s changes to transmission planning enabled the CAISO to put this project out for competitive solicitation during Phase 3 of the CAISO’s Transmission Planning Process and to choose the most cost competitive bid. The Commission should seek to implement the most efficient and or cost effective solutions, as sought by Order 1000. NEET West won the CAISO’s competitive bid because its cost containment measures were more robust and it assumed more of the risk for cost increases than SDG&E’s bid. This was the case despite the fact that SDG&E sought to locate the project within its own Suncrest Substation. The Commission, through the exercise of its siting authority, has found that locating the SVC Project within the Suncrest Substation is the Environmentally Superior Alternative. It would be contrary to the intent of FERC Order 1000 if this Commission, the siting authority, could not require NEET West, the winner of a competitive bid, to site the SVC facility in the most efficient location, which is also the Environmentally Superior Alternative.

Lastly, FERC Order 1000 does not prevent two utilities from working together to construct a project, which is what the Commission would require under the Environmentally Superior Alternative. The CAISO notes that where even if a project were subject to right of first refusal, the incumbent transmission owner could agree to a different arrangement.⁵⁸ Thus, the only impediment to such an arrangement is the will of the incumbent transmission owner, rather than technological or safety concerns, which the Commission may direct.

⁵⁶ FERC Order 1000, para. 107.

⁵⁷ FERC Order 1000, para. 107.

⁵⁸ CAISO Opening Brief, p. 7.

B. What is the maximum prudent and reasonable cost of the proposed project and environmentally superior alternative, if approved?

1. The Commission should require a Tier 3 advice letter process for any amendments to the maximum prudent and reasonable cost of the proposed project.

NEET West proposes that if the Commission establishes a maximum prudent and reasonable cost for the proposed project and if NEET West exceeds this amount, they will file an advice letter to amend that amount.⁵⁹ ORA supports a Tier 3 advice letter process to amend the maximum prudent and reasonable cost, if the Commission sets such a cost. A Tier 1 or Tier 2 advice letter is not appropriate because amending the maximum prudent and reasonable cost would not be a ministerial act.⁶⁰ Previously, where SCE requested an adjustment to the approved cost cap, the Commission adopted the adjustment as a Tier 3 advice letter with a resolution adopted by the Commission.⁶¹ This was the case even though the Commission acknowledged that FERC would ultimately set the amount that ratepayers would pay in rates.⁶²

C. Does the Proposed Project comport with federal, state, and Commission's rules, regulations and other applicable standards governing safety, reliability, and competition?

1. The Commission may allow NEET West to use FERC filings to meet its reporting requirements.

ORA clarifies that the Commission should require NEET West to meet the reporting requirements under General Orders 65-A, 77- M, 104- A, but to the extent they are similar to requirements met through FERC filings, those filings could be submitted to the Commission. Additionally, the Commission should require NEET West to meet the

⁵⁹ NEET West Opening Brief, p. 61.

⁶⁰ .A ministerial act is one where statutes or Commission orders have required the action proposed in the advice letter, or have authorized the action with sufficient specificity that the Industry Division need only determine as a technical matter whether the proposed action is within the scope of what has already been authorized by statutes or Commission orders. See *Application of San Jose Water Co. (U168w) for Auth. to Determine Its Cost of Capital & to Apply That Cost of Capital in Rates* (D.09-07-038) (2009) 2009 WL 2473486.

⁶¹ *SCE Seeks Approval of the CPUC to Revise the Cost Cap for Its California Portion of the Devers Palo Verde No. 2 Transmission Line Project* (Resolution E-4602) (2014) 2014 WL 554997, p. 15.

⁶² Resolution E-4602, p.1; NEET West Opening Brief p. 61.

affiliate reporting requirements under Cal. Pub. Util. Code § 587 and D.93-02-019. At a minimum, NEET West should meet the reporting requirements for the affiliates used to construct and operate SVC Project. Similarly, if these requirements are similar to requirements met through FERC filings, those filings could be submitted to the Commission to avoid duplication of work.

IV. CONCLUSION

CEQA does not prohibit the Commission from ordering the construction of the Environmentally Superior Alternative. The Commission may issue an order requiring its construction by relying on Cal. Pub. Util. Code §§ 762 and 762.5 and then, condemnation is not necessary. Ordering the construction of the Environmentally Superior Alternative is consistent with FERC Order 1000 because it maintains NEET West's right to build the most efficient and cost effective project as the winner of the CAISO's competitive process.⁶³ Additionally, the Commission would not violate FERC Order 1000 by requiring the Environmentally Superior Alternative because FERC Order 1000 specifically preserved states' authority over matters relevant to siting, permitting and construction.⁶⁴ Lastly, if NEET West exceeds the maximum prudent and reasonable cost set by the Commission, it should file a Tier 3 advice letter to amend that amount.

Respectfully Submitted

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⁶³ FERC Order 1000, para. 284, <https://www.ferc.gov/whats-new/comm-meet/2011/072111/E-6.pdf>.

⁶⁴ FERC Order 1000, para. 107.