OFFICE OF RATEPAYER ADVOCATES
California Public Utilities Commission

PREPARED TESTIMONY
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

San Francisco, California
May 16, 2017
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>I. INTRODUCTION AND BACKGROUND</td>
<td>1</td>
</tr>
<tr>
<td>II. SUMMARY OF RECOMMENDATIONS</td>
<td>5</td>
</tr>
<tr>
<td>III. THE SUNCREST SUBSTATION ALTERNATIVE, THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE, IS FEASIBLE.</td>
<td>6</td>
</tr>
<tr>
<td>A. THE SUNCREST SUBSTATION ALTERNATIVE IS TECHNOLOGICALLY FEASIBLE.</td>
<td>7</td>
</tr>
<tr>
<td>1. Safety concerns do not make the Suncrest Substation Alternative</td>
<td>8</td>
</tr>
<tr>
<td>technologically infeasible.</td>
<td></td>
</tr>
<tr>
<td>B. THE SUNCREST SUBSTATION ALTERNATIVE IS FEASIBLE UNDER CURRENT LAWS</td>
<td>10</td>
</tr>
<tr>
<td>AND REGULATIONS.</td>
<td></td>
</tr>
<tr>
<td>1. The Commission has siting authority over transmission facilities</td>
<td>10</td>
</tr>
<tr>
<td>2. CAISO’s APSA does not have bearing on the site of the SVC facility</td>
<td>11</td>
</tr>
<tr>
<td>3. FERC Order 1000 did not remove this Commission’s siting authority.</td>
<td>13</td>
</tr>
<tr>
<td>4. ORA recommends the Commission require NEET West to construct the</td>
<td>15</td>
</tr>
<tr>
<td>SVC facility within the Suncrest Substation.</td>
<td></td>
</tr>
<tr>
<td>C. THE SUNCREST SUBSTATION ALTERNATIVE IS ECONOMICALLY FEASIBLE.</td>
<td>17</td>
</tr>
<tr>
<td>IV. SINCE THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE</td>
<td>19</td>
</tr>
<tr>
<td>OBVIATES THE NEED FOR CERTAIN PROJECT COMPONENTS, THE REASONABLE COST</td>
<td>19</td>
</tr>
<tr>
<td>MUST BE LESS THAN THE COST OF THE PROPOSED PROJECT.</td>
<td></td>
</tr>
<tr>
<td>V. IF THE COMMISSION CHOOSES NOT TO EXERCISE ITS AUTHORITY</td>
<td>19</td>
</tr>
<tr>
<td>TO REQUIRE THE PROJECT TO BE SITED WITHIN THE SUNCREST SUBSTATION,</td>
<td></td>
</tr>
<tr>
<td>ORA SUPPORTS THE PROJECT AS CURRENTLY PROPOSED BY NEET WEST.</td>
<td></td>
</tr>
<tr>
<td>VI. CONSISTENCY WITH FEDERAL, STATE, AND COMMISSION RULES, REGULATIONS</td>
<td>20</td>
</tr>
<tr>
<td>AND OTHER APPLICABLE STANDARDS GOVERNING SAFETY, RELIABILITY AND</td>
<td></td>
</tr>
<tr>
<td>COMPETITION.</td>
<td></td>
</tr>
<tr>
<td>A. THE COMMISSION SHOULD NOT GRANT NEET WEST EXEMPTIONS FROM</td>
<td>20</td>
</tr>
<tr>
<td>REPORTING REQUIREMENTS.</td>
<td></td>
</tr>
<tr>
<td>VII. CONCLUSION</td>
<td>20</td>
</tr>
<tr>
<td>STATEMENT AND QUALIFICATIONS OF CHARLES MEE</td>
<td>24</td>
</tr>
</tbody>
</table>
I. INTRODUCTION AND BACKGROUND

The Office of Ratepayer Advocates (ORA) submits this testimony pursuant to the Assigned Commissioner’s Scoping Ruling (Ruling) issued on February 24, 2017 in regards to NextEra Energy Transmission West, LCC’s (NEET West) Application (A.) 15-08-027 (Application), seeking a Certificate of Public Convenience and Necessity (CPCN) for the Suncrest Static Volt-Ampere Reactive Compensator project (Suncrest SVC Project). ORA analyzes and makes recommendations on the feasibility of the environmentally superior alternative; cost and cost cap; and adherence to applicable federal, state, and the California Public Utilities Commission’s (Commission) rules, which were identified as within the scope of this proceeding in the Ruling.¹

The Suncrest SVC Project arose from the California Independent System Operator’s (CAISO) 2013/ 2014 Transmission Planning Process (TPP) where it was studied as a policy-driven upgrade to facilitate delivery of renewable electricity generating capacity located in the Imperial Valley area.² Under CAISO Tariff 24³ and Federal Energy Regulatory Commission (FERC) Order 1000,⁴ a policy driven project is subject to competitive solicitation.⁵ Therefore, CAISO released a description and functional specifications for a 300 Mega Volt-Ampere Reactive (MVAR) Dynamic Reactive Power Support facility connecting at the Suncrest Substation’s 230 kilovolt (kV) bus for competitive solicitation.⁶ CAISO awarded the Suncrest SVC Project to

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¹ Assigned Commissioner’s Scoping Ruling, February 24, 2017, pp. 6-7.
⁴ FERC Order 1000 is FERC’s Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities. FERC 1000 provides transmission planning and cost allocation requirements. https://www.ferc.gov/industries/electric/indus-act/trans-plan.asp.
⁵ CAISO Tariff 24.4.10; 24.5.1; FERC Order 1000, para. 284.
NEET West after considering one other bid from San Diego Gas & Electric Company (SDG&E). CAISO selected NEET West as the project sponsor primarily because (1) its binding cost containment measures were more robust and (2) it assumed more of the risk for cost increases. NEET West agreed to build the Suncrest SVC Project under a binding cost of $42,288,000 and included a cap on all costs associated with the construction period, including direct costs, allocated overhead costs, capital costs, and allowance for funds used during construction.

On August 31, 2015, after CAISO selected NEET West as the project sponsor, NEET West filed its Application with the Commission, seeking a CPCN for the Suncrest SVC Project and to implement the Approved Project Sponsor Agreement (APSA) with CAISO. The Suncrest SVC Project will provide dynamic reactive power support to the 230 kV bus of the existing Suncrest Substation owned by SDG&E. The Suncrest SVC Project will include a static volt-ampere reactive (VAR) compensator and related equipment as well as an approximately one-mile underground 230 kV transmission line that will connect the SVC to the Suncrest Substation.

ORA filed a response to NEET West’s Application on October 5, 2015, raising several issues which might result in ORA protesting the Suncrest SVC Project. These issues included whether the Suncrest SVC Project serves a present or future convenience and necessity; whether the CAISO can terminate or revise the APSA if the Commission

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8 Id.
9 Id. Application, p. 32.
10 NEET West will construct, operate, own, and maintain the Suncrest SVC Project pursuant to the Project Sponsor Agreement with the CAISO. The APSA is an agreement between an Approved Project Sponsor and the CAISO establishing the terms and conditions under which the Approved Project Sponsor will complete the siting and construction of the transmission facilities that the Approved Project Sponsor was selected to construct and own under CAISO Tariff 24.
11 Id.
12 Id.
13 ORA Response to NEET West Application, October 5, 2015, pp. 4-5.
finds that NEET West should construct the Suncrest SVC Project within the Suncrest Substation; significant environmental impacts associated with the Suncrest SVC Project; project alternatives; and cost.\textsuperscript{14} A draft Environmental Impact Report (DEIR) was published on November 23, 2016.\textsuperscript{15} The DEIR identified a number of impacts resulting from the Proposed Project that NEET West could mitigate to a level of less-than-significant.\textsuperscript{16} In contrast, the DEIR determined that the Suncrest Substation Alternative would “avoid virtually all of the environmental impacts of the Proposed Project.”\textsuperscript{17} Therefore, it identified the Suncrest Substation Alternative as the environmentally superior alternative rather than the project currently proposed by NEET West.\textsuperscript{18} This alternative sites the SVC facility within the existing Suncrest Substation footprint, eliminates the need for the Proposed Project’s one-mile underground transmission line and other related components, and eliminates land disturbance at the remote site and within the right of way of the one-mile transmission line.\textsuperscript{19} The DEIR finds that the Suncrest Substation Alternative, or the environmentally superior alternative, would meet all project objectives while avoiding the environmental impacts of the Proposed Project.\textsuperscript{20}

ORA submitted comments on the DEIR on January 10, 2017 and supported the Suncrest Substation Alternative as the most reasonable, as well as the most cost effective and environmentally superior, option of those studied within the DEIR.\textsuperscript{21}

\textsuperscript{14} ORA Response to NEET West Application, October 5, 2015, pp. 4-5.
\textsuperscript{15} California Public Utilities Commission, Draft EIR, November 23, 2016 (DEIR).
\textsuperscript{16} DEIR, p. ES-8.
\textsuperscript{17} DEIR, pp. ES-9-ES-10.
\textsuperscript{18} Id.
\textsuperscript{19} Id.
\textsuperscript{20} Id.
West to construct, own, and operate the SVC facility within the existing Suncrest Substation footprint citing mostly legal arguments.\textsuperscript{22} A prehearing conference was held on February 7, 2017 where parties asserted similar arguments.\textsuperscript{23}

The Ruling issued after the prehearing conference included the following issues as within the scope of opening testimony:

1. Does the Proposed Project serve a present or future public convenience and necessity? (California Public Utilities (Cal. Pub. Util.) Code § 1001.)

2. Is there no substantial evidence that the project will have a significant effect on the environment? In the alternative, if there is substantial evidence to that effect: Are the mitigation measures or project alternatives infeasible?

3. Is the Proposed Project and/or project alternative designed in compliance with the Commission’s policies governing the mitigation of EMF effects using low-cost and no-cost measures?

4. What is the maximum prudent and reasonable cost of the Proposed Project and environmentally superior alternative, if approved?

5. Does the Proposed Project comport with federal, state, and Commission’s rules, regulations and other applicable standards governing safety, reliability, and competition?
   a. If the certificate is granted, should the exemptions from certain affiliate transaction rules and reporting requirements set forth in the Commission’s General Orders be granted, as requested by NEET West?


\textsuperscript{23} Prehearing Conference Transcript. pp. 23-39.

\textsuperscript{24} Ruling. pp. 6-7.
II. SUMMARY OF RECOMMENDATIONS

ORA recommends the Commission approve the Suncrest Substation Alternative, which is the environmentally superior alternative. Since this alternative would site the SVC facility within the existing Suncrest Substation footprint, it would avoid most environmental impacts at a potentially lower cost. Additionally, the Commission can, on its own motion, require construction of the SVC facility within the Suncrest Substation.

In order to proceed with siting the SVC facility within the Suncrest Substation, ORA recommends that the Commission bifurcate the proceeding to first consider the issue of whether it should require NEET West to site the project within the Suncrest Substation. This sequencing will also ensure expeditious consideration of this issue. ORA anticipates that similar projects proposed by non-incumbent transmission owners may raise this siting issue again and urges the Commission to determine its role as the siting authority within the context of FERC Order 1000. ORA notes that the Administrative Law Judge has appropriately designated this issue as both a factual and legal issue. Therefore, parties should have the ability to brief these legal issues as well.

What is not at issue in this proceeding is which entity should construct this project. The CAISO’s bid request was for a project which could provide 300 MVARs at the 230 kV bus at the Suncrest Substation. NEET West won that bid over SDG&E. SDG&E refused to cooperate with NEET West to construct this project at the Suncrest Substation and therefore, NEET West was required to propose its project one mile away from the substation. Despite this fact, NEET West’s project was selected as the most cost competitive bid and the Commission should reject any attempt by SDG&E to obtain


\(^{26}\) Id.


\(^{29}\) NEET West DEIR Comments, p.11; Prehearing Conference Transcript 25:9-10, 37-38:28-3.
approval for its losing and more expensive bid. Furthermore, it is reasonable to locate a project which regulates the operating voltage of a substation within that substation, rather than requiring the project proponent to build a one-mile transmission line to connect that project to the substation. Additionally, since the issue in this proceeding is one of siting, which is within the Commission’s purview, it should reject any attempts by other parties to undermine this siting authority.

If the Commission adopts the Suncrest Substation Alternative, the environmentally superior alternative, the maximum prudent and reasonable cost of the project should be the cost of the Proposed Project less the cost required to construct the one-mile transmission line and for other project components that would no longer be needed.\[30\]

However, if the Proposed Project is approved, ORA supports NEET West’s bid price as the maximum prudent and reasonable cost of the project. ORA does not support exempting NEET West from the reporting requirements associated with affiliate transactions. The issues related to the rules on affiliate transactions are legal issues which parties should also have the opportunity to brief.

III. THE SUNCREST SUBSTATION ALTERNATIVE, THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE, IS FEASIBLE.

The Commission is the lead agency pursuant to the California Environmental Quality Act (CEQA) and is responsible for preparing the EIR in compliance with CEQA. CEQA prohibits public agencies from approving projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the project.\[31\] In analyzing alternatives, the purpose is to determine whether there is a feasible way to achieve the basic objectives of

\[30\] There may be additional costs to place the SVC facility within the Suncrest Substation, which NEET West cannot determine at this time because SDG&E has not provided NEET West with the necessary information to do so. The Commission should require SDG&E to provide NEET West with the information necessary to make an estimate so that the Commission can make an objective and independent determination of the economic feasibility of the environmentally superior alternative.

\[31\] 14 CCR (CEQA Guidelines) §15126.6.
the project, while avoiding or mitigating environmental impacts.\textsuperscript{32} Feasibility is defined as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors.\textsuperscript{33} The DEIR found that the Suncrest Substation Alternative would “avoid virtually all of the environmental impacts of the Proposed Project” and that it would meet all of the project objectives.\textsuperscript{34} Therefore, the Commission should approve this alternative rather than NEET West’s Proposed Project.

Additionally, CEQA requires that the lead agency “independently participate, review, analyze and discuss the alternatives in good faith.”\textsuperscript{35} Thus, it is the responsibility of the Commission, not the applicant, to determine whether alternatives are feasible and “the circumstances that led the applicant in the planning stage to select the project for which approval is sought and to reject alternatives cannot be determinative of their feasibility.”\textsuperscript{36} Also, this Commission has held that as the lead agency, it cannot delegate meeting CEQA requirements to any other agency, despite any other related jurisdiction by another agency, such as CAISO.\textsuperscript{37} The Commission should consider all the evidence presented regarding feasibility of the Suncrest Substation Alternative to come to its own independent conclusion about the appropriate site for the project.

A. The Suncrest Substation Alternative is technologically feasible.

The Suncrest Substation Alternative is feasible from an electrical/technical standpoint according to both SDG&E and CAISO. SDG&E’s bid for this project under Phase 3 of CAISO’s TPP proposed construction of the SVC facility within the Suncrest

\textsuperscript{33} CEQA Guidelines §15364.
\textsuperscript{34} DEIR, pp. 20-12 -20 -16.
\textsuperscript{35} Kings County Farm Bureau v. City of Hanford (1990) 221 Cal.App.3d 692, 736.
\textsuperscript{36} Id.
Additionally, in CAISO’s data request response to Energy Division, CAISO stated in regards to the environmentally superior alternative that it “has no basis to conclude that it is infeasible from an electrical/technical standpoint for NEET West to design and build the SVC inside the boundaries of the Suncrest Substation.” Therefore, it is feasible, from an electrical and technical standpoint to construct the environmentally superior alternative, which is located within the Suncrest Substation footprint.

1. Safety concerns do not make the Suncrest Substation Alternative technically infeasible.

SDG&E and CAISO raise safety concerns as a reason that the Commission should not approve the Suncrest Substation Alternative. However, any legitimate concerns can be addressed through coordination between SDG&E and NEET West. CAISO argues that it would generally be “impractical to allow an entity to construct and own facilities within another utility’s existing substation because it could lead to significant safety issues and questions regarding accountability.” However, CAISO fails to cite any evidence which would make coordination between NEET West and SDG&E to mitigate safety issues or develop plans regarding accountability impossible.

SDG&E argues that national standards related to safety and cyber security renders the Suncrest Substation Alternative infeasible. In support of this argument SDG&E cites to the National Electrical Safety Code (NESC) and North American Cyber and Physical Security Standards. The NESC standards which SDG&E has cited, Section 11 (Protective arrangements in electric supply stations) Subdivision 110 (General requirements) Part A (Enclosure of equipment) Chapters 1 (Types of enclosures) and 2 (Safety clearance zone), discusses industry standards related to safety clearance zones.

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39 CAISO Response to Energy Division Data Request February 24, 2017, p. 2.
40 SDG&E DEIR Comment Letter, p. 5; CAISO DEIR Comment Letter, p. 2.
41 SDG&E DEIR Comment Letter, pp. 4-5; SDG&E Response to Data Request of ORA Set 1, Question 2, March 31, 2017.
42 SDG&E Response to Data Request of ORA Set 2, Questions 1-3, May 5, 2017.
Based on those rules, SDG&E argues that an SVC facility operated by NEET West would require a fence and a clearance of 15 feet 4 inches around that fence. According to SDG&E, there is not enough space in the Suncrest Substation for this additional clearance; therefore, SDG&E argues that this alternative is infeasible. However, the NESC includes an exception which states that the safety clearance zone requirement is not applicable to internal fences within an electric supply station perimeter.\footnote{National Electrical Safety Code 2011, Section 11 Protective Arrangements in Electric Supply Stations, p. 32.} In other words, the NESC does not require additional clearance to separate the two entities’ facilities.

Additionally, SDG&E argues that the North American Cyber and Physical Security Standards require a separately enclosed and monitored facility and control center and that NEET West and SDG&E would need to develop a new compliance plan related to these standards.\footnote{SDG&E Response to Data Request of ORA Set 2, Question 2, May 5, 2017.} However, the North American Cyber and Physical Security Standards that SDG&E cites do not prescribe specific actions that a utility must take or structures that must be built to meet these standards.\footnote{CIP -004-06; CIP -005-06; CIP -006-06.} Rather, most of these standards are process driven, requiring a utility to show that processes are in place to address security concerns.\footnote{CIP -005-06 requires an Electronic Safety Perimeter, but this is not a physical perimeter, but relates to online network security, \url{http://www.nerc.com/pa/Stand/Cyber%20Security%20Permanent/Cyber_Security_FAQ.pdf}.} Furthermore, SDG&E does not state that it would be infeasible to create a new compliance plan with a NEET West SVC facility in the Suncrest Substation. Instead, SDG&E states that “any joint access to a NEET West device within SDG&E’s facility would violate SDG&E[‘s] internal security policy for [the] Suncrest Substation.”\footnote{SDG&E Response to Data Request of ORA Set 2, Question 2, May 5, 2017.} While the current internal security policy may not permit joint access, it does not foreclose the possibility that a new policy could permit joint access in a manner that would comply with applicable North American Cyber and Physical Security Standards. To the extent that the Commission requires coordination between the two...
utilities to construct the Suncrest Substation Alternative, as recommended in
Section (B)(4) below, it may also require coordination to ensure any safety concerns are
addressed.

B. The Suncrest Substation Alternative is feasible under
current laws and regulations.

1. The Commission has siting authority over
transmission facilities.

Under federal law, states have siting authority over transmission facilities. In
1935 when Congress enacted the Federal Power Act (FPA), it maintained transmission
planning and expansion within the purview of state regulatory agencies. Specifically,
under § 201(b) of the FPA, states have jurisdiction over electric generation facilities and
facilities used in the transmission of electric energy in intrastate commerce.\footnote{48} In \textit{New
York v. FERC}, the Court reaffirmed this authority, stating that “among other things,
Congress left to the States authority to regulate generation and transmission siting.”\footnote{49}

Although the “Commission and CAISO share concurrent jurisdiction over
elements of the transmission system and transmission reliability,” the Commission retains
its “extensive jurisdiction over transmission and reliability pursuant to provisions of the
public utilities code.”\footnote{50} Only where the Legislature has given CAISO specific authority
and responsibility must the Commission share that jurisdiction with CAISO.\footnote{51} In this
instance, the Legislature has specifically granted siting authority to the Commission by
stating that, “no electrical corporation … shall begin the construction of a …line, plant or
system, or any extension thereof without having first obtained from the Commission a
certificate that the present or future convenience and necessity require or will require
such construction.”\footnote{52} Additionally, as a basis for granting a CPCN pursuant to Cal. Pub.

\footnote{48} 16 U.S.C. § 824.
\footnote{51} \textit{Id.}
Util. Code §1001, Cal. Pub. Util. Code § 1002, requires the Commission to consider the following factors: (1) Community values, (2) Recreational and park areas, (3) Historical and aesthetic values, and (4) Influence on environment. The Commission has previously concluded that Cal. Pub. Util. Code §1002 imposes a “responsibility independent of CEQA to include environmental influences and community values in its consideration of a request for a CPCN.” CAISO also conceded this authority in regards to implementation of FERC Order 890 where it stated that it supported preserving an incumbent transmission owner’s right of first refusal in its tariff because CAISO lacked siting authority. Therefore, this Commission has authority over the siting of the SVC facility and one factor it must consider is the influence of this project on the environment.

2. CAISO’s APSA does not have bearing on the site of the SVC facility.

The APSA should not determine the appropriate site for the SVC facility. The APSA, which was signed by CAISO and NEET West, does not require the CAISO to terminate their agreement if the Commission approves an alternative other than NEET West’s Proposed Project. Rather, the APSA states that if an unreasonable delay occurs, the CAISO shall consult with the Approved Project Sponsor. If, after that consultation, CAISO determines that “the Approved Project Sponsor cannot secure necessary approvals or property rights … or the Approved Project Sponsor is otherwise unable to timely construct the project,” the CAISO shall take action it determines to be necessary, including termination of the APSA. Furthermore, in implementing Order 1000, CAISO specifically stated that where a project is delayed because of the permitting process, it will take steps to address potential reliability concerns and only if this concern cannot be

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55 CAISO, June 10, 2014 Implementation Letter, FERC Docket ER 10-1401-000, p. 70.
56 Approved Project Sponsor Agreement, §5.8.
57 Id.
addressed would CAISO consider reassigning the transmission project.\textsuperscript{58} (Italics added.)

In this case, there are no or minimal reliability concerns related to this policy-driven project.\textsuperscript{59} Therefore, CAISO has discretion to determine whether it should terminate the APSA.\textsuperscript{60} And in fact, this project has already been delayed, but CAISO did not terminate the APSA.\textsuperscript{61}

Additionally, the Commission has modified projects after they received CAISO’s approval despite any delay associated with the modification. For example, in the Commission’s grant of a CPCN to Southern California Edison Company (SCE) for the Tehachapi Renewable Transmission Project (segments 4-11), it approved various segments which the environmental impact report (EIR) determined was the environmentally superior alternative, rather than approving the entire route as proposed.\textsuperscript{62} Despite these required changes, CAISO did not terminate the project and the project was energized in 2016.\textsuperscript{63}

Lastly, the fact that CAISO and NEET West signed the APSA cannot preclude the Commission from considering all possible alternatives. Contracts or agreements entered into by the proponent of an EIR on a Proposed Project prior to completion of the environmental review process cannot be used to avoid the scrutiny envisioned by

\textsuperscript{58} FERC Order on Compliance Filing, Docket Nos. ER13-103-000, ER12-2709-000, ER13-87-000, 143, para. 260.
\textsuperscript{60} Furthermore, the APSA also states, in deference to this Commission’s authority over siting, that “any modifications to the Project’s facilities ordered by a siting agency are not subject to CAISO approval.” Approved Project Sponsor Agreement, §5.9.3.
\textsuperscript{61} NEET West First Supplement to Response to Data Request Response of CURE Set 1, Question 3, May 4, 2017, NW-217.
\textsuperscript{62} Decision Granting a Certificate of Public Convenience and Necessity for the Tehachapi Renewable Transmission Project (Segments 4-11) (D.09-12-044), December 17, 2009, p. 41.
\textsuperscript{63} SCE, Tehachapi Transmission Project, \url{https://www.sce.com/wps/portal/home/about-us/reliability/upgrading-transmission/TRTP-4-11//ut/pb1/hdcxDoIwEAbbgp2Gihy2KbiWYWmUnQyxBggFKAOH1RcNCo1Lbf_n-4Q4JFCBRRl0mozZTZSS_s1heDYvRHfeBg28T4LYLmWcDO6YAwgHAD-Gwiz_gsSUaDMxB7JYYWZ6fGbf-C4MAAMIGeGawXbnHt_Aw8CxBwefUgywHMGfK1wkZK7iz0dCWsbYkkjUyT2pk1p_1sM6duqq2WigQd_3ulR K5ol-U4UG3ypaloUTCWqigAy_jDzbk9fZwJDOg!!/d4/d5/L2dBISevZ0FBIS9nQSEh?from=trtp}. 

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CEQA. Therefore, the fact that the CAISO and NEET West signed an agreement does not prevent the Commission from considering environmentally superior sites.

3. **FERC Order 1000 did not remove this Commission’s siting authority.**

FERC Order 1000 requires transmission planning at the regional level which considers and evaluates possible transmission alternatives and encourages competition in transmission project development. After the transmission projects are constructed and become operational, it also requires the fair allocation, among beneficiaries, of the cost of any transmission solution that was chosen to meet a regional transmission. Thus, FERC Order 1000’s purpose is to promote competition in regional transmission planning and to support efficient and cost effective transmission development.

However, in doing so, FERC Order 1000 did not remove states’ siting authority for transmission solutions. In the Order, 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.” Additionally, FERC stated that Order 1000 “in no way involves an exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities.” Therefore, FERC concluded that Order 1000 did not create any conflicts between state and federal requirements. Thus, any requirements under FERC Order 1000 do not interfere with the Commission’s siting authority.

The right of first refusal reserved for incumbent transmission providers also does not impinge on the Commission’s siting authority. FERC Order 1000 stated that it did not involve a exercise of authority over those specific substantive matters traditionally reserved to the states, including integrated resource planning, or authority over such transmission facilities.

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65 FERC Order 1000, para. 107.
66 FERC Order 1000, para. 186; see also FERC Order 1000, para. 188 stating “it is important to recognize that Order No. 1000’s transmission planning reforms are concerned with process; these reforms are not intended to dictate substantive outcomes, such as what transmission facilities will be built and where. We recognize that such decisions are normally made at the state level.”
not intend, through that order, to affect the right of an incumbent transmission provider to build, own, and recover costs for upgrades to its own transmission facilities, nor to alter an incumbent transmission provider’s use and control of an existing right of way. 67 SDG&E, NEET West, and CAISO argue that this prevents the Commission from requiring NEET West to construct the SVC facility within the Suncrest Substation footprint. 68 But, as stated previously, while FERC Order 1000 did not affect existing incumbent transmission providers’ rights related to upgrades or control over rights of way, it also did not override Order 1000’s explicit intent to preserve state’s siting authority historically reserved to the states.

Lastly, any attempt by SDG&E to use this Commission’s exercise of its siting authority as a pathway to undermine NEET West’s Proposed Project is contrary to the intent of FERC Order 1000 to both preserve states’ siting authority and increase competition. When FERC issued Order 1000, it removed the federal right of first refusal for transmission facilities selected in a regional transmission plan for the purposes of cost allocation and to lift restrictions on the universe of transmission developers offering potential solutions. 69 FERC found that the federal right of first refusal was unjust and unreasonable because it could result in the failure to consider more efficient or cost-effective solutions to regional needs. 70 This change to FERC Order 1000 is what enabled CAISO to put this project out for competitive solicitation during Phase 3 of CAISO’s TPP and to choose the most cost competitive bid, which was NEET West’s bid. 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 within the Suncrest Substation footprint, according to the environmentally superior alternative.

67 FERC Order 1000, para. 226.
68 NEET West DEIR Comment Letter, pp.9-11; CAISO DEIR Comment Letter, p. 2-3; SDG&E DEIR Comment Letter, pp. 3-4.
69 FERC Order 1000, para. 225.
70 FERC Order 1000 para. 284.
4. ORA recommends the Commission require NEET West to construct the SVC facility within the Suncrest Substation.

The Commission has the authority to require NEET West to site the SVC facility within the existing Suncrest Substation footprint. 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 facility within the Suncrest Substation. Furthermore, in considering the location of the facility, the Commission is required to consider the influence of the project on the environment. Specifically, Cal. 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.”

The Commission should conduct a hearing to consider whether to require NEET West to construct the SVC facility within SDG&E’s Suncrest Substation, as recommended by the DEIR.

The Commission’s authority depends on the extent to which the utility has dedicated or devoted its property to public use. One method used to determine the territorial scope of water, gas, electric, and telephone utilities is through a franchise to operate in certain municipalities. When a utility acquires permission to operate within the boundaries of a specific area, it is agreeing to serve all customers within that area.

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72 The Commission may only take this action with respect to public utilities. NEET West’s current Application requests public utility status from this Commission.
74 Id.
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. Furthermore, SDG&E’s customers have paid, through rates, for the Suncrest Substation in exchange for electric service. Therefore, SDG&E has dedicated or devoted the Suncrest Substation to public use.

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.”\(^76\) In *Greyhound Lines, Inc. v. Public Utilities Commission*, the court affirmed the exercise of this power where the Commission required Greyhound to reroute its services and require additional stations along its already existing route.\(^77\) Similarly here, the Commission has extensive power to order any additions, extensions, repairs, and 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, Cal. Pub. Util. Code §762 permits the Commission to require coordination between utilities and share costs. Specifically, Cal. Pub. Util. Code §762 states that if the Commission’s order requires “joint action by two or more public utilities, the Commission shall notify the public utilities and fix a reasonable time within which they may agree upon the portion or division of the cost which each shall bear.”\(^78\) If they are not able to do so, the Commission may take action to determine each utility’s cost.\(^79\) Thus, the Commission may order SDG&E to take joint action with NEET West to install the SVC facility within the Suncrest Substation footprint and share the costs to do so.

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\(^{77}\) Id.; See also *In Re Pacific Tel. and Tel. Co.* 12 CPUC 2d 525 (Sept. 7, 1983), Conclusions of Law 1, requiring Pacific to sell its customer premises equipment to its customers.


\(^{79}\) Id.
C. The Suncrest Substation Alternative is economically feasible.

As stated previously, as a public utility, SDG&E has dedicated its property for public use within its service territory. Therefore, the Commission’s exercise of Cal. Pub. Util. Code §762 within the bounds of that service territory and for the purposes of providing electric service, is not a taking.\(^\text{80}\) Without the need to exercise eminent domain, costs to implement the Suncrest Substation Alternative are substantially less.

Additionally, under Cal. Pub. Util. Code §762, the Commission can order SDG&E and NEET West to take joint action and require them to agree upon the division of costs. Where the utilities are not able to come to an agreement, the Commission may fix the proportion of costs that each utility must bear.\(^\text{81}\) Therefore, the Commission can ensure a fair cost sharing agreement which does not impinge on the economic feasibility of the project.

Furthermore, the construction of the Suncrest Substation Alternative would obviate the need for the following components\(^\text{82}\):

- The one-mile underground transmission line
- Six acres of remote land
- Signage and lighting for the remote site
- Access driveway improvements
- A storm water detention basin
- A retaining wall, storm water drainage, and conveyance system
- Chain link and barb wire security fencing approximately 7 feet in height
- 230 kV Lightning Arresters
- 230 kV Potential Measurement Transformers

NEET West states that there might be other unknown costs in locating the SVC facility in the Suncrest Substation. However, NEET West cannot estimate the cost of

\(^\text{80}\) Atchinson Topeka & Santa Fe Ry. Co. v. RR. Comm’n of California, (1931) 209 Cal. 460, 473.


\(^\text{82}\) DEIR, ES-4 - ES-5.
placing the SVC facility within the Suncrest Substation because SDG&E has not provided the information necessary to make these estimates. Proving economic infeasibility requires a showing that “the additional costs or lost profits are so severe the project would become impractical.” While any particular economic analysis or data is not required, generally CEQA requires “‘some context’ that allows for economic comparison” and “without any comparative numbers, it [is] not possible to determine the feasibility of … alternatives.” The Commission should not take NEET West’s claims of economic infeasibility at face value; rather it should require comparative numbers so that it can independently determine whether any increased costs would result and whether that increase would render the project infeasible. The Commission should also require SDG&E to provide NEET West the information it needs to give the Commission an accurate estimate on the cost to construct the SVC facility within the Suncrest Substation.

Additionally, that NEET West may have already expended funds in support of the Proposed Project cannot, on its own, make an alternative economically infeasible. As the lead agency, the Commission cannot “avoid an objective consideration of an alternative simply because, prior to commencing CEQA review, an applicant made substantial investments in the hope of gaining approval for a particular alternative.” The Commission must make an objective and independent determination on the feasibility of the environmentally superior alternative, irrespective of any funds that NEET West has expended to prepare the Proposed Project for Commission approval.

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83 NEET West Response to ORA Data Request Set 1, Question 3, March 27, 2017.
IV. SINCE THE ENVIRONMENTALLY SUPERIOR ALTERNATIVE OBVIATES THE NEED FOR CERTAIN PROJECT COMPONENTS, THE REASONABLE COST MUST BE LESS THAN THE COST OF THE PROPOSED PROJECT.

Under the Suncrest Substation Alternative, the SVC facility will be co-located within the existing Suncrest Substation; therefore, there will be no need for many of the project components listed in Section III.D. above such as, the one-mile underground transmission line and six acres of land for the project site. Thus, the reasonable cost of the environmentally superior alternative should be less than that of the Proposed Project.

It is unclear whether additional costs may arise from the environmentally superior alternative because NEET West has not made these estimates. However, as stated previously, the Commission should require an accurate estimate and the utilities should take joint action to determine an appropriate sharing of costs.\(^88\)

V. IF THE COMMISSION Chooses NOT TO EXERCISE ITS AUTHORITY TO REQUIRE THE PROJECT TO BE SITED WITHIN THE SUNCREST SUBSTATION, ORA SUPPORTS THE PROJECT AS CURRENTLY PROPOSED BY NEET WEST.

This project was subject to competitive bid under the CAISO’s rules regarding policy oriented projects.\(^89\) NEET West was the winner of that bid because it agreed to a cost cap of $42,288,000, which also included a cap on all costs associated with the construction period, including direct costs, allocated overhead costs, capital costs, and allowance for funds used during construction, which benefits ratepayers.\(^90\) CAISO found this bid to be superior to SDG&E’s bid.\(^91\) The Commission should reject any attempt by SDG&E to acquire the right to construct this project after the fact. While the Commission should consider the narrow subject of whether the project should be

\(^89\) CAISO Tariff 24.4.10; 24.5.1.
\(^91\) SDG&E’s cost cap was higher and did not include the risk of increased costs associated with changes to the scope of the Proposed Project, unforeseen issues outside of SDG&E’s control, and increases in commodity costs.
constructed by NEET West within the Suncrest Substation, it should not consider
whether SDG&E should construct the project. Since the DEIR found that the impacts of
the Proposed Project could be mitigated, it should be the Commission’s next choice after
the environmentally superior alternative.92

VI. CONSISTENCY WITH FEDERAL, STATE, AND COMMISSION
RULES, REGULATIONS AND OTHER APPLICABLE
STANDARDS GOVERNING SAFETY, RELIABILITY AND
COMPETITION.

A. The Commission should not grant NEET West
exemptions from reporting requirements.
ORA is concerned that granting exemptions from the affiliate transaction reporting
requirements will impede its ability to obtain relevant and accurate information to ensure
that customer interests are protected. While NEET West emphasizes that it will not be
providing service to retail customers due to its CAISO membership, California’s retail
customers pay roughly 90% of the costs of transmission under CAISO’s operational
control. Therefore, the Commission must ensure that NEET West provides critical
information to both Commission staff and ORA without additional litigation.

VII. CONCLUSION
ORA recommends that the Commission bifurcate the proceeding to first consider
the issue of whether it should require NEET West to site the project within the Suncrest
Substation. The Suncrest Substation alternative is superior because it would avoid most
environmental impacts at a potentially lower cost. Additionally, If the Commission
adopts the Suncrest Substation Alternative (the environmentally superior alternative), the
maximum prudent and reasonable cost of the project should be the cost of the Proposed
Project less the cost required to construct the one-mile transmission line and for other
project components that would no longer be needed. However, if the Proposed Project is
approved, ORA supports NEET West’s bid price as the maximum prudent and reasonable

92 DEIR, 20-14.
cost of the project. ORA does not support exempting NEET West from the reporting requirements associated with affiliate transactions.
STATEMENT AND QUALIFICATIONS

OF

CHARLES MEE

Q1: Please state your name and business address.
A1: My name is Charles Mee and my business address is 505 Van Ness Avenue, San Francisco, California 94102.

Q2: By whom are you employed and in what capacity?
A2: I am employed by the Office of Ratepayer Advocates of the California Public Utilities Commission as a Senior Utilities Engineer – Specialist.

Q3: Please describe your related educational and professional experience.
A3: In 1984, I graduated from Tsinghua University in Beijing, China with a Bachelor of Science degree in Electric Power Engineering.

From 1984 to 1998, I worked for Henan Electric Power Test and Research Institute in Henan Province, China in the capacity of Assistant Electric Power Engineer and performed the following tasks:

- Conducted technical research on electrical power equipment such as: transformers, transmission lines, circuit breakers, and insulators for their electrical characteristics.

- Measured and analyzed operational over-voltages of the Henan Province electric power grid and recommended solutions in mitigating the over-voltages.

From 1988 to 1992, I worked for Hainan Province Electric Power Company in Hainan Province, China in the capacity of Electric Power Engineer and performed the following tasks:

- Monitored insulation level of high voltage generators, transformers, and circuit breakers. Monitored operational over-voltages of the high voltage equipment and the electric power grid.

- Drafted testing plans and testing reports. Supervised testing of power devices including generators, transmission lines, transformers, and circuit breakers.
• Coordinated on the operation and maintenance of power transmission and power generation facilities.

• Coordinated on the planning, budgeting, engineering, building, and commissioning of new generators, power transmission lines, and power substations.

From 2002 to 2010, I worked for California Department of Water Resources in Sacramento, California in the capacity of Associate Hydroelectric Power Utility Engineer and Senior Hydroelectric Power Utility Engineer – Supervisor, and performed the following duties:

• Participated in the California Independent System Operator (“CAISO”) stakeholder processes including plan, design, and implementation of the Market Redesign and Technology Upgrade. Provided comments in the area of day-ahead market, real time market, energy and ancillary services co-optimization, residual unit commitment, congestion management, locational marginal pricing, market power mitigation, grid reliability, resource adequacy, and demand response.

• Participated in the CAISO transmission planning processes, generator interconnection procedures, local capacity requirement studies, transmission access charges, and grid management charges.

• Intervened in transmission owners’ tariff filings on existing transmission contracts, transmission owner tariffs, and reliability services tariffs.

• Conducted the following studies related to State Water Project (SWP) operation: transmission and interconnection planning, existing power and transmission contracts benefit cost analysis, transmission cost forecasting, SWP capabilities in providing ancillary services to the CAISO market, cost impact of the CAISO proposals to SWP power operation, SWP resource modeling, and settlement and reconciliation for the CAISO market transactions.

From November 2010 to February 2013, I worked for the Energy Division of the California Public Utilities Commission in San Francisco, California as a Senior Utilities Engineer – Specialist and performed the following tasks:
• Commented on the CAISO power market refinement including renewable
  resources integration and market power mitigation.
• Facilitated settlement on distributed resources interconnection to utilities’
  distribution systems.
• Drafted resolution on utilities’ tariff filings on power generators’ station
  power services and on utilities’ minor transmission and distribution
  construction and maintenance projects.

From February 2013 to present, I have worked for the Office of Ratepayer
Advocates of the California Public Utilities Commission in San Francisco,
California as a Senior Utilities Engineer – Specialist and have performed the
following tasks:
• Project coordinator for ORA in the Tehachapi Reliability Transmission
  Project proceeding under the Commission docket number A.07-06-031.
• Project coordinator for ORA in the Alberhill System Project proceeding
  under the Commission docket number A.09-09-022.
• Project coordinator for ORA in the South Orange County Reliability
  Enhancement Project proceeding under the Commission docket number
  A.12-05-020.
• Project coordinator for ORA in the Coolwater – Lugo Transmission Project
  proceeding under the Commission docket number A.13-08-023.
• Project coordinator for ORA in the Mesa Substation Project proceeding
  under the Commission docket number A.15-03-003.
• Project coordinator for ORA in the Riverside Transmission Reliability
  Project proceeding under the Commission docket number A.15-04-013.
• Project coordinator for ORA in the Circle City Project proceeding under the
  Commission docket number A. 15-12-007.

Q4: What is the purpose of this testimony?
A4: I am the sponsor of ORA’s Prepared Testimony in this Suncrest SVC Project,
  under the Commission docket number A.15-08-027.

Q5: Does this complete your testimony?
A5: Yes, it does.