153 FERC ¶ 61,295
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

DCR Transmission, LLC Docket No. EL15-102-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued December 17, 2015)

1. On September 14, 2015, DCR Transmission, LLC (DCR Transmission) filed a petition for a declaratory order seeking authorization for certain transmission rate incentives pursuant to section 219 of the Federal Power Act[1] (FPA) and Order No. 679[2] for a new 500 kV transmission line project connecting the Delaney substation in Arizona to the existing Colorado River substation in California (Delaney Project or Project). In this order, we grant DCR Transmission's petition, based on the finding that DCR Transmission has satisfied the requirements of Order No. 679.[3]

I. Background

2. In Order No. 1000,[4] the Commission required public utility transmission providers to eliminate provisions in Commission-jurisdictional tariffs and agreements that establish

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[1] 16 U.S.C. § 824s (2012).

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

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

[4] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth.* v. *FERC,* 762 F.3d 41 (D.C. Cir. 2014).

a federal right of first refusal for an incumbent transmission provider with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation. In addition, the Commission required public utility transmission providers to revise their Open Access Transmission Tariffs to, among other things: (1) establish qualification criteria to determine whether an entity is eligible to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation; (2) identify information a prospective transmission developer must submit in support of a transmission project proposed for selection; and (3) describe a transparent and not unduly discriminatory process for evaluating proposals for selection in the regional transmission plan for purposes of cost allocation. In response to the requirements of Order No. 1000, the California Independent System Operator Corporation (CAISO) established a process under which eligible transmission developers may submit bids to develop and construct transmission projects that have been designated in CAISO's comprehensive transmission plan for competitive bidding.[5]

3. DCR Transmission, the project developer here, represents a joint venture between Abengoa Transmission & Infrastructure, LLC (ATI) and DCR Investor, LLC, an affiliate of Starwood Energy Group Global, LLC (SEG). ATI is a wholly-owned subsidiary of Abengoa, South America. SEG is the ultimate general partner of several private equity funds that focus on energy infrastructure investments, including acquiring and holding interests in power generation and transmission projects.[6]

4. The Delaney Project is a proposed 114-mile, 500 kV transmission line that will connect the existing Colorado River 500 kV substation in California owned by Southern California Edison Company (SoCal Edison) to the Delaney 500 kV substation in Arizona, which is currently under construction.[7] The expected in-service date of the project is May 1, 2020. According to DCR Transmission, once the Delaney Project is operational, it will establish a second contiguous 500 kV transmission connection from the Palo Verde trading hub to the Devers substation to serve load in southern California.[8]

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[5] *See Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013), *order on clarification and compliance*, 146 FERC ¶ 61,198, *order on reh'g and compliance*, 149 FERC ¶ 61,249 (2014).

[6] DCR Transmission Petition at 4.

[7] Arizona Public Service Company is currently constructing the Delaney 500 kV substation.

[8] DCR Transmission Petition at 7-8. The Devers substation is located approximately 100 miles to the northwest of the Colorado River substation and is one of the key substations into southern California.

II. DCR Transmission's Filing

5. DCR Transmission states that after conducting a competitive solicitation process, CAISO selected it as the approved project sponsor to finance, construct, own, and operate the Delaney Project. DCR Transmission states that its bid contained certain commitments with respect to rate treatments. As such, DCR Transmission requests that the Commission grant four transmission rate incentives. DCR Transmission states that the limited incentives are narrowly tailored to address the risks and challenges of the Delaney Project. These four incentives include: (1) recovery of all prudently incurred pre-commercial costs not capitalized and authorization to establish a regulatory asset that will include these expenses (regulatory asset incentive); (2) recovery of 100 percent of the prudently incurred costs, including costs incurred prior to the filing of the petition, in the event that the Delaney Project must be abandoned for reasons outside of DCR Transmission's reasonable control (abandoned plant incentive); (3) use of a hypothetical capital structure consisting of 50 percent debt and 50 percent equity until the project achieves commercial operation (hypothetical capital structure incentive); and (4) inclusion of a 50 basis point adder to its base return on equity (ROE) for participation in a regional transmission organization (RTO) (RTO participation incentive).[9]

III. Notice of Filing and Responsive Pleadings

6. Notice of DCR Transmission's filing was published in the *Federal Register*, 80 Fed. Reg. 56,976 (2015), with interventions and comments due on or before October 14, 2015. Timely motions to intervene were filed by CAISO; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside California (collectively, Six Cities); SoCal Edison; California Department of Water Resources State Water Project; the International Brotherhood of Electrical Workers, Local 769; and the Modesto Irrigation District. Motions to intervene and comments were filed by the City of Santa Clara, California (SVP) together with M-S-R Public Power Agency (M-S-R) (collectively, SVP/M-S-R); TransCanyon DCR, LLC (TransCanyon); SoCal Edison; and Six Cities. On September 19, 2015, DCR Transmission filed an answer to comments filed by SVP/M-S-R. On October 28, 2015, and November 2, 2015, CAISO and SVP/M-S-R filed motions for leave to answer and answers, respectively.

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[9] *Id*. at 2-3.

IV. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

8. Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) (2015), prohibits answers to protests and answers unless otherwise decided by the decisional authority. We accept the answers submitted by DCR Transmission, CAISO, and SVP/M-S-R because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 219 Requirement

9. In the Energy Policy Act of 2005,[10] Congress added section 219 to the FPA, directing the Commission to establish, by rule, incentive-based rate treatments to promote capital investment in certain transmission infrastructure. The Commission subsequently issued Order No. 679, which sets forth processes by which a public utility may seek transmission rate incentives pursuant to section 219, including the incentives requested here by DCR Transmission. Additionally, in November 2012, the Commission issued the Transmission Incentives Policy Statement providing additional guidance regarding its evaluation of applications for transmission rate incentives under section 219 and Order No. 679.[11]

10. Pursuant to Order No. 679, an applicant may seek to obtain incentive rate treatment for a transmission infrastructure investment that satisfies the requirements of FPA section 219, i.e., the applicant must show that "the facilities for which it seeks incentives either ensure reliability or reduce the cost of delivered power by reducing transmission congestion."[12] Order No. 679 established the process for an applicant to demonstrate that it meets this standard, including a rebuttable presumption that the standard is met if:

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[10] Pub. L. No. 109-58, § 1241, 119 Stat. 594 (2005).

[11] *See Promoting Transmission Investment Through Pricing Reform*, 141 FERC ¶ 61,129 (2012) (Transmission Incentives Policy Statement).

[12] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76.

> (1) the transmission project results from a fair and open regional planning process that considers and evaluates the project for reliability and/or congestion and is found to be acceptable to the Commission; or (2) a project has received construction approval from an appropriate state commission or state siting authority.[13]

The Commission also stated that "other applicants not meeting these criteria may nonetheless demonstrate that their project is needed to maintain reliability or reduce congestion by presenting [to the Commission] a factual record that would support such a finding."[14]

11. An applicant seeking to obtain a transmission rate incentive must also demonstrate a nexus between the incentives being sought and the investment being made. In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is tailored to address the demonstrable risks or challenges faced by the applicant.[15] Applicants must provide sufficient support to allow the Commission to evaluate each element of the package and the interrelationship of all elements of the package. The Commission noted that this nexus test is fact-specific and requires the Commission to review each application on a case-by-case basis.

a. <u>DCR Transmission's Filing</u>

12. DCR Transmission states that the Delaney Project qualifies for incentives under Order No. 679 because it was identified and approved through a fair and open regional planning process conducted by CAISO. DCR Transmission asserts that this process satisfies the Commission's rebuttable presumption that such projects will ensure reliability or reduce the costs of delivered power by reducing congestion.[16] DCR Transmission states that the CAISO transmission planning process, through which the Delaney Project was approved, evaluated whether the Delaney Project would enhance reliability and/or reduce congestion. According to DCR Transmission, CAISO determined that the Delaney Project will enhance reliability, provide economic benefit,

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[13] *Id.*

[14] *Id.* P 57; *see also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 41.

[15] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 115.

[16] DCR Transmission Petition at 15 (citing Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at PP 5, 49-50).

increase deliverability of renewable power from California's Imperial Valley region, and provide reliability benefits by reducing flows on key transmission paths.[17]

13. More specifically, DCR Transmission states that CAISO determined that the Delaney Project will provide annual production cost savings in 2020 of $23 million, including $1 million in transmission loss reduction savings. Further, DCR Transmission asserts that the Delaney Project will provide up to $30 million in capacity benefits in 2020, and from $86 to $128 million in capacity benefits during its first six years of service. It is expected to provide at least $9 million in capacity benefits per year from 2026 through the end of its 50-year economic life.[18] According to DCR Transmission, the location of the Delaney Project will increase the California market's access to both current and potential future resources from the Palo Verde hub, thereby enhancing regional reliability, lowering costs to California customers, increasing access to renewables in the Imperial Valley for California customers by reducing congestion on other lines, and delaying the need for additional fossil-fueled combustion turbines. Moreover, DCR Transmission states that the Delaney Project will enhance the reliability and operational flexibility of both the Arizona and California transmission grids, thereby allowing economic, reliable, and cost-effective development and integration of renewable resources in both the Arizona and California transmission grids.[19]

14. No party submitted a protest on this issue.

i. Commission Determination

15. We find that DCR Transmission is entitled to the rebuttable presumption that the facility for which it seeks incentives will either ensure reliability or reduce the cost of delivered power by reducing transmission congestion. The CAISO transmission planning process, through which the Delaney Project was approved, evaluates whether identified transmission projects will enhance reliability and/or reduce congestion.[20] Specifically,

[17] *Id*. at 16-17 (citing CAISO Approval Memo at 2; also citing *TransCanyon DCR, LLC*, 152 FERC ¶ 61,017 (2015) (*TransCanyon*)) (granting incentive rate treatment for the Delaney Project)).

[18] *Id*. at 16 (citing 2013-2014 CAISO Transmission Plan at 264-265).

[19] *Id*. at 16-17.

[20] *Id*. at 15 (citing testimony of Mr. Ali Amirali and CAISO Approval Memo). *See also* CAISO 2014-2015 Transmission Plan at 7, 12, 16-17.

CAISO determined that the Delaney Project will provide annual production cost savings in 2020 of $23 million, including $1 million in transmission loss reduction savings.[21]

b. Order No. 679 Nexus

16. In addition to satisfying the section 219 requirement of ensuring reliability and/or reducing the cost of delivered power by reducing congestion, Order No. 679 requires an applicant to demonstrate that there is a nexus between the incentive being sought and the investment being made.[22] In Order No. 679-A, the Commission clarified that the nexus test is met when an applicant demonstrates that the total package of incentives requested is "tailored to address the demonstrable risks or challenges faced by the applicant."[23] The regulations under section 219 require a project-specific demonstration of the nexus between the requested incentives and the risks and challenges of the project.

i. DCR Transmission's Filing

17. DCR Transmission asserts that there is a nexus between the incentives it requests and the risks and challenges faced in constructing the Delaney Project. DCR Transmission explains that because the Project resulted from CAISO's transmission planning process, DCR Transmission submitted a bid containing several cost containment commitments and cost caps that could result in unrecoverable costs to DCR Transmission. DCR Transmission asserts that this unique bid structure creates more risk for the Delaney Project than the usual cost of service approach and is the reason for many of the requested risk-reducing incentives.[24]

18. DCR Transmission explains that because the Delaney Project is the first transmission facility it will place into service, it will expend significant capital during the pre-construction and construction phases without another available source of income. Further, DCR Transmission states that the Delaney Project is a significant investment and, without the requested incentives, its ability to maintain adequate cash flow could be challenged, which ultimately could lead to lower credit ratings and higher costs of

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[21] *Id*. at 16.

[22] Order No. 679, FERC Stats & Regs. ¶ 31,222 at P 48.

[23] Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

[24] DCR Transmission Petition at 18-19.

financing.[25] DCR Transmission asserts that higher costs of financing could diminish the economic value of the Delaney Project for both CAISO and its customers.[26]

19. According to DCR Transmission, the Delaney Project poses financial and logistical challenges because DCR Transmission is a newly-formed company and has no direct business history, no credit rating, and no debt repayment history. Also, DCR Transmission asserts that the Delaney Project will require substantial expenditures to recover ongoing development costs, especially in the early phases of development, which will require DCR Transmission to secure financing in a credit market that is experiencing fluctuations as a result of recent global conditions.[27] DCR Transmission argues that it will need to expend significant funds for the engineering, procurement, right-of-way acquisition, permitting, and overall development of the Delaney Project. DCR Transmission asserts that its requested incentive rate treatments will significantly enhance its overall financial strength and lower the cost of the Delaney Project to CAISO and its customers.[28]

20. DCR Transmission asserts that the Delaney Project also presents regulatory challenges because the proposed route for the Delaney Project will require acquisition of rights-of-ways across federal, state, and private lands in Arizona and California. DCR Transmission anticipates that in order to secure the federal approvals, it will be required to file an environmental impact statement and other documents in accordance with National Environmental Policy Act of 1969, the Endangered Species Act of 1973, and the National Historic Preservation Act of l966.[29] For approvals from California and Arizona, DCR Transmission expects that it will be required to comply with state environmental and project reviews. Further, DCR Transmission expects it will be required to secure other federal and local permits, including local permits from California and Arizona cities and municipal utility districts, as well as easements from private landowners.[30]

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[25] *Id*. at 19 (citing DCR Transmission Petition, Ex. DCR-5, Testimony of Mr. Himanshu Saxena at 12).

[26] *Id*.

[27] *Id*. at 19-20.

[28] *Id*. at 20.

[29] *Id*. at 21.

[30] *Id*. at 22-23.

According to DCR Transmission, these regulatory and project siting requirements add a level of complexity and risk to the Delaney Project.[31]

21. DCR Transmission explains that construction of the Delaney Project is a major undertaking that will present many construction challenges. For example, DCR Transmission asserts, environmental mitigation ordered by permitting agencies may increase its construction time and cost risks, particularly given the construction cost caps DCR Transmission agreed to for the Project.[32]

22. DCR Transmission states that CAISO's competitive solicitation process results in robust competition among qualified applicants and is designed to create the highest value for CAISO's customers. DCR Transmission explains that its preparation of its application to include robust cost containment commitments and cost caps required it to commit much time and resources to address design and engineering needs, potential route identification, cost estimates, identification of development challenges, and other issues.[33]

ii. <u>Comments</u>

23. Six Cities request that, if the Commission grants DCR Transmission's request for transmission incentives, it make clear that the Commission is not establishing a general policy that all competitively-bid transmission projects automatically warrant incentive rate treatment. Six Cities request that the Commission continue to apply its standard practice of examining the project-specific risks to determine whether incentives are appropriate.[34]

24. SVP/M-S-R argues that the Commission should not grant DCR Transmission any of its requested incentives on the basis of its participation in CAISO's competitive solicitation process. According to SVP/M-S-R, DCR Transmission's participation in this process should not be considered a "challenge" justifying receipt of transmission incentives because CAISO's process was created in response to the Commission directives in Order No. 1000 and, thus, granting incentives for compliance with a Commission directive would essentially result in rewarding DCR Transmission for complying with Commission requirements. SVP/M-S-R argues that it could lead to the

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[31] *Id*. at 24.

[32] *Id*.

[33] *Id*. at 25.

[34] Six Cities Comments at 3.

granting of transmission incentives for projects lacking commensurate benefits to customers.

25. SVP/M-S-R also contend that the Commission's policy of granting a 50 basis point ROE adder for RTO participation more than sufficiently compensates utilities for complying with CAISO's requirements, including participating in the competitive solicitation process. SVP/M-S-R asserts that the competitive solicitation process is voluntary and the participation by multiple parties proves that no incentive adder is needed to address what DCR Transmission characterizes as a challenge. SVP/M-S-R argues that because the competitive solicitation is complete, whatever risks and challenges DCR Transmission experienced through its participation in CAISO's competitive solicitation process for the Delaney Project no longer exist. Thus, DCR Transmission cannot justify rate incentives which, by definition, operate only prospectively. [35]

iii. DCR Transmission's Answer

26. DCR Transmission contends that SVP/M-S-R misstates the Commission's precedent when it argues that the Commission should not award any of its requested incentives on the basis of its participation in CAISO's competitive solicitation process. DCR Transmission asserts that selection of a transmission project through the Order No. 1000 process is one of the means by which a project developer can demonstrate eligibility for transmission incentives under Order No. 679.[36] Further, DCR Transmission disputes SVP/M-S-R's assertion that a 50 basis point ROE adder for RTO participation is sufficient compensation for complying with CAISO's requirements, including participating in CAISO's competitive solicitation process. DCR Transmission asserts that participation in the Order No. 1000 competitive solicitation process involves additional risks that entitle participants to additional incentives separate and apart from the RTO participation adder. DCR Transmission explains, as an example, that the regulatory asset incentive it requests allows nonincumbent transmission developers to recover early pre-commercial and formation costs incurred that are not recovered through the RTO participation incentive. DCR Transmission also argues that the Commission has recognized the need to award to nonincumbent transmission developers incentives to

[35] SVP/M-S-R Comments at 6-8; *see also* SVP/M-S-R Motion for Leave to Answer and Answer at 3-5.

[36] DCR Transmission Answer at 2 (citing Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 58; Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 49).

level the playing field with incumbent developers so as to encourage competition between them.[37]

27. DCR Transmission disagrees with SVP/M-S-R's comment that incentives are not warranted to encourage participation in CAISO's competitive solicitation process. DCR Transmission explains that it participated in the competitive solicitation process and made certain cost-containment commitments based on the ability to request and receive certain incentives. These incentives relate to the ability to effectively capitalize and recover costs incurred in the process, and put the nonincumbent bidder on equal footing with the incumbent utilities. According to DCR Transmission, if the Commission restricted the ability of nonincumbents to receive incentives, then nonincumbent bidders would be discouraged from participating, which could result in CAISO receiving fewer bids in its competitive solicitation process.[38]

28. Finally, DCR Transmission disagrees with SVP/M-S-R's argument that the risks and challenges associated with DCR Transmission's participation in the competitive bidding process are now complete. DCR Transmission states that SVP/M-S-R's argument is based upon a misunderstanding of DCR Transmission's business structure and the Commission's transmission rate incentive precedent. DCR Transmission explains that its bid was subject to the competitive solicitation process, which delayed its ability to begin the permitting process. According to DCR Transmission, these delays created increased opportunity costs. DCR Transmission states that even though the submission of its bid to develop the Delaney Project is in the past, the tasks associated with developing the Project are difficult, complex and on-going. DCR Transmission adds that when it decided to participate in the competitive solicitation process, it did not know whether it would be able to recover its investment. DCR Transmission asserts that the Commission recognizes the timing challenges that transmission developers must address.[39]

iv. <u>Commission Determination</u>

29. We find that DCR Transmission has demonstrated that there is a nexus between the incentives it seeks and the investment being made.[40] Specifically, as discussed in

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[37] *Id*. at 1-4 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 87).

[38] *Id*. at 5-6.

[39] *Id*. at 6 (citing Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at P 26).

[40] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 76. *See also* Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 27.

more detail below, we find that DCR Transmission has demonstrated that its total package of requested incentives is tailored to address the demonstrable risks or challenges faced by DCR Transmission, including construction, regulatory, and financial challenges arising during the pre-construction and construction phases of the Delaney Project.[41]

30. In response to comments raised by Six Cities and SVP/M-S-R, our determinations herein are based upon the specific risks and challenges of the Delaney Project, in accordance with the requirements of Order No. 679. Further, we are not persuaded by SVP/M-S-R that the Commission should not award other transmission incentives for participation in the Order No. 1000 competitive solicitation process if it also awards the transmission developer an ROE adder for RTO participation. Unlike the RTO participation adder, which is discussed below, these incentives are intended to permit the transmission developer to effectively capitalize and recover costs incurred in the pre-development and development stages of a project.[42]

c. Regulatory Asset Incentive

i. DCR Transmission's Proposal

31. DCR Transmission requests authorization to establish a regulatory asset in which to book certain pre-commercial costs for the Delaney Project, including engineering expenses, development surveys, attorney and consultant fees, tax and accounting services, administrative and travel expenses and costs to support planning and bid development activities.[43] DCR Transmission seeks to include in a regulatory asset all costs not capitalized that have been incurred to date and up to the date that charges are assessed to CAISO customers.[44] DCR Transmission asserts that this incentive is necessary to allow it to record and recover necessary startup and project development costs that are not capitalized, but will be incurred so that they can be recovered as current expenses. DCR Transmission comments that the Commission has recognized that this

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[41] We note that while DCR Transmission's application references cost containment measures, it justified its request for incentives on the basis of Order No. 679 and the Transmission Incentives Policy Statement, and the Commission's review of DCR Transmission's request for incentives is on that basis.

[42] *See* Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 115, 117, 163; Transmission Incentives Policy Statement, 141 FERC ¶ 61,129 at PP 11-13.

[43] DCR Transmission Petition at 25-26.

[44] *Id*.

incentive enhances a project developer's credit quality, which in turn lowers its borrowing costs.[45]

32. DCR Transmission requests authorization to amortize the regulatory asset for the Delaney Project over five years, beginning at such time as the Delaney Project becomes operational and charges are assessed to customers. DCR Transmission also requests permission to accrue carrying charges on the regulatory asset balances beginning on the effective date of the Commission's approval of this incentive and ending when the regulatory assets are included in rate base.[46] DCR Transmission explains that the ability to book such costs into a regulatory asset prior to it being included in its Annual Transmission Revenue Requirement within the CAISO Transmission Access Charge will provide up-front regulatory certainty, improve coverage ratios used by rating agencies to determine credit quality, and reduce interest expense. Moreover, DCR Transmission asserts that authorization to recover current expenses booked to regulatory asset will provide regulatory certainty and will allow DCR Transmission to recover costs incurred in the development of the Project, thereby improving its cash flow during construction and facilitating its ability to obtain financing.[47]

ii. <u>Comments</u>

33. Six Cities assert that the Commission should require DCR Transmission to apply the same restrictions that the Commission imposed in *TransCanyon* when it authorized the establishment of a regulatory asset for TransCanyon's pre-commercial costs. In that instance, according to Six Cities, the Commission required TransCanyon to: (1) limit the compounding of interest such that it does not result in a higher amount of interest than is allowed for allowance for funds used during construction (AFUDC); and (2) demonstrate that accruing the carrying charge at the weighted average cost of capital will not result in a higher amount of interest than is allowed for construction expenses that accrue for AFUDC when it seeks to commence recovery of the regulatory asset in rates.[48]

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[45] *Id*. at 26 (citing *Potomac-Appalachian Transmission Highline, L.L.C.*, 122 FERC ¶ 61,188, at P 52 (2008) (*PATH*)).

[46] *Id*. (citing *RITELine Ill., LLC*, 137 FERC ¶ 61,039, at P 96 (2011); *Green Power Express LP*, 127 FERC ¶ 61,031, at P 60 (2009); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281, at P 84 (2009)).

[47] *Id*. at 27.

[48] Six Cities Comments at 2 (citing *TransCanyon*, 152 FERC ¶ 61,017 at P 32).

34. Six Cities additionally state that DCR Transmission committed to a project cost cap of $300 million, as reflected in CAISO's Project Sponsor Selection Report. Six Cities request that the Commission confirm that DCR Transmission's pre-commercial costs for which it requests regulatory asset treatment and the Delaney Project's capital costs will be subject to the project cost cap.[49]

iii. <u>Commission Determination</u>

35. We grant DCR Transmission's request to establish a regulatory asset for all prudently-incurred pre-commercial costs for the Delaney Project, including pre-commercial costs of permitting and consulting activities.

36. In Order No. 679, the Commission allowed project developers to defer and amortize pre-commercial operations costs that were not capitalized, including the types of preliminary survey and investigation costs recordable in Account 183, Preliminary Survey and Investigation Charges. The Commission also noted that it will entertain proposals to defer and amortize other types of costs on a case-by-case basis.[50] DCR Transmission proposes to defer and amortize costs related to the development and startup of the Delaney Project, including engineering, consulting, and legal costs. We find that this incentive appropriately addresses the risks and challenges of the Delaney Project, because this incentive will provide DCR Transmission with added upfront regulatory certainty, reduce interest expenses, and assist in the construction of the Delaney Project.

37. We also grant DCR Transmission's request to accrue a carrying charge from the effective date of the regulatory asset until the asset is included in its rate base. However, consistent with Commission precedent, we require DCR Transmission to restrict the compounding of interest to ensure that such compounding does not result in a higher amount of interest than is allowed for AFUDC.[51] Further, DCR Transmission must record all associated carrying charges by debiting Account 182.3 and crediting Account 421, Miscellaneous Nonoperating Income. Also, we authorize DCR Transmission to amortize the regulatory asset and related carrying charges associated with the Delaney Project by debiting Account 566 and crediting Account 182.3, consistent with

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[49] *Id*. at 3.

[50] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 122.

[51] *See, e.g.*, *TransCanyon,* 152 FERC ¶ 61,017 at P 58; *MidAmerican Central California Transco*, *LLC*, 147 FERC ¶ 61,179, at P 34 (*MidAmerican*).

Commission precedent.[52] We accept DCR Transmission's proposal to amortize the regulatory asset over five years, consistent with rate recovery.

38. While we authorize DCR Transmission to record its prudently-incurred costs as a regulatory asset, when DCR Transmission submits a filing under section 205 of the Federal Power Act[53] for its transmission revenue requirement, it will need to demonstrate that the pre-commercial and formation costs are just and reasonable before it includes them in its rate base. In that filing, DCR Transmission must establish that the costs included in the regulatory asset are costs that would otherwise have been chargeable as expenses in the period incurred, but were deferred consistent with the authorization granted herein. Parties such as Six Cities may challenge the reasonableness of these costs, including whether these costs result in DCR Transmission breaching the cost cap to which it committed, when DCR Transmission submits its section 205 transmission revenue requirement filing.

d. Abandoned Plant Incentive

39. DCR Transmission requests authority to recover 100 percent of prudently-incurred costs in the event the Delaney Project must be abandoned for reasons outside of its reasonable control. DCR Transmission asserts that this incentive supports its goal of securing needed financing by removing risk that lenders and shareholders may have to bear prudently-incurred costs in the event that the Delaney Project is cancelled for reasons outside of DCR Transmission's control. DCR Transmission comments that the Commission has authorized an applicant to recover 100 percent of prudently-incurred abandoned plant costs as "an effective means to encourage transmission development by reducing the risk of non-recovery costs."[54]

40. According to DCR Transmission, there are a number of risks that could lead to the eventual abandonment of the Delaney Project, including environmental, regulatory, siting and rights-of-way acquisition risks. Further, as described herein, DCR Transmission will need to secure state and federal approvals, and will need to negotiate easements with private landowners. DCR Transmission also asserts that undue delays or other materially changed circumstances could impact the economic viability of the Delaney Project.[55]

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[52] DCR Transmission Petition at 24.

[53] 16 U.S.C. § 824d (2012).

[54] DCR Transmission Petition at 27 (quoting *Citizens Energy Corp*., 129 FERC ¶ 61,242, at P 22 (2009)).

[55] *Id*. at 27-28 (citing *S. Cal. Edison Co*., 148 FERC ¶ 61,126, at PP 22-23 (2014)).

41. No party submitted a protest on this issue.

i. Commission Determination

42. We grant DCR Transmission's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the Delaney Project, provided that the abandonment is a result of factors beyond DCR Transmission's control.[56] As the Commission explained in other proceedings, the recovery of abandonment costs is an effective means to encourage transmission development by reducing the risk of non-recovery of costs.[57] Here, as DCR Transmission has demonstrated, the abandonment incentive will attract financing for the Delaney Project and protect DCR Transmission from further losses if the Delaney Project is cancelled for reasons outside DCR Transmission's control.[58] We note that in the event a utility seeks abandoned plant recovery, Order No. 679 specifically requires it to demonstrate the justness and reasonableness of the abandoned transmission facilities costs in a separate FPA section 205 filing.[59] Moreover, in such a proceeding, abandoned plant recovery is available for 100 percent of prudently-incurred project costs expended on or after the issuance of this order.[60]

e. Hypothetical Capital Structure Incentive

43. DCR Transmission proposes the use of a hypothetical capital structure consisting of 50 percent debt and 50 percent equity for the Delaney Project. DCR Transmission asserts that this hypothetical capital structure should allow it to achieve reasonable costs of capital, which ultimately would benefit CAISO customers who pay the cost of service in their utility rates and is appropriate to offset risks associated with the Delaney Project. DCR Transmission states that the Commission has authorized the use of a hypothetical capital structure during construction phase because it "will result in lower debt costs for the company, while also permitting it to vary its financing vehicles to the needs of the

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[56] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

[57] *Id.* P 163; *see also, e.g., TransCanyon*, 152 FERC ¶ 61,017 at P 41.

[58] *See N.Y. Indep. Sys. Operator, Inc.*, 151 FERC ¶ 61,004, at P 86 (2015) (*NYISO*).

[59] Order No. 679, FERC Stats. & Regs. ¶ 31,222 at PP 165-166.

[60] *PJM Interconnection, L.L.C.*, 140 FERC ¶ 61,197, at P 24 (2012); *see also New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,175-178, *order on reh'g*, Opinion No 295-A, 43 FERC ¶ 61,285 (1988).

construction process, including such issues as timing of expenditures, regulatory developments, and changes in financial market conditions."[61] DCR Transmission concludes that its proposed hypothetical capital structure is reasonable to and appropriate to provide the Delaney Project with certainty and improved access to capital.[62]

44. No party submitted a protest on this issue.

i. **Commission Determination**

45. We grant DCR Transmission's request to use a hypothetical capital structure of 50 percent debt and 50 percent equity for the Delaney Project. We find that DCR Transmission has demonstrated that the requested hypothetical capital structure is tailored to address the risks and challenges of its investment in the Delaney Project. The requested hypothetical capital structure will aid DCR Transmission in raising capital during the construction phase of the Delaney Project, and will assist DCR Transmission in maintaining low debt costs while its actual debt-to-equity ratio varies.

46. Moreover, as the Commission held in *XEST* [63] and *XETD*,[64] nonincumbent transmission developers have a particular need for the hypothetical capital structure incentive because it establishes certain financial principles that incumbent transmission owners currently have in place but that remain undetermined for nonincumbent transmission developers.[65] We grant this request because we find that a hypothetical capital structure furthers the policy goal of facilitating the participation of nonincumbent transmission developers in the Order No. 1000 competitive solicitation process, thereby encouraging competition.[66]

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[61] DCR Transmission Petition at 30 (quoting *PATH*, 122 FERC ¶ 61,188 at P 55 (2008)).

[62] *Id*.

[63] *Xcel Energy Sw. Transmission Co.*, 149 FERC ¶ 61,182, at P 22 (2014) (*XEST*).

[64] *Xcel Energy Transmission Dev. Co., LLC*, 149 FERC ¶ 61,181, at P 13 (2014) (*XETD*).

[65] *See, e.g., ATX Southwest, LLC*, 152 FERC ¶ 61,193, at P 30 (2015).

[66] *Id*. (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 87).

f. RTO Participation Adder

i. DCR Transmission's Proposal

47. DCR Transmission requests a 50 basis point adder to its base ROE for RTO participation. DCR Transmission states that the Commission authorizes the RTO participation adder as an important incentive for newly established transmission developers to participate in an RTO.[67] Moreover, DCR Transmission explains that it is required pursuant to the terms of CAISO's Approved Project Sponsor Agreement to become a Participating Transmission Owner of CAISO, transfer operational control of the Delaney Project to CAISO once it is constructed and placed into service, and recover the costs of the Delaney Project to CAISO customers through the inclusion of DCR Transmission's Annual Transmission Revenue Requirement in the CAISO Transmission Access Charge.

ii. Comments

48. TransCanyon and SoCal Edison state that although they do not oppose the requested incentives, they question whether DCR Transmission's request for an RTO participation adder is consistent with its bid submitted in response to the CAISO's competitive solicitation process. They state that there is conflicting information within CAISO's Project Sponsor Selection Report[68] as to whether DCR Transmission committed in its bid application to forego an "ROE that includes a 50 basis point adder"[69] or, alternatively, an "ROE that includes a 100 basis point adder."[70]

49. TransCanyon and SoCal Edison assert that the parties will not be privy to the details of DCR Transmission's cost containment proposal because CAISO will use a *pro forma* Approved Project Service Agreement. TransCanyon further states that it reserves the right to raise issues relating to the appropriateness of any ROE adder, including the

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[67] DCR Transmission Petition at 31 (citing *Midcontinent Indep. Sys. Operator, Inc*., 150 FERC ¶ 61,004 at P 42 (2015)).

[68] *See* CAISO's Project Sponsor Selection Report, available at http://www.caiso.com/Documents/DelaneyColoradoRiverTransmissionLineProject-ProjectSponsorSelectionReport.pdf.

[69] TransCanyon Comments at 3 (citing CAISO Bid Selection Report at 115).

[70] *Id*. at 3, n.5 and SoCal Edison Comments at 2 (both citing CAISO Bid Selection Report at 102).

use of a participation adder, at a later date when DCR Transmission submits its FPA section 205 transmission revenue requirement filing.

iii. CAISO's Answer

50. CAISO states that DCR Transmission's request to the Commission for a 50 basis point adder for becoming a CAISO participating transmission owner is consistent with DCR Transmission's proposal to CAISO. CAISO explains that the concerns raised by TransCanyon and SoCal Edison stem from an error in the CAISO Project Sponsor Selection Report. Specifically, CAISO explains that page 115 of the Project Sponsor Selection Report should have stated that DCR Transmission's project bid included the commitment that it would not seek a 100-basis point adder for being a transmission company. Also, CAISO states that it will ensure that the commitments made by DCR Transmission in its bid package are reflected in the provisions of the Approved Project Sponsor Agreement.[71]

iv. Commission Determination

51. We grant DCR Transmission's request for a 50 basis point adder to its base ROE for its participation in CAISO, consistent with previous Commission orders.[72] Our approval of this incentive is based on DCR Transmission's commitment to become a member of CAISO and transfer operational control of the Delaney Project to CAISO once the Delaney Project is placed in service.

52. In response to arguments raised by TransCanyon and SoCal Edison, we find that, based on CAISO's acknowledgement of an error in its Bid Selection Report, DCR Transmission's request for a 50 basis point RTO participation adder does not conflict with its commitments to CAISO in the bid selection process. Rather, as CAISO explains, CAISO's Project Sponsor Selection Report should have reflected DCR Transmission's commitment not to seek an adder of 100 basis points for being a transmission company.

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[71] CAISO Answer at 3.

[72] *See, e.g.*, *TransCanyon*, 152 FERC ¶ 61,017 at P 29; *Transource Kansas LLC*, 151 FERC ¶ 61,010, at P 46; *MidAmerican*, 147 FERC ¶ 61,179, at P 45; *Transource Missouri*, 141 FERC ¶ 61,075, at P 75; *XEST*, 149 FERC ¶ 61,182 at P 64.

The Commission orders:

DCR Transmission's petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.