BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA

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In the Matter of the Application of DCR Transmission, LLC for a Certificate of Public Convenience and Necessity for the Ten West Link Project	A.16-10-012 (Filed October 12, 2016)

DCR TRANSMISSION, L.L.C.'S PETITION FOR MODIFICATION OF DECISION 21-11-003

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I. INTRODUCTION

Pursuant to Rule 16.4 of the California Public Utilities Commission's ("Commission" or "CPUC") Rules of Practice and Procedure ("Rules") and Ordering Paragraph 6 of Decision ("D.") 21-11-003,[1] DCR Transmission, L.L.C. ("DCRT") respectfully submits this petition for modification ("PFM") of D.21-11-003, granting DCRT a certificate of public convenience and necessity ("CPCN") for the Ten West Link Transmission Line Project ("Project" or "Ten West Link").[2] In compliance with D.21-11-003 Ordering Paragraph 6, the PFM seeks to revise "the reasonable and prudent maximum cost" ("maximum reasonable cost") for the Project adopted by the Commission in D.21-11-003 to the revised total Project upon which the Federal Energy

[1] *Decision Granting DCR Transmission, LLC a Certification of Public Convenience and Necessity for the Ten West Link Project* (Decision), Application for Rehearing denied on June 23, 2022 (see D.22-06-051).

[2] In accordance with Rule 16.4(d), DCRT notes that this PFM is filed more than one year from the effective date of the Commission's decision granting DCRT a CPCN and establishing the maximum reasonable cost for the Project because DCRT had not determined a revised total estimated project cost within one year of the issuance of D.21-11-003.

Regulatory Commission ("FERC")-approved Transmission Revenue Requirement ("TRR") is based.[3]

Additionally, DCRT respectfully requests that the Commission hold in abeyance or stay the PFM pending resolution of DCRT's Section 205 rate case proceeding, which is presently pending before FERC, and direct DCRT to submit a compliance filing or amended PFM, upon conclusion of the FERC proceeding offering a revised maximum reasonable cost consistent with the total project costs upon which the final FERC-approved TRR is based. Because the revised total Project cost – the essential issue raised in this PFM – is presently pending before FERC in connection with its assessment of the reasonableness of DCRT's requested TRR, it is appropriate to hold this PFM in abeyance pending FERC's decision in the rate case.[4]

II. BACKGROUND

On October 11, 2016, DCRT filed its CPCN application for construction of the Ten West Link.[5] The Ten West Link project is 125-mile, series-compensated 500 kilovolt ("kV") transmission line with a conductor capacity of approximately 3200 megawatts ("MW") between the Colorado River 500 kilovolt substation, owned by Southern California Edison Company, and Delaney 500 kilovolt substation, owned by Arizona Public Services Company.[6] DCRT will be a

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[3] The FERC section 205 rate case will ultimately result in a FERC approved TRR that will be recovered by DCRT through the CAISO Transmission Access Charge for Regional Transmission Facilities and which will be based, in part, on the total project cost. Depending on the whether and how FERC approves the TRR, be it as the result of litigation or settlement, the total Project cost upon which the TRR is based may or may not be explicit in the final FERC order. However, DCRT's FERC-approved TRR will be based in large part on the total Project cost and such cost will be capable of determination.

[4] FERC Docket No. ER23-2309-000 (*DCR Transmission, L.L.C., Request for Acceptance of Transmission Owner Tariff and Transmission Revenue Requirement, Request for Waivers, and Request for Confidential Treatment*)

[5] *See*, *Application of DCR Transmission, LLC for a Certificate of Public Convenience and Necessity for the Ten West Link Project*, Oct. 11, 2016, A.16-10-012.

[6] D.21-11-003 at 2.

California Independent System Operator Corporation ("CAISO") Participating Transmission Owner ("PTO") under the CAISO Open Access Transmission Tariff and will turn over operational control to the CAISO following Project completion. It is anticipated that the Project will be energized on March 8, 2024, per the schedule agreed to with the CAISO.[7]

On November 5, 2021, the Commission granted DCRT a CPCN for the Ten West Link and adopted DCRT's project cost estimate of $389,045,968 as the maximum reasonable cost for the Project.[8] D.21-11-003 states: "the maximum reasonable and prudent cost for the Ten West Link Transmission Line Project is $389,045,968 in 2021 dollars, including contingency, subject to the Commission's authority to review actual costs incurred for reasonableness and prudency and to challenge them as appropriate at the Federal Energy Regulatory Commission."[9] Pursuant to Public Utilities Code Section 1005.5(a), the Commission set a maximum reasonable cost for the Proposed Project, including contingency, of $389,045,968 in 2021 dollars.[10] The Decision ordered that, pursuant to Section 1005.5(b), "at any point during the Ten West Link Transmission Line Project construction and prior to any expenditures in excess of the maximum reasonable and prudent cost," DCRT "must file a formal Petition for Modification with the Commission for consideration of a revised determination of the reasonable and prudent maximum cost of the Project."[11]

As further discussed below, the estimated Project costs have increased due to a number of factors, including inflation and delays from events of Force Majeure, which has resulted in

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[7] Appendix A at 65.

[8] D.21-11-003, Ordering Paragraph 6 at 98.

[9] *Id*.

[10] D.21-11-003 at 98.

[11] D.21-11-003 at 98.

increases to Engineering, Procurement and Construction ("EPC") and other costs.[12] On June 30, 2023, DCRT filed with FERC its Request for Acceptance of Transmission Owner Tariff and Transmission Revenue Requirement ("FERC Rate Case Application"), which included a proposed initial $83,370,655 annual Base TRR, based on a revised total Project cost of $553,261,497.[13]

The CPUC filed a Notice of Intervention in DCRT's FERC Rate Case on July 17, 2023.[14] On July 21, 2023, the CPUC protested DCRT's FERC Rate Case Application and requested that the matter be set for evidentiary hearings "to determine whether DCRT's costs are just and reasonable."[15] Because the Rate Case is a contested litigation proceeding, the total Project cost upon which transmission rates are based will be established at the conclusion of the proceeding may differ from the proposed total Project cost in DCRT's Rate Case Application. The FERC Rate Case is presently ongoing and may ultimately be resolved through a FERC-approved settlement or a decision by FERC on the merits following an evidentiary hearing. On September 29, 2023, FERC ordered that "a public hearing shall be held concerning the justness and reasonableness" of DCRT's Rate Case Application" but that "the hearing will be held in abeyance to provide time for" potential settlement.[16]

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[12] Appendix A at 223-243.

[13] Appendix A at 187.

[14] FERC Docket No. ER23-2309-000, Protest, Request for Hearing, and Reservation of Rights of the California Public Utilities Commission (July 21, 2023).

[15] FERC Docket No. ER23-2309-000, Protest, Request for Hearing, and Reservation of Rights of the California Public Utilities Commission (July 21, 2023).

[16] Docket No. ER23-2309-000184, Order Accepting and Suspending Proposed Transmission Owner Tariff and Transmission Revenue Requirement, Subject to Refund, and Establishing Hearing and Settlement Judge Procedures, 184 FERC ¶ 61,199 at 15-16.

III. JUSTIFICATION FOR REQUESTED RELIEF

DCRT requests that the Commission amend the maximum reasonable cost specified in D. 21-11-003, from $389,045,968 in 2021 dollars to DCRT's revised estimated total Project cost of $553,261,497, or the total Project cost upon which DCRT's FERC-approved TRR is based at the conclusion of DCRT's Rate Case, which is presently pending.[17]

As detailed in DCRT's FERC Rate Case Application, attached hereto as **Appendix A**, costs for the Ten West Link have increased due to global COVID-19 induced inflation and delays resulting from Force Majeure events.[18] Due to these cost increases, total project cost will exceed the maximum reasonable cost adopted in D.21-11-003.[19] DCRT's revised estimated total Project cost is $553,261,497. Facts supporting the revised total Project cost are detailed in the Direct Testimony of Jason Crew at pages 181-246 of **Appendix A**.

IV. REQUEST TO HOLD IN ABEYANCE

DCRT respectfully requests that the Commission hold in abeyance or stay the PFM proceeding pending resolution of DCRT's FERC Rate Case, which is presently pending before FERC.

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[17] Rule 16.4(b) requires, among other things, "specific wording to carry out all requested modifications to the decision." As stated herein, the principal modification that needs to be made to the D.21-11-003 is to update the existing maximum reasonable cost approved by D.21-11-003 from $389,045,968, in 2021 dollars, to the revised total Project cost based on DCRT's FERC-approved TRR that will ultimately be adopted in the FERC proceeding. These updates will need to be made to the following sections of D.21-11-003: p. 2 (Summary), pp. 64-66 (7. Maximum Reasonable and Prudent Cost), p. 96 (Finding of Fact No. 20), p. 98 (Ordering Paragraph 5). Because FERC has not yet determined DCRT's revised estimated total Project cost, the precise language that will be needed to update the maximum reasonable cost in the revised Commission decision is subject to change.

[18] Appendix A at 223-243.

[19] See Appendix A at 181-246 (Exhibit No. DCRT-5, Direct Testimony of Jason Crew).

A court, or agency, "may, with propriety, find it is efficient for its own docket and the fairest course for the parties to enter a stay of an action before it, pending resolution of independent proceedings which bear upon the case."[20] The Commission has previously found it appropriate to defer or hold in abeyance the resolution of proceedings before the Commission pending the outcome of parallel federal proceedings. For example, the Commission previously held in abeyance two competing applications for authority to provide cellular service in the Los Angeles area, pending the Federal Communications Commission's ("FCC") decision as to which of the prospective applicants would be granted a construction permit.[21] The Commission has similarly postponed consideration of an application to determine the reasonable rate for call termination services, while the FCC decision that led to the application before the Commission was under appeal before the United States Court of Appeal.[22]

Indeed, in *North County*, the Commission concluded, it was not "prudent to commit Commission resources to a consideration of this application at this time," finding that it made "no sense to proceed with this matter while it is before the D.C. Circuit."[23] The Commission reasoned, "[t]he decision of that court may lead to a resolution of this matter, and will likely shed light on the many jurisdictional issues that the parties have raised in the FCC proceeding and in this proceeding, as well. Thus, awaiting the court decision may either resolve this matter or

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[20] *Mediterranean Enterprises, Inc. v. Ssangyong Corp.* (9th Cir. 1983) 708 F.2d 1458, 1465 (Internal citation and quotation omitted).

[21] *See e.g.*, *Application of Los Angeles Cellular Tel. Co. for A Certificate of Pub. Convenience & Necessity to Provide Cellular Radiotelephone Serv. in the Greater Los Angeles Metro. Area.* (June 25, 1986) 21 CPUC 2d 285.

[22] *Application of N. County Communications Corp. of California (U5631c) for Approval of Default Rate for Termination of Intrastate, Intramta Traffic Originated by Cmrs Carriers.* ("*North County*") (June 3, 2010) 2010 WL 2543043, at *9

[23] *Id*.

provide guidance that facilitates action by this Commission."[24] The Commission has further held that "efficient deployment" of the "Commission's resources requires that we decline to exercise our jurisdiction where a fully competent agency is also addressing the same issues."[25] The Commission is presented with the same issue here.

DCRT's request to increase the maximum reasonable cost is governed by Public Utilities Code Section 1005.5(b), which states that a utility "may apply to the commission for an increase in the maximum cost" and that the Commission "may authorize an increase in the specified maximum cost if it finds that the cost has in fact increased and that the present or future public convenience and necessity require the construction of the project at the increased cost." However, FERC has exclusive jurisdiction to ensure and establish just and reasonable rates, terms, and conditions of transmission service in interstate commerce.[26] Section 205 of the Federal Power Act and the regulations promulgated by FERC to carry out that section provide a utility the right to file for its rates at FERC for those costs that are FERC jurisdictional. As illustrated in DCRT's Rate Case Application, assessment of project costs is central to FERC's transmission rate setting process.[27]

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[24] *North County* (June 3, 2010) 2010 WL 2543043, at *9

[25] *Pac. Bell* (Sept. 24, 1997) 75 CPUC 2d 678.

[26] The CPUC's authority to limit or otherwise regulate transmission project under Public Utilities Code Section 1005.5 is likely preempted by federal law. See *Mirant Delta, LLC*, 100 FERC 61,271, 62,035 (2002) (confirming FERC has "exclusive authority to ensure just and reasonable rates and prevent unduly discriminatory practices as well as with the statutory framework of the [Federal Power Act], which, as noted, allows public utilities the ability to make rate filings and which requires them to comply with [FERC's] regulations and directives regarding matters within [FERC's] exclusive jurisdiction.") see also S. Cal. Edison Co. v. Pub. Util. Comm'n, 121 Cal. App. 4th 1303 (2004), modified and reh'g denied, 2004 Cal. App. LEXIS 1609 (Cal. App. 2d Dist. Sept. 27, 2004), review denied by So Cal. Edison Co. v. PUC, 2005 Cal. LEXIS 592 (Cal. Jan. 19, 2005) (finding that an attempt by the Commission to control or limit what costs Southern California Edison may seek to recover at FERC is preempted by federal law).

[27] *See* Appendix A.

Thus, the Commission's evaluation of the maximum reasonable project cost under Public Utilities Code Section 1005.5 necessarily implicates the same issues related to project costs that are presently at issue in DCRT's FERC Rate Case proceeding. As a result, if the Commission declines to stay the instant PFM proceeding, the Commission risks investing limited Commission resources in adjudicating an issue that is squarely before its federal counterpart. Parties to the FERC Rate Case proceeding may also seek to intervene in the CPUC PFM proceeding in order to protect or advance their interests on matters where the two proceedings overlap, in particular with regards to the reasonableness of DCRT's requested total Project cost.

Additionally, if the PFM proceeding is not stayed it raises the potential for the Commission to make factual findings that conflict with the findings, conclusions or ultimate outcome of the FERC Rate Case proceeding. Holding the PFM in abeyance until the conclusion of the FERC Section 205 rate case — and establishing a revised maximum reasonable cost at that time based on the FERC-approved TRR—will promote efficiency, avoid unnecessary duplicative litigation in two different forums, and avoid the risk of conflicting outcomes between the FERC Rate Case and the CPUC's decision on the PFM.

Holding the PFM proceeding in abeyance pending resolution of the FERC Rate Case proceeding is also prudent as a matter of procedural fairness. If the PFM is not stayed, it is unclear how the Commission could impartially determine the revised maximum reasonable cost for Ten West Link while simultaneously opposing DCRT's revised project cost estimate in the parallel FERC proceeding. Such due process considerations further support holding the PFM in abeyance until FERC determines Ten West Link's maximum reasonable cost. Upon resolution of DCRT's FERC Rate Case proceeding, the Commission may at its discretion direct DCRT to

submit a compliance filing or amended PFM, specifying a revised maximum reasonable cost consistent with the final FERC-approved TRR.

V. CONCLUSION

DCRT requests that the Commission amend the maximum reasonable cost specified in D. 21-11-003 Ordering Paragraph 6 to a revised total Project cost consistent with the FERC-approved TRR in DCRT's Rate Case, which is presently pending.

Respectfully submitted,

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