

Decision **PROPOSED DECISION OF ALJ TRAN** (Mailed 1/27/2020)

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
Horizon West Transmission, LLC
(U222E) for Exemptions from Public
Utilities Code Sections 816-830 and
851 Relating to Securities
Transactions.

Application 19-09-008

**DECISION GRANTING EXEMPTIONS FROM PUBLIC UTILITIES
CODE SECTIONS 816-830 AND 851 RELATING TO
SECURITIES TRANSACTIONS**

Summary

This Decision grants, with conditions and limitations, the request of Horizon West Transmission, LLC for exemption from the requirements of Public Utilities Code Sections 816- 830 and a partial exemption from the requirements of Public Utilities Code Section 851 to enable Horizon West Transmission, LLC to incur indebtedness from certain affiliates to finance the construction and operation of its transmission facilities and encumber its assets as security for the debt. Horizon West Transmission, LLC does not need to obtain prior Commission authorization for securities transactions that are also subject to review by the Federal Energy Regulatory Commission subject to certain conditions and limitations.

1. Background

Horizon West Transmission, LLC (Horizon West) is a Delaware limited liability corporation formerly known as NextEra Energy Transmission West, LLC (NEET West), and is a wholly owned subsidiary of NextEra Energy Transmission, LLC, and an indirect, wholly owned subsidiary of NextEra Energy Capital Holdings, Inc (NEECH) and NextEra Energy, Inc. Horizon West was selected to be the project sponsor for two transmission projects identified by the California Independent System Operator Corporation (CAISO) in its transmission planning process, and is currently constructing the first of those projects, the Suncrest Static Var Compensator (SVC) Project.¹ Once constructed, the Suncrest SVC Project will be placed under the CAISO's operational control, and Horizon West will operate and maintain the Suncrest SVC Project as a Participating Transmission Owner in accordance with the CAISO Tariff.

Horizon West is also in the process of obtaining Commission approval for the second project, the Estrella Substation Project.² Once constructed, the Estrella Substation Project also will be under the CAISO's operational control and Horizon West will operate and maintain the Estrella Substation Project as a

¹ The Commission granted Horizon West a certificate of public convenience and necessity for the Suncrest SVC Project in Decision (D.)18-09-030. The Suncrest SVC Project is located in San Diego County and includes two primary components: (1) a +300/-100 Megavar ("Mvar") SVC with a nominal terminal voltage of 230 kilovolts ("kV"); and (2) an approximately one-mile 230 kV single-circuit underground transmission line that will interconnect the SVC with the existing Suncrest Substation owned by San Diego Gas and Electric Company (SDG&E).

² Horizon West filed an application for a Permit to Construct the Estrella Substation Project, which is pending in Application (A.)17-01-023. The Estrella Substation Project is located in San Luis Obispo County and consists of new 230 kV bus work and termination equipment and a new 230/70 kV transformer bank (collectively, the "230/70 kV Substation"), and new 230 kV transmission line segments that will interconnect the 230/70 kV Substation with existing facilities owned by Pacific Gas and Electric Company (PG&E). PG&E will construct and own several related components that were not eligible for competitive solicitation.

Participating Transmission Owner under the CAISO Tariff. The Federal Energy Regulatory Commission (FERC) has exclusive authority to regulate Horizon West's rates for both the Suncrest SVC Project and the Estrella Substation Project.

On September 10, 2019, Horizon West filed an application requesting exemptions from Public Utilities Code (Pub. Util. Code) Sections 816-830 and limited exemption from Pub. Util. Code Section 851 to enable Horizon West to incur indebtedness from certain affiliates to finance the construction and operation of its transmission facilities and encumber its assets as security for the debt.³ Horizon West requests these exemptions to incur indebtedness pursuant to a Loan Agreement with NEECH, an associated Security Agreement, and a Construction Deed of Trust with Assignment of Leases and Rents, Security Agreement and Fixture Filing (Deed of Trust), (collectively, the Loan Documents), and thereby to encumber its assets as security for such debt. The total indebtedness to be incurred under the Loan Documents will be up to and not in excess of \$35 million. Horizon West also seeks exemptions to facilitate potential future financings and refinancing without the need to obtain separate Commission approval. If the Commission decides not to grant the requested exemptions, then Horizon West requests Commission approval pursuant to Pub. Util. Code Sections 818 and 851 to incur indebtedness and encumber its assets pursuant to the Loan Documents. Horizon West requests expedited approval of the exemptions or, alternatively, approval of the debt issuance pursuant to the Loan Documents by February 2020.

³ Application (A.) 19-09-008.

No protests were received. A prehearing conference was held on November 13, 2019 and the Assigned Commissioner Scoping Memo and Ruling was issued on December 12, 2019.

2. Issues Before the Commission

2.1. Requested Exemptions

Horizon West is seeking an exemption from Pub. Util. Code Sections 816–830 pursuant to Pub. Util. Code Section 829(c), which authorizes the Commission to “exempt any public utility or class of public utility from *this article* if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest.”⁴ Horizon West also seeks a limited exemption from Pub. Util. Code Section 851 to encumber its assets as security for the exempted debt issuances pursuant to Pub. Util. Code Section 853(b), which authorizes the Commission to “exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest.”

Horizon West states that the application of Pub. Util. Code Sections 816–830 and 851 is not necessary in the public interest because:⁵

- a. Horizon West is a transmission-only utility that has no direct customers of its own and no retail customers;
- b. Horizon West’s rates are established and approved by FERC, not by the Commission, and FERC regulates the extent to which costs may be recovered in transmission rates;

⁴ The “article” referenced in Pub. Util. Code Section 829(c) is Division 1, Part 1, Chapter 4, Article 5 of the Pub. Util. Code, consisting of Pub. Util. Code Sections 816–830 (“Article 5”).

⁵ A.19-09-008 at 2-3.

- c. Horizon West's securities transactions are subject to FERC review and approval to determine whether they are consistent with the public interest, making a separate review by the Commission both unnecessary to protect the public interest and duplicative; and
- d. Interested parties can participate in FERC proceedings regarding review and approval of Horizon West's rates and security transactions and thus are not disadvantaged if exemptions are granted from the requirements for separate Commission review.

Horizon West notes that the Commission has previously granted a similar request for Trans Bay Cable LLC in D.16-09-003, which, like Horizon West, is a transmission-only public utility in California that is subject to rate regulation exclusively by FERC.⁶ Horizon West requests the same exemptions here and is willing to accept the same conditions established for Trans Bay Cable LLC, as detailed below.⁷ Lastly, Horizon West requests exemptions to facilitate potential future financings and refinancing without the need to obtain separate Commission approval.

2.2. Proposed Conditions for the Requested Exemptions

Horizon West states that it is willing to accept that the exemptions granted may be revoked, limited, or conditioned on a prospective basis by the Commission at any time, and will agree to the following conditions and limitations:⁸

- a. If Horizon West is cited by the Commission for a safety violation, or if the Commission opens an Order Instituting

⁶ D.16-09-003 granted Trans Bay Cable LLC exemption from Pub. Util. Code Sections 816-830 and a partial exemption from Pub. Util. Code Section 851 subject to certain conditions.

⁷ D.16-09-003 at 6-7.

⁸ A.19-09-008 at 10.

- Investigation for a safety violation, the exemptions are prospectively revoked;
- b. If Horizon West anticipates requesting more than a 20% rate increase from FERC as a result of a securities transaction, the exemptions do not apply to that transaction, and Horizon West must file an application at the Commission for approval of the securities transaction;
 - c. If a securities transaction will result in a functional or actual change of ownership or control of Horizon West or its facilities (that would trigger a requirement for prior Commission approval under Pub. Util. Code Section 854 or Section 851), the exemptions do not apply, and Horizon West must file an application at the Commission; and
 - d. This Decision does not grant an exemption from the requirements of Pub. Util. Code Section 854.

2.3. Requested Expedited Approval

Horizon West plans to obtain debt financing through the Loan Documents to finance the costs incurred to construct its transmission facilities. It claims that this transaction needs to be in place by early 2020 to finance the construction costs incurred for the Suncrest SVC Project, which is scheduled to go into service during the first quarter of 2020.⁹ Horizon West therefore requests a Commission order granting the requested exemptions no later than February 2020. If the Commission decides not to grant the requested exemptions, then Horizon West requests Commission approval by February 2020 for Horizon West's pending financing transaction pursuant to the Loan Documents.

⁹ A.19-09-008 at 3.

3. Discussion

3.1. The Commission has Authority to Grant the Requested Exemptions

The Commission regulates public utilities' stock and securities transactions under Article 5 (consisting of Pub. Util. Code Sections 816-830), and the encumbrance of public utility assets under Pub. Util. Code Section 851. Relief requested from Pub. Util. Code Sections 816-830, and 851 may be granted under Pub. Util. Code Section 829(c) and Pub. Util. Code Section 853(b) respectively, which state:

Pub. Util. Code Section 829(c): "The commission may from time to time by order or rule, and subject to such terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof to such public utility or class of public utility is not necessary in the public interest."

Pub. Util. Code Section 853(b): "The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with respect to the public utility or class of public utility is not necessary in the public interest. The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers."

Pursuant to these provisions, the Commission has express statutory authority to grant Horizon West's requested exemptions if it finds that application of Pub. Util. Code Sections 816-830 and 851 to Horizon West "is not necessary in the public interest."

3.2. FERC Will Provide Review, Approval and Oversight of Horizon West's Securities Transactions

Although Horizon West argues that the requirement to file applications under Pub. Util. Code Sections 816–830 and 851 for its security transactions is not necessary in the public interest,¹⁰ this Commission still has an interest in ensuring that Horizon West's facilities are maintained and operated in a safe and reliable manner, and ensuring that Horizon West's securities transactions do not impair its ability to provide safe and reliable service.¹¹ So while Horizon West's rates are set by FERC, this Commission will not authorize, by omission, securities transactions that result in significant rate increases that will ultimately be passed on to retail customers in California. At the same time, we agree that having the Commission review every securities transaction that will also be reviewed and approved by FERC does appear to provide little value while imposing costs on Horizon West, the Commission, and California ratepayers.

Therefore, based on the record before the Commission, this Decision grants Horizon West the statutory exemptions under certain conditions detailed below, as we find no need for the Commission to engage in a redundant review of transactions FERC will also be reviewing.

3.3. Imposed Conditions to Accompany Exemptions

As noted in Pub. Util. Code Section 853(b) as it relates to Pub. Util. Code Section 851:

“The commission may from time to time by order or rule, and subject to those terms and conditions as may be prescribed therein, exempt any public utility or class of public utility from this article if it finds that the application thereof with

¹⁰ A.19-09-008 at 2-3.

¹¹ Pub. Util. Code Section 451.

respect to the public utility or class of public utility is not necessary in the public interest. *The commission may establish rules or impose requirements deemed necessary to protect the interest of the customers or subscribers of the public utility or class of public utility exempted under this subdivision. These rules or requirements may include, but are not limited to, notification of a proposed sale or transfer of assets or stock and provision for refunds or credits to customers or subscribers.*"

Accordingly, the Commission grants Horizon West exemptions from Pub. Util. Code Sections 816-830 and limited exemption from Pub. Util. Code Section 851 to enable Horizon West to incur indebtedness to finance the construction and operation of its transmission facilities pursuant to the Loan Documents and encumber its assets as security for the debt. The Commission also grants the requested exemptions to facilitate potential future financings and refinancing that are subject to FERC review without the need to obtain separate Commission approval. The exemptions granted here may be revoked, limited, or conditioned on a prospective basis by the Commission at any time, and are subject to the following conditions and limitations:

- a. If Horizon West is cited by the Commission for a safety violation, or if the Commission opens an Order Instituting Investigation for a safety violation, the exemptions are prospectively revoked;¹²
- b. If Horizon West anticipates requesting more than a 20% rate increase from FERC as a result of a securities transaction, the exemptions do not apply, and Horizon West must file an application at the Commission for approval of the securities transaction;

¹² The revocation would operate prospectively and would not apply once Horizon West has already issued securities or entered into a legally binding written agreement based on the Loan Documents.

- c. If a securities transaction will result in a functional or actual change of ownership or control of Horizon West or its facilities (that would trigger a requirement for prior Commission approval under Pub. Util. Code Section 854 or Section 851), the exemptions do not apply, and Horizon West must file an application at the Commission; and
- d. This Decision does not grant an exemption from the requirements of Pub. Util. Code Section 854 and the scope of exemption from Pub. Util. Code Section 851 does not extend beyond transactions exempt from Pub. Util. Code Section 816-830.

4. Conclusion

Based on the record before the Commission, the Commission grants Horizon West's request for exemption from Pub. Util. Code Sections 816-830 and a corresponding exemption from Pub. Util. Code Section 851, with the conditions and limitations as discussed above.

5. Comments on Proposed Decision

The Proposed Decision of the ALJ in this matter was mailed on January 27, 2020 to the parties in accordance with Section 311 of the Public Utilities Code and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed on February 18, 2020 by Horizon West requesting that the Proposed Decision be modified to extend the exemptions to future debt and securities transactions that are subject to FERC review as review by both the Commission and FERC for the same transactions add unnecessary time and expense.¹³ The Commission is persuaded that Commission review of securities transactions that will also be reviewed by FERC may be duplicative while imposing costs on Horizon West, the Commission, and California

¹³ Comments of Horizon West Transmission LLC on Proposed Decision, at p. 2-5.

ratepayers. Therefore, the Commission finds this request reasonable and the decision has been modified accordingly.

6. Assignment of Proceeding

Genevieve Shiroma is the assigned Commissioner and Ava Tran is the assigned Administrative Law Judge in this proceeding.

Findings of Fact

1. Horizon West Transmission, LLC is a transmission-only public utility with no California retail customers.
2. Horizon West Transmission, LLC's rates are set by the Federal Energy Regulatory Commission, not by this Commission.
3. Horizon West Transmission, LLC's transactions must be reviewed and approved by the Federal Energy Regulatory Commission.
4. Horizon West Transmission, LLC is subject to the requirements of Public Utilities Code Sections 816-830 relating to securities transactions, and Public Utilities Code Section 851 relating to the transfer or encumbrance of utility assets.

Conclusions of Law

1. Public Utilities Code Section 829(c) allows for exemptions from the requirements of Public Utilities Code Sections 816-830.
2. Public Utilities Code Section 853(b) allows for exemptions from the requirements of Public Utilities Code Section 851.
3. It is reasonable to grant Horizon West Transmission, LLC an exemption from the requirements of Public Utilities Code Sections 816-830, and a corresponding exemption from Public Utilities Code Section 851, but with conditions and limitations to protect the public interest.

O R D E R

IT IS ORDERED that:

1. Horizon West Transmission, LLC is granted an exemption from the requirements of California Public Utilities Code Sections 816-830 for securities transactions , subject to conditions and limitations.

2. Horizon West Transmission, LLC is granted an exemption from the requirements of California Public Utilities Code Section 851 for securities transactions corresponding to the exemption granted from the requirements of Public Utilities Code Sections 816-830.

3. The exemptions granted to Horizon West Transmission, LLC by this Decision may be revoked, limited, or conditioned on a prospective basis by the Commission at any time.

4. The exemptions granted to Horizon West Transmission, LLC by this Decision are subject to the following conditions and limitations:

- a. If Horizon West Transmission, LLC is cited by the Commission for a safety violation, or if the Commission opens an Order Instituting Investigation for a safety violation, the exemptions are prospectively revoked;
- b. If Horizon West Transmission, LLC anticipates requesting more than a 20% rate increase from the Federal Energy Regulatory Commission as a result of a securities transaction, the exemptions do not apply, and Horizon West Transmission, LLC must file an application at this Commission;
- c. If a securities transaction will result in a functional or actual change of ownership or control of Horizon West Transmission, LLC or its facilities, the exemptions do not apply, and Horizon West Transmission, LLC must file an application at this Commission; and
- d. This Decision does not grant an exemption from the requirements of Public Utilities Code Section 854.

5. The exemptions approved here will apply to the financing transactions pursuant to the Loan documents in this application and to future securities

transactions that will also be reviewed by the Federal Energy Regulatory Commission, subject to conditions and limitations.

6. Application 19-09-008 is closed.

This order is effective today.

Dated _____, at San Francisco, California