February 16, 2022

BY E-FILING

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: <u>WestConnect Public Utilities, Docket No. ER22-___-000</u>
<u>Petition for Approval of Settlement Agreement Resolving Matters on Appeal before the United States Court of Appeals for the Fifth Circuit</u>

Dear Secretary Bose:

Pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"),[1] Arizona Public Service Company, Black Hills Power, Inc., Black Hills Colorado Electric, LLC, Cheyenne Light, Fuel and Power Company, El Paso Electric Company, Public Service Company of Colorado, Public Service Company of New Mexico, Tucson Electric Power Company, and UNS Electric, Inc. (collectively, the "WestConnect Public Utilities")[2] respectfully submit this petition for approval of a settlement agreement ("Settlement Agreement") that will fully resolve the appeal pending before the United States Court of Appeals for the Fifth Circuit in Case No. 18-60575 involving the Commission's orders implementing Order No. 1000[3] in the WestConnect planning region. The WestConnect Public Utilities request that the Commission approve, without condition or modification, the attached Settlement Agreement by and among (i) the WestConnect Public Utilities, (ii) the non-jurisdictional, non-public utility members of the WestConnect transmission planning region who

[1] 18 C.F.R. § 385.207(a)(5) (2021).

[2] Recently, the public utility subsidiaries of Nevada Energy, Inc. that are parties to the appeal supporting El Paso Electric Company (the Petitioner) and the other WestConnect Public Utilities, have joined a different planning region. They are among the sponsors of the Settlement Agreement. In addition, two formerly non-jurisdictional utilities in the WestConnect planning region have become public utilities subject to FERC jurisdiction. They are Basin Electric Power Cooperative ("Basin") and Tri-State Generation and Transmission Association, Inc. ("Tri-State"). Both Basin and Tri-State are parties to the appeal and among the sponsors of the settlement.

[3] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (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).

are parties to the appeal (collectively, the "WestConnect Non-Public Utilities"),[4] and (iii) the WestConnect members who have become public utilities during the pendency of the appeal but were non-jurisdictional, non-public utility members of WestConnect at the time the petition for review was filed (collectively, the "Settling Parties"). [5]

The intent of the Settling Parties in executing this Settlement Agreement is to accommodate both the public and non-public utility members of WestConnect in a cohesive planning region where the non-public utility members of WestConnect are allowed to secure the approval of their governing bodies or governing boards before becoming contractually bound to regional cost allocation for a specific regional transmission project, while also providing for jurisdictional ratepayer protection features that would resolve cost causation and free-ridership concerns raised by the public utility members of WestConnect and identified in the decision of the United States Court of Appeals for the Fifth Circuit vacating and remanding certain aspects of the Commission's orders on the WestConnect Order No. 1000 compliance filings.[6] As discussed further herein, this Settlement Agreement represents the culmination of settlement negotiations that began in late 2018 among the Settling Parties[7] to resolve issues related to regional cost allocation and the participation of non-public utilities in the WestConnect Order No. 1000 regional transmission planning process.

The WestConnect Public Utilities believe the measures built into the regional process through the Settlement Agreement will protect their ratepayers from cross-subsidization. They also believe these protections are essential to the settlement because of the unique nature of the region where public utilities comprise a minority of WestConnect members. Non-public utilities outnumber public utilities in the WestConnect region.[8] As reflected in their agreement to the terms of the Settlement Agreement, the WestConnect Non-Public Utilities agree that these protections reflect a fair and reasonable resolution to the Fifth Circuit appeal.

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[4] Arizona Electric Power Cooperative, Inc.; Colorado Springs Utilities; Los Angeles Department of Water and Power; Platte River Power Authority; Sacramento Municipal Utility District; Salt River Project Agricultural Improvement & Power District; and Transmission Agency of Northern California are non-public utilities supporting the Commission (as the Respondent) in the appeal. Imperial Irrigation District and Western Area Power Administration, though not parties to the appeal, are non-public utility members of the WestConnect planning region and have executed the Settlement Agreement.

[5] Los Angeles Department of Water and Power does not oppose the settlement and participated in its development, but is not a signatory. All Settling Parties understand, however, that once the terms and conditions are accepted by FERC, the order will become a part of the WestConnect process of which WestConnect members will be bound.

[6] *El Paso Elec. Co. v. FERC*, 832 F.3d 495 (5th Cir. 2016).

[7] During most of these negotiations and at the time of their intervention in the Fifth Circuit proceeding, Basin and Tri-State were not jurisdictional public utilities. As reflected in the Settlement Agreement, both support the settlement and, if accepted by the Commission, would be bound by the Settlement Agreement in the same manner as the other public utility members of the WestConnect planning region.

[8] When a public utility member is affiliated with other public utility members, the region treats them as a single member. Due to this structure, the eleven public utilities in the WestConnect planning region (including Tri-State and Basin) act as eight public utilities for purposes of participation and voting within the planning process. At present, the public utility members of WestConnect represent only eight votes out of WestConnect's total membership of twenty-five. The other members of the region are comprised of independent transmission entities and others within WestConnect membership sectors.

Consistent with the historical approach to Order No. 1000 compliance in the WestConnect region, the Settling Parties crafted this Settlement Agreement to encourage and preserve the participation of utilities regardless of their jurisdictional status under the Federal Power Act.

I. Communications

The WestConnect Public Utilities request that all correspondence, pleadings, and other communications concerning this filing be served upon the following individuals who should be included on the official service list in this proceeding:[9]

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[9] The WestConnect Public Utilities request waiver of 18 C.F.R. § 385.203(b)(3) to permit the designation of more than two persons for service in this proceeding due to the number of public utilities submitting this filing.

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II. Background

a. WestConnect Region

The WestConnect transmission planning region is comprised of public and non-public utility transmission providers located across Arizona, California, Colorado, Montana, Nebraska, Nevada, New Mexico, South Dakota, Texas, and Wyoming. WestConnect has traditionally been a group of FERC-jurisdictional and non-jurisdictional electric utilities working collaboratively to assess stakeholder and market needs and to develop cost-effective enhancements to the Western wholesale electricity market. The WestConnect region (both historically and as proposed in the initial compliance filings) included the WestConnect Public Utilities, which were subject to FERC's rate jurisdiction.[10] The region also includes the WestConnect Non-Public Utilities, which are non-jurisdictional transmission providers under the Federal Power Act.

The WestConnect region is unique because of its geographical distribution and the jurisdictional status of many of its transmission-owning members. While many other transmission planning regions in the eastern and western United States are primarily comprised of public utilities and operated by regional transmission organizations or independent system operators, non-jurisdictional entities have a much larger presence within the WestConnect region. The systems

[10] Previously, Nevada Power Company and Sierra Pacific Power Company, collectively d/b/a "NV Energy," were public utility members of WestConnect. However, in Docket No. ER21-2768 the Commission accepted revisions to NV Energy's Open Access Transmission Tariff Attachment K to facilitate NV Energy's participation in NorthernGrid. Subsequently, in Docket No. ER22-236 the Commission accepted a certificate of concurrence to enable NV Energy's participation in NorthernGrid in satisfaction of its regional transmission planning obligations. Those changes became effective January 1, 2022.

of the WestConnect Public Utilities and the WestConnect Non-Public Utilities are electrically connected to each other at many locations throughout the region.

a. WestConnect Region Before Order No. 1000

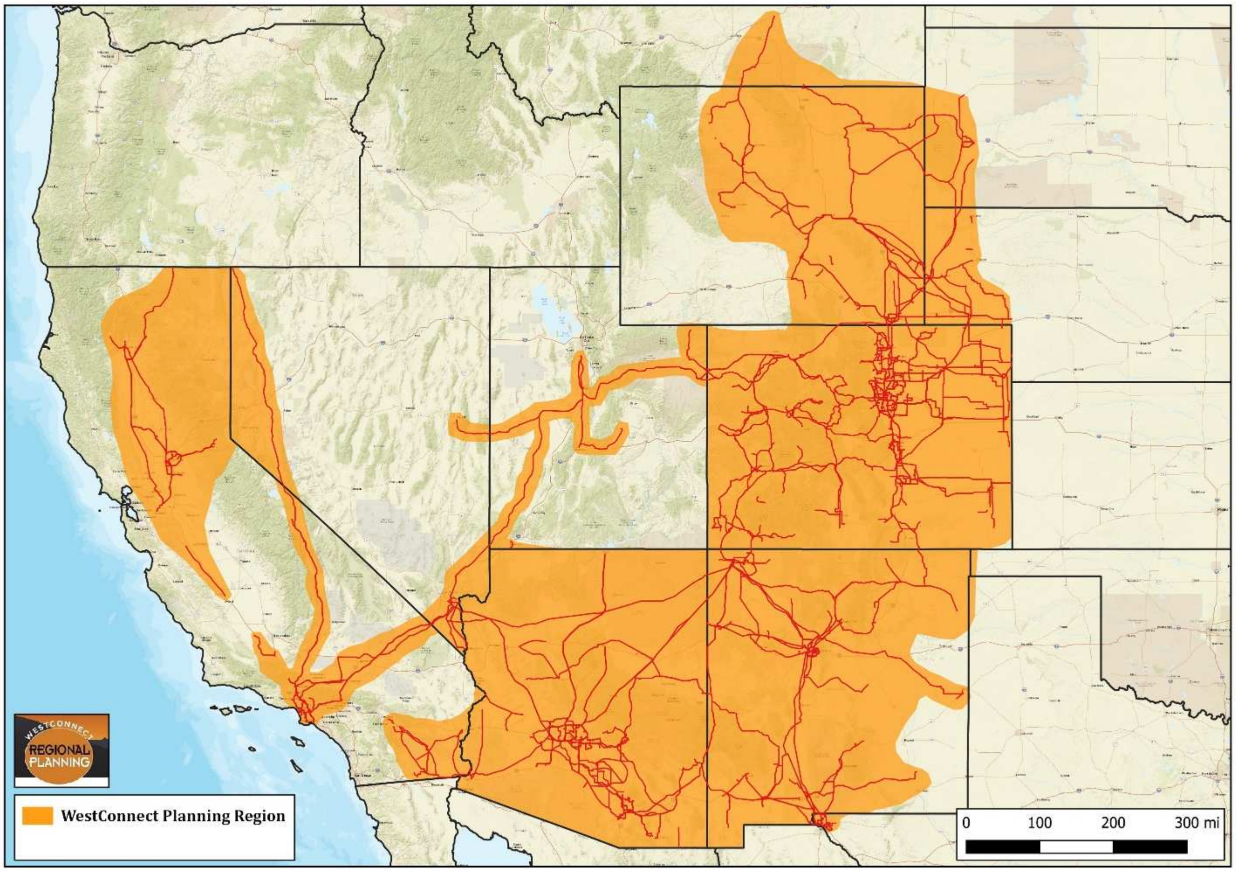
Before Order No. 1000, regional transmission planning in the Southwest and Rocky Mountain regions, which together compose the WestConnect region, was done with significant joint cooperation between public utilities and non-jurisdictional entities. Whether assessing needs for new regional transmission projects, jointly planning transmission projects to address those needs, or financing and/or sharing costs for the regional projects that serve regional needs, the transmission-providing entities within the WestConnect region successfully relied on voluntary efforts to expand the electric grid within the region, with each utility contributing to various transmission projects as necessary to serve its individual needs. Pursuant to the Subregional Transmission Planning Agreement, the pre-Order No. 1000 WestConnect parties also collaborated to oversee the subregional transmission planning processes in the Colorado Coordinated Planning Group, the Southwest Area Transmission, and the Sierra Subregional Planning Group, as well as to produce an annual Transmission Plan Report.

b. WestConnect Region After Order No. 1000

Following the issuance of Order No. 1000, the then-existing members of WestConnect and other interested stakeholders negotiated the Order No. 1000 regional transmission planning and regional cost allocation processes required by that rulemaking in a manner that reflected the interests of all existing pre-Order No. 1000 WestConnect participants. The intent was to continue the long history of robust, inclusive regional transmission planning and joint development and ownership of transmission facilities regardless of jurisdictional status that occurred in the pre-Order No. 1000 WestConnect planning region.

Today, the Settling Parties own more than 33,000 miles of high voltage transmission lines, some of which are jointly owned between two or more entities. Planning transmission projects between two separate WestConnect Public Utilities frequently requires crossing the service territory of, or interconnection with, the system of a WestConnect Non-Public Utility. Even planning projects wholly within a public utility's footprint can impact non-jurisdictional facilities and vice versa.

The map below shows the scope of the current WestConnect planning region, including those members that are FERC-jurisdictional public utilities as well as those that are not:



c. WestConnect Region Order No. 1000 Compliance Filings

In Order No. 1000, FERC required public utility transmission providers to modify their tariffs to provide for more "efficient and cost-effective regional transmission planning" and to establish transmission planning regions.[11] The WestConnect Public Utilities developed their Order No. 1000 compliance filings in conjunction with the non-jurisdictional utilities and vetted them with the various stakeholders in the WestConnect region before filing essentially identical tariff revisions. Although the compliance filings were submitted separately by the public utilities in WestConnect, the Commission ruled on each of them in comprehensive compliance orders as discussed further below.

i. First Compliance Order, 142 FERC ¶ 61,206

On October 11, 2012, the WestConnect Public Utilities submitted their first filings to comply with Order No. 1000 ("First Compliance Filings"). The First Compliance Filings identified the then-participating eleven Public Utilities[12] that were subject to Order No. 1000 and

[11] Order No. 1000 at PP 2, 160.

[12] As noted above, since the initial Order No. 1000 compliance filings for the WestConnect planning region, Tri-State and Basin have become public utilities and the public utility subsidiaries of Nevada Energy, Inc. have joined a different planning region. This procedural background refers to the jurisdictional status of the referenced utilities and the WestConnect membership as it existed at the time referenced.

also identified the WestConnect Non-Public Utilities desiring to participate in regional planning under Order No. 1000 but noted that final enrollment decisions in WestConnect would depend on the Commission's actions on the proposed revisions. The First Compliance Filings also adopted a regional cost allocation method whereby the costs of a transmission project selected in the regional transmission plan for purposes of cost allocation and associated transmission rights would be allocated proportionally to the beneficiaries of the project who agreed to participate.

On March 22, 2013, the Commission issued an order finding that the First Compliance Filings partially complied with Order No. 1000, but rejecting both the proposed enrollment and regional cost allocation provisions ("First Compliance Order").[13] FERC concluded that the WestConnect region was sufficiently large from a geographical perspective, but that the public utilities had failed to "enroll" in the region by providing a list of enrolled utilities in their tariffs.[14] FERC also found that the proposed regional cost allocation process was inadequate because, among other reasons, it did not provide for regional cost allocations to be sufficiently binding, which the Commission concluded did not adhere to Order No. 1000's cost causation principle and the goal of minimizing free ridership.[15] Accordingly, FERC directed the WestConnect Public Utilities to submit compliance filings addressing various directives. One such directive was to provide that "cost allocation determinations for projects selected in the regional transmission plan for purposes of cost allocation be binding upon identified beneficiaries."[16]

ii. Second Compliance Order, 148 FERC ¶ 61,213

The WestConnect Public Utilities responded to the First Compliance Order by: (1) seeking clarification or rehearing on April 22, 2013 ("First Rehearing Request"),[17] and (2) submitting filings with further revisions to their local and regional transmission planning processes to comply with the Commission's First Compliance Order ("Second Compliance Filings").

The First Rehearing Request addressed certain aspects of the First Compliance Order, including the affirmative obligation to plan, the proposed nonincumbent transmission developer reforms, and the proposed regional cost allocation method.[18] The Second Compliance Filings proposed to permit non-jurisdictional utilities to participate in the WestConnect regional planning process as "Coordinating Transmission Owners" or "CTOs." Those utilities would be treated the

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13 *Pub. Serv. Co. of Colo. et al.*, 142 FERC ¶ 61,206 (2013) ("First Compliance Order").

14 First Compliance Order at PP 25-26.

15 *Id.* at PP 306-08 ("A cost allocation determination that is not binding on identified beneficiaries is directly inconsistent with these goals of Order No. 1000. Order No. 1000 expressly rejected the notion that an entity may opt-out of a Commission-approved cost allocation for a specific transmission project if it merely asserts that it receives no benefits from the project, stating that such an opportunity to opt-out would not minimize the regional free rider problem.").

16 *Id.* at P 307.

17 *See* Request for Clarification or, in the Alternative, Rehearing of the Jurisdictional WestConnect Utilities, Docket No. ER13-75 et al. (filed Apr. 22, 2013).

18 *See id.*

same as the enrolled public utilities in all ways except one—because they would not be "enrolled," the CTOs would not be subject to binding regional cost allocation.

The Second Compliance Filings also provided that, because the CTOs could not be subjected to binding regional cost allocation, any transmission project that provided quantifiable benefits to those utilities would not be eligible for binding regional cost allocation in the region. Instead, the Second Compliance Filings proposed to study and identify projects that met regional needs, including those of the non-jurisdictional utilities, but to obtain funding from participants in a voluntary manner rather than through a binding regional cost allocation.

The Commission addressed the First Rehearing Request and Second Compliance Filings in a single order, issued on September 18, 2014 ("Second Compliance Order").[19] In the Second Compliance Order, the Commission accepted the inclusion of non-jurisdictional utilities as CTOs for regional planning and the ability of the regional planning process to account for the CTOs' needs. However, the Commission again rejected the idea that projects benefitting CTOs (non-jurisdictional utilities) could be excluded from binding regional cost allocation.

The Commission concluded that "[c]arving out from potential regional cost allocation all transmission facilities that interconnect with, or provide quantifiable benefits to, transmission owners that have not enrolled in the WestConnect transmission planning region (including coordinating transmission owners) would unduly restrict consideration of transmission facilities."[20] The Commission directed the WestConnect Public Utilities to revise their respective open access transmission tariffs ("OATTs") within 60 days "to describe the process by which a [CTO] that is identified as a beneficiary of a transmission project proposed for selection in the regional transmission plan for purposes of cost allocation will advise the enrolled transmission providers of whether the CTO will accept its share of the costs of that transmission facility."[21]

iii. Third Compliance Order, 151 FERC ¶ 61,128

The WestConnect Public Utilities responded to the Second Compliance Order by: (1) seeking rehearing or, in the alternative, clarification on October 20, 2014 ("Second Rehearing Request"),[22] and (2) submitting filings with further revisions to comply with the Commission's Second Compliance Order on November 17, 2014, as amended on November 19, 2014 ("Third Compliance Filings").

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[19] *Pub. Serv. Co. of Colo. et al.*, 148 FERC ¶ 61,213 (2014) (Order on Rehearing and Compliance) ("Second Compliance Order").

[20] Second Compliance Order at P 56.

[21] *Id.* at P 57.

[22] *See* Request for Rehearing or in the Alternative Request for Clarification of September 18, 2014 Order of the WestConnect Public Utility Transmission Providers in Docket No. ER13-75 et al. (filed Oct. 20, 2014).

In the Second Rehearing Request, the WestConnect Public Utilities argued that the First Compliance Order would create free ridership and violate cost causation.[23] The WestConnect Public Utilities explained that the First Compliance Order, which mandated that jurisdictional utilities pay the costs to develop new transmission facilities and exempted non-jurisdictional utilities from those costs, did not allocate costs in at least a roughly commensurate fashion to those who receive the benefits as required by the cost causation principle.[24] Alternatively, in the Third Compliance Filings, the WestConnect Public Utilities proposed to make a project ineligible for regional cost allocation if the enrolled beneficiaries of a project would experience a cost increase of more than 10% following the refusal of cost contributions from participating non-jurisdictional utilities.

As before, the Commission addressed the Second Rehearing Request and the Third Compliance Filings in a single order, issued on May 14, 2015 ("Third Compliance Order").[25] The Commission rejected the WestConnect Public Utilities' proposal and the Second Rehearing Request, but also acknowledged that the participation of non-enrolled, non-jurisdictional utilities in WestConnect regional planning could result in the very free ridership that Order No. 1000 sought to eliminate.[26] The Commission also rejected the WestConnect Public Utilities' proposed 10% cap on cost increases to a public utility resulting from non-jurisdictional utilities rejecting regional cost allocation. According to FERC, because the project costs would be assigned proportionately to the remaining beneficiaries, the regional cost allocations would still be roughly commensurate with benefits.[27] The Commission concluded that it could choose to balance competing goals, that it was not required to ensure perfect cost causation, and that the potential for some limited free ridership was not inconsistent with Order No. 1000.[28]

d. Fifth Circuit Appeal and Remand to the Commission

On November 17, 2014, and May 18, 2015, El Paso Electric Company ("El Paso"), joined and supported by the other, then enrolled, WestConnect Public Utilities as intervenors, appealed the First Compliance Order, Second Compliance Order, and Third Compliance Order (collectively, the "Compliance Orders") to the United States Court of Appeals for the Fifth Circuit ("Fifth Circuit").[29]

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[23] *Id.* at 10-16.

[24] *Id.*

[25] *Pub. Serv. Co. of Colo. et al.*, 151 FERC ¶ 61,128 (2015) (Order on Rehearing and Compliance) ("Third Compliance Order").

[26] *Id.* at P 29.

[27] *Id.* at P 57.

[28] *Id.* at P 31.

[29] *El Paso Elec. Co. v. FERC*, Pet. for Review of El Paso Elec. Co. in Docket No. 14-60822 (5th Cir., filed Nov. 17, 2014).

Central to the WestConnect Public Utilities' challenge was the issue of regional cost allocation under Order No. 1000 and the directives in the Compliance Orders on the interplay between public utilities and non-public utilities in the WestConnect planning region. On August 8, 2016, the court issued an opinion (the "Fifth Circuit Order") vacating the Commission's findings on regional cost allocation and remanded the Compliance Orders to the Commission.[30] While the court acknowledged that the Commission has the discretion to balance competing objectives to achieve the goals of Order No. 1000 and that the Commission's regulations need only roughly correlate costs to benefits, it also found that the Compliance Orders did not "apply that foundational principle of cost causation for about half of the utilities in the WestConnect region."[31]

The court concluded that the Compliance Orders were arbitrary and capricious and could not be approved in their then-current form "[a]bsent a more reasoned explanation for why the [non-public] utilities will participate in the binding cost allocation process, or why their lack of participation will not result in unjust and unreasonable rates."[32] Accordingly, the Fifth Circuit Order vacated the Commission's findings on regional cost allocation, rendering them of no effect, and remanded the case to the Commission for further explanation.[33]

e. FERC Remand Proceedings

i. Order on Remand

On remand, the Commission's November 16, 2017 order ("Order on Remand") made no change to its directives on the implementation of Order No. 1000 in the WestConnect region.[34] Instead, the Commission explained why it considered its original directives just and reasonable.[35] Specifically, the Order on Remand noted that the Commission expects non-public utility transmission providers in the region to be incentivized to participate in regional cost allocation because they will benefit from the transmission, and that this will limit any potential free ridership in the region.[36]

ii. Remand Rehearing Order

On December 18, 2017, the WestConnect Public Utilities each submitted identical requests for rehearing of the Order on Remand, arguing that the Commission failed to address the deficiencies in the Compliance Orders identified by the court in the Fifth Circuit Order. The WestConnect Public Utilities argued that the Order on Remand therefore violated both the purpose

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[30] *El Paso Elec. Co. v. FERC*, 832 F.3d 495 (5th Cir. 2016).

[31] *Id.* at 505.

[32] *Id.* at 507.

[33] *Id.* at 510-11.

[34] *See Pub. Serv. Co. of Colo. et al.*, 161 FERC ¶ 61,188 (2017) (Order on Remand).

[35] *See id.* at PP 1, 29, 31, 39-42, 46, and 52.

[36] *See id.* at P 46 ("[A] non-public utility transmission provider should be incentivized to participate in regional cost allocation if the analysis demonstrates that it will benefit from a transmission project").

of Order No. 1000 and the principle of cost causation because it supported free ridership and allowed non-public utility transmission providers to receive benefits from transmission projects that they decline to pay for, with the costs of those benefits borne by public utility transmission providers and their ratepayers.

On June 21, 2018, the Commission issued an order rejecting the requests for rehearing ("Remand Rehearing Order"), finding that the Order on Remand adequately addressed the concerns about free ridership and cost causation.[37] The Commission concluded that it is not necessary at this time to order additional proceedings to investigate the participation of non-public utility transmission providers in regional cost allocation in WestConnect.[38]

iii. 2018 Petition for Review and Settlement

The matter then returned to the Fifth Circuit. On August 20, 2018, El Paso, again joined and supported by the other then-enrolled public utility members of WestConnect, petitioned for review of the Order on Remand and the Remand Rehearing Order to the Fifth Circuit.[39] The WestConnect Non-Public Utilities moved to intervene in support of the Commission's order. Both the WestConnect Public Utilities and the WestConnect Non-Public Utilities, however, agreed that it might be possible to avoid litigation through a settled resolution. The WestConnect Public Utilities subsequently submitted an unopposed request that the Court hold the proceeding in abeyance to allow the appellate parties an opportunity to try to resolve the issues on a mutually agreeable basis.[40] The instant filing and the Settlement Agreement represents the culmination of complex and lengthy settlement negotiations that began in late 2018 among the Settling Parties, all of whom are sponsoring and/or actively supporting the settled resolution presented to the Commission in this filing.

III. The Instant Petition

Now that the Settling Parties have reached an agreement on the issues subject to the pending petition for appellate review, the WestConnect Public Utilities are submitting the Settlement Agreement for Commission approval pursuant to Rule 207(a)(5).[41] This approach is consistent with prior Commission orders on similar settlements that, while not resolving a dispute actively before the Commission, nevertheless affect the rates, terms, and conditions of jurisdictional service and require Commission approval.[42]

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[37] *Pub. Serv. Co. of Colo. et al.*, 163 FERC ¶ 61,204 (2018) (Order Denying Rehearing).

[38] *See id.* at PP 1, 7.

[39] *El Paso Elec. Co. v. FERC*, Pet. for Review of El Paso Elec. Co., Docket No. 18-60575 (5th Cir., filed Aug. 20, 2018).

[40] *El Paso Elec. Co. v. FERC*, Unopposed Joint Motion to Hold Appeal in Abeyance, Docket No. 18-60575 (5th Cir., filed Nov. 30, 2018).

[41] 18 C.F.R. § 385.207(a)(5).

[42] *See, e.g.*, *Cal. Indep. Sys. Operator Corp.*, 177 FERC ¶ 61,034 (2021) (approving a settlement agreement submitted under Rule 207(a)(5) to resolve an issue in a pending appeal before the United States Court of Appeals for the District

Although filed as a petition under Rule 207, because this is a settlement, the petition is accompanied by the materials and explanations that would have been required by Rule 602 if Rule 602 applied in the present circumstance.[43] This petition consists of the following documents:

1. This transmittal letter, including a detailed description of the settled process under which a non-jurisdictional utility in the WestConnect region can become contractually bound to regional cost allocation for a transmission project selected in the regional plan for purposes of cost allocation, which is the core issue in the pending appeal, with illustrative flow charts;[44]
2. A summary table, included as an attachment to this transmittal letter, that addresses the proposed tariff changes and explains the relevance of those changes to the settled resolution;
3. The Offer of Settlement and Settlement Agreement executed by the Settling Parties; and,
4. An attachment to, and integral part of, the settlement providing the *pro forma* marked settlement tariff language, together with new or changed exhibits to the tariff, including a *pro forma* Memorandum of Understanding document and a process flow diagram demonstrating the steps in the process for participation in WestConnect by non-jurisdictional utility members.[45]

IV. Compliance Process and Resolution of the Pending Petition for Review

Under the Settlement Agreement, within 45 days of an order from the Commission that accepts the settlement without change or condition and that is not subject to rehearing, clarification, or judicial review ("Final Order"), the WestConnect Public Utilities (which for these compliance purposes will be all utilities enrolled in the region, including Tri-State and Basin) will make the following compliance filings with the Commission: (a) tariff record(s) to implement the proposed changes within their respective OATTs in conformance with the marked changes shown in the *pro forma* tariff revisions proposed in this settlement; and (b) an unexecuted replacement Planning Participation Agreement (to be submitted by Arizona Public Service Company as the designated filer for eTariff purposes) that will act to conform the Planning Participation Agreement

of Columbia Circuit); *Dominion Transmission, Inc.*, 111 FERC ¶ 61,285 (2005) ("The Commission will treat the petition for approval of the agreement as initiating a new proceeding, assign a new docket number to that proceeding, and issue a notice providing for interventions, comments, and protests."); *Sw. Power Pool, Inc.*, 175 FERC ¶ 61,155 at P 1 & n.1 (2021) ("We note that in the circumstances presented in *Dominion Transmission, Inc.*, and in this proceeding, parties should file settlements pursuant to section 385.207(a)(5).").

[43] 18 C.F.R. § 385.602(c)(1).

[44] This transmittal letter includes the information traditionally provided by public utilities in an explanatory statement that accompanies a settlement proposal subject to Rule 602, and in the event of a conflict between this transmittal letter and the terms of the settlement tariff language, the settlement tariff language controls. Should the Commission treat this settlement as a filing subject to Rule 602, we ask that the Commission treat this transmittal letter as the required explanatory statement of the WestConnect Public Utilities.

[45] The *pro forma* tariff changes are marked against the Open Access Transmission Tariff of Arizona Public Service Company.

currently on file to the Settlement Agreement and the settlement tariff (collectively, the "Compliance Filings").[46]

In addition, within 30 days after the Commission issues orders approving, without change or condition, all of the Compliance Filings described above (including individual entity tariff filings and the conformed Planning Participation Agreement), and all such orders are also Final Orders, El Paso, the Petitioner in the pending appeal before the Fifth Circuit, will file with the Court to voluntarily dismiss the appeal with prejudice and will inform the Court at that time that the motion to dismiss the appeal is supported by each party to the appeal.[47]

If the Commission rejects this settlement or imposes any condition on or directs any modification of the Settlement Agreement, the proposed revisions to the tariff language, or the Compliance Filings by the public utility members of WestConnect,[48] the settlement will be deemed withdrawn and the rights, duties, and obligations of all persons affected by the settlement shall be deemed restored as if the settlement had never been executed. El Paso will then inform the Fifth Circuit that the Commission has rejected the proposed settlement and will ask that the appeal proceed.

V. The Settlement Achieves Cost Causation Protections for the WestConnect Public Utilities While Encouraging Participation by the WestConnect Non-Public Utilities

The Settlement Agreement, if accepted by the Commission, will resolve the issues presented in the pending petition for review before the Fifth Circuit, all of which stem from the role of non-jurisdictional utilities in the planning region. WestConnect is unusual among planning regions in that much of the electric transmission in the region is owned and operated, in whole or in part, by non-public utilities. The facilities owned by these non-public utilities sometimes overlap with or surround the electric transmission owned and operated by the public utilities in the region.

The proposed settlement presents a balanced approach to encouraging full participation in regional transmission planning by the highly integrated and interconnected West Connect Non-Public Utilities and WestConnect Public Utilities while respecting the non-jurisdictional status of the Non-Public Utilities. The Settlement Agreement accomplishes this by providing a process for

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[46] Settlement Agreement, Art. III.

[47] On January 31, 2022, the Fifth Circuit *sua sponte* removed the pending petition for review from abeyance. However, immediately after filing this petition for approval of the settlement, a motion will be filed with the court to have the case returned to abeyance. If the court grants such motion, the process described in the settlement for resolving the pending petition for review will remain unchanged.

[48] Article V of the Settlement Agreement provides a mechanism whereby the parties to the settlement can negotiate changes to the settlement that may be acceptable in the event the Commission imposes any condition on or directs any modification of the settlement and/or the settlement tariff and thereby resolve the appeal. However, none of the Settling Parties is obligated to agree to any such changes. As specified in Article V, "If the nature of FERC's order is such that an adjustment of little to no consequence could be made to the settlement, and the settlement refiled, the public utilities commit to request the Fifth Circuit to continue to hold the appellate proceeding in abeyance in order to allow for revisions to be acted upon by FERC."

WestConnect Non-Public Utilities to opt-in and contractually bind themselves to regional cost allocation for regional transmission projects where they have been determined to receive benefits.

Critically, this proposed settlement also largely resolves the WestConnect Public Utilities' concerns about regional projects that were designed, in part, to resolve the transmission needs of one or more WestConnect Non-Public Utilities but for which such non-jurisdictional utilities would not be allocated a share of the costs. That "free-ridership" concern had led to the initial petition for review, was the reason for the remand by the Fifth Circuit and is the core issue presented by the pending petition for review before that court.

The settlement achieves these two key objectives by (1) allowing WestConnect Non-Public Utilities to vote on project selection if they have contractually opted into participation and regional cost allocation either unconditionally or subject only to final governing body/board approval; (2) including processes and protections to ensure that there is more than one benefitting public utility for projects selected in the regional plan for purposes of cost allocation; and (3) clarifying (through defined criteria) the types of projects eligible for regional cost allocation to make it more likely that they would provide regional—as opposed to only local—benefits (the "Regional Cost Allocation Criteria").

If approved by the Commission, the proposed settlement resolves this long-standing concern in a manner that gives the WestConnect Non-Public Utilities a path to become bound to financially support a regional project under a timeline that accommodates the WestConnect Non-Public Utilities' individual governance structures. A process step centered around execution of a Memorandum of Understanding is a new feature of the tariff. It provides a vehicle by which a non-jurisdictional utility may bind itself to regional cost allocation subject only to governing board approval and by doing so, preserve its right to vote in the selection of projects as further described below. The Settlement Agreement allows the WestConnect Non-Public Utilities to participate in the full review of potential regional solutions to their transmission needs. At the same time, the process steps in the *pro forma* tariff recognize and address situations in which an individual governing body/board of a WestConnect Non-Public Utility may not be able to authorize a binding financial commitment quickly. The Memorandum of Understanding process ensures that committed WestConnect Non-Public Utilities have a seat at the table during consideration of projects identified as potential regional solutions until the point in the process at which a final commitment to accept a regional cost allocation must be made.

Importantly, the Settlement Agreement also contains ratepayer protections that address the concerns of the WestConnect Public Utilities regarding how their ratepayers could be forced to pay for a project that is designed to resolve the needs of a WestConnect Non-Public Utility that, by their own decision-making, is not obligated to financially support that project. The proposed tariff language accomplishes this by providing key protections through (1) modifications to the Regional Cost Allocation Criteria and (2) key procedural controls after a benefitting WestConnect Non-Public Utility decides not to bear an allocated portion of the costs for a project. In this manner, the WestConnect Public Utilities believe the tariff is more closely tied to cost-causation principles than before.

Negotiating this settlement consumed the better part of over three years, much of which occurred during the ongoing COVID-19 pandemic. Settlement was difficult to achieve but resulted in a process that the Settling Parties (on both sides) can support. These are difficult issues, but the Settling Parties' efforts have produced a reasonable path to meaningful regional transmission planning in a way that protects the ratepayers of the WestConnect Public Utilities while improving the participation in regional planning by the WestConnect Non-Public Utilities.

VI. The Settlement Enhances the Process for Non-Public Utility Participation While Reducing Cost Causation Concerns

Under the settlement, WestConnect will still identify the transmission needs of the WestConnect Non-Public Utilities that participate as CTOs, and WestConnect will still solicit for solutions to such needs. However, the settlement revamps the process by which the WestConnect Non-Public Utilities can determine whether they will be "cost-bound" (*i.e.*, be subject to mandatory regional cost allocations for projects selected in the WestConnect regional plan for purposes of cost allocation) and ties continued voting opportunities for project selection to a WestConnect Non-Public Utility's willingness to participate in a project or become cost-bound. On that issue, the settlement provides additional flexibility to the WestConnect Non-Public Utilities, while also adding new processes to minimize the circumstances in which costs associated with a WestConnect Non-Public Utility beneficiary that has not bound itself to regional cost allocation would be shifted to the WestConnect Public Utilities. Specifically, the settlement creates an opt-in process for WestConnect Non-Public Utilities that provides a mechanism by which a WestConnect Non-Public Utility may contractually elect to be bound to a regional cost allocation for a regional transmission solution.

a. The New Opt-In Process for WestConnect Non-Public Utilities

Consistent with Order No. 1000-A,[49] the WestConnect Public Utilities who are "Transmission Owners with Load-Serving Obligations" (called "TOLSOs" under the tariff), must "enroll" in WestConnect for regional cost allocation purposes.[50] These "Enrolled Transmission Owners" (or "ETOs" under the tariff) are bound to regional cost allocation by virtue of their enrollment; they do not affirmatively opt-in or opt-out of cost-allocation for particular regional projects. Instead, responsibility for regional cost allocation is determined on the basis of whether ETOs benefit from a project.[51] Public utilities are required to be ETOs under Order No. 1000.

Even though the WestConnect Non-Public Utilities are eligible to enroll in the region and be treated as ETOs for all purposes, none has ever done so. Instead, the WestConnect Non-Public Utilities that are TOLSOs have participated in WestConnect Order No. 1000 transmission planning as CTOs, which allows them to participate in the WestConnect planning process in the same

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[49] Order No. 1000-A at P 275 ("[W]e believe that the requirement to have a clear enrollment process for transmission providers in a transmission planning region . . . provides certainty regarding who is enrolled in a region and therefore who is a potential beneficiary that may be allocated costs."); *Id.* at P 419 ("We believe that in most cases, it should be clear where an entity's load is located and therefore the region in which it would be expected to enroll.").

[50] Tariff § III.

[51] *Id.* (defining an ETO as a "TOLSO member of the WestConnect Planning Region in the sub-sector of the TOLSO member sector comprised of members enrolled in the region for purposes of cost allocation pursuant to Order No. 1000.").

manner as ETOs, but without enrolling and subjecting themselves to binding regional cost allocation.[52]

The settlement does not change WestConnect's historical inclusion of both ETOs and CTOs in its processes for the identification of economic, reliability, and public policy requirement-driven needs. Indeed, both categories of members participate in the governance of WestConnect through the Planning Management Committee ("PMC") as members of the TOLSO membership sector.[53] The PMC identifies regional transmission needs with no distinction between ETO and CTO needs.[54]

If a regional need of more than one ETO in more than one Balancing Authority Area ("BAA") is identified,[55] then the PMC solicits for solutions to the identified regional transmission need.[56] From the projects proposed in response to the solicitation, the PMC is responsible for developing a comprehensive list of solutions to the identified regional need.[57]

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[52] *Id.* This was not the intent of the WestConnect Public Utilities in their initial Order No. 1000 compliance filings, but as a result of the directives in the various compliance orders and the required tariff changes WestConnect ended up with a structure providing full CTO participation in planning, no mandatory regional cost allocation to CTOs, and no ability to limit free-ridership, in the WestConnect Public Utilities' view, resulting in the two petitions for review to the Fifth Circuit.

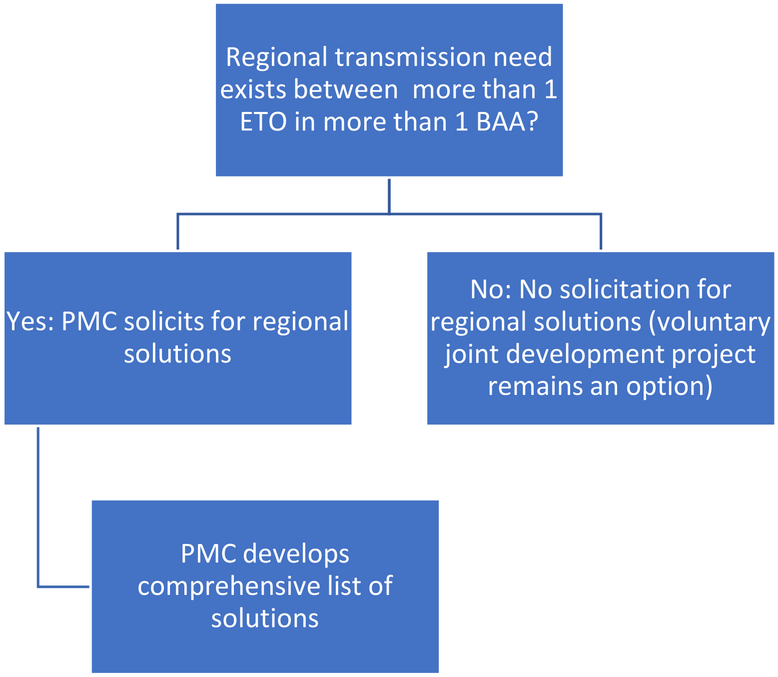
[53] *Id.* § III.A.5.a.

[54] *Id.* § III.E.1.

[55] *Id.* §§ III.E.2; III.E.3; III.E.4.a.

[56] *Id.* § III. C.5. In the event no project is proposed in response to the solicitation to address identified regional transmission needs, consistent with the existing tariff language, the PMC is responsible for striving to identify a regional solution itself. *Id.* § III.E.1. Note that the solicitation of solutions does not determine the developer of a transmission project. The selection of the developer of a transmission project selected in the regional plan for purposes of cost allocation occurs later in the process.

[57] *Id.* § III.E.1. This development of the list of comprehensive projects does not involve the formal assessment of the projects against the Regional Cost Allocation Criteria to determine if individual projects are eligible for regional cost allocation and does not determine the developer of projects eligible for selection in the regional plan for purposes of cost allocation. Those steps come later. However, this is a listing by the PMC, prepared after it conducts its solicitation, of potential solutions to identified regional transmission needs, requiring an initial assessment that a proposed solution would appear to solve an identified regional transmission need, and identifying the specific regional need the proposed solution addresses (including an identification of project beneficiaries).



Once this list is created, both the WestConnect Public Utilities and the WestConnect Non-Public Utilities agreed that it would be important to know which projects the CTO beneficiaries are willing to support financially through a binding regional cost allocation.[58] Consequently, once the list is created, under the new procedures provided by the Settlement Agreement a CTO beneficiary of a project on the comprehensive list of solutions can continue to participate in planning for a potential solution if it agrees to support that potential solution financially.[59]

Whether a CTO continues to participate in selecting a project to solve an identified regional transmission need depends on whether the CTO affirmatively "opts-in" to cost responsibility by executing an MOU in the form presented in the tariff or providing a commitment to receive a binding regional cost allocation for a specific project as more fully described below.[60] Projects that the CTO opts into proceed through the process as potentially eligible solutions to regional needs that include that CTO beneficiary. The WestConnect Public Utilities believe this process helps to *limit* the circumstances that give rise to their free-ridership concerns and *increase* adherence to the legal principle of cost causation because it is unlikely that a project that provides benefits to a CTO for which it is unwilling to accept a cost allocation will move forward in the process. The opt-in process developed over the course of the last three years is custom-made for the WestConnect region—a region that performs the function of regional transmission planning

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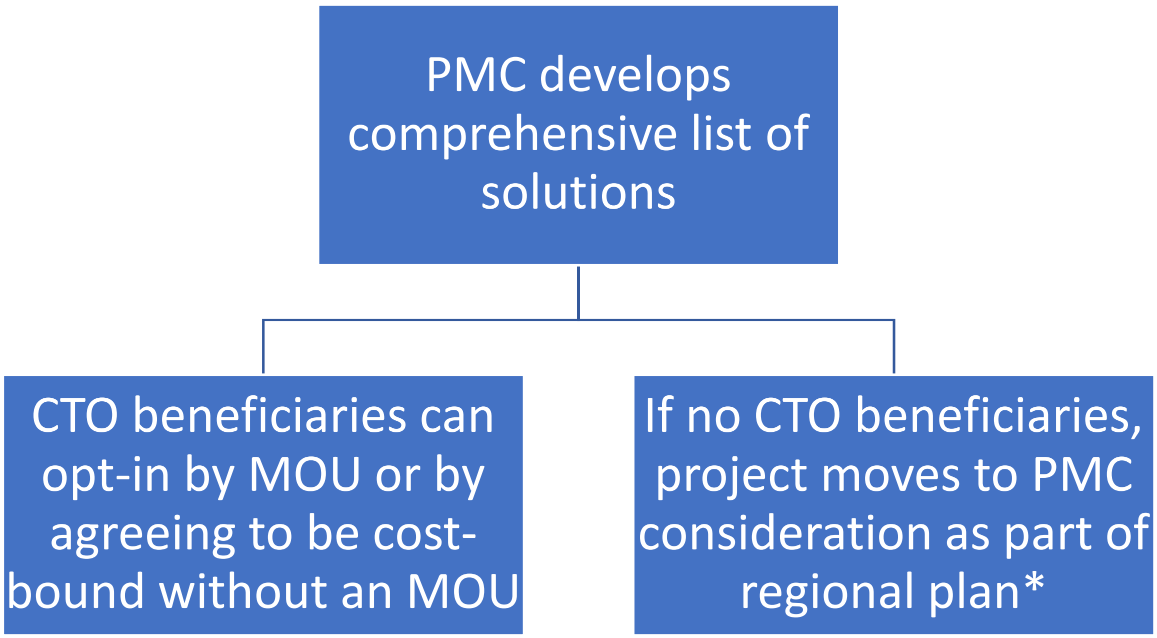
[58] Projects on the list of comprehensive solutions that do not have a CTO beneficiary are not subject to the CTO opt-in process, but rather go directly to the end of the process where the PMC will determine which solution is the more cost effective or efficient solution to the identified regional transmission need and will assess solutions against the Regional Cost Allocation Criteria for eligibility for regional cost allocation as part of developing the regional plan.

[59] Tariff § III.E.6.a.

[60] *Id*. As discussed *infra,* and in the Settlement Agreement, a CTO's right to continue to participate in planning for a potential solution is triggered by its good faith commitment to seek its board/governing body/board approval for project participation.

for a large group of utilities, the majority of which have no obligation under Order No. 1000 to pay for regional projects.



*Subject to satisfying the Regional Cost Allocation Criteria and being deemed the more cost effective or efficient solution by the PMC.

The Opt-In Options

There are two ways a CTO can opt-in: (a) the CTO signs a Memorandum of Understanding ("MOU") in the *pro forma* format provided in the proposed tariff, committing to accept a WestConnect-determined regional cost allocation for a particular project, subject to final CTO governing body/board approval by a specified deadline[61] or (b) the CTO otherwise commits to immediately becoming a "Cost-Bound Entity" or "CBE" for a project (i.e., skipping the MOU step).[62] The deadline for either option varies in each planning cycle, but cannot be earlier than April 1 or later than August 1 of the second year of the biennial regional planning cycle, and must always be at least 60 days following finalization of the comprehensive list of project solutions.[63] In the situation where not all CTO beneficiaries provide a binding commitment to accept a regional cost allocation, the remainder of this revised process then operates to identify those projects that

[61] In this situation, a CTO who has submitted an MOU becomes cost-bound once the CTO's governing body/board approves the CTO's participation in the project identified in its MOU. The form of MOU submitted in this Settlement Agreement was developed with the WestConnect Non-Public Utilities and provides the advantage of clarity regarding what project a CTO is supporting and the steps that the CTO must take to support that project.

[62] Tariff § III.E.6.a.

[63] *Id*. If all of the CTO beneficiaries of a given project commit to accept the regional cost allocation for that project determined in accordance with the WestConnect tariff language, the project moves to the end of the process where the PMC votes on the regional plan, including the identification of any projects that are selected for purposes of cost allocation.

have CTO beneficiaries that the PMC will consider when deciding which projects will be identified in the regional plan as the more cost-effective or efficient solution to the identified regional need.

Short-Listing Process

All projects with CTO beneficiaries (other than those projects already before the PMC for evaluation in circumstances in which all CTO beneficiaries have already become CBEs) are then subject to a short-listing process. In this process, the financially committed beneficiaries of a given project (i.e., the CTO beneficiaries of a project that have submitted an MOU or otherwise have agreed to become cost-bound, and the ETO beneficiaries of a project) then identify, for each project on the comprehensive list of solutions, whether that project should be on the short list of proposed solutions.[64]

Initial Regional Cost Allocation Criteria Testing

After developing the short-list of projects that provide benefits to CTOs beneficiaries, the PMC evaluates the short-listed projects against the Regional Cost Allocation Criteria that identify projects eligible for regional cost allocation.[65] This determination is subject to the normal PMC voting procedures, but only the ETO beneficiaries and the CTO beneficiaries that have opted-in (through an MOU or otherwise agreeing to be cost-bound) can vote within the TOLSO sector on those items requiring a vote.[66]

Projects that do not satisfy the Regional Cost Allocation Criteria are ineligible for selection in the regional plan for purposes of cost allocation. This allows the project beneficiaries, including any CTO beneficiaries, to know at this stage of the regional planning process whether a project could be eligible for regional cost allocation.[67]

Final Opportunity to Opt-In to a Specific Project

At the end of the two-year planning cycle, or shortly after the two-year mark, all CTO beneficiaries with MOUs reach the deadline for final opt-ins to the specific projects for which they have MOUs. This opt-in occurs if the applicable CTO beneficiary receives governing body/board

[64] *Id.* § III.E.6.a.ii.

[65] The tariff criteria that will be used to identify projects eligible for regional cost allocation are identified in the *pro forma* tariff. See, in particular, Section VII.B.

[66] Tariff § III.E.1.

[67] In situations in which a CTO beneficiary does not submit an MOU, and does not otherwise agree to be cost bound by the time MOU submissions are due, the project still may be eligible for consideration and selection by the PMC in the regional plan for purposes of cost allocation if the remaining beneficiaries do not exercise their rights to identify an alternative solution tailored to their specific needs or to request a new solicitation targeted to only their needs consistent with Tariff § III.E.6.b as described in Part VI.b *infra*. However, the project would still need to satisfy the other tariff requirements, including the Regional Cost Allocation Criteria, and would need to be selected in the regional plan as the more cost effective or efficient solution to the identified regional need(s).

approval by the "Final Opt-In Date."[68] If governing body/board approval is received by the Final Opt-In Date, the commitment to regional cost allocation evidenced in the MOU is no longer conditional. It is binding on the CTO to the same extent as ETOs are bound.

If all the CTO beneficiaries that submitted an MOU for a project receive governing body/board approval by the Final Opt-In Date, that project moves to final consideration by the PMC in approving the regional plan. It may be the case that there are multiple projects that the CTOs have opted into that are potential solutions to the regional need. In approving the regional plan, the PMC must still determine which project is the more efficient or cost effective solution to the identified regional need and find that any project proposed for regional cost allocation satisfies the Regional Cost Allocation Criteria. Thus, even if a regional project receives binding commitments to regional cost allocation from all CTOs, that does not guarantee it will be selected in the regional plan for purposes of cost allocation. A given project may not, for example, be the more efficient or cost effective solution to an identified regional transmission need.

b. The Process When a CTO Beneficiary Does Not Receive Governing Body Approval to Participate in Regional Cost Allocation

If, however, a project with CTO beneficiaries does not timely receive governing body/board approval from all CTO beneficiaries by the Final Opt-In Date, then the remaining project beneficiaries (which may be a combination of ETO and CTO beneficiaries) have several options to identify projects that meet the smaller set of regional needs (the regional needs of the remaining beneficiaries), all of which are project-specific[69]:

1. Unanimously agree to proceed with the project.
2. Select an alternative project to solve the needs of the remaining beneficiaries from the original comprehensive list of solutions.
3. Select an alternative project to solve the needs of the remaining beneficiaries through a targeted solicitation.
4. Identify an alternative project to solve the specific needs of the remaining beneficiaries in some other manner.

If none of the above options are utilized, the PMC determines if another project would be the more cost-effective or efficient solution to their needs.

Each of these options is addressed below. A key feature of each option is that in a situation in which a CTO beneficiary does not finally opt-in to a project, that specific project is not eligible for selection by the PMC in the regional plan for purposes of cost allocation unless all other

[68] "Final Opt-in Date" is a defined term under the proposed tariff revisions and is defined as "Deadline for CTOs with MOUs to report governing body/board approval to become a CBE." *Id.* § III. The proposed tariff also describes the maximum window for this period to receive governing body/board approval. "The WestConnect Regional Transmission Planning Process allows for a maximum six-month window for CTOs with MOUs to receive governing body/board approval, with the six-month clock beginning to run at that point in the two-year planning cycle when project costs, benefits and beneficiaries are identified, and an illustrative allocation of project costs among identified beneficiaries is complete." *Id.* § III.E.6.a.iii.

[69] The same four options are available under the tariff in the situation in which a CTO beneficiary does not submit an MOU and does not otherwise bind itself to cost allocation.

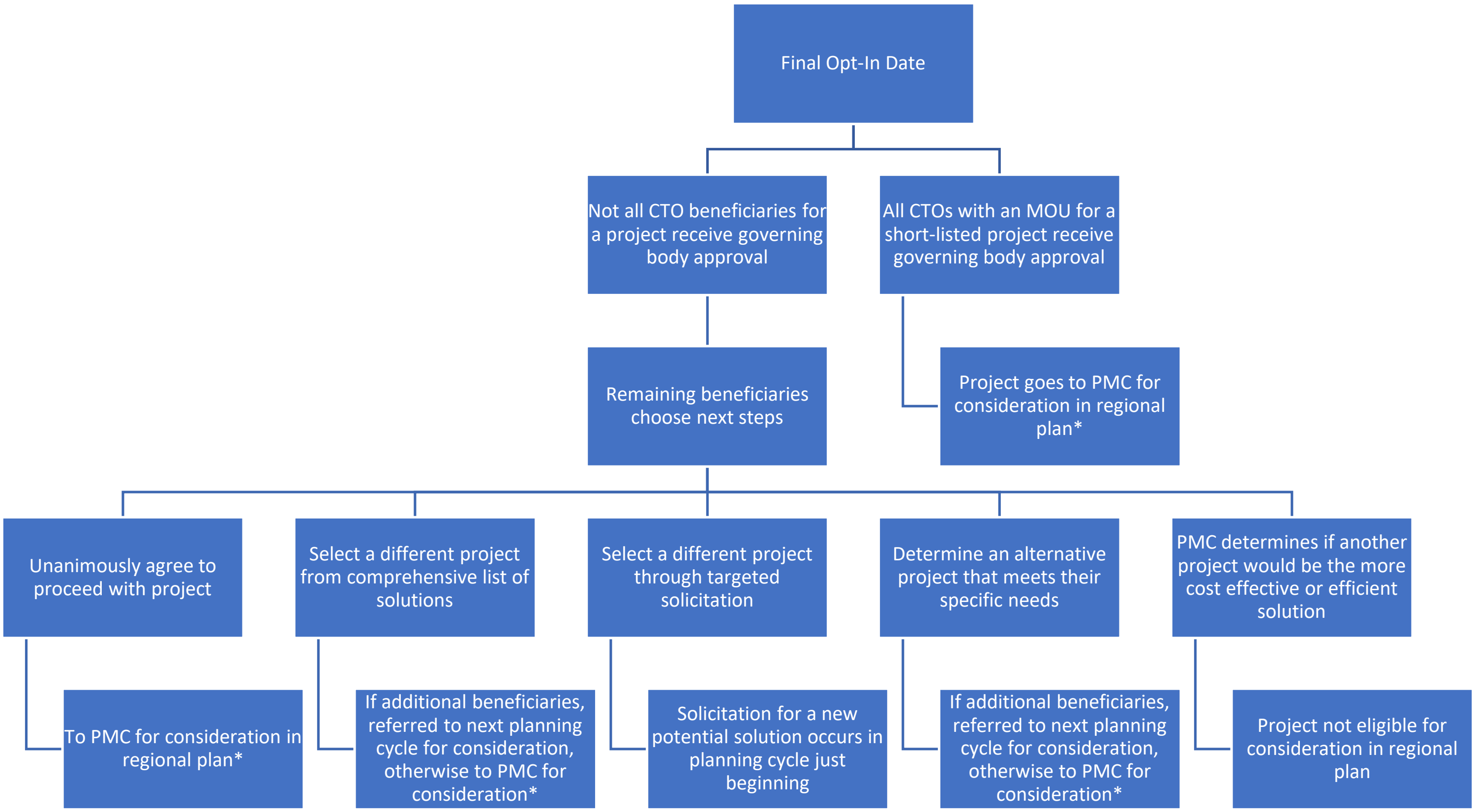
beneficiaries are willing to proceed with the project.[70] However, because transmission needs were identified, regional transmission planning for those needs (the needs of the remaining beneficiaries and not the needs of the CTO that did not opt-in) moves forward under a variety of potential scenarios.[71]

Any project resulting from the various options described below must still satisfy the Regional Cost Allocation Criteria before being selected by the PMC for inclusion in the regional plan for purposes of regional cost allocation. In addition, every project selected in the regional plan for purposes of cost allocation will be subject to the existing tariff process requirements, including those governing selection of a transmission developer.

The following chart illustrates the options available to the remaining beneficiaries in any situation in which a CTO beneficiary that submitted an MOU does not become cost bound to a project:

[70] Assuming the project is the more cost effective or efficient solution to the identified regional need, and it satisfies the tariff criteria for selection in the regional plan for purposes of cost allocation.

[71] The remaining beneficiaries will have to agree on which option, of the available options, to pursue in such circumstances.



*Subject to satisfying the Regional Cost Allocation Criteria and being found to be the more cost effective or efficient solution.

Unanimously agree to proceed with the project

If the remaining beneficiaries of the project unanimously agree, they can inform the PMC that they wish to proceed with the project despite the fact that at least one CTO beneficiary will not financially support the project.[72] If this occurs, the project moves to PMC for consideration as part of the approval of the regional plan. As with any project, this does not guarantee that the project will be selected in the regional plan for purposes of cost allocation. The PMC must still find that the project is the more cost effective or efficient solution to the identified regional needs and that it satisfies the Regional Cost Allocation Criteria.[73]

Select an alternative project to solve the needs of the remaining beneficiaries from the original comprehensive list of solutions.

The remaining beneficiaries can return to the comprehensive list of solutions identified earlier in the planning process and choose an alternative project from that comprehensive list of solutions that more specifically addresses their needs.[74] If this occurs, the PMC must then determine if there are additional beneficiaries of the alternative project.[75] If there are no additional beneficiaries, the project is forwarded for consideration by the PMC in the approval of the regional plan.[76] If there are additional beneficiaries, the alternative project could be submitted as a proposed solution to the applicable regional transmission need(s) in the next planning cycle.[77] This will allow the project's eligibility for regional cost allocation to be evaluated under the Regional Cost Allocation Criteria in light of the additional beneficiaries.

Select an alternative project to solve the needs of the remaining beneficiaries through a targeted solicitation.

The remaining beneficiaries can instead ask the PMC to conduct a targeted project solicitation seeking solutions to address the needs of only the specific remaining beneficiaries.[78] This solicitation would occur in the new planning cycle that is just beginning, and any proposed projects would be subject to the same regional planning process steps (compilation of a

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[72] Tariff § III.E.6.b.i ("The remaining beneficiaries are not prohibited from pursuing the solution for which the CTO did not become a CBE, but only if all remaining beneficiaries, including CTO beneficiaries that have signed an MOU and become CBEs or that otherwise became CBEs, agree to do so.").

[73] *Id.* § VII.B.

[74] *Id.* § III.E.6.b.i ("the remaining beneficiaries may choose to identify an alternative solution, including, but not limited to, consideration of other project submittals made during the planning cycle.").

[75] *Id.* § III.E.6.b.iii & iv.

[76] *Id.* § III.E.6.b.iv. The PMC must still find that the project satisfies the Regional Cost Allocation Criteria for regional cost allocation and that the project is the more cost effective or efficient solution to the identified regional needs.

[77] *Id.* § III.E.6.b.iii.

[78] *Id.* § III.E.6.b.i ("[T]he remaining beneficiaries may choose to identify an alternative solution, including, but not limited to . . . solicitation of new project submittals in the next planning cycle.").

comprehensive list of solutions, short-listing, opt-ins through MOU submissions or otherwise, etc., and testing against the Regional Cost Allocation Criteria).

Identify an alternative project to solve the specific needs of the remaining beneficiaries in some other manner.

The remaining beneficiaries are not limited to previously-proposed projects or to a new solicitation. If they so choose, they can propose a new project not previously identified in that planning cycle and which may be more tailored to their needs (i.e., that does not consider the needs of the CTO(s) that did not opt-in).[79] If this occurs, the PMC must then determine if there are additional beneficiaries of the alternative project.[80] If there are no additional beneficiaries, the project is considered by the PMC in the approval of the regional plan, subject to satisfying the Regional Cost Allocation Criteria and being found the more cost-effective or efficient solution.[81] If there are additional beneficiaries, the alternative project could be submitted as a proposed solution to the applicable regional transmission needs in the next planning cycle.[82]

PMC determines if another project would be the more cost-effective or efficient solution.

In the event that the remaining beneficiaries do not pursue one of the four paths described above, the project that failed to secure CTO beneficiary governing body/board approval cannot be selected by the PMC as the more cost-effective or efficient solution to the identified regional needs in the current planning cycle when approving the regional plan. However, that does not mean the identified transmission needs will go unresolved. Only the specific project that did not receive CTO governing body/board approval will not go forward. If this were to occur, the PMC, in developing the regional plan, would look back to other solutions presented in the planning cycle in considering whether there is a solution (or a combination of solutions) that would meet the Regional Cost Allocation Criteria[83] and could be selected as the more cost-effective or efficient solution to the identified regional transmission needs.

c. The Remaining Process Remains Essentially Unchanged

The PMC must still develop and approve the Regional Transmission Plan by considering the identified regional transmission needs, the list of potential solutions, the results of analyses, and recommendations from sub-groups to identify the more cost-effective or efficient project or projects to meet the regional need(s). In this process, the PMC considers (1) projects seeking regional cost allocation, (2) projects that do not seek regional cost allocation (i.e., that are participant-funded), and (3) non-transmission alternatives. In selecting any projects in the regional

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[79] *Id.* § III.E.6.b.i ("[T]he remaining beneficiaries may . . . develop their own solution (s) to the identified regional need. The remaining beneficiaries are not limited to the list of solutions identified from the previous project solicitation.").

[80] *Id.* §§ III.E.6.b.iii & iv.

[81] *Id.* § III.E.6.b.iv.

[82] *Id.* § III.E.6.b.iii.

[83] As discussed in more detail below, this includes the requirement that the percentage of project benefits identified as going to ETO beneficiaries and cost-bound CTO beneficiaries represents 90% or greater of the total project benefits.

plan for purposes of cost allocation, the PMC must apply the Regional Cost Allocation Criteria provided in the tariff and conclude that any such projects are the more cost-effective or efficient solution to the identified regional transmission need(s). At no point in the process is it guaranteed that any particular project will be selected in the regional plan for purposes of cost allocation. Even if a project only has ETO beneficiaries or has ETO and CTO beneficiaries with all the CTO beneficiaries having agreed to be cost-bound, the PMC must still determine whether that project represents a more cost-effective or efficient solution to an identified regional transmission need, whether it satisfies the Regional Cost Allocation Criteria, and whether it is eligible for regional cost allocation. Further, the PMC must still vote on the regional plan itself, and the regional plan will identify any project selected for purposes of cost allocation.

As before, if a project is selected for inclusion in the regional plan for purposes of regional cost allocation, the PMC must then select the project developer using the established process. In the WestConnect process, unlike other regional planning processes, the one who presents a project proposal is not necessarily the one who develops the project. Project submittal and project development are separate processes under the tariff and remain so under the Settlement Agreement. If state law mandates the selection of a particular entity as the developer, that entity is selected.[84] Otherwise, the PMC conducts a solicitation for a project developer.[85]

Under any scenario, the regional plan and projects selected in the regional plan for purposes of cost allocation are subject to re-evaluation in subsequent planning cycles.[86] The tariff's re-evaluation provisions are unchanged by the settlement.

VII. New Regional Cost Allocation Criteria for Transmission Projects That Are Eligible for Selection in the Regional Plan for Purposes of Cost Allocation Address Cost Causation Concerns While Complying with Order No. 1000

The settlement tariff includes additional Regional Cost Allocation Criteria, which are minimum threshold requirements for the selection of regional transmission projects that are consistent with FERC guidance in Order No. 1000 and subsequent orders differentiating between local and regional needs.[87] These additions to the tariff criteria previously accepted by the Commission are integral to the settlement as they go further to avoid the need for the WestConnect Public Utilities to expend resources on the consideration of transmission projects that are unlikely to provide regional transmission benefits and better focus the region's resources on projects that

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[84] Tariff § VII.B.9.

[85] *Id.* § VII.B.9.

[86] *Id.* § III.E.7.

[87] *See e.g.*, *Louisville Gas and Elec. Co. et al.*, 144 FERC ¶ 61,054, at P 76 (2013) (under Order No. 1000, "[m]inimum threshold requirements for determining whether a proposed transmission facility is eligible to be selected in the regional transmission plan for purposes of cost allocation may be a reasonable way to identify transmission facilities that likely have regional benefits."); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 63 (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 ¶ 51,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (transmission facilities selected in a regional transmission plan for purposes of cost allocation are more efficient or cost-effective solutions to regional transmission needs).

are more likely to provide regional benefits.[88] The WestConnect Public Utilities believe these additions to the Regional Cost Allocation Criteria also may make it more likely that WestConnect Non-Public Utilities will agree to financially support a proposed project because the Regional Cost Allocation Criteria provide a greater likelihood that project benefits will be commensurate with the project costs allocated.

Many of the Regional Cost Allocation Criteria remain unchanged from the existing tariff language previously accepted by the Commission. However, the Settlement Agreement provides additional criteria that must be met for projects to be selected in the regional plan for purposes of cost allocation. The WestConnect Public Utilities believe these criteria serve the same overall purpose of the settlement: to make regional cost allocation commensurate with benefits in a way that encourages and enables participation by the WestConnect Non-Public Utilities. The modified Regional Cost Allocation Criteria are all consistent with the Commission's prior orders on regional implementations of Order No. 1000.

These new Regional Cost Allocation Criteria proposed in Section VII.B of the settlement tariff include:

- ***Transmission Line Voltage and Mileage Thresholds:*** The settlement tariff requires project transmission lines to be 200 kV or greater and a minimum of 50 miles in length. The Commission has approved minimum voltage- and mileage-based criteria in other regions as an acceptable way to identify transmission projects that are eligible for selection in a regional transmission plan for purposes of cost allocation. For example, in the Florida region (a region much smaller than the WestConnect region), the Commission approved minimum criteria that require a transmission project to be at least 230 kV and 15 miles or longer.[89] The Commission found that the 230 kV minimum threshold was reasonable because "transmission facilities that operate at or above 230 kV are used to transfer power over greater distances and integrate loads and resources within the FRCC region, providing transmission with lower impedances and higher loadings than lower voltage facilities."[90] The Commission approved the Florida region's 15-mile threshold on the grounds that it reflected projects that benefited more areas of the transmission system, while excluding the smallest transmission projects, which are less likely to provide regional transmission benefits.[91] Similarly, in SERTP, the Commission approved a 300 kV minimum voltage threshold and a 50-mile minimum mileage threshold on the basis that those criteria were likely to identify projects that provide regional benefits.[92] The distance between load centers in the WestConnect region support the 50-mile threshold. For instance, the distance between Denver and Albuquerque is over 400 miles, Phoenix and Los

[88] *Tampa Elec. Co. et al.*, 148 FERC ¶ 61,172 at P 139 (2014).

[89] *Tampa Elec. Co.*, 148 FERC ¶ 61,172 at PP 138-39 (2014).

[90] *Id.* at P 138.

[91] *Id.* at P 139.

[92] *See Duke Energy Carolinas, LLC et al.*, 147 FERC ¶ 61,241 at P 104 (2014) ("[T]ransmission projects that operate at or above 300 kV make up the 'backbone' of the transmission facilities that convey bulk transfers throughout the SERTP region, integrating generation to large load centers, as compared to 230 kV facilities increasingly used by SERTP facilities to serve load"); *Duke Energy Carolinas, LLC et al.*, 151 FERC ¶ 61,021 at P 144 (2015) (approving 50-mile minimum threshold).

Angeles are just under 400 miles apart and even the distance between Phoenix and Tucson is more than 100 miles.

- ***Project Transformer Thresholds*:** The Regional Cost Allocation Criteria include a new minimum threshold for project transformers of 200 kV or greater on the low side and a requirement that all other project transmission equipment must functionally support or operate at an operating voltage of 200 kV or greater. The basis for these criteria is substantially the same as the transmission line voltage criteria discussed above – the 200 kV minimum reflects those transmission projects that are more likely to provide regional transmission benefits and excludes those that are more local in nature.

- ***Physically interconnected to the transmission systems of two or more ETOs in more than one BAA.*** This requirement, like the criteria noted above, is designed to recognize unique aspects of the WestConnect region. Similar to the voltage and length criteria above, this criterion makes it more likely that projects that are local in nature are not proposed for regional cost allocation. Across the WestConnect Region there are multiple examples where a single BAA contains transmission facilities of more than one ETO, and where a transmission installation electrically connecting more than one ETO within that single BAA would be solving a local issue. For example, the PSCo BAA contains Platte River Power Authority, Black Hills Colorado, Tri-State, and Colorado Springs Utilities[93], of which Tri-State and Black Hills Colorado are ETOs. Similarly, the PNM BAA contains Tri-State facilities. There are numerous local projects that touch more than one transmission owner in these BAAs. For example, adding interconnections for load serving or increased local reliability is common. There are existing local planning efforts within each of those BAAs, and excluding from regional cost allocation eligibility projects that are entirely contained within a single BAA better enables the WestConnect regional planning process to identify regional projects that may have regional benefits, thereby making the process *more likely to secure regional participation.*

- ***Minimum Number of Beneficiaries:*** The settlement tariff criteria require that a minimum of two ETOs must benefit from a project before that project is eligible for regional cost allocation. The Commission has approved such a threshold in the South Carolina region, finding that it is acceptable to require that a proposed transmission project "must be beneficial to 'more than one' transmission provider" to be eligible for regional cost allocation.[94] It is necessary and appropriate for regional cost allocation under Order No. 1000 to apply only in situations in which there is a regional transmission need shared by more than one public utility transmission provider in the region. Order No. 1000 only applies to public utility transmission providers. Therefore, in situations in which there is only a single public utility transmission provider with a transmission need, that need proceeds through the local transmission planning procedures.

- ***Minimum Percentage of Total Project Benefits:*** The percentage of ETO beneficiaries, CTOs who have agreed to become cost-bound, and CTOs with MOUs must represent 90% or more

[93] Colorado Springs Utilities will be moving into the BAA of a different WestConnect member later this year.

[94] *S. Carolina Gas & Elec. Co.*, 150 FERC ¶ 61,036 at P 41 (2015); *Avista Corp.*, 148 FERC ¶ 61,212 at PP 199-200 (2014) (approving compliance filing where regional cost allocation is applied if "more than one Enrolled Party requests regional cost allocation for a transmission project").

of the total project benefits.[95] This means that the choice of a CTO not to become cost-bound minimizes the potential for cost-shifting to the CBEs by limiting potential unallocated benefits to just under 10%. This threshold is part of the settled resolution's overall structure intended to address the WestConnect Public Utilities' desire to minimize what they have regarded as the potential for free ridership, to recognize the cost causation principle that underlies just and reasonable ratemaking under Section 205 of the Federal Power Act, and to limit the potential for harm (in the form of cross-subsidization) to the ratepayers of the enrolled public utility members of WestConnect. This threshold, in the WestConnect Public Utilities' view, is also central to the Settlement Agreement as it addresses the core issues of cost causation and free-ridership that led to the Fifth Circuit's earlier decision vacating the tariff provisions under which non-public utilities participate in WestConnect regional planning under the Commission's original Order No. 1000 compliance orders, orders that were remanded to the Commission and are now back before the Fifth Circuit.

- ***Benefit Validation:*** This criterion requires a super-majority (80%) of the ETO beneficiaries and CTO beneficiaries that signed MOUs or otherwise agreed to become cost-bound to vote in favor of the project and agree that they will benefit.[96] The Commission has previously approved similar voting parameters in the NYISO region, noting that an 80% beneficiary vote "provides a useful check to ensure that a transmission project has net benefits, by requiring that most of those whom NYISO expects to benefit from a project agree that they will actually benefit."[97] A super majority (80% or more) of identified beneficiaries comprised of ETO beneficiaries and CTO beneficiaries that have signed MOUs or have become CBEs (or after the Final Opt-in Date, 80% or more of CBEs) vote in favor of the solution proposed for regional cost allocation and agree that they actually will benefit. This threshold is an important feature of the settled solution for the WestConnect region, given its open and broad-based membership and governance structure. In the WestConnect region, anyone can become a member of the region, with rights to vote. The votes are not mere advisory votes. Public utilities comprise a minority portion of the total membership of the WestConnect region. Most WestConnect members are not enrolled in the region, do not own or operate transmission under a FERC-jurisdictional OATT, and do not conduct their day-to-day business under the just and reasonable ratemaking parameters of Section 205 of the Federal Power Act.

These new Regional Cost Allocation Criteria were developed as part of the settlement to strike a balance between "excluding clearly local transmission projects that are unlikely to provide regional benefits from being submitted for evaluation in the regional transmission planning process with the need to evaluate . . . those transmission facilities that are likely to provide regional transmission benefits."[98] As the Commission has acknowledged, this balance is "not an exact

[95] Tariff § VII.B (after the Final Opt-in Date, CBEs must represent 90% or more of total project benefits).

[96] *Id.* (after the Final Opt-in Date, 80% or more of CBEs).

[97] *See N.Y. Indep. Sys. Operator*, 143 FERC ¶ 61,059 at PP 245-246 (2013) ("Since this is the group of parties that will bear the costs of the project if it goes forward, this group has a particularly strong incentive to ensure that NYISO's estimate of benefits is accurate") (quoting *N.Y. Indep. Sys. Operator*, 125 FERC 61,068 at P130 (2008)).

[98] *Tampa Elec. Co*., 143 FERC ¶ 61,254, at P 67 (2013).

science."[99] However, the new Regional Cost Allocation Criteria are intended to refine the process for evaluating projects submitted for regional cost allocation by better identifying those projects that could provide regional transmission benefits and by better aligning cost allocations to individual beneficiaries commensurate with benefits.

VIII. *Mobile-Sierra* Protections for the Settlement Agreement

The Settlement Agreement contains a *Mobile-Sierra* provision to provide the highest available legal certainty that the arms-length agreement of the parties will be maintained. The use of a *Mobile-Sierra* provision in Commission settlements is not unusual, and the Commission has accepted numerous similar provisions in other recent settlements. For example, consistent with other Commission-approved settlements, the Settlement Agreement provides that the standard of review for any modifications to the settlement requested by a non-signatory or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law.[100]

However, given the complexity of regional transmission planning and in recognition of the Commission's ongoing rulemaking proceeding that may touch on these issues, the WestConnect Public Utilities note that the proposed *Mobile-Sierra* provision does not limit the Commission's ability to implement rulemakings or regulations that would affect the industry generally, and therefore may affect the WestConnect Public Utilities' tariffs. As explained in the Settlement Agreement, this use of a *Mobile-Sierra* provision specifically carves out any Commission rulemaking actions on an industry-wide basis: "This Settlement does not bar or restrict the Commission when issuing under Section 206 of the Federal Power Act new or modified rules of general industry-wide applicability, and it does not bar or restrict anyone from taking any position in response to any Commission-issued modified rules of general industry-wide applicability."

Thus, for example, if the Commission's current rulemaking proceeding in Docket No. RM21-17-000 results in industry-wide changes that are inconsistent with this Settlement Agreement, the WestConnect Public Utilities could not use the Settlement Agreement to avoid making such changes. In this manner, the use of a *Mobile-Sierra* provision in the settlement protects the hard-earned bargain of the parties while avoiding tying the Commission's hands for future policy developments.

Finally, under Article VI.F, the Settlement Agreement recognizes that WestConnect Public Utilities retain their rights under Section 205 of the Federal Power Act to file to revise or replace any contents of their respective OATTs, and that WestConnect Non-Public Utilities may take any position on any such Section 205 filings. As stated in that provision, "The settlement does not restrict or impair any public utility from exercising its rights under Section 205 of the Federal Power Act. The public utilities in the WestConnect region retain their rights under Section 205 of the Federal Power Act to file to revise or replace any contents of their respective Open Access

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[99] *See, e.g.*, *Duke Energy Carolinas et al.*, 151 FERC ¶ 61,021 at P 45 (2015) (quoting *Tampa Elec. Co.*, 143 FERC 61,254 at P 67 (2013)).

[100] *See, e.g.*, *PJM Interconnection, L.L.C.*, 177 FERC ¶ 61,082 (2021); *Sw. Power Pool, Inc.*, 175 FERC ¶ 61,155 (2021); *EF Oxnard LLC*, 174 FERC ¶ 61,076 (2021); *Sw. Power Pool, Inc.*, 173 FERC ¶ 61,274, pp. 62, 784–85 (2020); *ISO New England Inc. et al.*, 173 FERC ¶ 61,270, pp. 62, 777–78 (2020).

Transmission Tariffs, and to file to revise, replace or cancel all or part of the Planning Participation Agreement. The non-public utility sponsors of the settlement and others retain their rights to take any position on any such Section 205 filing."

IX. Summary of All Proposed Tariff Changes

The proposed tariff changes facilitate WestConnect Non-Public Utilities' participation in an Order No. 1000 process, which is the primary issue on appeal. While some proposed changes may not give the appearance, at first blush, of being related to the specific parameters of whether and how CTOs can or will become bound to regional cost allocations and cost causation protections for the ratepayers of ETOs, all proposed changes are interrelated and together created the resolution, years in the making, that was necessary for the Settling Parties to reach this settlement. For example, certain changes provide additional criteria or transparency for identifying reliability and economic needs as well as specific criteria that projects must meet to be eligible to be selected in the regional plan for purposes of cost allocation.[101] These criteria facilitated settlement by making it more likely, in the WestConnect Public Utilities' view, that the projects identified and selected for purposes of cost allocation are indeed "regional" projects, not limited projects that would have only localized benefits, thereby making it more likely for regional projects to secure regional participation.[102]

The table attached to this transmittal letter addresses the tariff changes required under the Settlement Agreement and explains their relevance and importance to the overall settled resolution.

X. Responses to Required Questions

By order dated December 15, 2016, the Chief Administrative Law Judge requires all parties submitting Offers of Settlement under Rule 602 to address four questions in their Explanatory Statement. This Settlement Agreement is submitted pursuant to Rule 207(a)(5) and is therefore not subject to the order of the Chief Administrative Law Judge. However, in the interest of consistency with other settlements considered by the Commission, the WestConnect Public Utilities provide the following responses applicable to this proposed Settlement Agreement:

A. Does the Settlement affect other pending cases?

No. The Settlement Agreement affects only the appeal before the Fifth Circuit, and the Commission's underlying Order No. 1000 compliance orders issued in the dockets of the WestConnect Public Utilities. The dockets and the Commission's orders in those dockets are identified in the Offer of Settlement. The orders were previously vacated by the Fifth Circuit and remanded to the Commission, and the Commission issued orders on remand. The matter is back before the Fifth Circuit at this time.

B. Does the Settlement involve issues of first impression?

No.

[101] *See, e.g.*, *Tariff* § III.E.2.

[102] *See, e.g.*, *id.* §§ III.E.2 (requiring relevant projects to be "deemed by such transmission owners and the Planning Subcommittee to be of regional significant."), III.E.3 (describing how to identify an economic-driven regional need).

C. Does the Settlement depart from Commission precedent?

No. As explained herein, the tariff changes proposed in the Settlement Agreement are consistent with Commission precedent.

D. Does the Settlement seek to impose a standard of review other than the ordinary just and reasonable standard with respect to any changes to the Settlement that might be sought by either a third party or the Commission acting sua sponte?

Yes. See Part VIII.

XI. Conclusion

For the foregoing reasons, the WestConnect Public Utilities respectfully request that the Commission accept the attached Settlement Agreement. The Settlement Agreement states the terms and conditions by which the Settling Parties have agreed, following extensive settlement negotiations that began in late-2018, to resolve issues related to regional cost allocation under Order No. 1000 and the participation of non-jurisdictional utilities in the WestConnect regional planning process. These issues have been disputed since their origin in 2013, when the Commission issued its first of many orders addressing Order No. 1000 compliance in the WestConnect region. Accordingly, the WestConnect Public Utilities respectfully request that the Commission grant this petition and accept or approve the Settlement Agreement as proposed, without condition or modification. The Settlement Agreement provides for complete resolution of the Fifth Circuit appeal in a manner that all public utility and non-public utility parties to the appeal support.

Respectfully submitted,

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Attachment to Transmittal Letter:
Tariff Table

Tariff Table with Explanatory Notes

Section #	Explanatory Notes
III	New text added to define commonly-used terms.
III.A.1	Sentence added to make clear that the tariff controls over the PPA. The Commission made this finding early in the original Order No. 1000 implementation process.
III.A.2	Introduction of the new MOU process by which a non-public utility may participate in the regional planning process.
III.A.2.c	Administerial: To reflect membership updates.
III.A.5.b	New text to make clear that the governance body created for Order No. 1000 implementation (the PMC) does not govern transmission project development that is not subject to Order No. 1000. Members of the region, or non-members, may pursue transmission investment not subject to Order No. 1000 cost allocation. Other administerial inserts are to offer clarity. Note the clarifying text on the PMC chair being a member of the TOLSO membership sector. The TOLSO sector is the only sector comprised of entities registered as Transmission Planners and/or Planning Coordinators, and the only sector with entities subject to Order No. 1000.
III.C.4	Administerial: Data submission is handled in III.C.5. Text removed from this location as unnecessary, and potentially confusing. The data submission requirements in III.C.5 apply to any transmission project submittal made to address an identified regional need, including those submittals made by a TOLSO member.
III.E.1	Administerial, in part: (a) the term, “resources” is removed, and in its place is the term, “solutions and/or projects” and (b) references to study methods are shown by section numbers in this location. Note the substantive text added: (a) to reflect the settlement criterion that there must be more than one ETO in more than one BAA to form a regional transmission need, and (b) to identify how voting is to be handled within the TOLSO sector *before* versus *after* the PMC identifies a comprehensive list of solutions to an identified regional transmission need. Rationale on requiring more than one ETO in more than one BAA: The WestConnect region has several member(s) who have facilities within the BAAs of others. The “more than one ETO in more than one BAA” requirement is to remove the potential that the existence of such electrical connections within a single BAA will force a conclusion that a “regional” need for transmission exists. The settlement tariff’s reliance on the principle of “more than one ETO in more than one BAA” is due to the unique configuration of

	transmission assets within the WestConnect region. Across the WestConnect region, there are multiple examples where a single BAA contains transmission facilities of more than one ETO, and where a transmission installation electrically connecting more than one ETO within that single BAA would be solving a local issue. For example, the PSCo BAA contains facilities of four other utilities, including two third-party ETOs. Similarly, the PNM BAA contains the facilities of a third-party ETO who also has transmission facilities in the PSCo BAA. Numerous local projects touch more than one transmission owner in these BAAs, and local planning efforts within each of the BAAs should be the means by which such local issues are addressed. Excluding from regional cost allocation eligibility those projects that are entirely contained within a single BAA better enables the WestConnect regional planning process to identify regional projects that have regional benefits, and thereby more likely to attract CTO support for regional cost allocation. Rationale on voting mechanics: The voting mechanics in the settlement tariff are part of the settlement's features that protect ratepayers of the Public Utilities in response to the Fifth Circuit opinion. In the WestConnect region, unlike other regions, anyone can become a member of the region, with rights to vote. The votes are not mere advisory votes. The majority of the members of the WestConnect region are not subject to binding cost allocation under Order No. 1000. Public Utilities comprise a minority portion of the total membership of the WestConnect region. Most WestConnect members are not enrolled in the region, do not own or operate transmission under a FERC-jurisdictional OATT, and do not conduct their day-to-day business under the just and reasonable ratemaking parameters of Section 205 of the Federal Power Act. In vacating the Commission's Order No. 1000 implementation orders in the WestConnect region, the Fifth Circuit expressed concern over the potential for harm to the ratepayers of the Public Utilities in the region. An alternative to the settlement resolution considered by the Public Utilities would have been for the Public Utilities to comply with Order No. 1000 through a structure in which only those entities willing to enroll in the region would receive the region's planning services, and in which Order No. 1000 implementation in the region would be performed by the region's enrolled entities. Such a structure may have been able to address the issues that prompted the Fifth Circuit to vacate the Commission's original Order No. 1000 implementation orders. The settled resolution is not such a structure. It retains the open structure of WestConnect's broad membership; it maintains a governance role for each membership sector; and it continues to allow for non-Public Utilities to be planned for without enrolling. The Public Utilities believe that maintaining these features requires the addition of Public Utility ratepayer protections to address the Fifth Circuit opinion. The non-public utility signatories to the settlement are agreeable to providing these additional protections.

III.E.2	Settlement criteria addressed here: (a) the criterion that there must be more than one ETO in more than one BAA to form a regional transmission need, and (b) the criterion that, for thermal overloads, they must involve 200 kV or above transmission. The references to contingency analysis and transient stability analysis are for added transparency.
III.E.3	Administerial, in part, because there no longer are WECC board-approved recommendations to alleviate congestion, under WECC's evolution over the last several years, and substantive, in part, to give direction to the PMC on what is expected of them when they use production cost modeling (with all of its limitations and challenges) in the identification of regional economic-driven transmission needs, and to identify the timing of the PMC's production cost modeling work under the settlement structure that now provides for MOU submittals and a Final Opt-In Date (FOD). The last sentence of this section contains new content to make clear that even in situations in which a transmission project that is not eligible to move forward under Order No. 1000, there remains an opportunity for regional collaboration in pursuit of transmission infrastructure development. This is consistent with the Commission's approval of participant funding as a means to facilitate transmission infrastructure development. See Order No. 1000-A at P 724 ("the evaluation of the potential benefits and beneficiaries of a proposed transmission facility may facilitate negotiations among such entities, potentially leading to greater use of participant funding for transmission projects not selected in the regional transmission plan for purposes of cost allocation").
III.E.4(a)	Substantive additions to reflect that Public Policy Requirements (PPRs) identification first takes place at the local level. Here, the tariff acknowledges PPRs of "more than one TOLSO in more than one BAA" driving "200 kV or greater" transmission identified at the local level may also satisfy a regional transmission need at the regional level. Later in this section, a new sentence is added to make clear that if an identified need is not between more than one ETO in more than one BAA, there remains an opportunity for regional collaboration in this manner in pursuit of transmission infrastructure development by those entities interested in pursuing the investment.
III.E.6	This section contains substantial revision to address how a non-public utility that does not enroll in the region may become cost-bound to a transmission project. The term, Cost-Bound Entity (CBE), is used to describe non-public utilities that bind themselves to cost allocation (either using the MOU form or by binding themselves without an MOU). CBE is also used to describe entities enrolled in the region. Non-enrolled CTO members are planned for by the region without being made to enroll in the region (true under the old tariff and still true under the settlement tariff). In addition, the transmission needs of non-enrolled CTOs are identified by the region (again, true under the old tariff and still true under the settlement tariff). These features make the WestConnect regional planning process very different from other planning regions. However, many revisions to the old tariff reflected in this portion of the settlement tariff were included to address the Public Utilities' belief that

	such revisions are required to make the tariff responsive to the Fifth Circuit opinion, especially with respect to the potential for free ridership. For example: • Order No. 1000 cost allocation will not apply in any situation in which the region identifies only non-public utility needs. The same is true in situations in which only one enrolled member (one ETO) has a transmission need. There must be more than one ETO in more than one BAA for the region to launch a solicitation for project solutions under the Order No. 1000 regional transmission planning process. • After there is a list of project solutions resulting from the solicitation, a clock runs to establish a deadline by which a CTO may opt-in to Order No. 1000 cost allocation by making a submittal (through an MOU or otherwise). • Those CTOs that use the new form of MOU to opt in to Order No. 1000 cost allocation bind themselves to cost allocation for an identified project/projects subject only to receipt of approval by their governing bodies/boards. In other respects, those CTOs are bound to the same extent as ETOs. • A Final Opt-In Date (FOD) marks the deadline for CTO governing body/board approvals. • There is a potential that not all CTO beneficiaries of a project bind themselves to that project, even though the project was solicited for, and designed, to satisfy CTO needs. If this occurs, the settlement tariff provides for options to the other project beneficiaries, options that did not exist under the old tariff. These options are an important component of how the settlement tariff addresses the Public Utilities' free ridership concerns. The other project beneficiaries may desire to return to other project submittals made during the solicitation, or propose an alternative solution.
III.E.7	Administerial to better reflect in this section that Non-Transmission Alternatives (NTAs) may be identified as a more efficient or cost-effective solution to an identified regional transmission need.
VII.B	The opening paragraphs of this section contain new text providing specificity to the PMC on the types of transmissions projects that are to be considered eligible for regional cost allocation. The Public Utilities believe that the new contents are responsive to the Fifth Circuit opinion on the potential for jurisdictional ratepayer harm under the old tariff. See the transmittal letter at section VII for further discussion of these items. For example: • Minimum mileage and voltage levels are identified in this section of the settlement tariff to focus eligibility for Order No. 1000 cost allocation on transmission projects that show “regional” indicia in a way that can be applied without inviting unnecessary subjectivity and advocacy when the region determines eligibility for binding cost allocation under Order No. 1000. The settlement tariff requires project transmission lines to be 200 kV or greater and a minimum of 50 miles in length. The Commission has approved minimum voltage- and mileage-based criteria in other regions as an acceptable way to identify transmission projects that are eligible for selection in a regional transmission plan for purposes of cost allocation. [For example, in the Florida region, the Commission approved minimum criteria that require a transmission project to be at least

	230 kV and 15 miles or longer. The Commission found that the 230 kV minimum threshold was reasonable because "transmission facilities that operate at or above 230 kV are used to transfer power over greater distances and integrate loads and resources within the FRCC region, providing transmission with lower impedances and higher loadings than lower voltage facilities." The Commission approved the Florida region's 15-mile threshold on the grounds that it reflected projects that benefited more areas of the transmission system, while excluding the smallest transmission projects, which are less likely to provide regional transmission benefits. *Tampa Elec. Co. et al.*, 148 FERC ¶ 61,172 at PP 138-139 (2014). Similarly, in SERTP, the Commission approved a 300 kV minimum voltage threshold and a 50-mile minimum mileage threshold on the basis that those criteria were likely to identify projects that provide regional benefits. *See Duke Energy Carolinas, LLC et al.*, 147 FERC ¶ 61,241 at P 104 (2014) ("[T]ransmission projects that operate at or above 300 kV make up the 'backbone' of the transmission facilities that convey bulk transfers throughout the SERTP region, integrating generation to large load centers , , , ,") and *Duke Energy Carolinas, LLC et al.*, 151 FERC ¶ 61,021 at P 144 (2015) (approving 50-mile minimum threshold)]. The distance between load centers in the WestConnect region support the 50-mile threshold. For instance, the distance between Denver and Albuquerque is over 400 miles, Phoenix and Los Angeles are just under 400 miles apart and even the distance between Phoenix and Tucson is more than 100 miles. • 80% and 90% thresholds are provided for in this section to protect against a situation in which the region's broad membership and governance (a membership comprised mostly of entities not enrolled in the region and not subject to Order No. 1000 binding cost allocation) could act to impose binding cost allocation on a small number of entities who otherwise would have no protection from being made to fund a project that does not benefit them. One threshold requires a minimum of 80% of project beneficiaries agreeing that they actually would benefit from the project. This threshold is consistent with Commission precedent and is an important feature of the settled solution for the WestConnect region, given its open and broad-based membership and governance structure. [*See New York Indep. Sys. Operator*, 143 FERC ¶ 61,059 at PP 245-246 (2013) (finding that the 80% beneficiary vote requirement complies with Order No. 1000 because "the supermajority rule provides a useful check to ensure that a project has net benefits, by requiring that most of those whom NYISO expects to benefit from a project agree that they actually will benefit")]. The other threshold requires a minimum of 90% of project costs allocated to cost-bound entities. This threshold, too, is part of the settled resolution's overall structure intended to address the Public Utilities' desire to minimize what they have regarded as the potential for free ridership, to recognize the cost causation principle that underlies just and reasonable ratemaking under Section 205 of the Federal Power Act, and to limit the potential for harm (in the form of cross-subsidization) to the ratepayers of the enrolled Public Utilities.
VII.B.1	Administerial, to provide a reference to elsewhere within the tariff where reliability needs are addressed.

VII.B.2	Administerial, in part (to provide references to elsewhere within the tariff where economic needs are addressed), and substantive, in part (to make clear that the tariff does not dictate any particular resource selection).
VII.B.4	Administerial.
VII.B.11	To replace the reference to a CTO “accepting” cost allocation, with “opt-in” terminology to better represent the settlement structure.

OFFER OF SETTLEMENT
AND SETTLEMENT TARIFF

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

OFFER OF SETTLEMENT
AND SETTLEMENT AGREEMENT
RESOLVING THE APPEAL BEFORE THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
OF THE COMMISSION'S ORDERS IN THE FOLLOWING PROCEEDINGS

Public Service Company of Colorado	)	Docket Nos.	ER13-75-000 & subdockets ER15-416-000 & subdockets
Tucson Electric Power Company	)		ER13-77-010 & subdockets ER15-433-000 & subdockets
UNS Electric, Inc.	)		ER13-78-000 & subdockets ER15-434-000 & subdockets
Public Service Company of New Mexico	)		ER13-79-000 & subdockets ER15-413-000 & subdockets
Arizona Public Service Company	)		ER13-82-000 & subdockets ER15-411-000 & subdockets
El Paso Electric Company	)		ER13-91-000 & subdockets ER15-426-000 & subdockets
Black Hills Power, Inc.	)		ER13-96-000 & subdockets ER15-431-000 & subdockets
Black Hills Colorado Electric Utility Company, LP	))		ER13-97-000 & subdockets ER15-430-000 & subdockets
NV Energy, Inc.	)		ER13-105-000 & subdockets
Nevada Power Company	)		ER15-423-000 & subdockets ER15-428-000 & subdockets
Sierra Pacific Power Company	)		ER15-424-000 & subdockets
Cheyenne Light, Fuel and Power Company	)		ER13-120-000 & subdockets ER15-432-000 & subdockets

This offer of settlement is presented to the Commission[1] to resolve a longstanding dispute between the public utilities identified in the caption above and the non-public utilities in the WestConnect planning region with respect to the Commission's Order No. 1000 compliance implementation orders in the identified dockets, the first of which was issued in 2013 (the "Compliance Orders").[2] El Paso Electric Company ("EPE"), joined and supported by the other public utilities in the WestConnect planning region, appealed the Commission's orders to the United States Court of Appeals for the Fifth Circuit. On appeal, the WestConnect public utilities challenged the Compliance Orders. Central to the appeal is the issue of cost allocation under Order 1000 and the directives in the Compliance Orders on the interplay between public utilities and non-public utilities in the WestConnect planning region. In 2016, the Court vacated the Commission's findings in this regard and remanded the Compliance Orders back to the Commission, observing that "[a]s they stand, the Compliance Orders do not apply that foundational principle of cost causation for about half of the utilities in the WestConnect region."[3] The Court concluded that the Compliance Orders are arbitrary and capricious, and could not be approved in their then-current form "[a]bsent a more reasoned explanation for why the [non-public] utilities will participate in the binding cost allocation process, or why their lack of participation will not result in unjust and unreasonable rates."[4]

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[1] "Commission" and "FERC" are used interchangeably to mean the Federal Energy Regulatory Commission.

[2] The Compliance Orders include: *Pub. Serv. Co. of Colo., et al.*, Order on Compliance Filings, 142 FERC ¶ 61,206 (Mar. 22, 2013); *Pub. Serv. Co. of Colo., et al.*, Order on Rehearing and Compliance, 148 FERC ¶ 61,213 (Sept. 18, 2014); and *Pub. Serv. Co. of Colo., et al.*, Order on Rehearing and Compliance, 151 FERC ¶ 61,128 (May 14, 2015).

[3] *El Paso Elec. Co. v. FERC*, 832 F3d 495, 505 (5th Cir. 2016).

[4] *Id*. at 507.

On remand, the Commission made no change to its directives on the implementation of Order No. 1000 in the WestConnect region. Instead, the Commission offered an explanation of why it considers its original directives just and reasonable. *See* Order on Remand, 161 FERC ¶ 61,188 at PP 1, 29, and 31 (2017); *see also* Order Denying Rehearing, 163 FERC ¶ 61,204 at PP 1 and 7 (2018). The Commission found that "it is not necessary at this time to order additional proceedings to investigate the participation of non-public utility transmission providers in regional cost allocation in WestConnect." Order on Remand, 161 FERC ¶ 61,188 at P 29 n.62. The non-public utilities in the region are of the position that the Commission's explanation is a reasoned one. The public utilities disagree. EPE, joined and supported by the other public utilities in the WestConnect planning region that appealed the original Compliance Orders, has brought the matter back to the Fifth Circuit on appeal of the Order on Remand and Order on Rehearing for a determination of whether the Commission's orders are lawful and satisfy the concerns expressed by the Court when it vacated the original orders.

Consequently, the matter is again pending before the Fifth Circuit.[5] This offer of settlement represents the culmination of settlement negotiations that began in late 2018 among the public utility and non-public utility parties to the appeal. The intent of the parties in executing this settlement is to accommodate both public utility and non-public utility members of WestConnect in a cohesive planning region where the non-public utility members are not subject to mandatory binding cost allocation but public utility members have enhanced protections against cost allocations that the public utilities believe would not be consistent with cost causation. The settlement provides for a more robust Order 1000-compliant planning process, and also provides for the pursuit and development of projects that are beneficial and are

[5] *El Paso Electric Co. v. FERC,* 5th Cir. No. 18-60575.

sufficiently supported but that do not pass the tariff's criteria for selection as an Order No. 1000 cost-allocated project. Particularly, projects that do not pass the tariff's criteria for selection as an Order No. 1000 cost-allocated project may be included in the overall regional plan if their funding and development are negotiated among those whom assume costs. If approved by the Commission, the settlement will resolve the Fifth Circuit appeal and the long-standing dispute over the Compliance Orders that has been lingering before the Commission and the courts for much of the last decade.

ARTICLE I

THE SETTLEMENT SPONSORS

The sponsors of this settlement include the Petitioner of the Commission orders currently on appeal to the Fifth Circuit, EPE, as well as *all public utilities supporting the Petitioner* in the appeal and *all non-public utilities supporting the Commission* in the appeal. As such, all parties to the appeal[6] are sponsoring this settlement, both public utility parties and non-public utility parties to the appeal. The resolution struck in the settlement took a great deal of time and effort to craft. It is considered by all sponsors a fair and acceptable way to end the dispute surrounding the participation of both public utilities and non-public utilities in the WestConnect region.

ARTICLE II

THE SETTLEMENT TARIFF

The sponsors of the settlement have agreed to revisions to the currently effective terms and conditions set forth in the tariffs of the public utilities in the WestConnect region. A *pro forma* marked settlement tariff is shown in Exhibit A to this offer of settlement. The settlement

[6] The Commission, although a party to the appeal, is not considered a sponsor of the settlement.

tariff provides for a balanced approach to Order No. 1000 implementation in the unique WestConnect region, with its substantial number of non-public utilities. For example:

- Non-public utilities may continue to participate in the WestConnect regional transmission planning process, such that when the region identifies regional transmission needs, the transmission needs of non-public utilities that have joined the Transmission Owners with Load-Serving Obligations sector are part of the process of regional needs identification.
- Non-public utilities are not required to enroll in the region for purposes of cost allocation, but they may be contractually bound to cost allocation for a specific regional transmission project solution in one of two ways. First, a non-public utility may sign a Memorandum of Understanding ("MOU") committing it to promptly and in good faith seek and advocate for approval from its governing body/board to participate in the project. Execution of an MOU by senior management is a conditional agreement by the non-public utility to binding cost allocation, subject only to receipt of approval from its governing body/board. A non-public utility that has executed an MOU may participate in the voting process along with other cost-bound entities during evaluation of the range of projects proposed to meet the identified regional need. Once a non-public utility executes an MOU, the MOU is contractually binding and legally enforceable and subjects the non-public utility to binding cost allocation for an identified project unless, despite good faith efforts, the non-public utility fails to receive the approval of its governing body/board by a date certain (a final opt-in deadline identified in the settlement tariff) for that project. Second, a non-public utility may skip the

conditional acceptance process under an MOU and bind itself to cost allocation for a project immediately. A non-public utility's decision to become a cost-bound entity binds it to cost allocation for a project to the same extent as public utilities are bound to cost allocation for such project. This settlement agreement constitutes the parties' agreement that a non-public utility's decision to become a cost-bound entity ("CBE"), whether following execution of an MOU and obtaining governing body/board approval or by becoming a CBE by binding itself to cost allocation as described herein outside the MOU process, is contractually binding and legally enforceable. The form of proof of the non-public utility's contractually binding and legally enforceable decision to become a CBE is identified in the settlement tariff, which provides that an email from the non-public utility to WestConnect stating that it has received governing body/board approval shall constitute proof of the non-public utility's status as a legally bound CBE.

- If a non-public utility that signed an MOU fails to receive approval from its governing body/board by the final opt-in date, the other utilities that were identified as beneficiaries of the same transmission project are not forced to pursue that transmission project, which accounted for the non-public utility's needs and benefits. Instead, they are free to identify the solution that best serves the remaining cost-bound entities. Further, the remaining beneficiaries are not limited to the list of solutions identified from the previous set of project alternatives, which were designed, in part, to serve the needs of the non-public utility that did not receive governing body/board approval. Therefore, the remaining beneficiaries may develop alternatives tailored to their specific needs or request a solicitation for project solutions tailored to their specific needs.

- In addition, the criteria for what constitutes a regional transmission project subject to cost allocation is more clearly defined in the settlement tariff to ensure that binding cost allocation under Order No. 1000 is not imposed on local projects.[7]
- At the culmination of the regional transmission planning process as set forth in the settlement tariff, once a non-public utility is cost-bound to a regional transmission project, it is bound to Order No. 1000 cost allocation *to the same extent* as a public utility in the region. The various components of the settlement tariff work together to achieve this result.

The above summaries describe the intent of the revisions proposed to the tariffs of the WestConnect public utilities. In the event of a conflict between this summary and the concurrently filed tariff language, the tariff language governs.

[7] The settlement tariff provides minimum threshold requirements for selection of regional transmission projects consistent with FERC guidance in Order No. 1000 and subsequent orders differentiating between local and regional needs. *See e.g.*, *Louisville Gas and Electric Company et al.*, 144 FERC ¶ 61,054, at P 76 (2013) (under Order No. 1000, "[m]inimum threshold requirements for determining whether a proposed transmission facility is eligible to be selected in the regional transmission plan for purposes of cost allocation may be a reasonable way to identify transmission facilities that likely have regional benefits."); *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 63 (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 ¶ 51,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (transmission facilities selected in a regional transmission plan for purposes of cost allocation are more efficient or cost-effective solutions to regional transmission needs).

ARTICLE III

COMPLIANCE FILINGS TO IMPLEMENT THE SETTLEMENT

The marked tariff in Exhibit A is a *pro forma* version. Within 45 days of a Final Order[8] of the Commission accepting the settlement without change or condition, the public utilities in the WestConnect region will submit to the Commission, through eTariff, the following compliance filings:

(a) The public utilities in the WestConnect region each will submit, as a compliance filing, tariff record(s) to implement the marked changes to their respective Open Access Transmission Tariffs in conformance with the marked changes in the *pro forma* tariff in Exhibit A. The tariff records will be filed individually by each public utility in their eTariff databases.

(b) In addition, the public utilities in the WestConnect region will submit as a compliance filing an unexecuted Planning Participation Agreement to replace the one currently on file. The compliance filing of the Planning Participation Agreement will act to conform the Planning Participation Agreement to the settlement and the settlement tariff. It will be filed in the eTariff database of the public utilities' designated lead tariff filer, with companion certificates of concurrence filed by the other public utilities in their own eTariff databases.[9]

[8] A Final Order is an order that is not subject to rehearing, clarification or judicial review.

[9] In the event of any conflict between the Planning Participation Agreement and the tariff, the tariff controls.

ARTICLE IV

THE APPEAL

Within 30 days of the effective date of the settlement consistent with Article V, EPE, the Petitioner in the appeal before the Fifth Circuit, will file with the Court to voluntarily dismiss the appeal with prejudice. The sponsors of the settlement agree that EPE will inform the Court at that time that the motion to dismiss the appeal is supported by each party to the appeal.

ARTICLE V

EFFECTIVE DATE

The settlement shall become effective after (a) a Commission order approving the settlement and the *pro forma* settlement tariff, without change or condition, is no longer subject to a request for rehearing, clarification or judicial review, and (b) Commission order or orders approving, without change or condition, all of the public utility compliance filings described in Article III and that implement the settlement is/are no longer subject to a request for rehearing, clarification or judicial review. Specifically, the effective date of the settlement shall be the date on which the last of the compliance filings identified in Article III, approved by the Commission without change or condition, is no longer subject to a request for rehearing, clarification or judicial review.

If the Commission imposes any condition on or directs any modification of the settlement and/or the settlement tariff, then the settlement and settlement tariff are null and void and of no effect. Similarly, if the Commission rejects the settlement and/or the settlement tariff, then the settlement and the settlement tariff are null and void and of no effect, and in addition, the settlement and the settlement tariff shall be deemed to have been withdrawn by the filers simultaneous with the Commission's rejection order. The rights, duties and obligations of all persons affected by the settlement shall be deemed restored as if the settlement had never been executed.

Notwithstanding the foregoing, should the Commission reject the settlement or subject it to any change or modification, the parties sponsoring the settlement shall engage in discussions during a 90-day window to meet and negotiate in good faith in an attempt to reach agreement on a new or revised settlement filing. The 90-day clock would begin to run on the date FERC issues its initial order rejecting the settlement or subjecting it to any change or modification.

If the nature of the FERC order is such that an adjustment of little to no consequence could be made to the settlement, and the settlement refiled, the public utilities commit to request the Fifth Circuit to continue to hold the appellate proceeding in abeyance in order to allow for revisions to be filed and acted upon by FERC. Should the court terminate the abeyance before the Commission acts on any revised settlement and related tariff language, the Fifth Circuit proceedings would resume and the revised settlement would not govern or in any way limit the positions or filings of the settling parties.

If the nature of the FERC order is such that any one public utility sponsor of the settlement determines, in its sole discretion, that changes beyond adjustments of little to no consequence are necessary to address the FERC order, EPE will file to remove the Fifth Circuit proceeding from abeyance so that the appeal may proceed forward, and the remaining sponsors of the settlement will not oppose such motion.

ARTICLE VI

MISCELLANEOUS

A. Reservations. This offer of settlement, including the settlement tariff, is an integrated package. None of the terms of the settlement are agreed to without each of the other terms. The various provisions and components of the settlement package are not severable. If the settlement is not accepted and approved without modification or condition by the Commission, it shall be deemed withdrawn, null and void, and of no force and effect, and shall not be considered to be part of the record in these proceedings.

B. Entire Agreement. This offer of settlement, including the settlement tariff and all other attachments and components, constitutes the entirety of the offer to settle this matter; provided, however, that the settlement provides for the submission of compliance filings after Commission approval of the settlement and the settlement tariff. The compliance filings consist of individual public utility tariff filings and a Planning Participation Agreement that are to conform to the settlement tariff.

C. No Precedent. This settlement establishes no principles or precedent with respect to any issue in any proceeding, and is not to be considered an admission of any party to the appeal or a "settled practice" as that term was interpreted and applied in *Public Service Commission of New York v. FERC*, 642 F.2d 1335 (D.C. Cir. 1980).

D. Transmittal Letter. In the event there is any inconsistency between the terms of this settlement and the transmittal letter provided with it, the terms of the settlement, including the settlement tariff, shall control.

E. Standard of Review. After Commission approval of the settlement, the standard of review for any modifications to the settlement requested by a non-signatory or initiated by the Commission acting *sua sponte* will be the most stringent standard permissible under applicable law. See *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the Mobile-Sierra doctrine), as clarified in *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of*

Snohomish County, Washington, 554 U.S. 527 (2008), and refined in *NRG Power Marketing, LLC v. Maine Public Utilities Commission*, 558 U.S. 165, 174-75 (2010). This Settlement does not bar or restrict the Commission when issuing under Section 206 of the Federal Power Act new or modified rules of general industry-wide applicability, and it does not bar or restrict anyone from taking any position in response to any Commission-issued modified rules of general industry-wide applicability.

F. Filing Rights under the Federal Power Act Retained. The settlement does not restrict or impair any public utility from exercising its rights under Section 205 of the Federal Power Act. The public utilities in the WestConnect region retain their rights under Section 205 of the Federal Power Act to file to revise or replace any contents of their respective Open Access Transmission Tariffs, and to file to revise, replace or cancel all or part of the Planning Participation Agreement. The non-public utility sponsors of the settlement and others retain their rights to take any position on any such Section 205 filing. Similarly, the settlement does not limit any public utility sponsor or non-public utility sponsor's right to assert any rights it may have under any section of the Federal Power Act. The Commission's authority to take action under the Federal Power Act is unaffected by the settlement, except with respect to the standard of review addressed in this Article VI.

G. Settlement Confidences. The discussions and negotiations between the settling parties that have produced this offer of settlement have been conducted on the explicit understanding that all settlement communications are privileged and confidential. In addition, all settlement communications are without prejudice to the position of any party or participant making such communications in the event this settlement is not approved by the Commission without modification or condition.

H. Successors and Assigns. This settlement is binding upon and for the benefit of the sponsors and their successors and assigns.

I. Authorization to Sign. Each person signing this offer of settlement represents and warrants that he or she is duly authorized and empowered to act on behalf of, and to sign for, the entity for whom he or she has signed.

J. Captions. The captions in this offer of settlement are for convenience and do not limit or amplify the terms and provisions of the settlement. Captions in this offer of settlement shall have no effect on the settlement's interpretation.

K. Counterparts. This offer of settlement may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall be deemed to be of one and the same instrument.

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

The Petitioner in the Fifth Circuit Appeal
All Public Utility Intervenors in the Fifth Circuit Appeal
All Non-Public Utility Intervenors in the Fifth Circuit Appeal, and
Other Non-Public Utilities in the WestConnect Region not in the Fifth Circuit Appeal

[Signature Pages Follow]

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Arizona Electric Power Cooperative, Inc.

/s/ Ben Engelby

[Please Print Below]

Name: Ben Engelby

Title: General Counsel

Date: February 1, 2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Arizona Public Service Company

[signature]

[Please Print Below]

Name: Tony J. Tewelis

Title: Vice President, Transmission & Distribution Operations

Date: 2/8/22

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Basin Electric Power Cooperative

Tom Christensen

[Please Print Below]

Name: Tom Christensen

Title: Senior Vice President, Transmission, Engineering & Construction

Date: Feb 9, 2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Black Hills Power, Inc.,
Black Hills/ Colorado Electric, LLC
(f/k/a Black Hills Colorado Utility
Company, LP), and
Cheyenne Light, Fuel and Power Company

[Please Print Below]

Name: Marne Jones

Title: Vice President Electric Utilities

Date: 02/14/2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Colorado Springs Utilities

[Please Print Below]

Name: Travas Deal

Title: Chief Operations Officer

Date: February 15, 2022

Approved as to Form:

David Beckett February 14, 2022

City Attorney's Office – Utilities Division

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

El Paso Electric Company

/s/ *Cynthia Henry*

[Please Print Below]

Name: ___Cynthia Henry________________

Title: ___VP – General Counsel __________

Date: ___February 7, 2022_______________

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Imperial Irrigation District

E Martinez
____

[Please Print Below]

Name: Enrique B. Martinez

Title: General Manager

Date: February 7, 2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

NV Energy, Inc.,
Nevada Power Company,
Sierra Pacific Power Company

David Rubin
____

[Please Print Below]

Name: _____David Rubin________________

Title: ____Federal Energy Policy Director__

Date: __________February 4, 2022________

Platte River Power Authority
Estes Park • Fort Collins • Longmont • Loveland

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Platte River Power Authority

DocuSigned by:
Jason Frisbie
A5162DD4BDB24E8...

[Please Print Below]

Name: Jason Frisbie

Title: General Manager / CEO

Date: 2/10/2022

Platte River Power Authority
Legal Department
APPROVED AS TO FORM:

DocuSigned by:
Sarah D. Leonard
5BEB61CE1A02432...

General Counsel

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Public Service Company of Colorado

Ian Benson Digitally signed by Ian Benson Date: 2022.02.09 16:40:26 -06'00'

[Please Print Below]

Name: Ian R. Benson

Title: Area Vice President - Transmission Strategy & Planning

Xcel Energy Services Inc., as Agent for Public Service Company of Colorado

Date: ______________________________

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Public Service Company of New Mexico

[Please Print Below]

Name: Todd Fridley

Title: Vice President, New Mexico Operations

Name: February 10, 2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Sacramento Municipal Utility District

Steven G. Lins

[Please Print Below]

Name: Steven G. Lins

Title: Deputy General Counsel

Date: February 9, 2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Salt River Project Agricultural Improvement & Power District

____

[Please Print Below]

Name: Bryce Nielsen

Title: Director, Transmission Planning

Date: February 8, 2022

[Entity Logo Here, If Desired]

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Transmission Agency of Northern California

DocuSigned by:
John Roukema
1133480BB1EB4E3...

[Please Print Below]

Name: ______John Roukema______________

Title: __Interim General Manager_________

Date: _______February 6, 2022___________

TRI-STATE
22-TSGT-0017

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Tri-State Generation and Transmission Association, Inc.

Joel K Bladow
Joel K Bladow (Feb 10, 2022 11:48 MST)

Name: _Joel K. Bladow____________________

Title: _Senior Vice President - Transmission_

Date: _February 10, 2022__________________

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.

Tucson Electric Power Company and UNS Electric, Inc.

____

[Please Print Below]

Name: Erik Bakken

Title: VP, System Operations and Energy Resources

Date: 2/8/2022

IN WITNESS WHEREOF, the following entities have caused this settlement to be duly executed.[1]

Western Area Power Administration

Ronald Klinefelter Digitally signed by Ronald Klinefelter Date: 2022.02.11 16:00:30 -07'00'

Name: Ronald Klinefelter

Title: Acting General Counsel

Date: February 11, 2022

Signature page:

[1] Settlement in resolution of the Fifth Circuit appeal of FERC's orders in the WestConnect Order No. 1000 compliance dockets. The Western Area Power Administration is not a party to the Fifth Circuit appeal, but it is a Coordinating Transmission Owner in WestConnect

The Settlement Tariff

Pro Forma

To Show Changes to the Tariff
Resulting from the Settlement

APS ATTACHMENT E

Transmission Planning Process

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III. Regional Transmission Planning Process

In accordance with the Commission's regulations, this Attachment to the APS OATT implements the requirements for regional planning in accordance with Order No. 1000 and Order No. 890. APS engages in regional Planning and Coordination with the WestConnect regional process (Regional Planning Process).

The purpose of the Regional Planning Process is to produce a regional transmission plan (the Regional Plan) and provide a process for evaluating projects submitted for cost allocation[i] in accordance with the provisions of this Attachment E and those business practices adopted by WestConnect in the WestConnect Regional Planning Process Business Practice Manual, as may be amended from time to time, available on the WestConnect website (Business Practice Manual).

Commonly-used acronyms and terms include the following:

Coordinating Transmission Owner (CTO) – A Transmission Owner with Load-Serving Obligations (TOLSO) member of the WestConnect Planning Region who joined the sub-sector of the TOLSO member sector to participate in the WestConnect Regional Planning Process without enrolling for Order No. 1000 cost allocation purposes.

Cost-Bound Entity (CBE) – TOLSOs subject to cost allocation for a regional project selected for regional cost allocation. This could be a combination of benefitting ETOs and CTOs including those CTO beneficiaries that opt in to regional cost allocation for a project by providing proof of opt-in as a CBE either (1) through a Memorandum of Understanding (MOU) process, or (2) by providing proof of opt-in as a CBE no later than the deadline for MOU submissions without going through the MOU process. These beneficiaries have a greater than 1.25 Benefit Cost Ratio (BCR) and have a plan to access said resources in question.

Enrolled Transmission Owner (ETO) — A TOLSO member of the WestConnect Planning Region in the sub-sector of the TOLSO member sector comprised of members enrolled in the region for purposes of cost allocation pursuant to Order No. 1000.

Final Opt-in Date (FOD) – Deadline for CTOs with MOUs to report governing body/board approval to become a CBE.

A. Overview

The WestConnect Planning Region is defined by the transmission owners and transmission provider members (referred to generally as "transmission owners") participating in the Regional Planning Process and for whom WestConnect is conducting regional planning. The service areas of the transmission providers consist of all or portions of nine states: Arizona, California, Colorado, New Mexico, Nebraska, Nevada, South Dakota, Texas and Wyoming. Non-public utilities are invited to participate in the Regional Planning Process.

Following the effective date of APS's September 20, 2013 Order No. 1000 compliance filing (Effective Date), the WestConnect Order No. 1000 regional transmission planning management committee (PMC) will commence the Regional Planning Process. This committee will be responsible for administering the Regional Planning Process. In order to align its regional process with the western interregional coordination process, it is WestConnect's intent to begin its biennial process in even-numbered years. Should FERC acceptance of WestConnect's compliance filing result in an effective date in an odd-numbered year, WestConnect will conduct an abbreviated planning process in its first year and begin its biennial process the next year. To effectuate such an abbreviated process, the PMC will develop a study scope for the first year, including project submission deadlines, and post it to the WestConnect website within the first thirty (30) days of the year.

In conjunction with creating the new PMC, the WestConnect members, in consultation with interested stakeholders, will establish a separate project agreement (the Planning Participation Agreement) to permit interested stakeholders to participate in the Regional Planning Process. Although the Regional Planning Process is open to the public, stakeholders interested in having a voting right in decisions related to the Regional Planning Process will be required to execute the Planning Participation Agreement and any necessary confidentiality agreements.[ii] The PMC will implement the stakeholder-developed Regional Planning Process, which will result in a Regional Plan for the ten-year transmission planning horizon.[iii]

APS is a party to the WestConnect Project Agreement for Subregional Transmission Planning (WestConnect STP Project Agreement) (See APS Attachment E Hyperlinks List at http://www.oatioasis.com/AZPS/AZPSdocs/Attach_E_Hyperlink_List.pdf). The committees formed under the WestConnect STP Project Agreement and the WestConnect Steering Committee have no authority over the PMC and the PMC's decision making in implementing the Regional Planning Process.

1. WestConnect Planning Participation Agreement

Each WestConnect member will be a signatory to the Planning Participation Agreement, which formalizes the members' relationships and establishes obligations, including transmission owner coordination of regional transmission planning among the WestConnect participants and the local transmission planning processes and produce a Regional Plan. In the event of a conflict between the Planning Participation Agreement and the Tariff, the Tariff controls.

2. Members

WestConnect has two types of members: (i) transmission owners that enroll in WestConnect in order to comply with Order No. 1000 planning and cost allocation requirements (ETOs), as well transmission owners that are not required to comply with Order No. 1000 planning and cost allocation requirements, but elect to participate in the WestConnect Regional Planning Process without enrolling for Order No. 1000 cost allocation purposes (CTOs), and (ii) stakeholders who wish to have voting input into the methodologies, studies, and decisions made in the execution of those requirements. CTOs may bind themselves to cost allocation in accordance with the process described in Section III.6 for one or more specific regional transmission project(s) identified in a Memorandum of Understanding (MOU) executed pursuant to the Section III.6 process. A CTO may also bind itself to cost allocation for a particular regional transmission project by becoming a CBE by the deadline for MOU submissions, without going through the MOU process. The proof of opt-in will be the same as proof of opt-in for a CTO that has signed an MOU, i.e., governing body/board approval. The date that a CTO becomes a CBE is the date that the WestConnect PMC receives email confirmation that the CBE has obtained governing body/board approval.

a) Joining the WestConnect Planning Region

A transmission owner that wishes to enroll or participate in the WestConnect Planning Region may do so by executing the Planning Participation Agreement and paying its share of costs as provided for in the Planning Participation Agreement.

A stakeholder that wishes to have voting input may join the WestConnect Planning Region by executing the Planning Participation Agreement, paying annual dues, and complying with applicable provisions as outlined in such agreement. For further information regarding membership dues, please see WestConnect's Planning Participation Agreement, located on the WestConnect website[iv] and on file with FERC.

b) Exiting the WestConnect Planning Region

Should a transmission owner wish to exit the WestConnect Planning Region, it must submit notice in accordance with the Planning Participation Agreement and pay its share of any WestConnect expenditures approved prior to providing its formal notice of withdrawal from WestConnect Planning Region.

Should a stakeholder wish to exit the WestConnect Planning Region, it may do so by providing notice in accordance with the Planning Participation Agreement. Withdrawing stakeholders will forfeit any monies or dues paid to the PMC and agree to remit to the PMC any outstanding monies owed to the committee on or prior to the effective date of such withdrawal.

c) List of Enrolled Entities

Transmission owners enrolled in the WestConnect Planning Region for purposes of Order No. 1000:

- Arizona Public Service Company
- Basin Electric Power Cooperative
- Black Hills Colorado Electric ~~Utility Company, LP~~, LLC
- Black Hills Power, Inc.
- Cheyenne Light, Fuel~~, &~~and Power Company
- El Paso Electric Company
- ~~NV Energy, Inc. Operating Companies~~
- Public Service Company of Colorado
- Public Service Company of New Mexico
- Tri-State Generation and Transmission Association, Inc.
- Tucson Electric Power Company
- UNS Electric, Inc.

3. WestConnect Objectives and Procedures for Regional Transmission Planning

The Regional Planning Process will produce a Regional Plan that complies with existing Order No. 890 principles and carried forward in Order No. 1000:

- Coordination
- Openness
- Transparency
- Information exchange
- Comparability
- Dispute resolution

APS, along with the other Planning Participation Agreement signatories, will work through the regional planning group processes, as applicable, to integrate their transmission plan into a single ten-year Regional Plan for the WestConnect Planning Region by:

a) Actively coordinating development of the Regional Plan, including incorporating information, as appropriate, from all stakeholders;

b) Coordinating, developing and updating common base cases to be used for all study efforts within the Regional Planning Process and taking steps to ensure that each plan adheres to the methodology and format developed for the Regional Plan;

c) Providing funding for the Planning Participation Agreement planning management functions pursuant to the Planning Participation Agreement;

d) Maintaining a regional planning section on the WestConnect website,[v] where all WestConnect planning information, including meeting notices, meeting minutes, reports, presentations, and other pertinent information is posted;

e) Posting detailed notices of all regional and local planning meeting agendas on the WestConnect website; and

f) Establishing a cost allocation process for regional transmission projects selected in the Regional Planning Process for cost allocation.

B. Roles in the Regional Transmission Planning Process

1. PMC Role

The PMC is responsible for bringing transmission planning information together and sharing updates on active projects. The PMC provides an open forum where any stakeholder interested in the planning of the regional transmission system in the WestConnect footprint can participate and obtain information regarding base cases, plans, and projects and provide input or express its needs as they relate to the transmission system. On a biennial basis and in coordination with its members, transmission owners, and other interested stakeholders, the PMC will develop the Regional Plan. The PMC, after considering the data and comments supplied by customers and other stakeholders, is to develop a regional transmission plan that treats similarly-situated customers (e.g., network, retail network, and native load) comparably in transmission system planning.

The PMC is charged with development and approval of the Regional Plan. The PMC will be comprised of representatives from each stakeholder sector. The PMC will be empowered to create and dissolve subcommittees as necessary to facilitate fulfillment of its responsibilities in developing the Regional Plan.

2. Stakeholder Participation and Assistance

Stakeholders may participate in the Regional Planning Process in any one or more of the following ways: (a) by joining one of five WestConnect regional transmission planning membership sectors described below; (b) by attending publicly-posted WestConnect regional transmission planning stakeholder meetings; and/or (c) by submitting project proposals for consideration and evaluation in the Regional Planning Process.

Attendance at meetings is open to all interested stakeholders. These meetings will include discussion of models, study criteria and assumptions, and progress updates. Formal participation, including voting as allowed by the process, can be achieved through payment of applicable fees and annual dues in accordance with the Planning Participation Agreement and this Tariff. Transmission Owners with a Load Serving Obligation will not be responsible for annual dues because they will be the default source of monies to support WestConnect activities beyond dues paid by other organizations.

WestConnect Planning Region members will assist stakeholders interested in becoming involved in the Regional Planning Process by directing them to appropriate contact persons and websites. (*See* APS's Attachment E Hyperlinks List posted on the APS OASIS http://www.oatioasis.com/AZPS/AZPSdocs/Attach_E_Hyperlink_List.pdf). All stakeholders are encouraged to bring their plans for future generators, loads or transmission services to the WestConnect regional planning meetings. Each transmission planning cycle will contain a period during which project ideas are accepted for potential inclusion in that cycle's Regional Plan.

3. Forum for Evaluation

The WestConnect Regional Planning Process provides a forum for transmission project sponsors to introduce their specific projects to interested stakeholders and potential partners and allows for joint study of these projects by interested parties, coordination with other projects, and project participation, including ownership from other interested parties. This may include evaluation of transmission alternatives or NTAs in coordination with the Regional Planning Process.

4. Stakeholder Meetings

WestConnect will hold open stakeholder meetings on at least a semi-annual basis, or as needed and noticed by the PMC with thirty (30) days advance notice, to update stakeholders about its progress in developing the Regional Plan and to solicit input regarding material matters of process related to the regional transmission plan. Notice for such meetings will be posted on the WestConnect website and via email to the Regional Transmission Planning email distribution list.

The meeting agendas for all WestConnect transmission planning meetings will be sufficiently detailed, posted on the WestConnect website, and circulated in advance of the meetings in order to allow stakeholders the ability to choose their meeting attendance most efficiently.

5. WestConnect Planning Governance Process

a) Membership Sectors

The Regional Planning Process will be governed by the PMC, which will be tasked with executing the Regional Planning Process and have authority to approve the Regional Plan. For those entities desiring to be a part of the management of the Regional Planning Process, one of five PMC membership sectors is available:

- Transmission Owners with Load Serving Obligations
- Transmission Customers
- Independent Transmission Developers and Owners
- State Regulatory Commissions
- Key Interest Groups

Only transmission owners that have load serving obligations individually or through their members may join the Transmission Owners with Load Serving Obligations membership sector. The Transmission Owners with Load Serving Obligations sector will be comprised of (a) those transmission owners that enroll in the WestConnect Planning Region for purposes of Order No. 1000 (ETOs); and (b) those transmission owners that elect to participate in the WestConnect Regional Planning Process as Coordinating Transmission Owners (CTOs).

Except for Public Utilities that are required to comply with Order No. 1000, any entity may join any membership sector for which it qualifies, but may only participate in one membership sector at a time. If a non-public utility is qualified to join the Transmission Owners with Load Serving Obligations sector as well as one or more other sectors, and the non-public utility elects to join a sector other than the Transmission Owners with Load Serving Obligations sector, the PMC will not perform the function of regional transmission planning for that entity. Additionally, if a member of the Transmission Owner with Load Serving Obligations sector owns transmission facilities located in another planning region, the PMC will not perform the function of regional planning for such facilities located in another planning region.

b) Planning Management Committee

The PMC will be empowered to create and dissolve subcommittees as necessary to ensure timely fulfillment of its responsibilities; to assess fees for membership status on the PMC; and to assess fees for projects submitted for evaluation as part of the Regional Planning Process. The PMC is to manage the Regional Planning Process, including approval of the Regional Plan that includes application of regional cost allocation methodologies. The PMC's governance role is limited to implementation of Order No. 1000. If a transmission project does not qualify for selection in the Regional Plan for purposes of cost allocation under Order No. 1000, but is nonetheless pursued by interested entities under Section III. E. 6(c), interested entities do not require PMC action of any kind in order to pursue such transmission infrastructure investment.

The PMC is to coordinate and have the decision-making authority over whether to accept recommendations from the Planning Subcommittee (PS) and Cost Allocation Subcommittee (CAS). The PMC, among other things, is to develop and approve the Regional Plan based on recommendations from the PS and CAS; and develop and approve a scope of work, work plan, and periodic reporting for WestConnect planning functions, including holding a minimum of two stakeholder informational meetings per year. The PMC is to appoint the chair of the PS and CAS. The chair for the PMC and each subcommittee must be a representative of the Transmission Owners with Load Serving Obligations member sector.

The PS responsibilities include, but are not limited to, reviewing and making recommendations to the PMC for development of study plans, establishing base cases, evaluating potential solutions to regional transmission needs, producing and recommending the Regional Plan for PMC approval and coordinating with the CAS. The PS is to provide public notice of committee meetings and provide opportunities for stakeholders to provide comments on the process and proposed plan.

The CAS responsibilities include, but are not limited to, performing and/or overseeing the performance of the cost allocation methodology. The CAS also is to review and make recommendations to the PMC for modifying definitions of benefits and cost allocation methodology as necessary to meet WestConnect planning principles on identification of beneficiaries and cost allocation. The CAS is to review and recommend projects to the PMC for purposes of regional cost allocation identified in the Regional Planning Process consistent with the regional cost allocation criteria in Section VII. B. of this Attachment E. The CAS is to provide public notice of committee meetings and provide opportunities for stakeholders to provide comments on the process and proposed cost allocation.

All actions of the PMC (including approval of the Regional Plan) will be made possible by satisfying either of the following requirements:

- 75% of the members voting of at least three sectors approving a motion, where one of the three sectors approving is the Transmission Owners with Load Serving Obligations sector; or
- 75% of the members voting of the four member sectors other than the Transmission Owners with Load Serving Obligation sector approving a motion and two-thirds (2/3's) of the members voting of the Transmission Owners with Load Serving Obligation sector approving a motion.

Each entity within a membership sector is entitled to one vote on items presented for decision.

Any closed executive sessions of the PMC will be to address matters outside of the development of the Regional Planning Process, including matters involving contracts, personnel, financial matters, or legal matters such as, but not limited to, litigation (whether active or threatened).

C. Submission of Data by Customers, Transmission Developers, and Transmission Owners

When stakeholder feedback on modeling assumptions is requested, the data submittal period for such feedback will be established by the PMC. In all cases, requests for submittal of data from WestConnect members and stakeholders will be followed by a data submittal window lasting no less than thirty (30) days from the date of such requests. In addition, consistent with the Regional Planning Process, any interested stakeholder may submit project ideas for consideration in the Regional Plan without a need for that stakeholder's project to qualify for a project submittal for purposes of cost allocation. Specific project submittals are treated differently than generalized project ideas. For any project submittal seeking study by the PMC in the Regional Planning Process to address a regional need identified by the PMC (without regard to whether the project seeks cost allocation), a project submittal deposit will be collected and made subject to later true-up based upon the actual cost of the study (ies) performed. Project submittals are to be accepted through the fifth (5th) quarter of the planning cycle (or first (1st) quarter of the second (2nd) year), and are addressed in Section III.C.5 of this Attachment E. A timeline detailing the timing and notice for submission of information and input can be found in Exhibit ~~2~~1 of this Attachment E.

1. Transmission Customers

Transmission customers shall generally submit their load forecast and other relevant data through the WestConnect Planning Region member's (e.g., APS's) local transmission planning process. However, from time to time, there may be a need for transmission customers participating in the Regional Planning Process to submit data directly to WestConnect. This data may include, but is not limited to load forecasts, generation resource plans, non-transmission alternatives, proposed transmission upgrade recommendations, and feedback regarding certain assumptions in the planning process.

No less than thirty (30) days' notice will be given for customers to submit any required data and data submissions will generally be able to be made via email or by posting information to a designated website.

2. Independent Transmission Developers and Owners

Transmission Developers are entities with project ideas they wish to submit into the Regional Planning Process. These may include project submittals that the developer wishes to be considered to address an identified regional need (whether or not the project is eligible for regional cost allocation).

Each regional transmission planning cycle will include a submission period for project, as described below. Notice of the submission period will be posted on the WestConnect website and will also be made via e-mail to WestConnect stakeholders. The submission period will last for no less than thirty (30) days and during this time, any entity that wishes to submit a transmission project for consideration in the Regional Planning Process to address an identified regional need may do so.

Projects proposed by Independent Transmission Developers and Owners are subject to the same reliability standards as projects submitted by Transmission Owners with Load Serving Obligations. The project developer shall register with NERC and WECC in accordance with the applicable registration rules in the NERC Rules of Procedure. In addition, project developers shall observe and comply with regional requirements as established by the applicable regional reliability organizations, and all local, state, regional, and federal requirements.

3. Merchant Transmission Developers

Merchant Transmission Developers are entities pursuing completion of projects that do not wish to have their projects considered for regional cost allocation. Nonetheless, coordination between merchant projects and the Regional Planning Process is necessary to affect a coordinated Regional Plan that considers all system needs.

Each regional transmission planning cycle will include a submission period for project submittals to address an identified regional need, as described below. Notice of the submission period will be posted on the WestConnect website and will also be made via e-mail to WestConnect stakeholders. In addition, it is necessary for merchant transmission developers to provide adequate information and data to allow the PMC to assess the potential reliability and operational impacts of the merchant transmission developer's proposed transmission facilities on other systems in the region. The submission period will last for no less than thirty (30) days and during this time sponsors of merchant transmission projects that are believed to impact the WestConnect Planning Region will be asked to provide certain project information.

Projects proposed by Merchant Transmission Developers are subject to the same reliability standards as projects submitted by Transmission Owners with Load Serving Obligations. The project developer is responsible for properly registering with NERC and WECC in accordance with the applicable registration rules in the NERC Rules of Procedure. In addition, project developers shall observe and comply with regional requirements as established by the applicable regional reliability organization and all local, state, regional, and federal requirements.

4. Transmission Owners with Load Serving Obligation

Transmission owners and transmission providers that are members of the WestConnect Planning Region are responsible for providing all necessary system information through the Regional Planning Process.

At the beginning of each regional transmission planning cycle, transmission owners and transmission providers that are participating in the WestConnect Regional Planning Process will be responsible for verifying the accuracy of any data (including, but not limited to, system topology and project proposal information) they have previously submitted. ~~Transmission owners will also be required to submit all relevant data for any new projects being proposed for inclusion in the Regional Plan to address an identified regional need in accordance with Section III.C.5 below.~~ Transmission owners will also be responsible for submitting any project plans developed through their local transmission planning processes for inclusion in the Regional Plan models.

5. Transmission Project Submittals

All submittals of transmission projects to address an identified regional need, without regard to whether or not the project seeks regional cost allocation, are to contain the information set forth below, together with the identified deposit for study costs, and be submitted timely within the posted submittal period in order for the project submittal to be eligible for evaluation in the Regional Planning Process. A single project submittal may not seek multiple study requests. To the extent a project proponent seeks to have its project studied under a variety of alternative project assumptions, the individual alternatives must be submitted as individual project submittals. To be eligible to propose a project for selection in the Regional Plan a project proponent must also be an active member in good standing within one of the five PMC membership sectors described above in Section III.B.5.a.

- Submitting entity contact information
- Explanation of how the project is a more efficient or cost-effective solution compared to regional transmission needs*
- A detailed project description including, but not limited to, the following:
    - Scope
    - Points of interconnection to existing (or planned) system
    - Operating Voltage and Alternating Current or Direct Current status
    - Circuit Configuration (Single, Double, Double-Circuit capable, etc.)
    - Impedance Information
    - Approximate circuit mileage

- Description of any special facilities (series capacitors, phase shifting transformers, etc.) required for the project
- Diagram showing geographical location and preferred route; general description of permitting challenges
- Estimated Project Cost and description of basis for that cost*
- Any independent study work of or relevant to the project
- Any WECC study work of or relevant to the project
- Status within the WECC path rating process
- The project in-service date
- Change files to add the project to a standard system power flow model
- Description of plan for post-construction maintenance and operation of the proposed line
- A $25,000 deposit to support the cost of relevant study work, subject to true-up (up or down) based upon the actual cost of the study (ies)*. The true-up will include interest on the difference between the deposit and the actual cost, with such interest calculated in accordance with section 35.19a(a(2) of FERC's regulations. A description of the costs to which the deposit was applied, how the costs were calculated, and an accounting of the costs will be provided to each project sponsor within 30 calendar days of the completion of the study. Dispute resolution is addressed pursuant to Section V.
- Comparison Risk Score from WECC Environmental Data Task Force, if available
- Impacts to other regions. The applicant must provide transmission system impacts studies showing system reliability impacts to neighboring transmission systems or another transmission planning region. The information should identify all costs associated with any required upgrades to mitigate adverse impacts on other transmission systems.*

  If impact studies and costs are not available at the time of submittal, the project proponent may request that impact studies be performed, at the project proponent's expense, as part of the analysis to determine whether the project is the more efficient or cost-effective solution. Requests for transmission system impact studies are approved through the PMC depending on whether the project proponent provides funding for the analysis. The PMC will provide, subject to appropriate confidentiality and CEII restrictions, the information in the possession of the PMC that an applicant needs to perform the transmission system impact study and to identify the costs associated with any upgrades required to mitigate adverse impacts.

*Merchant transmission developers are exempt from these requirements.

There is to be an open submission period for project proposals to address identified regional needs. Notice of the submission period shall be posted on the WestConnect website and will also be made via email to

WestConnect stakeholders. The submission period shall last for no less than thirty (30) days and will end by the fifth (5th) quarter of the WestConnect planning cycle (or first (1st) quarter of the second (2nd) year of the planning cycle). Proposals submitted outside that window will not be considered. The PMC will have the authority to determine the completeness of a project submittal. Project submittals deemed incomplete will be granted a reasonable opportunity to cure any deficiencies identified in writing by the PMC.

Any stakeholder wishing to present a project submittal to address an identified regional need shall be required to submit the data listed above to be considered in the Regional Planning Process. Should the submitting stakeholder believe certain information is not necessary, it shall identify the information it believes is not necessary and shall provide a justification for its conclusion that the information is not necessary. The PMC retains the sole authority for determining completeness of the information submittal. After the completion of the project submittal period, the PMC will post a document on the WestConnect website detailing why any projects were rejected as incomplete. Upon posting of the document, any project submittal rejected as incomplete will be given a reasonable opportunity to cure the reason(s) it was rejected to the satisfaction of the PMC in its sole discretion.

6. Submission of Non-Transmission Alternatives Projects

Any stakeholder may submit projects proposing non-transmission alternatives to address an identified regional need for evaluation under the Regional Planning Process. The submission period will last for no less than thirty (30) days. The submission window will end by the fifth (5th) quarter of the WestConnect planning cycle (or first (1st) quarter of the second (2nd) year of the planning cycle). The following criteria must be satisfied in order for a non-transmission alternative project submittal to be evaluated under the Regional Planning Process:

- Basic description of the project (fuel, size, location, point of contact)
- Operational benefits
- Load offset, if applicable
- Description of the issue sought to be resolved by the generating facility or NTA, including reference to any results of prior technical studies
- Network model of the project flow study
- Short-circuit data
- Protection data
- Other technical data that might be needed for resources
- Project construction and operating costs
- Additional miscellaneous data (e.g., change files if available)

As with entities submitting a transmission project under Section III.C.5, those who submit under Section III.C.6 a non-transmission alternative under the Regional Planning Process must adhere to and provide the same or equivalent information (and deposit for study costs) as transmission alternatives. Should the submitting stakeholder believe certain information is not necessary, it shall identify the information it believes is not necessary and shall provide a justification for its conclusion that the information is not necessary. Although NTA projects will be considered in the Regional Planning Process, they are not eligible for regional cost allocation.

7. The WestConnect Regional Planning Cycle

The WestConnect regional transmission planning cycle is biennial. The WestConnect PMC will develop and publish a Regional Plan every other year.

D. Transmission Developer Qualification Criteria

1. In General

A transmission developer that seeks to be eligible to use the regional cost allocation methodology for a transmission project selected in the Regional Plan for purposes of cost allocation must identify its technical and financial capabilities to develop, construct, own, and operate a proposed transmission project. To be clear, satisfaction of the criteria set forth below does not confer upon the transmission developer any right to:

(i) construct, own, and/or operate a transmission project,
(ii) collect the costs associated with the construction, ownership and/or operation of a transmission project,
(iii) provide transmission services on the transmission facilities constructed, owned and/or operated.

The applicable governing governmental authorities are the only entities empowered to confer any such rights to a transmission developer. The PMC is not a governmental authority.

2. Information Submittal

A transmission developer seeking eligibility for potential designation as the entity eligible to use the regional cost allocation for a transmission project selected in the Regional Plan for purposes of cost allocation must submit to the PMC the following information during the first quarter of the WestConnect planning cycle, except that during the first WestConnect planning cycle the PMC shall have the discretion to extend the period for the submission of this information:

a) Overview
A brief history and overview of the applicant demonstrating that the applicant has the capabilities to finance, own, construct, operate and maintain a regional transmission project consistent with Good Utility Practice within the state(s) within the WestConnect Planning Region. The applicant should identify all

transmission projects it has constructed, owned, operated and/or maintained, and the states in which such projects are located.

b) Business Practices

A description of the applicant's experience in processes, procedures, and any historical performance related to engineering, constructing, operating and maintaining electric transmission facilities, and managing teams performing such activities. A discussion of the types of resources, including relevant capability and experience (in-house labor, contractors, other transmission providers, etc.) contemplated for the licensing, design, engineering, material and equipment procurement, siting and routing, Right-of-Way (ROW) and land acquisition, construction and project management related to the construction of transmission projects. The applicant should provide information related to any current or previous experience financing, owning, constructing, operating and maintaining and scheduling access to regional transmission facilities.

c) Compliance History

The applicant should provide an explanation of any violation(s) of NERC and/or Regional Entity Reliability Standards and/or other regulatory requirements pertaining to the development, construction, ownership, operation, and/or maintenance of electric transmission facilities by the applicant or any parent, owner, affiliate, or member of the applicant that is an Alternate Qualifying Entity (ies) under Section III.D.2.l. Notwithstanding the foregoing, if at the time the applicant submits the information required by this Section III.D.2, the applicant has not developed, constructed, owned, operated or maintained electric transmission facilities, the applicant shall instead submit such information for any electric distribution or generating facilities it develops, constructs owns, operates and/or maintains, as applicable, to demonstrate its compliance history.

d) Participation in the Regional Planning Process

A discussion of the applicant's participation within the Regional Planning Process or any other planning forums for the identification, analysis, and communication of transmission projects.

e) Project Execution

A discussion of the capability and experience that would enable the applicant to comply with all on-going scheduling, operating, and maintenance activities associated with project development and execution.

f) Right-of-Way Acquisition Ability

The applicant's preexisting procedures and historical practices for siting, permitting, landowner relations, and routing transmission projects including, acquiring ROW and land, and managing ROW and land acquisition for transmission facilities. Any process or procedures that address siting or routing transmission facilities through environmentally sensitive areas and mitigation thereof. If the entity does not have such preexisting procedures, it shall provide a detailed description of its plan for acquiring ROW and land and managing ROW and land acquisition.

g) Financial Health

The applicant must demonstrate creditworthiness and adequate capital resources to finance transmission projects. The applicant shall either have an investment grade credit rating from both S&P and Moody's or provide corporate financial statements for the most recent five years for which they are available. Entities that do not have a credit rating, or entities less than five years old, shall provide corporate financial statements for each year that is available. Alternatively, the applicant may provide a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to the PMC.

The following ratios must be provided with any explanations regarding the ratios:

- Funds from operations-to-interest coverage.
- Funds from operation-to-total debt.
- Total debt-to-total capital.
- The applicant must indicate the levels of the above ratios the company will maintain during and following construction of the transmission element.

The PMC may request additional information or clarification as necessary.

h) Safety Program

The applicant must demonstrate that they have an adequate internal safety program, contractor safety program, safety performance record and program execution.

i) Transmission Operations

The applicant must: demonstrate that it has the ability to undertake control center operations capabilities, including reservations, scheduling, and outage coordination; demonstrate that it has the ability to obtain required path ratings; provide evidence of its NERC compliance process and compliance history, as applicable; demonstration of any existing required NERC certifications or the ability to obtain any applicable NERC certifications; establish required Total Transfer Capability; provide evidence of storm/outage response and restoration plans; provide evidence of its record of past reliability performance, as applicable; and provide a statement of which entity will be operating completed transmission facilities and will be responsible for staffing, equipment, and crew training. A potential transmission developer will not be required to have an operations entity under contract at the time it seeks to be eligible to use the regional cost allocation method for a transmission project selected in the Regional Plan for purposes cost allocation.

j) Transmission Maintenance

The applicant must demonstrate that they have, or have plans to develop, an adequate transmission maintenance program, including staffing and crew training, transmission facility and equipment maintenance, record of past maintenance performance, NERC compliance process and any past history of NERC compliance or plans to develop a NERC compliance program, statement of which entity will be performing maintenance on completed transmission facilities. A potential transmission developer will not be required to have a maintenance entity under contract at the time it seeks to be eligible to use the regional cost allocation method for a transmission project selected in the Regional Plan for purposes of cost allocation.

k) Regulatory Compliance

The applicant must demonstrate the ability, or plans to develop the ability, to comply with Good Utility Practice, WECC criteria and regional reliability standards, NERC Reliability Standards, construction standards, industry standards, and environmental standards.

l) Affiliation Agreements

A transmission developer can demonstrate that it meets these criteria either on its own or by relying on an entity or entities with whom it has a corporate affiliation or other third-parties with relevant experience (Alternate Qualifying Entity (ies)). In lieu of a contractual or affiliate relationship with one or more Alternate Qualifying Entity (ies) and to the extent a transmission developer intends to rely upon third-parties for meeting these criteria, the transmission developer must provide in attestation form an identification of its preferred third-party contractor(s) and indicate when it plans to enter into a definitive agreement with its third-party contractor(s). If the transmission developer seeks to satisfy the criteria in whole or in part by relying on one or more Alternate Qualifying Entity (ies), the transmission developer must submit:
(1) materials demonstrating to the PMC's satisfaction that the Alternate Qualifying Entity (ies) meet(s) the criteria for which the transmission developer is relying upon the alternate qualifying entity (ies) to satisfy; and (2) a commitment to provide in any project cost allocation application an executed agreement that contractually obligates the Alternate Qualifying Entity (ies) to perform the function(s) for which the transmission developer is relying upon the Alternate Qualifying Entity (ies) to satisfy.

m) WestConnect Membership

A transmission developer must be a member of either the WestConnect Transmission Owners with Load Serving Obligations or Independent Transmission Developers and Owners sector, or must agree to join the WestConnect Transmission Owners with

Load Serving Obligations or Independent Transmission Developers and Owners sector and agree to sign the Planning Participation Agreement if the transmission developer seeks to be an entity eligible to use the regional cost allocation method for a transmission project selected in the Regional Plan for purposes of cost allocation.

n) Other
Any other relevant project development experience that the transmission developer believes may demonstrate its expertise in the above areas.

3. Identification of Transmission Developers Satisfying the Criteria

a) Notification to Transmission Developer

No later than September 30 each year, the PMC is to notify each transmission developer whether it has satisfied the stated criteria. A transmission developer failing to satisfy one or more of the qualification criteria is to be informed of the failure(s) and accorded an additional opportunity to cure any deficiency (ies) within thirty (30) calendar days of notice from the PMC by providing any additional information.

The PMC is to inform the transmission developer whether the additional information satisfies the qualification criteria within forty-five (45) calendar days of receipt of the additional information.

The PMC is to identify the transmission developers that have satisfied the qualification criteria (the "Eligible Transmission Developers") by posting on the WestConnect website, on or before December 31 of each year.

b) Annual Recertification Process and Reporting Requirements

By June 30 of each year, each Eligible Transmission Developer must submit to WestConnect a notarized letter signed by an authorized officer of the Eligible Transmission Developer certifying that the Eligible Transmission Developer continues to meet the current qualification criteria.

The Eligible Transmission Developer shall submit to the PMC an annual certification fee equal to the amount of the WestConnect annual membership fee. If the Eligible Transmission Developer is a member of WestConnect and is current in payment of its annual membership fee, then no certification fee will be required.

If at any time there is a change to the information provided in its application, an Eligible Transmission Developer shall be required to inform the PMC chair within thirty (30) calendar days of such change so that the PMC may determine whether the Eligible Transmission Developer continues to satisfy the qualification criteria. Upon notification of any such change, the PMC shall have the option to: (1) determine that the change does not affect the status of the transmission developer as an Eligible Transmission Developer; (2) suspend the transmission developer's eligibility status until any deficiency in the transmission developer's qualifications is cured; (3) allow the transmission developer to maintain its eligibility status for a limited time period, as specified by the PMC, while the transmission developer cures the deficiency; or (4) terminate the transmission developer's eligibility status.

c) Termination of Eligibility Status

The PMC may terminate an Eligible Transmission Developer's status if the Eligible Transmission Developer: (1) fails to submit its annual certification letter; (2) fails to pay the applicable WestConnect membership fees; (3) experiences a change in its qualifications and the PMC determines that it may no longer qualify as an Eligible Transmission Developer; (4) informs the PMC that it no longer desires to be an Eligible Transmission Developer; (5) fails to notify the PMC of a change to the information provided in its application within thirty (30) days of such change; or (6) fails to execute the Planning Participation Agreement as agreed to in the qualification criteria within a reasonable time defined by the PMC, after seeking to be an entity eligible to use the regional cost allocation method for a transmission project selected in the Regional Plan for purposes of cost allocation.

E. Regional Planning Methodology and Protocols; Evaluation and Selection of Solution Alternatives

1. Overview of Regional Planning Methodology and Evaluation Process

The Regional Planning Process is intended to identify regional needs and the more efficient or cost-effective solutions to satisfy those needs. Consistent with Order No. 890, qualified projects timely submitted through the Regional Planning Process will be evaluated and selected from competing solutions ~~and resource~~ such that all types of ~~resource~~solutions and/or projects, as described below, are considered on a comparable basis. The same criteria and evaluation process will be applied to competing solutions and/or projects, regardless of type or class of stakeholder proposing them. ~~Where~~When a regional transmission need of more than one ETO in more than one Balancing Authority Area (BAA) in the region is identified by the PMC, the PMC is to perform studies that seek to meet that need through regional projects, even in the absence of project proposals advanced by stakeholders or projects identified through the WECC process. When the PMC performs a study to meet an identified regional need in circumstances where no stakeholder has submitted a project proposal to meet that regional need, the PMC is to pursue such studies in a not unduly discriminatory fashion. The study methods employed for PMC-initiated studies will be the same types of study methods employed for stakeholder-initiated studies (see, ~~e.g., Section III.E.2 addressing the use of NERC Transmission Planning (TPL) Reliability Standards for regional reliability~~Section III.E.2, Section III.E.3, and Section III.E.4). ~~projects, Section III.E.3 addressing the use of production cost modeling for regional economic projects, and Section III.E.4 addressing the identification of Public Policy Requirements for regional public policy driven projects).~~

The solution alternatives will be evaluated against one another on the basis of the following criteria to select the preferred solution or combination of solutions: (1) ability to fulfill the identified need practically; (2) ability to meet applicable reliability criteria or NERC Transmission Planning Standards issues; (3) technical, operational and financial feasibility; (4) operational benefits/constraints or issues; (5) cost-effectiveness over the time frame of the study or the life of the facilities, as appropriate (including adjustments, as necessary, for operational benefits/constraints or issues, including dependability); (6) where applicable, consistency with Public Policy Requirements or regulatory requirements, including cost recovery through regulated rates; and (7) a project must be determined by the PMC to be a more efficient or cost-effective solution to one or more regional transmission needs to be eligible for regional cost allocation, as more particularly described below.

The Regional Planning Process provides for an assessment of regional solutions falling in one or more of the following categories:

- Regional reliability solutions
- Regional economic solutions
- Regional transmission needs driven by Public Policy Requirements~~.~~
- Non-transmission alternatives

TOLSO members are eligible to vote in the TOLSO sector as the PMC evaluates whether there are regional transmission needs using the specified criteria applicable to each potential type of regional need (see the following sections for the corresponding criteria: Section III.E.2 for reliability-driven regional transmission needs, Section III.E.3 for economic-driven regional transmission needs and Section III.E.4 for regional transmission needs driven by Public Policy Requirements). All TOLSO members will participate in identifying regional transmission needs, soliciting for and evaluating solutions to the identified regional transmission needs (assuming the regional transmission need(s) identified is between more than one ETO in more than one BAA), and developing the comprehensive list of solutions for any such PMC-identified regional needs. However, once the comprehensive list of solutions is developed, voting within the TOLSO sector is limited to CTO beneficiaries that have signed an MOU, CTO beneficiaries that have become CBEs by the specified deadline, and ETO beneficiaries. CTO beneficiaries that have signed an MOU and are awaiting governing body/board approval, CTO beneficiaries that have already become CBEs by the specified deadline, along with ETOs that have been identified as beneficiaries, determine a short list of solutions to be criteria-tested by the PMC under the Tariff requirements, and vote within the TOLSO sector when the PMC evaluates the solutions under the Tariff criteria and determines which solution, out of the short listed solutions, is the more efficient or cost-effective solution to satisfy the regional transmission need, as more fully described in Section III.E.6.

APS encourages all interested stakeholders to consult the Business Practice Manual for additional details regarding the planning process, timing, and implementation mechanics. A flow chart depicting the Regional Planning Process is attached hereto as Exhibit 1.

All WestConnect Transmission Owners with Load Serving Obligations shall be responsible for submitting their local transmission plans for inclusion in the Regional Plan in accordance with the timeline stated in the Business Practice Manual. Those individual plans will be included in the Regional Plan base case system models.

2. WestConnect Reliability Planning Process

Once the base case is established and verified, the PMC is to perform a regional reliability assessment in which the base case system models will then be checked for adherence to the relevant NERC Transmission Planning Standards, through appropriate studies, including, but not limited to, steady-state power flow, voltage, stability, short circuit, and transient studies as more specifically outlined in the Business Practice Manual. If a reliability violation is identified in this power flow process, the violation will be referred back to the appropriate transmission owner.

The PMC will identify ~~projects~~thermal overloads on Bulk Electric System (BES) elements rated at least 200 kV on the transmission facilities of more than one TOLSO in more than one BAA or failure of more than one TOLSO to ~~resolve any~~ meet acceptable transient stability performance criteria in more than one Planning Coordinator area in more than one BAA. Overloads or transient instability due to contingencies evaluated in the studies must affect multiple BAs and transmission owners and be deemed by such transmission owners and the Planning Subcommittee to be of regional significance.

Reliability needs will be identified using one of the following:

- Contingency analysis to identify thermally overloaded elements. Not all thermal violations ~~that impact more than one transmission owner of relevant NERC or WECC Transmission Planning Standards or WECC criteria.~~ result in the identification of a regional need.

- Transient stability analysis to identify regionally critical transient disturbances and stability violations. Not all stability issues result in the identification of a regional need.

In addition, as part of the Regional Planning Process, an opportunity will be afforded to any interested party to propose regional reliability projects that are more efficient or cost-effective than other proposed solutions. The PMC will then identify the more efficient or cost-effective regional transmission project that meets the identified regional transmission need, taking into account factors such as how long the project will take to complete and the timing of the need. Because local transmission owners are ultimately responsible for compliance with NERC Reliability Standards and for meeting local needs the local transmission plans will not be modified; however, the PMC may identify more efficient or cost-effective regional transmission projects. As seen in Exhibit 1~~2~~ of this Attachment E, the PMC will perform the regional reliability assessment and, if necessary, identify a regional transmission need for transmission projects to resolve any violations ~~that impact more than one transmission owner~~as set forth herein in the fourth quarter of the planning cycle. If the identified need is not between more than one ETO in more than one BAA, it may proceed under Section III. E.6(c).

3. WestConnect Economic Planning Process

As part of the WestConnect Regional Planning Process, the PMC is to analyze whether there are projects that have the potential to reduce the total delivered cost of energy by alleviating congestion or providing other economic benefits to the transmission system located within the WestConnect Planning Region through production cost modeling~~. This analysis also shall utilize WECC Board-approved recommendations to further investigate congestion within the WestConnect Planning Region for congestion relief or economic benefits that has subsequently been validated by WestConnect.~~ that captures contractual TOLSO-TOLSO transmission rights in addition to physical and facility limitations. Additional projects may also be proposed by stakeholders or developed through the stakeholder input process for evaluation of economic benefits.

An economic-driven regional need is identified when the transmission systems of more than one TOLSO in more than one BAA have a common congested element, as follows:

Production Cost Model (PCM) studies must demonstrate "tangible" benefits to the benefitting TOLSOs, i.e. the studies must demonstrate that by the alleviation of such congestion, the lower cost resources that were previously limited by the identified congestion and that are needed by the benefitting TOLSOs will become accessible to the benefitting TOLSOs through firm transmission service rights and/or capacity ownership on the transmission solution resulting in reduction of their Adjusted Production Costs (APC). The presence of transmission limitations is not automatically identified as an economic need for congestion relief. Access to low cost resources as a result of relief gained from identified congestion is not assumed to be available to the TOLSOs. The availability of these low cost resources and whether there is a need for such resources are factors that will be considered as part of the evaluation of whether an economic need exists. For example, congestion that is created based on the use of resource assumptions that differ from the existing and planned resources selected through the TOLSOs' resource planning activities does not give rise to the identification of an economic-driven regional need.

In verifying PCM and APC results to evaluate whether a true economic-driven regional need is present in the region, several questions must be answered, including, but not limited to, the following:

- Do the results show persistent congestion (prolonged congestion that is independent of isolated events or outages)?
- Is owned and contracted-for generation appropriately accounted for?
- Is the increase or decrease in generation from specific units realizable?
- Is transmission service available between the location of the resources and the location of the TOLSOs' load?
- Are generating units capable of making additional third-party sales (i.e. are the units that are shown in the modeling results as generating additional MWs actually capable of doing so, considering factors such as ramping, capacity factor, start-up)?
- Have significant changes occurred in TOLSOs' projected loads or resource mix (retirements, new renewable mandates, etc.) during the ten-year WestConnect planning period? and
- Can existing fuel contract obligations continue to be met (e.g., are there pay or take coal contracts in effect, such that the cost of those existing resources are not capable of being avoided even if a lower-cost resource were verified as available and realizable)?

Under the Regional Planning Process, the PMC will identify more efficient or cost-effective regional transmission projects, but will not modify local transmission plans.

The WestConnect economic planning process will analyze benefits via detailed production cost simulations. The models employed in the production cost simulations will appropriately consider the impact of transmission projects on production cost and system congestion. The WestConnect economic planning process will also consider the value of decreased reserve sharing requirements in the development of a Regional Plan that is more efficient or cost-effective. ~~As seen in Exhibit 2 of this Attachment E, t~~The PMC will develop the production cost modeling analysis in the ~~second (2nd) and third (3rd) quarters~~first year of the planning cycle, solicit for Order No. 1000 solutions to ~~any~~ identified regional transmission need(s) in the second year of the planning cycle, and identify, following the FOD, any economic-driven transmission projects selected for purposes of cost allocation~~in the sixth (6th) quarter and parts of the fifth (5th) and seventh (7th) quarters of the planning cycle~~. If the identified need is not between more than one ETO in more than one BAA, it may proceed under Section III. E. 6(c).

4. WestConnect Public Policy Planning Process

a) Procedures for Identifying Regional Transmission Needs Driven by Public Policy Requirements

It is anticipated that any regional transmission need that is driven by Public Policy Requirements will be addressed initially within the local planning cycles of the individual transmission owners in the WestConnect Planning Region (through the consideration of local transmission needs driven by a Public Policy Requirement, since a Public Policy Requirement is a requirement that is imposed upon individual transmission owners (as opposed to a requirement that is imposed on a geographic region). For those Public Policy Requirements that affect more than one ~~transmission owner~~TOLSO in more than one BAA in the WestConnect Planning Region and are driving 200 kV or greater transmission development for access to needed resources that would be accessed by such TOLSOs to satisfy their Public Policy Requirements, a solution identified at the local level to satisfy the local needs of the affected transmission owner(s), may also satisfy a regional transmission need identified by the PMC for the WestConnect Planning Region.

WestConnect transmission owner members that are planning consistent with Order No. 890 will continue to conduct local transmission planning processes (Section II.C of this Attachment E), which provide a forum for discussions on local transmission needs driven by Public Policy Requirements. These local processes provide the basis for the individual transmission owners' local transmission plans, which are then incorporated into the regional base case at the start of the Regional Planning Process under Order No. 1000.

The PMC is to provide notice on the WestConnect website of both regional transmission planning meetings convened by the PMC for the WestConnect region, and local transmission planning meetings of the individual transmission owners in the WestConnect region.

The PMC will begin the evaluation of regional transmission needs driven by Public Policy Requirements by identifying any Public Policy Requirements that are driving local transmission needs of the transmission owners in the WestConnect Planning Region, and including them in the transmission system models (the regional base case) underlying the development of the Regional Plan. Then, the PMC will seek the input of stakeholders in the WestConnect region on those Public Policy Requirements in an effort to engage stakeholders in the process of identifying regional transmission needs driven by Public Policy Requirements. The PMC will communicate with stakeholders through public postings on the WestConnect website of meeting announcements and discussion forums. In addition, the PMC is to establish an email distribution list for those stakeholders who indicate a desire to receive information via electronic list serves.

After allowing for stakeholder input on regional transmission needs driven by Public Policy Requirements and regional solutions to those needs, as part of the Regional Planning Process, the PMC is to identify in the Regional Plan those regional transmission needs driven by Public Policy Requirements that were selected by the PMC for evaluation of regional solutions.

In selecting those regional transmission needs driven by Public Policy Requirements that will be evaluated for regional solutions in the current planning cycle, the PMC is to consider, on a non-discriminatory basis, factors, including but not limited to, the following:

(i) whether the Public Policy Requirement is driving a regional transmission need that can be reasonably identified in the current planning cycle;
(ii) the feasibility of addressing the regional transmission need driven by the Public Policy Requirement in the current planning cycle;
(iii) the factual basis supporting the regional transmission need driven by the Public Policy Requirement; and
(iv) whether a Public Policy Requirement has been identified for which a regional transmission need has not yet materialized, or for which there may exist a regional transmission need but the development of a solution to that need is premature.

No single factor shall necessarily be determinative in selecting among the potential regional transmission needs driven by Public Policy Requirements. If the identified need is not between more than one ETO in more than one BAA, it may proceed under Section III. E. 6(c).

The process by which PMC is to identify those regional transmission needs for which a regional transmission solution(s) will be evaluated, out of what may be a larger set of regional transmission needs, is to utilize the communication channels it has in place with stakeholders, identified above (open meetings and discussion forums convened by the PMC), through which regional transmission needs driven by Public Policy Requirements are to be part of the open dialogue.

b) Procedures for Identifying Solutions to Regional Transmission Needs Driven by Public Policy Requirements

Stakeholders are to have opportunities to participate in discussions during the Regional Planning Process with respect to the development of solutions to regional transmission needs driven by Public Policy Requirements. Such participation may take the form of attending planning meetings, offering comments for consideration by the PMC on solutions to regional needs driven by Public Policy Requirements, and offering comments on proposals made by other stakeholders or by the PMC. Stakeholders that are members of the WestConnect PMC are performing the function of regional transmission planning, and, developing regional solutions to identified regional transmission needs driven by Public Policy Requirements through membership on subcommittees of the PMC.

After allowing for stakeholder input on solutions to regional transmission needs driven by Public Policy Requirements, as part of the Regional Planning Process, the PMC is to identify in the Regional Plan those regional transmission solutions driven by Public Policy Requirements that were selected by the PMC and any regional transmission project(s) that more efficiently or cost-effectively meet those needs.

The procedures for identifying and evaluating potential solutions to the identified regional transmission needs driven by Public Policy Requirements are the same as those procedures used to evaluate any other project proposed in the Regional Planning Process, whether or not submitted for purposes of cost allocation.

The PMC will perform a Public Policy Requirements analysis to help identify if a transmission solution is necessary to meet an enacted public policy. For a transmission need driven by Public Policy requirements, the PMC will identify if a more efficient or cost effective regional transmission solution exists based upon several different considerations, including consideration of whether the project is necessary and capable of meeting transmission needs driven by Public Policy Requirements, while also:

i. Efficiently resolving any criteria violations identified by studies pursuant to any relevant NERC Transmission Planning (TPL) Reliability Standards for regional reliability projects or WECC Transmission Planning Reliability Standards or WECC criteria, as applicable, that could impact more than one Transmission Owner as a result of a Public Policy requirement or,

ii. Producing economic benefits shown through detailed production cost simulations. The models employed in the production cost simulations will appropriately consider the impact of transmission projects on production cost, system congestion and the value of decreased reserve sharing requirements.

The PMC will develop the public policy analysis in the sixth (6^{th}) quarter and parts of the fifth (5^{th}) and seventh (7^{th}) quarters of the planning cycle.

c) Proposed Public Policy

A public policy that is proposed, but not required (because it is not yet enacted or promulgated by the applicable governmental authority) may be considered through Section III.E.3 (WestConnect Economic Planning Process) of this Attachment E, if time and resources permit.

d) Posting of Public Policy Considerations

WestConnect will maintain on its website (i) a list of all regional transmission needs identified that are driven by Public Policy Requirements and that are included in the studies for the current regional transmission planning cycle; and (ii) an explanation of why other suggested regional transmission needs driven by Public Policy Requirements will not be evaluated.

5. WestConnect Non-Transmission Alternatives Planning Process

Non-transmission alternatives will be evaluated to determine if they will provide a more efficient or cost-effective solution to an identified regional transmission need. Non-transmission alternatives include, without limitation, technologies that defer or possibly eliminate the need for new and/or upgraded transmission lines, such as distributed generation resources, demand side management (load management, such as energy efficiency and demand response programs), energy storage facilities and smart grid equipment that can help eliminate or mitigate a grid reliability problem, reduce uneconomic grid congestion, and/or help to meet grid needs driven by Public Policy Requirements. Non-transmission alternatives are not eligible for regional cost allocation.

6. Approval of the WestConnect Regional Transmission Plan

~~The~~In any regional transmission planning cycle in which a regional (reliability, economic, or Public Policy Requirements-driven) transmission need is identified under the terms of this Tariff and for which the PMC sought and evaluated solutions seeking to satisfy that need, after the solutions have been evaluated for satisfaction of the benefit/cost ratio and regional cost allocation eligibility criteria set forth in Section VII.B, the Cost Allocation Subcommittee is to submit, for review and comment, the results of its project benefit/cost analysis and beneficiary determination to the PMC Chair and to the identified beneficiaries of the transmission projects that the CAS has identified as ~~proposed~~eligible for regional cost allocation under the terms of this Tariff. The PMC shall make available to its Members sufficient information to allow for a reasonable opportunity to comment on the proposed selection. The PMC shall not make a determination on the project benefit/cost analysis and beneficiary determination until it has reviewed all comments. Upon approval of the PMC, the project benefit/cost analysis and beneficiary identifications shall be posted by the PMC on the WestConnect website.

a) CTO ~~Acceptance of~~Regional Cost Allocation Opt-In Procedure

Each CTO beneficiary will indicate whether it ~~accepts the~~opts in to regional cost allocation for ~~the~~a project by providing proof of opt-in as a CBE through a Memorandum of Understanding (MOU) process, which is described below~~as follows~~, or by providing proof of opt-in as a CBE no later than the deadline for MOU submissions without going through the MOU process. The deadline for MOU submissions occurs at the point in the regional planning process after the PMC has developed a comprehensive list of solutions to PMC-identified regional needs and before short-listing occurs. The precise date upon which the PMC identifies a comprehensive list of solutions to identified regional needs may vary cycle-to-cycle, but in no event shall the deadline for MOU submissions occur earlier than April 1 or later than August 1 of the second year of the biennial regional planning cycle, and in no event may the deadline for submitting an MOU be less than 60 days following finalization of the comprehensive list of project solutions:

(i) A CTO Member, in its sole discretion, may ~~elect~~give notice of its conditional commitment to accept ~~a~~ regional cost allocation for ~~each separate~~a particular transmission ~~facility~~project for which it is identified as a beneficiary, ~~but only if it notifies~~ by submitting to the PMC and CAS Chair a completed Memorandum of Understanding (MOU) in the form set forth as Exhibit 2 to this Attachment E. The MOU signatory must be an individual within the ~~Chair of the PMC in writing of its decision to accept any~~ CTO's senior management with appropriate authority to make such commitment. A signed MOU serves as (a) the CTO's conditional agreement to regional cost allocation ~~within sixty (60) calendar days after~~for a particular project subject only to subsequent CTO governing body/board vote, and (b) its commitment to recommend the ~~benefit/cost analysis is posted by the PMC under this Section III.E.6; provided, however, that the PMC has the discretion to extend the 60-day period when~~

~~additional time is necessary for an identified beneficiary to complete its internal review and deliberation process before deciding to accept the cost allocation.~~ project to the CTO's governing body/board for approval.

(ii) ~~A CTO Member giving notice that it elects to accept a cost allocation for a transmission facility may rescind that notice at any time prior to the end of the sixty (60) day period, or such extended period established in this Section III.E.6.a.i.~~
~~(iii) A~~ Except as provided in subpart (b) below (governing situations in which not all CTO beneficiaries become CBEs), CTO beneficiaries that have signed an MOU and are awaiting governing body/board approval, CTO beneficiaries that are CBEs, along with ETOs that have been identified as beneficiaries, determine a short list of solutions to be criteria-tested by the PMC under the Tariff requirements, and vote within the TOLSO sector when the PMC evaluates the solutions under the Tariff criteria and determines which project, out of the short-listed projects, is the more efficient or cost effective project to satisfy the regional need.

(iii) A CTO's acceptance of a regional cost allocation for the particular transmission project is no longer conditional following its governing body/board approval. The WestConnect Regional Transmission Planning Process allows for a maximum six-month window for CTOs with MOUs to receive governing body/board approval, with the six-month clock beginning to run at that point in the two-year planning cycle when project costs, benefits and beneficiaries are identified, and an illustrative allocation of project costs among identified beneficiaries is complete. The progression of the WestConnect planning cycle is such that the six-month period is expected to conclude no later than February of the first year of the next planning cycle, as shown in Exhibit 1. The expiration of the six-month window is referred to as the FOD.[vi]

(iv) A CTO Member that is identified as a beneficiary but does not ~~accept a cost allocation for a transmission facility~~submit an MOU, or a CTO Member that submits an MOU for a project but does not notify the PMC and CAS Chairs by the FOD that it secured its governing body/board's approval for the project, will not be subject to regional cost allocation for that transmission facility. Otherwise, a CTO Member that executes an MOU and receives governing body/board approval by the FOD, and a CTO Member that does not execute an MOU but becomes a CBE without condition by timely submitting (no later than the deadline for MOU submissions) an email confirmation of its CBE status, in accordance with Section III.A.2, is subject to regional cost allocation and bound in subsequent reevaluations under the reevaluation criteria set forth in this Attachment E, to the same extent as ETO Members.

(v) The process chart in Exhibit 1 uses the term Cost-Bound Entities (CBEs) to identify the combination of (a) ETO beneficiaries subject to binding cost allocation by virtue of their enrollment, and (b) CTO beneficiaries subject to binding cost allocation by virtue of opting-in to regional cost allocation for a particular project.

A CTO's agreement to become a CBE for a transmission project is contractually binding and legally enforceable. The agreement, however, does not subject a CTO to FERC regulation nor does it limit any party's ability to assert any rights it may have under the Federal Power Act or limit FERC's authority under the Federal Power Act.

~~The information made available under this Section III.E.6 will be electronically masked and made available pursuant to a process that the PMC reasonably determines is necessary to prevent the disclosure of confidential information or CEII contained in the information.~~

~~b) Recalculation of Benefits and Costs for Reliability Projects:~~

~~The Cost Allocation Subcommittee will adjust, as necessary, its project benefit/cost analysis and beneficiary identification for any transmission project that continues to meet the region's criteria for regional cost allocation. For any CTO beneficiary that does not accept cost allocation for a project under this Section 6, such CTO's transmission need(s) which was included within the identification of the region's transmission needs under Sections 1-4 (for which the regional project would have avoided an alternative reliability project in such CTO's local transmission plan) will be removed as a regional transmission need for purposes of justifying a project's approval as a project eligible for inclusion in the Regional Plan for purposes of cost allocation.~~

~~c) Recalculation of Benefits and Costs for Public Policy Requirements Projects~~

~~The Cost Allocation Subcommittee will adjust, as necessary, its project benefit/cost analysis and beneficiary identification for any transmission project that continues to meet the region's criteria for regional cost allocation. For any CTO beneficiary that does not accept cost allocation for a project under this Section 6, such CTO's transmission need(s) which was included within the identification of the region's transmission needs under Sections 1-4 (for which the regional project would have avoided an alternative Public Policy Requirements project in such CTO's local transmission plan) will be removed as a regional transmission need for purposes of justifying a project's approval as a project eligible for inclusion in the Regional Plan for purposes of cost allocation.~~

~~This shall include any such CTO's resource needs necessary to comply with Public Policy Requirements.~~

~~d) Recalculation of Benefits and Costs for Economic Projects~~

~~The Cost Allocation Subcommittee will adjust, as necessary, its project benefit/cost analysis and beneficiary identification for any transmission project that continues to meet the region's criteria for regional cost allocation. For any CTO beneficiary that does not accept cost allocation for a project under this Section 6, such CTO's transmission benefits which were included within the identification of the regional project's economic benefits under Sections 1-4 will be removed as a regional transmission benefit for purposes of justifying a project's approval as a project eligible for inclusion in the Regional Plan for purposes of cost allocation. This shall include the value of any economic benefits determined through the regional transmission plan to accrue to such CTO.~~

~~e) Resultant Increase in Beneficiary Cost Allocation~~

~~Any regional transmission project that continues to meet the region's benefit/cost and other criteria for regional cost allocation will remain eligible for selection in the Regional Plan for purposes of cost allocation.~~

b) In the Event Not All CTO Beneficiaries Become CBEs

There may arise a situation in which one or more CTO beneficiaries of a regional transmission project execute a MOU but do not receive governing body/board approval and thus do not become a CBE. The regional project would have been solicited for, and designed, in part, to serve the needs of the CTO(s) that did not receive governing body/board approval. In this situation or in any situation in which not all CTO beneficiaries become CBEs, the following steps shall be taken:

i. If the remaining beneficiaries include more than one ETO in more than one BAA, the remaining beneficiaries may (a) request that the PMC convene a solicitation for project solutions in the then-current planning cycle;[vii] or (b) develop their own solution[viii](s) to the identified regional need. The remaining beneficiaries are not limited to the list of solutions identified from the previous project solicitation.

~~i.~~ii. A CTO that was an identified beneficiary of a transmission solution but did not become a CBE would not be eligible to vote within the TOLSO sector in any subsequent PMC vote with respect to that particular transmission solution or any alternative solution, subject to footnote ix below, that may be identified and evaluated to replace such transmission solution. Such CTOs may attend meetings held by WestConnect.

iii. If the alternative solution desired by the remaining beneficiaries identifies additional beneficiaries (whether ETOs or CTOs) that were not previously identified as beneficiaries, the PMC will inform PMC members and stakeholders of the alternative solution desired by the remaining beneficiaries and the project solution will move to the next planning cycle and may be submitted by such beneficiaries as a project submittal under Section III.C.5 or Section III.C.6 of this Attachment E.[ix] The project submittal's eligibility for regional cost allocation consideration will depend on whether the project satisfies the Tariff's regional cost allocation criteria. Nothing in this provision is intended to limit the rights of a CTO that did not become a CBE to participate in other WestConnect meetings.

iv. If there are no additional beneficiaries identified for the alternative solution, the project solution desired by the remaining beneficiaries may be submitted by such beneficiaries as a transmission project submittal proposed for regional cost allocation in the then-current regional planning cycle, in which case it will be evaluated based upon Tariff criteria.

c) In the Event Tariff Criteria are Not Satisfied:

In any planning cycle in which the criteria in this Attachment E are not satisfied, there is still an opportunity for collaboration and transmission infrastructure development, as follows:

In a planning cycle in which there is not more than one ETO in more than one BAA with a regional reliability-driven, economic-driven or Public Policy Requirements-driven transmission need, the affected TOLSOs may decide to pursue a joint transmission project that would not be subject to regional cost allocation under this Attachment E. See the far left side of the flow chart shown in Exhibit 1. The same opportunity is available in situations in which the PMC solicits for solutions to an identified regional reliability-driven, economic-driven, or Public Policy Requirements-driven transmission need, but the proposed solution does not satisfy the Tariff criteria. In choosing which course they intend to pursue, TOLSOs will document the reasoning behind their decision.

The opportunity for regional collaboration in this manner in pursuit of transmission infrastructure development may occur through formal solicitations or requests to developers for proposals, or in any other manner, upon the consensus of the affected TOLSOs.

~~f~~d) Approval of the WestConnect Regional Transmission Plan

Upon completion of the process outlined above, the PMC will vote on whether to accept the proposed plan. The Regional Transmission Plan will document why projects were either included or not included in the Regional Transmission Plan. In addition, the Regional Plan is to describe the manner in which the applicable regional cost allocation methodology was applied to each project selected in the Regional Plan for purposes of regional cost allocation. Projects that meet system needs are incorporated into the Regional Plan. Participant funded projects and other types of projects may be included in the Regional Plan; however, those projects are not eligible for regional cost allocation.

7. Reevaluation of the WestConnect Regional Transmission Plan

The PMC is the governing body responsible for deciding whether to reevaluate the Regional Plan to determine if the conditions, facts and/or circumstances relied upon in initially selecting a transmission project for inclusion in the Regional Plan for purposes of cost allocation have changed and, as a result, require reevaluation. Reevaluation will begin within the second planning cycle following the Effective Date. The Regional Plan and any project selected for cost allocation in the Regional Plan, including any local or single-system transmission projects or planned transmission system upgrades to existing facilities selected for purposes of cost allocation, shall be subject to reevaluation in each subsequent planning cycle according to the criteria below. Upon reevaluation, the Regional Plan and any projects selected for purposes of cost allocation in connection therewith may be subject to modification, including the status as a project selected for cost allocation, with any costs reallocated under Section VII as if it were a new project. Only the PMC has the authority to modify the status of a transmission project selected for cost allocation. Conditions that trigger reevaluation are:

- The underlying project characteristics and/or regional or interregional needs change in the Regional Plan. Examples include, but are not limited to: (a) a project's failure to secure a developer, or a developer's failure to maintain the qualifications necessary to utilize regional cost allocation, or (b) a change (increase or decrease) in the identified beneficiaries of a project (which changes may occur through company acquisitions, dissolutions or otherwise), (c) a change in the status of a large load that contributes to the need for a project, or (d) projects affected by a change in law or regulation;
- Projects that are delayed and fail to meet their submitted in-service date by more than two (2) years. This includes projects delayed by funding, regulatory approval, contractual administration, legal proceedings (including arbitration), construction delays, or other delays;
- Projects with significant project changes, including, but not limited to kilovolt (kV), megavolt ampere (MVA), or path rating, number of circuits, number of transmission elements, or interconnection locations; and
- Projects with a change in the calculation of benefits or benefit/cost (B/C) ratio that may affect whether the project selected for inclusion in the Regional Plan for purposes of cost allocation is a more efficient or cost effective regional solution.

    - Example 1: Where an increase in the selected project's costs, including but not limited to, material, labor, environmental mitigation, land acquisition, operations and maintenance, and mitigation for identified transmission system and region, causes the total project costs to increase above the level upon which the project was initially selected for inclusion in the Regional Plan for purposes of cost allocation, the inclusion of the regional project in the Regional Plan will be reevaluated to determine if the regional project continues to satisfy the region's B/C ratio and can be found to be a more efficient or cost-effective solution under current cost information.

    - Example 2: A selected project's benefits may include identification of a reliability benefit in the form of remedying a violation of a Reliability Standard. If the identified beneficiary implements improvements, such as a Remedial Action Scheme, to achieve reliability in compliance with the Reliability Standard at issue, inclusion of the regional project in the regional plan will be reevaluated to determine if the regional project continues to satisfy the region's B/C ratio and can be found to be a more efficient or cost-effective solution under current benefit information.

- Example 3: Where a project's estimated benefits include benefits in the form of avoided costs (e.g., a regional project's ability to avoid a local project), and the project is not avoided, the inclusion of the regional project in the Regional Plan will be reevaluated to determine if the regional project continues to satisfy the region's B/C ratio and can be found to be a more efficient or cost-effective solution under current facts and circumstances.

Projects selected for purposes of cost allocation will continue to be reevaluated until all the following conditions have been met.

- State and federal approval processes completed and approved (including cost recovery approval under Section 205 of the Federal Power Act as applicable);
- All local, state and federal siting permits have been approved; and
- Major construction contracts have been issued.

When the Regional Plan is reevaluated as a result of any of the conditions triggering reevaluation addressed above, the PMC is to determine if an evaluation of alternative transmission solutions is needed in order to meet an identified regional need. In doing so, the PMC is to use the same processes and procedures it used in the identification of the original transmission solution to the regional need. If an alternative transmission solution is needed, the incumbent transmission owner may propose one or more solutions that it would implement within its retail distribution service territory or footprint, and if such proposed solution is a transmission facility or NTA, the transmission owner may submit the project for possible ~~selection~~inclusion in the Regional Plan as a more efficient or cost effective solution to the identified need~~for purposes of cost allocation~~.

Projects not subject to reevaluation include, but are not limited to, the following:

- Local or single system transmission projects that have been identified in individual transmission provider's Transmission Planning (TPL) Reliability Standards compliance assessments to mitigate reliability issues and that have not been proposed for (and selected by the PMC for) regional cost allocation; and
- Planned transmission system upgrades to existing facilities that have not been proposed for (and selected by the PMC for) regional cost allocation.

Projects meeting any of the following criteria as of the Effective Date will also not be subject to reevaluation under the Regional Planning Process:

- Projects of transmission owners who have signed the Planning Participation Agreement and that have received approval through local or state regulatory authorities or board approval;

- Local or single system transmission projects that have been planned and submitted for inclusion in the Regional Plan or exist in the 10-year corporate capital project budgets; and
- Projects that are undergoing review through the WECC Project Coordination and Rating Review Process as of the Effective Date.

8. Confidential or Proprietary Information

Although the Regional Planning Process is open to all stakeholders, stakeholders will be required to comply at all times with certain applicable confidentiality measures necessary to protect confidential information, proprietary information or CEII. From time to time the regional transmission planning studies and/or open stakeholder meetings may include access to base case data that are WECC proprietary data, information classified as CEII by FERC, or other similar confidential or proprietary information. In such cases, access to such confidential or proprietary information shall be limited to only those stakeholders that (i) hold membership in or execute a non-disclosure agreement (NDA) with WECC (*see* APS's Attachment E Hyperlinks List posted on the APS OASIS http://www.oatioasis.com/AZPS/AZPSdocs/Attach_E_Hyperlink_List.pdf); (ii) execute a non-disclosure agreement with the applicable WestConnect Planning Region members; or (iii) are parties to the Planning Participation Agreement, as may be applicable.

Any entity wishing to access confidential information, subject to applicable standards of conduct requirements, discussed in the Regional Planning Process must execute an NDA, and submit it to NDA@westconnect.com. A link to the NDA has been provided (*see* APS's Attachment E Hyperlinks List posted on the APS OASIS http://www.oatioasis.com/AZPS/AZPSdocs/Attach_E_Hyperlink_List.pdf).

[i] "Cost allocation," "regional cost allocation" and "Order No. 1000 cost allocation" are terms used interchangeably throughout this Attachment E.

[ii] If the Planning Participation Agreement is terminated, the requirement of becoming a signatory to the Planning Participation Agreement also terminates. In that situation, it would no longer be necessary for an entity to execute the Planning Participation Agreement before engaging in the WestConnect regional planning process, because the PMC will cease performing its functions under this Attachment E upon termination of the Planning Participation Agreement.

[iii] Because the rights and responsibilities of the PMC terminate when the Planning Participation Agreement terminates, APS, as a Transmission Provider subject to Order No. 1000 compliance, will have to satisfy its regulatory compliance through other means. At that time, APS will make an appropriate filing with the Commission to demonstrate its continued compliance with Order No. 1000.

[iv] The Planning Participation Agreement is located at http://www.westconnect.com./planning_agreement.php.

[v] The WestConnect website is located at http://www.westconnect.com.

[vi] A CTO that has executed an MOU will promptly notify the PMC and CAS after its governing body/board reaches its decision.

[vii] If the remaining beneficiaries request the PMC to conduct a solicitation, such solicitation would not be allowed to commence until after the expiration of the FOD so that all CTOs with MOUs have their full window of time in which to receive governing body/board approval.

[viii] The remaining beneficiaries are not prohibited from pursuing the solution for which the CTO did not become a CBE, but only if all remaining beneficiaries, including CTO beneficiaries that have signed an MOU and become CBEs or that otherwise became CBEs, agree to do so. In such circumstances, the solution would be evaluated under the criteria for cost allocation in Section VII. In addition, the remaining beneficiaries may choose to identify an alternative solution, including, but not limited to, consideration of other project submittals made during the planning cycle or solicitation of new project submittals in the next planning cycle.

[ix] In the situation in which the alternative solution desired by the remaining beneficiaries has additional beneficiaries that were not previously identified as beneficiaries of the original solution, and the alternative solution desired by the remaining beneficiaries is submitted by such beneficiaries as a project submittal under Section III.C.5 or Section III.C.6 of this Attachment E, the CTO voting prohibition identified in sub-part (ii) above is released to open up the potential for the CTO who did not receive governing body/board approval of the original solution to vote in the TOLSO sector on the alternative project submittal. In this situation, the CTO's voting rights will depend on whether the CTO is identified as a beneficiary of the alternative solution, and whether the CTO has signed an MOU or has already become a CBE, as addressed in Section III.E.1.

APS ATTACHMENT E

Transmission Planning Process

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B. Regional Transmission Projects

For any project determined by the PMC to be eligible for regional cost allocation, project costs will be allocated proportionally to those entities determined by the PMC, as shown in the Regional Plan, to be beneficiaries in the WestConnect Planning Region, as identified in this Attachment E subject to the processes set forth in Sections III through VII and the flow chart process in Exhibit 1.

The PMC, with input from the CAS and in accordance with the terms of this Tariff, is to determine whether a project is eligible for regional cost allocation, and assesses the project's costs against its benefits in accordance with the following ~~factors~~criteria for regional cost allocation:

- Project transmission lines must be 200 kV or greater and a minimum of 50 miles in length,
- Project transformers must have a low side operating voltage of 200 kV or greater.
- All other project transmission equipment must functionally support or operate an operating voltage of 200 kV or greater.
- The project physically interconnects the transmission systems of two or more ETOs in more than one BAA.
- Benefits and beneficiaries will be identified before cost allocation methods are applied.
- A minimum of two ETOs must benefit from the project.
- The percentage of project benefits identified as going to ETO beneficiaries and CTO beneficiaries that have signed MOUs or have become CBEs (or after the FOD, the percentage going to CBEs) represents 90% or greater of the total project benefits.
- Cost assignments must be commensurate with estimated benefits.
- Those that receive no benefits must not be involuntarily assigned costs.
- A super majority (80% or more) of identified beneficiaries comprised of ETO beneficiaries and CTO beneficiaries that have signed MOUs or have become CBEs (or after the FOD, 80% or more of CBEs) vote in favor of the solution proposed for regional cost allocation and agree that they actually will benefit.
- A benefit-to-cost threshold (B/C) ~~of not more~~equal to or greater than 1.25 shall be used, as applicable,[i] so that projects with significant benefits are not excluded, as applicable.
- Costs must be allocated solely within the WestConnect Planning Region, unless other regions or entities voluntarily assume costs.
- Costs for upgrades on neighboring transmission systems or other planning regions that are (i) required to be mitigated by the WECC Path Rating process, FERC tariff requirements, or NERC Reliability Standards, or (ii) negotiated among interconnected parties will be included in the total project costs and used in the calculation of B/C ratios.
- Cost allocation method and data shall be transparent and with adequate documentation.

- Different cost allocation methods may be used for different types of projects.

Specifically, the PMC will consider the following project categories eligible for regional cost allocation consideration ~~as further described below~~ based on specified criteria set forth above:

- Reliability Projects;
- Economic ~~or Congestion Relief~~ Projects; or
- Public Policy Projects.

Only projects that fall within one or more of these three categories and satisfy the cost-to-benefit analyses and other requirements, as specified herein, are eligible for regional cost allocation in the WestConnect Planning Region. APS encourages all interested stakeholders to consult the Business Practice Manual for additional details regarding the assessment for eligibility for regional cost allocation. Summary provisions are provided below:[ii]

1. Allocation of Costs for Reliability Projects

In order to allocate costs to transmission owners for system reliability improvements that are necessary for their systems to meet the NERC Transmission Planning Standards, the WestConnect cost allocation procedure will allocate costs for system reliability improvements only when a system improvement is required to comply with the NERC Transmission Planning Standards during the planning horizon~~.~~ as set forth in greater detail in Section III.E.2.

All components of a Transmission Owner's local transmission plan will be included in the Regional Plan and will be considered Local Transmission Projects that are not eligible for regional cost allocation. A system performance analysis will be performed on the collective plans to ensure the combined plans adhere to all relevant NERC Transmission Planning Standards, and stakeholders will be afforded an opportunity to propose projects that are more efficient or cost-effective than components of multiple Transmission Owner local plans as outlined in Section III.E, above.

Should a reliability issue be identified in the review of the included local transmission plan, the project necessary to address that reliability issue will be included in the Regional Plan and the cost will be shared by the utilities whose load contributed to the need for the project.

Should multiple utilities have separate reliability issues that are addressed more efficiently or cost-effectively by a single regional project, that regional project will be approved for selection in the Regional Plan and the cost will be shared by those transmission owners in proportion to the cost of alternatives that could be pursued by the individual transmission owners to resolve the reliability issue. The ultimate responsibility for maintaining system reliability and compliance with NERC Transmission Planning Standards rests with each transmission owner.

The costs for regional reliability projects will be allocated according to the following equation:

(1 divided by 2) times 3 equals 4

Where:

1 is the cost of local reliability upgrades necessary to avoid construction of the regional reliability project in the relevant transmission owner's retail distribution service territory or footprint
2 is the total cost of local reliability upgrades in the combination of transmission owners' retail distribution service territories or footprints necessary to avoid construction of the regional reliability project
3 is the total cost of the regional reliability project
4 is the total cost allocated to the relevant transmission owner's retail distribution service territory or footprint

The manner in which the PMC applied this methodology to allocate the costs of each regional reliability project shall be described in the Regional Plan.

2. Allocation of Costs for Economic Projects

Cost allocation for ~~economic~~ projects satisfying an identified economic-driven regional transmission need~~associated with congestion relief that provide for more economic operation of the system~~ will be based on the calculation of economic benefits that each transmission owner system will receive. See Section III.E.3 for details on the use of production cost modeling and the verification of model results. Cost allocation for economic projects shall include scenario analyses to ensure that benefits will actually be received by beneficiaries with relative certainty. Projects for which benefits and beneficiaries are highly uncertain and vary beyond reasonable parameters based on assumptions about future conditions will not be selected for cost allocation. The PMC is not authorized to require any particular resource selection. In performing regional cost allocation on a project that satisfies an economic-driven regional transmission need, benefits are to be allocated to those identified beneficiaries that plan to access the resource (i.e., those entities that will rely on the particular resource). Assumptions made in the cost allocation process may not contradict state integrated resource plans.

In order for a project to be considered economically-justified and receive cost allocation associated with economic projects, the project must have a B/C ratio that is greater than 1.0 under each reasonable scenario evaluated and have an average ratio of at least 1.25 under all reasonable scenarios evaluated. Costs will be allocated on the basis of the average of all scenarios evaluated. The B/C ratio shall be calculated by the PMC. This B/C ratio shall be determined by calculating the aggregate load-weighted benefit-to-cost ratio for each transmission system in the WestConnect Planning Region. The benefits methodology laid out below ensures that the entities that benefit the most from the completion of an economic project are allocated costs commensurate with those project benefits.

The cost of any project that has an aggregate 1.25 B/C ratio or greater will be divided among the transmission owners that show a benefit based on the amount of benefits calculated to each respective transmission owner. For example, if a $100 million dollar project is shown to have $150 million in economic benefit, the entities for which the economic benefit is incurred will be determined. The cost of the project will then be allocated to those entities, based on the extent of each entity's economic benefits relative to the total project benefits. This will ensure that each entity that is allocated cost has a B/C ratio equal to the total project B/C ratio. For example:

- Project with $150 million in economic benefit and $100 million in cost
    - Company 1 has $90 million in benefits; Company 2 has $60 million in benefits
    - Company 1 allocation: 90/150 (100) = $60 million
    - Company 1 B/C ratio: 90/60 = 1.5
    - Company 2 allocation: 60/150 (100) = $40 million
    - Company 2 B/C ratio: 60/40 = 1.5

Other than through the reevaluation process described in Section III.E.7 of this Attachment E, the benefits and costs used in the evaluation shall only be calculated during the planning period and shall be compared on a net present value basis.

The WestConnect economic planning process shall consider production cost savings and reduction in reserve sharing requirements as economic benefits capable of contributing to the determination that a project is economically justified for cost allocation. Production cost savings are to be determined by the PMC performing a production cost simulation to model the impact of the transmission project on production costs and congestion. Production cost savings will be calculated as the reduction in production costs between a production cost simulation with the project included compared to a simulation without the project. See Section III.C.3 for further details on the use of production cost modeling and the verification of model results. Reductions in reserve sharing requirements are to be determined by the PMC identifying a transmission project's impact on the reserve requirements of individual transmission systems, and not on the basis of the project's collective impact on a reserve sharing group, as a whole. The production cost models are to appropriately consider the hurdle rates between transmission systems. The following production cost principles may be applied:

- The production cost savings from a project must be present in each year from the project in-service date and extending out at least ten (10) years.
- Cost savings must be expressed in present-value dollars and should consider the impact of various fuel cost forecasts.
- The production cost study must account for contracts and agreements related to the use of the transmission system (this refers to paths in systems that might be contractually limited but not reliability limited).
- The production cost study must account for contracts and agreements related to the access and use of generation (this refers to generators that might only use spot purchases for fuel rather than firm purchases, or generation that has been designated as network resources for some entities and thus cannot be accessed at will by non-owners).

Access by stakeholders to the PMC's application of its regional cost allocation method for a specific economic transmission project is available in several ways:

First, stakeholders that are members of the PMC will have firsthand knowledge of the way in which the regional method was applied to a particular project because the PMC is responsible for performing the application of the regional cost allocation method. Second, stakeholders that choose not to become members of the PMC may access such information through the WestConnect regional stakeholder process. See Section III.B of this Attachment E. Third, the manner in which the PMC applied this methodology to allocate the costs of each economic project shall be described in the Regional Plan.

In determining which entities will be allocated costs for economic projects, WestConnect will compare the economic value of benefits received by an entity with the cost of the project to ensure that each entity allocated cost receives a benefit/cost ratio equal to the aggregate load-weighted benefit-to-cost ratio. These costs allocated to each company will be calculated based on the following equation:

(1 divided by 2) times 3 equals 4

Where:

1	is the total projected present value of economic benefits for the relevant transmission owner
2	is the total projected present value of economic benefits for the entire project
3	is the total cost of the economic project
4	is the total cost allocated to the relevant transmission owner

Any transmission owner with benefits less than or equal to one percent of total project benefits will be excluded from cost allocation. Where a project satisfies the B/C ratio, and is determined to provide benefits less than or equal to one percent of total project benefits to an identified transmission owner, such benefits will be re-allocated to all other identified beneficiaries on a pro rata basis, in relation to each entity's share of total project benefits.

3. Allocation of Costs for Public Policy Projects

Any transmission system additions that arise from Public Policy Requirements shall be included in the system models used for the WestConnect transmission system studies. Further, any additional system needs that arise from proposed public policy shall be reported by each entity for its own service territory. Decisions on the inclusion of those needs shall be made during the consideration and approval of the system models. Transmission needs driven by Public Policy Requirements will be included in the evaluation of reliability and economic projects.

Except for projects proposed through a transmission owner's local planning process, arising out of a local need for transmission infrastructure to satisfy Public Policy Requirements that are not submitted as projects proposed for cost allocation (which are addressed in Section II of this Attachment E), any projects arising out of a regional need for transmission infrastructure to satisfy the Public

Policy Requirements shall be considered public policy projects eligible for evaluation in the Regional Planning Process.

Stakeholders may participate in identifying regional transmission needs driven by Public Policy Requirements. After seeking the input of stakeholders pursuant to the stakeholder participation provisions of Section III, the PMC is to determine whether to move forward with the identification of a regional solution to a particular regional need driven by Public Policy Requirements. Stakeholders may participate in identifying a regional solution to a regional need driven by Public Policy Requirements pursuant to the stakeholder participation provisions of Section III, or through membership on the PMC itself. After seeking the input of stakeholders, the PMC is to determine whether to select a particular regional solution in the regional transmission plan for purposes of cost allocation. The identification of beneficiaries of these projects shall be the entities that will access the resources enabled by the project in order to meet their Public Policy Requirements.

If an entity accesses resources that were enabled by a prior public policy project, that entity will need to either share in its relative share of the costs of that public policy project or acquire sufficient transmission service rights to move the resources to its load with the determination left up to the entity or entities that were originally allocated the cost for the public policy project.

The costs for public policy projects will be allocated according to the following equation:

(1 divided by 2) times 3 equals 4

Where:

1	is the number of megawatts of public policy resources enabled by the public policy project for the entity in question
2	is the total number of megawatts of public policy resources enabled by the public policy project
3	is the total project cost
4	is the cost for the public policy project allocated to the entity in question

The process to interconnect individual generation resources is provided for under the generator interconnection section of each utility's OATT and not under this process.

Requests for transmission service that originate in a member's system and terminate at the border shall be handled through that member's OATT. Regional transmission needs necessary to meet Public Policy Requirements will be addressed through the Public Policy Requirements section of the Regional Planning Process.

The manner in which WestConnect applied this methodology to each public policy project shall be described in the Regional Transmission Plan.

4. Combination of Benefits

In developing a more efficient or cost-effective plan, it is possible for the plan to jointly consider multiple types of benefits if multiple types of needs are identified when approving projects for inclusion in the Regional Plan. The determination to consider multiple types of benefits for a particular project shall be made through the WestConnect stakeholder process, in which interested stakeholders are given an opportunity to provide input as set forth in Section III of this Attachment E. In determining whether a project would provide multiple benefits, the PMC is to categorize the benefits based on the identified regional need as (a) necessary to meet NERC Transmission Planning Reliability Standards (reliability); (b) achieving production cost savings or a reduction in reserve sharing requirements (economic); or (c) necessary to meet transmission needs driven by Public Policy Requirements, as applicable, using the methods set forth in this Attachment E. The PMC will identify all ~~three~~ categories of benefits ~~in~~associated with the identified regional needs in its regional cost allocation process. If a project cannot pass the cost allocation threshold for any one of the three need/benefit categories, alone (reliability, economic or public policy), the sum of benefits from each benefit category may be considered.

- With respect to a reliability-driven regional transmission project, the quantified benefits of the project to each identified beneficiary must be greater, by a margin of 1.25 or more to 1, than the result of the equation identified in Section B.1 above (where the result is shown as item 4 in the formula).
- With respect to an economic-driven regional transmission project, the quantified benefits of the project to each identified beneficiary must be greater than the project's cost to each beneficiary under each reasonable scenario evaluated, and must yield an average ratio of at least 1.25 to 1 under all reasonable scenarios evaluated, as described in Section B.2 above.
- With respect to a public policy requirements-driven regional transmission project, the quantified benefits of the project to each identified beneficiary must be greater, by a margin of 1.25 or more to 1, than the result of the equation identified in Section B.3 above (where the result is shown as item 4 in the formula).

If a single regional transmission project is determined to provide benefits in more than one category, but does not meet the cost threshold for any single category, the PMC may consider the sum of benefits from each benefit category to determine if the regional transmission project provides, in total, benefits per beneficiary that meet or exceed the region's 1.25 to 1 benefit to cost ratio. To illustrate, consider the following example where a regional project developed to provide public policy requirement benefits might also provide for economic benefits to the same beneficiaries:

> A regional project submittal has undergone analysis for its quantifiable benefits and costs and is determined to cost $100 million and produce benefits to identified beneficiaries in two categories: economic benefits of $101 million (on average, under all economic scenarios quantified), and public policy requirement benefits of $70 million. The project is found to

fail the cost threshold for each category, individually, but when the total benefits are combined and the project's total regional benefits per beneficiary are weighed against the project's total costs per beneficiary, the project can be found to meet or surpass the region's 1.25 to 1 benefit to cost ratio per beneficiary:

- The benefits to Beneficiary A of pursuing the regional solution (60% of the regional project's total $171 million in benefits) = $102.6 million. When $102.6 million in project benefits is compared against $60 million in project costs (60% of project costs), it yields a B/C ratio of 1.71 to 1 for Beneficiary A.

- The benefits to Beneficiary B of pursuing the regional solution (40% of the regional project's total $171 million in benefits) = $68.4 million. When $68.4 million in project benefits is compared against $40 million in project costs (40% of project costs), it yields a B/C ratio of 1.71 to 1 for Beneficiary B.

Even though the regional project does not pass the cost allocation threshold in any individual benefit category, the PMC may consider the sum of the project's benefits in all categories.

For those regional projects that satisfy the region's cost allocation threshold, the PMC then will continue its evaluation process by considering whether the regional project meets the region's identified reliability, economic and Public Policy Requirements-driven needs more efficiently or cost-effectively than solutions identified by individual transmission providers in their local transmission planning processes.

The costs for projects that rely upon multiple types of benefits to secure inclusion in the Regional Plan for purposes of cost allocation will be shared according to the amount of cost that is justified by each type of benefits.

5. Allocation of Ownership and Capacity Rights

An Eligible Transmission Developer that is subject to the Commission's jurisdiction under section 205 of the Federal Power Act may not recover project costs from identified beneficiaries in the WestConnect Planning Region without securing approval for project cost recovery from FERC through a separate proceeding brought by the Eligible Transmission Developer under Section 205 of the Federal Power Act. In no event will identified beneficiaries in the WestConnect Planning Region from whom project costs are sought to be recovered under Section 205 be denied either transmission transfer capability or ownership rights proportionate to their allocated costs, as determined by FERC in such proceeding. An Eligible Transmission Developer that is not subject to the Commission's jurisdiction under section 205 of the Federal Power Act may seek cost recovery from identified beneficiaries in the WestConnect Planning Region either: (a) through bilateral agreements that are voluntarily entered into between such Eligible Transmission Developer and the applicable identified beneficiaries; or (b) by obtaining approval from FERC for project cost recovery pursuant to any other applicable section of the Federal Power Act.

If a project beneficiary receives transmission transfer capability on the project in exchange for transmission service payments, such project beneficiary may resell the transfer capability. Alternatively, a project beneficiary could seek to make a direct capital contribution to the project construction cost (in lieu of making transmission service payments) in which case, the project beneficiary would instead receive an ownership percentage in proportion to their capital contribution (Ownership Proposal). This Ownership Proposal does not create a right of first refusal for transmission beneficiaries.

An ownership alternative will only be pursued if the Eligible Transmission Developer agrees. The Eligible Transmission Developer and the beneficiaries will enter into contract negotiations to address the many details regarding the capital funding mechanics and timing, as well as other details, such as defining (as between the Eligible Transmission Developer, whether a nonincumbent or incumbent transmission developer, and those receiving ownership interests) responsibility for operations and maintenance, administrative tasks, compliance with governing laws and regulations, etc. These negotiations will take place at arm's length, without any one party having undue leverage over the other.

A transmission project beneficiary should not be expected to pay for its benefits from the project twice: once through a capital contribution, and again through transmission service payments. The Ownership Proposal permits an ownership share in a project that is in the same proportion to a beneficiary's allocable costs, which costs will have been allocated roughly commensurate with the benefits to be gained from the project. This will allow the beneficiary to earn a return on its investment. In addition, it allows those beneficiaries that may not necessarily benefit from additional transfer capability on a new transmission project, whether due to lack of contiguity to the new facilities or otherwise, to realize the benefits through an ownership option.

Any transmission project participant that is identified as a beneficiary of the project might be permitted by the Eligible Transmission Developer to contribute capital (in lieu of transmission service payments) and receive a proportionate share of ownership rights in the transmission project. The Ownership Proposal affords an identified beneficiary who contributes toward the project costs the opportunity to obtain an ownership interest in lieu of an allocated share of the project costs through transmission service payments for transfer capability on the project; it does not, however, confer a right to invest capital in a project. The Ownership Proposal merely identifies that, to the extent it is agreed among the parties that capital may be contributed toward a transmission project's construction, a proportionate share of ownership rights will follow.

Nothing in this Attachment E with respect to Order No. 1000 cost allocation imposes any new service on beneficiaries. Similarly, nothing in this Attachment E with respect to Order No. 1000 cost allocation imposes on an Eligible Transmission Developer an obligation to become a provider of transmission services to identified beneficiaries simply as a result of a project's having been selected in the Regional Plan for purposes of cost allocation; provided, however, if that Eligible Transmission Developer seeks authorization to provide transmission services to beneficiaries or others, and to charge rates or otherwise recover costs from beneficiaries or others associated with any transmission services it were to propose, it must do so by contract and/or under separate proceedings under the Federal Power Act. The purpose of this Section VII.B.5 is to (a) provide an option to a project developer to negotiate ownership rights in the project with identified beneficiaries, if both the developer and the identified beneficiaries mutually desire to do so, and (b) specify that, although Order No. 1000 cost allocation does not impose any new service on beneficiaries, identified beneficiaries have the opportunity to discuss with the project developer the potential for entering into transmission service agreements for transmission capacity rights in the project, and (c) ensure that Order No. 1000 cost allocation does not mean that a project developer may recover project costs from identified beneficiaries without providing transmission transfer capability or ownership rights, and without securing approval for project cost recovery by contract and/or under a separate proceeding under the Federal Power Act.

If an Eligible Transmission Developer is not subject to FERC's jurisdiction under section 205 of the Federal Power Act, the Eligible Transmission Developer would have to seek to recover project costs from identified beneficiaries in the WestConnect Planning Region either: (a) through bilateral agreements that are voluntarily entered into between such Eligible Transmission Developer and the applicable identified beneficiaries; or (b) by obtaining approval from FERC for project cost recovery pursuant to any other applicable section of the Federal Power Act.

6. Project Development Schedule

The WestConnect PMC will not be responsible for managing the development of any project selected for inclusion in the Regional Plan. However, after having selected a project in the Regional Plan, the PMC will monitor the status of project's development. If a transmission facility is selected for inclusion in the Regional Plan for purposes of cost allocation, the transmission developer of that transmission facility must submit a development schedule that indicates the required steps, such as the granting of state approvals, necessary to develop and construct the transmission facility such that it meets the regional transmission needs of the WestConnect Planning Region. As part of the ongoing monitoring of the status of the regional transmission project once it is selected, the transmission owners and providers in the WestConnect Planning Region will establish a date by which the steps required to construct must be achieved that are tied to when construction must begin to timely meet the need that the project is selected to address. If such required steps have not been achieved by those dates, then the transmission owners and providers in the WestConnect Planning Region may remove the transmission project from the selected category and proceed with reevaluating the Regional Plan to seek an alternative solution.

7. Economic Benefits or Congestion Relief

For a transmission project wholly within the Transmission Provider's local transmission system that is undertaken for economic reasons or congestion relief at the request of a Requester, the project costs will be allocated to the Requester.

8. APS Rate Recovery

Notwithstanding the foregoing provisions, APS will not assume cost responsibility for any transmission project if the cost of the project is not reasonably expected to be recoverable in APS's retail and/or wholesale transmission rates.

9. Selection of a Transmission Developer for Sponsored and Unsponsored Projects

For any project (sponsored or unsponsored) determined by the PMC to be eligible for regional cost allocation and selected in the Regional Plan for purposes of cost allocation, the PMC shall select a transmission project developer according to the processes set forth in this section, provided that selection according to those processes does not violate applicable law where the transmission facility is to be built that otherwise prescribes the entity that shall develop and build the project. Any entity that, pursuant to applicable law for the location where the facilities are to be built, shall or chooses to develop and build the project must submit a project development schedule as required by Section VII.B.6 of this Attachment E, within the timeframe directed by the Business Practice Manual, not to exceed the time period for request for proposal responses.

For any project determined by the PMC to be eligible for regional cost allocation and selected in the Regional Plan for purposes of cost allocation, either sponsored by a transmission developer or unsponsored, that is not subject to the foregoing paragraph, the PMC shall upon posting the selected projects, issue a request for information to all Eligible Transmission Developers under Section III.D.2 of this Attachment E soliciting their interest in developing the project(s). Each transmission developer shall respond to the request for information indicating its interest in developing the project. The PMC shall post on the WestConnect website the list of all transmission developers who responded with an expression of interest in developing the project(s). The PMC shall provide to each developer indicating interest in developing a project a request for proposals for the identified project(s) with a specified date of return for all proposals.

Each transmission developer, or partnership or joint ventures of transmission developers, shall submit information demonstrating its ability to finance, own and construct the project consistent with the guidelines for doing so set forth in the WestConnect Business Practices Manual. The PMC shall assess the submissions according to the following process and criteria:

The evaluation of the request for proposals will be at the direction of the PMC, and will involve representatives of the beneficiaries of the proposed project(s). The evaluation will include, but not be limited to, an assessment of the following evidence and criteria.

- General qualifications of the bidding entity;
- Evidence of financing/financial creditworthiness, including
  - financing plan (sources debt and equity), including construction financing and long-term financing
  - ability to finance restoration/forced outages

    - credit ratings
    - financial statements;
- Safety program and experience;
- Project description, including
    - detailed proposed project description and route
    - design parameters
    - design life of equipment and facilities
    - description of alternative project variations;
- Development of project, including
    - experience with and current capabilities and plan for obtaining state and local licenses, permits, and approvals
    - experience with and current capabilities and plan for obtaining any federal licenses and permits
    - experience with and expertise and plan for obtaining rights of way
    - development schedule
    - development budget;
- Construction, including
    - experience with and current capabilities and plan for project construction
    - third party contractors
    - procurement plan
    - project management (cost and schedule control)
    - construction schedule
    - construction budget (including all construction and period costs;
- Operations, including
    - experience with and current capabilities and plan for project operation
    - experience with and current capabilities and plan for NERC compliance
    - security program and plan
    - storm/outage response plan
    - reliability of facilities already in operation;
- Maintenance capabilities and plans for project maintenance (including staffing, equipment, crew training, and facilities);
- Project cost to beneficiaries, including
    - total project cost (development, construction, financing, and other non-O&M costs)
    - operation and maintenance costs, including evaluation of electrical losses
    - revenue requirement, including proposed cost of equity, FERC incentives, proposed cost of debt and total revenue requirement calculation
    - present value cost of project to beneficiaries.

The PMC shall notify the developers of its determination as to which developer(s) it selected to develop the project(s) responsive to the request for proposal. The selected developer(s) must submit a project development schedule as required by Section VII.B.6 of this Attachment E.

If the PMC determines that a sponsored or unsponsored project fails to secure a developer through the process outlined in this section, the PMC shall remove the project from the Regional Plan.

After the PMC makes a determination, it will post a document on the WestConnect website within 60 days explaining the PMC's determination in selecting a particular transmission developer for a specific transmission project. The information will explain (1) the reasons why a particular transmission developer was selected or not selected, and, if applicable, (2) the reasons why a transmission project failed to secure a transmission developer.

10. No Obligation to Construct

The WestConnect Regional Planning Process is intended to determine and recommend the more efficient or cost-effective transmission solutions for the WestConnect Planning Region. After the Regional Plan is approved, due to the uncertainty in the Regional Planning Process and the need to address cost recovery issues, the Regional Planning Process shall not obligate any entity to construct, nor obligate any entity to commit to construct, any facilities, including any transmission facilities, regardless of whether such facilities are included in any plan. Nothing in this Attachment E, the Business Practice Manual or the Planning Participation Agreement, or any cost allocation shall (1) determine any transmission service to be received by, or any transmission usage by, any entity; (2) obligate any entity to purchase or pay for, or obligate any entity to commit to purchase or pay for, any transmission service or usage; or (3) entitle any entity to recover for any transmission service or usage or to recover from any entity any cost of any transmission facilities, regardless of whether such transmission facilities are included in any plan. Without limiting the generality of the foregoing, nothing in this Attachment E, the Business Practice Manual or the Planning Participation Agreement with respect to regional cost allocation shall preclude any WestConnect Planning Region member from satisfying its statutory obligations.

11. Binding Order No. 1000 Cost Allocation Methods

Order No. 1000 cost allocation methods as set forth in Section VII of this Attachment E are binding on identified beneficiaries in the WestConnect Planning Region, without prejudice to the following rights and obligations: (1) the right of a CTO, at its sole discretion, to decide whether to ~~accept a~~opt-in to regional cost allocation for a specific project by becoming a CBE in accordance with Section III.E.6; (2) the right and obligation of the PMC to reevaluate a transmission facility previously selected for inclusion in the regional plan for purposes of Order No. 1000 cost allocation under Section III.E.7 of this Attachment E; (3) the right and obligation of a Eligible Transmission Developer to make a filing under Section 205 or other applicable provision of the Federal Power Act in order to seek approval from the Commission to recover the costs of any transmission facility selected for inclusion in the regional plan for purposes of Order No. 1000 cost allocation; (4) the right and obligation of any interested person to intervene and be heard before the Commission in any Section 205 or other applicable provision of proceeding initiated by an Eligible Transmission Developer, including the right of any identified beneficiaries of the transmission facility to support or protest the filing and to present evidence on whether the proposed cost recovery is or is not just and reasonable; and (5) the right and obligation of the Commission to act under Section 205 or other applicable provisions of the Federal Power Act to approve or deny any cost recovery sought by an Eligible Transmission Developer for a transmission facility selected in the regional plan for purposes of Order No. 1000 cost allocation.[iii]

12. Impacts of a Regional Project on Neighboring Planning Regions

The PMC is to study the impact(s) of a regional transmission project on neighboring planning regions, including the resulting need, if any, for mitigation measures in such neighboring planning regions. If the PMC finds that a regional transmission project in the WestConnect Planning Region causes impacts on a neighboring planning region that requires mitigation (a) by the WECC Path Rating Process, (b) under FERC OATT requirements, (c) under NERC Reliability Standards requirements, and/or (d) under any negotiated arrangement between the interconnected entities, the PMC is to include the costs of any such mitigation measures into the regional transmission project's total project costs for purposes of determining the project's eligibility for regional cost allocation under the procedures identified in Section VII.B of this Attachment E, including application of the region's benefits-to-costs analysis.

The WestConnect Planning Region will not be responsible for compensating a neighboring planning region, transmission provider, transmission owner, Balancing Area Authority, or any other entity, for the costs of any required mitigation measures, or other consequences, on their systems associated with a regional transmission project in the WestConnect Planning Region, whether identified by the PMC or the neighboring system(s). The PMC does not direct the construction of transmission facilities, does not operate transmission facilities or provide transmission services, and does not charge or collect revenues for the performance of any transmission or other services. Therefore, in agreeing to study the impacts of a regional transmission facility on neighboring planning regions, the PMC is not agreeing to bear the costs of any mitigation measures it identifies. However, the PMC will request of any developer of a regional transmission project selected in the Regional Plan for purposes of cost allocation that the developer design and build its project to mitigate the project's identified impacts on neighboring planning regions. If the project is identified as impacting a neighboring planning region that accords less favorable mitigation treatment to the WestConnect Planning Region than the WestConnect Planning Region accords to it, the PMC will request that the project developer reciprocate by using the lesser of (i) the neighboring region's mitigation treatment applicable to the mitigation of impacts of its own regional projects on the WestConnect Planning Region, or (ii) the PMC's mitigation treatment set forth above in sub-sections (a) through (d).

13. Exclusions

The cost for transmission projects undertaken in connection with requests for generation interconnection or transmission service on the APS transmission system, which are governed by existing cost allocation methods within the OATT, will continue to be so governed and will not be subject to the principles of this Section VII.

In the event of an inconsistency between this Attachment E and the load interconnection cost allocation policy, this Attachment E shall control.

[i] The 1.25 B/C threshold is applicable to all three categories of projects (reliability-driven, economic-driven, and Public Policy Requirements-driven), but economic-driven projects as described in Section VII.B.2 must have a B/C ratio that is greater than 1.0 under each reasonable scenario evaluated and have an average ratio of at least 1.25 under all reasonable scenarios evaluated. For all categories of projects, the project must provide, in total, benefits per beneficiary that meet or exceed the region's 1.25 to 1 benefit to cost ratio.

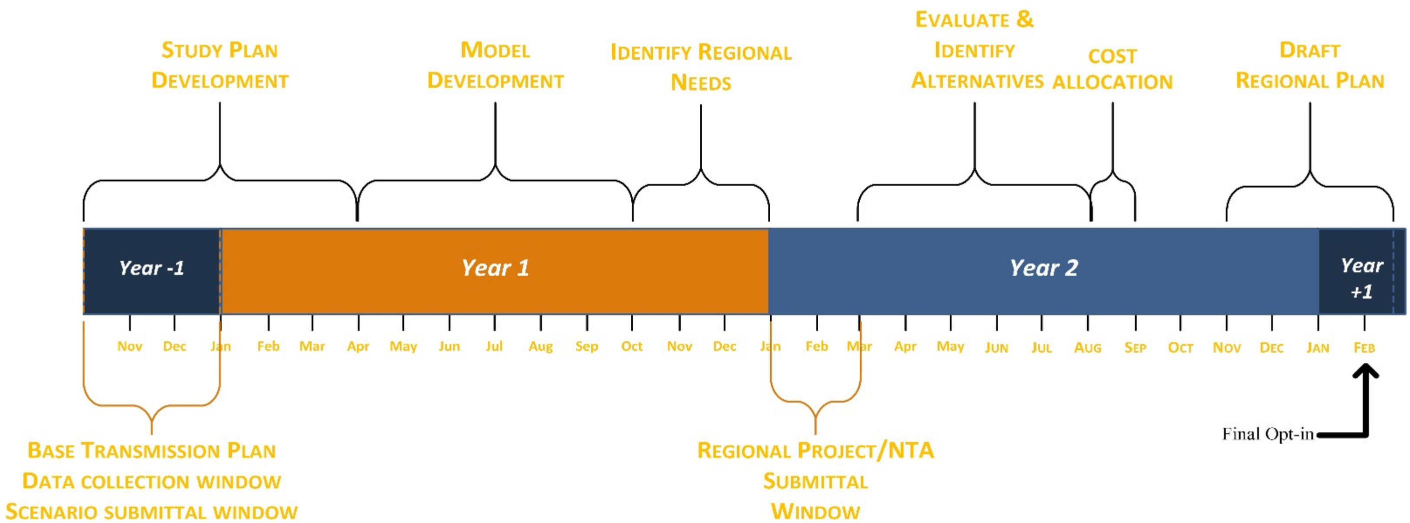
[ii] References to "transmission owners" in the cost allocation provisions are to transmission owners for whom the WestConnect Planning Management Committee is performing the function of regional transmission planning. At present, those transmission owners are TOLSO members.

[iii] An Eligible Transmission Developer may not be subject to the Commission's Section 205 jurisdiction. See Section VII.5. If an Eligible Transmission Developer is not subject to the Commission's jurisdiction under section 205 of the Federal Power Act, the Eligible Transmission Developer would have to seek to recover project costs from identified beneficiaries in the WestConnect Planning Region either: (a) through bilateral agreements that are voluntarily entered into between such Eligible Transmission Developer and the applicable identified beneficiaries; or (b) by obtaining approval from the Commission for project cost recovery pursuant to any other applicable section of the Federal Power Act.

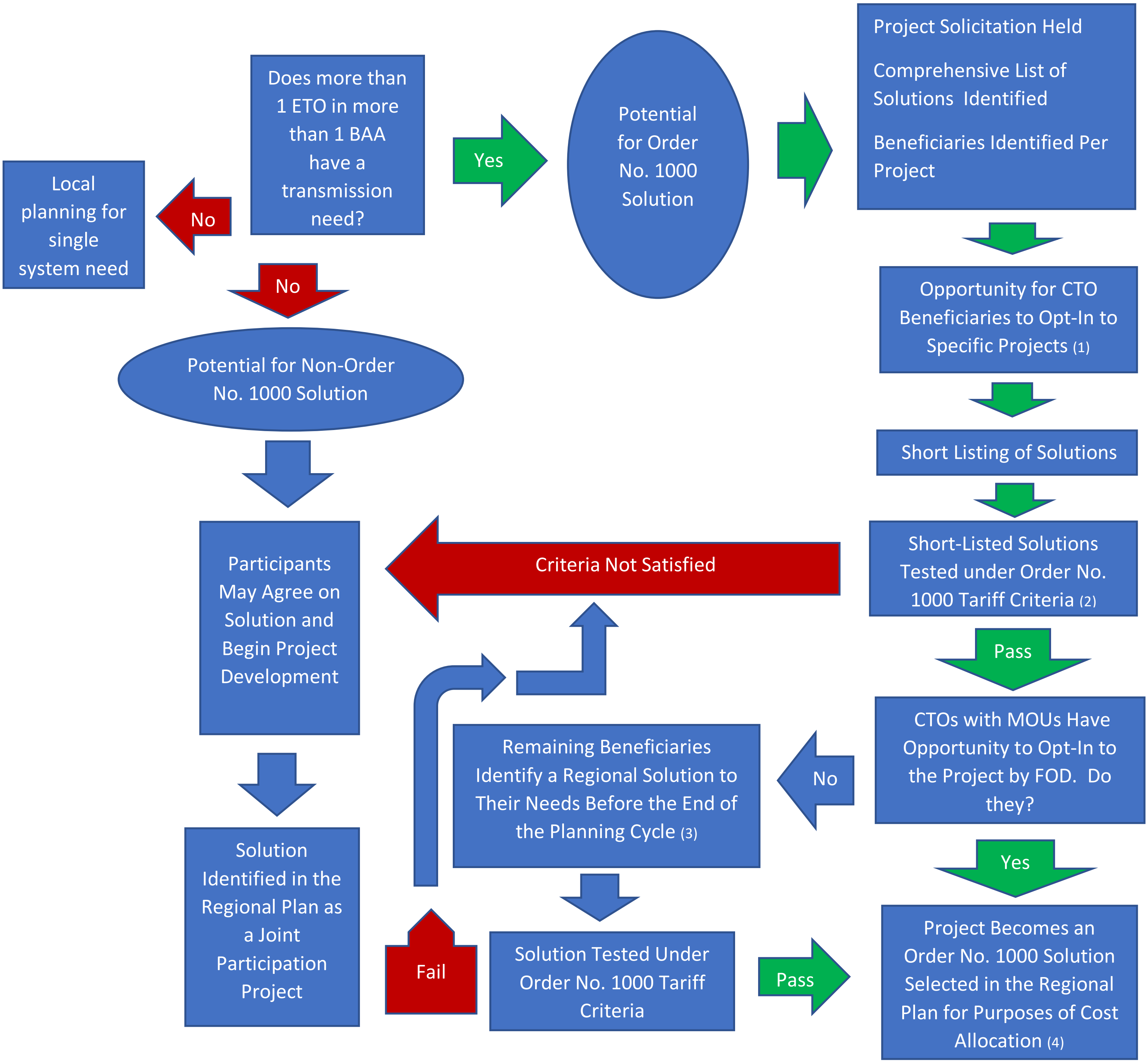
Exhibit 1 to the Pro Forma Tariff: Process Diagrams

The first diagram is a modified version of an existing bar chart in the tariff. The text box below the bar chart is unchanged, except to delete the last sentence in order to recognize that the settled resolution provides an opportunity for remaining beneficiaries to identify an alternative solution within the current planning cycle.

The second diagram is a new flow chart added to the tariff to represent the process provided for in the settlement.



Regional Planning Process Activity	Activity Timeframe
Stakeholder meetings	WestConnect will hold open stakeholder meetings on at least a semi-annual basis, or as needed and noticed by the PMC with 30 days advance notice, to update stakeholders about its progress in developing the Regional Plan and to solicit input regarding material matters of process related to the regional transmission plan.
Base transmission plan data collection window	The PS will initiate development of the base transmission plan no later than Quarter 8 of the previous biennial planning cycle and in conjunction with initiating the development of the Regional Study Plan. The submittal window for projects to be considered as part of the base transmission plan will be noticed a minimum of 15 days before the window opens, and the submittal window will stay open for a minimum of 30 days.
Scenario submittal window	A scenario submittal window will open when the development of the Regional Study Plan commences and no later than Quarter 8 of the previous biennial planning cycle. The scenario submittal window will be noticed a minimum of 15 days before the window opens, and the submittal window will stay open for a minimum of 30 days.
Identification of regional needs	Identified regional needs will be posted to the WestConnect website no later than close of Quarter 4 of the first year of the biennial cycle.
Submission period for regional projects to address identified regional needs	For consideration in the current planning cycle, projects must be submitted following the posting of identified regional needs to the WestConnect website, and must occur before the end of Quarter 5 of the biennial planning cycle. ~~Any project submitted after this date will be considered in the next subsequent planning cycle.~~



[1] CTOs have the opportunity to become a CBE without entering into an MOU, but must do so no later than the MOU submission deadline. For example, a CTO may become a CBE at the time transmission needs are identified, before project solutions to those needs are known. In no event may the deadline for submitting an MOU be less than 60 days following the time when the comprehensive list of solutions is identified.

2 Short-listing involves the CBEs (ETO beneficiaries and any CTO beneficiary CBE), as well as CTOs who signed MOUs.

[3] When a CTO beneficiary does not become a CBE, the remaining beneficiaries are not obligated to accept or re-design the project that failed to secure the CTO's governing body/board approval. Instead, the remaining beneficiaries may (a) consider other project submittals made during the planning cycle (including, for example, going back to the short-listed project submittals), (b) identify an alternative solution, or (c) solicit for new project submittals in the next planning cycle.

4 Assuming it is identified by the PMC as the more cost effective or efficient solution to the identified regional need(s) and is confirmed by the PMC as eligible for cost allocation.

Exhibit 2 to the Pro Forma Tariff: Form of MOU

Form of Memorandum of Understanding for Participation in WestConnect Regional Cost Allocation

This Memorandum of Understanding ("MOU"), dated as of ____________, is executed by ________________________, a Coordinating Transmission Owner ("CTO") in the WestConnect planning region (the "Executing CTO"), and _______________________ and _____________________, the Enrolled Transmission Owner ("ETO") identified beneficiaries of a transmission project identified in the WestConnect Regional Transmission Planning Process (the "Executing ETOs" and together with the Executing CTO, the "Parties").

RECITALS

WHEREAS, the Parties are members of the WestConnect Planning Region and have been identified as beneficiaries of a transmission project identified in the WestConnect Regional Transmission Planning Process ("Planning Process");

WHEREAS, the Parties agree and understand that the process for identifying potential regionally cost allocated transmission projects as well as identifying beneficiaries of those projects, pursuant to Federal Energy Regulatory Commission ("FERC") Order No. 1000 and within the Planning Process, is set forth in the Attachment K (or the equivalent Attachment) of the FERC approved Open Access Transmission Tariffs ("OATTs") of the executing ETOs ("ETO OATT(s)");

WHEREAS, the executing Parties have been identified as beneficiaries of a transmission project potentially eligible for regional cost allocation under the Planning Process and whereas the ETO OATT(s) provide that, to retain certain voting rights as the Planning Process determines potential solutions to an identified regional need, a CTO that has not already become a Cost-Bound Entity, must evidence its conditional agreement to accept a regional cost allocation through execution of this Memorandum of Understanding ("MOU");

WHEREAS, this MOU is entered into for the purpose of evidencing the Executing CTO's conditional agreement to accept a regional cost allocation for the transmission project described herein (the "Regional Cost Allocated Project") and to retain voting rights as outlined in the ETO OATT(s);

WHEREAS, the Executing CTO understands that effective upon its receipt of its Governing Body/Board (as defined in Section 2 below) approval for participation in the Regional Cost Allocated Project identified in this executed MOU, the Executing CTO automatically becomes a

Cost-Bound Entity ("CBE") for all purposes for the Regional Cost Allocated Project under the ETO OATT(s);

WHEREAS, the Parties understand that the sole condition on the Executing CTO's becoming a CBE under the ETOs' OATTs for the Regional Cost Allocated Project identified herein is the Executing CTO's receipt of approval from its Governing Body/Board on or before the Final Opt-in Date;

WHEREAS, the Parties understand that construction of the Regional Cost Allocated Project may require additional contracts, agreements, and further assurances and, if the Regional Cost Allocated Project proceeds to the construction phase and the Executing CTO has become a CBE for that Regional Cost Allocated Project, the CBEs (whether ETOs or CTOs) for that project will work in good faith to negotiate and execute those contracts, agreements, and further assurances; and

WHEREAS, the Parties further understand that in the case where Western Area Power Administration executes an MOU and subsequently receives Governing Body/Board approval to participate in a specific project, any contract executed in accordance with the ETO OATT(s) will reflect the tariff conditions specifically applicable to contracts to which Western Area Power Administration is a party.

WHEREFORE, this MOU is entered into for the purpose of evidencing the Executing CTO's conditional agreement to become a CBE under the ETO OATT(s) for the Regional Cost Allocated Project specifically described below:

[Insert Project Description]

1. Unless otherwise defined herein, terms that are capitalized in this MOU should be given the definition set forth in the ETO OATT(s).

2. This MOU shall be deemed effective as of the date set forth above. The MOU will remain in full force and effect until the Executing CTO receives Governing Body/Board approval or the Final Opt-in Date identified in the ETO OATT(s) passes, whichever occurs first; provided, however, that if the Final Opt-in Date passes and the Executing CTO has not opted in, the ETOs' right to enforce the CTO's obligation under paragraph 4 of this MOU shall survive the MOU's expiration. "Governing Body/Board" for purposes of this MOU refers to a governing body/board that has the legal authority to issue a binding decision on the Executing CTO's participation in the Regional Cost Allocated Project.

3. The sole remaining condition on the Executing CTO becoming a CBE under the ETO OATT(s) for the Regional Cost Allocated Project identified in this MOU is the Executing CTO's receipt of approval from its Governing Body/Board on or before the Final Opt-in Date. Upon receipt of Governing Body/Board approval, the Executing CTO is a CBE for the Regional Cost Allocated Project for all purposes under the ETO OATT(s) to the same extent as the Executing ETOs.[1] If Governing Body/Board approval of the Executing CTO's participation in the Regional Cost Allocated Project is not received on or before the Final Opt-in Date, then the Executing CTO will not become a CBE for the Regional Cost Allocated Project.

4. The Executing CTO represents and commits that it will support the Regional Cost Allocated Project and recommend it to its Governing Body/Board, and that it will promptly and in good faith seek and advocate for approval from its Governing Body/Board, prior to the Final Opt-in Date, to become a CBE under the terms of the ETO OATT(s) for the Regional Cost Allocated Project. The Executing CTO signatory represents that it has appropriate authority to make such a commitment. Nothing in this MOU shall constitute a guaranty or promise of a specific outcome in the decision process that a Governing Body/Board may take in consideration of the Regional Cost Allocated Project.

5. The Executing CTO commits to promptly notify the WestConnect Planning Management Committee ("PMC") and the WestConnect Cost Allocation Sub-committee ("CAS") of any final decision of its Governing Body/Board regarding the Executing CTO's participation in the Regional Cost Allocated Project.

6. The Executing CTO will promptly inform the PMC and CAS, upon reasonable request, regarding the status of the Executing CTO's request for approval from its Governing Body/Board regarding the Executing CTO's participation in the Regional Cost Allocated Project.

7. Execution of this MOU does not subject an Executing CTO to FERC regulation as a public utility under the Federal Power Act nor does it limit any Party's ability to assert any rights it may have under the Federal Power Act.

[1] The Parties understand and acknowledge that the Regional Cost Allocated Project identified in this MOU is subject to the processes set forth in the WestConnect Regional Planning Process set forth in the ETO OATT(s). The ETO OATT(s) processes include a process under which the regional transmission plan is reevaluated, as well as processes under which the Regional Cost Allocated Project is further developed and potentially modified. As the Regional Cost Allocated Project proceeds through the processes set forth in the ETO OATT(s), and once a CTO becomes a CBE, an Executing CTO is no more or less bound to the Regional Cost Allocated Project than the Executing ETOs.

8. The Parties to this MOU agree that the terms of this MOU may be legally enforced in any forum with jurisdiction over the matter, at the petitioner's option, and that the sole remedy under this MOU is specific performance. The Parties hereby waive any arguments in federal court regarding lack of personal jurisdiction, appropriate venue, or inconvenient venue.

9. In and of itself, this MOU does not create any type of partnership, joint venture, association, agency relationship, fiduciary relationship or any other type of business relationships between the Parties.

10. This MOU may be executed in counterparts, each of which is deemed an original but all constituting one and the same instrument. Signatures reproduced electronically have the same force and effect as original signatures.

In WITNESS WHEREOF, the Parties have caused this MOU to be duly executed by their duly authorized officers or agents on the day and year shown below.

Executing CTO:

Name of CTO: ______________________________

By: ________________________ ________________________ ________________
[__________] Title Date

Executing ETOs:

Name of ETO: ______________________________

By: ________________________ ________________________ ________________
[__________] Title Date

Name of ETO: ________________________________

By: ________________________ ________________________ ________________
[__________] Title Date

[Add signatory lines, as necessary]