

In conjunction with this request for negotiated rate authority, TransWest also requests approval of the initial capacity allocation process set forth in this filing. Under the proposed initial capacity allocation process, TransWest intends to allocate up to 100 percent of the capacity of the TWE Project to one or more transmission customers pursuant to an open and transparent solicitation, subject to a commitment by TransWest to demonstrate in a post-allocation compliance filing that its customer selection is consistent with the process approved by the Commission in its 2013 Policy Statement.⁴

TransWest needs to begin the open solicitation shortly after March 1, 2021, and to place the TWE Project in service as early as the end of 2024 to enable potential transmission customers to qualify to bid into Requests For Proposals (“RFP”) that are being issued by various western franchised public utilities and Community Choice Aggregation (“CCA”) programs.⁵ Therefore, TransWest respectfully requests that the Commission issue an order granting the requests in this filing by February 15, 2021. Issuance of a Commission order by that date will facilitate commencement of the open solicitation shortly after March 1, 2021, the subsequent formal negotiations with potential transmission customers, and the timely start of construction.

TransWest also requests certain waivers of the Commission’s regulations and reporting requirements related to cost-of-service rate regulation. As explained below, the requested

⁴ *Allocation of Capacity on New Merchant Transmission Projects and New Cost-Based, Participant-Funded Transmission Projects; Priority Rights to New Participant-Funded Transmission*, 142 FERC ¶ 61,038 (2013) (“2013 Policy Statement”).

⁵ RFPs often have a requirement that bidders with projects out of state must have transmission rights delivering energy to the utility’s balancing authority area. *See e.g.*, NV Energy Fall 2020 Renewable Energy Request for Proposals, https://www.nvenergy.com/publish/content/dam/nvenergy/brochures_arch/about-nvenergy/doing-business-with-us/energy-supply-rfps/2020-fall-renewable-energy-request-for-proposals/2020-fall-re-rfp-protocol.pdf at page 11, Minimum Requirements g (“wind energy proposals ... may be located outside Nevada but must have transmission rights delivering energy and associated PCs to NV Energy’s balancing authority area.”).

waivers are consistent with waivers the Commission has previously granted to applicants for negotiated rate authority.

I. COMMUNICATIONS

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II. DESCRIPTION OF THE APPLICANT AND THE TWE PROJECT

A. TransWest

TransWest is a wholly owned affiliate of The Anschutz Corporation (“TAC”), a privately held company based in Denver, Colorado. Through its affiliates, TAC has been actively involved for more than 75 years in energy development in the western United States. TAC has extensive experience in developing, constructing, financing, and operating numerous infrastructure projects worth billions of dollars in the natural resource, real estate, sports, and entertainment industries. For example, TAC developed, financed, and constructed: the Pacific Pipeline, a 132-mile crude oil pipeline that extends from Kern County, California to refineries in

the Los Angeles basin; an 18,500-mile national fiber optic network (Qwest Communications); the Staples Center sports and entertainment arena in Los Angeles; the LA Live entertainment district adjacent to the Staples Center; the O2 arena and entertainment district in London, England; and the Mercedes-Benz arena and entertainment district in Berlin, Germany.

In addition, TAC has been developing natural resource assets in Wyoming for over 60 years. TAC first produced oil and gas in the Kitty Field in Campbell County in the 1960s, and since then has produced oil and gas from the Powder River Basin to the Pinedale Anticline, including the large Anschutz Ranch East field in Uinta County, Wyoming. TAC's wholly owned affiliate TransWest was formed to develop the TWE Project.

B. The TWE Project

The TWE Project is an overhead high-voltage transmission system that will extend 732 miles from Wyoming to Nevada and will interconnect to existing bulk power system facilities in Wyoming, in Utah, and at two locations in Nevada.⁶ The TWE Project will consist of three linked segments that include: (1) a 405-mile, 3,000 MW, 500 kV high-voltage direct current ("HVDC") system between Wyoming and Utah; (2) a 278-mile, 1,500 MW, 500 kV high-voltage alternating current ("HVAC") transmission line between Utah and Nevada; and (3) a 49-mile, 1,680 MW, 500 kV HVAC transmission line in Nevada. The TWE Project will have interconnection points at the ends of each of the three linked segments where the TWE Project will interconnect to the existing bulk power system facilities. (See map at Attachment A.)

⁶ See <http://www.transwestexpress.net/index.shtml> (website page for the TWE Project). Because TransWest is not submitting a rate schedule for the TWE Project at this time and does not own any other facilities subject to FERC's jurisdiction under the FPA, Commission action on this filing does not make TransWest a public utility.

The TWE Project's 405-mile HVDC segment will include terminals located near Sinclair, Wyoming ("Wyoming Terminal") and Delta, Utah ("Utah Terminal"). At the Wyoming Terminal, the TWE Project will interconnect to PacifiCorp's Wyoming 230 kV and 500 kV transmission systems. At the Utah Terminal, the TWE Project will interconnect to the Intermountain Power Agency's Intermountain Power Project ("IPP")⁷ at its 345 kV Switchyard.

The TWE Project's 278-mile HVAC segment will extend from the Utah Terminal to an interconnection with NV Energy's Crystal 500 kV Substation and Desert Link's Harry Allen to Eldorado 500 kV line northeast of Las Vegas, Nevada. From there, a 49-mile HVAC segment could interconnect with the 500 kV transmission facilities in the Eldorado Valley southwest of Boulder City, Nevada owned by Southern California Edison Company ("SCE"), the Western Area Power Administration ("WAPA"), Arizona Public Service, the Los Angeles Department of Water and Power, NV Energy and others. These facilities include the Eldorado Substation, the McCullough Substation, and the Mead-Marketplace transmission line. Currently, TransWest has an interconnection request pending with SCE for the Eldorado Substation.

In a report submitted to Congress in June 2020, Commission Staff noted that:

The proposed route of the transmission line project . . . would maximize the use of existing and designated utility corridors. If constructed, the TransWest Express could help deliver the renewable energy needed for Arizona, Nevada and California to achieve their [Renewable Portfolio Standards] of 15 percent by 2025, 25 percent by 2025, and 60 percent by 2030, respectively.⁸

The TWE Project was originally conceived by other developers as a "coal by wire" project to take low-cost coal generation to Arizona. In 2008, TAC acquired the TWE Project to provide transmission for wind generation development from Wyoming to load centers in

⁷ The Intermountain Power Project is owned by Intermountain Power Agency.

⁸ *Supra* n.3, June 2020 FERC Staff Report at 11.

California and the Desert Southwest. Thereafter, TransWest took over what became a 13-year process of obtaining federal, state, and county environmental reviews and permits. The Western Area Power Administration (“WAPA”), one of four power marketing administrations in the U.S. Department of Energy, has been a partner with TransWest in the development of the TWE Project.⁹ WAPA and TransWest entered into a Development Agreement in September 2011 that was amended in March 2019. Under the amended Development Agreement, among other things, WAPA has the right to own 25% of the all-digital fiber communications system on the TWE Project and an option to own 1% of the transmission capacity.

The TWE Project has received a Right-of-Way Grant from the Bureau of Land Management, an Electric Transmission Line Easement from the U.S. Forest Service, a License for the Electric Transmission Line from the U.S. Bureau of Reclamation in Nevada, and the requisite major permits from Nevada, Wyoming, and 14 counties to be traversed by the TWE Project. The TWE Project has secured approximately 95 percent of the rights-of-way for the 732-mile route, with over 98 percent of the private land easements secured.

The TWE Project has been evaluated in regional planning processes since 2007, by the Western Electricity Coordinating Council (“WECC”); the California Independent System

⁹ In 2009, WAPA was granted the authority to borrow up to \$3.25 billion from the U.S. Treasury Department for the purpose of constructing, financing, facilitating, planning, operating, maintaining, or studying construction of new or upgraded electric power transmission lines and related facilities (i) that have at least one terminus within the area served by WAPA and (ii) that deliver or facilitate the delivery of power generated by renewable energy resources constructed after February 2009. *See* Hoover Power Plant Act of 1984, 42 U.S.C. § 16421a - Western Area Power Administration borrowing authority. To implement its borrowing authority, WAPA developed its Transmission Infrastructure Program (TIP), which provides project and program principles to guide WAPA’s funding of partnerships to develop transmission infrastructure that meet certain criteria. In April 2009, TransWest submitted a response to WAPA’s request for proposals under TIP and WAPA determined that the TWE Project met the statutory and TIP criteria. *See* <https://www.wapa.gov/transmission/TIP/Pages/transwest-express-project.aspx>.

Operator Corporation (“CAISO”), which operates and coordinates planning in California; the Northern Tier Transmission Group, which coordinates planning in the Northwest and Mountain states; and WestConnect, which coordinates planning in Nevada, California, Arizona, New Mexico, and Colorado. In each of the last three Interregional Transmission Planning coordination two-year cycles TransWest has provided the appropriate Regional Planning submittals.

TransWest has completed Phase 2 of the WECC Path Rating process. The Accepted Path Ratings of the TWE Project segments represent the maximum north-to-south capacity as measured at the southern interconnection point of each segment. The maximum south-to-north capacity of each segment will be similar to the north-to-south Accepted Path Ratings for each segment. TransWest will seek appropriate Path Ratings for the south-to-north capacity based on the outcome of the solicitation process described in this filing.

The remaining pre-construction work is limited to completing the right-of-way program, which is approximately 95 percent complete for the 732 mile route; receiving a Notice to Proceed from the Bureau of Land Management (“BLM”) for construction of the TWE Project; completing the negotiation, execution, and regulatory approval of interconnection agreements; contracting with engineering, procurement, and construction contractors; negotiating agreements with customers resulting from the initial solicitation; and entering into transmission service agreements (“TSAs”). In short, the TWE Project is essentially a shovel-ready project ready for the start of construction in 2022, subject to the negotiation of agreements with the initial customers. TransWest anticipates that the first elements of the TWE Project can be placed in service potentially as early as the end of 2024.

C. Power Company of Wyoming

TransWest is affiliated with another TAC wholly-owned affiliate, Power Company of Wyoming LLC (“PCW”). In 2007, PCW started developing a 3,000 MW¹⁰ wind farm, called the Chokecherry and Sierra Madre Wind Energy Project (“CCSM Project”), located south of Sinclair and Rawlins in Carbon County, Wyoming.¹¹ It quickly became apparent that PCW would need to secure transmission to deliver energy from the wind project to distant load centers where the demand for renewables was located, leading to TAC’s acquisition of the TWE Project.

TransWest has developed the TWE Project as an independent transmission project operated separately and distinctly from PCW and the CCSM Project.

III. REQUESTS FOR NEGOTIATED RATE AUTHORITY AND APPROVAL OF CAPACITY ALLOCATION PROCESS

As discussed below, and consistent with Commission precedent and guidance, TransWest requests authorization to charge negotiated rates for transmission service on the TWE Project. TransWest also requests Commission authorization to allocate up to 100 percent of the capacity of the TWE Project through an open and transparent solicitation followed by bilateral negotiations with eligible bidders that satisfy eligibility criteria in accordance with Commission approval of TransWest’s proposed capacity allocation process described below. TransWest commits to demonstrate in a post-allocation compliance filing that its customer selection is consistent with the Commission’s order approving the capacity allocation process.

As noted above, TransWest’s affiliate, PCW, is developing a wind energy project located south of Sinclair and Rawlins in Carbon County, Wyoming. If TransWest allocates capacity on

¹⁰ The nameplate capacity of the CCSM Project could range from approximately 3,000 MW to 4,000 MW, depending on the turbine or turbines selected, due to advancements in wind turbine generator technology.

¹¹ See <http://www.powercompanyofwyoming.com/>.

the TWE Project to PCW, TransWest commits to make a showing in its post-allocation compliance filing with the Commission that its treatment of PCW and all other potential customers was just, reasonable, and not unduly discriminatory or preferential. The TWE Project was sized to have the largest single transmission line capacity that can be reliably integrated into the Western Bulk Power System and is designed to integrate into the existing Wyoming transmission system. The respective sizing of the two affiliated projects does not preclude the opportunity for non-affiliated eligible potential transmission customers to secure transmission capacity. Due to the nature of wind energy generation technology, wind energy projects commonly have an installed generation nameplate capacity that is 25% to 30% greater than a project's transmission capacity rights.

A. *Chinook* and the 2013 Policy Statement

Pursuant to its 2009 order in *Chinook Power Transmission, LLC*,¹² the Commission analyzes negotiated rate applications by evaluating four factors: (1) the justness and reasonableness of rates; (2) the potential for undue discrimination; (3) the potential for undue preference, including undue affiliate preference; and (4) regional reliability and operational efficiency requirements.¹³

In the 2013 Policy Statement, the Commission refined its policies governing the allocation of capacity for new merchant transmission projects and new non-incumbent, cost-based, participant-funded transmission projects.¹⁴ Specifically, the 2013 Policy Statement allows

¹² 126 FERC ¶ 61,134 (2009) (“*Chinook*”).

¹³ *Id.* at P 37.

¹⁴ The Commission explained that “[c]ost-based participant-funded projects are similar to merchant projects in that both involve willing customers assuming part of the risk of a transmission project in return for defined capacity rights; i.e., there is no direct assignment of costs to captive customers.” 2013 Policy Statement at P 6. The Commission also stated that use

the developer of such a project to select a subset of customers, based on not unduly discriminatory or preferential criteria, and negotiate with each of those customers on a bilateral basis to reach agreement on the key rates, terms, and conditions for procuring up to 100 percent of the project's transmission capacity, when the developer (1) broadly solicits interest in the project from potential customers and (2) demonstrates to the Commission that the developer has satisfied the solicitation, selection, and negotiation process criteria set forth in the 2013 Policy Statement.¹⁵

If the Commission determines that a developer complies with these criteria, the Commission will find that the developer has satisfied the second (undue discrimination) and third (undue preference) factors of the *Chinook* analysis.¹⁶ The Commission allows distinctions in the bilateral negotiations among prospective customers based on transparent and not unduly discriminatory or preferential criteria – so long as the differences in negotiated terms recognize material differences and do not result in undue discrimination or preference – with the potential result that a single customer, including an affiliate, may be awarded up to 100 percent of the project's capacity.¹⁷

A number of applicants have received Commission approval for their rate proposals and capacity allocation processes pursuant to the direction described above.¹⁸ As TransWest

of a common process for both types of projects pursuant to the 2013 Policy Statement does not eliminate the distinction between the two project types. *Id.* at P 40.

¹⁵ *Id.* at PP 16, 39.

¹⁶ *Id.* at P 15.

¹⁷ *Id.* at PP 18, 28. For instance, the Commission stated that a developer might offer “first mover” customers more favorable rates, terms, and conditions than later customers. *Id.* at P 28.

¹⁸ *See, e.g., Linden VFT, LLC*, 162 FERC ¶ 61,297 (2018) (approving application to modify existing negotiated rate authority to allow developer to allocate up to 100 percent of transmission capacity for its project through bilateral negotiations); *Western Spirit Clean Line LLC*, 155 FERC ¶ 61,252 (2016) (approving application for negotiated rate authority and allowing up to

demonstrates below, its proposal likewise satisfies all four factors of the Commission’s analysis in *Chinook* and the requirements of the 2013 Policy Statement.

B. TransWest Satisfies the Four-Factor *Chinook* Analysis As Modified by the 2013 Policy Statement

1. Factor One: Just and Reasonable Rates

To approve rates for a transmission project, the Commission must find that the rates are just and reasonable.¹⁹ In making this determination, the Commission considers (1) whether the developer has assumed the full market risk for the cost of constructing its proposed transmission project, and (2) whether the project is being built within the footprint of the developer’s (or an affiliate’s) traditionally regulated transmission system, such that there are captive customers who would be required to pay the costs of the project. The Commission also considers whether the developer or an affiliate already owns transmission facilities in the region where the project is located, what alternatives customers have to the project, whether the developer is capable of erecting any barriers to entry among competitors, and whether the transmission owner would have an incentive to withhold capacity.²⁰ The Commission did not modify this factor in the 2013 Policy Statement.²¹

Applying the Commission’s *Chinook* analysis, the open solicitation process proposed by TransWest will result in just and reasonable rates. First, TransWest has assumed and will

100 percent of project capacity) (“*Western Spirit*”); *Southline Transmission, L.L.C.*, 152 FERC ¶ 61,211 (2015) (authorizing negotiated rate authority and approving proposed capacity allocation methodology); *Lucky Corridor, LLC*, 151 FERC ¶ 61,072 (2015) (approving application to modify existing negotiated rate authority to allow developer to allocate up to 100 percent of project capacity).

¹⁹ *Chinook* at P 37.

²⁰ *Id.* at P 38.

²¹ *See* 2013 Policy Statement at P 15 n.37.

continue to assume the full financial risk for the TWE Project. Second, as a new entrant to the transmission market, neither TransWest nor its affiliates own any other electric transmission system, let alone a traditionally regulated transmission system with captive customers.

Therefore, neither TransWest nor its affiliates are increasing an existing presence in the region, and no captive customers would be required to pay the costs of the TWE Project.

Instead, the TWE Project will be operating in a highly competitive transmission environment. Because the TWE Project will interconnect with existing transmission systems in Wyoming, Utah, and Nevada, potential transmission customers will have alternative sources of transmission service on any or all of those existing systems, whose incumbent owners could serve the same customers as TransWest under an Open Access Transmission Tariff (“OATT”) with a duty to expand under cost-based rates. The Commission has previously found that where neighboring transmission systems with cost-based rates have the potential for expansion – as is the case with the interconnecting systems owned by PacifiCorp, the Intermountain Power Agency, Arizona Public Service, and WAPA – this potential for expansion exerts downward pressure on the negotiated transmission rates of the new merchant transmission developer.²² In addition, in this case, the Zephyr Power Transmission, LLC (“Zephyr”) project also has a transmission path from southern Wyoming to the Desert Southwest, for which the Commission has already approved negotiated rates.²³ Because Zephyr or another transmission developer could elect to build a transmission project serving the same customer needs as the TWE Project, potential customers would only purchase transmission service from TransWest to the extent it is cost-effective.

²² *Chinook Power Transmission, LLC and Zephyr Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 58 (2009).

²³ *Id.* at PP 2, 57.

Instead of erecting barriers to entry or limiting customer options, the TWE Project will expand transmission opportunities for transmission customers. First, prior to commencing service TransWest will file an OATT with the Commission that will provide third parties with a transparent and uniform practice for requesting electrical interconnection and transmission service for all remaining capacity, if any, after the initial subscriptions. These practices will include the procedures for requesting expansion of the TWE Project to accommodate such requests. Second, all customers with transmission rights will retain firm tradeable secondary rights with respect to their contracted capacity. Finally, TransWest will maintain an Open Access Same-Time Information System (“OASIS”) to ensure uniformity of customer treatment. In short, TransWest cannot erect barriers to entry in the relevant markets, nor would it have an incentive to withhold capacity.²⁴

2. Factor Two: Undue Discrimination

In *Chinook*, the Commission explained that it will examine two factors to ensure that a developer cannot exercise undue discrimination when charging rates: (1) the developer’s OATT commitments (or, if applicable, the developer’s commitment to turn operational control over to an independent system operator (“ISO”) or regional transmission organization (“RTO”)), and (2) the terms and conditions of the project’s open season.²⁵ In the 2013 Policy Statement, the Commission provided an alternative to conducting a formal open season, allowing a developer to demonstrate no undue discrimination or preference by conducting an open solicitation that

²⁴ See *SunZia Transmission, LLC*, 135 FERC ¶ 61,169, at P 22 (2011) (approving similar commitments by applicant in finding it satisfied first *Chinook* factor).

²⁵ *Chinook* at P 40.

complies with the requirements of the 2013 Policy Statement.²⁶ Specifically, the developer must (1) conduct an open solicitation that broadly solicits interest in the project from potential customers, and (2) after the solicitation process, demonstrate to the Commission that the developer has satisfied the solicitation, selection, and negotiation process criteria set forth in the 2013 Policy Statement.²⁷

With regard to the open solicitation process, the Commission stated in the 2013 Policy Statement that the developer must issue broad notice of its proposed project in a manner that ensures that all potential and interested customers are informed of the project.²⁸ Such notice should include developer points of contact, pertinent project dates, and sufficient technical specifications and contract information to inform interested customers of the nature of the project, including: (1) project size/capacity; (2) end points of the line; (3) projected construction and/or in-service dates; (4) type of line; (5) precedent agreement (if developed); and (6) other capacity allocation arrangements (including how the developer will address potential oversubscription of capacity).²⁹ The developer should also specify in the notice the criteria it plans to use to select transmission customers. In addition, the developer may adopt a specific set of objective criteria that it will use to rank prospective customers, provided it can justify why such criteria are appropriate. The Commission stated that it expects the developer to update its notice if there are any material changes to the nature of the project or the status of the capacity

²⁶ 2013 Policy Statement at PP 15, 23. However, the Commission stated that it would continue to require developers either to file an OATT or turn over control to an ISO or RTO. *Id.* at P 4 n.7.

²⁷ *Id.* at P 16.

²⁸ *Id.* at P 23.

²⁹ *Id.* at P 24.

allocation process, in particular to ensure that interested entities are informed of any remaining available capacity.³⁰

As to the capacity allocation process, the Commission stated in the 2013 Policy Statement that the developer must disclose the results of that process after it is completed. The developer's disclosure will be part of the Commission's approval of the capacity allocation process, and thus will be noticed and acted upon under section 205 of the FPA.³¹ The developer must demonstrate that the processes that led to the identification of transmission customers and the execution of the relevant contractual arrangements are consistent with the 2013 Policy Statement and the Commission's open access principles. The Commission emphasized that the information in the post-selection demonstration is an essential part of the developer's request for approval of a capacity allocation process, and that the developer must demonstrate that its process was in fact not unduly discriminatory or preferential, and resulted in rates, terms, and conditions that are just and reasonable.³²

TransWest will conduct an open solicitation process that will fully satisfy the second *Chinook* factor as modified by the 2013 Policy Statement. As explained below, TransWest has already engaged in extensive outreach to inform potential customers about the TWE Project, and that outreach remains ongoing. And, as outlined below, TransWest commits that it will broadly solicit participation in an open solicitation process, will specify in the notice the criteria that it plans to use to select transmission customers, and will submit a comprehensive post-allocation disclosure report to the Commission for its review.

³⁰ *Id.* at PP 25-27.

³¹ *Id.* at P 30.

³² *Id.* at P 32.

a. Prior Outreach Process

Even prior to the open solicitation, TransWest has been engaged in an extensive outreach process highlighting the benefits of the TWE Project to potential customers and the general public. TransWest's outreach efforts to date have included:

- During the TWE Project's 13-year permitting process, TransWest engaged in public outreach efforts at the federal, state, and local levels, taking advantage of the outreach opportunities presented by many public meetings with government agencies and other stakeholders in all four states traversed by the TWE Project.
- During the permitting process, the federal permitting agencies published numerous public notices in the Federal Register that described the TWE Project, including notices related to the Draft Environmental Impact Statement, Final Environmental Impact Statement, and Records of Decision issued by the Bureau of Land Management, U.S. Forest Service, and WAPA.³³
- Since the TWE Project's inception, TransWest has actively participated in regional and state energy planning processes to advocate for and highlight the benefits of the TWE Project. These processes included the Regional Transmission Expansion Planning ("RTEP") process conducted by WECC,³⁴ the Regional Planning Processes and Inter-Regional Transmission Planning Coordination processes of each of the three Regional Transmission Planning

³³ See TransWest Express Transmission Project, History and background at: <http://www.transwestexpress.net/about/history.shtml>.

³⁴ The economic benefits of the TWE Project were highlighted in two reports prepared by WECC as part of the RTEP. The TWE Project website includes links to these reports at <http://www.transwestexpress.net/WECC/index.shtml>.

Groups whose systems the TWE Project will span;³⁵ resource and transmission planning proceedings conducted by the California Public Utilities Commission (“CPUC”);³⁶ and other formal and ad hoc regional transmission planning processes.

- TransWest has commissioned two comprehensive economic studies highlighting the benefits of the TWE Project. These studies are described in the “California–Wyoming Grid Integration Study” completed by the National Renewable Energy Laboratory in 2014, as well as the “Regional Transmission Expansion Assessment” completed by PA Consulting in 2016.³⁷
- TransWest has had a project website since 2009 that provides detailed information about the TWE Project, including but not limited to: project purpose, benefits, timeline, maps and visuals, history, public responsibility, news and updates on the TWE Project beginning in July 2008, regional planning and reports, and contact information.³⁸

³⁵ The TWE Project will span the transmission systems planned by three Regional Transmission Planning groups, including the CAISO, the Northern Tier Transmission Group/Northern Grid and WestConnect. TransWest has actively participated in each of these three groups’ planning processes and has submitted the TWE Project, highlighting the economic benefits, for consideration as an Interregional Transmission Project since 2016.

³⁶ TransWest has been a party to the CPUC’s Integrated Resource Plan and Long Term Procurement Plan (IRP-LTPP) proceedings since 2012. *See* Comments of Transwest Express LLC, filed May 31, 2012 in docket for Rulemaking 12-03-14, at: <https://docs.cpuc.ca.gov/PublishedDocs/EFILE/CM/168173.PDF>.

³⁷ The cited reports can be found at: <http://www.nrel.gov/docs/fy14osti/61192.pdf> and: <https://www.paconsulting.com/globalassets/downloads/regional-transmission-expansion-assessment.pdf>, respectively.

³⁸ *See* www.transwestexpress.net.

b. Open Solicitation Process

TransWest plans to commence the open solicitation process on or shortly after March 1, 2021, pursuant to which TransWest will allocate up to 100 percent of the TWE Project's transmission capacity. TransWest has retained PA Consulting as an Independent Solicitation Manager ("ISM"), to run the open solicitation process.³⁹ The ISM's responsibilities will include: widely publishing the notice of open solicitation; managing the TWE Project Open Solicitation website; providing project and process information to interested parties; screening potential customers based on the previously disclosed eligibility criteria; ranking eligible customers based on previously disclosed ranking criteria; and preparing a comprehensive post-allocation disclosure report to the Commission for inclusion in TransWest's compliance filing.

The open solicitation will be conducted in three steps. In the first step, TransWest and the ISM will broadly solicit interest in the TWE Project from potential customers by issuing a notice announcing the open solicitation and soliciting Statements of Interest from entities meeting certain eligibility criteria.

The notice announcing the open solicitation will include a link to the TWE Project Open Solicitation website managed by the ISM (the "Notice"). The Notice will contain all of the information required by the 2013 Policy Statement, including points of contact for the ISM and TransWest, project size/capacity, end points of the line, projected construction and/or in-service dates, technical specifications, how TransWest will address potential oversubscription of

³⁹ The Commission has accepted comparable arrangements in prior orders granting negotiated rate authority to transmission projects. *See, e.g., Linden VFT*, 162 FERC ¶ 61,297, at P 31; *Southern Cross Transmission*, 157 FERC ¶ 61,090, at P 30; *MATL LLP*, 166 FERC ¶ 61,051, at P 28 (2019) (committing to retaining an independent evaluator if an affiliate wishes in the future to participate in any open solicitation process).

capacity, and the criteria it plans to use to select transmission customers, with additional detail provided on the Open Solicitation website. The ISM and TransWest will actively publicize the open solicitation to parties that they believe might be interested in participating and attempt to market the open solicitation by providing the Notice for distribution to the Wyoming Energy Authority, Utah Governor’s Energy Office, trade journals, regional energy publications, TWE Project website, emails to developer’s contacts, and other publications and entities as appropriate, including but not limited to news outlets and regional planning and reliability groups.⁴⁰ The Notice will provide a link to a Statement of Interest form available on a page regarding the TWE Project Open Solicitation. Interested parties will be required to submit their completed Statement of Interest forms within 60 days after the Notice is posted.

The open solicitation will include the following two primary long-term firm transmission service product offerings:

- 1,500 MW Wyoming to Utah point-to-point service; and
- 1,500 MW Wyoming to Nevada service.

Each of these products will provide transmission service from Wyoming to market off-take points in Utah and Nevada. Several Nevada 500 kV Points of Delivery (“PODs”) where TransWest has pending interconnection requests will be available, including the Crystal (NV Energy), Harry Allen (LS Power/CAISO), and Eldorado (SCE) substations.

The TWE Project can be built in stages generally defined by each of the two primary products. The customer commitments resulting from the initial capacity allocation will be used

⁴⁰ Other applicants have made similar commitments, which the Commission has accepted. See *Grain Belt Express Clean Line LLC*, 147 FERC ¶ 61,098, at PP 19, 23 (2014) (“*Grain Belt*”); *Empire State Connector Corp.*, 155 FERC ¶ 61,305, at PP 21, 23 (2016); *SOO Green HVDC Link ProjectCo, LLC*, 172 FERC ¶ 61,086, at PP 22, 30 (2020) (“*SOO Green*”).

to secure funds for the initial build-out of the TWE Project. It is likely the initial capacity allocation will include either the full or near-full subscription of the Wyoming to Utah product or the full or near-full subscription of both primary products.

The eligibility criteria will include:⁴¹

- (a) Readiness to commit, *i.e.*, the customer's commitment to pursue a customer agreement within TransWest's designated negotiation window as set forth in the Notice;
- (b) Commitment to pay a non-refundable deposit upon execution of a customer agreement.
- (c) A firm transmission service request for at least 300 MW of capacity of either primary product for at least 20 years;
- (d) If capacity is for a new Wyoming generation project, the generation project must be in a highly advanced stage of development (*e.g.*, a development status comparable to the TWE Project development status, which is essentially shovel-ready);
- (e) The ability of the entity to directly interconnect to a TWE Project interconnection point or interconnection with a third-party system, and the ability to secure third-party firm transmission service on an existing transmission system to deliver to or receive from a TWE Project interconnection point; and
- (f) An investment-grade credit rating or alternative evidence of creditworthiness.

In the second step, the ISM will screen the Statements of Interest against the eligibility criteria set forth above to determine eligibility for the third step of the open solicitation process described below. During the screening process, if the ISM determines that an entity is ineligible due to failure to satisfy the published eligibility criteria, then the ISM will notify the entity regarding the eligibility criteria it does not appear to satisfy and it will be given a limited

⁴¹ Other applicants have proposed, and the Commission has accepted, similar criteria. *See Grain Belt*, 147 FERC ¶ 61,098, at PP 20, 23; *Plains and Eastern Clean Line LLC*, 148 FERC ¶ 61,122, at PP 22, 25 (2014) ("*Plains and Eastern*"); *Western Spirit*, 155 FERC ¶ 61,252, at PP 23, 28.

opportunity to provide additional information to demonstrate that it satisfies the criteria. Once the ISM determines all eligible entities, the ISM will rank eligible entities using the following set of objective criteria:⁴²

- (a) Level of Creditworthiness: Reduction in counterparty risks by entering into contracts with customers with the highest level of creditworthiness and/or credit support;
- (b) Larger Capacity Reservations: Maximize support for the full project by executing larger capacity reservations that utilize the HVDC segment and one or two of the linked HVAC segments;
- (c) Longer Term of Service: Securing of long-term revenues by obtaining customer commitments with longer terms;
- (d) Project Risk-Sharing: Ability to provide financial commitments during the TWE Project development cycle and the term of any customer agreement;
- (e) Access to TWE Project Substation: Reduction of the risk that customers will not be able to access the TWE Project by selecting customers that can directly interconnect to a TWE Project interconnection point or have secured TSAs to a TWE Project interconnection point;
- (f) Generation Customers: Reduction of project-on-project development risk by entering into contracts with customers based upon completion of generation development milestones and generation commercial operation date (under construction or shovel-ready); and
- (g) Non-Generator Customers: Reduction of development risk by evidence of need for capacity, ability to obtain any required regulatory approvals, and the timing of transmission service commencement date.

These criteria may be weighted differently depending on the needs of the TWE Project. The criteria will be applied in a not unduly discriminatory manner, and potential customers with identical ranking characteristics will be afforded the same weight for that particular

⁴² Other applicants have proposed similar criteria, which the Commission has accepted. *See Grain Belt*, 147 FERC ¶ 61,098, at PP 20, 23; *Plains and Eastern*, 148 FERC ¶ 61,122, at PP 21, 25; *Western Spirit*, 155 FERC ¶ 61,252, at PP 24, 28.

characteristic.⁴³ It may be necessary to refine these criteria based on market circumstances, in which case the ISM and TransWest will provide public notice of any changes and apply any changes equally to all potential customers.⁴⁴

The third and final step will include phased bilateral negotiations between TransWest and the highest-ranked eligible entities resulting from the ISM screening and ranking process described above. These negotiations will take place during a time-defined negotiation window; details of the phased negotiation window regarding dates and deadlines will be posted on the website page for the open solicitation.

c. Capacity Allocation Process

TransWest intends to allocate up to 100 percent of the TWE Project capacity in accordance with the ranking criteria described above. TransWest will accord the highest ranking to the largest-capacity customer bids based on the understanding that larger-sized generation resource developments will benefit from larger-scale developments in the absence of any other distinction between prospective customers. Based on this understanding, TransWest does not intend to prorate capacities of potential customers if the TWE Project is potentially “over-subscribed” based on eligible expression of interest.

The capacity of the three segments described above is the upper limit for each segment for purposes of this capacity allocation process. TransWest does not intend to seek to increase the capacity of the TWE Project as a result of the open solicitation due to the delays that would result from determining how to expand the project beyond its current configuration in a manner that complies with North American Electric Reliability Corporation (“NERC”) and WECC

⁴³ *See id.*

⁴⁴ *See Southline Transmission, L.L.C.*, 152 FERC ¶ 61,211, at P 58.

reliability standards. TransWest does commit to file an OATT with the Commission for the TWE Project prior to commencing service. Potential future transmission customers will have the opportunity to obtain service on any available transmission capacity in accordance with the Commission-accepted rates, terms, and conditions of the TransWest OATT, which TransWest will base on the Commission's *pro forma* OATT.

There are no RTOs or ISOs with a footprint that overlaps the path of the TWE Project. Therefore, TransWest cannot turn over operation of its facilities to an RTO or ISO. If in the future the Commission approves an RTO or ISO with a footprint in which the TWE Project will operate, TransWest will engage in good-faith efforts to determine if it is reasonable to join that RTO or ISO.

Once the TWE Project commences operation, TransWest will (1) ensure that the books and records for the project comply with the Uniform System of Accounts in Part 101 of the Commission's regulations⁴⁵ and will be subject to examination as required in Part 41 of the regulations,⁴⁶ and (2) have its books and records audited by an independent auditor.⁴⁷

3. Factor Three: Undue Preference and Affiliate Concerns

In the 2013 Policy Statement, the Commission stated that with respect to potential participation by an affiliate of the developer in the capacity allocation process, it would continue to expect (as it did in *Chinook*) an affirmative showing that the affiliate is not afforded an undue preference.⁴⁸ The developer must demonstrate that the assignment of capacity to its affiliate and the corresponding treatment of non-affiliated potential customers is just, reasonable, and not

⁴⁵ 18 C.F.R. Part 101.

⁴⁶ 18 C.F.R. Part 41.

⁴⁷ *See, e.g., Western Spirit*, 155 FERC ¶ 61,252, at P 29 (citing *Chinook* at P 62).

⁴⁸ 2013 Policy Statement at P 34 (citing *Chinook* at PP 49-50).

unduly preferential or discriminatory. Although the Commission did not require non-affiliates to receive the same rates, terms, and conditions as affiliates, the Commission stated it will carefully scrutinize any differences in rates, terms, and conditions for affiliates versus non-affiliates to ensure those differences are appropriately based on objective criteria.⁴⁹

TransWest will use the objective criteria and negotiate rates for the initial capacity offering of the TWE Project capacity with affiliates and non-affiliates that submit Statements of Interest to the TWE Project initial capacity allocation. Non-affiliates will be offered the same rates, terms, and conditions as any affiliate for similar-length TSAs resulting from the allocation. The terms and conditions for the initial capacity will require sufficient commitments from the transmission customers to fund the initial build-out of the TWE Project, regardless of whether the customer is an affiliate or non-affiliate of TransWest.

TransWest has developed the TWE Project as an independent transmission project operated separately and distinctly from PCW, the affiliate company that is developing the CCSM Project. TransWest has and will continue to maintain separate books and records for the TWE Project, independent of its affiliates' books and records. PA Consulting, as the ISM, will oversee the open solicitation process as an independent solicitation manager. PA Consulting will prepare a report to the Commission that TransWest will include in its post-solicitation compliance filing.

TransWest will file an OATT following the FERC *pro forma* template to provide transmission service on the TWE Project for all capacity not initially allocated in the Open Solicitation process. Further, TransWest will comply with FERC's Standard of Conduct, affiliate rules, and other filing requirements, including Electric Quarterly Reports of its

⁴⁹ 2013 Policy Statement at P 34.

transmission service transactions. The Commission has found in other proceedings that applicants making commitments similar to those described above satisfy *Chinook* factor three.⁵⁰

4. Factor Four: Regional Reliability and Operational Efficiency

In order to ensure regional reliability and operational efficiency, the Commission expects developers to assign operational control of their projects to an ISO or RTO if the projects are connected to such a regional entity.⁵¹ Whether or not a project is connected to an ISO or RTO, the developer must satisfy all applicable requirements of NERC and any regional reliability council in which it is located. The Commission also encourages developers to participate in regional planning processes required by Order Nos. 890 and 1000 as their projects move forward.⁵² The Commission did not modify this factor in the 2013 Policy Statement.⁵³

As stated above, TransWest cannot assign operational control of the TWE Project to an ISO or RTO because the TWE Project is not located within the footprint of any such entity. Nevertheless, TransWest is committed to satisfying all applicable NERC and WECC requirements. TransWest has completed Phase 2 of the WECC Path Rating Process and has been granted Accepted Path Ratings for the TWE Project's north-to-south capacity. TransWest, as a WECC member, has sponsored the TWE Project within the Path Rating process to demonstrate that the Project complies with all relevant NERC and WECC transmission planning reliability requirements. TransWest commits to completing the WECC Path Rating Process third and final

⁵⁰ See *Linden VFT, LLC*, 162 FERC ¶ 61,297, at P 31; *Southern Cross Transmission LLC*, 157 FERC ¶ 61,090, at P 30 (2016); *Western Spirit*, 155 FERC ¶ 61,252, at P 32; *Lucky Corridor, LLC*, 151 FERC ¶ 61,072, at P 41.

⁵¹ *Chinook* at P 52; *Western Spirit*, 155 FERC ¶ 61,252, at P 33.

⁵² *Chinook* at P 53; *Lucky Corridor, LLC*, 151 FERC ¶ 61,072, at P 45.

⁵³ See 2013 Policy Statement at P 15 n.37.

phase when the TWE Project is placed in service. TransWest has and will continue to participate in the regional planning process conducted by the CAISO, Northern Grid, and WestConnect.

IV. REQUEST FOR WAIVERS

TransWest respectfully requests waivers from certain cost-based regulatory requirements applicable to public utilities. The Commission has explained that public utility status attaches at “the earlier of the date when [an entity] commences interstate sales or transmission, or when the Commission accepts a voluntary rate filing.”⁵⁴ Therefore, TransWest will become a public utility upon energizing the TWE Project or when it has an effective rate schedule on file with the Commission, whichever occurs first. Because TransWest is not submitting a rate schedule for the TWE Project at this time, Commission action on this filing does not make TransWest a public utility. However, out of an abundance of caution, TransWest now requests certain waivers in connection with this application that will take effect when TransWest becomes a public utility.

Specifically, TransWest requests waiver of: (1) the full reporting requirements of Subparts B and C of Part 35 of the Commission’s regulations, except for Sections 35.12(a), 35.13(b), 35.15, and 35.16 therein; (2) the requirement to file Form No. 1 (Annual Report of Major Electric Utilities, Licensees, and Others); and (3) Part 141 of the Commission’s regulations relating to forms and reports, except for Sections 141.14 and 141.15 therein. The Commission has granted similar waiver requests to other developers seeking negotiated rate

⁵⁴ *Multitrade Ltd. P’ship*, 63 FERC ¶ 61,252, at 62,692 (1993). Similarly, in the 2013 Policy Statement, the Commission reaffirmed that all developers of merchant transmission and nonincumbent cost-based, participant-funded transmission projects become public utilities at the time their projects are energized (and, depending on the circumstances, may become public utilities even earlier). 2013 Policy Statement at P 22.

authority.⁵⁵ TransWest also requests waiver of any other part of the Commission's regulations as necessary to grant the authorizations requested herein.

V. CONCLUSION

For the foregoing reasons, TransWest respectfully requests that the Commission (1) grant this application for authority to sell up to 100 percent of the transmission service rights on the TWE Project at negotiated rates through bilateral negotiations, (2) approve this request for approval of TransWest's capacity allocation process, and (3) grant this request for certain waivers of the Commission's regulations.

Respectfully submitted,

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⁵⁵ See, e.g., *Chinook* at PP 68-69; *SOO Green, LLC*, 172 FERC ¶ 61,086, at PP 43-44 (2020).

ATTACHMENT A

Location of Proposed TransWest Express Transmission Project

