

168 FERC ¶ 61,165
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Tucson Electric Power Company

Docket No. ER19-2023-000

ORDER ON ABANDONMENT COST RECOVERY AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued September 19, 2019)

1. On May 31, 2019, Tucson Electric Power Company (Tucson Electric) filed, pursuant to sections 205 and 219 of the Federal Power Act (FPA)¹ and part 35 of the Commission's regulations,² a request to recover, through its Open Access Transmission Tariff (OATT) rates, 100 percent of the prudently-incurred costs that it incurred associated with the development of a 345 kV transmission line between Sahuarita and Nogales, Arizona (Nogales Project), which was ultimately abandoned. Tucson Electric states that, at a minimum, it is eligible to recover 50 percent of the prudently-incurred costs associated with the Nogales Project. For the reasons discussed below, we deny Tucson Electric's request for 100 percent recovery of prudently incurred costs associated with the Nogales Project and grant Tucson Electric's request for 50 percent recovery. We accept and suspend the filing for a nominal period, effective August 1, 2019, subject to refund, and set for hearing and settlement judge procedures the types and level of prudently incurred costs and the appropriate amortization period.

I. Tucson Electric's Filing

2. Tucson Electric seeks to recover 100 percent of the costs that it incurred for the abandoned Nogales Project. In support of its request, Tucson Electric states that, in 1999, the Arizona Corporation Commission (Arizona Commission) directed Citizens Utilities Company (Citizens) to create a plan to address chronic reliability problems in Citizens' service territory in Santa Cruz County, Arizona. The Arizona Commission approved Citizens' proposed solution, which involved building a new transmission line from Sahuarita, Arizona to Nogales, Arizona, in Santa Cruz County.³

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

³ Tucson Electric Filing at 11-12.

3. Tucson Electric states that, in 2000, it approached Citizens to build a joint transmission line that would address the reliability concerns in Santa Cruz County and would allow Tucson Electric to interconnect to the Comisión Federal de Electricidad system in Sonora, Mexico. Tucson Electric states that it entered into a project development agreement with Citizens in 2001 for the Nogales Project, which had an estimated cost of \$64 million and for which Tucson Electric was responsible for overall management, including construction and regulatory approvals during the development, design, construction, and testing phases. In 2003, Tucson Electric's parent company acquired all of the electric facilities of Citizens, and now operates those electric facilities as UNS Electric, Inc. (UNS Electric), an affiliate of Tucson Electric.⁴

4. Tucson Electric states that the proposed routes for the line traversed federal land and required approvals from the U.S. Forest Service and the Department of Energy, and that, due to the possibility of a future interconnection with Mexico's electric grid, the routes triggered a National Environmental Protection Act requirement, including an Environmental Impact Study. Tucson Electric states that, after significant delays, the Environmental Impact Study was completed in 2005, with the U.S. Forest Service approving a route that differed from the one approved by the Arizona Commission. Tucson Electric states that, despite repeated efforts, it was unable to reconcile the route approved by the Arizona Commission with the one approved by the U.S. Forest Service.⁵

5. Tucson Electric states that, by 2012, amidst the backdrop of delays, the Arizona Commission found that the Nogales Project was no longer economically justified due to: (1) UNS Electric's ongoing improvements to its electric system; (2) decreased load forecasts from slower-than-expected economic growth; and (3) UNS Electric's interim proposal to focus on upgrading an existing 115 kV line to a 138 kV line to help resolve reliability issues in Santa Cruz County. Tucson Electric states that, in 2012, it concluded the Nogales Project was no longer needed, and that the project was withdrawn from Tucson Electric's and UNS Electric's 10-year transmission plans. Tucson Electric states that it "officially abandoned" the project in 2014. In support of its request, Tucson Electric provides a list of costs incurred from 1999-2010.⁶ Tucson Electric states that

⁴ *Id.* at 4 n.7.

⁵ *Id.* at 15.

⁶ These cost categories include construction review, environmental impact studies, site preparation and preliminary engineering, labor, land rights, and travel expenses. *Id.* at Exhibit 9.

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less than six percent of the costs were incurred after 2005 and that about one percent was incurred after 2007.⁷

6. Tucson Electric states that it seeks any and all necessary Commission authorizations under FPA section 205, and, to the extent necessary, under FPA section 219⁸ and Order No. 679,⁹ to allow it to recover 100 percent of the abandoned plant costs that it incurred in the development of the Nogales Project. First, concerning its request that the Commission grant authorization under FPA section 205, Tucson Electric asserts that the Nogales Project was developed principally because of a directive by the Arizona Commission to Citizens to build a transmission line to serve the Santa Cruz service area, which also was consistent with Tucson Electric's desire to improve its system's reliability and economics via a connection to Mexico.¹⁰ Tucson Electric states that, in Opinion No. 295,¹¹ the Commission explained the rationale for its traditional 50/50 cost sharing of abandoned plant costs as between a public utility's shareholders and ratepayers, observing that the public utility's management, which acts on behalf of its investors and ratepayers, is the entity that makes the original investment decision as well as the subsequent decision to cancel.¹² Tucson Electric states that, even before Order No. 679, the Commission allowed full recovery of the costs associated with an abandoned transmission project under certain circumstances.¹³ Tucson Electric adds that, in at least one case issued before Order No. 679, the Commission found that utility management did not control the original decision to build the transmission project, and on that basis granted authorization under FPA section 205 to permit the utility to recover 100 percent

⁷ *Id.* at 26, n.48; *see also id.* at Exhibit 9 (breaking down the Nogales Project costs incurred, by year).

⁸ 16 U.S.C. § 824s.

⁹ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

¹⁰ Tucson Electric Filing at 18-19.

¹¹ *N. Eng. Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016, at 61,081-82, *order on reh'g*, Opinion No. 295-A, 43 FERC ¶ 61,285 (1988).

¹² Tucson Electric Filing at 19 (citing Opinion No. 295-A, 43 FERC ¶ 61,285 at 61,780).

¹³ *Id.* at 19-20 (citing *San Diego Gas & Elec. Co.*, 98 FERC ¶ 61,332, at 62,408, *reh'g denied*, 100 FERC ¶ 61,073 (2002)).

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of abandoned plant costs.¹⁴ Tucson Electric states that the Commission distinguished the facts of *SoCal Edison* from the facts in Opinion No. 295, emphasizing that Southern California Edison (SCE) was developing its transmission project in compliance with the requirement of the California state agencies.¹⁵

7. Tucson Electric argues that the facts and circumstances surrounding the development of the Nogales Project are comparable to those in *SoCal Edison*—i.e., the Nogales Project was developed largely as a result of a mandate by the Arizona Commission to Citizens that a new line be built to address and improve electric reliability in the Santa Cruz service area; while it diligently pursued the siting and permitting required for the development of the Nogales Project, the project was ultimately abandoned due to factors outside of Tucson Electric’s control; and in light of the impasse regarding the preferred route, Tucson Electric worked with UNS Electric to propose incremental improvements to the UNS Electric system to address the reliability issues, resulting in Tucson Electric and UNS Electric reconsidering the viability of the Nogales Project.¹⁶

8. Tucson Electric also asserts that Order No. 679 provides a basis for recovering 100 percent of the project costs. While acknowledging that the Nogales Project was initiated prior to the issuance of Order No. 679, Tucson Electric asserts that the Nogales Project nonetheless is the type of transmission project that would have met the substantive requirements and qualified for the Abandoned Plant Incentive under Order No. 679. First, Tucson Electric asserts that its filing meets the requirement of Order No. 679 that an applicant demonstrate that the facilities for which it seeks incentives satisfy the requirements of section 219 of the FPA—i.e., that they either ensure reliability or reduce the cost of delivered power by reducing congestion.¹⁷ Tucson Electric asserts that the Nogales Project qualifies for the rebuttable presumption regarding reliability benefits or reduction of congestion because the Nogales Project received siting approval from the Arizona Line Siting Committee and the Arizona Commission.¹⁸ Concerning the requirement under Order No. 679 that an applicant demonstrate that the total package of incentives is tailored to address the demonstrable risks or challenges faced by the applicant, Tucson Electric maintains that the significant regulatory risks associated with

¹⁴ *Id.* at 20 (citing *Southern Cal. Edison Co.*, 112 FERC ¶ 61,014 (2005) (*SoCal Edison*)).

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 23.

¹⁷ *Id.* at 27 (citing 18 C.F.R. § 35.35(d)).

¹⁸ *Id.* at 28.

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obtaining numerous regulatory, siting, and permitting approvals demonstrate the Nogales Project's risks.¹⁹

9. Tucson Electric states that, notwithstanding its arguments that it should receive 100 percent recovery of the costs associated with the abandoned Nogales Project, at a minimum, it is eligible to recover 50 percent of its abandoned plant costs under the Commission's long-standing policy. Tucson Electric states that, in granting requests for 50 percent cost recovery, "the Commission looks to see whether the costs would have been incurred in good faith by a reasonable utility management, under the same circumstances and at the relevant period in time."²⁰ According to Tucson Electric, it prudently incurred costs in connection with its efforts to develop the state-mandated transmission line to ensure transmission reliability needs were met and it prudently cancelled the Nogales Project when it became clear that, due to a combination of factors that were outside of its control, the Nogales Project was no longer feasible and an alternative project would satisfy UNS Electric's reliability needs. Tucson Electric requests that the Commission allow it to recover 50 percent of the abandoned Nogales Project costs in accordance with Opinion No. 295 to the extent that the Commission declines its request for full cost recovery.

10. Tucson Electric also states that the Commission has a general policy that the amortization period of abandoned plant costs should extend over the expected life of the plant had it gone into service and that the Commission considers the appropriate amortization period on a case-by-case basis. Tucson Electric requests the Commission's authorization to amortize and recover the abandoned plant costs over a 45-year period, which it states reflects the Nogales Project's estimated life had it gone into service.²¹

11. Tucson Electric requests that the Commission accept its proposal to recover its costs associated with the abandoned Nogales Project with an effective date of August 1, 2019, which is the same effective date it sought in its May 31, 2019 filing in Docket No. ER19-2019-000.²² Tucson Electric states that in the Formula Rate Filing it included

¹⁹ *Id.* at 29.

²⁰ *Id.* at 31 (citing *N. Eng. Power Co.*, Opinion No. 231, 31 FERC ¶ 61,047 at 61,084, *reh'g denied*, 32 FERC ¶ 61,112 (1985), *aff'd sub nom. Violet v. FERC*, 800 F.2d 280 (1st Cir. 1986)).

²¹ *Id.* at 25.

²² Tucson Electric filed revisions to its OATT in Docket No. ER19-2019-000 to change from stated transmission rates to a transmission formula rate, to update its loss factors, and to make various ministerial revisions on the same date that it submitted its filing in this proceeding (Formula Rate Filing). On July 31, 2019, the Commission

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a line item in its formula rate template to include abandoned plant costs, as authorized by the Commission, in its transmission rates starting August 1, 2019, and thus requests the same effective date in this filing. In addition, Tucson Electric requests waivers of the Commission's cost support regulations in 18 C.F.R. § 35.13, including waiver of the full Period I and Period II data requirements, to the extent necessary. Tucson Electric states that the materials, testimony, and exhibits accompanying its filing provide ample support for the reasonableness of its proposal.

II. Notice, Interventions, and Responsive Pleadings

12. Notice of Tucson Electric's filing was published in the *Federal Register*, 84 Fed. Reg. 26,412 (2019), with interventions and protests due on or before June 21, 2019. On June 17, 2019, the Commission's Secretary issued notices granting requests by Trico Electric Cooperative, Inc. (Trico) and the Arizona Commission to extend the deadline for interventions and protests to June 28, 2019, and July 5, 2019, respectively.²³ Pattern New Mexico Wind LLC filed a motion to intervene. The Arizona Commission filed a notice of intervention and a protest. Tri-State Generation and Transmission Association, Inc. (Tri-State) and Freeport-McMoran Copper & Gold Energy Services LLC (FM Energy Services) filed motions to intervene and protests. Trico and Arizona Electric Power Cooperative, Inc. (Arizona Cooperative) filed motions to intervene, protests, and motions to consolidate. The International Brotherhood of Electrical Workers, Local 1116 (Electrical Workers Union) filed a motion to intervene and comments. On July 22, 2019, Tucson Electric filed a motion for leave to answer and an answer.

A. Protests and Comments

13. The Electrical Workers Union states that it supports Tucson Electric's request for 100 percent abandonment cost recovery. It explains that the case for 100 percent recovery for the Nogales Project is even more compelling than in *SoCal Edison*, noting that the abandonment of the Nogales Project was outside of Tucson Electric's control.²⁴

issued an order accepting and suspending Tucson Electric's Formula Rate Filing and establishing hearing and settlement judge procedures. *Tucson Elec. Power Co.*, 168 FERC ¶ 61,068 (2019).

²³ Notice of Extension of Time, Docket No. ER19-2023-000 (issued June 17, 2019); Notice of Extension of Time, Docket No. ER19-2023-000 (issued June 27, 2019).

²⁴ Electrical Workers Union Comments at 3-5 (citing *SoCal Edison*, 112 FERC ¶ 61,014).

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The Electrical Workers Union also asserts that Tucson Electric would have been eligible for total cost recovery under Order No. 679.²⁵

14. Arizona Cooperative, Trico, and FM Energy Services state that Tucson Electric should not be eligible for the abandoned plant incentive under Order No. 679.²⁶ Trico and Tri-State note that the majority of the costs associated with the Nogales Project were incurred prior to Order No. 679, and Trico further notes that Tucson Electric would be limited to recovery of 50 percent of costs incurred because Order No. 679 only allows for full cost recovery in prospective requests.²⁷

15. Trico asserts that the abandonment of the Nogales Project was not necessarily outside of Tucson Electric's control, arguing that there were business reasons that could have caused the cancellation.²⁸ Trico further asserts that Tucson Electric does not acknowledge that another entity, Nogales Transmission, L.L.C., is continuing to pursue a similar project to the Nogales Project. Trico argues that, while this new project does not appear to be identical to the Nogales Project, it is substantially similar and is actively being pursued. Trico asserts that the Commission should consider whether the abandonment of the Nogales Project was for reasons entirely beyond Tucson Electric's control where another entity appears able to move forward successfully with a very similar project.²⁹

16. Similarly, Tri-State argues that although Tucson Electric documents significant siting issues and delays associated with the Nogales Line, Tucson Electric states that "[Tucson Electric] and UNS Electric recognized that then ongoing improvements to UNS Electric's system, combined with the 138kV Conversion Project, could provide a more cost-effective solution for UNS Electric's customers than the Nogales Line." Thus, according to Tri-State, siting challenges were one of several factors leading to the abandonment decision.³⁰

²⁵ *Id.* at 5-6.

²⁶ Arizona Cooperative Protest at 15-16; FM Energy Services Protest at 5-7; Trico Protest at 8.

²⁷ Trico Protest at 10-11; Tri-State Protest at 56.

²⁸ Trico Protest at 6-7.

²⁹ *Id.* at 7.

³⁰ Tri-State Protest at 55-56 (quoting Tucson Electric Filing at 17).

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17. Arizona Cooperative, Trico, and FM Energy Services assert that the Nogales Project is distinguishable from the project in *SoCal Edison*, and should not be eligible for 100 percent cost recovery.³¹ Arizona Cooperative and FM Energy Services note that SCE's project was developed in response to an order from the California Public Utility Commission (CPUC), whereas Tucson Electric's Nogales Project was self-initiated.³² Trico notes that SCE sought a determination in advance with regard to the abandonment cost recovery, as opposed to Tucson Electric's request for a retroactive determination.³³ Arizona Cooperative asserts that the situation is more analogous to *San Diego Gas & Electric*, in which the Commission rejected the utility's request for 100 percent cost recovery.³⁴

18. Arizona Cooperative and FM Energy Services assert that, under Opinion No. 295, the Commission should authorize no more than 50 percent cost recovery.³⁵ Further, Arizona Cooperative, FM Energy Services, Trico, and Tri-State assert that the prudence of incurred costs should be set for hearing.³⁶ Arizona Cooperative further requests the Commission to investigate if Tucson Electric's proposal to connect to the Mexican electric grid was prudent, noting that the Arizona Commission requested Citizens, not Tucson Electric, to address reliability issues.³⁷

19. The Arizona Commission argues that Tucson Electric should receive no recovery for the abandoned Nogales Project. According to the Arizona Commission, Tucson Electric has not demonstrated that the Nogales Line costs were prudently incurred and has not previously sought any incentives for the project. The Arizona Commission asserts that the Commission has not had an opportunity to review the prudence of the Nogales Project because Tucson Electric has not filed for a change in its transmission rates since the current stated rates were set in a settlement approved by the Commission

³¹ Arizona Cooperative Protest at 13-14; FM Energy Services Protest at 7-9; Trico Protest at 8-9.

³² Arizona Cooperative Protest at 14-15; FM Energy Services Protest at 7-8.

³³ Trico Protest at 8-9.

³⁴ Arizona Cooperative Protest at 15 (citing *San Diego Gas & Elec. Co.*, 146 FERC ¶ 61,066, at P 26 (2014)).

³⁵ *Id.* at 16-17; FM Energy Services Protest at 9-10.

³⁶ Arizona Cooperative Protest at 16-17; FM Energy Services Protest at 12-13; Trico Protest at 12; Tri-State Protest at 57.

³⁷ Arizona Cooperative Protest at 17.

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in 1997. The Arizona Commission states that it recognizes that the Commission has a general policy that unless a utility requests and receives authorization to recover 100 percent of the prudently incurred construction costs of a capital project, the abandonment recovery of the prudently incurred costs should be shared between the customers and the shareholders on a 50/50 basis. The Arizona Commission asserts that, in this case, the 50/50 sharing is not appropriate because Tucson Electric has not demonstrated that costs for the abandoned Nogales Project were prudently incurred.³⁸

20. According to FM Energy Services, the proposed 45-year amortization period is unjust and unreasonable. FM Energy Services notes that Tucson Electric failed to cite any ruling that allows such a lengthy amortization period, that most cases Tucson Electric cites involved ten-year amortization periods, and that in recent years the Commission has generally awarded amortization periods of 12 months.³⁹

21. Trico asserts that Tucson Electric's multi-year lag in requesting abandonment cost recovery shifts costs to third parties such as Trico, noting that Trico was not a customer of Tucson Electric's at the time the costs were incurred.⁴⁰ Tri-State also contends that Tucson Electric's decision to delay abandonment cost recovery until filing for formula rate authorization is not sufficiently justified.⁴¹

22. Arizona Cooperative and Trico request that the Commission consolidate the instant proceeding with the Formula Rate Filing proceeding for purposes of administrative efficiency. They assert that the abandoned plant costs that Tucson Electric is seeking to recover are included in Tucson Electric's projected annual transmission revenue requirement and will be inputs to the Tucson Electric Formula Rate, once it is approved by the Commission.⁴²

B. Answer

23. Tucson Electric disputes the protests of its proposed cost recovery for the abandoned Nogales Project. Tucson Electric asserts that its decision to proceed with the Nogales Project was not voluntary. Tucson Electric states that, while it is correct that the

³⁸ Arizona Commission Protest at 8.

³⁹ FM Energy Services Protest at 10-11 (citing *S. Calif. Edison Co.*, 155 FERC ¶ 61,169, at P 27 (2016); *S. Calif. Edison Co.*, 137 FERC ¶ 61,252, at P 22 (2011)).

⁴⁰ Trico Protest at 5-6.

⁴¹ Tri-State Protest at 56.

⁴² Arizona Cooperative Protest at 17; Trico Protest at 24.

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Arizona Commission's directive was originally directed at Citizens and then transferred to UNS Electric, the Nogales Project was developed to fulfill a state mandate, and the fact that Tucson Electric was assisting Citizens and then UNS Electric is irrelevant. Further, Tucson Electric disagrees with Trico's argument that the circumstances surrounding the Nogales Project are different from those in *SoCal Edison*. Responding to Trico, Tucson Electric contends that a project to resolve a chronic power outage deficiency as required by a state public utility commission—as is the case with the Nogales Project—presents an equally compelling, if not stronger, case for full abandoned plant cost recovery as was present in *SoCal Edison*, where the project was designed to accommodate third-party wind generators.⁴³

24. In addition, Tucson Electric disagrees with Trico's assertion that the abandonment of the Nogales Project was a business decision or that the decision to abandon the Nogales Project was otherwise within Tucson Electric's control. Instead, Tucson Electric reiterates that there were difficulties in the siting process for the Nogales Project, given the conflicting routes approved by the Arizona Commission and the U.S. Forest Service.⁴⁴ Tucson Electric maintains that, although the Nogales Project pre-dated Order No. 679, it would have qualified for the abandoned plant incentive under that rule.⁴⁵

25. Tucson Electric also disputes Tri-State and Trico's assertions that the requested abandoned plant recovery is untimely, arguing that the timing of its filing with the Commission should not affect its ability to recover the abandonment costs. Tucson Electric contends that it did not decide to formally abandon the Nogales Project until 2014, and that, in 2014, it was evaluating a change to its transmission rates and planned to include the abandonment cost recovery request when it filed a proposal to change its rates with the Commission.⁴⁶ Tucson Electric also disputes Trico's argument that the delay in the cost recovery filing results in a cost shift to Trico. Tucson Electric maintains that Trico was already a transmission customer of Tucson Electric in 2014, and would have been allocated a share of the abandoned plant costs.⁴⁷

26. Tucson Electric also asserts that all costs were prudently incurred. To address an argument by Arizona Cooperative that Tucson Electric did not adequately explain the plan to connect to Mexico's grid, Tucson Electric points to Mr. Beck's testimony,

⁴³ Tucson Electric Answer at 5.

⁴⁴ *Id.* at 6-7.

⁴⁵ *Id.* at 8.

⁴⁶ *Id.* at 9-10.

⁴⁷ *Id.* at 11.

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explaining potential economic and technical benefits of interconnection found in a 1991 joint study by the U.S. and Mexico.⁴⁸ In response to the Arizona Commission's argument that the costs were not previously determined to be prudent, Tucson Electric argues that costs can be evaluated after the abandonment of a project, and that it met its burden of proof to show the costs were prudently incurred.⁴⁹

27. Addressing FM Energy Services' argument that the 45-year amortization period is excessive, Tucson Electric asserts that its proposed amortization period is just and reasonable, and that Commission policy allows abandoned plant costs to be amortized over the expected life of the plant had it gone into service.⁵⁰

28. Tucson Electric also counters arguments from FM Energy Services and Tri-State that the filing should be set for hearing. Tucson Electric further maintains that the docket should not be consolidated with the Formula Rate Filing proceeding, as proposed by Trico. Tucson Electric argues that the abandonment filing addresses a discrete issue and combining it with the Formula Rate Filing proceeding offers no administrative efficiency.⁵¹

III. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

30. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Tucson Electric's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

31. We deny Tucson Electric's request for 100 percent recovery of prudently incurred costs associated with the Nogales Project, grant Tucson Electric's request for 50 percent recovery, accept and suspend Tucson Electric's filing for a nominal period, subject to

⁴⁸ *Id.* at 14.

⁴⁹ *Id.* at 12-14 (citing Arizona Commission Protest at 8).

⁵⁰ *Id.* at 15 (citing Opinion No. 295, 42 FERC at 61,082; Order No. 679, 116 FERC ¶ 61,057 at n.113).

⁵¹ *Id.* at 16-17.

refund, and set for hearing and settlement judge procedures the type and level of prudently incurred costs and the appropriate amortization period, as discussed below.

32. Tucson Electric states that it seeks any and all necessary Commission authorizations under FPA section 205, and to the extent necessary, under section 219 of the FPA and Order No. 679, to allow it to recover 100 percent of the abandoned plant costs that it incurred in the development of the Nogales Project. To support its request, Tucson Electric primarily relies on *SoCal Edison*. We find this reliance to be misplaced.

33. In *SoCal Edison*, SCE filed a petition for declaratory order requesting, among other things, that the Commission grant it pre-authorization for all of its prudently incurred costs in developing its transmission project in the event that the expected wind generation projects that were being developed by a third party and that drove the need for the new transmission line did not develop as forecasted and/or SCE had to abandon or cancel one or more of the three segments that comprised its transmission project.⁵² By contrast, Tucson Electric requests 100 percent abandoned plant cost recovery on a retroactive basis many years after it incurred the costs and abandoned the project.

34. Additionally, we find that the circumstances surrounding the transmission project in *SoCal Edison* were different from those surrounding the Nogales Project. In *SoCal Edison*, it was clear that SCE was developing the transmission project pursuant to a directive by the CPUC, and it was clear that the CPUC had control over the determinations regarding the ultimate design of SCE's transmission project. Here, the Arizona Commission directed Citizens, not Tucson Electric, to study alternatives to address service problems, and it was Citizens, not the Arizona Commission, that decided that a new transmission line would be the appropriate solution for the reliability problems in Santa Cruz County. Tucson Electric later voluntarily joined the project and expanded the proposed line into a more extensive, higher-voltage project, after which the plan was formalized in a settlement approved by the Arizona Commission. Further, in *SoCal Edison*, the Commission found that SCE may have been at high risk in developing the project because of factors beyond its control, such as the possibility that the third-party developer could terminate development of any given wind farm.⁵³

35. We also disagree with Tucson Electric's reliance on Order No. 679 as a basis for recovering 100 percent of the abandoned Nogales Project costs. The Commission has held that abandoned plant cost recovery pursuant to Order No. 679 applies only to costs incurred after the date of a Commission order granting that incentive.⁵⁴ Tucson Electric acknowledges that its efforts in developing the Nogales Project (and the associated costs)

⁵² See *SoCal Edison*, 112 FERC ¶ 61,014 at PP 4-6, 14.

⁵³ *Id.* P 61.

⁵⁴ See, e.g., *San Diego Gas & Elec. Co. v. FERC*, 913 F.3d 127 (D.C. Cir. 2019).

took place not only prior to its submittal of this application, but also largely took place prior to the enactment of section 219 of the FPA and the issuance of Order No. 679. Therefore, we need not reach the merits of Tucson Electric's argument that the risks and challenges associated with the Nogales Project were such that it would have qualified for the Order No. 679 abandoned plant incentive.

36. Although we find that Tucson Electric's abandoned Nogales Project costs are not eligible for 100 percent recovery, consistent with Opinion No. 295, we will authorize Tucson Electric to recover 50 percent of its prudently incurred abandonment costs associated with the Nogales Project, effective August 1, 2019.⁵⁵ However, our preliminary analysis indicates that the amount of abandoned plant costs that Tucson Electric proposes to recover as prudently incurred costs has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that the types and level of prudently incurred costs and the appropriate amortization period raise issues of material fact that cannot be resolved based upon the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we set issues related to the types and level of abandonment costs Tucson Electric is permitted to recover for its Nogales Project as well as the appropriate amortization period for hearing and settlement judge procedures.⁵⁶

37. Because Docket Nos. ER19-2023-000 and ER19-2019-000 may raise common issues of law and fact, we direct the Chief Administrative Law Judge to consider and decide whether to consolidate these proceedings for purposes of settlement, hearing, and decision.⁵⁷ While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁵⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge

⁵⁵ Opinion No. 295, 42 FERC at 61,081-82.

⁵⁶ Tucson Electric must, in accordance with the Commission's Uniform System of Accounts, also obtain approval to record abandonment costs in Account 182.2 (Unrecovered Plant and Regulatory Study Costs) and to record the amortization to Account 407 (Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs).

⁵⁷ See 18 C.F.R. § 385.503(a) (2019).

⁵⁸ 18 C.F.R. § 385.603.

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based on workload requirements which determine judges' availability.⁵⁹ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assignment of the case to a presiding judge.

The Commission orders:

(A) Tucson Electric's request to recover 100 percent of the project abandonment costs of the Nogales Project is hereby denied, as discussed in the body of this order.

(B) Tucson Electric's request to recover the Nogales Project abandoned plant costs in its formula rate is hereby accepted, suspended for a nominal period, effective August 1, 2019, subject to refund, as discussed in the body of this order.

(C) Tucson Electric is hereby authorized to recover 50 percent of its prudently incurred abandonment costs associated with the Nogales Project, effective August 1, 2019, following the evidentiary hearing and/or settlement procedures established by this order to determine the types and level of prudently incurred costs, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 205 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the types and level of prudently incurred costs and the appropriate amortization period, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall

⁵⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(F) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(G) The Chief Administrative Law Judge is authorized to consider whether to consolidate Docket Nos. ER19-2019-00 and ER19-2023-000 for purposes of settlement, hearing and decision.

(H) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.