

132 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

California Independent System Operator Corporation Docket No. ER10-1401-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING PROPOSED TARIFF
REVISIONS AND ESTABLISHING TECHNICAL CONFERENCE

(Issued July 26, 2010)

1. On June 4, 2010, the California Independent System Operator Corporation (CAISO) filed proposed revisions to its Open Access Transmission Tariff (CAISO Tariff) to implement a revised transmission planning process (RTPP).¹ While we recognize the extensive efforts that have gone into developing this proposal to assist California utilities in meeting state renewable portfolio standards, we nevertheless find that CAISO has not shown that its proposed RTPP is just and reasonable. CAISO's proposed tariff sheets lack the specificity and clarity necessary for the Commission to evaluate the proposal. Therefore, as discussed below, we will accept and suspend the proposed tariff revisions to become effective the earlier of January 3, 2011 or a date set in a further Commission order. To facilitate the expeditious resolution of this proceeding, we direct Commission staff to convene a technical conference as soon as possible, but not later than 45 days following the date of issuance of this order.

I. Background

2. CAISO states that the RTPP is necessary to meet California's goal of achieving a 33 percent renewable portfolio standard by 2020. The revised process introduces a new category of "policy-driven" transmission facilities (i.e., facilities needed to facilitate achievement of state and federal policy requirements and directives). Through the RTPP, CAISO will undertake a unified planning effort that will produce a single comprehensive transmission plan for CAISO's balancing authority area, including transmission additions and upgrades driven by policy goals as well as other transmission needs and objectives.

¹ CAISO, June 4, 2010 Revised Transmission Planning Process Proposal, Docket No. ER10-1401-000.

CAISO states that it has added a competitive solicitation process for certain categories of projects that will provide an opportunity for independent transmission developers to submit proposals to build and own transmission elements identified in the plan.

3. According to CAISO, the RTPP will have three phases. In Phase 1, CAISO proposes to develop its unified planning assumptions with stakeholder input. CAISO states that it will also initiate development of a statewide conceptual transmission plan that will consider the transmission infrastructure needs of California in order to meet state and federal policy requirements. CAISO indicates that it may undertake this effort with regional and sub-regional planning groups and interconnected balancing authority areas. CAISO notes that for the 2010/2011 planning cycle it is working with the California Transmission Planning Group (CTPG) for this purpose.²

4. In Phase 2, CAISO proposes to develop a comprehensive transmission plan for the CAISO balancing authority area that specifies all of the upgrades and additions needed to meet the infrastructure needs of the transmission grid. During this period, CAISO states that it will consider various inputs, including the draft statewide conceptual plan; project proposals submitted in the transmission planning request window;³ and stakeholder input. CAISO provides that Phase 2 transmission project categories include: reliability-driven projects, merchant transmission projects, LCRI projects, projects needed to maintain the feasibility of long-term congestion revenue rights (CRRs), Large Generator Interconnection Procedure (LGIP) network upgrades, policy-driven projects, and economically-driven projects.

5. Under Phase 2, CAISO proposes first to consider projects needed to maintain reliability, qualified merchant transmission projects, LCRI projects, and projects needed to maintain the feasibility of long-term CRRs. Starting in the 2011/2012 planning cycle, CAISO proposes also to evaluate LGIP-driven upgrades that might have a significant impact on the transmission system to ensure a comprehensive approach for identifying

² The CTPG is composed of transmission planners and load serving transmission owners in California, including all of the primary municipal utilities in the state.

³ CAISO's proposed tariff language provides that during the Phase 2 request window the following types of proposals may be submitted: reliability-driven projects; Location Constrained Resource Interconnection (LCRI) projects; demand response or generation projects proposed as alternatives to transmission additions or upgrades to meet reliability needs; and merchant transmission projects.

the most efficient and effective network upgrades.⁴ CAISO proposes to cap the interconnection customers' costs at the amount they would be responsible for under the CAISO Tariff LGIP provisions to ensure that any potential modification to network upgrades caused by the RTPP does not adversely impact interconnection customers.

6. After considering these projects, CAISO proposes to consider policy-driven projects. CAISO states that the comprehensive transmission plan will designate the policy-driven elements as either Category 1 or Category 2. CAISO states the two-category approach is necessary to manage the considerable uncertainty that exists with respect to external conditions that will affect what transmission is needed. Category 1 elements will be identified based on a "least regrets" evaluation of alternative generation development scenarios in order to minimize the risk of building under-utilized transmission capacity. However, because Category 1 elements may not be sufficient to achieve the 33 percent renewable energy target, the plan will identify additional transmission elements and classify those as Category 2. According to CAISO, it will recommend Category 1 elements to the CAISO Governing Board for approval. CAISO states that it will identify the Category 2 elements in the transmission plan, but will not recommend them for approval because these Category 2 transmission facilities will be re-assessed in the next planning cycle as candidates to become Category 1 facilities if new information regarding patterns of generation development and other factors confirm the need for these facilities.

7. Finally, CAISO proposes to consider economically-driven projects last. CAISO emphasizes two proposed changes to the treatment of these projects. First, CAISO proposes changing the timing of the economic analysis it uses to assess needs and identify additional transmission elements that will provide economic benefits. CAISO seeks to conduct economic studies during Phase 2, after initially evaluating the merchant transmission facility projects, reliability-driven projects, LCRI facilities, long-term CRR projects submitted through the annual transmission planning request window, LGIP-related network upgrades modified by the transmission planning process, and the needed Category 1 policy-driven elements. Second, CAISO proposes to no longer accept economic project proposals in the transmission planning request window. CAISO states that, instead, it will use its economic studies to identify transmission elements that provide cost-effective economic benefits, such as congestion cost reduction.

⁴ CAISO states that it will not evaluate LGIP-driven upgrades during the RTPP process during the 2010/2011 planning cycle in order to not adversely impact the schedules of generators that (1) are subject to deadlines to sign Large Generator Interconnection Agreements (LGIAs) to receive funding under the American Recovery and Reinvestment Act, and (2) are on course to execute LGIAs this year under the existing CAISO Tariff LGIP provisions. CAISO RTPP Transmittal Letter at 5-6.

8. In the RTPP, CAISO proposes to maintain some rights of first refusal but to eliminate others. The right of first refusal is the right of the incumbent transmission provider to have the option or first opportunity to choose whether to construct new facilities in its service territory, even when those facilities are first proposed by a non-incumbent transmission developer. CAISO explains that it will retain the existing CAISO Tariff provisions regarding the responsibility to build reliability-driven projects, LGIP network upgrades, LCRI facilities and facilities needed to maintain the feasibility of allocated long-term CRRs. CAISO states that the parties responsible for constructing these projects will be the applicable participating transmission owner (PTO) or merchant transmission facility project sponsor, as appropriate.

9. CAISO also notes that, if through the transmission planning process it modifies any facilities identified in a Phase 2 LGIP study to meet policy-driven or other system needs in addition to the needs of the interconnection customers, the applicable PTO will be responsible for constructing and owning the modified facilities if the network upgrade that is being modified would have been included in an LGIA for interconnection customers (e.g., the network upgrade is being upsized to meet some system need in addition to serving the specific interconnection customers). CAISO states that the responsibility for building and owning upgrades or additions that are needed due to the modification of the network upgrades identified in the Phase 2 LGIP study, but which are not part of the network upgrade that would have been included in an LGIA for interconnection customers, will be determined according to the category of the upgrade. In this regard, CAISO states that reliability projects and any new facilities on or upgrades to existing PTO facilities, rights-of-way or substations will be built and owned by the applicable PTO, unless the PTO agrees otherwise.

10. CAISO states that, in light of stakeholder concerns with the right of first refusal in prior versions of the RTPP, it removed from the RTPP a right of first refusal for PTOs to build policy-driven and economic transmission facilities. CAISO states that these projects will be subject to a competitive solicitation process. CAISO points out, however, that it proposes to allow project sponsors that submitted projects in CAISO's 2008 and 2009 transmission planning request windows to build and own their projects if CAISO finds them to meet its policy-driven or economic transmission needs. But CAISO notes that, if there are competing 2008 and 2009 transmission planning request window projects for the same transmission element, it will apply the Phase 3 process and standards for evaluating multiple-sponsor projects.

11. At the conclusion of Phase 2, CAISO proposes to submit the comprehensive transmission plan to the CAISO Governing Board for approval. CAISO notes that its management will retain its current ability to approve projects that cost less than \$50 million without CAISO Governing Board approval, but these projects will be identified in the comprehensive plan.

12. Under Phase 3, CAISO states that it will receive specific proposals from all interested project sponsors to build Category 1 policy-driven and economically-driven transmission elements that the CAISO Governing Board approved in the final Phase 2 plan. In this phase, CAISO will conduct an open solicitation process that will give all interested parties, including independent transmission developers and PTOs, an equal opportunity to propose to construct and own these elements. CAISO states that it will review the project proposals to determine whether they are technically consistent with the specifications in the final Phase 2 plan; whether they satisfy applicable reliability criteria and CAISO planning standards; and whether the project sponsors are qualified to build and own the facilities. CAISO adds that the proposed qualification standards require project sponsors to demonstrate that they are physically, technically and financially capable of (1) completing the project in a timely and competent manner, and (2) operating and maintaining the facilities consistent with Good Utility Practice and applicable reliability criteria.

13. CAISO explains that, if two or more qualified project sponsors seek to construct and own the same policy-driven or economically-driven transmission element and both meet the qualification requirements, then, upon request, CAISO will facilitate an opportunity for the project sponsors to collaborate with each other to propose a single joint project. If the project sponsors are not able to collaborate on a single project and all of the qualified project sponsors propose to seek siting authorization from the same siting authority (e.g., the California Public Utilities Commission (CPUC)), then CAISO proposes to defer to that siting authority to determine which project sponsor should build and own the project. CAISO notes that it has entered into a Memorandum of Understanding with the CPUC to coordinate CAISO's RTPP and identification of needed transmission infrastructure with the CPUC's subsequent siting/permitting process.

14. CAISO requests that the RTPP become effective on August 3, 2010.

II. Notice of Filing and Responsive Pleadings

15. Notice of the RTPP was published in the *Federal Register*, 75 Fed. Reg. 35014 (2010), with protests and interventions due on or before June 25, 2010, subsequently extended until June 30, 2010.⁵

⁵ On June 18, 2010 and June 23, 2010, the Bay Area Municipal Transmission Group (Bay Area), consisting of the Cities of Santa Clara, Palo Alto and Alameda, California, and the Western Independent Transmission Group (WITG) filed respective motions for extension of time to file comments. CAISO filed an answer to each motion. On June 23, 2010, the Commission extended the time for filing comments to and including June 30, 2010.

16. Timely motions to intervene were filed by Citigroup Energy Inc.; LS Power Associates, L.P.; Metropolitan Water District of Southern California; NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC and Long Beach Generation LLC; Sempra Generation; and Starwood Energy Group Global, LLC. CPUC filed a notice of intervention and comments. Timely motions to intervene and comments and/or protests were filed by Bay Area; California Department of Water Resources State Water Project (SWP); California Municipal Utilities Association (CMUA),⁶ California Wind Energy Association (CalWEA); City and County of San Francisco (San Francisco); Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities); Cities of Redding and Santa Clara, California and M-S-R Public Power Agency (Cities/M-S-R); DayStar Farms and Critical Path Transmission (DayStar); Desert Southwest Power, LLC (Desert Southwest); Green Energy Express LLC and 21st Century Transmission Holdings, LLC (Green Energy); Imperial Irrigation District (Imperial); Large-Scale Solar Association (Large-Scale Solar); Metro Renewable Express LLC and Pony Express LLC (MRE/PE); Modesto Irrigation District (Modesto); Nevada Hydro Company (Nevada Hydro); NextEra Energy Resources, LLC (NextEra); Northern California Power Agency (NCPA); Pacific Gas and Electric Company (PG&E); Pattern Transmission LP (Pattern Transmission); Sacramento Municipal Utility District (SMUD); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SoCal Edison); Transmission Agency of Northern California (TANC); Western Grid Development LLC (Western Grid); and WITG.

17. On July 15, 2010, CAISO and Six Cities submitted answers.

18. Parties protest or comment upon a number of issues, including the right of first refusal and construction in existing rights-of-way and upgrades to existing facilities; the definition of new transmission project categories; selection among competing proposals; the need for increased use of cost containment principles; the statewide conceptual plan and the role of the CTPG; integration of the transmission planning process with LGIP; cost allocation; use of the transmission planning request window; and regional and sub-regional participation.

19. Many protestors, including independent transmission providers, argue that CAISO asserts a right of first refusal with regard to incumbent PTOs' rights to build LGIP network upgrades, LCRI facilities, facilities needed to maintain the feasibility of long-term CRRs, and reliability projects.⁷ These parties are concerned that incumbent PTOs'

⁶ On July 6, 2010, CMUA filed an errata to correct a typographical error in its pleading.

⁷ These parties include: Green Energy, Pattern Transmission, CPUC, MRE/PE, Western Grid and WITG.

rights to construct and own facilities added onto their existing facilities or built within their existing rights-of-way are too broad.⁸ Other protestors, including incumbent transmission providers such as SoCal Edison, argue that a PTO should not have the backstop obligation to build needed policy-driven or economic transmission elements in its service territory if parallel rights of first refusal for such projects do not exist.

20. Protestors also pose questions on the new project categories, selection criteria, and CAISO's discretion for selecting among competing projects.⁹ Parties contend that the project categories and CAISO's discretion over identifying policy-driven projects are vague and imprecise and need to be better defined. They argue that the proliferation of categories of transmission expansion projects, in conjunction with consideration of each category at different times during the transmission planning process and subject to different qualification and selection criteria, provides the opportunity for preferential treatment, undue discrimination and gaming.¹⁰ Some submit that a third-party evaluator should be used to identify projects and select among competing proposals. Many parties support CAISO's proposed voluntary cost cap for project proposals and assert that more cost containment principles should be included in the project selection criteria.¹¹ But PG&E and SoCal Edison oppose the cost cap and contend that it would not be effective. They argue that capping cost recovery could prompt a project sponsor to cut capital costs with resultant higher maintenance costs and potentially frequent outages and likely need for future capital upgrades. They emphasize that a cost cap might encourage a non-PTO project sponsor to set an unreasonable cost cap to win the award, increasing the likelihood that the non-PTO sponsor would later abandon the project and create the dilemma of who would be responsible for completing or cleaning up the project.

⁸ *See, e.g.*, comments of Green Energy, MRE/PE, Imperial and Pattern Transmission.

⁹ Protestors raising such issues include: San Francisco, WITG, CalWEA, Western Grid, DayStar, Pattern Transmission, MRE/PE, Desert Southwest, Nevada Hydro and Bay Area.

¹⁰ *See, e.g.*, comments of Pattern Transmission.

¹¹ Such parties include: Bay Area, San Francisco, NCPA, CMUA, Six Cities, TANC, MRE/PE, Pattern Transmission, SWP and Western Grid.

21. Many parties are concerned with CAISO's reliance on CTPG's development of the statewide conceptual plan.¹² Protestors argue that CTPG excludes independent transmission developers and therefore the RTPP does not comply with Order No. 890.¹³

22. Several parties argue that the proposed RTPP tariff provisions need to be better integrated with the LGIP. They raise issues regarding the integration of LGIP studies with the RTPP, cost allocation for network upgrades and lack of transparency in the LGIP provisions.¹⁴ Protestors also express concerns about cost allocation related to LGIP upgrades and policy-driven transmission projects that CAISO proposes to allocate through the transmission access charge.¹⁵

23. Parties contend that the transmission planning request window should be extended to include all jurisdictional transmission projects and that CAISO should establish a first-in-time principle to give preference to earlier submissions.¹⁶ Parties also urge the Commission to clarify that existing requests should be subject to the current CAISO Tariff, and not the RTPP. They anticipate that it will take time to resolve the issues raised by the RTPP, and they seek to clarify their status so as not to jeopardize receipt of the federal stimulus funds under the American Recovery and Reinvestment Act.¹⁷

¹² Such parties include: Nevada Hydro, MRE/PE, Pattern Transmission, Large-Scale Solar, DayStar, Western Grid, CalWEA and WITG.

¹³ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

¹⁴ Parties raising such issues include: CPUC, Bay Area, CMUA, Six Cities, Large-Scale Solar, Western Grid and CalWEA.

¹⁵ Protestors include: Bay Area, SWP, CalWEA and San Francisco.

¹⁶ *See, e.g.*, comments of: MRE/PE, Pattern Transmission, DayStar, Western Grid and Desert Southwest.

¹⁷ *See, e.g.*, comments of Desert Southwest.

24. Several parties ask the Commission to require CAISO to participate in regional and sub-regional transmission planning.¹⁸ Protestors are concerned that the proposed tariff language could allow CAISO to unilaterally develop its statewide transmission plan without collaborating with neighboring balancing authorities.¹⁹

25. In its answer, CAISO defends its RTPP filing as consistent with Order No. 890 and emphasizes that prompt Commission action is needed to meet California's renewable portfolio standards. CAISO argues that most of the parties' suggested modifications should be rejected. CAISO does, however, agree to make certain tariff modifications in response to parties' concerns.

26. Six Cities argues in its answer that generators should not be relieved of initial funding obligations for network upgrades. Furthermore, Six Cities asserts that Desert Southwest should not receive an exemption for approval of its transmission project through the RTPP.

III. Discussion

Procedural Matters

27. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's and Six Cities' answers because they have provided information that assisted us in our decision-making process.

Suspension and Technical Conference

28. The CAISO's RTTP proposal appears to be an innovative approach to a significant challenge facing California utilities in their efforts to meet renewable portfolio standards. However, CAISO's proposed tariff sheets lack the specificity and clarity necessary for the Commission to evaluate the proposal. Additional information is needed before the Commission can resolve the complex issues that are in dispute among the parties.

29. We find that CAISO has not shown that its proposed RTPP is just and reasonable, and that it may be unjust, unreasonable, or unduly discriminatory or preferential.

¹⁸ Parties include: Bay Area, CMUA, TANC, Imperial, SMUD, and Large-Scale Solar.

¹⁹ See, e.g., comments of SMUD.

Accordingly, we will accept and suspend the proposed tariff revisions to become effective the earlier of January 3, 2011 or a date set in a further Commission order. This approach is particularly appropriate here where the filing raises issues concerning non-rate terms and conditions that cannot easily be redressed by the Commission's refund authority.

30. Nevertheless, we recognize the critical role transmission planning plays in enabling California to meet its renewable portfolio standards. Therefore, because we find the issues parties raise may benefit from closer examination at a technical conference, we direct Commission staff to convene a technical conference on the RTPP as soon as possible, but not later than 45 days following the date of issuance of this order. Notice of such technical conference will include topics for discussion.

The Commission orders:

(A) The proposed tariff sheets in the Revised Transmission Planning Process are hereby accepted and suspended, to become effective the earlier of January 3, 2011 or a date set in a further Commission order, as discussed in the body of this order.

(B) Commission staff shall convene a technical conference as soon as possible, but not later than 45 days following the date of issuance of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.