

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

In the Matter of the Application of DCR
TRANSMISSION, LLC for a Certificate of
Public Convenience and Necessity for the Ten
West Link Project.

Application 16-10-012
Filed October 12, 2016

**RESPONSE TO APPLICATION FOR REHEARING OF DECISION 21-11-003 OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

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I. Introduction

The California Independent System Operator Corporation (CAISO) hereby responds to the Application for Rehearing (AFR) filed by the Public Advocates Office of the California Public Utilities Commission (Cal Advocates). The AFR seeks rehearing of Commission Decision 21-10-003 (Decision), which granted DCR Transmission, LLC's (DCRT) application for certificate of public convenience and necessity (CPCN) to construct the Ten West Link Transmission Line Project (Ten West Project). The CAISO opposes the Cal Advocates' request for rehearing and recommends the Commission reject the AFR.

The Decision granted DCRT's CPCN application Project, in part, based on finding the CAISO's 2013-2014 Board-approved economic evaluation warranted a rebuttable presumption in favor of the project's cost-effectiveness. The Decision concluded Cal Advocates failed to rebut the cost-effectiveness presumption. The Decision properly applied the rebuttable presumption to the CAISO's economic analysis because the analysis met the requirements established in Decision (D.) 06-11-018 and the Commission has ultimate discretion to establish the burden of proof in its proceedings.

In addition to the rebuttable presumption, there is a voluminous record in this proceeding establishing the Ten West Project's continuing cost-effectiveness. Both the CAISO and DCRT presented detailed production cost and capacity benefit modeling demonstrating the Ten West Project provides benefits in excess of costs, thereby providing value to California ratepayers. Cal Advocates conducted its own modeling, which purportedly showed lower benefit-to-cost results, but those results depending on subjective modeling adjustments that were not in line with

existing planning and procurement processes. The Decision properly found the CAISO's updated analysis used assumptions and portfolios consistent with the Commission's integrated resource planning process to establish the Ten West Project's benefits. As a result, there is substantial evidence to support the Decision to grant DCRT's application for CPCN.

II. Background

The CAISO identified the need for the Ten West Project in its 2013-2014 Board-approved Transmission Plan to provide economic benefits to California ratepayers. After a robust and transparent stakeholder process, the CAISO Board found the Proposed Project provided sufficient net economic benefits relative to its estimated cost. After a competitive solicitation process, the CAISO selected DCRT as the approved project sponsor to construct and own the Ten West Project. DCRT subsequently applied for a CPCN from the Commission.

The CAISO intervened in this proceeding and provided detailed information regarding its 2013-2014 transmission planning process and the economic basis for approving the Ten West Project. The CAISO's direct testimony described the 2013-2014 transmission planning process, including the public participation through stakeholder meetings and comments. The CAISO provided evidence demonstrating the 2013-2014 transmission planning economic modeling for the Ten West Project, which the CAISO Board reviewed and approved as part of the transmission plan.

The CAISO also provided a fully updated economic analysis showing the continuing need for the Ten West Project in 2019 direct testimony. The CAISO based this economic analysis on the most up-to-date, Commission adopted assumptions and resource portfolios available at that time. The CAISO's updated analysis confirmed the Ten West Project's continuing economic benefits, which included both production cost benefits and capacity benefits. The CAISO's updated 2019 economic analysis found the Ten West Project provided economic benefits in excess of anticipated costs in all studied production cost and capacity saving scenarios.

The Commission issued Decision 21-11-003 granting DCRT's application for CPCN to construct the Ten West Project. The Commission previously adopted a process for applying a rebuttable presumption to CAISO Board approved economic analyses in Decision (D.) 06-11-018. The Decision in this proceeding found the CAISO substantially complied with the process adopted in D.06-11-018 and thus applied the rebuttable presumption in favor of the CAISO

Board-approved 2013-2014 economic analysis of the Ten West Project. The Decision further found Cal Advocates—the only party opposing DCRT’s CPCN application—failed to meet the burden of proof to rebut the presumption in favor of the CAISO’s economic analysis. The Decision also found the CAISO’s updated applied reasonable assumptions and studied appropriate resource portfolios to confirm the continuing need for the Ten West Project.

Cal Advocates filed the AFR claiming the Decision unlawfully applies the rebuttable presumption to the CAISO’s economic analysis.

III. The Commission Has Discretion to Establish the Burden of Proof in Its Administrative Proceedings.

Unlike other state agencies, the Commission has significant discretion to establish the procedural rules for its administrative proceedings. The California Constitution authorizes the Commission to establish its own procedures,¹ and California statute provides the Commission need not apply “the technical rules of evidence[.]”² The Courts have rejected appeals to limit the Commission’s ability to establish the burden of proof, specifically finding the Commission has authority to establish the appropriate burden of proof in CPCN proceedings.³

D.06-11-018 shifts the burden of proof onto parties opposing a CPCN for a project supported by a CAISO Board-approved economic evaluation.⁴ There the Commission recognized “the CAISO’s work in the area of economic evaluations and its role in transmission planning” by finding it “appropriate to establish a rebuttable presumption regarding economic value in CPCN proceedings in favor of an economic evaluation approved by the CAISO Board and submitted in a CPCN proceeding” provided certain procedural safeguards are met. The Commission further explained the “rebuttable presumption in favor of a CAISO Board-approved economic evaluation shall be such that parties opposing the proposed project in a CPCN

¹ Cal. Const., Article XII, § 2.

² Cal Pub. Util. Code § 1701.

³ *Util. Consumers’ Action Network v. Pub. Utilities Com.*, 187 Cal. App. 4th 688, 699, 114 Cal. Rptr. 3d 475, 484 (2010), (“Turning to the merits, UCAN offers no statutory or case authority to support its argument the Commission should change its procedure, or that the Commission failed to proceed in the manner required by law when it applied the preponderance of the evidence standard of proof to SDG&E’s application.”)

⁴ *In Re Ord. Instituting Rulemaking on Commission’s Own Motion into Methodology for Econ. Assessment of Transmission Projects*, D.06-11-018, 2006 WL 3328154 (Nov. 9, 2006), Conclusion of Law No. 3: “In order to rebut the presumption created by a CAISO Board-approved economic evaluation in support of a proposed transmission project, parties opposing the proposed project in a CPCN proceeding should bear the burden of demonstrating either (1) that the CAISO Board-approved economic evaluation does not comply with the principles and minimum requirements of this decision or (2) that the project is not cost-effective.”

proceeding will bear the burden of demonstrating either (1) that the CAISO Board-approved economic evaluation does not comply with the principles and minimum requirements of this decision or (2) that the project is not cost-effective.”⁵

In addition, D.06-11-018 adopted general principles and guidance regarding economic evaluations of proposed transmission projects. The Commission stated the “principles and minimum requirements should be useful to project proponents, the CAISO, and other parties who may participate both in the CAISO review and in CPCN proceedings before the Commission by providing consistency and transparency across the two forums.”⁶ At the same time, the Commission’s decision “recognize[d] that it may be appropriate to tailor the application of these general principles to the particular project before us” and that the “Assigned Commissioner or assigned ALJ in a CPCN proceeding may allow parties to deviate from the adopted minimum requirements for economic evaluations with good cause shown, taking case-specific conditions into account, and may impose additional requirements as warranted.”⁷

In this case, the CAISO’s 2013-2014 transmission planning process Board approval for the Ten West Project met the minimum requirements and procedural safeguards set forth in D.06-11-018. As a result, the Commission properly applied the rebuttable presumption in favor of the CAISO Board-approved economic analysis in this proceeding.

A. The Decision Provides Substantial Evidence to Establish a Rebuttable Presumption for the CAISO’s Board-Approved Economic Analysis.

Cal Advocates wrongly claims the Decision fails to comply with D.06-11-018’s public participation requirements and support its findings with substantial evidence.⁸ To establish a rebuttable presumption for the CAISO’s economic analysis, D.06-11-018 requires the CAISO approval process to meet public participation requirements, including (a) sponsoring two public meetings, (b) providing reasoned responses to all public comments, and (c) providing interested parties time and opportunity to review and comment on the draft evaluation.⁹ In testimony, the CAISO detailed the stakeholder process that led to the CAISO Board’s Proposed Project

⁵ *Id.* at 3.

⁶ *Id.* at 26.

⁷ *Id.* at 27.

⁸ Application for Rehearing, p. 10.

⁹ *In Re Ord. Instituting Rulemaking on Commission's Own Motion into Methodology for Econ. Assessment of Transmission Projects*, D.06-11-018, 2006 WL 3328154, p. 23-24.

approval in the 2013-2014 transmission planning process and satisfied the requirements of D.06-11-018.¹⁰ The Decision properly acknowledges the CAISO's 2013-2014 transmission planning process and tariff provided opportunities for public review and comment consistent with D.06-11-018's requirements.

Despite the underlying evidence clearly showing the CAISO's transmission planning process provided more than adequate public participation opportunities, Cal Advocates states "simply because a process is envisioned by the 2013-2014 Transmission Plan and the CAISO's tariff, does not demonstrate that the process was followed by the CAISO for the Ten West Link project."¹¹ The Decision, however, relies on evidence showing the CAISO more than simply "envisioned" the multi-step FERC-mandated stakeholder process that led to approving the Ten West Project. The CAISO's direct testimony clearly established both (1) the required public participation procedures included in its tariff and the transmission planning process¹² and (2) the fact that the CAISO followed these procedures to review and approve the Ten West Project.¹³ Similarly, the CAISO testified to following its procedures to request and consider stakeholder comments at various points throughout its 2013-2014 transmission planning process.¹⁴ Cal Advocates provides no evidence to counter the CAISO's testimony outlining the public participation followed by the CAISO.

¹⁰ Exhibit CAISO-03 (Millar), p. 2-3.

¹¹ Application for Rehearing, p. 11.

¹² Exhibit CAISO-03 (Millar), p. 3: "During Phase 1, the CAISO first posts a draft study plan for stakeholder review and then conducts a public stakeholder session. At the stakeholder session, the CAISO answers questions regarding the draft study plan and requests additional written comments from stakeholders. The CAISO then considers stakeholder comments in completing its final study plan... In Phase 2, the CAISO performs studies to identify transmission needs and the necessary solutions to meet those needs, culminating in the annual comprehensive transmission plan. Phase 2 takes approximately 12 months and generally involves three additional public stakeholder sessions at which the CAISO presents preliminary and draft results for vetting with stakeholders. After each stakeholder session, the CAISO requests and considers stakeholder comments on its planning analyses."

¹³ Exhibit CAISO-03 (Millar), p. 8: "The CAISO followed its FERC-approved transmission planning process, as generally described above, to review and approve the Proposed Project."

¹⁴ *Id.* In point of fact, the CAISO provided no fewer than four opportunities for the public to provide comments during the 2013-2014 transmission planning process. The CAISO even allowed for a comment period specifically related to its economic planning studies which can be accessed at the following link: http://www.caiso.com/Documents/CommentsMatrix-ISOResponses-MeetingNov20-21_2013.pdf. Commission Staff provided comments specifically related to the Ten West Project (*see* page 15 of 60). The CAISO further notes that Cal Advocates' outside consultant in this proceeding, then representing another entity, also provided comments to the CAISO regarding the Ten West Project during the 2013-2014 transmission planning process (*see* pages 2-12 of 60). The CAISO provided detailed responses to all comments, all of which are included in the linked document.

Instead, Cal Advocates generally alleges:

[t]o be clear, the CAISO Board did not make findings specific to Ten West Link. Any findings that may exist in the 2013-2014 Transmission Plan were made by the CAISO staff who authored it, not the CAISO Board.¹⁵

However, as the CAISO testified, the CAISO Board reviews and approves the CAISO transmission plan document per its tariff.¹⁶ The CAISO Board approved the 2013-2014 transmission plan, including the Ten West Project on June 16, 2014.¹⁷ The CAISO included the substantive portions of the 2013-2014 transmission plan describing the Ten West Project in the evidentiary record.¹⁸ Cal Advocates' claim that the CAISO Board-approved transmission plan does not represent CAISO Board findings—but rather only CAISO staff findings—strains credulity. This conclusion would be similar to stating that an Administrative Law Judge drafted decision, later approved by the full Commission, does not represent a Commission finding. The CAISO Board reviewed and approved the economic need for the Ten West Project as part of the 2013-2014 transmission plan, and that Board approval is consistent with the requirements in D.06-11-018.

B. The Commission Appropriately Applied the Rebuttable Presumption Based on its Existing Authority and the Evidentiary Record.

On various occasions, Cal Advocates argues the Commission acted unlawfully because “the Decision Fails to Comply With D.06-11-018’s Public Participation Requirements,”¹⁹ “the Decision fails to comply with the requirements of D.06-11-018,”²⁰ and “fails to proceed in a manner required by D.06-11-018.”²¹ As discussed in Section A above, these assertions are incorrect. The Decision cites substantial evidence demonstrating the CAISO’s 2013-2014 transmission planning process review and approval met the D.06-11-018 public participation requirements. However, even assuming *arguendo*, the Commission failed to follow a prior Commission decision is not grounds for rehearing.

¹⁵ Application for Rehearing, p. 12.

¹⁶ Exhibit CAISO-03 (Millar), p. 3.

¹⁷ *Id.* at 8.

¹⁸ *Id.* at Attachment A.

¹⁹ Rehearing, p. 10.

²⁰ Rehearing, p. 13.

²¹ Rehearing, p. 15.

As the Commission has noted:

the Commission is not bound by its precedent, unlike a court. (Decision 14-04-022, at 8, citing to *In re Pacific Gas & Electric Co.* (1988) 30 Cal.P.U.C.2d 189, 223-225; and *Postal Telegraph-Cable Company v. Railroad Commission* (1925) 197 Cal. 426, 436.) In *In re Pacific Gas*, the Commission explained that it is a “general rule of law that no legislative body can limit or restrict its own power or that of subsequent legislatures, and that the act of one legislature does not bind its successors.” (30 Cal.P.U.C.2d at 223.) The Commission is both a court and an administrative tribunal that “exercises both judicial and legislative functions.” (Id.) “The fixing of rates of public utilities is an example of its legislative powers.” (Id., citing to *People v. Western Air Lines, Inc.* (1954) 42 Cal.2d 621, 630.) Accordingly, since the Commission “exercises legislative powers when it sets rates,” a prior decision setting rates “would not bind successor Commissions.”²²

In D.06-11-018, the Commission explained “[t]he principles we adopt are applicable to transmission projects proposed wholly or partly on the basis of their expected economic benefits. We recognize that it may be appropriate to tailor the application of these general principles to the particular project before us.”²³ D.06-11-018 explicitly adopted the rebuttable presumption for CAISO Board-approved economic analysis to “narrow issues and streamline the process in the CPCN” proceeding.²⁴ Cal Advocates’ Application for Rehearing seeks to undermine that effort by parsing the procedural minutiae in a manner that would render the rebuttable presumption useless in practice.

The CAISO followed the steps outlined in D.06-11-018 necessary to establish the rebuttable presumption. However, even if the Commission agrees with any of Cal Advocates assertions regarding strict compliance with D.06-11-018, the Decision does not commit legal error by failing to strictly follow that precedent. The Commission has discretion to establish the burden of proof and in this case the Commission put the burden of proof on Cal Advocates to show the Ten West Project was not cost-effective. The Commission had appropriate basis to shift the burden of proof—*i.e.*, the CAISO Board-approved 2013-2014 economic analysis— independent from D.06-11-018.

²² *In the Matter of the Application of S. California Gas Co. (U904g) for Approval of the Branch Off. Optimization Process.*, No. 13-09-010, 2018 WL 2149045, at 4 (Apr. 26, 2018).

²³ D.06-11-018, p. 27.

²⁴ *Id.* at 27.

IV. The Commission’s Decision to Apply the Rebuttable Presumption Does Not Create Prejudice or Deny Cal Advocates’ Due Process Rights.

Application of the burden of proof is a legal determination.²⁵ As outlined in Section II.A above, Courts have granted the Commission wide discretion to select the appropriate burden of proof because the California Constitution authorizes the Commission to establish its own procedures and California statute provides the Commission need not apply the technical rules of evidence. Cal Advocates states that shifting the burden of proof “after the record is closed and briefs submitted is a violation of Cal Advocates’ right to due process.”²⁶ Cal Advocates also asserts “the Commission was required to inform parties that it intended to apply the rebuttable presumption to the CAISO’s Board-approved economic evaluation at such a time as to afford parties an opportunity to be heard.”²⁷

Cal Advocates’ due process claims are without merit. Cal Advocates provides no legal basis to find that the Commission (or any other court or administrative body) must inform parties of its intended application of burden of proof *prior* to its decision. Due process does not require pre-determining the burden of proof.²⁸

Cal Advocates claims the lack of “notice” regarding the Commission’s determination on the burden of proof denied Cal Advocates an “opportunity to be heard” on the issue.²⁹ The actual record in this case contradicts this claim, as Cal Advocates argued the whether the Commission should apply the rebuttable presumption *in its opening brief*.³⁰ Cal Advocates specifically acknowledged “the Commission has established a rebuttable presumption in CPCN proceedings in favor of a CAISO Board-approved economic evaluation” but argued “the presumption is invalid (is rebutted)”³¹ in this case. The fact that Cal Advocates argued against applying the rebuttable presumption in its opening brief is conclusive evidence Cal Advocates was not only on notice, but that it actually exercised its opportunity to be heard. Given that Cal

²⁵ *Ferrari, Alvarez, Olsen & Ottoboni v. Home Ins. Co.*, 940 F.2d 550, 555 (9th Cir. 1991).

²⁶ Application for Rehearing, p. 17.

²⁷ *Id.* at 18.

²⁸ A party has the burden of proof as the each fact essential to its claim or defense. *Samuels v. Mix* (1999) 22 C4th 1, 10-11, 91 CR2d 273, 278-279; *Aguilar v. Atlantic Richfield Co.* (2001) 25 C4th 826, 861, 107 CR2d 841, 871.

²⁹ Application Rehearing, p. 18.

³⁰ Cal Advocates Opening Brief, p. 5-6 (February 12, 2021).

³¹ *Id.* at 5.

Advocates presented arguments during the briefing phase regarding the burden of proof, there is no basis for the claim the Decision deprives Cal Advocates of its due process rights.³²

Cal Advocates' additionally claims the rebuttable presumption was not included within the scope of the proceeding, thus the "Decision failed to proceeding in a manner required by law."³³ The rebuttable presumption assigns the burden of proof. The Commission must establish the burden of proof for each claim or defense in a proceeding based on the underlying substantive law.³⁴ D.06-11-018 provided adequate notice that the burden of proof could rest on intervenors opposing a CAISO Board approved economic project and Cal Advocates opened the door to considering the rebuttable presumption by raising the issue in its opening brief. Unlike *Southern California Edison v. Public Utilities. Commission*,³⁵ which Cal Advocates cites to argue the Decision fails to act in a manner required by law, in this case considering the burden of proof and the rebuttable presumption was not prejudicial.³⁶

V. The Decision's Finding that Cal Advocates Failed to Meet the Burden of Proof Is Supported by Substantial Evidence.

Cal Advocates argues it offered extensive evidence and argument to support a determination that the Ten West Project is not cost effective.³⁷ However, the Decision and the record provide substantial evidence Cal Advocates failed to rebut the presumption in favor of the CAISO's economic analysis. Specifically, Decision section 5.4.2 explains the Commission found that Cal Advocates modeling assumptions were not persuasive to rebut the CAISO's economic analysis. The Decision found the CAISO's economic analysis properly applied

³² In addition, the case cited by Cal Advocates to support its due process claim is inapposite. The cited case does not address whether due process requires a party to be put on notice regarding who bears the burden of proof. In *California Trucking Assn.*, the Commission had issued a proposed modifying previously set rates. The Commission provided only an opportunity on the proposed decision and denied a request for hearing.³² Here, Cal Advocates had a full opportunity for hearing and briefing in the present case and Cal Advocates did, in fact, raise the relevant issue during briefing. *California Trucking Assn. v. Pub. Utilities Com.*, 19 Cal. 3d 240, 242, 561 P.2d 280 (1977).

³³ Application for Rehearing, p. 18-19.

³⁴ Which facts are essential to a party's claim or defense are determined by substantive law. *Searle v. Allstate Life Ins. Co.*, 696 P.2d 1308 (1985).

³⁵ *Southern Cal. Edison Co. v. Pub. Util. Comm.*, (2006) 140 Cal. App. 4th 1085, 1105.

³⁶ Unlike this case, the Court in *Southern California Edison Co. v. Public Utilities Commission* found "The PUC's failure to comply with its own rules concerning the scope of issues to be addressed in the proceeding therefore was prejudicial." *S. California Edison Co. v. Pub. Utilities Com.*, 140 Cal. App. 4th 1085, 1106, 45 Cal. Rptr. 3d 485, 500 (2006).

³⁷ Application for Rehearing, p. 22.

portfolios and assumptions consistent with the Commission’s Integrated Resource Planning process.

The record provides detailed evidence demonstrating why Cal Advocates’ economic modeling and analysis are unpersuasive. The CAISO and DCRT provided opening testimony supporting the Ten West Project’s public convenience and necessity in December 2019. The CAISO and DCRT used baseline resource plans and assumptions consistent with the Commission’s updated integrated resource planning (IRP) processes. The CAISO and DCRT used the IRP-developed resource plans and assumptions as a cohesive package to conduct their economic modeling consistent with D.06.11.016.³⁸

Cal Advocates asserted the CAISO and DCRT analyzed the Ten West Project benefits based on outdated resource portfolios and incorrect resource planning assumptions. However, Cal Advocates relies on its subjective judgment to arbitrarily modify certain assumptions and resource portfolios from the IRP to conduct and support its own economic modeling.³⁹ Cal Advocates’ fundamental approach rejects the comprehensive planning process—which contemplates using an entire set of inputs from the IRP in the transmission planning process.⁴⁰ Cal Advocates’ piecemeal approach to transmission planning is inconsistent with the Commission-developed framework, which recognizes the importance of agency coordination in developing and studying the portfolios and assumptions used to identify and permit transmission projects. The Decision properly rejected this attempt to undermine the coordination between resource and transmission planning.⁴¹

Cal Advocates economic modeling used arbitrary resource planning assumptions undermines sound transmission planning. Cal Advocates’ economic modeling purportedly showed benefit-to-cost ratios ranging from 0.55 to 0.65. However, the resource portfolio Cal Advocates used in its economic analyses fundamentally differed from the portfolios adopted and

³⁸ D.06-11-018 provides “Economic evaluations of proposed transmission projects shall use baseline resource plans and assumptions about the system outside the applicant’s service territory that are consistent with resource plans and system assumptions used in procurement or other recent Commission proceedings, updated as appropriate. Potential changes to the system that may result from or accompany construction of the proposed project shall be taken into account.”

³⁹ Exhibit CAISO-05 (Yimer), p. 24-27.

⁴⁰ *Id.*

⁴¹ Decision, p. 45-47.

provided to the CAISO in the Commission's IRP process and, as a result, is inconsistent with D.06-11-016.

As the CAISO explained in rebuttal testimony, Cal Advocates resource portfolio is arbitrary.⁴² Unlike the CAISO and DCRT's analyses, the starting resource portfolio for Cal Advocates' analysis was not supported by any Commission-developed portfolio and is inconsistent with the Commission's resource planning software, RESOLVE.⁴³ Thus, Cal Advocates' resource portfolio is fundamentally flawed from the outset.⁴⁴ Cal Advocates arbitrarily modified its resource portfolio to show reduced project benefits, but it simultaneously increased overall resource costs, by substituting more costly resources than those included in the RESOLVE portfolio, thereby undermining the Commission's IRP.⁴⁵ The Decision properly found Cal Advocates modeling to be unpersuasive.

VI. Conclusion

Cal Advocates fails to raise substantive concerns regarding the Decision's validity. The Commission should reject the AFR and affirm the Decision.

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⁴² Exhibit CAISO-05 (Yimer), p. 24-27.

⁴³ Exhibit CAISO-05 (Yimer), p. 23.

⁴⁴ The CAISO estimated that Cal Advocates resource portfolio increases costs by roughly \$273 million in 2016 dollars. Exhibit CAISO-05 (Yimer), p. 23:21-27.

⁴⁵ Exhibit CAISO-05 (Yimer), p.23-24.