

182 FERC ¶ 61,154
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Acting Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

California Independent System Operator Corporation Docket No. ER23-838-000

ORDER ACCEPTING APPLICANT PARTICIPATING TRANSMISSION OWNER
AGREEMENT

(Issued March 14, 2023)

1. On January 13, 2023, pursuant to section 205 of the Federal Power Act,¹ the California Independent System Operator Corporation (CAISO) filed an Applicant Participating Transmission Owner Agreement (APTOA) between CAISO and TransWest Express LLC (TransWest). The APTOA sets forth the terms and conditions that will govern TransWest's responsibilities and relationship with CAISO until CAISO assumes operational control over TransWest's proposed TransWest Express Transmission Project (Project). In this order, we accept the APTOA, effective March 15, 2023, as requested.

I. Background

A. Development of the Project

2. CAISO indicates that the Project consists of transmission facilities located in Wyoming, Colorado, Utah, and Nevada that are primarily intended to deliver up to 3,000 MW of wind generation from resources in Wyoming to California.² According to CAISO, the Project was not identified through the transmission planning process set forth in CAISO's Open Access Transmission Tariff (Tariff).³

¹ 16 U.S.C. § 824d.

² CAISO Transmittal at 2. The 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.

³ CAISO Transmittal at 5, n.16.

3. CAISO explains that, in early 2021, the Commission granted TransWest negotiated rate authority and approved an open solicitation process for the Project.⁴ TransWest's subsequent open solicitation process resulted in all of the north-to-south capacity of the Project being awarded to Power Company of Wyoming LLC (PCW),⁵ an affiliate of TransWest.⁶

4. In late 2021, TransWest executed customer agreements with PCW for all the Project's north-to-south capacity.⁷ CAISO states that TransWest negotiated these customer agreements with PCW to provide the funding required for TransWest to proceed with development of the Project.⁸ TransWest currently expects to energize the project in 2027.⁹

B. Approval of TransWest as a Participating Transmission Owner

5. CAISO explains that the Transmission Control Agreement (TCA) and CAISO's Tariff set forth procedures for transmission owners (TO) to apply to CAISO to become Participating TOs.¹⁰ The TCA describes how CAISO and each Participating TO will discharge its respective duties and responsibilities with regard to the operation of those facilities and entitlements once the transmission facilities are placed under CAISO's operational control.¹¹

6. CAISO states that, in mid-2022, TransWest applied for Participating TO status. CAISO indicates that in the application TransWest stated its intent to place the

⁴ *Id.* at 2 (citing *TransWest Express LLC*, 174 FERC ¶ 61,160 (2021)).

⁵ *Id.*

⁶ *Id.* at 2 n.6.

⁷ *Id.* at 2; ER21-645 Compliance Filing.

⁸ CAISO Transmittal at 2 (citing *TransWest Express LLC*, Docket No. ER21-645-000 (Feb. 16, 2022) (delegated order)).

⁹ *Id.*

¹⁰ *Id.* at 3, n.7 (citing CAISO, CAISO eTariff, § 4.3.1 (Nature of Relationship) (5.0.0), § 4.3.1.1; CAISO Rate Schedules, CAISO and TO, TCA (12.0.0), § 2.2 (Applications for Participating TO Status; Eligibility Criteria)).

¹¹ *Id.* at 2 (citing *Cal. Indep. Sys. Operator Corp.*, 82 FERC ¶ 61,325, at 62,276-79 (1998)).

Project under CAISO's operational control.¹² TransWest stated that the costs of the Project would not be included in CAISO's Transmission Access Charge. Rather, TransWest intends that the transmission capacity of the Project will be paid for by its transmission customer (i.e., PCW). The transmission customer will in turn use its long-term transmission rights on the Project to deliver wind energy and capacity to California.¹³

7. CAISO explains that, since TransWest is the owner of a transmission project with Commission-approved negotiated rate authority and Commission acceptance of its open solicitation, TransWest's efforts to join CAISO as a Participating TO must include certain terms and conditions that consider its agreements with PCW. In particular, the existing PCW transmission service agreements with TransWest will encumber the north-to-south capacity of the Project and that transmission capacity will be reserved for delivery of the associated wind energy and capacity to California.¹⁴ CAISO expects to account for these existing TransWest customer arrangements through the addition of a new model for participation in CAISO, called the Subscriber PTO Model, which is currently under development in CAISO's stakeholder process. CAISO envisions that the Subscriber PTO Model would enable TOs to join CAISO's balancing authority as Participating TOs with transmission lines and facilities subject to subscription agreement encumbrances that will be administered pursuant to the TO's Open Access Transmission Tariff (TO Tariff) and CAISO's Tariff.¹⁵

8. CAISO further explains that, in late 2022, its Board of Governors authorized TransWest to become a Participating TO, conditioned upon TransWest executing the TCA, which must include provisions setting forth the finalized Subscriber PTO Model, and upon the Commission's acceptance of a TO Tariff for TransWest.¹⁶ CAISO notes that, if a satisfactory Subscriber PTO Model cannot be developed and approved by the

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ CAISO explains that the Subscriber PTO Model will allow comparable projects to move forward and will be implemented through future revisions to its Tariff and the TCA, subject to Commission review of such revisions. *See* CAISO Transmittal at 4 for additional explanation of CAISO's contemplated Subscriber PTO Model.

¹⁶ CAISO Transmittal at 3.

Commission, CAISO expects that TransWest may instead move forward as an independent generation-only balancing authority.¹⁷

II. CAISO's Filing

A. Purpose of the APTOA

9. As part of CAISO's transmission planning process under its Tariff, CAISO invites entities to submit Project Sponsor applications to finance, construct, own, operate, and maintain transmission solutions previously identified in CAISO's comprehensive Transmission Plan subject to a competitive process.¹⁸ Upon selection, an Approved Project Sponsor executes an Approved Project Sponsor Agreement (APSA)¹⁹ with CAISO, assuming the rights and obligations set forth in the APSA.²⁰ The APSA sets forth the terms and conditions that will govern an approved project sponsor's responsibilities and relationship with CAISO during the period prior to the time that CAISO assumes operational control over the approved project sponsor's transmission facilities.²¹

10. CAISO explains that, because the Project was not identified through the transmission planning process, TransWest is ineligible to execute an APSA for its

¹⁷ *Id.* n.11.

¹⁸ CAISO, CAISO eTariff, § 24.5.1 (Competitive Solicitation Process) (7.0.0); *id.*, § 24.5.2 (Project Sponsor and Application Requirements) (6.0.0).

¹⁹ The *pro forma* APSA was developed in response to nonincumbent transmission developer participation in the competitive solicitation process that CAISO administers as part of the transmission planning process. Pursuant to the CAISO Tariff's definition of "Approved Project Sponsor Agreement," an APSA is only available to those selected to construct and own facilities under section 24 of the Tariff, which governs CAISO's transmission planning process. An APSA is necessary because approved project sponsors who are not Participating TOs are not subject to the Tariff until they enter into the TCA and turn the facility over to CAISO's operational control. *See Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,237, at PP 1-11 (2014); *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,107, at PP 1-10 (2014) (*CAISO*).

²⁰ CAISO, CAISO eTariff, § 24.5.3 (Project Sponsor and Proposal Qualification) (3.0.0); *id.*, § 24.6 (Obligation to Construct Transmission Projects) (4.0.0).

²¹ *See CAISO*, 149 FERC ¶ 61,107 at PP 1, 4.

Project.²² However, to accommodate the anticipated request by PCW for generator interconnection to the CAISO-controlled grid via the Project, CAISO has concluded that it is appropriate to execute an agreement with TransWest that is comparable to the APSA. The APTOA will serve as that agreement with TransWest on a stand-alone basis.²³

11. CAISO explains that the APTOA allows generator interconnections to the Project to be studied in queue cluster 15 of CAISO's generator interconnection process opening April 1, 2023. CAISO explains that PCW's wind-powered generation will need to be studied to determine if network upgrades are required on the existing CAISO-controlled grid to ensure deliverability of PCW's wind generation to CAISO's load. According to CAISO, the transmission planning deliverability allocation results are scheduled to be published in March 2025. CAISO indicates that PCW's knowledge of its full cost of delivering the wind generation and whether the generation will receive full capacity deliverability status is critical for the development of the Project because that information will help inform PCW whether California load serving entities want to contract for energy and capacity from the Wyoming wind project under construction by PCW.²⁴

12. Further, CAISO contends that its Tariff does not apply to transmission facilities that are under development and have not been turned over to CAISO's operational control. That is, CAISO explains, its Tariff does not address the obligations that TransWest needs to assume in advance of turning over operational control of the Project to CAISO. CAISO indicates that, therefore, such matters must be included in a separate agreement similar to the way in which the details of a generator interconnection are included in a generator interconnection agreement. CAISO states that the APTOA will serve that purpose for TransWest and its Project. CAISO adds that the APTOA is also necessary because, although CAISO's Governing Board has approved TransWest as a Participating TO, TransWest is not subject to CAISO's Tariff until it enters into the TCA and turns the Project over to CAISO's operational control. Thus, CAISO argues, the APTOA "bridges the gap" until CAISO's Tariff and the TCA can govern TransWest's relationship with CAISO as a Participating TO.²⁵

B. Description of the APTOA

13. CAISO states that Article 1 of the APTOA provides definitions for certain capitalized terms in the APTOA. It also provides that other terms have the definition

²² CAISO Transmittal at 5, n. 16.

²³ *Id.* at 5.

²⁴ *Id.* at 5-6.

²⁵ *Id.* at 6.

given them in the Article of the APTOA in which they occur or in Appendix A of CAISO's Tariff.²⁶

14. CAISO states that Article 2 governs the effective date, term, and termination of the APTOA. The APTOA is effective upon execution, subject to acceptance by the Commission. The APTOA terminates when TransWest turns the Project transmission facilities that are the subject of the APTOA over to CAISO's operational control, except for certain provisions that must continue in effect, such as insurance and limitations on liability, after the APTOA terminates. Either CAISO or TransWest may terminate the APTOA if, after consultation, the parties agree that the Project is not reasonably expected to be completed or if either party determines that the Project will not become part of the CAISO-controlled grid.²⁷

15. CAISO states that Article 3 sets forth the interaction among CAISO's Tariff, the TCA, and the APTOA. Pursuant to Article 3, TransWest agrees to comply with all applicable Tariff provisions, to become a Participating TO, and to execute the TCA when the Project is initially turned over to CAISO's operational control. The APTOA provides that, in the case of a conflict between CAISO's Tariff and the APTOA, the Tariff governs. In addition, once TransWest executes the TCA, the TCA will govern in the event of conflicts between the TCA and the APTOA.²⁸

16. CAISO states that Article 4 sets forth TransWest's obligation to seek transmission interconnection service from other Participating TOs or any other entity to whose facilities the Project will connect, and to enter into a transmission interconnection service agreement. CAISO explains that a facility cannot interconnect to an existing part of the grid without the cooperation of the owner of the existing facilities. The existing facilities may also require upgrades. According to CAISO, it is not reasonable to expect the interconnecting transmission owner to enable the interconnection and construct the upgrades without an agreement that sets forth the specifications and schedule for the work.²⁹

17. CAISO explains that, pursuant to section 4.3, TransWest agrees that it will comply with the interconnecting Participating TO's Interconnection Handbook for transmission interconnections, if applicable. Section 4.4 requires TransWest to meet performance standards consistent with applicable laws and regulations, applicable reliability standards,

²⁶ *Id.* at 7.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

and good utility practice. Section 4.5 provides for information exchange between the parties regarding the Project and any changes to technical data that may arise.³⁰

18. CAISO states that section 4.6 addresses the possibility that TransWest may plan to use the Project to fulfill certain interconnection requests in its queue. CAISO explains that this provision requires the use of CAISO's process for generation projects seeking interconnection to the facilities that will be turned over to CAISO's operational control. CAISO will process requests for interconnection to the Project under CAISO's procedures, except that TransWest will have the rights and obligations under CAISO's procedures that it would have if it were already a Participating TO.³¹

19. CAISO states that, pursuant to section 4.7, the parties recognize and agree that CAISO is the transmission planning authority for the Project transmission facilities from the time the APTOA goes into effect, regardless of the timeline for Project construction or energization. According to CAISO, this section provides clarity for TransWest with respect to its role in implementing the provisions contained in section 24 of CAISO's Tariff (Comprehensive Transmission Planning Process). CAISO explains that section 4.8 of the APTOA provides that CAISO and TransWest will cooperate with each other to maintain their respective tax statuses.³²

20. CAISO states that Article 5 requires metering consistent with CAISO's Tariff requirements, which CAISO asserts is necessary because the Project is creating three new CAISO balancing authority area interconnection boundaries.³³

21. CAISO explains that Article 6 requires operating communications between CAISO and the interconnecting entity be consistent with CAISO's Tariff. Article 6 also states that TransWest will provide the dedicated data circuit necessary to transmit TransWest's data to CAISO and the interconnecting Participating TO, as set forth in Appendix B to the APTOA regarding security arrangements details. CAISO adds that, consistent with section 5.2 of the TCA, which establishes the need to provide operational data to CAISO subsequent to the transfer to CAISO of operational control, Article 6 of the APTOA establishes the obligation of each party to perform its operational responsibilities prior to CAISO's assumption of operational control in accordance with applicable reliability requirements and other requirements made applicable by CAISO's

³⁰ *Id.* at 7-8.

³¹ *Id.* at 8.

³² *Id.*

³³ *Id.*

procedures or the APTOA. Article 6 also requires the parties to establish procedures for start-up, testing, and energization of the Project.³⁴

22. CAISO states that Articles 7 and 8 are standard contractual provisions addressing regulatory requirements and governing laws and notices, and that Article 9 contains standard provisions concerning force majeure.³⁵

23. CAISO explains that Article 10 provides the terms and conditions for default and allows a 90-day opportunity to cure a breach. CAISO states that a breach is defined as a failure to perform or observe a material term or condition of the APTOA. According to CAISO, section 10.2 provides the right to terminate the APTOA if the breach is not capable of being cured. Section 10.3 addresses TransWest's right under Section 12.1 to assign the APTOA for financial security collateral purposes if it gives notice to the CAISO, including collateral assignee contact information. Section 10.3 indicates that, if CAISO has received notice of assignment for collateral security purposes, CAISO must provide any notice of contract breach provided to TransWest to the collateral assignee, and the collateral assignee has the right, but not the obligation, to cure the breach on behalf of TransWest. CAISO explains that this provision allows the APTOA to continue in place under certain circumstances and could prevent the need for choosing a new Project sponsor if the collateral assignee is able to cure the breach.³⁶

24. CAISO states that, with minor changes, Articles 11-18 are standard contractual provisions also contained in other CAISO agreements.³⁷ According to CAISO, these provisions cover indemnity and consequential damages, assignment, severability, comparability, confidentiality, disputes, representations and warranties, and covenants, respectively. CAISO explains that sections 11.3 (Insurance) and 11.4 (Continuity of Obligations) survive termination of the APTOA.³⁸

III. Notice and Responsive Pleadings

25. Notice of CAISO's filing was published in the *Federal Register*, 88 Fed. Reg. 3733, 3734 (Jan. 20, 2023), with interventions and protests due on or before February 3, 2023. Timely motions to intervene were filed by California Department of Water

³⁴ *Id.* at 8-9.

³⁵ *Id.* at 9.

³⁶ *Id.*

³⁷ CAISO did not explain the minor changes.

³⁸ CAISO Transmittal at 9.

Resources State Water Project, Northern California Power Agency, Pacific Gas and Electric Company, and San Diego Gas & Electric Company. Timely motions to intervene and comments were filed by NextEra Energy Resources, LLC (NextEra) and TransWest. On February 10, 2023, CAISO filed an answer to the comments of NextEra Resources.

26. NextEra states that it does not object to the terms and conditions of the APTOA and supports timely acceptance of CAISO's filing.³⁹ Rather, NextEra expresses concerns with one component of the Subscriber PTO Model that is being developed by CAISO, as described in Attachment B to the filing, which is a December 2022 Memo to CAISO's Board of Governors.⁴⁰ Specifically, NextEra contends that this Memo suggests that, under the Subscriber PTO Model, generation assets initially interconnecting with TransWest that subscribe to the line's capacity – in this case, the wind generation owned by PCW – would not be reimbursed for any network upgrades required to the existing CAISO system, inconsistent with current cost allocation policy for generator interconnections on CAISO's controlled grid.⁴¹

27. TransWest states that Commission approval of the APTOA is a key step in the development of the Project and the delivery of wind power to California. Therefore, TransWest urges the Commission to accept the APTOA, effective March 15, 2023.⁴²

28. In its answer, CAISO contends that only the APTOA is currently before the Commission, and all commenters support Commission acceptance of the APTOA. CAISO contends that the terms and conditions of the APTOA do not predetermine the details of the Subscriber PTO Model, which is currently under development. CAISO argues that it would be premature for the Commission to make any findings in this proceeding with regard to the specifics of the potential Subscriber PTO Model. CAISO states that it intends to consider the issues raised by NextEra regarding the details of the Subscriber PTO Model in the ongoing stakeholder process. Furthermore, CAISO states that the Commission and interested parties will have the opportunity to address any concerns regarding the Subscriber PTO Model when the stakeholder process is complete

³⁹ NextEra Comments at 1.

⁴⁰ *Id.*

⁴¹ *Id.* at 1, 4.

⁴² TransWest Comments at 3.

and CAISO files revisions to the TCA and CAISO's Tariff to implement the Subscriber PTO Model.⁴³

IV. Discussion

A. Procedural Matters

29. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2022), the 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) (2022), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept CAISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Issues

31. We accept the APTOA, effective March 15, 2023, as requested. We find that the APTOA is just and reasonable and not unduly discriminatory or preferential, as the language in the APTOA largely mirrors the language already approved by the Commission in the *pro forma* APSA. While TransWest would be ineligible to execute an APSA with CAISO in this case because the Project was not identified through CAISO's transmission planning process, we find that the APTOA is a reasonable vehicle to address this situation. Like the APSA, the APTOA provides a mechanism for a potential Participating TO to function as a Participating TO in ways that facilitate the eventual transition of the potential Participating TO to becoming a Participating TO. Furthermore, as CAISO explains, the APTOA bridges the gap until CAISO's Tariff and the TCA can govern TransWest's relationship with CAISO as a Participating TO. This will allow, among other things, any requests for generator interconnections to the Project to go through and be studied in CAISO's generator interconnection queue cluster 15, opening April 1, 2023.

32. We also dismiss NextEra's comments as beyond the scope of this proceeding. Although CAISO provides background information about the Subscriber PTO Model that is under development, the Subscriber PTO Model is not currently before the Commission. CAISO states that the APTOA is not intended to predetermine the Subscriber PTO stakeholder process. Therefore, the issue raised by NextEra is beyond the scope of this proceeding.

⁴³ CAISO Answer at 1-7.

The Commission orders:

The APTOA is hereby accepted for filing, effective March 15, 2023, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.