

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

Order Instituting Investigation into)
implementation of Assembly Bill 970 regarding) I.00-11-001
the identification of electric transmission and)
distribution constraints, actions to resolve those)
constraints, and related matters affecting the)
reliability of electric supply.)
_____)

**COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR ON THE
SEPTEMBER 24 PROPOSED DECISION OF ALJ GOTTSTEIN**

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I. INTRODUCTION

In accordance with California Public Utility Commission rules 77.2, 77.3 and 77.4, the California Independent System Operator (CA ISO) respectfully submits these comments on the September 24 Draft Decision of Administrative Law Judge (ALJ) Gottstein (Draft Decision). The CA ISO agrees with the conclusion in the Draft Decision that there is unlikely to be a reliability need for a new link between Southern California and Arizona, Nevada or Mexico ("the Southwest") before 2008. Moreover, the CA ISO agrees that the California Public Utilities Commission (CPUC) has an interest in the economic assessment of new transmission lines.

However, the CA ISO disagrees with the implication in the Draft Decision that the CPUC has a superior interest in and authority regarding the economic assessment of new transmission lines to that of the CA ISO or other entities. Further, the CA ISO believes that language to this effect in the Draft Decision ignores the complete regulatory process that already exists regarding transmission expansion and cost recovery and is unhelpful to the development of an efficient, constructive and cooperative approach to transmission expansion and siting between the CA ISO and the CPUC. In addition, the CA ISO is concerned about the process envisioned in the Draft Decision for moving forward which could result in a very ineffective use of resources. The CA ISO sets forth herein why this is the case and recommended changes to the Draft Decision to address our concerns.

II. THE CA ISO AGREES WITH THE CONCLUSION IN THE DRAFT DECISION THAT A LINK TO THE SOUTHWEST IS UNLIKELY TO BE NEEDED BEFORE 2008.

The Draft Decision carefully sifts through the record and concludes, consistent with the CA ISO's position, that a link to the Southwest is unlikely to be needed to meet reliability before 2008 and that there is time to undertake a careful economic assessment of the benefits of such a

link. This was precisely the CA ISO's recommendation. Thus, although the CA ISO does not agree with some of the details discussed in the Draft Decision as to the reliability assessment of a Southwestern link, the CA ISO wholeheartedly supports the conclusion. The CA ISO notes that it undertook the matrix assessment discussed in the Draft Decision in response to a CPUC request, and attempted to work with other parties to assess a large number of scenarios as best it could within a limited time frame. The CAISO is committed to working with the CPUC to ensure a complete record and appropriate evaluation of need for transmission projects.

III. THE CA ISO DISAGREES WITH THE IMPLICATION THAT THE CPUC HAS A SUPERIOR INTEREST IN AND AUTHORITY REGARDING ECONOMIC ASSESSMENTS OF TRANSMISSION PROJECTS AND WITH THE PROPOSED PROCESS FOR FURTHER STAGES OF THIS PROCEEDING

The Draft Decision states on pages 30-31:

The results of the reliability analysis in this proceeding indicate that we have a sufficient window of time to further update planning assumptions and consider the need for new transmission to the Southwest from an economic perspective. However, we do not believe that decisions concerning the economic need for major transmission projects, which could cost ratepayers over a billion dollars, should be left to the discretion of the ISO management personnel or Board, given that the ISO does not have a mandate or statutory authority to protect ratepayers' interests, and lacks an open, evidentiary process to scrutinize the methodologies and assumptions used to reach such decisions. While we appreciate the ISO's efforts to facilitate a resolution of the economic need issues through an RFP process, we believe that the public interest is best served by evaluating the economic need for new transmission projects, and the appropriate allocation of costs among beneficiaries, in this proceeding -- where we can ensure that a public record is fully developed. To that end, we direct SCE, SDG&E and PG&E to jointly file the results of the ISO/stakeholder RFP process within 15 days from the date that the consultant's final report is completed. The assigned ALJ will hold a PHC as soon as practicable thereafter to schedule evidentiary hearings on the economic need for new transmission to the Southwest.

Draft Decision at 30-31. The CA ISO has a number of concerns with this paragraph and the findings of fact and conclusions of law related to it. First, the paragraph fails to take into account the complete regulatory process already in place with respect to transmission expansion

and cost recovery. Second, the paragraph mischaracterizes and unnecessarily denigrates the CA ISO's processes. Third, the paragraph sets up an inefficient process for the assessment of the need for a Southwest power link.

As described in the CA ISO's opening brief, transmission upgrades, particularly significant regional upgrades, require coordination and support by a number of entities. There must be a sponsor willing to assume the investment responsibility, and the project must be approved through the CA ISO Grid Planning process. Exh. 29, California ISO Conformed Tariff as of January 12, 2001 sections 3.2.1 and 3.2.2. Cost responsibility for the expansion must be determined in accordance with the CA ISO Tariff section 3.2.7., including a determination of whether specific beneficiaries can be reasonably identified, or whether the cost of the project is to be included in the Access Charge, or the High Voltage Access Charge. Exh. 29, California ISO Conformed Tariff as of January 12 2001, section 3.2.7.

Most importantly, major lines within California built by public utilities subject to the jurisdiction of the CPUC require Certificates of Public Convenience and Necessity (CPCN) from the CPUC. Public Utilities Code § 1001, et. seq. Lines with regional consequences must go through a process before the Western Systems Coordinating Council (WSCC), in which the project sponsors must explain their studies and demonstrate that the new line would not adversely impact the systems and customers of other WSCC members. Tr. (Miller) 2 Vol. at 206. Inclusion of the costs of a project in public utility transmission rates would have to be approved by the Federal Energy Regulatory Commission (FERC). Tr. (Miller) Vol. at 194; 198-9; section 201 of the Federal Power Act, 16 U.S.C. § 824; Order No. 888 61 Fed. Reg. at 21726.

The passage of the Draft Decision cited above suggests that the CPUC has a superior claim to reviewing the economics of a transmission project to that of the CA ISO. In fact,

however, each of the entities listed above, including the CA ISO and the CPUC, could significantly influence efforts to build a necessary regional transmission project. Moreover, contrary to what the passage suggests by unduly highlighting the importance of CPUC determinations as to economic projects, it is FERC which ultimately determines whether the cost of a project is to be included in public utility transmission rates or not, in accordance with the Federal Power Act. The Federal Power Act clearly requires that investments included in public utility rates be prudent and in the public interest.

If the CA ISO fails to approve a project and resolve issues associated with cost responsibility in accordance with its tariff, this factor is likely to be considered seriously by the FERC, which must approve inclusion of the costs in the transmission tariff of a utility. FERC has made it clear that it expects ISOs and their successor Regional Transmission Organizations (RTOs) to play a key role in transmission planning. In FERC's Order No. 2000 regarding the formation of Regional Transmission organizations (RTOs), FERC identified "Transmission Planning and Expansion" as one of eight critical functions of an RTO. FERC stated that an RTO must have ultimate responsibility for both transmission planning and expansion to enable it to provide "efficient, reliable and non-discriminatory service." 89 FERC ¶ 61,285 at 485. Moreover, FERC has emphasized the importance of consideration by RTOs of economic as well as reliability projects. Recently, in reviewing PJM's RTO filing, FERC stressed that in undertaking its RTO planning responsibilities, PJM must go beyond maintaining reliability, and must identify projects that "expand trading opportunities, better integrate the grid, and alleviate congestion that may enhance market power." 96 FERC ¶ 61,061, 61,240. FERC explained that although maintaining reliability in an economic and environmentally acceptable manner is an important objective, "the focus of an RTO regional plan that supports the development of a

competitive bulk power market must be broader", . . . "planning protocols must fully explain how the RTO 'will pursue infrastructure investment that will make generation markets more competitive.'" Id. Thus, proceeding with construction of a project the costs of which are to be incorporated into utility transmission tariffs without CA ISO approval of the project and determination that its costs should be included in utility Access Charges, increases the risk of an adverse FERC determination regarding inclusion of the costs in utility tariffs.

Projects requiring a CPCN similarly cannot proceed without CPUC support since the CPUC could deny a CPCN. In addition, the CPUC has the ability to intervene in utility transmission tariff cases before FERC and oppose recovery of investments that it considers to be imprudent and contrary to the public interest.

Accordingly, the views of both the CA ISO and the CPUC as to the economic merit or lack thereof of a transmission project are ultimately critical. Given the importance of putting into place transmission projects that are needed either for reliability or economic reasons, the CA ISO considers that it is important for the CA ISO and the CPUC to coordinate as much as possible so that there are, at a minimum, consistent expectations regarding the methodology and criteria that will be considered in evaluating economic transmission projects. This is why the CA ISO has invited the CPUC to participate in the process of developing a methodology to undertake economic assessments and does not object to the final report regarding the methodology being filed with the Commission. Nonetheless, the CA ISO considers that language in the Draft Decision that suggests that the CPUC is THE entity that should determine the economic merits of a proposed transmission project and the allocation of costs ignores the existing larger regulatory process, the role of the CA ISO and the role of the FERC.

In addition, the language in the Draft Decision is inaccurate and unnecessarily disparaging regarding CA ISO procedures. While the CA ISO does not hold evidentiary hearings of the type held by the CPUC, its proceedings are open and provide many opportunities for stakeholder participation and comment. Tr. (Miller) 2 Vol. at 192-195. Also, a Southwest power link is of a size and cost that would decidedly require Governing Board approval through a formal and public process. Moreover, as stated previously, the incorporation of costs into public utility tariffs would ultimately be determined by FERC in accordance with its administrative procedures which provide for open, evidentiary hearings.

Finally, as the CA ISO indicated in its opening brief, the CA ISO has concerns about further proceedings before the CPUC without a clear articulation of process that furthers the development and construction of needed projects. A Southwestern Power link constructed by a utility regulated by the CPUC would undoubtedly require a CPCN from the CPUC. In the context of a CPCN proceeding, issues of need (economic and reliability based) would be fully vetted. Early in this proceeding, the ALJ concluded that a final determination of need could not be made outside of a formal CPCN process. In this context, it is an inefficient use of resources to litigate the economic merits of a Southwestern link first in a further phase of this proceeding, and then again, in the context of a CPCN application.

Again, the CA ISO fully supports cooperation between the CA ISO and the CPUC to develop methodologies and criteria for the economic assessment of transmission projects so that needed projects can be approved by the CA ISO and permitted by the CPUC in an efficient and consistent manner. The CA ISO is pleased that the CPUC has designated a member of the Energy Division to sit on the steering committee for development of a methodology to undertake economic assessment of transmission projects; is happy to have the final report of this effort filed

with the CPUC; and welcomes dialogue with the CPUC on how else cooperation and coordination between the CA ISO and the CPUC can be achieved.

The proposed amendments to the passage cited above, findings of fact, conclusions of law and order consistent with these views are set forth in Attachment A.

IV. CONCLUSION

The CA ISO supports the conclusion in the Draft Decision that a link to the Southwest is not likely to be needed for reliability before 2008. The CA ISO proposes changes to the Draft Decision to better reflect the existing, complete regulatory process regarding transmission expansion and cost recovery, and a more efficient approach for coordination and cooperation between the CPUC and the CA ISO.

Respectfully submitted this 15th of October, 2001 by:

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ATTACHMENT A: PROPOSED CHANGES TO THE DRAFT DECISION

Proposed changes to pages 30-31:

"The results of the reliability analysis in this proceeding indicate that we have a sufficient window of time to further update planning assumptions and consider the need for new transmission to the Southwest from an economic perspective. ~~However, we do not believe that decisions concerning the economic need for major transmission projects, which could cost ratepayers over a billion dollars, should be left to the discretion of the ISO management personnel or Board, given that the ISO does not have a mandate or statutory authority to protect ratepayers' interests, and lack an open, evidentiary process to scrutinize the methodologies and assumptions used to reach such decisions. While w~~ We appreciate the ISO's efforts to facilitate a resolution of the economic need issues through an RFP process, ~~we believe that the public interest is best served by evaluating the economic need for new transmission projects, and the appropriate allocation of costs among beneficiaries, in this proceeding — where we can ensure that a public record is fully developed. We will be required to consider the economic merit of a link to the Southwest in the context of a CPCN application, before such a link can be built. To that end~~ Accordingly, we direct SCE, SDG&E and PG&E to jointly file the results of the ISO/stakeholder RFP process within 15 days form the date that the consultant's final report is completed. ~~The assigned ALJ will hold a PHC as soon as practicable thereafter to schedule evidentiary hearings on the economic need for new transmission to the Southwest.~~

FINDING OF FACT

18. ~~The ISO does not conduct evidentiary proceedings to scrutinize the assumptions or methods utilized in its transmission planning process.~~

...

22. ~~—To the extent that significant ratepayer funding is involved to further upgrade Path 45, this issue may be included in the evidentiary hearings on the economic need for new transmission to the Southwest.~~

CONCLUSIONS OF LAW

1. ~~Decisions concerning the economic need of major transmission projects as well as the allocation of costs among ratepayers and other project beneficiaries, should not be left to the discretion of ISO management personnel or Board. Instead, this assessment should be made at the Commission, which has both a statutory mandate and authority to protect ratepayers' interests and an open evidentiary process to scrutinize the methodologies and assumptions used to reach such determinations. The Commission will be required to consider the economic merit of a link to the Southwest in the context of a CPCN application, before such a link can be built.~~

2. ~~In order to proceed with further evaluation of transmission upgrades to the Southwest as soon as possible, this order should be effective today.~~

ORDER

2. Pacific Gas and Electric Company, San Diego Gas & Electric Company (SDG&E), and Southern California Edison Company shall jointly file the results of the ISO/stakeholder Request for Proposal process in this proceeding within 15 days from the date the consultant's final report is completed. Copies of the full report shall be served on Energy Division and the assigned ALJ. A notice of availability of this report shall also be served in this proceeding. ~~As soon as~~

~~practicable thereafter, the assigned ALJ will hold a further prehearing conference to schedule evidentiary hearings on the economic need for new transmission to the Southwest.~~