

June 30, 2003

Attn: Commission's Docket Office
California Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

RE: Docket # I.00-11-001, Order Instituting Investigation Into Implementation of Assembly Bill 970 Regarding the Identification of Electric Transmission and Distribution Constraints, Actions to Resolve Those Constraints, and Related Matters Affecting the Reliability of Electric Supply

Dear Clerk:

Enclosed for filing please find an original and five copies of the California Independent System Operator's Comments on the Draft Decision of Administrative Law Judges Gottstein and Terkeurst in Docket # I.00-11-001. Please date stamp one copy and return to California ISO in the self-addressed stamped envelope provided.

Thank you.

Sincerely,

Jeanne M. Solé
Regulatory Counsel

Cc: Attached Service List

**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.)
_____)

**THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR'S COMMENTS ON THE
DRAFT DECISION OF ADMINISTRATIVE LAW JUDGES GOTTSTEIN AND
TERKEURST**

Jeanne M. Solé, Regulatory Counsel
Charles F. Robinson, Vice President and
General Counsel
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
Telephone: 916-351-4400
Facsimile: 916-608-7222

Attorneys for the
California Independent System Operator

Dated: June 30, 2003

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

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

I.00-11-001

**THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR’S COMMENTS ON
THE DRAFT DECISION OF ADMINISTRATIVE LAW JUDGES GOTTSTEIN AND
TERKEURST**

In accordance with California Public Utilities Commission (“CPUC” or “Commission”) Rule 77.3, the California Independent System Operator (“CA ISO”) respectfully submits its comments on the Draft Decision of Administrative Law Judges (“ALJ”) Gottstein and Terkeurst that was mailed on June 9, 2003 (“Draft Decision”). Generally, the CA ISO supports the approach set forth in the Draft Decision for making determinations pursuant to Public Utilities Code Section 399.25, in light of CA ISO requirements as to the interconnection of generating units, the CA ISO annual transmission planning process, and CPUC siting responsibilities. The CA ISO supports clarifications in the Draft Decision that provide for consistency with CA ISO interconnection requirements, and urges the Commission to remain abreast of on-going proceedings before the Federal Energy Regulatory Commission (“FERC”) for generic generator interconnection rules. Further, the CA ISO supports a process for implementing Section 399.25 that will focus the expenditure of resources for studying and litigating issues regarding transmission on relatively certain renewable generation projects. The CA ISO considers that the process set forth in the Draft Decision generally accomplishes this objective.

I. BACKGROUND.

The Draft Decision set forth a process for incorporating the requirements of Public Utilities Code Section 399.25 into the Renewables Portfolio Standard (“RPS”). Public Utilities Code Section 399.25 provides:

- (a) Notwithstanding any other provision in Sections 1001 to 1013, inclusive, an application of an electrical corporation for a certificate authorizing the construction of new transmission facilities shall be deemed to be necessary

to the provision of electric service for purposes of any determination made under Section 1003 if the commission finds that the new facility is necessary to facilitate achievement of the renewable power goals established in Article 16 (commencing with Section 399.11).

(b) With respect to a transmission facility described in subdivision (a), the commission shall take all feasible actions to ensure that the transmission rates established by the Federal Energy Regulatory Commission are fully reflected in any retail rates established by the commission. These actions shall include, but are not limited to:

- (1) Making findings, where supported by an evidentiary record, that those transmission facilities provide benefit to the transmission network and are necessary to facilitate the achievement of the renewables portfolio standard established in Article 16 (commencing with Section 399.11).
- (2) Directing the utility to which the generator will be interconnected, where the direction is not preempted by federal law, to seek the recovery through general transmission rates of the costs associated with the transmission facilities.
- (3) Asserting the positions described in paragraphs (1) and (2) to the Federal Energy Regulatory Commission in appropriate proceedings.
- (4) Allowing recovery in retail rates of any increase in transmission costs incurred by an electrical corporation resulting from the construction of the transmission facilities that are not approved for recovery in transmission rates by the Federal Energy Regulatory Commission after the commission determines that the costs were prudently incurred in accordance with subdivision (a) of Section 454.

The Draft Decision proposes the following approach to implement the requirements of Public Utilities Code Section 399.25:

- The provisions of § 399.25 apply to network transmission facilities that come before the Commission in the form of a Certificate of Public Convenience and Necessity (CPCN) or Permit to Construct (PTC) application. “Network” transmission facilities are defined as those that are needed to ensure reliable electric service with the addition of generation. The provisions of § 399.25 do not apply to transmission facilities needed to bring power from the plant to the first point of interconnection with the existing transmission grid.
- The procurement proceeding will develop the rules and procedures for the RPS planning process and RPS renewables bidding program. If the transmission facility is an integral part of a renewables project

approved pursuant to the RPS process, (i.e., a winning renewables bid), that creates a prima facie finding that the network upgrade will facilitate achievement of the renewable power goals set forth in Article 16 of Senate Bill 1078.

- The Commission will make § 399.25(a) and § 399.25(b)(1) findings on whether a proposed transmission project is “necessary” to facilitate achievement of renewable power goals in the applicable CPCN or PTC proceeding, based on the results of the RPS procurement process and General Order (GO) 131-D considerations of alternatives to the proposed project. The evaluation will not, however, reconsider the selection of the winning generation project.
- In the applicable CPCN or PTC proceeding, the Commission will make § 399.25(b)(1) findings regarding whether the transmission project undertaken to ensure reliable electric service with the addition of generation will also provide benefits to the transmission network.
- The Commission will continue to perform the appropriate review of CPCN and PTC applications under the California Environmental Quality Act, which may include consideration of project alternatives.

Draft Decision at 25-26.

II. THE DRAFT DECISION CONTAINS IMPORTANT CLARIFICATIONS THAT ARE NEEDED FOR CONSISTENCY WITH FEDERAL LAW.

As an initial matter, the CA ISO supports the clarification in the Draft Decision that FERC has jurisdiction in the area of electric transmission. Draft Decision at 20. This is true, and gives rise to the need for consistency among the CPUC’s decision in this matter, FERC precedent, the FERC approved tariffs of the CA ISO and the Participating Transmission Owners (“Participating TOs”), and going forward, any final generic FERC rule regarding the interconnection of new generators. As will be discussed further below, FERC is in the process of developing a generic generator interconnection policy. Until that policy is finalized, the FERC accepted CA ISO Tariff, as supplemented by relevant provisions in the FERC approved Transmission Owner (“TO”) Tariffs, prescribes cost allocation in the context of generator interconnections to the transmission grid¹.

¹ On June 4, 2002, FERC accepted (subject to refund and further proceedings in its generic proceeding on the rules for generator interconnections), Amendment 39 to the CA ISO Tariff which placed the CA ISO in the position to coordinate interconnection to the CA ISO Controlled Grid. 99 FERC ¶ 61, 275. Because Amendment 39 was accepted subject to further proceedings and refunds, it is possible that in the future the rules for cost allocation will

Pursuant to section 5.7.5(c) of the CA ISO Tariff, a generator interconnecting to the CA ISO Controlled Grid is responsible for the costs of “planning, installing, operating and maintaining the following facilities: (i) Direct Assignment Facilities, and, if applicable, (ii) Reliability Upgrades.” A “Direct Assignment Facility” is defined in the CA ISO Tariff as “[t]he transmission facilities necessary to physically and electrically interconnect a New Facility Operator to the ISO Controlled Grid at the point of interconnection.” A “Reliability Upgrade” is defined as “[t]he transmission facilities, other than Direct Assignment Facilities, beyond the first point of Interconnection, necessary to interconnect a New Facility safely and reliably to the ISO Controlled Grid which would not have been necessary but for the interconnection of a New Facility, including network upgrades necessary to remedy short circuit or stability problems resulting from the interconnection of a New Facility to the ISO Controlled Grid. Reliability Upgrades also include, consistent with [Western Electricity Coordinating Counsel (“WECC”)] practice, the facilities necessary to mitigate any adverse impacts a New Facility’s interconnection may have on a path’s [WECC] path rating.” CA ISO Tariff section 5.7.5(d) provides that a “New Facility Operator may, at its own discretion, sponsor, pursuant to Section 3.2 of the ISO Tariff any Delivery Upgrades.” “Delivery Upgrades” are defined as “[t]he transmission facilities, other than Direct Assignment Facilities and Reliability Upgrades necessary to relieve constraints on the ISO Controlled Grid and to ensure the delivery of energy from a New Facility to Load.”

Pursuant to Section 3.2.7.3 of the CA ISO Tariff, the costs for transmission facilities the need for which is identified through the annual transmission expansion planning process overseen by the CA ISO are recovered by the relevant Participating TO through the CA ISO’s transmission Access Charge, provided that FERC accepts inclusion of these costs in a Participating TO’s Transmission Revenue Requirement. Pursuant to CA ISO Tariff Section 7.1 and Appendix F, Schedule 3, costs for High Voltage Transmission Facilities are rolled into the CA ISO grid-wide component of the High Voltage Access Charge that is paid by all loads using the CA ISO Controlled Grid. Exports pay the High Voltage Wheeling Access Charge that also includes this cost component. The costs for Low Voltage Transmission Facilities are recovered through the

change and that the changes will be retroactive to the date on which FERC made Amendment 39 effective, June 4, 2002. See 100 FERC ¶ 61,235.

Participating TO's TO Tariff from users within the Participating TO's Service Area.² The need for a transmission project can be established in the annual transmission expansion planning process either on reliability or economic grounds. CA ISO Tariff Section 3.2.1 and 3.2.1.1.3, et seq.

Finally, section 5.7.5 of the CA ISO Tariff provides that generators seeking interconnection are responsible for the cost of System Impact Studies and Facility Studies required during the course of the interconnection process.

The CA ISO welcomes the discussion in the Draft Decision that clarifies that Public Utilities Code Section 399.25 does not affect the responsibility of interconnecting generators to absorb "gen-tie" costs as part of the cost of producing power. Draft Decision at 10. This clarification is important to ensure that consistency is maintained between the implementation of Public Utilities Code Section 399.25 and FERC requirements for the allocation of interconnection costs. The discussion makes it clear that, consistent with the CA ISO Tariff, interconnecting generators are responsible for the costs of "Direct Assignment Facilities," which include "gen ties". The CA ISO similarly welcomes the discussion in the Draft Decision clarifying that interconnecting generators remain responsible for the cost of studies. Draft Decision at 11, footnote 12.

The Draft Decision also notes that interconnecting generators are responsible for the cost of "network upgrades for which the new generator is the 'but for' causation." Draft Decision at 10. The Draft Decision provides however that TOs must credit back to new generators their payments for "network upgrades" once the upgrade comes on line. As outlined above, the CA ISO Tariff provides that interconnecting generators are responsible for "Reliability Upgrades," which generally correspond to "network upgrades" as defined in the Draft Decision.

It is important to note, however, that under the CA ISO Tariff, interconnecting generators are only responsible for the cost of upgrades to the grid that are needed to maintain reliability. Such reliability upgrades do not assure the full deliverability of an interconnecting generator's output. Rather, as described above, the additional facilities necessary for the full or partial delivery of output are defined in the CA ISO Tariff as "Delivery Upgrades". Interconnecting generators are not required to fund "Delivery Upgrades," but they may choose to do so. Alternatively, if it is demonstrated that such upgrades are cost-effective to ratepayers, the CA ISO could determine such

² Amendment 27 to the CA ISO Tariff, along with certain subsequent updates, sets forth the methodology for determining the transmission Access Charge. The bulk of Amendment 27 was accepted by FERC subject to hearings and subject to refund, and is the subject of ongoing litigation before FERC in docket ER00-2019-000.

upgrades to be needed in the context of the annual transmission expansion planning process. It may be appropriate to reflect this distinction in the CPUC's final decision in this matter.

Further, the CA ISO notes that the requirement to credit back over time amounts expended by interconnecting generators for "network" upgrades is not set forth in the CA ISO Tariff but rather arises from FERC decisions in particular cases. See e.g. Consumers Energy Company, 95 FERC ¶ 61,233 (2001); Removing Obstacles, 96 FERC 61,155 (2001); American Electric Power Service Corporation, 97 FERC ¶ 61,098 (2001); and Southern California Edison Company, 97 FERC ¶ 61,148 (2001). Moreover, the matter of cost allocation for "network" upgrades is an important outstanding issue in the development by FERC of a generic generator interconnection rule. Development of such a rule is underway in FERC docket No. RM02-1-000. In that docket, the CA ISO submitted comments highlighting the fact that by requiring TOs and hence ultimately ratepayers to credit back to generators their investment in "network" upgrades, FERC would mute price signals to generators to consider transmission system impacts in identifying the best site for their project. The CA ISO raised the concern that as a result utilities (and hence ratepayers) would be required to pay for the siting decisions of generators regardless of how costly these turn out to be in terms of impacts to the transmission system. See June 19, 2002 Comments of the California Independent System Operator Corporation on the Commission's Notice of Proposed Rulemaking on Standardization of Generator Interconnection Agreements and Procedures at 7-9.

FERC has not yet issued its final rule in docket No. RM02-1-000. As the CPUC proceeds with the implementation of Public Utilities Code Section 399.25, the Commission, the CA ISO and interested parties will have to remain abreast of the developments in RM02-1-000 to ensure that CPUC determinations remain consistent with FERC's final rule on generator interconnections.

Finally, the CA ISO concurs with the Draft Decision that, so long as TOs are required to credit back to interconnecting generators the cost of "network" facilities, the distinction between "rolled-in" treatment, and upfront payment of "network" upgrades by interconnecting generators is primarily a matter of timing, and of who as between ratepayers and interconnecting generators bears the risk that a particular generating project will come on line. The CA ISO notes that the Draft Decision does not explicitly address the mechanism for harmonizing the requirements of Public Utilities Code Section 399.25 to seek rolled in treatment for certain transmission facilities with FERC precedent requiring generators to pay upfront for "network" upgrades. The CA ISO remains interested in working with the Commission on this matter. Rolled in treatment for "network"

upgrades could be consistent with existing CA ISO Tariff provisions, in cases where “network” upgrades can be shown to 1) be the best value alternative to solve existing reliability needs, or 2) provide economic benefits to ratepayers (that is, the benefit of an upgrade to ratepayers exceeds its cost to ratepayers). It would be helpful for the CA ISO and the CPUC to coordinate so that in undertaking assessments of need for transmission facilities, the CA ISO and CPUC consider in an appropriate and consistent manner, the utilities’ obligation to comply with the Renewables Portfolio Standards (“RPS”), including a full consideration of the costs and benefits to ratepayers in light of that obligation.³

In sum, the CA ISO supports the discussion in the Draft Decision clarifying that, consistent with existing CA ISO and TO Tariff provisions, interconnecting generators remain responsible for “Direct Assignment Facilities” and interconnection study costs. The CA ISO urges the Commission to continue working to harmonize implementation of Public Utilities Code Section 399.25 with FERC requirements for interconnection (which are the subject of ongoing proceedings before FERC) to minimize potential pre-emption concerns.

III. THE CA ISO SUPPORTS AN APPROACH FOR MAKING DETERMINATIONS PURSUANT TO PUBLIC UTILITIES CODE SECTION 399.25 THAT FOCUSES ON RENEWABLES THAT HAVE SOME CERTAINTY.

The Draft Decision provides for consideration of Public Utilities Code Section 399.25 in the context of CPUC proceedings for Certificates of Public Convenience and Necessity (“CPCN”) and Permits to Construct (“PTC”), and that such proceedings should take place after winning bidders are determined in utility RPS bidding processes. Draft Decision at 12. The CA ISO supports focusing limited resources on assessing transmission needs for projects that are reasonably certain. As the Draft Decision notes, the alternative could “commit ratepayers funds for potentially hundreds of millions of dollars based on a general assessment of renewable resource potential, and without the benefit of knowing which projects would actually win the bid and where they would locate their generation facilities.” Draft Decision at 13-14. Moreover, as the Draft Decision also

³ In the context of R.01-10-024, the CPUC’s proceeding on the procurement plans of the utilities, the CA ISO recently filed testimony stressing among other points the need for the plans to address the deliverability of the resources the utilities intend to rely on to meet their customers’ needs. Where it is shown that a combination of additional transmission and lower-cost resources that can be accessed through that transmission is the preferred alternative to meet a utility’s resource needs, rolled-in treatment of the additional transmission would be justified on economic grounds. Similarly, it can be argued that rolled-in treatment may be justified on economic grounds where additional transmission is needed to 1) access cost-effective renewable resources and hence 2) to permit a utility to meet its RPS requirements most economically.

points out, to bifurcate the determination of necessary findings under Public Utilities Code Section 399.25 from the evaluation of need and project alternatives that the CPUC undertakes in the context of CPCN and PTC proceedings would “be confusing to public participants and could strain both the Commission’s and interested parties’ limited resources on transmission issues.” Draft Decision at 19.

The CA ISO notes that in the context of established CA ISO processes, resources are focused on assessing reasonably certain projects in both the interconnection and the annual transmission expansion planning process. In the context of generator interconnections, each specific generator requesting interconnection service must submit an interconnection application and the generator is responsible for study costs. In the annual transmission expansion planning process, for reliability assessments, study cases consider only new generators that have received their permits from the California Energy Commission (“CEC”), or, if there is particular uncertainty about even permitted projects, projects for which construction is underway.

Ordinarily, before the utilities apply to the CPUC for a CPCN or a PTC, the CA ISO has approved the project, either in the context of the generator interconnection process, or in the context of the CA ISO annual transmission expansion planning process. Thus, by providing that CPUC determinations pursuant to Public Utilities Code Section 399.25 will be made in the context of CPCN or PTC proceedings, the CPUC will appropriately focus Section 399.25 assessments on generation projects that are likely to be real. However, as was stated in the section above, it will be helpful for the CPUC and the CA ISO to coordinate so that CA ISO determinations of need, that will likely occur prior to CPUC consideration of projects in the context of CPCN and PTC applications, can to the largest extent possible be consistent with CPUC findings in the context of CPCN and PTC proceedings.

In sum, the CA ISO supports the approach set forth in the Draft Decision to focus assessments under Public Utilities Code Section 399.25 on projects that have some degree of certainty.

IV. CONCLUSION

The CA ISO supports the emphasis in the Draft Decision on the need for consistency between FERC requirements and CPUC activities to implement Public Utilities Code section 399.25. The CA ISO also supports an approach that focuses on renewable projects that have some certainty.

June 30, 2003

Respectfully Submitted:

By: _____
Jeanne M. Solé, Regulatory Counsel
California Independent System Operator
151 Blue Ravine Road
Folsom, CA 95630
Telephone: 916-351-4400
Facsimile: 916-351-2350

PROOF OF SERVICE

I hereby certify that on June 30, 2003, I served by electronic and U.S. mail, of the California Independent System Operator's Comments on the Draft Decision of Administrative Law Judges Gottstein and Terkeurst in Docket # I.00-11-001.

DATED at Folsom, California on June 30, 2003.

Meaghan McGuire
An Employee of the California
Independent System Operator