

driven” transmission facilities, which the CAISO considers necessary to achieve “state and federal policy requirements and directives,” such as greenhouse gas reduction requirements and renewable energy targets.⁴ Also significant, the RTPP transforms CAISO’s transmission planning process from an individual, project-by-project approach, into a much broader, holistic approach. The RTPP fosters statewide participation in the planning process and culminates in the development of a comprehensive transmission plan for CAISO’s balancing authority area and a competitive solicitation that gives opportunity to all transmission developers to propose to construct and own policy-driven and economically-driven transmission elements.

3. Our approvals here also recognize CAISO’s efforts to expand its transmission planning process beyond its previously-approved Order No. 890-compliant transmission planning process.⁵ The RTPP also continues to comply with Order No. 890. The Commission has expressed interest in expanding transmission planning processes to include, among other things, the consideration of public policy-driven projects, as CAISO has proposed here.⁶ CAISO’s innovative RTPP proposal enhances CAISO’s transmission planning by improving transparency and openness and expanding stakeholder, sub-regional, and regional collaboration. In addition, the RTPP provides

⁴ RTPP proposed tariff section 24.4.6.6.

⁵ *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). CAISO’s Order No. 890 transmission planning process compliance filing was accepted in the following orders: *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008); and *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,172 (2009).

⁶ The Commission has shown interest in expanding transmission planning processes and exploring cost allocation issues in its currently pending Notice of Proposed Rulemaking (NOPR) in Docket No. RM10-23-000. *See Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities Notice of Proposed Rulemaking*, Notice of Proposed Rulemaking, 75 Fed. Reg. 37,884 (June 30, 2010), FERC Stats. & Regs. ¶ 32,660 (2010) (Transmission NOPR). Because the Commission’s action today on CAISO’s proposed RTPP precedes any final rule on the Transmission NOPR, we have reviewed the RTPP Filing to ensure consistency with existing Commission policies. CAISO, like all jurisdictional entities, will be subject to any future rulemakings.

additional opportunities for consideration of demand resources, generation, and other non-transmission resources as alternatives to transmission solutions.⁷

4. Thus, we conditionally accept the RTPP subject to modification, as discussed below. In addition, we address Green Energy's requests for clarification of CAISO's interpretation of certain provisions of CAISO's existing tariff.

I. Background

A. Procedural

5. On June 4, 2010, CAISO submitted its RTPP Filing to implement a revised transmission planning process, requesting an effective date of August 3, 2010. In response to the RTPP Filing, on July 2, 2010, Green Energy filed its Petition, requesting clarification of certain provisions of or relating to the RTPP.⁸

6. On July 26, 2010, the Commission issued an order in Docket No. ER10-1401-000, finding that CAISO had not shown its proposed RTPP to be just and reasonable.⁹ The Commission stated that the RTPP Filing lacked the specificity and clarity necessary to evaluate the proposal, and additional information was needed before the Commission could resolve the complex issues that had been raised in protests filed by various parties and that are summarized below. The July 26 Order, therefore, accepted and suspended the proposed tariff revisions to become effective on the earlier of January 3, 2011, or a date set in a further Commission order, and directed Commission staff to convene a technical conference. The technical conference was held on August 24, 2010, to discuss the RTPP Filing and the Green Energy Petition. Parties were provided the opportunity to submit post-technical conference comments.¹⁰

⁷ Throughout this order, demand resources, generation, and other non-transmission resources may be referred to together as "non-transmission alternatives."

⁸ Green Energy states that it does not object to addressing the merits of its Petition in Docket No. ER10-1401-000. It states, however, that if certain of CAISO's interpretive claims are not resolved in Docket ER10-1401, Green Energy reserves its rights to pursue resolution of those issues in Docket No. EL10-76-000. Green Energy, August 5, 2010 Answer, Docket No. EL10-76-000 at 1, 2, 5 (Green Energy Answer).

⁹ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,067 (2010) (July 26 Order).

¹⁰ Throughout this order, we refer to all comments and protests on the RTPP Filing filed on or before June 30, 2010 as "protests." We refer to all comments filed on or before September 8, 2010 as "Post-Tech Conference Initial Comments." All comments

(continued...)

7. On August 10, 2010, CAISO filed a petition for waiver of the applicability during Fall 2010 of paragraph (a) of section 24.2.3 of the existing CAISO tariff, which permits market participants to submit proposals for economic transmission upgrades or additions through a transmission planning request window.¹¹ On October 8, 2010, the Commission issued an order in Docket No. ER10-2191-000, granting a temporary waiver of the requested tariff provision until the earlier of the Commission's action in the RTPP proceeding or January 3, 2011.¹²

B. RTPP Filing

8. The proposed RTPP consists of three phases. In Phase 1 of the RTPP, CAISO plans to begin to develop unified planning assumptions and a study plan, as it currently does under its existing planning process. In parallel, CAISO proposes to initiate the development of a conceptual statewide plan (conceptual plan) to identify transmission needs specifically based on policy goals. CAISO indicates that it may undertake this effort in coordination with regional and sub-regional planning groups and interconnected balancing authority areas.¹³

9. In Phase 2 of the RTPP, CAISO proposes to conduct technical studies based on the unified planning assumptions and study plan developed in Phase 1 and hold a request window for the submission of proposals for reliability-driven projects, location-constrained resource interconnection (LCRI) facilities, demand response or generation proposals as alternatives to transmission additions or upgrades to meet reliability needs, and proposals for merchant transmission facilities.¹⁴ By the conclusion of Phase 2,

filed after September 8, 2010 and on or before September 17, 2010 are referred to as "Post-Tech Conference Reply Comments."

¹¹ CAISO August 10, 2010 Petition for Waiver of Tariff Provision, Docket No. ER10-2191-000 (Waiver Petition).

¹² Waiver Request Order, 133 FERC ¶ 61,020.

¹³ California is made up of five balancing authorities: Imperial Irrigation District (Imperial); Los Angeles Dept. of Water and Power; Turlock Irrigation District; Sacramento Municipal Utility District (SMUD); and CAISO.

¹⁴ A merchant transmission facility is a facility or upgrade that is part of the CAISO controlled grid whose costs are paid by the project sponsor and not recovered through CAISO's transmission access charge, wheeling access charge or other regulatory cost recovery mechanism. We note that independent developers may propose merchant transmission facilities, if they wish to bear all of the project costs; however, independent developers are also able to propose to build policy-driven and economically-driven

(continued...)

CAISO states that it will develop a comprehensive transmission plan for its balancing authority area, using a number of inputs including, among others, technical and economic planning study results, request window proposals, and its conceptual plan. CAISO states that the comprehensive transmission plan will specify all of the upgrades and additions needed to meet the infrastructure needs of the CAISO transmission grid.

10. As part of the comprehensive transmission plan developed in Phase 2, CAISO plans to identify all needed additions and upgrades (e.g., to meet needs for reliability, to maintain the feasibility of long-term congestion revenue rights (CRR), for policy goals, etc.) and define them as either transmission “projects” or “elements.” CAISO explains that “projects” refer to transmission needs or additions to be built by the applicable participating transmission owner (PTO) responsible for constructing the project. CAISO states that transmission projects fall into the following categories: reliability-driven projects; LCRI facilities; projects to maintain the feasibility of long-term CRR;¹⁵ and Large Generator Interconnection Procedure (LGIP) network upgrades considered as part of the RTPP, as discussed in detail below.¹⁶ CAISO explains that transmission

transmission elements, as discussed below, which would not be considered merchant facilities because their costs are recoverable under CAISO’s tariff.

¹⁵ CRRs are financial instruments made available through allocation or auction that enable CRR holders to manage their exposure to congestion costs in a locational marginal pricing market. CAISO is obligated to ensure the continuing feasibility of long-term CRRs that are allocated by CAISO over the length of their terms. Accordingly, CAISO, as part of its annual transmission planning process, tests and evaluates the simultaneous feasibility of long-term CRRs. Pursuant to such evaluations, CAISO identifies the need for any transmission additions or upgrades required to ensure the continuing feasibility of long-term CRRs over the length of their terms and publishes a congestion data summary along with the results of the CAISO technical studies. In assessing the need for transmission additions or upgrades to maintain the feasibility of long-term CRRs, CAISO, in coordination with the PTOs and other market participants, considers lower cost alternatives to the construction of transmission additions or upgrades, such as acceleration or expansion of existing projects; demand-side management; remedial action schemes; constrained-on generation; interruptible loads; and reactive support. (CAISO existing tariff section 24.1.4, Maintaining The Feasibility Of Allocated Long Term CRRs; RTPP proposed tariff section 24.4.6.4, Projects to Maintain the Feasibility of Long Term CRRs).

¹⁶ CAISO also proposes to include merchant transmission projects in the comprehensive transmission plan and continue to allow such projects to be built by the developer who proposed them because project sponsors for merchant transmission

(continued...)

“elements” identified in the comprehensive transmission plan will be either policy-driven or economically-driven and subject to an open solicitation process for a project sponsor to build such elements.

11. CAISO explains that during Phase 3 of the RTPP, it will hold an open solicitation process that provides all interested parties, including independent developers and PTOs, an equal opportunity to submit specific proposals to build policy-driven and economically-driven transmission elements identified in the final comprehensive plan from Phase 2. CAISO also sets out a process for choosing between projects if two or more qualified project sponsors seek to construct and own the same policy-driven or economically-driven transmission element, as discussed below.

C. Green Energy Petition

12. In its Petition, Green Energy requests clarification of CAISO’s interpretation of provisions in CAISO’s existing tariff that pertain to LGIP-related network upgrades and LCRI facilities. Green Energy contends that CAISO’s existing tariff does not provide a right of first refusal (ROFR) for incumbent PTOs to build modified and expanded LGIP network upgrades or LCRI facilities, as the RTPP contemplates. Green Energy also contends that CAISO’s RTPP, consistent with the existing tariff, provides an “explicit” ROFR for incumbent PTOs to build and own reliability projects and projects required to maintain feasibility of long-term CRRs.¹⁷ Green Energy asks the Commission to evaluate whether these ROFRs remain just and reasonable and not unduly discriminatory or preferential in light of Commission precedent and the Transmission NOPR, as discussed below.

II. Notice of Filing and Responsive Pleadings¹⁸

13. Notice of the RTPP Filing was published in the *Federal Register*, 75 Fed. Reg. 35,015 (2010), with protests and interventions due on or before June 25, 2010, subsequently extended until June 30, 2010.¹⁹

projects bear all of their costs. To date, no significant merchant transmission projects have been built in the CAISO balancing authority area.

¹⁷ Green Energy Petition at 15.

¹⁸ On December 14, 2010, Critical Path Transmission, LLC and Clear Power LLC filed a complaint in Docket No. EL11-11, alleging issues relating to the RTPP. The complaint will be addressed in a subsequent order.

¹⁹ On June 23, 2010, the Commission extended the time for filing comments until June 30, 2010.

14. Numerous parties filed timely notices of intervention, motions to intervene, comments, and/or protests.²⁰ CAISO submitted an answer,²¹ as did Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities).²²

15. Notice of the Technical Conference was issued on August 3, 2010, with supplemental notices published on August 19, 20, and 23, 2010. The August 19, 2010 Notice set initial and reply post-technical conference comment dates of September 8, 2010, and September 17, 2010, respectively.

16. On August 20, 2010, Desert Southwest Power, LLC (Desert Southwest) filed supplemental comments. Western Independent Transmission Group (WITG) submitted technical conference questions on August 23, 2010.

17. On August 24, 2010, the technical conference was held to discuss issues raised in the RTPP and Green Energy Petition proceedings.

18. On September 8, 2010, the Commission received initial post-technical conference comments from: CAISO; California Wind Energy Association (CalWEA); California Municipal Utilities Association (CMUA); Desert Southwest; Green Energy; Independent Energy Producers Association (IEP); LS Power Associates, LP (LS Power); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Nevada Hydro Company (Nevada Hydro); Pattern Transmission LP (Pattern); Pacific Gas and Electric Company (PG&E); City and County of San Francisco (San Francisco); San Diego Gas & Electric Company (SDG&E); Six Cities; SMUD; Southern California Edison Company (SoCal Edison); California Department of Water Resources State Water Project (SWP); Transmission Agency of Northern California (TANC); and WITG.

19. On or before September 17, 2010, the Commission received post-technical conference reply comments from: Bay Area Municipal Transmission Group (Bay Area), CAISO, CalWEA, DayStar Farms and Critical Path Transmission (DayStar), CMUA, Green Energy, NCPA, Pattern, PG&E, San Francisco, SDG&E, Six Cities, SoCal Edison, and TANC.

²⁰ See July 26 Order, 132 FERC ¶ 61,067 at P 16.

²¹ CAISO July 15, 2010 Answer to Comments, Motion for Leave to Answer and Answer to Protests, Docket No. ER10-1401-000 (CAISO Answer).

²² July 26 Order, 132 FERC ¶ 61,067 at P 17.

20. On September 28, 2010, CAISO submitted post-technical conference supplemental comments and a motion for leave to file such comments.²³ Green Energy filed an answer to CAISO's supplemental comments on October 8, 2010.²⁴

21. On September 29, 2010, Six Cities filed additional comments in the RTPP proceeding, which address issues raised in the Transmission NOPR and other pending cases.²⁵

22. Notice of the Green Energy Petition was published in the *Federal Register*, 75 Fed. Reg. 40,818 (2010), with protests and interventions due on or before July 23, 2010. Timely notices of intervention or motions to intervene were filed by the California Public Utilities Commission (CPUC); Six Cities; NCPA; Modesto; Cities of Redding and Santa Clara, California and M-S-R Public Power Agency (Cities/M-S-R); and Imperial . SDG&E, CAISO,²⁶ SoCal Edison, and PG&E filed timely motions to intervene and protests. On July 27, 2010, SMUD filed a motion to intervene out-of-time. On August 5, 2010, Green Energy filed an answer to the protests.

²³ CAISO September 28, 2010 Supplemental Comments, Docket No. ER10-1401-000, *et al.* (CAISO Supplemental Comments).

²⁴ Green Energy October 8, 2010 Answer, Docket No. ER10-1401-000 (Green Energy RTPP Answer).

²⁵ Six Cities states that its comments were filed in response to the Transmission NOPR, but include discussion of matters at issue in this proceeding as well. Therefore, Six Cities states that it also filed the comments in this proceeding to avoid any potential for "off-the-record" communication, which we interpret to mean wrong record or wrong docket. Because these comments address the Transmission NOPR rather than the particular features of the RTPP, however, they are more appropriately addressed in the rulemaking proceeding in Docket No. RM10-23-000, and we will not address them here. *See Mobile Oil Exploration & Producing Southeast, Inc. v. United Distrib. Cos.*, 498 U.S. 211, 230 (1991) (agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures and priorities) (citing *Vermont Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519 (1978); *Heckler v. Chaney*, 470 U.S. 821, 831-832 (1985)).

²⁶ CAISO July 23, 2010 Motion for Leave to Intervene and Protest, Docket No. EL10-76-000 (CAISO Protest to Petition).

III. Procedural Matters

A. Interventions, Comments, and Answers

23. In the July 26 Order, the Commission found that the notice of intervention and timely, unopposed motions to intervene in the RTPP proceeding served to make the entities that filed them parties to this proceeding.²⁷ Pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), the Commission accepted CAISO's and Six Cities' answers because they provided information that assisted us in our decision-making process.²⁸

24. As to the Green Energy Petition, 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. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2010), the Commission will also grant SMUD's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

25. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept CAISO's Supplemental Comments and Green Energy's RTPP Answer, as well as Green Energy's answer in Docket No. EL10-76-000 because they have assisted us in our decision-making process.

B. Green Energy Petition

26. As noted above, Green Energy states that it does not object to its Petition being addressed as part of the RTPP proceeding. Because the issues raised in the Green Energy Petition are integrally related to and coextensive with certain issues raised in the RTPP proceeding, we therefore address the concerns raised by Green Energy in this order, and deny Green Energy's specific requests related to LGIP network upgrades and LCRI facilities, as well as reliability and long-term CRR feasibility projects, as discussed below.

IV. RTPP Discussion

27. As discussed below, we find that the RTPP, as modified in this order, is just, reasonable and not unduly discriminatory or preferential, and continues to comply with

²⁷ July 26 Order, 132 FERC ¶ 61,067 at P 27.

²⁸ *Id.*

Order No. 890's transmission planning principles. Also, we find the RTPP procedures for policy-driven and economically-driven projects enhance the efficiency of the planning process and increase competitive opportunities.

28. The August 24, 2010 technical conference provided an open, efficient forum to discuss the RTPP's significant and more controversial features, including the inputs used in the development of the conceptual statewide plan, the relationship between the RTPP and CAISO's interconnection procedures, opportunities for independent developers under the RTPP, and the treatment of projects submitted in the 2008/2009 request window. The technical conference also addressed parties' concerns regarding the rights and responsibility of transmission owners to build particular categories of transmission projects and the selection of project sponsors. Following robust technical conference participation, which was webcast, the Commission received several hundred pages of post-technical conference comments and reply comments supplementing the record.

29. This additional process, in conjunction with the RTPP Filing and pre-technical conference comments, has provided the Commission with the information needed to resolve the complex issues in dispute. Consistent with the objectives of Order No. 890, the RTPP is designed to make CAISO's current transmission planning process more comprehensive and collaborative.²⁹ The RTPP encourages statewide collaboration and the consideration of state and federal regulations and directives that may require additional transmission infrastructure in California. The proposed transmission planning process offers enhanced opportunities for stakeholder participation, input, review, and comments, and encourages collaboration with regional and sub-regional planning groups. Indeed, CAISO has already begun collaborating with the California Transmission Planning Group (CTPG) and other stakeholders to increase its understanding of California's transmission needs and acquire input for its conceptual plan.

30. However, while the RTPP improves certain features of CAISO's existing process, it also raises some concerns with both the existing and proposed transmission planning procedures. Consequently, we conditionally accept the tariff revisions implementing CAISO's proposed RTPP, subject to the modifications and clarifications discussed below. This discussion focuses on arguments raised in connection with specific proposed RTPP provisions. We accept all tariff revisions proposed in the RTPP Filing, including those not specifically addressed in this order, except as specifically discussed below, where we direct modifications to be made in a compliance filing within 30 days of issuance of this order.

²⁹ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 3.

A. Development of a Conceptual Statewide Plan

31. Phase 1 of the proposal consists of two parallel processes: (1) development of the unified planning assumptions and study plan; and (2) initiation of the development of the conceptual statewide transmission plan.³⁰ Several parties raise issues with regard to the conceptual plan.

32. CAISO proposes to develop a conceptual plan that will identify potential transmission upgrades or additional elements needed to meet state and federal policy requirements and directives on its own, or in coordination with other regional or sub-regional transmission planning groups or entities.³¹ After the conceptual plan is posted for stakeholder review, comments, and recommended modifications, it will be an input into the development of CAISO's comprehensive plan in the RTPP.

33. CAISO states that it plans to work with CTPG to develop CAISO's conceptual plan for the 2010/2011 planning cycle. CTPG is a forum for conducting joint transmission planning and coordination to meet California's transmission needs. CTPG's membership includes transmission operators and owners that have an obligation to serve specific areas in the state.³² CAISO notes that CTPG is developing its own, separate statewide plan, which CAISO states it will use as one RTPP input. CAISO also states that it receives inputs into its planning process from a multitude of other stakeholders, in addition to CTPG.³³

34. Several parties express concern about CTPG's role in the development of CAISO's conceptual plan and CTPG's restricted membership.³⁴ These protestors argue that CAISO's collaboration with this regional group of transmission owners compromises CAISO's impartiality and could result in CAISO being unfairly influenced by the product developed by CTPG. These parties are concerned that CAISO could simply adopt

³⁰ RTPP proposed tariff section 24.3, Transmission Planning Process Phase 1.

³¹ RTPP proposed tariff section 24.4.4, Comment Period of the Conceptual Statewide Plan.

³² CTPG members include Imperial Irrigation District, Los Angeles Dept. of Water and Power, Modesto and Turlock Irrigation Districts, SMUD, TANC, Southern California Public Power Authority, Western Area Power Administration, SoCal Edison, PG&E, and SDG&E. CAISO is a non-voting member of CTPG.

³³ RTPP Filing at 31.

³⁴ These parties include CalWEA, CPUC, DayStar, DSWP, IEP, Green Energy, Large-Scale Solar Association (Large-Scale Solar), MRE/PE, Nevada Hydro, Pattern, San Francisco, SWP, Western Grid, and WITG.

CTPG's recommendations without adequately considering other stakeholder input. They argue that the proposed tariff revisions do not explicitly commit CAISO to independently vet its conceptual inputs, nor does the RTPP proposal indicate whether other stakeholders' inputs are given equal consideration. Parties argue that CAISO's participation in conducting CTPG's studies results in a conflict-of-interest and requests that the Commission direct CAISO to disengage from CTPG's process, and instead use separate staff to review and evaluate CTPG's plan apart from those who will create CAISO's conceptual plan. Also, parties ask the Commission to require CAISO to modify its tariff to clarify the inputs and criteria CAISO will use to develop its conceptual plan in Phase 1. In particular, these parties would like CAISO's tariff to clearly state how much weight CAISO will afford the plan CTPG provides to CAISO.

35. In addition to parties' general protests, San Francisco and IEP offer two specific remedies. First, San Francisco asks the Commission to direct CAISO to submit detailed recommendations for bringing CTPG into compliance with Order No. 890, and allow all parties to review and comment on those recommendations. Second, IEP requests that the Commission reject the RTPP Filing until CTPG includes regulatory, consumer, independent generation, and independent transmission representatives in all phases of its process.

36. CTPG members PG&E, SDG&E, SoCal Edison, and TANC, support CAISO's collaboration with CTPG. These parties reject protestors' claims that CTPG favors its members' project proposals and oppose opening CTPG's membership. They assert that CTPG is not a decision-making body, and that the group's purpose instead is to identify potential solutions to potential transmission needs. Additionally, these parties note that CTPG does not claim that these potential solutions are the single or best answer, and that CAISO does not classify them as member-owned. SDG&E points out that CTPG studies have considered various scenarios to determine what renewable resource areas may be able to meet state and federal renewable goals. For example, SDG&E notes that CTPG has considered California Renewable Energy Transmission Initiative analyses in these studies.³⁵ SDG&E also notes that CTPG has identified three projects submitted by non-incumbent sponsors for evaluation that would address certain of the transmission needs identified by CTPG.³⁶ Parties also support CAISO's collaborative efforts by arguing that CTPG adheres to North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Counsel (WECC) objective reliability standards.³⁷

³⁵ SDG&E Post-Tech Conference Initial Comments at 9.

³⁶ *Id.* at 14.

³⁷ *See, e.g.*, TANC and SoCal Edison.

37. CAISO clarifies that any transmission elements identified in the CTPG studies will be subject to the same criteria and standards as all other stakeholder inputs when individually vetted during Phase 1. Although CAISO concedes that CTPG's membership is not open to all stakeholders, CAISO maintains that CTPG is not a decision-making body, and that CAISO alone will determine who will build and own transmission elements in an Order No. 890-compliant process. CAISO contends that its process will include stakeholder meetings and several opportunities for interested parties to comment. Thus, CAISO defends its decision to collaborate with CTPG, and notes that, consistent with Commission precedent, its tariff does not specifically identify CTPG, or any other planning entity with which it collaborates.

38. Further, CAISO clarifies that the proposed tariff provision does not assign any role to CTPG, but instead allows for the development of the conceptual statewide plan in coordination with regional planning groups, which includes, among others, CTPG. Responding to San Francisco's protest, CAISO argues that it is not biased towards CTPG's plan because it is not a voting member of CTPG's Executive Committee. CAISO states that its work on CTPG's plan is consistent with Commission-imposed requirements, tariff sections, and Business Practice Manual provisions that require regional coordination and planning. Moreover, CAISO also emphasizes that the tariff does not assign CTPG's plan any greater weight than other inputs into its conceptual plan and RTPP.

39. CAISO reiterates that the CTPG plan is only one input into the RTPP and that all of its results and assumptions will be vetted equally through the RTPP along with the other proposals that CTPG does not address. In response to comments that CAISO should identify its independent analysis and planning inputs in the tariff, CAISO counters that the RTPP already contemplates such actions, which will be conducted in an open and transparent process. CAISO notes that CTPG is not mentioned in the RTPP proposed tariff language because it is CAISO's responsibility to develop and present to stakeholders a conceptual statewide transmission plan in each planning cycle. While CAISO notes that it is working with CTPG in the 2010/2011 planning cycle, CAISO states that it cannot predict whether current CTPG activities will continue in the future and cannot dictate CTPG's future work plans.

40. CAISO also refutes protestors' complaints regarding CTPG's restricted membership. CAISO argues that even if CTPG were to open up to include all interested stakeholders, it still could not rely exclusively on CTPG's recommendations because there are numerous other inputs that CAISO must take into account. CAISO also argues that CTPG is not private and has made all of its studies and assumptions public. CAISO

asserts that the Commission allows transmission providers to seek input from entities that do not themselves fully comply with Order No. 890.³⁸

41. Lastly, CAISO maintains that the RTPP complies with Order No. 890. CAISO reiterates the numerous opportunities it provides stakeholders to review and comment throughout the RTPP. Specifically, under RTPP proposed tariff section 24.4.4, stakeholders will be able to comment on the conceptual statewide plan that will be posted on the CAISO website. In the month immediately following the publication of the conceptual statewide plan prepared by CAISO, all interested parties will have an opportunity to submit comments and recommend modifications to the conceptual statewide plan and alternative transmission elements. CAISO asserts that these provisions ensure that all parties have input regarding the Phase 1 process equivalent to that of CTPG. In addition, CAISO states that the Phase 2 analytical and stakeholder processes in the tariff will fully address the interests of all parties. For example, CAISO's conceptual plan is used to determine which projects should be included in CAISO's comprehensive transmission plan, developed during RTPP Phase 2. Phase 2 provides for at least one public meeting after CAISO posts its technical study results and a minimum of two weeks to provide written comments.³⁹ Following that, CAISO proposes to post a draft comprehensive transmission plan, hold a public conference and solicit comments. After consideration of comments, CAISO will post a revised draft comprehensive transmission plan. Finally, the revised draft plan, along with stakeholder comments, will be presented to CAISO's Governing Board for approval, at which time stakeholders can make their comments directly to the Board.

Commission Determination

42. We accept the proposed RTPP tariff provisions concerning the development of the conceptual statewide plan as just and reasonable and consistent with Order No. 890, and find CAISO's participation in CTPG studies acceptable, provided CAISO modifies its tariff to expressly state its commitment that it will not give undue weight or preference to any input in its planning process.

³⁸ CAISO Post-Tech Conference Reply Comments at 5 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 460).

³⁹ The RTPP tariff provisions provide that technical studies, and other assessments necessary to develop the comprehensive transmission plan, would be conducted during Phase 2 in accordance with the unified planning assumptions and study plan, and will include any technical studies or assessments necessary to determine whether and how to include elements from CAISO's conceptual statewide transmission plan.

43. We find that CAISO staff's involvement in the regional CTPG planning process is acceptable. CAISO assists CTPG in preparing studies, and is not a voting member on CTPG's Executive Committee. As an independent system operator, CAISO has no financial stake in the transmission planning process.⁴⁰ As such, CAISO lacks the incentives that would create a conflict, and given its status as a non-voting member, it would be limited in its ability to influence the CTPG planning outcome even if there were a conflict.

44. Furthermore, we believe that CAISO's collaboration with CTPG is beneficial to the region. The enhanced collaboration between California's public transmission owners and investor-owned utilities within CTPG, in conjunction with CAISO's added expertise and participation, will help to prevent duplication of facilities and increase the efficient sharing of data and planning information. Further, throughout the planning process, in both the CTPG and the RTPP, there are various public forums where findings will be presented and interested parties will have the opportunity to review and comment on those findings. We encourage interested parties to avail themselves of these numerous opportunities to participate. As stated above, CAISO has committed to collaborate with numerous and diverse groups throughout its planning process.

45. Our review shows that the RTPP provides numerous meaningful opportunities for all stakeholders to review and comment on CAISO's conceptual and comprehensive plans, including commenting on inputs from CTPG and others. We note that while non-transmission owners are not voting members on CTPG's Executive Committee, CTPG allows interested parties, including non-transmission owners, to participate in meetings and provide feedback. Further, CTPG posts its study plans and results online so that all interested parties may submit comments and recommendations. Therefore, the CTPG planning process is generally open and transparent.

46. More importantly, and regardless of how open and transparent the CTPG process might be, it is CAISO that has an obligation to conduct an open and transparent transmission planning process in compliance with Order No. 890.⁴¹ Our review of the procedures proposed reveals that all interested parties have many opportunities to review and comment on inputs into the RTPP, including any input based on CTPG study results. These opportunities include the following: (1) one month to comment on and suggest

⁴⁰ See *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001); *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,010, *reh'g dismissed*, 112 FERC ¶ 61,337 (2005).

⁴¹ See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 528.

modifications to CAISO's conceptual plan; (2) a public meeting after CAISO's technical study results are posted and a minimum of two weeks to provide written comments; (3) a public conference and solicitation of comments on CAISO's comprehensive plan; and (4) opportunity to comment to the CAISO Board regarding the proposed comprehensive plan. Therefore, we reject protestors' requests to require CTPG to open its voting membership, preclude CAISO's participation in CTPG, or prevent CAISO from using CTPG's plan as an input to CAISO's conceptual plan.

47. We also reject protestors' claims that the RTPP does not comply with Order No. 890 because CAISO intends to use the CTPG plan as a Phase 1 input. CAISO has reiterated and committed that the CTPG study plan will be only one input among many into the development of CAISO's conceptual plan, and has listed multiple other entities whose input it will also take into consideration.⁴² By considering a broad array of input (including the CTPG study plan) in developing its own plan, CAISO will be better able to prepare a robust comprehensive transmission plan.

48. CAISO explains that once it finishes the initial draft of its conceptual plan there are lots of opportunities for public comment on it because, as noted above, CAISO will post the conceptual plan online, issue a market notice, and allow one month for parties to submit comments and modifications. The final conceptual statewide plan will then become one input into CAISO's comprehensive transmission plan, which is subject to a comment period and public conference, as also noted above. CAISO asserts that it will then submit the comprehensive plan and stakeholder comments to its Governing Board for approval, at which time stakeholders will be able to make their comments directly to the Board. We find these steps provide for further inclusiveness and transparency in the process, in further support of the principles of Order No. 890.

49. CAISO states that the CTPG conceptual plan is only one input into the RTPP and that all of its results and assumptions will be vetted equally through the RTPP along with the other proposals. Further, CAISO emphasizes that the tariff does not even recognize, let alone assign CTPG's conceptual plan a greater weight than other inputs into CAISO's conceptual plan in the RTPP process. CAISO clarifies and commits that any transmission needs identified in the CTPG studies will be subject to the same criteria and standards as all other stakeholder inputs when individually vetted during Phase 1. We note, however, that while these commitments would ensure that CAISO treats each input into the RTPP in a non-discriminatory manner, these commitments are not included in

⁴² In addition to independent developers and generators, CAISO names CPUC, California Energy Commission, consumer interests, municipal utilities that are not members of CTPG, and transmission providers in other states. CAISO Post-Tech Conference Reply Comments at 4.

CAISO's proposed tariff revisions. Therefore, we direct CAISO to revise its proposed tariff provisions to incorporate tariff language that memorializes its commitments to apply the same criteria and standards to each input into its planning process, without according any undue weight or preference to CTPG or any other input in the planning process. With these revisions we find CAISO's proposal concerning development of the conceptual statewide plan for the RTPP, including CTPG input, are just and reasonable and will enable CAISO to continue to comply with the transmission planning principles of Order No. 890.⁴³ We direct CAISO to submit the tariff modification within 30 days of issuance of this order.

B. Categories of Transmission Projects and Elements

50. Following the development of the conceptual plan, unified planning assumptions, and study plan in Phase 1 of the RTPP, CAISO will conduct technical studies and open a request window during Phase 2 for the submission, by any interested parties, of proposals for reliability projects; LCRI facilities; non-transmission resource alternatives to meet reliability needs; and merchant transmission facilities.⁴⁴ Using all of these inputs, CAISO then will determine which transmission elements (which will be open to solicitation for a project sponsor in Phase 3) and transmission projects should be included in the comprehensive transmission plan.

51. The comprehensive plan will include reliability projects, LCRI facilities, merchant transmission facilities, projects to maintain the feasibility of long-term CRRs, and certain LGIP network upgrades, as discussed below. The comprehensive plan will also include policy-driven transmission elements that are needed to meet state or federal policy requirements or directives, and economically-driven elements needed to reduce congestion costs, production supply costs, transmission losses, or other electric supply costs resulting from improved access to cost-effective resources.⁴⁵ CAISO will also consider potential transmission and non-transmission alternatives proposed by interested parties.⁴⁶

⁴³ See *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283; *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008); *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,172 (2009).

⁴⁴ RTPP proposed tariff section 24.4.3, Phase 2 request window.

⁴⁵ RTPP proposed tariff section 24.1, Overview.

⁴⁶ RTPP proposed tariff section 24.4.5, Determination of Needed Transmission Projects and Elements.

52. CAISO notes that the RTPP does not change the tariff provisions or the process for identifying reliability projects, projects required to maintain the feasibility of long-term CRRs, LCRI facilities, or merchant transmission projects. CAISO states that, consistent with the existing tariff, the applicable PTO will have the responsibility to construct reliability, LCRI, and long-term CRR projects that are included in the final comprehensive transmission plan. Also consistent with the existing tariff, the merchant transmission project sponsor that proposed the merchant project will build it if the project is included in the final comprehensive plan. On the other hand, policy-driven and economically-driven transmission elements, identified in the comprehensive transmission plan, will be open to competitive solicitation during Phase 3 to determine the project sponsor.

53. Several parties take issue with the RTPP transmission categories, contending that they are vaguely defined and subject to differing submission and selection criteria. They assert that this vagueness will cause gaming, litigation that will result in delays to transmission development, and discriminatory treatment of independent transmission developers. Parties are also concerned with potential overlap among transmission categories that could result in a project fitting into more than one category. In particular, parties are concerned that some transmission categories are effectively subject to a ROFR for incumbent transmission owners.

54. Each transmission category, with associated comments, is discussed in detail below.

1. **Reliability Projects**

55. CAISO states that it will receive and evaluate proposals for reliability projects during RTPP Phase 2. RTPP proposed tariff section 24.4.6.2 (Reliability Driven Projects), which is substantively unchanged from the existing tariff, provides that PTOs are responsible for constructing, owning, financing, and maintaining reliability upgrades and additions in their corresponding service territories.⁴⁷ Reliability-driven projects are “any transmission additions or upgrades required to ensure System Reliability consistent with all Applicable Reliability Criteria and CAISO Planning Standards.”⁴⁸ The tariff provisions on reliability projects provide that CAISO will identify the need for any transmission additions or upgrades required to ensure system reliability, taking into consideration “lower cost alternatives to the construction of transmission additions or upgrades, such as acceleration or expansion of existing projects, Demand-side

⁴⁷ Compare RTPP proposed tariff section 24.4.6.2 with CAISO existing tariff section 24.1.2.

⁴⁸ RTPP proposed tariff section 24.4.6.2, Reliability Driven Projects.

management, Remedial Action Schemes, appropriate Generation, interruptible Loads or reactive support.”⁴⁹

56. CPUC suggests that CAISO should add “storage” to the list of non-wires solutions to reliability needs. Pattern contends that the RTPP provides incumbent PTOs strong incentives to categorize projects into those categories that will grant the incumbent a ROFR (i.e., reliability projects, LCRI facilities, projects needed to maintain the feasibility of long-term CRRs, or LGIP network upgrades).⁵⁰ Pattern notes that independent developers are only provided the opportunity to compete for the right to build and own policy-driven and economically-driven elements that are included in the comprehensive transmission plan.

57. Green Energy acknowledges that CAISO’s proposed and existing tariff provisions provide incumbent PTOs exclusive rights to build reliability upgrades. Green Energy encourages the Commission to examine whether these provisions remain just and reasonable in light of the Transmission NOPR and recent Commission precedent where, it argues, the Commission has rejected proposals to create a ROFR for incumbent PTOs.⁵¹

58. In response, CAISO reiterates that a PTO’s right to build reliability-driven projects is explicit in the existing tariff and unchanged in the RTPP proposal. Therefore, CAISO asserts that general protests concerning rights to build for reliability-driven projects are beyond the scope of this proceeding. It also states that Green Energy has provided no basis for its request that the Commission evaluate incumbent PTOs’ exclusive rights-to-build reliability-driven projects. Further, CAISO emphasizes that giving third parties the ability to construct and own reliability-driven projects could hinder the ability of incumbent PTOs to ensure their long-term compliance with mandatory reliability standards. Lastly, CAISO notes that in the event that a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fit the narrow definition of a reliability project with exclusive PTO rights to build.⁵²

⁴⁹ *Id.*

⁵⁰ Pattern’s issues pertaining to LCRI facilities and LGIP network upgrades will be addressed separately below.

⁵¹ Green Energy Petition at 15 (citing *Primary Power*, 131 FERC ¶ 61,015 (2010); *Central Transmission, LLC v. PJM Interconnection, L.L.C.*, 131 FERC ¶ 61,243 (2010) (*Central Transmission*)).

⁵² CAISO Answer at 71-73; CAISO Post-Tech Conference Initial Comments at 10.

Commission Determination

59. We find that the proposed RTPP tariff provisions addressing reliability projects have not substantively changed from those provisions in the current tariff.⁵³

60. Pattern is concerned that PTOs may attempt to categorize transmission proposals as projects that would provide PTOs with an exclusive right to build, though Pattern does not dispute PTOs' existing right to build reliability projects. We find that the RTPP provides explicit provisions for determining how projects or elements will be categorized, and expect that CAISO will follow those provisions when determining the category of transmission projects or elements. However, CAISO further clarifies in its pleadings that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project for which a PTO would have the exclusive right to build. We note that such language is not included in section 24.1.2 of CAISO's existing tariff or RTPP proposed tariff section 24.4.6.2. Because this is an important distinction, we direct CAISO to make a compliance filing within 30 days of issuance of this order. Consistent with CAISO's pleadings, the compliance filing should include language to clarify that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project. Additionally, the compliance filing should include tariff language addressing how CAISO will identify the existence of such additional benefits.

61. Such a project may instead be categorized as a policy-driven or economically-driven element, for which, as Pattern has recognized, all transmission developers would have an opportunity to compete for the right to build.

62. We decline Green Energy's request to initiate an investigation under section 206 of the Federal Power Act (FPA)⁵⁴ "to formally consider" whether the existing ROFR in the CAISO tariff for reliability-driven transmission projects remains just and reasonable and not unduly discriminatory in light of recent precedent and the policies proposed in the Transmission NOPR.⁵⁵ To prevail in a proceeding under section 206 of the FPA, a complainant such as Green Energy must demonstrate both that the existing practice is unjust, unreasonable, unduly discriminatory or preferential and that its alternative

⁵³ Compare RTPP proposed tariff section 24.4.6.2 with existing CAISO tariff section 24.1.2.

⁵⁴ 16 U.S. C. § 824e (2006).

⁵⁵ Green Energy Petition at 15-16.

proposal is just and reasonable and not unduly discriminatory or preferential.⁵⁶ Green Energy has not provided sufficient factual evidence or legal justification to persuade us to change the existing reliability project provisions. Further, as Green Energy acknowledges, the Commission is already formally evaluating this issue in the rulemaking proceeding on the Transmission NOPR, and, rather than duplicate efforts, we find that issue is more properly addressed in that proceeding.⁵⁷

63. We agree with CPUC that “storage” should be added to the list of non-transmission alternatives to reliability transmission projects. RTPP proposed tariff section 24.4.6.2 requires CAISO to consider lower-cost alternatives to the construction of transmission additions or upgrades. Such lower-cost alternatives may include storage; therefore, we direct CAISO to add storage to the list of examples of alternatives to transmission that it will consider in its analysis.⁵⁸ We direct CAISO to submit this tariff modification within 30 days of issuance of this order.

2. Projects to Maintain the Feasibility of Long-Term CRRs

64. CAISO states that it will receive and evaluate proposals for projects to maintain the feasibility of long-term CRRs during RTPP Phase 2. CAISO states that the RTPP does not contain substantive changes to the existing tariff provisions on long-term CRR feasibility projects, which provide that CAISO will designate the PTO who maintains the corresponding service territory to own, construct, finance, and maintain the long-term CRR feasibility project.⁵⁹ Under RTPP proposed tariff section 24.4.6.4, projects to maintain the feasibility of long-term CRRs are network transmission upgrades or additions needed to maintain the feasibility of previously-issued long-term CRRs.

65. As noted above, several protestors argue that CAISO asserts too broad a ROFR with regard to incumbent PTOs’ rights to build facilities needed to maintain the

⁵⁶ 16 U.S.C. §824e(b) (2006); *Blumenthal v. FERC*, 552 F.2d 875, 881 (D.C. Cir. 2009) (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

⁵⁷ Transmission NOPR, FERC Stats & Regs. ¶ 32,660 at P 87-91; *Mobile Oil*, 498 U.S. at 230.

⁵⁸ We note that this directive should not be construed as a blanket determination that electricity storage should always be classified as an alternative to transmission. See June 11, 2010 Request for Comments Regarding Rates, Accounting and Financial Reporting for New Electric Storage Technologies, Docket No. AD10-13-000, at 1 (“under certain circumstances, electricity storage can act like any of the traditional asset categories, and also like load”).

⁵⁹ RTPP proposed tariff section 24.4.6.4.

feasibility of long-term CRRs.⁶⁰ These parties assert that incumbent PTOs' rights to construct and own facilities added onto their existing facilities, or built within their existing rights-of-way, are too broad.

66. In its Petition, Green Energy concedes that the existing CAISO tariff already provides PTOs that have existing network facilities with an explicit ROFR to build projects required to maintain feasibility of long-term CRRs.⁶¹ Citing *Primary Power, Central Transmission* and the Transmission NOPR, Green Energy nonetheless urges the Commission to initiate a complaint proceeding under section 206 of the FPA to consider whether this ROFR is no longer just and reasonable and is unduly discriminatory and preferential.⁶²

67. In response, CAISO explains that the long-term CRR feasibility category of transmission projects is narrowly defined and required to comply with the Commission's final rule on long-term firm transmission rights.⁶³ CAISO argues that such projects are different than policy-driven and economically-driven elements. Additionally, CAISO explains, if a transmission project that maintains the feasibility of long-term CRRs also provides additional benefits, the project would no longer fit the narrow definition of a long-term CRR feasibility project or be subject to the associated PTO exclusive rights to build.⁶⁴

Commission Determination

68. We find that RTPP proposed tariff section 24.4.6.4 does not substantively change CAISO's existing tariff provisions on projects to maintain long-term CRR feasibility, which the Commission previously accepted as just and reasonable and compliant with the final rule on long-term firm transmission rights.⁶⁵ To maintain long-term CRR feasibility, under RTPP proposed tariff section 24.4.6.4 and section 24.1.4 of the existing

⁶⁰ These parties include: Green Energy, Pattern, CPUC, MRE/PE, Western Grid and WITG.

⁶¹ Green Energy Petition at 15.

⁶² *Id.* at 15-16.

⁶³ CAISO Answer at 25, referring to our final rule in *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 108-428, *order on reh'g*, Order No. 681-A, 117 FERC ¶ 61,201 at P 12-15 (2006).

⁶⁴ CAISO Post-Technical Conference Initial Comments at 10-11.

⁶⁵ Compare RTPP tariff section 24.4.6.4 with existing CAISO tariff section 24.1.4.

CAISO tariff, “CAISO will designate the Participating TO with a PTO Service Territory in which a transmission upgrade or addition is to be located as the Project Sponsor(s), responsible to construct, own and finance, and maintain such transmission upgrade or addition.”⁶⁶

69. Green Energy argues that while this provision in the existing tariff and under the RTPP provides “an explicit ROFR” to PTOs with existing network facilities, the Commission should consider initiating an FPA section 206 investigation to consider whether they continue to be just and reasonable and not unduly discriminatory or preferential. We are not persuaded to launch an investigation at this time. As noted above, to prevail in a proceeding under section 206 of the FPA, a complainant such as Green Energy must demonstrate both that the existing practice is unjust, unreasonable, unduly discriminatory or preferential and that its alternative proposal is just and reasonable and not unduly discriminatory or preferential.⁶⁷ Green Energy bases its challenge to what it claims is an existing ROFR on the Commission’s proposed policy generally favoring elimination of ROFRs, as enunciated in the Transmission NOPR, and precedent applicable to the PJM tariff.⁶⁸

70. Green Energy has not provided sufficient factual evidence or legal justification to persuade us to change the existing long-term CRR feasibility provisions. Unlike the CAISO tariff provisions here, in the cases Green Energy relies on, *Primary Power* and *Central Transmission*, the Commission found that the PJM tariff did not establish a ROFR for incumbent PTOs.⁶⁹ The generic issue of ROFRs is currently being examined in the Transmission NOPR proceeding.⁷⁰

⁶⁶ RTPP proposed tariff section 24.4.6.4 and existing CAISO tariff section 24.1.4. *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,095 (2008), *reh’g denied*, 126 FERC ¶ 61,233 (2009).

⁶⁷ 16 U.S.C. § 824e(b) (2006); *Blumenthal v. FERC*, 552 F.2d 875, 881 (D.C. Cir. 2009) (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

⁶⁸ Green Energy Petition at 15.

⁶⁹ *Primary Power*, 131 FERC ¶ 61,015 at P 70 (finding PJM’s tariff permits, but does not require, PJM to designate an entity other than an incumbent transmission owner as the entity to build a baseline reliability or economic project; PJM tariff does not prevent non-incumbent transmission developer from seeking cost-based recovery if its project is included in the Regional Transmission Expansion Plan and satisfies the same reliability and/or economic requirements that must be satisfied by other cost-based projects in PJM); *Central Transmission*, 131 FERC ¶ 61,243 at P 46 (finding PJM tariff

71. As mentioned above, CAISO explains that a transmission project that maintains the feasibility of long-term CRRs and also provides additional benefits, e.g., policy-driven or economic, no longer meets the narrow definition under the tariff of a long-term CRR feasibility project; nor is subject to the associated PTO exclusive rights to build. We note, however, that such clarifying language is not included in section 24.1.4 of CAISO's existing tariff or RTPP proposed tariff section 24.4.6.4. Because this is an important distinction, we direct CAISO to make a compliance filing within 30 days of issuance of this order, to include such clarification in RTPP proposed tariff section 24.4.6.4. Additionally, the compliance filing should include tariff language addressing how CAISO will identify the existence of such additional benefits.

72. Additionally, we note that while CAISO states that proposals for projects to maintain the feasibility of long-term CRRs may be submitted to CAISO during the Phase 2 request window, RTPP proposed tariff section 24.4.3 does not include provisions for the submission of long-term CRR project proposals. We agree that it is appropriate and consistent with the efficiency goals of the RTPP to allow long-term CRR project proposals to be submitted to CAISO during the Phase 2 request window. However, this feature needs to be provided in the tariff. Therefore, we direct CAISO to make a compliance filing within 30 days of issuance of this order to allow proposals for projects to maintain the feasibility of long-term CRRs to be submitted during the RTPP Phase 2 request window provided in RTPP proposed tariff section 24.4.3(a).

3. LGIP Network Upgrades

73. In addition to identifying transmission projects in the RTPP, CAISO also proposes to partially integrate the LGIP with the RTPP, beginning in the 2011/2012 planning cycle.⁷¹ Specifically, as part of RTPP Phase 2, CAISO proposes to evaluate network upgrades that are identified during LGIP Phase II⁷² if they meet one of the following criteria: (1) consist of new lines 200 kV or above with capital costs of \$100 million or greater; (2) are a new 500 kV substation facility with capital costs of \$100 million or

does not preclude PJM from designating non-incumbent transmission developers to build facilities and seek cost-of-service rate treatment).

⁷⁰ Transmission NOPR, FERC Stats & Regs. ¶ 32,660; *Mobile Oil*, 498 U.S. at 230.

⁷¹ These provisions are all contained in RTPP proposed tariff section 24.4.6.5.

⁷² We note that "Phase II" refers to the interconnection study or interconnection facilities study process of the LGIP. "Phase 2" refers to the second phase of CAISO's RTPP, during which CAISO's comprehensive transmission plan is developed, as explained in the background section above.

greater; or (3) have capital costs of \$200 million or greater. During Phase 2 of the RTPP, CAISO will assess whether these upgrades should be re-sized or otherwise modified to meet policy-driven or other system needs in addition to those of interconnection customers. CAISO notes that it will publish a list of the facilities that meet these criteria in accordance with the schedule set forth in the Business Practice Manual.

74. While parties generally support CAISO's goal of better coordinating the LGIP and the transmission planning process,⁷³ several parties raise specific concerns regarding CAISO's proposal to partially integrate the LGIP with the transmission planning process. These concerns are discussed below.

a. Rights to Build Modified Network Upgrades and Additions

75. Once CAISO determines which LGIP network upgrades it will evaluate as part of the transmission planning process, it will decide if such network upgrades should be modified or expanded. If an LGIP network upgrade is not found to need modification when assessed as part of the transmission planning process, then that LGIP network upgrade will continue to proceed solely under the LGIP process. If, instead, an LGIP network upgrade is modified, then it will become part of the comprehensive transmission plan. RTPP proposed tariff section 24.4.6.5 provides that if CAISO modifies any network upgrades identified in LGIP Phase II, the PTO responsible for building the originally-identified LGIP network upgrade will also be responsible for constructing the modified upgrade if the original upgrade "would have been included in a Large Generator Interconnection Agreement [LGIA] for Interconnection Customers as a result of the Phase II Interconnection Study or Interconnection Facilities Study Process if built under the Large Generator Interconnection Process."⁷⁴ In addition, all modified LGIP network upgrades will be further assessed as part of the RTPP to determine if any modified upgrade creates the need for any additional transmission upgrades. If such additional transmission upgrade is necessary, then CAISO will determine what type of transmission upgrade it is (e.g., reliability, policy-driven, etc.). The responsibility to build any such addition will depend on how it is classified; for example, a policy-driven transmission addition needed as a result of the modified upgrade would be open to competitive solicitation.⁷⁵

⁷³ See, e.g., CPUC Protest at 9.

⁷⁴ RTPP proposed tariff section 24.4.6.5.

⁷⁵ For example, if a 200kV, \$100 million network upgrade from point A to point B is identified in LGIP Phase II, CAISO will evaluate it in RTPP Phase 2 and could determine that the upgrade should be modified to meet the needs of the comprehensive

(continued...)

76. CAISO adds that under the proposed RTPP process, its evaluation of the policy-driven needs will identify upgrades and additional elements prior to the commencement of the following LGIP Phase II interconnection study or any future LGIP study. CAISO states that “the responsibility to build a policy-driven or economically-driven element identified in the transmission planning process will not be affected by the fact that the element might eliminate the need for a Network Upgrade identified in the LGIP Phase II studies.”⁷⁶ To clarify, CAISO states that “if the [CA]ISO identifies a policy-driven . . . element from point C to point D” that eliminates the need for “a Network Upgrade from point A to point B identified in the [LGIP] Phase II studies . . . , the element from point C to point D remains subject to the open solicitation process.”⁷⁷

77. CAISO states that under articles 5.1 and 11.3 of the Commission’s *pro forma* LGIA and CAISO’s LGIA, construction of necessary network upgrades is the responsibility of the PTO to whose existing facilities the generator will interconnect. For this reason, CAISO concludes that by conferring on the interconnecting PTO the exclusive responsibility to build these facilities, the LGIA effectively prohibits entities that are not incumbent PTOs from constructing these network upgrades. Additionally, CAISO notes that the Commission recognized in Order No. 2003-A that requiring transmission providers to cede ownership of stand-alone network upgrades and interconnection facilities under the LGIA would be inconsistent with Commission precedent and would undermine reliability by fragmenting the transmission system.⁷⁸

planning process. The modified upgrade would then be included as part of the transmission planning process and CAISO would further evaluate if any additional upgrades or transmission additions are needed as a result of considering the modified upgrade within the comprehensive transmission plan. These additional upgrades or transmission additions could be from point C to D; therefore, the PTO proposing the original \$100 million network upgrade as part of its LGIP Phase II would not necessarily have the right to build the additional upgrades or transmission additions. The right to build the C to D upgrade would depend on the need for the upgrade (e.g., a reliability project would be built by the incumbent PTO whose system it is on; a policy-driven element would be open to solicitation). *See* RTPP Filing at 47-48.

⁷⁶ CAISO Post-Tech Conference Reply Comments at 9.

⁷⁷ RTPP Filing at 47.

⁷⁸ CAISO July 23, 2010 Motion for Leave to Intervene and Protest, Docket No. EL10-76-000 at 9 (CAISO Protest) (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 230 (2004), *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*,

(continued...)

Additionally, CAISO notes that the term “PTO,” as defined in both its tariff and the Transmission Control Agreement, expressly excludes entities from building interconnection facilities if they have not already placed transmission assets and entitlements under CAISO’s operational control and do not have a Transmission Owner (TO) Tariff in effect.⁷⁹ Therefore, CAISO concludes that the LGIP applies only to existing PTOs, not potential PTOs.⁸⁰

78. Parties take issue with CAISO’s proposal for modified LGIP network upgrades. Several parties support eliminating the right of incumbent PTOs to build and own modified LGIP network upgrades.⁸¹ Green Energy argues that articles 5.1 and 11.3 of CAISO’s existing LGIA and section 24 of CAISO’s existing tariff do not preclude independent transmission developers from constructing and owning these facilities. Green Energy also contends that recent Commission precedent and the Transmission NOPR are indicative of the Commission’s opposition to ROFRs for incumbent PTOs.⁸² Additionally, Green Energy argues that the LGIA and Transmission Control Agreement were never intended to address any additional components or expansions that CAISO finds necessary after the LGIP Phase II studies are completed. Moreover, Green Energy argues that the phrase “would have been included in [an LGIA]” in RTPP proposed tariff section 24.4.6.5 is not clear and gives CAISO too much discretion in identifying which network upgrade expansions are subject to a ROFR.

79. Parties contend that if the Commission does not eliminate the right to build LGIP network upgrades, then this right should be restricted to narrow its applicability.⁸³ These parties suggest limiting the right to build so that it applies only to network upgrades with capital costs under \$50 million. Green Energy and WITG further recommend limiting

Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 457 F.3d 1277 (D.C. Cir. 2007)).

⁷⁹ CAISO Protest at 6, 24 (citing CAISO Transmission Control Agreement § 2.2.25).

⁸⁰ CAISO made the same arguments concerning incumbent transmission owners’ obligation to build LCRI facilities, *infra*.

⁸¹ *See, e.g.*, Green Energy, Pattern Transmission, Six Cities, and WITG.

⁸² Green Energy Petition at 13-14 (citing *Primary Power*, 131 FERC ¶ 61,015 at P 62-66; *Central Transmission*, 131 FERC ¶ 61,243 at P 46; *Carolina Power & Light Co.*, 94 FERC ¶ 61,273, at 61,010 (2001); *Transmission NOPR*, FERC Stats. & Regs. ¶ 32,660).

⁸³ *See, e.g.*, Green Energy, Pattern, Six Cities, and WITG.

the right to build to those that are also less than 20 miles and serve a single generator, have a voltage of less than 100 kV, or enhance existing facilities. Additionally, Green Energy suggests limiting the right to build to only LGIP network upgrades that are included in an executed LGIA. Six Cities argues that if a PTO elects to exercise its ROFR for LGIP network upgrades, it should be required to forgo all transmission incentives.⁸⁴

80. Green Energy and Pattern Transmission predict that incumbent PTOs will identify significant renewable-driven transmission upgrades and additions as LGIP network upgrades or additions, so that these projects will be subject to a ROFR and not be available for competitive solicitation. These Parties point to particular SoCal Edison projects as examples of major high voltage grid additions that have been described as LGIP network upgrades. These examples include the Lugo-Pisgah and Red Bluff Projects, which Green Energy estimates cost \$953 million and \$430- 480 million, respectively. Green Energy also points to the SoCal Edison Lugo-Pisgah and Red Bluff projects to argue that CAISO has permitted LGIP interconnections to facilities that have not been constructed, let alone turned over to CAISO's operational control.⁸⁵

81. Bay Area, Western Grid, and Metro Renewable express concern that the proposed inclusion of the LGIP process in the RTPP fails to comply with Order No. 890's transparency requirements and discriminates against independent developers.⁸⁶ For example, Metro Renewable contends that under the RTPP, CAISO will be able to approve major economic projects sponsored by incumbent PTOs as network upgrades in the LGIP outside of the transmission planning process. Western Grid and Metro Renewable request that all projects, including network upgrades identified through the LGIP, be submitted through the request window for processing in the transmission planning process.

82. Several parties argue that the RTPP proposal for LGIP network upgrades will limit the number of projects that will be considered under the policy-driven category and ask the Commission to ensure that LGIP network upgrades do not displace the need for this category.⁸⁷ CalWEA contends that if CAISO determines that an LGIP network upgrade should be expanded to serve policy needs, the entire line, not just the increment identified

⁸⁴ Six Cities Post-Tech Conference Initial Comments at 8-9.

⁸⁵ Green Energy Post-Tech Conference Reply Comments at 3-4 (citing SoCal Edison August 4, 2010 Petition for Declaratory Order, Docket No. EL10-81 at 3-4, 6-7).

⁸⁶ Bay Area Protest at 12-14; Western Grid Protest at 5; MRE/PE Protest at 3, 5, 7.

⁸⁷ *See, e.g.*, Pattern, CalWEA, Green Energy, and Six Cities.

in the RTPP analysis, is required for that purpose and should be open for competitive solicitation in RTPP Phase 3.⁸⁸

83. CalWEA states that the Commission should direct CAISO to revisit the schedule for submitting and executing LGIAs under CAISO's cluster study approach in time to make appropriate schedule changes for the next planning year. Additionally, parties argue that all LGIP interconnection lines should be considered in the RTPP, not in the separate LGIP process.⁸⁹

84. CPUC argues that clarification is needed to identify when LGIP network upgrades have been sufficiently expanded, and are no longer the right of the PTO to build.

85. In response to arguments that the LGIP projects will displace policy-driven projects, CAISO asserts that the RTPP creates a means by which optimally-sized upgrades needed for generation at different stages of the interconnection queue can be considered and approved in the RTPP as policy-driven elements. CAISO argues that it has mapped out a process that involves assessing clustered generation in likely renewable resource areas to identify potentially needed large network upgrades through comprehensive planning, before the LGIP study process for the next LGIP advances to Phase II. Thus, CAISO argues that it can proactively anticipate potential generation resource construction during the developmental stage and approve the necessary transmission to deliver those resources to meet public policy goals. Therefore, according to CAISO, it will be able to reduce the amount of transmission built pursuant to the LGIP through the construction of policy-driven elements. CAISO also emphasizes that protestors ignore the fact that generators, not transmission owners, initiate the generator interconnection process. CAISO asserts that transmission owners with service territories cannot manipulate that process by selectively signing power purchase agreements with generators that will expand their systems.

86. CAISO further explains that Order No. 2003, which required standardized interconnection procedures, presumed that existing transmission providers would fulfill the requirements of the LGIP and LGIA. CAISO argues that if the Commission were to determine that Order No. 2003 required CAISO to open up construction of LGIP network upgrades to competitive solicitation, this would "radically transform" the generator interconnection process across the country and likely create substantial delays and uncertainty for all generation, not just renewable resources.⁹⁰ CAISO states that this

⁸⁸ CalWEA Protest at 7.

⁸⁹ *See, e.g.*, CMUA, Large-Scale Solar, CPUC, CalWEA, and Six Cities.

⁹⁰ CAISO Answer at 67; CAISO Protest at 8-10, 25-26.

would contradict the Commission's prior findings that existing transmission owners are responsible for building upgrades on their facilities and rights of way.⁹¹ CAISO states that because LGIP upgrades constitute upgrades to an existing transmission owner's system, they are responsible for building and owning these facilities.

87. Addressing arguments that even if PTOs have a right under the LGIA to build LGIP network upgrades, such right should not extend to the modified network upgrades, or at least the limits of such extension should be clearer, CAISO defends its proposal, but also offers to clarify its tariff. CAISO explains that the PTOs' right to build "extends *only* to expansions that would have been included in a[n] LGIA as part of the Phase II studies if built under the LGIP."⁹² CAISO argues that this is the logical corollary of the existing PTO's right to build the original network upgrade that would have been included in the LGIA. CAISO argues that it would not be practical, consistent with good utility practice, consistent with Commission precedent or existing PTO's property rights to have the PTO build an upgrade identified under the LGIA Phase II studies, for example, a single-circuit network upgrade, and then have another entity modify the existing PTO's single circuit network upgrade on its right-of-way to a double circuit facility, and own that modification to the existing PTO's line.

88. In response to Green Energy's concerns regarding the alleged vagueness of the phrase in RTPP proposed tariff section 24.4.6.5, "would have been included in [an LGIA]," CAISO explains that this language is intended to refer specifically to network upgrades identified as necessary in the LGIP Phase II studies but not yet set forth in an executed LGIA. CAISO states that no LGIAs will have been executed regarding these network upgrades at the time these upgrades are identified for consideration in the RTPP. CAISO offers to clarify this tariff provision in a compliance filing.⁹³

89. With regard to SoCal Edison's generation interconnection proposals, CAISO states that, consistent with Commission precedent, LGIP network upgrades such as SoCal

⁹¹ CAISO Answer at 67; RTPP Filing at 68-71 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 230, 236; *PJM Interconnection, L.L.C.*, 102 FERC ¶ 61,277, at P 115 (2003); *Longview Power, LLC v. Monongahela Power Co.*, 112 FERC ¶ 61,022, at P 19 (2005); *Arizona Pub. Serv. Co.*, 102 FERC ¶ 61,303, at P 11 (2003); *Cambridge Elec. Light Co.*, 96 FERC ¶ 61,205, at 61,874 (2001); *Virginia Elec. Power Co.*, 93 FERC ¶ 61,307, at 62,054 (2000), *order on reh'g*, 94 FERC ¶ 61,164, at 61,589 (2001); *Carolina Power & Light Co.*, 93 FERC ¶ 61,032, at 61,072-73 (2000); CAISO Protest at 8-10.

⁹² CAISO Answer at 68.

⁹³ CAISO Post-Tech Conference Initial Comments at 8-9.

Edison's are those upgrades "at or beyond" the point of interconnection.⁹⁴ CAISO argues that the new substations in SoCal Edison's filings are network upgrades in which generators sought interconnection to existing facilities under CAISO operational control. CAISO also argues that the Commission has previously recognized that network upgrades needed to interconnect new generation can include facilities such as new 500 kV sub-stations.⁹⁵

90. In response to protestors' suggested changes to limit the applicability of the right to build LGIP network upgrades, CAISO asserts that Order No. 2003 does not distinguish among generator interconnection requests based on number or size and states that such limitations would restrict or prevent some generation developers from obtaining generation interconnection service under the CAISO tariff.⁹⁶

91. CAISO refutes protestors' challenges that the LGIP lacks transparency, stating that it already provides access, pursuant to its non-disclosure agreement, to interconnection study base case information that is not commercially sensitive and that the Business Practice Manual lays out the process that interested parties must take to access this information. CAISO also notes that Order No. 890 pertains to the transmission planning process and not to the LGIP. CAISO also argues that requiring all LGIP projects to be submitted through a transmission planning process request window would be contrary to Order No. 2003 and CAISO's LGIP process, as well as beyond the scope of this proceeding.

Commission Determination

92. As discussed below, we find CAISO's proposed treatment of LGIP network upgrades strikes an appropriate balance between honoring existing tariff obligations, enabling a more comprehensive planning process and providing additional opportunities for all transmission developers to construct and own certain types of transmission facilities. Achieving California's renewable energy target will require the interconnection of a large number of new resources to the CAISO-controlled grid, and the studies of different generation interconnection clusters may reveal the need for overlapping and cumulative network upgrades. We find that assessing significant generator interconnection upgrades in the transmission planning process will provide greater transparency and efficiency to the transmission planning process overall, as well

⁹⁴ CAISO Supplemental Comments at 4-5 (citing *Nevada Power Co.*, 111 FERC ¶ 61,161 (2005), *order on reh'g*, 113 FERC ¶ 61,007 (2005)).

⁹⁵ *Id.*

⁹⁶ CAISO Post-Tech Conference Reply Comments at 22-23.

as improve competitive opportunities for transmission construction. Accordingly, we conditionally accept these features of CAISO's proposal, including the consideration of certain LGIP network upgrades and expansions in the RTPP planning process under proposed tariff section 24.4.6.5, subject to the modification discussed below.

93. First, in response to Green Energy's Petition and associated complaint, we find that CAISO's existing tariff, including the LGIP and LGIA provisions, provides PTOs with existing network transmission facilities with an obligation to build LGIP network upgrades. CAISO has not proposed to modify the LGIP provisions in its existing tariff, which the Commission previously accepted as just and reasonable.⁹⁷ Rather, under RTPP proposed tariff section 24.4.6.5, CAISO proposes to allow transmission planners to consider whether any significantly sized LGIP network upgrades should be expanded or enhanced or require additional transmission upgrades to accommodate additional generators that are expected to utilize the expanded capacity in the future.

94. Examining the existing CAISO tariff, we conclude that the plain language of the LGIP provisions of the CAISO tariff,⁹⁸ which mirror the Commission's *pro forma* LGIP, provide that the PTO to whose existing transmission facilities the generator will interconnect is obligated to build all the facilities that meet the requirements of the LGIP Phase II process.⁹⁹ Similarly, under articles 5.1 and 11.3 of CAISO's LGIA and the Commission's *pro forma* LGIA, PTOs have the responsibility to build LGIP network upgrades identified in Phase II of the LGIP.¹⁰⁰

⁹⁷ See Section 25, Appendices U, V, Y and Z (pertaining to the LGIP) and Appendices S and T (pertaining to the Small Generator Interconnection Procedures).

⁹⁸ See CAISO Tariff, Appendix U, section 12.1; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, App. B (Standard Large Generator Interconnection Procedures), § 12.1 (2004); CAISO Tariff, Appendices V and Z, articles 5.1 and 11.3 of CAISO LGIA; Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, App. 6 (Standard Large Generator Interconnection Agreement), art. 5.1, 11.3(2004).

⁹⁹ Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, App. B (Standard Large Generator Interconnection Procedures), § 12.1 ("Transmission Provider and Interconnection Customer shall negotiate in good faith concerning a schedule for the construction of Transmission Provider's Interconnection Facilities and the Network Upgrades").

¹⁰⁰ "The Participating TO shall design, procure, construct, install, own and/or control the Participating TO's Interconnection Facilities[.]" CAISO LGIA § 5.1.1 (Standard Option) and § 11.2 (Participating TO's Interconnection Facilities); *See also*

(continued...)

95. We further find that the term “PTO” refers to PTOs with existing network transmission facilities. Thus, a transmission developer would be precluded from building LGIP network upgrades until it has already met the tariff definition of PTO and fulfilled the requirements of the Transmission Control Agreement as discussed earlier. The language in the definition of a PTO indicates that, to be a PTO, facilities must already have been turned over to CAISO. Section 2.2.5 of the Transmission Control Agreement supports this interpretation.¹⁰¹ Therefore, we conclude that currently only a PTO with existing network transmission facilities has the obligation to build LGIP network upgrades.

96. In addition, we find that Green Energy has not provided sufficient legal justification or factual evidence to require us to find that, at this time, the obligation under the existing CAISO tariff of PTOs with existing network transmission facilities to build LGIP network upgrades, which is consistent with Order No. 2003, is unduly discriminatory toward independent transmission developers. To prevail in a proceeding under section 206 of the FPA, a complainant such as Green Energy must demonstrate both that the existing practice is unjust, unreasonable, unduly discriminatory or preferential and that its alternative proposal is just and reasonable and not unduly discriminatory or preferential.¹⁰² We find that Green Energy has failed to meet its burden of proof to demonstrate that the existing CAISO tariff provisions on LGIP are unduly discriminatory.

97. We note, however, that in the Transmission NOPR proceeding, the Commission is examining on a broader scale the extent to which a right of first refusal in Commission

Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 230-36, App. 6 (Standard Large Generator Interconnection Agreement), art. 5.1, 11.3.

¹⁰¹ The LGIP incorporates the CAISO tariff Appendix A definitions, which define a “Participating TO” as “[a] party to the Transmission Control Agreement whose application under section 2.2 of the Transmission Control Agreement *has been accepted* and who *has placed* its transmission assets and Entitlements under Operational Control in accordance with the Transmission Control Agreement.” CAISO Tariff, Appendix A (emphasis added). CAISO Transmission Control Agreement, § 2.2.5 (“A Party whose application under this Section 202 has been accepted shall become a Participating TO *with effect from the date when its TO Tariff takes effect.*”) (emphasis added).

¹⁰² 16 U.S.C. § 824e(b) (2006); *Blumenthal v. FERC*, 552 F.2d 875, 881 (D.C. Cir. 2009) (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

jurisdictional tariffs and agreements gives an incumbent transmission provider an undue advantage over non-incumbent transmission developers.¹⁰³

98. We find it just, reasonable and not unduly discriminatory or preferential for PTOs with existing network transmission facilities to have the obligation to build LGIP network upgrades that are modified through the transmission planning process. As CAISO points out, these are modifications to network upgrades that “would have been included in an [LGIA],” i.e., facilities at or beyond the point of interconnection, which, had the generation interconnection request proceeded through Phase II of the LGIP process, ultimately would have been included in an LGIA. The fact that CAISO has voluntarily chosen to evaluate a network upgrade in its transmission planning process should not affect the obligation to build these facilities.

99. We accept CAISO’s offer to clarify RTPP proposed tariff section 24.4.6.5 to address Green Energy’s concerns about the “would have been included in [an LGIA]” language.¹⁰⁴ We direct CAISO to clarify that the applicable PTO will be responsible for constructing a modified upgrade if the LGIP Phase II studies identified the original upgrade as necessary and such upgrade has not yet been set forth in an executed LGIA. The clarification should also convey that at the time the upgrade is identified for consideration in the RTPP, no LGIAs for such upgrades will have been executed. This clarification should address concerns that the original language gives CAISO too much discretion because it limits the scope of the ability of PTOs with existing network transmission facilities to build modified network upgrades. We therefore direct CAISO to submit a compliance filing to revise RTPP proposed section 24.4.6.5 to this effect within 30 days of the issuance of this order.

100. We find that by limiting the obligation to build a modified network upgrade to network upgrades identified as necessary in the LGIP Phase II studies but not yet set forth in an executed LGIA, proposed RTPP section 24.4.6.5 defines the scope of modified network upgrades that the incumbent PTO is obligated to build, and no further clarification is needed to address CPUC’s concerns regarding when LGIP network upgrades have expanded to the point where they are no longer the obligation of the PTO to build.

¹⁰³ Transmission NOPR, FERC Stats. & Regs. ¶ 32,660 at P 87-101. We note that the Transmission NOPR does not specifically address ROFRs in the context of an LGIP process.

¹⁰⁴ See CAISO Supplemental Comments at 8-9.

101. We also find that PTOs will not be able “to manipulate” the RTPP process to categorize more transmission projects as LGIP network upgrades. Under the LGIP, a generator, not a PTO, requests interconnection at a specific point on the PTO’s transmission system in which CAISO studies the request under a queue cluster. Under RTPP proposed section 24.4.6.5, as clarified, the potential modified LGIP upgrades must originally have been identified as needed in a Phase II Interconnection study. Therefore, the PTO does not have discretion over the quantity of projects approved through this process.

102. Next we turn to RTPP proposed tariff section 24.4.6.5, which assesses significant LGIP network upgrades in the RTPP and gives CAISO the opportunity to identify additional transmission upgrades or expansions necessitated by “right-sizing” the large network upgrade. If these additions or upgrades are categorized as policy-driven or economically-driven elements, they would be open for competitive solicitation. Consequently, we find this feature of the RTPP provides greater potential opportunities for independent transmission developers to build new transmission facilities than the opportunities that exist today under CAISO’s existing planning process or the LGIP. Moreover, assessing significantly-sized LGIP network upgrades in the planning processes should enhance the efficiency of both the transmission planning and generation interconnection processes. We also agree with CAISO’s argument, discussed above, that policy-driven projects or other upgrades and expansions could serve to replace the need for future additional and potentially significant LGIP facilities and related network upgrades.

103. In addition, we find the RTPP proposed tariff section 24.4.6.5 criteria governing which large LGIP network upgrades will be considered in the revised planning process are just and reasonable and not unduly discriminatory; we deny protestors’ request that all LGIP network upgrades should be submitted through a request window and examined in the RTPP as contrary to the LGIP and beyond the scope of this proceeding.¹⁰⁵ It is appropriate for only substantial LGIP network upgrades to be evaluated in the RTPP process because the smaller generation interconnection upgrades are less likely to overlap with other network upgrades, require additions or expansions, or lead to the identification of additional needed transmission facilities, policy-driven or otherwise. Consequently, we find CAISO’s proposal strikes a reasonable balance between the objectives of the

¹⁰⁵ See *Southwest Power Pool*, 132 FERC ¶ 61,042, at P 107 (2010) (rejecting a request to require Southwest Power Pool (SPP) to include generator interconnection process upgrades in its transmission planning process because public utilities, such as SPP, have discretion over what they propose to include in their filings and SPP did not propose any modifications to the LGIP process).

LGIP, i.e., accommodating the generators' need to interconnect to the grid in a timely manner, and the benefits that can flow from evaluating the larger projects in the comprehensive transmission planning process.

104. Protestors have not persuaded us to adopt their proposals to limit a PTO's obligation to build LGIP network upgrades based upon the size or cost of the facilities, or to condition a PTO's obligation on its willingness to forgo transmission incentives for the LGIP network upgrades. Additionally, Green Energy has offered no justification for its request that we limit a PTO's obligation to build LGIP network upgrades to those facilities included in an executed LGIA. Moreover, granting this request could limit the efficiency achieved through coordination of the two processes. Therefore, we find no basis for granting these requests.

105. Protestors' contentions that the LGIP lacks transparency are beyond the scope of this proceeding. We have already accepted CAISO's LGIP provisions. Moreover, Order No. 890's transparency principle applies to the transmission planning process, and not the LGIP.

106. Additionally, we find protestors' arguments related to SoCal Edison's generation interconnection projects to be beyond the scope of this proceeding. These projects met the definition of network upgrade, consistent with the CAISO tariff, and the Commission has already approved the related LGIAs.¹⁰⁶ To the extent protestors raise these projects as examples of what "could have been" policy-driven transmission elements for competitive solicitation, we note that CAISO's RTPP proposed section 24.4.6.5 creates opportunities to identify additional policy-driven (and other) transmission elements.

107. Further, as CAISO makes clear in its pleadings, following RTPP implementation, it intends that the identification of policy-driven projects could fulfill the requirements of future, hypothetical LGIP-identified network upgrades and make the latter unnecessary, as long as relevant interconnection customers' interconnection needs are met.¹⁰⁷ We note however, that such clarification is not provided in the RTPP proposed tariff sections. Accordingly, in addition to the clarification directed in this section above, we direct CAISO to make a compliance filing to amend its tariff to make clear that if a policy-driven element is identified in Phase 2 of the RTPP, it could supplant the need for LGIP projects that may have otherwise been identified in a subsequent LGIP process, within 30 days of issuance of this order.

¹⁰⁶ *Southern California Edison Co.*, 133 FERC ¶ 61,107 (2010).

¹⁰⁷ RTPP Filing at 6, 46.

b. **Timing of implementation of LGIP and RTPP
Partial Integration**

108. With regard to the process of considering LGIP network upgrades in the RTPP, CAISO proposes to start implementing this in the 2011/2012 planning cycle. CAISO explains that it does not propose this integration for the 2010/2011 planning cycle because it does not want to adversely impact generators that are subject to American Recovery and Reinvestment Act (ARRA) deadlines.¹⁰⁸

109. Six Cities and CMUA argue that current LGIP projects should not be allowed to bypass the RTPP review during the 2010/2011 planning cycle because unnecessary costs could be pushed through the LGIP and impact PTO revenue requirements and the transmission access charge. CalWEA urges the Commission to require CAISO to harmonize the two processes for the 2010/2011 planning year and notes that the LGIP network upgrades and other project categories may overlap, despite financing differences.

110. CAISO responds that interconnection studies are conducted in clusters and needed network upgrades are identified for all interconnection customers collectively within an electrical area of the grid. Therefore, CAISO states that it is not practical to consider LGIP network upgrades in the initial RTPP planning cycle. CAISO notes that it is planning a stakeholder process later this year to address LGIP issues such as timing and coordination with the transmission planning process.¹⁰⁹

Commission Determination

111. We find that CAISO's proposal to incorporate certain LGIP network upgrades into the RTPP beginning in the 2011/2012 planning cycle to be just and reasonable. Allowing the current LGIP cycle to conclude before RTPP proposed tariff section 24.4.6.5, the LGIP coordination process, goes into effect is an appropriate and balanced approach to ensure that projects that have already begun the interconnection process are not adversely affected. Further, we find that CAISO's proposal reasonably considers the schedule of projects that are subject to deadlines in order to receive ARRA funding.

112. We note that CAISO has committed to holding a stakeholder process to address any outstanding issues related to the LGIP, such as timing and coordination with the RTPP. We support this commitment and expect that any refinements or proposals

¹⁰⁸ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-3.

¹⁰⁹ CAISO Answer at 38-39.

resulting from this stakeholder process that substantially affect rates, terms, and conditions of service will be filed with the Commission.¹¹⁰

c. Cost Issues

113. Parties contend that CAISO needs to clarify its cost allocation. CMUA states that costs of hundred-million dollar facilities are shared by all load-serving entities through the transmission access charge, not just customers of the PTOs. Because the RTPP proposal does not detail how interested parties can access LGIP-related study data, Bay Area asserts that there is no assurance that the costs which eventually form part of the CAISO transmission access charge are reasonable and justified.¹¹¹

114. CalWEA and Large-Scale Solar ask the Commission to require CAISO to refund the full security posting back to the generator in instances where CAISO converts a LGIP network upgrade to a policy-driven element. CalWEA argues that requiring CAISO to study these upgrades through a single comprehensive transmission study process would let generation developers know early on whether their up-front interconnection costs will be reduced because major new transmission elements will be treated as policy upgrades.

115. Six Cities argues that generators should not be relieved of initial funding obligations for network upgrades that are included in policy-driven or economically driven elements in the RTPP. Six Cities contends that it is reasonable to continue to impose on the generation developer the risk of stranded costs, including transmission costs, if the generation project does not succeed.

116. CAISO notes that, consistent with a recent Commission order in the Midwest Independent Transmission System Operator, the assessment and possible modification in the RTPP of network upgrades identified in Phase II of the LGIP will not increase the cost responsibilities of interconnection customers, as provided in Appendix Y of CAISO's tariff.¹¹²

117. In response to Bay Area, CAISO points out that it provides access, pursuant to its standard non-disclosure agreement, to interconnection study base case information that is

¹¹⁰ *City of Cleveland*, 773 F.2d at 1376.

¹¹¹ Bay Area Protest at 12-13.

¹¹² RTPP Filing at 45 (citing *Midwest Independent System Operator*, 131 FERC ¶ 61,165, at P 22 (2010)).

not commercially sensitive.¹¹³ CAISO further states that interested parties may access this information through the process set forth in the Business Practice Manual.

Commission Determination

118. We find that protestors' concerns regarding LGIP cost allocation are beyond the scope of this proceeding. The existing CAISO tariff already includes provisions regarding allocation of LGIP network upgrade and transmission upgrade costs. The existing CAISO tariff provisions for cost allocation of LGIP network upgrades would apply to modified network upgrades, i.e., network upgrades modified through the RTPP process because, while they are modified, they are still network upgrades. As we have discussed above, these modified network upgrades are network upgrades that would have been included in an LGIA had they been built under the LGIP. Therefore, the only difference is that these network upgrades would be modified during the RTPP process, rather than through the LGIP, but they are nevertheless network upgrades, subject to the CAISO tariff LGIP cost allocation provisions for network upgrades.¹¹⁴ To the extent network upgrades modified during RTPP Phase 2 create the need for additional transmission facilities, the costs of such additional transmission facilities will be separate and distinct from the costs associated with the modified network upgrade. The existing tariff provisions governing the cost allocation of transmission facilities would apply to these additional transmission upgrades (i.e., generally the transmission access charge). Consequently, because tariff provisions already exist regarding LGIP network upgrade and transmission upgrade costs, and these provisions are not before us in this proceeding, parties' concerns are beyond the scope of this proceeding. There is no further need to address these concerns to find CAISO's proposal to partially integrate the LGIP with the RTPP to be just and reasonable.

119. We agree with CalWEA and Large-Scale Solar that it is appropriate for CAISO to refund financial security deposits posted by a generation interconnection customer for network upgrades if a policy-driven element or other transmission addition eliminates the need for an LGIP network upgrade. Commission precedent requires that security deposits shall not exceed the customer's possible cost exposure.¹¹⁵ Where a policy-

¹¹³ CAISO Answer at 40. CAISO Post-Tech Conference Reply Comments at 10-11; *See also* Independent System Operator (ISO) Non-Disclosure and Use of Information Agreement for Market Infrastructure Development, Section 2 (b), *available at* <http://www.caiso.com/1f4f/1f4f8bf4240c0.pdf>.

¹¹⁴ *See Midwest Independent System Operator*, 131 FERC ¶ 61,165, at P 22 (2010).

¹¹⁵ *California Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223, at P 108 (2010); *California Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,005, at P 37 (2010).

driven element or other transmission addition identified in the transmission planning process makes an LGIP network upgrade unnecessary, the generation interconnection customer's obligation ceases. Therefore, consistent with precedent,¹¹⁶ in this instance, the generation interconnection customer would be entitled to a refund for the full amount of the posted financial security deposit. If the policy-driven or other transmission project results in downsizing, but not eliminating, the LGIP network upgrade for which the deposit has been posted, the generation interconnection customer's security deposit should be modified to ensure that it does not exceed the possible cost exposure for the resized project. Accordingly, we direct CAISO to clarify its tariff to ensure that security deposits do not exceed the generation interconnection customer's possible cost exposure, as discussed above, and submit this revision within 30 days of issuance of this order.

120. We find Bay Area's concerns regarding lack of transparency for LGIP-related study data are overstated because, as CAISO points out, it provides access, pursuant to its standard non-disclosure agreement, to interconnection study base case information that is not commercially sensitive.¹¹⁷ If Bay Area would like to obtain access to this information, it may do so through the process laid out in CAISO's Business Practice Manual.

4. LCRI Facilities

121. CAISO argues that it proposes no substantive changes to the LCRI project provisions in its existing tariff, and that applicable incumbent PTOs will be responsible for constructing these projects. CAISO describes LCRI facilities as radial facilities with a special financing mechanism that provide transmission solely for the interconnection of generation. Several parties commented on CAISO's treatment of LCRI facilities. TANC supports CAISO's proposal to use cost comparison information to evaluate the reasonableness of the projected LCRI costs.

122. Green Energy disputes CAISO's assertion that LCRI projects are already under the existing tariff, and should continue to be under the proposed RTPP, subject to a ROFR for incumbent PTOs. Green Energy asks the Commission to require CAISO to revise its proposed RTPP tariff provisions to make it explicit that LCRI facilities may be constructed and owned by any project sponsor, including non-incumbent transmission developers. Otherwise, if the Commission agrees with CAISO's interpretation regarding

¹¹⁶ *Id.*

¹¹⁷ CAISO Answer at 40. CAISO Post-Tech Conference Reply Comments at 10-11; *See also* ISO Non-Disclosure and Use of Information Agreement for Market Infrastructure Development, Section 2 (b), *available at* <http://www.caiso.com/1f4f/1f4f8bf4240c0.pdf>.

the ROFR for LCRI facilities in the existing tariff, Green Energy asks the Commission to reject this interpretation as unjust, unreasonable, and unduly discriminatory and to provide other relief as appropriate under sections 206 and 306 of the FPA with regard to this provision in the RTPP tariff revisions.

123. Green Energy and WITG both assert that RTPP proposed tariff section 24.4.6.3.1 allows any interested party to propose transmission additions as LCRI projects. For this reason, Green Energy contends that it is unreasonable to infer that market participants (other than regulatory agencies) will utilize their express right to propose such facilities if this provision does not also imply a right to build such facilities. Green Energy argues that the absence of language providing for a ROFR for LCRI facilities indicates that the tariff provides no ROFR to build them. Moreover, Green Energy argues that in recent precedent and in the Transmission NOPR, the Commission voiced support for the competitive solicitation of transmission expansions.¹¹⁸ Also, Green Energy, citing two economic transmission additions (the Trans Bay Cable and Path 15 Projects (Path 15)), argues that non-PTOs may propose to build and own transmission facilities and complete the process for gaining PTO status before they have built the facilities and turned over operational control to CAISO.

124. CAISO argues that protestors who take issue with a PTO's right to build LCRI facilities misunderstand the rationale for this existing category of transmission. CAISO asserts that LCRI facilities are a specific category of radial lines intended to connect multiple location-constrained generating units to a point of interconnection on the existing CAISO transmission system. CAISO contends that section 26.6 of its tariff makes clear that the costs of the unsubscribed portion of an LCRI facility are recovered through a PTO's transmission revenue requirement. CAISO claims that this funding mechanism provides a temporary alternative cost allocation mechanism for the cost of generator interconnection facilities that interconnection customers would otherwise have to pay.

125. Additionally, CAISO and PG&E assert that under CAISO's Transmission Control Agreement, a transmission owner can only become a PTO by turning over operational control of "transmission lines and associated facilities [that form] part of the transmission network that it owns or to which it has Entitlements."¹¹⁹ The Transmission Control

¹¹⁸ Green Energy Petition at 13-14 (citing *Primary Power*, 131 FERC ¶ 61,015 at 62-66; *Central Transmission* 131 FERC ¶ 61,243 at P 46; *Carolina Power & Light Co.*, 94 FERC at 62,010; Transmission NOPR, FERC Stats. & Regs. ¶ 32,660).

¹¹⁹ CAISO Answer at 59 (quoting CAISO Transmission Control Agreement; PG&E Protest at 8); CAISO Post-Tech Conference Initial Comments at 12.

Agreement provides, however, that “radial lines and associated facilities interconnecting generation do not constitute part of a [PTO’s] transmission network.” Therefore, CAISO and PG&E declare that the Transmission Control Agreement precludes parties from becoming PTOs merely by turning over operational control of radial lines, such as LCRI facilities. CAISO further asserts that Commission precedent indicates that radial interconnection facilities cannot be included in a PTO’s transmission revenue requirement except as an LCRI facility.¹²⁰

126. According to CAISO, the Transmission Control Agreement’s limitation on PTO status is reasonably related to CAISO’s core mission of maintaining reliable grid operations and performing balancing authority area responsibilities. CAISO also argues that this minimum eligibility requirement is not discriminatory because radial lines are not integral to CAISO’s achievement of these objectives.

127. CAISO disagrees with Green Energy’s suggestion that non-PTOs may propose to build and own transmission facilities and complete the process for gaining PTO status before they have built the facilities and turned over operational control to CAISO. CAISO notes that in making that suggestion, Green Energy cited to the Trans Bay Cable and Path 15 projects. CAISO asserts that the existing tariff does not restrict construction responsibility for those projects because they are categorized as economic transmission projects, not LCRI facilities. CAISO also states that the Path 15 project sponsor did not become a PTO until the Path 15 upgrades were completed and placed into service and its TO Tariff became effective. Likewise, CAISO confirms that Pattern, the owner of the Trans Bay Cable, would not become a PTO until its TO Tariff became effective, upon commercial operation of the line.¹²¹

128. CAISO also argues that existing LCRI requirements provide that the addition of an LCRI facility’s capital costs to a PTO’s high voltage transmission revenue requirement cannot cause the aggregate LCRI investment to exceed a specified cap. CAISO retains

¹²⁰ CAISO Answer at 58 (citing section 24.1.3.1 of CAISO’s existing tariff); *Id.* at 59-60 (citing *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, at P 65 (2007) (LCRI Declaratory Order); *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,286, at P 63-65 (2007) (LCRI Order), *reh’g denied*, 127 FERC ¶ 61,178 (2009) (collectively, LCRI Orders); *Southern California Edison Co.*, 112 FERC ¶ 61,014, at P 41-42 (2005).

¹²¹ CAISO Supplemental Comments at 7 (citing *Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,029, at P 5, 18 (2006)). In Docket No. ER06-1360-000, CAISO notified the Commission that it has accepted Trans Bay Cable’s proposal to turn over operational control of its entitlements and become a PTO, effective as of November 23, 2010, pursuant to its TO Tariff.

this cap in RTPP proposed tariff section 24.4.6.3.2(b), which requires that LCRI facilities' capital costs recovered through CAISO's transmission access charge not exceed 15 percent of the total amount of high-voltage capital costs recovered through the transmission access charge. CAISO also notes that, to date, one LCRI facility has been approved, conditionally.

129. With regard to CAISO's suggestion that the impact of the PTO's right to construct LCRI projects is insignificant because of the aggregate LCRI cost cap, Green Energy notes that CAISO has not ruled out future cap increases. Green Energy also contends that the RTPP's purpose is to connect new, location-constrained renewable generation resources to the CAISO-controlled grid through "gen-ties" bundled with associated network upgrades and additions. Consequently, Green Energy argues, if non-incumbents cannot build and own LCRI radial lines, they will likely be unable to build and own associated upgrades and additions beyond the interconnection point.

130. CAISO responds that there is no basis for this assertion; CAISO reiterates that LCRI facilities are considered during the transmission planning process, not under the LGIP. Under the LGIP, CAISO explains, radial interconnection lines are the responsibility of the generator who bears the cost, and the network upgrades are the responsibility of the interconnected transmission owner; thus, they are treated as two different types of facilities.

131. Furthermore, CAISO clarifies that transmission additions or upgrades that are necessary to improve the transmission network to accommodate deliveries from an LCRI facility approved in the planning process would be considered policy-driven elements. CAISO would then solicit proposals for these additions unless they are upgrades to a PTO's existing facilities.

Commission Determination

132. The LCRI provisions of the RTPP have not changed from the LCRI provisions in CAISO's existing tariff,¹²² which the Commission previously found to be just, reasonable, and not unduly discriminatory or preferential.¹²³ We also note that in the Transmission NOPR proceeding, the Commission is already examining on a broader scale the extent to which a ROFR in Commission jurisdictional tariffs and agreements

¹²² Compare RTPP proposed tariff section 24.4.6.3 with CAISO existing tariff section 24.1.3.

¹²³ LCRI Declaratory Order, 119 FERC ¶ 61,061; LCRI Orders, 121 FERC ¶ 61,286, *reh'g denied*, 127 FERC ¶ 61,178.

gives an incumbent transmission provider an undue advantage over non-incumbent transmission developers.¹²⁴

133. In its Petition, Green Energy contends that CAISO's existing tariff does not provide a ROFR for incumbent PTOs to build LCRI facilities, as the RTPP contemplates; WITG makes the same assertion. CAISO disagrees with Green Energy's suggestion that non-PTOs may propose to build and own LCRI facilities. Further, CAISO argues that non-PTOs cannot complete the process to gain PTO status before they have built the facilities and turned over operational control to CAISO.

134. CAISO's existing tariff section 26.6 provides that the costs of the unsubscribed portion of a LCRI facility may be included in the PTO owner's transmission revenue requirement.¹²⁵ Subsequently, the PTO's transmission revenue requirement is a mechanism funded through CAISO's transmission access charge. Furthermore, as discussed above with respect to LGIP facilities, CAISO's existing tariff definition of a PTO and its Transmission Control Agreement preclude entities from becoming PTOs if they have not turned over operational control of facilities that form part of the CAISO transmission network.¹²⁶ As LCRI facilities are radial interconnection lines, we conclude that, as we concluded for LGIP facilities, an entity that only seeks to build and turn over operational control of these radial lines does not satisfy the criteria to enter into a Transmission Control Agreement, and thus may not be considered a PTO. Consequently, and contrary to Green Energy's contention, we find the existing CAISO tariff gives PTOs with existing network transmission facilities the ability to construct LCRI facilities and non-PTO transmission developers are not eligible to build these facilities.

135. Further, in its Petition, Green Energy asks that, if the Commission finds the existing CAISO tariff provides a ROFR for PTOs with existing network transmission facilities to construct LCRI facilities, we find such ROFR to be no longer just and reasonable and unduly discriminatory or preferential. We will not do so in this proceeding. To reiterate, as the proponents of a change in rate or practice, Green Energy has the burden to demonstrate both that the existing rate or practice is unjust,

¹²⁴ Transmission NOPR, FERC Stats. & Regs. ¶ 32,660 at P 87-101; *Mobile Oil*, 498 U.S. at 230.

¹²⁵ See CAISO existing tariff section 24.1.3.1(a)(3) and RTPP proposed tariff section 24.4.6.3.2(a)(3) (providing that an LCRI facility "would not be eligible for inclusion in a Participating TO's TRR [transmission revenue requirement] other than as an LCRIF [LCRI Facility]").

¹²⁶ See CAISO existing tariff Appendix A.

unreasonable, unduly discriminatory or preferential, and that its proposed change is just and reasonable and not unduly discriminatory or preferential.¹²⁷

136. Location-constrained resources have a limited ability to minimize their interconnection costs and, moreover, these factors can, in certain circumstances, impede the development of such resources altogether.¹²⁸ Consequently, the LCRI provisions were crafted to help location-constrained resources overcome financial barriers to interconnecting to the grid, not as a benefit for transmission providers.¹²⁹ Because Green Energy has not provided sufficient evidence demonstrating how it is harmed by the lack of opportunity to construct LCRI facilities, we find that Green Energy has not provided sufficient legal justification or factual evidence to compel us to find, at this time, this ability to build LCRI facilities is unjust, unreasonable, unduly discriminatory or preferential. Accordingly, we continue to find that these provisions address a specific need presented by location-constrained resources and are not unduly discriminatory.¹³⁰

137. Furthermore, we agree with CAISO's contention that once the RTPP becomes effective, and LCRI projects as well as policy projects are vetted through the new comprehensive planning process, transmission projects identified as LCRI projects will likely diminish over time. As expressed earlier, fully vetted policy-driven elements are intended to address the needs that would have previously been considered under the LCRI tariff provisions and make LCRI projects less prevalent.

¹²⁷ 16 U.S.C. §824e(b) (2006); *Blumenthal v. FERC*, 552 F.2d 875, 881 (D.C. Cir. 2009) (citing *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002)).

¹²⁸ LCRI Order, 121 FERC ¶ 61,286 at P 3 (“Commission held that the CAISO’s proposed rate treatment of the costs of the LCRI facilities was not unduly preferential or discriminatory and would be a just and reasonable variation from Order No. 2003’s default generator interconnection policies.”).

¹²⁹ See LCRI Order, 121 FERC ¶ 61,286 at P 3, *order on reh’g*, 127 FERC ¶ 61,178 at P 2 (finding the LCRI necessary because “existing interconnection policies, as articulated in Order No. 2003, did not contemplate the challenges associated with more recent efforts to interconnect location-constrained resources[.]”).

¹³⁰ Moreover, we find that limiting the construction and ownership of LCRI facilities to PTOs, as preserved in the RTPP, will not preclude non-incumbent transmission developers from building new transmission elements.

5. Merchant Transmission Projects

138. CAISO states that it will receive and evaluate proposals for merchant transmission facility projects in Phase 2 of the RTPP. It also states that it has not proposed substantive changes to its tariff with regard to these projects.

139. CAISO states that section 24.4.6.1 sets forth the criteria for submitting merchant transmission projects. It explains that sponsors of these projects must bear all project costs because these costs are not recoverable through the transmission access charge. Further, CAISO notes, merchant projects must mitigate all CAISO-identified operational concerns and ensure the continuing feasibility of allocated long-term CRRs over the length of their terms. CAISO explains that during the RTPP, it will approve merchant projects before approving policy-driven or economically-driven transmission elements.

Commission Determination

140. CAISO has not proposed substantive changes to its tariff regarding merchant transmission projects,¹³¹ and no party has taken issue with CAISO's merchant transmission provisions in this proceeding. Therefore, we will accept the RTPP proposed tariff provisions regarding merchant transmission projects as they have not substantively changed from the already-approved existing tariff provisions on merchant transmission projects.

6. Policy-Driven Elements¹³²

141. CAISO states that a principal focus of its revised planning process is the creation of the policy-driven category of network transmission facilities. According to CAISO, this category is necessary "to meet state or federal policy requirements and directives, including renewable goals that are not inconsistent with the [FPA]."¹³³

142. CAISO states that RTPP section 24.4.6.6 describes the policy-driven transmission category and lists ten criteria that it may consider, among others, in determining whether

¹³¹ Compare RTPP proposed tariff section 24.4.6.1 with CAISO existing tariff section 24.1.1(a).

¹³² This section describes policy-driven elements and the RTPP process for determining what elements are needed, and commenters' associated concerns. As discussed above, once CAISO determines what elements are needed, during Phase 2 of the RTPP, it will hold an open solicitation for project sponsors in Phase 3, as discussed below.

¹³³ RTPP Filing at 4. 16 U.S.C. § 824, *et seq.*

a transmission upgrade or addition is needed to effectively and efficiently meet applicable state or federal policies.¹³⁴ Based on the ten criteria, CAISO states that it will apply a “least regrets” approach in order to identify policy-driven elements that will minimize the risk of stranded investment.¹³⁵ Under this approach, CAISO will identify the resources within reasonable assumption scenarios that are considered to be most likely to develop. CAISO highlights that, under its least regrets approach, it will identify two categories of policy elements: (1) category 1 elements, which will be built in the current planning cycle; and (2) category 2 elements, which are not recommended in the current planning cycle, but may be necessary in the future.

143. CAISO notes that although a needed policy-driven element could provide incidental reliability benefits, this fact alone would not make the transmission addition or upgrade a reliability project subject to an incumbent’s right to build; instead, it would remain a policy-driven element, as identified.

144. San Francisco expresses concern that, unlike LCRI facilities, policy-driven elements have no upper limit on risk. It contends that the only safeguard for policy-driven elements is CAISO’s ability, through the RTPP, to accurately predict future transmission needs. San Francisco therefore asks the Commission to require CAISO to develop appropriate cost containment and ratepayer impact safeguards, such as a cost allocation methodology that distributes costs to those that will benefit from the project, similar to the LCRI provisions.

¹³⁴ RTPP proposed tariff section 24.4.6.6 provides that the ten criteria that CAISO may use to determine needed policy-driven elements are: (1) commercial interest in the resources accessed by potential transmission elements; (2) results and priorities of the CPUC or California Local Regulatory Authorities’ resource planning processes; (3) expected planning level cost; (4) potential capacity and energy values, and cost supply function of resources in zones that will meet policy requirements; (5) environmental evaluation and the extent to which the potential element will be needed to meet applicable reliability criteria or to provide additional reliability or economic benefits; (6) potential future connections to other resource areas and transmission elements; (7) resource integration requirements and associated costs; (8) potential to provide access to resources needed for integration; (9) effect of uncertainty associated with criteria 1-8 and any other considerations that could affect the risk of stranded investment; and (10) effects of other additions or upgrades being considered for approval during the planning process.

¹³⁵ CAISO’s least regrets proposal and associated comments are addressed in greater detail in a later section.

145. CAISO maintains that there is no basis to create a cost cap for policy-driven elements similar to the LCRI cap because policy-driven elements, unlike LCRI facilities, are network facilities. CAISO also states that imposing such a cap could create a situation where needed policy-driven transmission could not be approved.

146. Bay Area and San Francisco take issue with the fact that the policy-driven considerations are left to CAISO's discretion. San Francisco's concern is that CAISO could commit the state to billions of dollars in new transmission projects to achieve policy goals that have yet to be resolved by the state's legislative, administrative, and executive leadership. San Francisco asks the Commission not to approve CAISO's proposed description of policy-driven elements as those "needed to meet state or federal policy requirements or directives," because such language is overly broad. Bay Area and San Francisco ask the Commission to limit policy-driven justifications to those needed to meet public policy *requirements* established by state and federal laws or regulations in accordance with the Commission's Transmission NOPR. Bay Area claims that this definition of policy-driven elements leaves no room for unilateral decisions that rely upon non-binding requirements.

147. CAISO disputes these arguments regarding the scope of state and federal policy goals. CAISO argues that restricting such projects to those required by laws and regulations would confine CAISO's options because it may have to incorporate requirements from state and federal policies contained in judicial orders, regulatory decisions, or executive orders into the RTPP.

148. Bay Area also asks the Commission to direct CAISO to amend RTPP proposed tariff section 24.4.6.6 to explicitly address how CAISO will adhere to its commitment, memorialized in the CPUC-CAISO Memorandum of Understanding (MOU), to coordinate its planning process with CPUC's siting/permitting process. In addition, Bay Area asks the Commission to require CAISO to adhere to the ten identified criteria in RTPP proposed tariff section 24.4.6.6 when determining the need for policy-driven elements. Bay Area states that the criteria should be expanded to also include: (1) the prioritized objectives from ongoing state level proceedings; (2) the need for new transmission to interconnect central station generation after adjusting the latest forecast of load for additional energy efficiency, demand response, and distributed generation resources; and (3) the likely location for new central station generation based upon considerations such as commercial interest in resources in the applicable geographic area (including renewable energy zones), access by potential transmission elements as evidenced by signed and approved power purchase agreements, and interconnection agreements. Imperial asks the Commission to require CAISO to amend proposed RTPP section 24.4.6.6 to require consideration of the extent to which a proposed policy-driven element would create a risk of stranded costs and coordination with non-PTOs to avoid the construction of duplicative transmission additions.

149. In response to Bay Area's comments about the CPUC-CAISO MOU, CAISO claims that its tariff does not specifically dictate how to treat individual stakeholders' inputs and that it, therefore, should not contain provisions pertaining to inputs provided by CPUC.

150. CAISO disagrees with Bay Area's position that the study methodologies used to identify needed transmission projects or elements must be described in detail in the tariff. CAISO states that the more appropriate course is to describe these details in the Business Practice Manual and in the annual study plan. Accordingly, to address several parties' questions about the precise methodology used to select policy-driven elements, CAISO proposes to provide greater methodological details in its Business Practice Manual. CAISO also states that it will address the policy goals to be evaluated in each cycle, as well as the process for identifying policy-driven elements, during Phase 1 of the planning cycle when it works with stakeholders to develop the study plan and planning assumptions.¹³⁶

151. DayStar expresses concern that CAISO could give undue weight to certain criteria, such as signed and approved power purchase and interconnection agreements. DayStar asks CAISO to amend its tariff to emphasize that power purchase and interconnection agreements are only one indicator of the geographic "commercial interest" preferences of renewable generation developers. DayStar states that CAISO should also consider other factors such as reliability benefits, economic benefits, and access to high quality renewable locations. Additionally, DayStar states that the level of public support or resistance from the local community and elected officials for transmission infrastructure and underlying generation assets should be a criterion for evaluating proposals.

152. In response, CAISO states that, when it approved CAISO's LCRI proposal, the Commission found that power purchase and interconnection agreements are appropriate measures of commercial interest.

153. Pattern and Desert Southwest state that the timing of policy-driven and economically-driven transmission element evaluation hinders independent developers because all other project categories will be evaluated for inclusion in the transmission plan before CAISO considers proposals to build policy-driven and economically-driven elements during the Phase 3 open solicitation. Desert Southwest also contends that CAISO has no plans to evaluate whether projects in the categories evaluated prior to Phase 3 will contribute to federal and state policy goals. For this reason, Desert Southwest asks CAISO to consider policy-driven elements at the outset of Phase 2, arguing that projects may present more efficient, cost-effective solutions when

¹³⁶ CAISO Post-Tech Conference Reply Comments at 7.

considering multiple system needs, rather than determining needed projects focused on a single need.

154. In response, CAISO explains that considering policy-driven elements first, without regard to the transmission upgrades that it is otherwise required to evaluate, would create the risk of overbuilding and stranded investment and undermine the objectives of comprehensive planning. PG&E agrees that CAISO should evaluate policy-driven projects later in the planning cycle because such projects are incremental to the already-existing tariff categories.

Commission Determination

155. Subject to the compliance filing discussed below, we accept CAISO's proposed RTPP provisions pertaining to policy-driven elements and find that they are just, reasonable and not unduly discriminatory or preferential. The new category of policy-driven transmission elements is a key feature of the RTPP that will allow CAISO to consider state and federal policy requirements and directives in a holistic manner in its transmission planning process. Consideration of policy-driven elements in the RTPP will allow CAISO to develop a transmission plan that better optimizes the planned transmission infrastructure and transforms CAISO's transmission planning process from a project-by-project approach into a comprehensive and more efficient process.

156. Additionally, as discussed in greater detail below with regard to CAISO's least regrets proposal, we find that the RTPP provisions relating to policy-driven elements are appropriate. We find that CAISO's proposed ten criteria for determining the need for policy-driven projects reasonably set forth a framework under which CAISO will identify policy-driven elements. However, whereas CAISO proposes, in RTPP proposed tariff section 24.4.6.6, that CAISO "may consider, but is not limited to" the criteria it has listed for identifying needed policy-driven elements, we believe that CAISO should consider and be limited to the listed selection criteria as each represents an important factor in mitigating the risk of stranded investment and provides transparency as to how CAISO will identify policy-driven needs. Therefore, we direct CAISO to make a compliance filing within 30 days of issuance of this order to revise "may" to "will" and to remove "but is not limited to" in that section.

157. Accordingly, we find the criteria in RTPP proposed tariff section 24.4.6.6, subject to our compliance filing directive for that section, to be an appropriate basis for determining needed policy-driven elements. We, therefore, reject DayStar's and Bay Area's requests to include additional criteria for determining needed policy-driven elements in the tariff.

158. Given the changes directed above, we disagree with parties' arguments that the RTPP gives too much discretion to CAISO regarding the selection of policy-driven elements. Our directed changes ensure that CAISO will define policy-driven elements

based only on the listed criteria. If, in the future, CAISO finds that it needs to adapt, develop or use other criteria, then CAISO may make a filing pursuant to section 205 of the FPA proposing changes to the criteria currently listed in its tariff. This requirement and the changes directed above will ensure that CAISO's implementation of policy-driven tariff provisions will be an open and transparent process and all stakeholders will have an opportunity to review CAISO's assumptions, analysis, and recommendations and provide input into the process.¹³⁷

159. To the extent parties desire greater methodological details regarding the identification of policy-driven elements, CAISO states that it will include such details in its Business Practice Manual and address the policy goals to be evaluated in each cycle, as well as the process for identifying policy-driven elements, during RTPP Phase 1. We find that these commitments by CAISO are sufficient to address parties' requests for additional details and direct CAISO to follow through on these commitments.¹³⁸

160. We will not require CAISO to modify its proposal by adding a cost cap for policy-driven elements because such a cap could potentially render CAISO unable to approve transmission elements that might be necessary to achieve state or federal policy requirements or directives. We also find that CAISO has sufficiently distinguished between LCRI facilities, LGIP network upgrades, and policy-driven elements. LCRI tariff provisions apply to radial interconnection facilities and provide a mechanism for

¹³⁷ Similar to the directives here, the Commission has previously taken steps to ensure that CAISO's discretion is limited and found that CAISO's tariff needs to incorporate appropriate detail and transparency of CAISO's decision-making processes. *See, e.g. Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,045, at P 72 (2010) (finding proxy demand resource tariff provisions describing actions that CAISO "may" take to rescind payments or suspend a market participant provide too much discretion); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,271, at P 182 (2008) (requiring CAISO to include tariff provisions that specify the minimum information it requires to accurately model interchange transactions).

¹³⁸ We note, however, that in *City of Cleveland v. FERC*, the D.C. Circuit made clear that a tariff must contain "those practices that affect rates and service significantly, that are reasonably susceptible of specification, and that are not so generally understood in any contractual arrangement as to render recitation superfluous." *City of Cleveland v. FERC*, 773 F.2d, 1368, 1376. While, presently, we find it acceptable to place the mentioned details used to determine policy-driven elements in the Business Practice Manual, if, once drafted, a party is concerned that these provisions could significantly affect rates and service, it can bring this issue to the Commission's attention under section 206 of the FPA.

funding such facilities. The criteria for LCRI facility selection is established in detail in RTPP proposed tariff section 24.4.6.3.2. Similarly, the consideration and treatment of LGIP network upgrades in the RTPP is also described in sufficient detail in 24.4.6.5. Policy-driven elements are network facilities and are distinguishable from non-network LCRI facilities. They are also distinguishable from LGIP network upgrades as the planning and selection process for policy-driven elements and LGIP network upgrades are distinct and clearly delineated in the tariff.

161. We find that CAISO's proposed least regrets approach, as modified, will adequately weigh current needs and potential future policy needs in order to avoid stranded investment. We discuss this least regrets approach in greater detail below.

162. We also reject Bay Area's request to require CAISO to amend the RTPP to address how CAISO will coordinate its planning process with CPUC's siting/planning process. The CPUC-CAISO MOU provides, among other things, for CAISO's consideration of study scenarios that reflect CPUC's long term procurement process.¹³⁹ We do not find it necessary to require that all input, assumptions, and study scenarios be included in the tariff. The tariff requires, and CAISO has the obligation to ensure, that the transmission planning process is open and transparent. Therefore, Bay Area and other stakeholders will be informed of how CAISO is taking CPUC's procurement decisions into account in CAISO's study scenarios. Furthermore, the Commission's transmission planning requirements do not require a Regional Transmission Organization (RTO) or ISO, such as CAISO to coordinate its planning process with state siting/permitting processes. Accordingly, we will not require CAISO to incorporate any such obligation with regard to the CPUC-CAISO MOU into CAISO's tariff.

163. With regard to Imperial's argument that CAISO should be required to amend its tariff to require coordination with non-PTOs in order to ensure a complete consideration of policy-driven elements to avoid stranded costs and the construction of duplicative facilities, we find that the proposed RTPP will provide an adequate opportunity for non-PTOs to comment on CAISO's comprehensive transmission plan throughout its development. Further, we find that, as discussed further below, the least regrets proposal will adequately weigh current needs and potential future policy needs in order to make sound development decisions that minimize the risk of overbuilding and stranded investment.

164. Pattern and Desert Southwest argue that the timing of policy-driven and economically-driven transmission element evaluation hinders independent developers because all other project categories will be evaluated for inclusion in the transmission

¹³⁹ <http://www.caiso.com/2799/2799bf542ee60.pdf>

plan before CAISO considers policy-driven and economically-driven proposals. While CAISO will not accept specific proposals to build transmission elements until Phase 3 of the RTPP, we disagree with Pattern and Desert Southwest's suggestion that CAISO will not consider potential transmission elements until all other project categories are evaluated for inclusion in the transmission plan. To the contrary, CAISO's consideration of potential policy-driven elements begins in RTPP Phase 1 during the development of CAISO's conceptual statewide plan. Further, throughout Phases 1 and 2 of the RTPP all interested parties may be involved in the development of the final comprehensive transmission plan by suggesting economic studies, reviewing and commenting on draft conceptual and comprehensive plans, and suggesting transmission and non-transmission alternatives.

165. Moreover, as noted above, if CAISO identifies needed transmission upgrades that satisfy reliability or long-term CRR needs, but also provide additional benefits, such upgrades will not be classified as reliability or long-term CRR feasibility projects. Instead, such upgrades may be identified as policy-driven or economically-driven transmission elements, depending on the benefits they will provide. We find this comprehensive transmission planning process, as proposed in the RTPP, to be efficient and effective to identify the needed transmission projects and elements, while limiting overbuilding and stranded investment. Thus, we find CAISO's proposal to not identify project sponsors for transmission elements until Phase 3 to be just and reasonable, given that consideration for the elements themselves will be given throughout the RTPP and all interested parties may participate in the development of the comprehensive transmission plan, which will identify needed transmission elements.

166. As stated above, we find that the proposed RTPP provisions related to policy-driven elements, as modified, provide sufficient detail, as well as openness and transparency to assess the need for policy-driven elements.

7. Economically-driven Elements

167. CAISO's current tariff provides for submission of economic project proposals prior to CAISO determining the need for such projects; CAISO states that the submission of a project confers on the project sponsor a right to build the project if it is ultimately included in the comprehensive transmission plan. CAISO proposes to change these provisions, such that, under the RTPP, during Phase 1, stakeholders can submit economic planning study requests that will inform CAISO's transmission planning studies and serve to identify needs for potential economically-driven elements that may ultimately be included in the comprehensive plan. However, any such economically-driven elements included in the comprehensive plan will be open to competitive solicitation during Phase 3 of the RTPP, whereby all interested parties will have an opportunity to propose to build

and own such elements.¹⁴⁰ Accordingly, under the RTPP, there will be no right to build conferred upon parties that submit economic planning study requests or economic project proposals.

168. CAISO explains that the development of the unified planning assumptions during Phase 1 provides an opportunity for stakeholders to provide input into the assumptions being used in its economic studies, along with the other technical studies that will be conducted by CAISO during the planning cycle. CAISO explains that these inputs will help to identify potential system needs that should be addressed by transmission or non-transmission solutions. CAISO notes that the RTPP provides a one month comment period for the proposal of interstate transmission lines, proposals for access to resources located in areas not identified in the conceptual plan, and non-transmission elements.¹⁴¹

169. CAISO explains that, once it identifies projects needed to maintain reliability, LCRI facility projects, qualified merchant projects and policy-driven elements, it will conduct high priority economic planning studies and any other studies to determine whether any additional transmission upgrades, additions, or modifications to identified transmission projects or elements are necessary to address: (1) congestion identified in the congestion data summary published for the applicable transmission planning process cycle and the magnitude, duration, and frequency of that congestion; (2) local capacity area resource requirements; (3) congestion projected to increase over the planning horizon used in the transmission planning process and the magnitude of that congestion; or (4) integration of new generation resources or loads on an aggregated or regional basis.

170. In determining whether any additional transmission elements are needed, CAISO states that it will consider the degree to which the benefits of any solution outweigh the anticipated costs.¹⁴² CAISO explains that benefits may include a calculation of any reduction in production costs, congestion costs, transmission losses, and capacity or other electric supply costs resulting from improved access to more cost-efficient resources.

¹⁴⁰ CAISO Post-Tech Conference Initial Comments at 5-6. CAISO RTPP Filing at 41.

¹⁴¹ CAISO Post-Tech Conference Initial Comments at 5. CAISO RTPP Filing at 41 (citing RTPP proposed tariff section 24.4.4).

¹⁴² With regard to costs, CAISO states that it will provide planning level cost estimates for each of the transmission elements that it finds are needed and include these estimates in the comprehensive transmission plan. CAISO states that stakeholders will then have the opportunity to comment on the potential costs to construct particular elements, during comment periods for the comprehensive plan. RTPP Filing at 66.

171. CAISO notes that the potential exists for some overlap between policy-driven projects and economically-driven projects, but contends that should not matter because the need for both types of plan elements is identified in the same stage of the planning process and the specific projects to satisfy both types of plan elements are subject to the open solicitation process. CAISO states that there will never be any overlap between these two categories of planning elements and reliability projects because reliability projects are limited to projects that meet reliability needs and cannot be expanded to cover economically-driven or policy-driven elements. As noted above, CAISO states that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project, and could instead be classified as an economically-driven transmission element, if it provided economic benefits.

172. As addressed above, Pattern and Desert Southwest state that the timing of policy-driven and economically-driven transmission element evaluation hinders independent developers because all other project categories will be evaluated for inclusion in the transmission plan before CAISO considers policy-driven and economically-driven proposals during the Phase 3 open solicitation.

Commission Determination

173. We find CAISO's proposed RTPP provisions regarding economically-driven transmission elements to be just, reasonable and not unduly discriminatory or preferential. With regard to parties' concerns that the timing of economically-driven transmission element evaluation hinders independent developers, we disagree. Instead, we find that the RTPP provides many opportunities for all interested parties to submit economic planning study and project proposals for consideration in CAISO's comprehensive transmission plan. There are also numerous opportunities to comment on CAISO's comprehensive plan during its development, such that parties may propose potential economically-driven transmission elements that might address multiple system needs and that would then be considered when determining the needed transmission elements. Further, the RTPP provides equal opportunities for all interested project sponsors, whether they are PTOs or independent developers, to propose to build economically-driven transmission elements.

8. Non-Transmission Alternatives

174. CAISO proposes several tariff modifications involving demand response and non-transmission alternatives that CAISO asserts would enhance the efficiency and comprehensiveness of its existing planning process. First, CAISO proposes to modify section 24.3.1 of the tariff by adding several new categories of inputs to the unified planning assumptions and study plan, including demand response programs and

generation and other non-transmission projects. CAISO explains that the purpose of the unified planning assumptions is to establish a common set of assumptions for the diverse planning studies that occur within the transmission planning process. Under the current tariff, these programs and projects are submitted during the request window. CAISO states that including them in the Phase I unified planning assumptions and study plan ensures that CAISO will consider these programs and projects within the same planning cycle as under the current tariff.

175. CAISO further proposes that, beginning with the 2011-2012 planning cycle, during development of the draft unified planning assumptions and study plan, it will provide a comment period according to a timetable set forth in the relevant Business Practice Manual that would allow submission of: (1) demand response programs proposed for inclusion in the base case; and (2) generation or non-transmission alternatives proposed as alternatives to transmission upgrades or additions.¹⁴³ CAISO states that it will consider these proposals in its preparation of the draft unified planning assumptions and study plan. CAISO also notes that this stakeholder process contemplated in RTPP proposed tariff section 24.3.3 augments the existing process with an additional opportunity for stakeholder proposals and increased notice requirements.

176. CAISO also states that under RTPP proposed tariff section 24.4.6.7, it will consider the degree to which the non-transmission solutions outweigh the costs of a facility being considered.¹⁴⁴ This analysis will include a consideration of demand-side management and non-transmission alternatives. CAISO asserts that it does not change the existing analytic approach to evaluating economically-driven projects, although its proposed RTPP places the economic analysis at a later point in the process to better comport with the logic of its more comprehensive planning approach.

177. SWP asks the Commission to require CAISO to confirm that the RTPP will “transparently explain and include the use of demand response resources in the base case assumptions of the CAISO’s annual Unified Planning Assumptions and Study Plan.” SWP proposes that CAISO be required to provide tariff language explaining how demand

¹⁴³ RTPP proposed tariff section 24.3.3 (Stakeholder Input – Unified Planning Assumptions/Study Plan).

¹⁴⁴ RTPP proposed tariff section 24.4.6.7 (Economic Studies and Mitigation Solutions) provides that in determining whether a particular solution is needed, CAISO will consider the comparative costs and benefits of non-transmission alternatives to the particular transmission element, including demand-side management.

response or remedial action schemes¹⁴⁵ could be used for each category of projects under RTPP, when practical.

178. SWP suggests the CAISO should add tariff language indicating how SWP would be compensated for load shedding under the remedial action scheme when its contract with PG&E expires. SWP asserts that potential demand response providers will be less inclined to offer services as a transmission substitute if the CAISO tariff fails to specify how they would be compensated in energy markets. SWP suggests that in compensating demand response substituting for transmission upgrades, consideration should be given to the price signals that might induce loads to make demand response investments that would shift usage to off-peak periods. SWP states that unlike most transmission providers, CAISO employs a flat, non time-sensitive transmission rate that sends no price signal to loads. In support of this suggestion, SWP quotes the Commission's statement in the National Action Plan on Demand Response that "[d]emand response can go beyond simple reduction in peak consumption to include shifting consumption from peak to off-peak hours."¹⁴⁶

179. In its Answer, CAISO argues that RTPP proposed tariff sections 24.3.1 and 24.3.3 address SWP's concerns. According to CAISO, section 24.3.1 expressly contemplates the inclusion of demand response programs in the base case or assumptions for the comprehensive transmission plan. CAISO points out that under section 24.3.3, stakeholders can submit demand response programs for consideration in the development

¹⁴⁵ SWP explains that its large water pumping loads provide the large majority of demand response on the CAISO system, which it bids in the day ahead market for ancillary services in the form of operating reserves. SWP states that, long before the advent of CAISO, SWP entered into an existing transmission contract under which SWP pumps will be automatically dropped by a remedial action scheme in certain contingencies as a substitute for transmission upgrades. SWP asserts that this arrangement supports the capacity ratings on Path 15 and 66. SWP expresses concern that it is aware of no tariff language or other guidance that describes how such a demand-based transmission substitute would be compensated by CAISO. Consequently, SWP is uncertain whether or how CAISO would compensate it for the remedial action scheme after the existing transmission contract expires. SWP points out that currently only participating load has a direct contractual relationship with CAISO, and other demand response in California is either under a load serving entity or, in the case of proxy demand response, involves a contractual relationship between the demand response aggregator and CAISO. *See* SWP Protest at 3-5.

¹⁴⁶ SWP Protest at 5 (citing National Action Plan on Demand Response, Docket No. AD09-11, at 4 (2010)).

of the draft unified planning assumptions and study plan. CAISO argues that SWP's request that the Commission require it to implement tariff provisions describing how the remedial action scheme will be priced after its expiration is inappropriate and beyond this proceeding's scope. Likewise, CAISO also submits that SWP's arguments pertaining to time-of-use pricing are beyond the scope of this proceeding. CAISO maintains that demand response initiatives and proceedings that are currently underway are the appropriate settings for addressing its general demand response-related concerns.

Commission Determination

180. We find that CAISO's tariff provisions regarding non-transmission alternatives, as revised for inclusion in the RTPP, continue to comply with Order No. 890. We note that the Commission already determined in its evaluation of CAISO's Order No. 890 compliance filing that CAISO had adequately described in its existing tariff how demand response resources will be treated comparably.¹⁴⁷ Here we confirm that CAISO's relevant proposed RTPP tariff provisions include and explain with sufficient transparency the use of alternatives to transmission upgrades. Specifically, RTPP proposed tariff section 24.3.1 expressly provides for consideration of demand response programs in the base case or assumptions for the comprehensive transmission plan, as well as other non-transmission alternatives proposed in long-term planning studies. Additionally, beginning with the 2011/2012 planning cycle, CAISO will hold a comment period for all interested parties to submit proposals to build demand response programs and other non-transmission alternatives for consideration during RTPP Phase 1 development.¹⁴⁸

181. We note that the RTPP also contemplates non-transmission alternatives with respect to reliability and economically-driven needs. RTPP proposed tariff section 24.4.3 provides that CAISO will open a request window during Phase 2 to accept, among other project proposals, proposals for demand response or non-transmission alternatives to meet reliability needs. Additionally, RTPP proposed tariff section 24.4.6.7 provides that CAISO will consider the comparative costs and benefits of non-transmission alternatives and demand-side management as alternatives to needed transmission elements. Further, RTPP proposed tariff section 24.4.6.8 clarifies that upon approval of the comprehensive plan, approved project sponsors' will be allowed to proceed. We interpret this provision to mean projects approved in the final comprehensive plan that are net of all transmission alternatives considered; however, this is not clear in the RTPP proposed tariff revisions. Accordingly, we direct CAISO to make a compliance filing to modify RTPP proposed tariff section 24.4.6.8 to specify that the transmission projects approved in the comprehensive plan are those remaining after the evaluation of transmission and

¹⁴⁷ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 at P 104.

¹⁴⁸ RTPP proposed tariff section 24.3.3.

transmission alternatives, within 30 days of issuance of this order. With that modification, we find CAISO's proposed tariff revisions concerning demand response and other non-transmission alternatives continue to comply with Order No. 890, are sufficiently clear and transparent.

182. With respect to SWP's concern regarding compensation for demand response, we agree with SWP that clarity in how demand response and other non-transmission alternatives are compensated fosters their development. However, as SWP acknowledges, the existing CAISO tariff already provides a mechanism for how proxy demand resources will be compensated.¹⁴⁹ In addition, CAISO has not proposed changes to compensation for demand response.

183. With regard to SWP's request that consideration be given to time-of-use transmission pricing, SWP has raised this issue several times in the past and the Commission has rejected SWP's arguments.¹⁵⁰ SWP's argument regarding time-of-use transmission pricing is not only a collateral attack on prior Commission findings, but is also beyond the scope of this proceeding. Likewise, SWP's request that the Commission require CAISO to implement tariff provisions describing how the remedial action scheme will be priced after SWP's contract expires is not only premature but also beyond the scope of this proceeding. As CAISO points out and SWP acknowledges in its comments, some of CAISO's ongoing demand response initiatives will address these issues, including SWP's specific participating load market issues.¹⁵¹

C. Least Regrets Approach

184. As mentioned above, in RTPP proposed tariff section 24.4.6.6, CAISO proposes to identify policy-driven transmission upgrades or additional elements needed to efficiently and effectively meet state or federal policy requirements and directives. In the process of determining the need for such policy-driven upgrades and additions, CAISO proposes to study various resource location and integration scenarios while mitigating the risk of stranded transmission investment by applying certain criteria. Under this approach, CAISO proposes to consider the ten criteria discussed above in order to mitigate the risk of stranded transmission investment. CAISO refers to this approach as "least regrets;" however, we note that the least regrets criteria are the ten criteria described above that are

¹⁴⁹ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,045 (2010) (finding that proxy demand resources will generally be paid the locational marginal price).

¹⁵⁰ *E.g.*, *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,313 (2007); *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 61,337 (2005).

¹⁵¹ SWP Comments at n.3; CAISO Answer at 14 and n.13.

used for determining policy-driven needs. While the criteria are discussed to some extent above, we consider them further herein, to more fully address commenters' concerns about CAISO's proposed approach for determining policy-driven element needs.

185. CAISO explains that its least regrets analysis will help it to ensure that transmission needed to achieve public policy goals will be developed in a manner that balances the competing objectives of timeliness and not overbuilding transmission.

186. CAISO argues that the RTPP is intended to better coordinate the LGIP and the transmission planning process through comprehensive planning and increase the opportunities for other transmission developers to build needed transmission elements. CAISO states that in the Transmission NOPR, the Commission expressly states that the benefit of a proposed requirement to consider public policy requirements is that it "may eventually increase the proportion of transmission network investment that is constructed pursuant to proactive transmission planning processes, thereby reducing the proportion of network upgrades that would otherwise be triggered by individual generator interconnection requests."

187. CAISO notes that the tariff description of the policy-driven category of transmission elements must be flexible enough to permit CAISO to conduct its evaluation under conditions of greater uncertainty (e.g., regarding the timing and location of future generation resources) than normally exists in transmission planning. CAISO states that the criteria set forth in proposed RTPP proposed tariff section 24.4.6.6 will depend on the evolving nature of the particular policy goal that is driving the analysis and the quality of information available.

188. CAISO proposes to provide greater methodological details in its Business Practice Manual and states that it will address the policy goals to be evaluated in each cycle, as well as the process for identifying policy-driven elements, during Phase 1 of the planning cycle when it works with stakeholders to develop the study plan and planning assumptions.

189. CAISO states that, under its new least regrets proposal, it will identify the resources within reasonable assumption scenarios that will be most likely to develop -- based on commercial interest, progress in permitting, as well as environmental impact considerations and other factors.

190. CAISO states that the "core" set of renewable resource assumptions for developing the Category 1 elements will be informed by the interconnection queue and the procurement information from CPUC. Then, CAISO states, elements will be categorized as Category 1 if they are needed in this core or baseline scenario and a significant percentage of sensitivity scenarios. CAISO states that it is likely that category 1 elements will reflect the transmission needs for many resources in the CAISO queue

that have not proceeded through the LGIP to Phase II and hence are not yet required as LGIP network upgrades.

191. CAISO states that it will share with stakeholders the complete scenarios examined, with an explanation as to the underlying assumptions for each one and the rationale for proposing particular transmission elements in Category 1 and Category 2. CAISO adds that the least regrets analysis will identify policy-driven elements that will be needed over a long-term planning horizon, but without necessarily seeking to advance all needed transmission in the initial year of comprehensive analysis (i.e., 2010). CAISO contends that this look into the future of renewable development, beyond generation in the LGIP Phase II studies, will, consistent with proposed RTPP proposed tariff section 24.4.6.6, enable policy-driven elements ultimately to supplant major LGIP network upgrades.

192. CAISO states that, generally, the least regrets analytical process is a series of engineering sensitivity studies used to identify a common set of transmission elements that are needed under the renewable scenarios most likely to occur. CAISO notes this process will be used during each planning cycle. CAISO notes that parties raise some concerns along those lines and offers to address the issues raised by these parties. Accordingly, CAISO proposes to modify RTPP proposed tariff section 24.4.6.6 as follows to reflect this common understanding and agreement as to its least regrets study approach:

The CAISO will determine the need for, and identify such policy-driven transmission upgrade or addition elements that efficiently and effectively meet applicable policies under alternative resource location and integration assumptions and scenarios, while mitigating the risk of stranded investment. The CAISO will create a baseline scenario reflecting the assumptions about resource locations that are most likely to occur and one or more reasonable stress scenarios that will be compared to the baseline scenario. Any transmission upgrade or addition elements that are included in the baseline scenario and at least a significant percentage of the stress scenarios may be Category 1 elements. Transmission upgrades or additions that are included in the base case, but which are not included in any of the stress scenarios or are included in an insignificant percentage of the stress scenarios, generally will be Category 2 elements, unless the CAISO finds that sufficient analytic justification exists to designate them as Category 1. In such cases, the ISO will make public the analysis upon which it based its justification for

designating such facilities as Category 1 rather than Category 2. In this process, the CAISO may consider, but is not limited to, the following criteria:

¹⁵²
...

193. Desert Southwest, PG&E, CalWEA, Green Energy, Pattern, San Francisco, and SDG&E argue that CAISO's tariff criteria are not clear and the least regrets concept is ambiguous. Pattern states that the least regrets approach will reduce the number of public policy projects that will be approved in the planning process and creates barriers for independent developers that are not faced by incumbent transmission owners.

194. As discussed in detail in the policy-driven elements section above, parties argue that the proposed RTPP does not set forth the analysis CAISO will use to determine what transmission elements are identified for inclusion in the comprehensive transmission plan. Parties also raise concerns about CAISO's discretion and potential for over-building and stranded costs. Also as discussed above, parties request that the Commission require CAISO to explain in its tariff, not Business Practice Manual, its least regrets methodology, including how it will use its proposed criteria to evaluate its transmission needs or the relative weight it will assign to each criterion. CalWEA and Desert Southwest argue that CAISO should include the complete list of metrics that it will use to identify the potential need for policy upgrades and specify the least regrets modeling method and how it will apply them.¹⁵³ Desert Southwest explains that a clear standard for least regrets would provide developers with adequate notice and opportunity to conform to the tariff's requirements.

195. San Francisco argues that the continued uncertainty of the least regrets approach underscores the need for limiting the approval of policy-driven projects to those projects that fulfill state and federal laws and regulations. San Francisco contends that, absent the limitations contained in the Commission's Transmission NOPR, i.e., that the policy underlying policy-driven elements be codified in laws and regulations, CAISO could get out in front of state policy makers, committing the state to potentially billions of dollars of new transmission projects that may not be needed.¹⁵⁴ San Francisco claims that, once RTPP branches into the policy-driven category without definition or specific criteria, CAISO risks wedding the state and its ratepayers to a strategy of transmission development that is out of step with economic, environmental and political decisions

¹⁵² CAISO Post-Tech Conference Reply Comments at 7-8.

¹⁵³ CalWEA Comments at 3; CalWEA Post-Tech Conference Reply Comments at 3; Desert Southwest Post-Tech Conference Initial Comments at 3-4.

¹⁵⁴ San Francisco Post-Tech Conference Reply Comments at 7.

made to further other legal mandates. San Francisco claims that CAISO has not offered sufficient justification to overcome these concerns.

Commission Determination

196. We find that CAISO's proposed approach to determining the need for and identifying policy-driven elements is just and reasonable, subject to modification. To identify the most efficient and effective transmission upgrades and additions needed to achieve policy objectives, CAISO must consider and evaluate a number of generation and transmission development scenarios. Because there may be some uncertainty involved with resource development scenarios, it is reasonable for CAISO to apply its proposed criteria to mitigate the risk of overbuilding transmission. Consideration of commercial interest in developing resources in a given geographic area, local regulatory authorities' resource procurement directives, cost of alternative transmission and non-transmission options and their overall effectiveness in integrating resources, and other proposed screens are reasonable criteria to ensure the right infrastructure solutions with the least risk of stranded investment are approved and developed. Therefore, we find CAISO's least regrets framework to be reasonable.

197. We are not persuaded by the arguments that the proposed criteria are not clear and that the least regrets approach is ambiguous. However, as described above, we are requiring CAISO to change "may" to "will" and remove "but is not limited to" with regard to the criteria that CAISO proposed and should consider when determining needed policy-driven elements. We are also not convinced that metrics or weights for the least regrets criteria must be specified in the tariff. CAISO has defined a reasonable framework for its analysis and identification of policy-driven elements. Further, the scenario-based nature of the analysis requires that CAISO have some flexibility in the implementation of the least regrets approach and in applying the criteria. In addition, CAISO is required to conduct its transmission planning process in an open and transparent manner, and stakeholders have many opportunities at the various stages of the transmission planning process to review and comment on CAISO's assumptions, analysis, and study results. The openness and transparency requirements also apply to the implementation of the least regrets approach. Therefore, stakeholders will be able to clearly understand CAISO's methodology and provide input on CAISO's approach. Given this open and transparent process, stakeholders will be able to participate in and monitor the process to ensure that there is no undue discrimination and to take appropriate action if there is any such behavior.

198. We also decline to adopt CalWEA's recommendation to require CAISO to expand its use of least regrets to apply a least regrets multi-scenario analysis to LGIP upgrades and coordinate the associated cost responsibility for transmission upgrades. Because we find CAISO's proposal to be just and reasonable, we need not consider alternative approaches in this proceeding. However, we expect that CAISO will continue to improve

its transmission planning process and encourage CAISO to consider proposals like CalWEA's.

199. In response to comments by PG&E and CalWEA, CAISO proposes to modify RTPP proposed tariff section 24.4.6.6 to clarify how Category 1 and Category 2 upgrades are delineated. We accept CAISO's proposal and direct CAISO to include this revision in a compliance filing within 30 days of issuance of this order.

D. Open Solicitation and Project Sponsor Selection

200. At the end of RTPP Phase 2, CAISO will present to its Governing Board its comprehensive transmission plan, which will consist of all the needed transmission addition and upgrade projects and elements that were identified throughout the Phase 1 and 2 processes. Upon the CAISO Governing Board's approval of the plan, the final comprehensive transmission plan will be posted to CAISO's website. Phase 3 will begin in the month following approval of the comprehensive plan and provide a period of at least two months for interested project sponsors to submit specific transmission project proposals to finance, own, and construct the transmission elements identified in the comprehensive plan.¹⁵⁵

201. At the end of the project submission period, CAISO will select projects and approved project sponsors pursuant to the project sponsor qualifications and factors described below. If only one project sponsor submits a proposal for a particular transmission element and CAISO determines that the project sponsor is qualified to own and construct the project, then the project sponsor must seek siting approval, and any other necessary approvals, from the appropriate authority(s) within 60 days of CAISO approval.¹⁵⁶

202. CAISO states that in cases where two or more qualified project sponsors propose to build the same transmission element, CAISO will, upon request, facilitate an opportunity for the competing project sponsors to collaborate with each other to propose a single project to meet the transmission need. If the competing project sponsors are unable to collaborate and are applying to the same siting authority, the competing project sponsors must seek siting approval within 60 days and the ultimate approved project sponsor will be determined by the siting authority. On the other hand, if the competing project sponsors are applying to different siting authorities then each other, CAISO will select the one approved project sponsor based on the criteria and factors set forth in the

¹⁵⁵ See RTPP proposed tariff sections 24.4.10, 24.5.

¹⁵⁶ RTPP proposed tariff section 24.5.2.2.

RTPP. CAISO explains that it proposes minimum criteria in section 24.5.2.1,¹⁵⁷ and includes additional non-discriminatory criteria in section 24.5.2.4¹⁵⁸ that it drew from stakeholder input.

203. Notably, the project sponsor selection factors allow project sponsors to demonstrate cost containment capability and other advantages they may have to build the specific project, including any binding agreement to a cost cap that would preclude costs above the cap from being recovered through the CAISO's transmission access charge.¹⁵⁹

¹⁵⁷ RTPP proposed tariff section 24.5.2.1 (Project Sponsor Qualification) provides that CAISO will evaluate project sponsor transmission element proposals to determine: (a) whether the proposed project is consistent with needed transmission elements identified in the comprehensive transmission plan; (b) whether the proposal satisfies applicable reliability criteria and CAISO planning standards; and (c) whether the project sponsor is physically, technically, and financially capable of (i) completing the project in a timely and competent manner; and (ii) operating and maintaining the facilities.

¹⁵⁸ RTPP proposed tariff section 24.5.2.4 (Project Sponsor Selection Factors) provides the factors to be considered by CAISO when selecting a project sponsor from competing proposals to build the same transmission element. The factors are:

(a) the current and expected capabilities of the Project Sponsor and its team to finance, license, and construct the facility and operate and maintain it for the life of the project; (b) the Project Sponsor's existing rights of way and substations that would contribute to the project in question; (c) the experience of the Project Sponsor and its team in acquiring rights of way, and the authority to acquire rights of way by eminent domain, if necessary, that would facilitate approval and construction; (d) the proposed schedule for development and completion of the project and demonstrated ability to meet that schedule of the Project Sponsor and its team; (e) the financial resources of the Project Sponsor and its team; (f) the technical and engineering qualifications and experience of the Project Sponsor and its team; (g) if applicable, the previous record regarding construction and maintenance of transmission facilities, including facilities outside the CAISO Controlled Grid of the Project Sponsor and its team; (h) demonstrated capability to adhere to standardized construction, maintenance and operating practices; (i) demonstrated ability to assume liability for major losses resulting from failure of facilities; (j) demonstrated cost containment capability and other advantages the Project Sponsor and its team may have to build the specific project, including any binding agreement by the Project Sponsor and its team to accept a cost cap that would preclude project costs above the cap from being recovered through the CAISO's Transmission Access Charge.

¹⁵⁹ RTPP proposed tariff section 24.5.2.4(j).

1. Project Sponsor Selection Factors

204. Several parties support CAISO's use of voluntary binding cost caps as a means to control costs and many suggest applying cost cap comparison as a selection criterion more broadly throughout the RTPP.¹⁶⁰ However, PG&E and SoCal Edison request that the Commission require CAISO to remove cost caps from the RTPP, stating that cost caps are unreliable and have negative consequences on ultimate ratepayers, particularly if the project sponsor changes or the project is abandoned.

205. Several protestors argue that the RTPP should include additional cost containment measures and specific provisions that provide the public with access to CAISO's cost information.¹⁶¹ In particular, these parties point to sections 24.4 and 24.5 as areas that would benefit from the inclusion of criteria on increased cost containment principles, the impact on the transmission access charge, and anticipated cost differences. Several of these parties offer specific suggestions of additional criteria to use, including: linking rate incentives with project cost containment, applying least-cost planning principles, explicitly addressing economic savings, evaluating transmission access charges, and using competitive bidding to balance costs and risk mitigation.

206. Concerning rate incentive treatment, several parties argue that a project sponsor's willingness to forgo rate incentives should be a stronger criterion in CAISO's selection between competing project sponsors.¹⁶² San Francisco asserts that rate incentives should not be applicable for any project CAISO identifies as a need because such facilities are already guaranteed cost recovery. NCPA suggests considering if the current procedure, in which multiple basis points are added to a transmission owner's rate of return, is necessary to incentivize transmission developers to build new facilities. NCPA also contemplates linking return on equity incentives to actual performance, such as cost and schedule benchmarks.

207. Six Cities argues that the Commission should not award PTOs transmission incentives unless the projects are studied and approved through the RTPP. Pattern notes that if a transmission owner seeks and obtains Commission abandoned cost recovery as a rate incentive, that utility gains financial resources that enable it to upsize a proposed modest network upgrade to address interconnection of other renewable resources. Pattern warns that the incumbent transmission owner may have a competitive advantage funded

¹⁶⁰ See, e.g., Bay Area, CMUA, NCPA, San Diego, Six Cities, and TANC.

¹⁶¹ See, e.g., Bay Area, CMUA, MRE/PE, NCPA, Pattern Transmission, San Francisco, Six Cities, SWP, and TANC.

¹⁶² See, e.g., Bay Area, CMUA, NCPA, San Francisco, Six Cities, and TANC.

by California ratepayers for projects evaluated in Phase 3 and open to competitive solicitation.

208. SoCal Edison and PG&E raise concerns that if an approved project sponsor is unable to adhere to its cost cap, it may abandon its project. SoCal Edison, therefore, suggests that the cost cap criterion be removed from the RTPP. PG&E states that the developer who acquires an abandoned project may have to do some tear-down and rebuild to ensure reliability, as well as seek a new permitting request, which could result in higher consumer costs, delays, and diminished reliability.¹⁶³

209. Metro Renewable Express LLC and Pony Express LLC (Metro Renewable) claim that the proposed criteria are unjust and unreasonable because they do not consider the ability to develop a transmission facility at the lowest cost.

210. Bay Area and WITG ask CAISO to confirm that rules concerning cost caps will be applied fairly and equally to both independent and incumbent transmission developers. Both parties additionally protest that CAISO does not include environmental considerations in the RTTP selection criteria. San Francisco is concerned that CAISO's review does not include the requirements and implications of the California Environmental Quality Act (CEQA). Therefore, San Francisco contends that CAISO should delay its evaluation of competing project sponsors until after each siting authority completes its review.

211. Pattern and PG&E oppose San Francisco's request that CAISO delay its evaluation of competing project sponsors until after each siting authority completes its review. Both parties assert that such delay would waste time and resources, as well as negatively impact costs. Pattern argues that because siting costs are more expensive than participating in CAISO's selection process, the costs of abandoned projects will increase if projects are required to first complete siting and regulatory review. Pattern explains that such delay will put pressure on project sponsors to seek abandoned project cost recovery as a transmission rate incentive. Pattern also asserts that project costs will increase if project sponsors compete simultaneously for real estate, property leases, and tax abatement arrangements. Pattern contends that there are two aspects of project costs that should be considered in the competing project sponsor selection process. First, Pattern argues that when comparing competing project proposals, it is logical to conclude that the shorter of the proposed projects in terms of routing would cost less to construct than the longer project. Second, Pattern asserts that a cost estimate done for a project with supporting analysis should be considered more credible than a proposal lacking such analysis.

¹⁶³ PG&E Post-Tech Conference Initial Comments at 6.

212. Western Grid and MRE/PE state that they disagree with CAISO's proposal to only allow incumbent PTO project sponsors to show that they could develop their projects at a lower cost, and disagree with CAISO that allowing other sponsors to make their case would provide an incentive for project sponsors to deliberately underestimate their costs. Western Grid contends that under an open, transparent and nondiscriminatory process, CAISO would have ample opportunity to require cost estimate justification from project sponsors and incumbent PTOs.

213. CAISO asserts that although it included several suggestions from stakeholders in the project sponsor selection factors, it chose not to specify rate incentives as one of the cost criteria. CAISO explains that expressly adding such criteria to the tariff would violate federal policy goals.¹⁶⁴ CAISO reasons that the voluntary cost cap measures incorporated in the RTPP are the best way to measure and contain costs. CAISO opposes protestors' suggestions to single out a project sponsor's willingness to forego rate incentives by giving this selection criterion a tariff-based advantage. CAISO argues that adopting express criteria that address rate incentives could result in awarding projects to higher-cost competitors, particularly if undue weight is given to rate incentive treatment. Instead, CAISO asserts that return on equity is only one component of a project's overall cost; therefore, a project sponsor's agreement to eliminate or reduce rate incentives will not automatically result in the most cost-effective solution.

214. CAISO clarifies that cost caps will be used as an evaluation criterion when deciding between two project sponsors that are otherwise comparatively equal. CAISO notes that cost estimates provided by project sponsors are unreliable and easily manipulated; thus, CAISO intends only to use cost comparison information based on binding agreements.¹⁶⁵ CAISO maintains that the selection criteria apply to all developers alike. CAISO reiterates that the tariff does not adopt or impose cost caps, and instead only applies when different sponsors submit competing projects to separate siting authorities and voluntarily commit to a cap.

215. Regarding project abandonment risk, CAISO explains that it will not require newly-selected project sponsors to involuntarily accept cost caps to which the previously-selected project sponsor agreed. CAISO instead clarifies that it must approve the project

¹⁶⁴ RTPP Filing at 67.

¹⁶⁵ We note, however, as discussed previously, that CAISO will provide its own planning level cost estimates for each of the transmission elements that it finds are needed and include these estimates in the comprehensive transmission plan. Such CAISO-provided planning level cost estimates are different from potential project-specific cost estimates provided by competing project sponsors.

sponsor to which an abandoned project is assigned, and that it will consider this sponsor's willingness to abide by the cost cap as an evaluation factor. Otherwise, CAISO notes that it will assign the project to a PTO covering the relevant service territory, or conduct a second competitive solicitation process.

216. CAISO argues that it is not unjustly ignoring the cost savings of projects by independent transmission developers. CAISO states that it is giving project sponsors an opportunity to agree to cost caps, but CAISO states that anything less than such cost caps would be unenforceable and unreliable.

217. In response to Pattern, CAISO reiterates that it is not appropriate or useful to use planning level cost estimates for deciding between competing proposals to build the same transmission element under Phase 3 of the RTPP. Instead, CAISO explains, planning level cost estimates, which include consideration of the length of a potential transmission line, are considered early in the RTPP process when CAISO is identifying the most cost-effective transmission projects or elements to meet the needs of its system. CAISO states that planning level costs cannot usefully distinguish between competing proposals during Phase 3 because such proposals would be for essentially the same facility.¹⁶⁶

218. CAISO refutes San Francisco's protest, stating that the RTPP does not impinge on state siting authority. CAISO argues that even if it waited until all siting authorities completed their reviews to choose between competing project sponsors that applied to different siting authorities, the fundamental question of which project sponsor to approve would remain. CAISO explains that there is no process in the state for choosing among competing projects that are submitted to different siting authorities. Accordingly, CAISO contends that it is appropriate for CAISO to make the decision in these limited circumstances to determine the approved project sponsor. CAISO notes that in this instance, the RTPP addresses competing project sponsors applying to different siting authorities up front before multiple transmission developers spend significant time and resources on duplicative efforts and a prolonged siting process.¹⁶⁷

Commission Determination

219. We find CAISO's proposed provisions for selecting project sponsors to be just and reasonable, as modified below. CAISO's open solicitation process allows all interested developers to submit proposals and compete to sponsor any policy-driven or

¹⁶⁶ CAISO Answer at 90-93.

¹⁶⁷ CAISO Answer at 81-82.

economically-driven transmission element in the approved comprehensive transmission plan.

220. Specifically, we find that the project sponsor selection factors for choosing between competing project sponsors are just and reasonable and not unduly discriminatory or preferential. CAISO's proposed criteria are aimed at ensuring that project sponsors are qualified and have the capability to construct, operate, and maintain the facilities. Given the long lead time to construct and bring transmission facilities on-line, it is important that project sponsors have the ability to finance, license and successfully construct transmission facilities in a timely manner so that policy goals driving the need for such facilities can be met and to minimize the risk of abandoned projects. Therefore, we accept CAISO's proposed project sponsor selection criteria.

221. The RTPP proposal includes sufficient criteria and factors for determining project sponsors and choosing between competing sponsors who submit qualified proposals to build the same transmission element. Accordingly, we reject protestors' broad requests to modify these provisions further, particularly with regard to cost caps and estimates. However, we remind CAISO that all of its selection criteria must be applied in a non-discriminatory manner. While we note that some protestors request additional information regarding cost comparison, we find that the proposal allows project sponsors to demonstrate their individual advantages and qualifications appropriately.

222. We disagree with parties' arguments that a project sponsor's willingness to forgo rate incentives should be a stronger criterion in CAISO's selection between competing project sponsors. Rate incentives are a component of the overall cost of a project. We agree with CAISO that it is inappropriate to give more weight to one component of cost containment and believe that a voluntary cost cap is a better measure of cost containment. Furthermore, with regard to San Francisco's assertion that rate incentives should not be applicable for any project CAISO identifies as a need, we find this to be beyond the scope of this proceeding. Whether or not the Commission grants incentives to any particular project is determined on a case by case basis, and is therefore, beyond the scope of this proceeding.

223. In response to Western Grid and MRE/PE's assertions that CAISO's cost cap provisions only apply to PTO project sponsors, we disagree. We note that an approved project sponsor will become a PTO, if it is not already, once it turns over its network facilities to CAISO; however, project sponsors need not already be PTOs to submit proposals to build transmission elements. The RTPP proposed tariff provisions provide for any competing project sponsor to demonstrate cost containment capability, which

includes any binding agreement to a cost cap.¹⁶⁸ There are no such provisions specific to PTOs, nor is there any opportunity for any project sponsor to submit merely a cost estimate.

224. With regard to requests that cost estimates and analyses be considered when deciding between competing proposals, we agree with CAISO when it states that it would not be appropriate to incorporate criteria for selecting among competing project sponsors based on the estimated costs of a project. Such criteria would provide an incentive for project sponsors to deliberately underestimate their costs, and CAISO does not have the authority to enforce compliance with project cost estimates.¹⁶⁹ In addition, cost estimates are considered early in the RTPP process when deciding which transmission elements will most effectively (costs included) address the identified transmission needs.

2. Treatment of Independent Developers in Project Sponsor Selection

225. DayStar argues that CAISO should revise its tariff to include a specific procedure for potential sponsors to appeal directly to the Commission when CAISO determines that a project sponsor is not qualified, to prevent CAISO from unduly discriminating against independent transmission developers.

226. DayStar also requests that the Commission direct CAISO to amend the language in RTPP proposed tariff section 24.5.2.1, regarding project sponsor qualification, to replace the term “project sponsor” with “project sponsor and its team.” CAISO states that it does not object to this requested change and notes that making this change will make section 24.5.2.1 consistent with section 24.5.2.4.¹⁷⁰

227. Western Grid and MRE/PE contend that the project sponsor selection factors contain specifications that favor incumbent developers, such as the financial resources, technical and engineering qualifications, and previous records regarding construction and maintenance of transmission facilities of the project sponsor and its team. MRE/PE states that CAISO’s proposed project sponsor selection criteria allow CAISO to exclude independent transmission developers from constructing transmission projects because

¹⁶⁸ RTPP proposed tariff section 24.5.2.4(j) (providing that a project sponsor may demonstrate cost containment capability, including any binding agreement to accept a cost cap that would preclude project costs above the cap from being recovered through the transmission access charge).

¹⁶⁹ RTPP Filing at 9.

¹⁷⁰ CAISO Answer at 85.

they focus on a project sponsor's similarity to incumbent utilities, not its ability to accomplish a particular task.

228. Pattern argues that the project sponsor qualification criteria and selection factors only apply to policy-driven and economically-driven projects. Pattern argues that this constitutes discriminatorily inconsistent application of the qualification criteria because PTOs are not subject to the same qualification criteria for other types of projects.

229. Nevada Hydro contends that CAISO uses its transmission planning process to delay and hinder proposals made by independent companies (including Nevada Hydro) due to a "two-caste" system that favors incumbent PTOs. Nevada Hydro also states that when CAISO approves an incumbent-sponsored project, it eliminates the value of a formerly competing independent project by reducing its benefits and increasing independent developers' costs. Nevada Hydro also alleges that CAISO and incumbent developers repeatedly violate Commission rules and CAISO's tariff. Therefore, Nevada Hydro requests that the Commission grant incentivized rates of return for independently-sponsored projects, expedite the approval of projects that CAISO has not yet acted on, and suspend its consideration of the RTPP until the Transmission NOPR is finalized.

230. CAISO states that Nevada Hydro has neither filed a complaint nor offered specific facts to advance its arguments. CAISO asks the Commission to disregard Nevada Hydro's comments to the extent that they exceed this proceeding's scope.

Commission Determination

231. We find the proposed RTPP criteria for project sponsor qualification and selection to be just, reasonable and not unduly discriminatory or preferential, and reject arguments that their application undermines competition between PTOs and independent transmission developers. CAISO's proposed RTPP provides new opportunities for independent transmission developers to compete to build and own policy-driven and economically-driven transmission elements. This feature of the RTPP significantly enhances the opportunity for independent developers to participate in developing needed infrastructure to achieve state and federal policy goals. Therefore, we find this aspect of the RTPP to be just and reasonable and disagree with parties' assertions that the proposed project sponsor selection criteria undermines competition and excludes independent developers. CAISO has proposed objective selection criteria aimed at ensuring the project sponsor's ability to carry a project through to completion and continue to maintain and operate the facility once it is in service. The criteria do not exclude independent developers; rather, they ensure that the developer is qualified. We direct CAISO to apply the RTPP project sponsor qualification criteria in a non-discriminatory manner.

232. We find it unnecessary to grant DayStar's request to require CAISO to include the procedure for appealing disputes to the Commission. DayStar and others already have rights to appeal directly to the Commission at any time through a complaint filed under section 206 of the FPA,¹⁷¹ and these rights need not be repeated in the tariff.

233. With regard to DayStar's request to amend the language in RTPP proposed tariff section 24.5.2.1 to replace the term "project sponsor" with "project sponsor and its team," we agree with DayStar and CAISO that making this change is reasonable and will appropriately make RTPP proposed tariff section 24.5.2.1 consistent with section RTPP proposed tariff section 24.5.2.4.¹⁷² Therefore, we direct CAISO to make a compliance filing within 30 days of issuance of this order to include that revision.

234. Western Grid and MRE/PE contend that the project sponsor selection factors contain specifications that favor incumbent developers. We disagree. While all transmission developers have different experience and qualifications to offer, we find that the criteria provided under the RTPP are a reasonable balance for considering many different factors and allowing all interested project sponsors to demonstrate their individual abilities, experience, and assets.

235. Pattern appears to argue that CAISO's proposed project sponsor qualification and selection criteria for policy-driven and economically-driven projects are discriminatory because they do not also apply to other categories of projects. We are not persuaded by Pattern's argument. Pattern has not provided sufficient legal justification to require us to find that the project sponsor qualification and selection criteria for policy-driven and economically-driven elements also must apply to other categories of projects.

236. Nevada Hydro complains that CAISO's transmission planning process delays and hinders independent transmission developer proposals and that CAISO has not properly processed a transmission proposal submitted by Nevada Hydro. Nevada Hydro also alleges that CAISO and incumbent utilities repeatedly violated the Commission's rules. Nevada Hydro's allegations about violations of the Commission's rules or about CAISO's failure to follow its tariff are beyond the scope of this proceeding. Such allegations can be brought to the Commission through an FPA section 206 complaint proceeding. Nevada Hydro's complaints and request for incentive rates for independently-sponsored projects are additionally outside the scope of this proceeding.

¹⁷¹ 16 U.S.C. § 824e (2006).

¹⁷² CAISO Answer at 85.

3. CAISO's Authority to Choose Between Competing Project Sponsors

237. Nevada Hydro and San Francisco oppose CAISO having decisional authority to choose between competing project sponsors when two proposals to build the same transmission element are submitted to different siting authorities. Both parties generally argue that CAISO lacks the necessary expertise to be the decisional authority. Nevada Hydro specifically points to CPUC as the appropriate judge in this matter; however, San Francisco states that the Public Resources Code assigns this authority to the Governor of California's Office of Planning and Research.

238. CPUC supports CAISO having decisional authority to choose between competing project sponsors who submit proposals to different permitting authorities. CPUC asserts that CAISO should base its decision on pre-defined, objective criteria and information requirements, as well as prepare transparent procedures, timelines, and a final report detailing the ultimate basis for decision.

239. In response to Nevada Hydro's protest, CAISO agrees that while it does not possess the authority to determine who can build transmission facilities connected to the CAISO-controlled grid, the RTPP does not attempt to grant such authority. CAISO clarifies that instead, the RTPP provides it with the authority to determine which projects are included in the CAISO transmission plan and, accordingly, are eligible for cost recovery through the CAISO transmission access charge. CAISO explains that Nevada Hydro is free to build any project that a siting authority approves, as well as interconnect with the CAISO-controlled grid; however, CAISO maintains the authority to decide whether to include Nevada Hydro's facility in its transmission plan or grant cost recovery through its transmission access charge.

Commission Determination

240. We deny protestors' requests and find that CAISO's proposal to serve as the authority to decide between project sponsors who submit competing proposals to different siting authorities is just, reasonable, and not unduly discriminatory or preferential. The situations in which CAISO would utilize the tie-breaking authority it proposes in the RTPP are limited, and apply only in cases where the two project sponsors are not applying to the same siting authority and cannot agree to collaborate. We note that the RTPP does not grant CAISO the authority to determine who can build transmission facilities connected to the CAISO-controlled grid. That authority rests solely with the relevant jurisdictional agency. Rather, the RTPP provides CAISO the authority to determine which projects are included in the transmission plan and are accordingly eligible for cost recovery through the transmission access charge. If a project sponsor believes it has been discriminated against by CAISO in the determination process, it is free to bring a complaint to the Commission.

4. Time to Seek Siting Authority

241. Green Energy notes that the RTPP project sponsor selection process requires project sponsors to seek siting approval within 60 days of being approved by CAISO or CAISO determining that two competing projects are qualified and in the process of applying to the same siting authority.¹⁷³ Green Energy argues that it may take more than 60 days to prepare and submit complete applications for siting approvals. Green Energy contends that 120 days would be a more reasonable deadline. CAISO states that it does not object to this change if the Commission finds it to be appropriate.¹⁷⁴

Commission Determination

242. With regard to Green Energy's request that project sponsors be allowed 120 days rather than 60 days to seek siting approval, we find this to be reasonable and note that CAISO does not object to this change.¹⁷⁵ We find that the extended deadline will increase the likelihood that approved project sponsors have sufficient time to submit complete applications for siting authorizations. Therefore, we direct CAISO to make a compliance filing within 30 days of issuance of this order to revise RTPP proposed sections 24.5.2.2 and 24.5.2.3 accordingly.

5. Project Abandonment Risk

243. SoCal Edison and PG&E both discuss using demonstrations of creditworthiness or sufficient security to ensure that third party project sponsors will not back out of projects. PG&E states that at least initially, non-incumbent transmission developers have no legal obligations to customers, the incumbent PTO, or CAISO, to construct, operate, and maintain a selected transmission project. Both SoCal Edison and PG&E support further examination of approaches to adequately protect customers from the risks associated with project abandonment by independent developers. SoCal Edison states that such an approach would need to ensure that reliability can be maintained and costs controlled if a PTO must step in to complete a project on a compressed timeline. Both SoCal Edison and PG&E suggest requiring independent developers to post security to protect customers from these risks. Similarly, CalWEA recommends requiring winners to post letters of credit equal to the difference between their cost proposals and those of the incumbent transmission owners, if the winner is not an incumbent transmission owner.

¹⁷³ Citing RTPP proposed tariff sections 24.5.2.2 and 24.5.2.3.

¹⁷⁴ CAISO Answer at 109.

¹⁷⁵ CAISO Answer at 109.

244. Responding to PG&E's and SoCal Edison's concerns, CAISO notes that section 24.1.1(a) of its existing tariff already imposes credit requirements on project sponsors proposing to construct merchant transmission facilities. CAISO suggests that the Commission could approve similar tariff language for project sponsors selected through the RTPP. Alternatively, CAISO suggests that the Commission could require it to adapt the credit requirements applicable to market participants or interconnection customers, and make those applicable to transmission project sponsors. CAISO states that it is amenable to making such tariff changes in a compliance filing.¹⁷⁶

245. Pattern disputes SoCal Edison's and PG&E's claim that independent transmission developers pose a greater risk of abandonment than incumbent transmission owners. Pattern recommends that all transmission developers' proposals be reviewed in part based on how they propose to shield customers from project development and construction risks.

Commission Determination

246. We decline to adopt a different treatment for PTOs and non-PTOs regarding credit requirements in this context because it may be unduly discriminatory. The project sponsor qualifications in RTPP proposed tariff section 24.5.2.1, which we accept in this order, include the requirement that the project sponsor have the financial capability to complete the project in a timely and competent manner. Therefore, CAISO has the ability to assess the financial capability of the project sponsors and the project sponsor has the option to post financial security to demonstrate its ability to complete the project. To the extent CAISO considers that the tariff provisions concerning the financial capability of project sponsors need to be expanded or made more specific, CAISO should first vet any proposal through its stakeholder process, before filing any resultant proposed tariff revisions with the Commission.

247. While SoCal Edison is concerned about its potential obligation to build abandoned projects,¹⁷⁷ we find this issue premature because the RTPP contemplates that abandoned projects may be subject to a second open solicitation process to identify a new project sponsor.¹⁷⁸ Further, the existing tariff already provides such an obligation.¹⁷⁹

¹⁷⁶ CAISO Post-Tech Conference Reply Comments at 45-46.

¹⁷⁷ See SoCal Edison Protest at 3-5.

¹⁷⁸ RTPP proposed tariff section 24.6.

¹⁷⁹ Compare RTPP proposed tariff section 24.6 with CAISO existing tariff section 24.2.4.2.

E. Independent Evaluator

248. In the RTPP Filing, CAISO does not propose to retain a third-party evaluator to assist in the evaluation and selection of project proposals. CAISO argues that an independent evaluator is unnecessary because the Commission has found that CAISO meets the independence requirements of Order No. 888 and has no financial ties to project sponsors.¹⁸⁰ CAISO also notes that in Order No. 2000 the Commission determined that regional transmission organizations are ultimately responsible for transmission planning and expansion within their regions.¹⁸¹ If parties believe that CAISO has violated its tariff, CAISO suggests that they initiate dispute resolution proceedings or file a complaint with the Commission. CAISO also points out that state planning authorities make the ultimate decision regarding certificates of public convenience and necessity and siting approval.

249. Pattern and WITG argue that a third-party evaluator will add transparency to the planning process and benefit all stakeholders. Both point to CAISO's representative's willingness to consider the use of an expert consultant to assist with the review and evaluation of policy-driven and economically-driven elements. Therefore, Pattern and WITG ask the Commission to direct CAISO to employ an independent evaluator throughout the RTPP.

250. San Diego supports CAISO's decision to work with an expert consultant for the evaluation and selection of project sponsors who propose to build the same transmission element. However, San Diego opposes the use of an additional, independent evaluator to ensure the RTPP's independence and transparency as other protestors suggest. San Diego argues that CAISO is an independent entity and already possesses the requisite authority and expertise to assess project proposals under the RTPP.

251. CAISO clarifies that it will employ an expert consultant to assist with the evaluation and selection of approved project sponsors when more than one proposal is received to build the same transmission element. CAISO explains that it will retain an expert consultant to assist in this Phase 3 process to assess transmission needs to meet the 33 percent RPS requirement.

¹⁸⁰ RTPP Filing at 65 (citing *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,010 at P 1, 32 (the Commission also found that CAISO meets the independence requirements of Order No. 2000)).

¹⁸¹ RTPP Filing at 65 (citing Order No. 2000, FERC Stats. and Regs. ¶ 31,089 at 31,164).

252. However, CAISO disagrees with protestors that it should employ a third-party evaluator throughout the RTPP. CAISO reiterates that because it does not hold financial interest in any of the proposed projects, an independent evaluator is unnecessary. CAISO notes that section 5.6.4 of its Business Practice Manual requires it to post a report detailing the selection of approved economic and policy project sponsors that participated in open solicitation. CAISO adds that all of the assumptions and studies underlying its transmission-needs determinations will be publicly available.

253. CAISO explains that all parties will have access to the information needed to file a complaint with the Commission or initiate dispute resolution proceedings if a tariff violation occurs. CAISO also notes that, in Order No. 890, the Commission expressly declined to impose a requirement for an independent evaluator in the planning process and that its current planning process is Order No. 890-compliant.¹⁸²

Commission Determination

254. We support CAISO's clarification and decision to employ an expert consultant to assist with the evaluation and selection of approved project sponsors when more than one proposal is received to build the same transmission element. Although Order No. 890 does not require the use of an independent third-party evaluator,¹⁸³ we support the use of one in circumstances such as these, where CAISO feels that it would benefit from additional expertise as well as circumvent any allegations of discriminatory selections. We direct CAISO to submit a compliance filing within 30 days of issuance of this order to include tariff language identifying the circumstances in which the expert consultant will be used, as described above.

255. We do not agree that CAISO needs to employ a third-party evaluator throughout all stages of the planning process. As noted above, in Order No. 890, the Commission did not require the use of an independent third-party evaluator.¹⁸⁴ CAISO's tariff, including the RTPP proposed tariff revisions that we conditionally accept herein, is open and transparent and contains meaningful coordination and dispute resolution provisions. We find these provide sufficient safeguards to enable customers to identify and raise concerns regarding CAISO's role as a decision-making authority. Furthermore, if parties find these measures insufficient, they can file a complaint with the Commission under section 206 of the FPA, or seek to initiate dispute resolution procedures.

¹⁸² CAISO Post-Tech Conference Initial Comments at 44 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 567).

¹⁸³ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 567.

¹⁸⁴ *Id.* at P 567-568.

F. Treatment of 2008 and 2009 Pending Project Submissions

256. CAISO plans to hold an open solicitation for all interested project sponsors to propose to construct and own the policy-driven and economically-driven elements identified in the RTPP. In the event that CAISO finds that a project submitted during the 2008 or 2009 request windows meets a Category 1 policy-driven or economically-driven transmission need, the original project sponsor who proposed the project will have the right to construct and own the element, provided that the sponsor meets the criteria in RTPP proposed tariff section 24.5.2.1(c).¹⁸⁵ For the 2010/2011 planning cycle, CAISO plans to conduct economic analyses on the 2008/2009 request window submissions and suspend requests for additional economic studies during that period. Based on the study results, CAISO will identify economically-driven elements that reflect the optimal additions and upgrades to mitigate congestion and other economic needs within the context of the comprehensive plan. CAISO plans to use these studies as the basis for evaluating the economically-driven project proposals submitted during the 2008/2009 request window. The final comprehensive plan, including all economically-driven transmission elements, is then subject to the Board of Governors' approval.

257. CPUC, Green Energy, and PG&E support CAISO's proposal to give 2008/2009 request window project sponsors the right to develop their proposals to the extent that they correspond to RTPP-identified needs and meet technical qualification criteria. However, several parties contend that CAISO should evaluate the pending 2008/2009 request window submissions under the existing tariff procedures instead. In addition, some of the protestors suggest that CAISO expedite the 2008/2009 request window projects and include them in the baseline case for the Phase 1 process.

258. Protestors generally argue that the RTPP places the 2008/2009 request window proposals at a disadvantage, particularly because of the potential for "copy cat" projects that would deny the original project sponsors the rights to build their proposals.¹⁸⁶ Pattern and LS Power are concerned with CAISO's decision to publicly disclose the 2008 request window projects prior to the 2009 request window. They fear that others may emulate or propose similar projects unfairly building on their efforts. Pattern suggests that CAISO should be directed to explicitly incorporate a "first in time" provision in the

¹⁸⁵ RTPP proposed tariff section 24.4.6.8, Projects Submitted in Prior Request Windows.

¹⁸⁶ *See, e.g.*, Desert Southwest Protest; Nevada Hydro Post-Tech Conference Initial Comments; DayStar Post-Tech Conference Initial Comments; WITG Post-Tech Conference Initial Comments; Pattern Post-Tech Conference Reply Comments; Green Energy Petition; LS Power Post-Tech Conference Initial Comments.

RTPP so that 2008 request window proposals are evaluated before the 2009 request window submissions, consistent with Version 2.0 of CAISO's Business Practice Manual.

259. Desert Southwest argues that requiring 2008/2009 request window projects sponsors to adhere to the new RTPP requirements will jeopardize the development of their projects, increase costs, and prevent developers from acquiring ARRA loans. For this reason, Desert Southwest asks the Commission to exempt 2008/2009 project sponsors from the RTPP provisions so that they can meet the September 2011 ARRA deadline. Nevada Hydro similarly objects to requiring re-submitting request window proposals, arguing that such actions demonstrate CAISO's intention to exclude independent developers from the RTPP.

260. On the other hand, Six Cities opposes these protestors' concerns, and argues that even though 2008/2009 request window project sponsors had a reasonable expectation that CAISO would review their projects during that timeframe, they were not guaranteed CAISO approval. Further, Six Cities argues that these specific projects cannot be acted on because such action would contradict open and transparent planning policy that occurs on a regional level.

261. DayStar requests that the Commission require CAISO to add tariff language to address the situation in which a Category 2 policy-driven project is reclassified, or a substantially similar project is classified, as Category 1. Specifically, DayStar requests the addition of tariff language clarifying that the original project sponsor retains the right to construct and own the transmission element. PG&E opposes this modification, and suggests that such tariff language would provide an on-going preference for previously submitted projects as opposed to a one-time accommodation. PG&E asserts that the purpose of the RTPP is to first identify project needs, then select project sponsors.

262. Last, Green Energy argues that 2008/2009 project sponsors should retain the right to build their proposals for five planning cycles beginning in the 2010/2011 planning year. Green Energy asserts that if rights to build are universally eliminated, particularly regarding LGIP network upgrades, then CAISO should remove request window rights to build as well and open all transmission projects to competition.

263. CAISO agrees with DayStar's suggestion to clarify the tariff language to explain that, if a Category 2 project is reclassified, or a substantially identical project is classified, as Category 1, then the original project sponsor who proposed the project in the 2008/2009 request window will have the right to build and own the transmission

element.¹⁸⁷ CAISO states that it does not object to this modification because it is consistent with its general proposal.

264. In response to protests, CAISO points to existing tariff section 24.1.1(b), which requires it to “consider the comparative costs and benefits of viable alternatives” to the proposed project. CAISO states that this language allows for alternative projects to be submitted in a subsequent request window, as well as for CAISO to propose alternative economic transmission projects during the planning process. CAISO also responds to LS Power and Patterns’ protests, which reference provisions in the Business Practice Manual that could give project proponents first-in-time rights. CAISO states that its tariff and Business Practice Manual provisions do not require its management to approve non-reliability projects during the same planning cycle in which they were submitted, and are devoid of any reference to such a prioritization.

265. CAISO disagrees with Desert Southwest’s assertion regarding ARRA funding deadlines. CAISO argues that its proposal does not unfairly penalize 2008/2009 request window projects that seek ARRA funds; instead, CAISO states that Desert Southwest’s difficulties are self-made. CAISO explains that Desert Southwest should have waited for its determination before seeking siting and permitting authorization, a practice transmission developers usually follow.

266. CAISO also opposes Green Energy’s proposal to assign 2008/2009 project sponsors rights to build for five planning cycles beginning in 2010/2011. CAISO states that it already provides special treatment for these projects and notes that the current tariff does not provide for repeated review once CAISO determines that a project is not necessary. CAISO asserts that such a “first in time” priority for any period beyond the time in which the project is reviewed is inconsistent with the RTPP’s fundamental design.

Commission Determination

267. We reject protestors’ requests to require CAISO to evaluate 2008/2009 request window proposals under the existing tariff and exempt those project sponsors from meeting the RTPP requirements. We find that such a requirement would undermine the goals of RTPP, which include development of a comprehensive transmission plan, rather than a project-by-project analysis, as under the existing tariff. However, we find CAISO’s plan to evaluate the 2008/2009 request window proposals during RTPP Phase 2 and subsequently have the ability to assign the original project sponsor the right to build their proposal if it fits an identified need in the comprehensive transmission plan to be appropriate. This provision recognizes projects that were submitted prior to RTPP

¹⁸⁷ CAISO Answer at 50-51.

implementation, while preserving the comprehensive transmission planning benefits of the RTPP.

268. Moreover, we also agree with protestors that CAISO should apply the “first-in-time” principle when considering the 2008 and 2009 request window proposals during RTPP Phase 2. We agree that 2008 project sponsors reasonably expected their proposals to be evaluated on a “first-in-time” basis to the extent their proposals were to compete with projects proposed in a subsequent year. Consequently, we find it reasonable to protect the expectation of originating investors from being displaced by similar, later proposals. Accordingly, we direct CAISO to revise the RTPP proposed tariff language to give priority to 2008 request window proposals before those submitted in 2009, to the extent that a 2008 and a 2009 project proposal both meet the needs of the same transmission element identified in RTPP Phase 2. CAISO is hereby directed to make a compliance filing to implement this finding within 30 days of issuance of this order.

269. CAISO agrees with DayStar’s suggestion to clarify the RTPP tariff language in proposed section 24.4.6.8 to explain that, if a Category 2 project is reclassified, or a substantially identical project is classified, as Category 1, then the original project sponsor who proposed the project in the 2008/2009 request window will have the right to build and own the transmission element.¹⁸⁸ We also agree with this clarification and, accordingly, direct CAISO to make a compliance filing within 30 days of issuance of this order to incorporate such tariff language into the RTPP. We find this revision is consistent with the foundation of RTPP proposed tariff section 24.4.6.8, which is to provide pending 2008/2009 projects an opportunity to meet Category 1 policy-driven and economically-driven needs in the 2010/2011 planning cycle. PG&E opposes this modification, and suggests that such tariff language would provide an on-going preference for previously submitted projects as opposed to a one-time accommodation. However, we expect that this additional provision would only be applied to the 2010/2011 planning cycle, consistent with RTPP proposed tariff section 24.4.6.8. Thus, PG&E’s concern that such preference would be on-going is incorrect.

270. We reject Green Energy’s proposal to assign 2008/2009 project sponsors rights to build for five planning cycles beginning in 2010/2011. As CAISO explains, the current tariff does not provide for repeated review once CAISO determines that a project is not necessary. As discussed above, we will allow 2008/2009 project sponsors to have a priority for the 2010/2011 planning cycle, as this recognizes the transition between the current transmission planning process and pending 2008/2009 submissions and the RTPP approved herein. Any priority beyond the first planning cycle of the RTPP, 2010/2011, is inappropriate because it would be inconsistent with the RTPP’s fundamental design.

¹⁸⁸ CAISO Answer at 50-51.

G. Jointly-Owned Transmission Projects

271. CAISO does not make substantive changes to its policy regarding jointly-owned transmission facilities in the revised tariff; however, the tariff contemplates joint ownership in parts of section 24. CAISO does not add express tariff language on this matter; however, CAISO states that it intends to facilitate the collaboration of joint projects after the conclusion of Phase 2. In addition, CAISO clarifies that there are numerous opportunities for joint planning throughout the revised process.

272. CMUA, Imperial, SMUD, and TANC express concern regarding jointly-owned transmission lines developed by independent developers and PTOs. Furthermore, these parties contend that proposed section 24.15.1 could be interpreted to mean that all transmission lines in which a PTO is one of the joint owners must be within CAISO's balancing authority area, or physically operated and maintained by the PTO. Thus, parties recommend that CAISO modify this tariff section to expressly state that non-PTOs are not required to transfer their portion of jointly-owned transmission to CAISO's operational control or balancing authority area. In addition, TANC suggests that CAISO modify additional provisions in RTPP proposed tariff section 24 to further clarify that certain provisions do not apply to non-PTOs that own portions of a jointly-owned line, and that the relevant cost responsibility provisions only apply to the portions of jointly-owned transmission that are turned over to the operational control of CAISO. These parties generally contend that such modifications will facilitate regional planning efforts and provide greater certainty for the development of jointly-owned transmission.

273. In response to comments, CAISO states that it does not interpret either current or revised tariff language to require non-participating transmission owners to turn over operational control of their facilities to CAISO or join CAISO's balancing authority area. Nevertheless, CAISO is willing to make the proposed revisions to the applicable provisions of RTPP proposed tariff section 24 to reflect current practices in a compliance filing if directed by the Commission.¹⁸⁹

Commission Determination

274. We agree with parties that CAISO should clarify language in RTPP proposed tariff section 24 concerning jointly-owned transmission facilities. Therefore, we direct CAISO to make a compliance filing within 30 days of issuance of this order to revise the sections requested by CMUA, Imperial, SMUD, and TANC to clarify that non-PTOs who own portions of jointly-owned transmission facilities are not required to join the CAISO balancing authority area or turn over operational control of their facilities to CAISO.

¹⁸⁹ CAISO Answer at 107-108.

However, there may be some circumstances in which non-PTOs may be willing to hand over operational control of their facilities to CAISO or join its balancing authority area, and thus the tariff language should allow for that possibility.

H. Out-of-State Transmission Projects

275. Neither CAISO's proposed tariff revisions nor transmittal letter expressly addresses the treatment of out-of-state transmission projects; however, CAISO does mention such projects in RTPP proposed tariff section 24.4.4. In this section, CAISO states that after it posts the initial draft of its conceptual statewide plan, parties will be able to submit comments and modifications. This includes comments on "potential interstate transmission lines and proposals for access to resources located in areas not identified in the conceptual statewide transmission plan."

276. LS Power argues that the RTPP is unclear regarding the evaluation and treatment of out-of-state transmission projects, even though CAISO has already approved a PTO-sponsored interstate project as an economic project. LS Power states that at the technical conference, a CAISO representative mentioned that out-of-state transmission projects found to economically deliver renewables to the CAISO grid will be eligible for cost recovery through the transmission access charge. Therefore, LS Power asks the Commission to require CAISO to incorporate this clarification into the Tariff.

277. CAISO does not support LS Power's request to expressly include out-of-state projects in its description of policy-driven or economically-driven elements. CAISO states that such proposals are specifically addressed in RTPP proposed tariff section 24.4.4 and do not necessitate further clarification.

Commission Determination

278. We deny LS Power's request and find that RTPP proposed tariff section 24.4.4 sufficiently addresses out-of-state transmission projects. RTPP proposed tariff section 24.4.4 provides "an opportunity for interested parties to submit comments and recommend modifications to the conceptual statewide transmission plan and alternative transmission elements, including potential interstate transmission lines" during Phase 1 of the RTPP.¹⁹⁰ We find this approach reasonable. Accordingly, we accept RTPP proposed tariff section 24.4.4.

¹⁹⁰ RTPP proposed tariff section 24.4.4 (Comment Period of Conceptual Statewide Plan).

279. In response to LS Power's comments that out-of-state transmission projects found to economically deliver renewables to the CAISO grid should be eligible for cost recovery through the transmission access charge, we find that provisions regarding cost recovery already exist in CAISO's tariff. Such provisions require that network facilities be turned over to CAISO's operational control and provide for what types of facilities are recoverable through the transmission access charge.

I. Cost Allocation for Policy-Driven Elements

280. CAISO states that the proposed RTPP does not change the cost allocation of reliability projects and economically-driven elements approved by CAISO. To the extent policy-driven elements are included in the approved comprehensive transmission plan, CAISO states that the costs of such projects will be allocated through CAISO's transmission access charge like reliability projects and economically-driven elements.

281. Several parties express concerns about the cost allocation for policy-driven elements.¹⁹¹ San Francisco complains that CAISO has not provided any justification for proposing to allocate the cost of policy-driven elements through the transmission access charge. San Francisco claims that the policy-driven elements category shifts costs from generators to ratepayers and increases the potential for stranded costs. San Francisco asks the Commission to require CAISO to conduct a stakeholder process to analyze these cost allocation issues at the same level of detail as occurred for the LCRI category.¹⁹²

282. As discussed previously, in the Policy-Driven Elements section, San Francisco asks the Commission to require CAISO to develop a distinct cost allocation methodology commensurate with the costs and benefits associated with policy-driven elements and impose a cost cap similar to the cap on LCRI facilities.

283. CalWEA asks that CAISO clarify that the PTO, not the generator, will be responsible for financing policy-driven elements. CalWEA believes that this requirement will remove commercial uncertainty and thus reduce associated construction delays.

284. In response to concerns raised by San Francisco, CAISO states that there can only be a state or federal directive or requirement necessitating a policy-driven element if a legislative or executive authority has decided that it is in the public interest to implement such a policy goal. CAISO contends that the RTPP proposal addresses protestors' concerns by providing in RTPP proposed tariff section 24.4.6.6 that CAISO will consider

¹⁹¹ See, e.g., Bay Area, CalWEA, SWP, and San Francisco.

¹⁹² San Francisco Protest at n.9 (citing LCRI Declaratory Order, 119 FERC ¶ 61,061).

planning level cost estimates in evaluating the need for policy-driven elements as compared to alternative transmission elements, as well as other additions or upgrades and non-transmission alternatives. CAISO argues that this approach will enable it to identify cost-effective alternatives. Therefore, CAISO argues that there is no need for a separate cost allocation mechanism for policy-driven elements.

285. CAISO states that San Francisco does not enunciate any reasons why the costs of policy-driven elements should be allocated any differently than the costs of reliability projects, economically-driven elements, and facilities designed to maintain the feasibility of long-term CRRs. CAISO also contends that imposing a cost cap for policy-driven elements could result in a scenario where more transmission is needed to meet a specific policy goal but cannot be approved because of a cost cap.

Commission Determination

286. We agree with CAISO that there is no need for a separate cost allocation mechanism for policy-driven elements. Policy-driven elements merit the same cost allocation treatment as reliability projects and economically-driven elements because, like these network facilities, policy-driven elements are integrated into the grid and inure to the benefit of all customers.

287. We also find that the proposed RTPP tariff provisions include appropriate safeguards to ensure that costs that are flowed through to customers via the transmission access charge will be just and reasonable. RTPP proposed tariff section 24.4.6.6, as modified, provides criteria that CAISO will consider in order to determine the need for policy-driven elements that efficiently and effectively meet applicable policies, while mitigating the risk of stranded investment, as discussed previously. The criteria, along with CAISO's commitment in the RTPP proposed tariff language to mitigate the risk of stranded investment, will protect customers from paying excessive costs for policy-driven elements through the transmission access charge. We note, however, that, as discussed above, CAISO is directed to revise RTPP proposed tariff section 24.4.6.6 to change "may" to "will" and remove "but is not limited to" with regard to the criteria it *will* consider. With these changes, CAISO will be required to consider the cost of alternatives to a potential policy-driven element, as that is a listed criterion.

288. We agree with CAISO that a cost cap should not be imposed on policy-driven elements. The purpose of the policy-driven category of transmission elements is to assist CAISO in meeting federal and state policy objectives that may not be consistent with purely economic interests or reliability needs. Therefore, as CAISO notes, policy-driven elements may not be built if a cost cap is imposed upon project developers. Accordingly, we find that CAISO's proposal to recover the cost of policy-driven elements through the transmission access charge is reasonable, subject to modification of RTPP proposed tariff section 24.4.6.6, as discussed above.

J. Regional Planning

289. CAISO states that its proposed tariff revisions do not amend the existing provisions for sub-regional and regional planning involvement that the Commission has already approved. CAISO contends that the new provisions in RTPP proposed tariff section 24.4.4 further enhance and fulfill Order No. 890's requirements. This new section provides that CAISO may coordinate Phase 1 development with regional and sub-regional planning groups and neighboring balancing authorities. CAISO contends that the proposed language provides flexibility to allow for collaboration with many planning groups. CAISO argues that if it were to specify in the tariff particular groups with which it collaborates during Phase 1, it would constantly have to submit tariff amendments to add and delete entities. CAISO contends that such a process is neither productive nor necessary, as these groups are inputs into the planning process, not rates or terms and conditions of service.

290. Several parties ask the Commission to require CAISO to coordinate with regional and sub-regional transmission planning groups or entities when developing CAISO's conceptual statewide plan by revising the language in RTPP proposed tariff section 24.4.4.¹⁹³ These protestors argue that the current language allows CAISO to unilaterally develop CAISO's conceptual statewide plan without collaborating with neighboring planning groups.¹⁹⁴ These protestors contend that the use of "or" in the section's first sentence gives CAISO the ability to opt out of regional planning, making such coordination non-binding.¹⁹⁵

291. SMUD asks for additional information from CAISO regarding information coordination, the scope of data sharing, and the treatment of potential confidentiality issues. SMUD requests that CAISO clarify that its information collection will be a cooperative endeavor, used strictly for planning, and confirm that it will account for appropriate confidentiality limitations on potentially market-sensitive information.

292. Large-Scale Solar asserts that the RTPP should encourage the export and import of renewable power, and provide for a reliable and least-cost renewable energy supply.¹⁹⁶ Large-Scale Solar contends that the proposal does not adequately address the sharing of data, information and assumptions. Large-Scale Solar states that CAISO should address

¹⁹³ *See, e.g.*, Bay Area, CMUA, Imperial, SMUD, and TANC.

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

¹⁹⁶ Large-Scale Solar Protest at 5-6.

the unique need for the coordinated implementation of renewable energy zones by taking an interregional planning approach.

293. CAISO argues that the protestors' suggestions exceed the requirements of Order No. 890, as its proposal adequately provides for regional and sub-regional coordination and planning. CAISO points to several proposed tariff sections and Business Practice Manual provisions that support its argument that the RTPP is sufficiently open and transparent. Therefore, CAISO contends that layering additional requirements onto its planning process is unwarranted. CAISO states that the Commission lacks the authority to direct the form that a public utility's regional coordination must take, citing a D.C. Circuit Court ruling.¹⁹⁷ CAISO also dismisses Large-Scale Solar's suggestion as misguided. CAISO contends that Large-Scale Solar's suggested tariff modifications are unnecessary because CAISO posts its planning studies on-line and has sufficient information exchange policies in place.¹⁹⁸

Commission Determination

294. In Order No. 890,¹⁹⁹ the Commission reformed the *pro forma* open access transmission tariff (OATT) to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a non-discriminatory basis. One of the Commission's primary reforms was designed to address the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new attachment to their OATT.

295. The nine planning principles each transmission provider was directed by Order No. 890 to address in its transmission planning process attachment are: 1) coordination; 2) openness; 3) transparency; 4) information exchange; 5) comparability;²⁰⁰ 6) dispute

¹⁹⁷ *Atlantic City Elec. Co., v. FERC*, 295 F.3d 1, 353 (D.C. Cir. 2002).

¹⁹⁸ CAISO Answer at 20.

¹⁹⁹ Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261, *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299, *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126.

²⁰⁰ In Order No. 890-A, the Commission clarified that the comparability principle requires each transmission provider to identify, as part of its Attachment K planning process, how it will treat resources on a comparable basis and, therefore, how it will

resolution; 7) regional participation; 8) economic planning studies; and 9) cost allocation for new projects. The Commission explained that it adopted a principles-based reform to allow for flexibility in implementation of and to build on transmission planning efforts and processes already underway in many regions of the country. The Commission also explained, however, that although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate,²⁰¹ must be specific and clear in order to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.

296. While Order No. 890 requires transmission planners to participate in regional planning, the Commission's current policy does not require transmission planners to develop their plans with other entities.²⁰² We note that the Commission has already determined that CAISO's OATT satisfies Order No. 890's planning principles, including that of regional participation. Thus, while we agree with protestors that having CAISO collaborate with regional and sub-regional is required by Order No. 890, we note that CAISO has already committed to do that. However, Order No. 890 does not require CAISO to include regional and subregional groups in the development of CAISO's transmission plan, as protestors suggest. Accordingly, we accept RTPP proposed section 24.4.4 and deny protestors' requests to require CAISO to develop its conceptual statewide plan with regional and sub-regional planning groups. We urge CAISO to continue collaborate with numerous and diverse planning entities throughout the RTPP process to ensure as comprehensive a plan as possible.

297. We agree with SMUD that CAISO's collaborative efforts should be cooperative and protect market-sensitive information; however, we disagree that such provisions should be incorporated into the tariff. Nonetheless, we fully expect CAISO to take the appropriate measures to protect confidentiality throughout the planning process. Further, we reject Large-Scale Solar's request that the tariff explicitly contemplate the implementation of renewable energy zones. We agree with CAISO that its information sharing policies are sufficient, and that additional tariff language discussing this issue is unnecessary.

determine comparability for purposes of transmission planning. *See* Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216.

²⁰¹ Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1649-55.

²⁰² *Id.* at P 523-524.

V. Waiver Request Order

298. In the Waiver Request Order in Docket No. ER10-2191-000, the Commission granted a temporary waiver of existing tariff section 24.2.3(a), which permits market participants to submit proposals for economic transmission upgrades or additions through a transmission planning request window.²⁰³ The Commission waived CAISO's obligation under tariff section 24.2.3(a) until the earlier of Commission action on the RTPP or January 3, 2011.²⁰⁴

Commission Determination

299. In accordance with the Waiver Request Order, the temporary waiver of CAISO's existing tariff section 24.2.3(a) will terminate once the RTPP tariff provisions become effective on December 20, 2010.²⁰⁵ The RTPP replaces the economic request window with an open solicitation process that allows independent transmission developers to compete with PTOs to construct economically-driven as well as policy-driven elements.²⁰⁶ The new RTPP provisions for economic transmission elements, which will become effective on December 20, 2010, will replace tariff section 24.2.3(a), the provision temporarily waived by the Waiver Request Order. We find these RTPP provisions, as accepted in this order, eliminate the need for CAISO to hold a request window for economic project proposals because the window will be replaced with an open solicitation process in RTPP Phase 3. Because these new RTPP procedures improve the efficiency and comprehensive nature of the planning process and enhance the competitive opportunities for transmission developers, the need for the temporary waiver will become moot once the RTPP tariff provisions become effective on December 20, 2010. Accordingly, the waiver of tariff section 24.2.3(a) will continue until December 20, 2010, after which time the RTPP will be effective and the need for any economic request window will be eliminated.

The Commission orders

(A) CAISO's RTPP is conditionally accepted, as discussed in the body of this order, effective December 20, 2010.

²⁰³ Waiver Request Order, 133 FERC ¶ 61,020 at P 1, 7, 10.

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ RTPP proposed tariff section 24.5, Transmission Planning Process Phase 3.

(B) CAISO is directed to make a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

(C) Green Energy's Petition is hereby denied, as discussed in the body of this order.

(D) CAISO's temporary tariff waiver granted in Docket No. ER10-2191-000 will terminate on December 20, 2010, upon implementation of the RTPP, and the 2010 request window for economic projects will be supplanted by the RTPP, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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