

145 FERC ¶ 61,221
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

California Independent System Operator Corporation Docket No. ER14-291-000

ORDER GRANTING WAIVER REQUEST

(Issued December 19, 2013)

1. On November 1, 2013, the California Independent System Operator Corporation (CAISO) filed with the Commission a limited, one-time request for waiver of section 24.5.2.3(b) and certain provisions of 24.5.2.3(c) of CAISO's former tariff, which continues to be applicable to projects approved in the 2012/2013 CAISO planning cycle.¹ In this order, we grant CAISO's waiver request, as discussed below.

I. Background

2. Prior to October 1, 2013, section 24.5.2.3(b) of CAISO's tariff provided that where two or more competing transmission developers designate the same siting authority from which they will seek siting approval, CAISO will accept the project sponsor determined by that authorized governmental authority. Section 24.5.2.3(c) of CAISO's tariff provided that if the qualified project sponsors apply to different authorized governmental bodies for project siting approval, CAISO will select one approved project sponsor based on a comparative analysis. In the first Order No. 1000 Compliance Order, issued April 20, 2013, the Commission directed CAISO to remove the provisions allowing the siting authority to select project sponsors and required that only CAISO can select the project sponsor.² However, the Commission determined that the former tariff provisions would continue to apply to projects approved in the 2012/2013 planning cycle.³ In the 2012/2013 Transmission Plan, CAISO identified the reliability need for a 230 kV line between the Sycamore and Penasquitos 230 kV

¹ CAISO states that the California Public Utilities Commission (CPUC) also requests waiver.

² *California Independent System Operator Corporation*, 143 FERC ¶ 61,057, at PP 225-227 (2013) (First Compliance Order).

³ First Compliance Order, 143 FERC ¶ 61,057 at P 28.

substation owned by San Diego Gas & Electric Company (SDG&E) (Sycamore-Penasquitos line) and determined the project was eligible for competitive solicitation. During the competitive solicitation process, CAISO found that four project sponsors qualified and each stated its intent to seek siting approval from the CPUC. Accordingly, under former Tariff section 24.5.2.3(b), the CPUC is responsible for selecting an approved project sponsor.

3. CAISO maintains that a waiver of the 24.5.2.3(b) tariff provision would allow CAISO to assume responsibility for selecting the approved project sponsor for the Sycamore-Penasquitos project. CAISO states that waiver of certain provisions of tariff section 24.5.2.3(c) are also necessary to make clear that CAISO will assume responsibility for selecting the approved project sponsor for the Sycamore-Penasquitos line even when the project sponsors are applying to the same authorized governmental body for siting approval. CAISO states that the Commission has granted waivers when good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident.⁴ First, CAISO argues that there is good cause for a waiver because under the Order No. 1000 planning framework adopted by the Commission, CAISO will be required to make all project sponsor selections going forward. CAISO states that because the CPUC's existing siting process is not designed to select a sponsor among competing developers, but rather to review, site, and permit a specific project proposed by a single applicant through an application for a certificate of public convenience and necessity.⁵ CAISO states that having four project sponsors advance through an application or siting process would be complex, not easily manageable, and likely to be disputed. Consequently, CPUC staff discussed the matter with CAISO and requested CAISO assume responsibility for the project selection process.⁶

4. Second, CAISO states there are no undesirable consequences to granting waiver of the tariff provisions regarding project sponsors because the approved project sponsor will still present the Sycamore-Penasquitos project to the CPUC for siting approval. In addition, CAISO explains that it is required by the Commission to be independent and that it uses a consultant to assist in the evaluation of potential sponsors. CAISO maintains that there are benefits to customers since the waiver will allow the Sycamore-Penasquitos project to proceed without delay and will allow the CPUC to continue to devote its resources to its other important responsibilities. Additionally, CAISO states

⁴ CAISO Transmittal Letter at 8 (citing *Cal. Ind. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008), and *Cal. Ind. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007)).

⁵ CAISO Transmittal Letter at 4.

⁶ *Id.* at 6.

that none of the applicants of the Sycamore-Penasquitos line oppose CAISO making the project sponsor determination.⁷

5. Lastly, CAISO states that SoCal Edison indicated that it was shutting down the San Onofre Nuclear Generating Station, which exacerbates certain local transmission overloads in the northern region of SDG&E's system, and the Sycamore-Penasquitos line will improve power flows from east-to-west, helping to mitigate reliability concerns.⁸ CAISO maintains that in order to meet the required 2017 in-service date for the Sycamore-Penasquitos line, the selected project sponsor must be determined in early 2014, and it is unlikely that any CPUC process could meet these deadlines. Therefore, CAISO argues that good cause exists to grant CAISO's requested waiver of tariff section 24.5.2.3(b) and certain provisions of section 24.5.2.3(c).⁹

II. Notice of Filings and Responsive Pleadings

6. Notice of CAISO's filing was published in the *Federal Register*, 78 Fed. Reg. 68,050 (2013) with interventions and protests due on or before November 22, 2013. Imperial Irrigation District, Trans Bay Cable LLC and SoCal Edison filed motions to intervene. Pacific Gas & Electric Company (PG&E) filed a motion to intervene and comments in support.¹⁰ SDG&E filed a motion to intervene out of time and comments.

7. SDG&E states that it supports the request for waiver as a reasonable means of addressing the unusual circumstances in this case. However, SDG&E is concerned that, under CAISO's current tariff, qualified project sponsors must seek siting approval from the CPUC within 120 days of the qualification date, which SDG&E states is December 11, 2013. SDG&E is relying on CAISO's assurance that, in light of the waiver request, qualified project sponsors do not need to submit an application with the CPUC by December 11, 2013. SDG&E requests that, if the Commission denies the waiver, the Commission expressly state that a qualified project sponsor's failure to file with the CPUC by December 11, 2013 will not adversely affect the sponsor's ability to file after the order is issued.¹¹

⁷ *Id.* at 9.

⁸ *Id.* at 9-10.

⁹ *Id.* at 10.

¹⁰ PG&E states that it would be reasonable, efficient, and consistent with the Commission's Order No. 1000 First Compliance Order to have CAISO select the sponsor for the project. PG&E Comments at 1-2 (citation omitted).

¹¹ SDG&E Comments at 3.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

9. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2013), the Commission will grant the untimely, unopposed motion to intervene and comments of SDG&E given their interest in the proceeding, the early stage of this proceeding, and the absence of undue prejudice or delay.

B. Substantive Matters

10. The Commission has historically granted certain waiver requests where an emergency situation or an unintentional error was involved.¹² Waiver, however, is not limited to those circumstances. Where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, the Commission has found that a one-time waiver is appropriate.¹³

11. Applying these standards, we approve CAISO's request for limited waiver of tariff section 24.5.2.3(b) and certain provisions of section 24.5.2.3(c) to allow CAISO to assume responsibility for selecting the approved project sponsor for the Sycamore-Penasquitos project, in order to avoid delay in construction of this reliability transmission addition. The requested waiver for the 2012/2013 planning cycle is limited in scope and aligns the tariff with the currently effective CAISO tariff for the 2014/2015 planning cycle, which minimizes potential inconsistencies between planning periods. We note that customers are further benefited because CAISO retains an expert consultant to assist in

¹² See, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (using reasoning typically applied to waivers to allow limited and temporary change to tariff to correct an error); *Great Lakes Transmission LP.*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event granted for good cause shown); and *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

¹³ See, e.g., *California Independent System Operator.*, 118 FERC ¶ 61,226, at P 24 (2007) (granting a one-time waiver of the CAISO Open Access Transmission Tariff to change the established 180-day Queue Cluster Window because good cause existed based on the CAISO's representations that the effect of granting the waiver would be to obviate the need to conduct duplicative and redundant incremental studies and to allow for greater efficiency in the design of necessary network upgrades).

the selection of transmission developers. Finally, we find that SDG&E's concerns regarding the December 11, 2013 filing date set forth in the CAISO tariff are moot in light of our decision to grant the waiver.

The Commission orders:

For good cause shown, CAISO's limited, one-time request for waiver of section 24.5.2.3(b) and certain provisions of section 24.5.2.3(c) of CAISO's former tariff, is granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.