

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

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| <b>California Independent System<br/>Operator Corporation</b> | )<br>)<br>)<br>) | <b>Docket No. ER13-103-000</b> |
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**MOTION FOR LEAVE TO ANSWER PROTESTS  
AND TO ANSWER OUT-OF-TIME  
AND ANSWER TO PROTESTS AND COMMENTS OF  
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) hereby submits this motion for leave to answer protests and for leave to answer out-of-time, and this answer to the protests and comments regarding the ISO’s October 11, 2012, filing in compliance with Order No. 1000.<sup>1</sup> As discussed below, the protests and adverse comments, with certain minor exceptions, are without merit. The Commission should approve the ISO tariff revisions to comply with Order No. 1000 as filed, with only such modifications as the ISO notes are appropriate in this answer.

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<sup>1</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

## I. INTRODUCTION AND OVERVIEW

In Order No. 1000, the Commission revised the transmission planning requirements established in Order No. 890.<sup>2</sup> Order No. 1000's transmission planning reforms provide that (1) each public utility transmission provider must participate in a regional transmission planning process that produces a regional transmission plan; (2) local and regional transmission planning processes must provide an opportunity to identify and evaluate transmission needs driven by public policy requirements established by state or federal laws or regulations; (3) public utility transmission provider planning regions must coordinate with neighboring planning regions for new interregional transmission facilities; and (4) each public utility transmission provider must remove from its tariff any federal "right of first refusal" for transmission facilities selected in a regional transmission plan for purposes of regional cost allocation, but incumbent transmission owners have right of first refusal to build upgrades to existing facilities and new local transmission facilities that are located within the boundary of their retail distribution service territory or footprint and the costs of which are not allocated on a region-wide basis. Order No. 1000 also required that a regional transmission planning process have (1) a regional cost allocation method for the cost of new transmission facilities selected in a regional transmission plan for purposes of cost allocation that satisfies certain principles set forth in the order, and (2) an interregional cost allocation method for the cost of new transmission

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<sup>2</sup> *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).

facilities that are located in two neighboring transmission planning regions and are jointly evaluated by the two regions in the interregional transmission planning coordination process required by the Final Rule.

On October 11, 2012, the ISO submitted in this proceeding its filing to comply with the regional transmission planning and cost allocation requirements of Order No. 1000. The modifications to the ISO tariff needed to comply with these aspects of Order No. 1000 are relatively modest because the ISO recently enhanced its transmission planning process to achieve many of the objectives laid out in Order No. 1000.

The ISO's transmission planning process had already been shown to comply with Order No. 890.<sup>3</sup> The ISO then developed further revisions to its transmission planning process to enable California to meet its ambitious renewable portfolio standards and environmental goals. The ISO's revised transmission planning process was developed through a substantial stakeholder process and heavily influenced by input from Commission staff. The ISO's revised transmission planning process includes a number of features required by Order No. 1000 in advance of the issuance of that order, including a process to identify transmission enhancements that facilitate federal and state public policy requirements and an opportunity for non-incumbent transmission developers to build transmission plan elements. The Commission approved the ISO's revised transmission planning process as a just and reasonable set of planning reforms

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<sup>3</sup> See *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008); *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,172 (2009); and *Cal. Indep. Sys. Operator Corp.*, 130 FERC ¶ 61,048 (2010).

that comply with Order No. 890.<sup>4</sup> Indeed, Order No. 1000 cites the competitive solicitation procedures in the ISO's revised transmission planning process as an example of a process that provides greater opportunities to independent transmission developers.<sup>5</sup>

After a thorough review of the order and consultation with stakeholders over the course of this year, the ISO has concluded that its current transmission planning process and cost allocation provisions largely comply with the regional requirements of Order No. 1000 and that only targeted revisions to the ISO tariff are required. The response of parties to the ISO's October 11 compliance filing demonstrates that most parties agree that these modifications are sufficient. Although numerous parties have moved to intervene, only three parties submitted protests.<sup>6</sup> Only a handful of parties filed comments recommending modification of the ISO's filing, and two of these parties filed virtually identical pleadings.<sup>7</sup> There have been no protests or adverse comments regarding the following issues:

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<sup>4</sup> *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 (2010) ("RTPP Order"), *on reh'g*, 137 FERC ¶ 61,062 (2011) ("RTPP Rehearing Order").

<sup>5</sup> Order No. 1000 at P 321 n.302.

<sup>6</sup> LS Power Transmission, LLC and LSP Transmission Holdings, LLC (together, "LS Power") and Clean Line Energy Partners LLC ("Clean Line") filed protests; Southern California Edison Company ("SoCal Edison") submitted a limited protest.

<sup>7</sup> Timely comments were filed by E.ON Climate & Renewables North America, LLC ("EON"); Pattern Transmission LP ("Pattern"); Startrans IO, LLC ("Startrans"); and Western Independent Transmission Group ("WITG"). Because Startrans and WITG filed identical comments and Startrans is a member of WITG, the ISO will refer herein only to the comments of WITG. Exelon Corporation ("Exelon") filed supportive comments. Public Interest Organizations ("PIOs") filed a timely motion to intervene, but filed a motion on December 4 to amend their intervention to include a number of comments. The California Department of Water Resources submitted comments and a motion to intervene one day out-of-time urging further development in future stakeholder processes of the consideration of transmission alternatives. The American Wind Energy

- Elimination from the ISO tariff of the remaining provisions that grant a federal “right of first refusal” for incumbent participating transmission owners to build and own certain transmission facilities whose costs will be allocated regionally -- including transmission facilities of 200 kV and above and lower voltage transmission facilities that extend beyond the retail service territory or footprint of an incumbent transmission owner, *i.e.*, regional transmission facilities, including elimination of tariff provisions that provide a federal right of first refusal for transmission facilities on a participating transmission owner’s own rights of way;
- Clarification that participating transmission owners have a right of first refusal to build and own local transmission facilities – which are facilities under 200kV that are located entirely within the existing retail service territory or footprint of the transmission owner;
- Retention of the ISO’s existing cost allocation scheme in compliance with Order No. 1000 with minor changes to conform to the Order No. 1000 paradigm, specifically (1) allocation of the costs of all transmission facilities under 200 kV to the participating transmission owner who builds them and who recovers their costs through its transmission owner tariff from its low voltage transmission customers, and (2) allocation of the costs of all transmission facilities at voltage levels of 200 kV or higher to all ISO customers through the ISO regional access charge;
- More explicit recognition of the opportunity for stakeholders to propose public policy requirements and directives that should be considered in the transmission planning process and to obligate the ISO to provide a public explanation of its selection of specific public policies for consideration in the planning process and its rejection of others; and
- Additional language setting forth the ISO’s ultimate objective in its comparative analysis of the degree to which competing project sponsors meet the qualification and selection criteria, which defines the standard the ISO will apply in its comparative analysis for purposes of selecting a project sponsor.

The comments focus primarily on certain tariff enhancements that the ISO made to clarify and increase the transparency of the ISO’s competitive solicitation process and its selection of project sponsors, including changes to

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Association (“AWEA”) filed comments and a motion for leave to file comments out-of-time on November 30. The Public Utilities Commission of the State of California (“CPUC”) filed comments and a motion for leave to file comments out-of-time on December 14.

facilitate collaboration among project sponsors and to provide greater detail regarding the standards the ISO will apply to evaluate competing project sponsors. These changes included the following:

- A new tariff requirement that the ISO identify, within 30 days after the posting of the revised draft comprehensive transmission plan, the factors and considerations, in addition to any binding cost containment commitments, that the ISO believes to be key drivers for selecting an approved project sponsor for each transmission facility that is open to competitive solicitation;
- Language clarifying the process for qualifying and selecting project sponsors;
- A new tariff requirement that the ISO post, within ten days after the ISO's project sponsor selection decision, a report detailing the results of the ISO's comparative analysis, the reasons for the ISO's decisions, and how the ISO considered each of the selection and qualification criteria, including the cost containment criterion;
- Tariff language clarifying that the ISO will select the transmission or non-transmission solutions to meet reliability needs and enhance the simultaneous feasibility of long-term congestion revenue rights that are the most prudent and cost-effective;
- Tariff provisions establishing new project sponsor reporting requirements and providing for the ISO to proactively monitor the status of approved facilities and to take the necessary actions if projects are not on schedule; and
- A requirement that, before the ISO re-assigns construction responsibility for an economically driven or public policy-driven transmission project that is abandoned by a previously approved project sponsor, the ISO must conduct an additional competitive solicitation.

In their comments, a number of commenters recommend limited modifications to various aspects of these revisions. A number of recommendations focus on whether cost should be the primary driver in the selection of project sponsors. In other cases, these commenters seek clarification of tariff provisions. Although the ISO agrees to accept a few of the

clarification suggestions, as discussed below, most of these recommendations are unnecessary for compliance with Order No. 1000 and, in some cases, would be unjustifiable. In other cases, the proposed changes are already captured by the tariff language or are otherwise counterproductive.

Specifically, the ISO agrees to the following changes and clarifications in this answer:

- In response to Pattern and LS Power, the ISO is prepared to review the use of the terms “project,” “solution,” “element,” “upgrade,” and “addition” in the tariff and submit any word changes needed to add clarity or ensure consistency.
- In response to WITG, the ISO is willing to replace the words “revised draft comprehensive Transmission Plan” in section 24.5.2.3(d) with “draft comprehensive Transmission Plan.”
- In response to PIO, the ISO is willing to add language expressly providing that in the draft Study Plan the ISO will reflect any previously-established policies that it proposes to remove, and that stakeholders will be able to comment on that recommendation in accordance with section 24.3.3(d).
- In response to LS Power’s comments, the ISO is willing to add the following language at the end of section 24.5.2.4(d): “and whether, and to what extent, the Project Sponsor will incur incremental right-of-way costs to add new facilities on existing rights of way.”

For the most part, the changes requested by intervenors are not justified.

For example, Clean Line raises a number of issues concerning treatment of merchant or participant-funded transmission. Clean Line did not participate in the ISO’s Order No. 1000 compliance stakeholder process and raises these issues for the first time in its protest. More importantly, Clean Line’s requested changes are not required by Order No. 1000 and are therefore beyond the scope of this proceeding. Clean Line’s suggestions can be pursued through other forums. As discussed below, the ISO also is very concerned that Clean Line’s

proposed changes could require significant changes to the manner in which the ISO schedules transmission and develops its transmission charges.

AWEA is generally supportive of many aspects of the ISO's transmission planning process, and particularly the retention of the ISO's cost allocation methodology. Where AWEA does seek changes to the ISO's transmission planning process, such changes relate to elements of the ISO's planning process previously approved by the Commission and not affected by Order 1000. AWEA does not demonstrate that these approved terms and conditions must be modified to comply with Order No. 1000.

SoCal Edison's limited protest seeks modification to the provisions requiring a participating transmission owner to act as a backup project sponsor if a project is abandoned. The ISO believes SoCal Edison's suggestions are not practicable and would interfere with the ISO's ability to meet the goals of the transmission planning process to ensure that projects that are needed under all of the ISO's categories of transmission are approved and built in a timely manner.

In contrast to the limited comments of other parties, LS Power appears to view the ISO's Order No. 1000 compliance filing as an opportunity to re-litigate a large portion of the ISO's recently approved revised transmission planning process and to seek a wholesale rewrite of that process. In reviewing LS Power's comments, the Commission should take into consideration LS Power's admitted, but unjustified, distrust of the ISO. LS Power asserts that "[h]istorically,

[the ISO] has not been receptive to new entrants.”<sup>8</sup> Yet the evidence is to the contrary. The ISO, prior to Order No. 1000, on its own initiative, opened up the opportunity for new entrants to construct economically driven and policy-driven transmission expansions included in the ISO transmission plan. Even under the more limited opportunities provided before the recent revisions to the ISO transmission planning process, three independent transmission companies, unrelated to retail load-serving entities in California, became participating transmission owners, and a fourth application is pending project completion.

LS Power’s only purported support for its assertion that the ISO is not receptive to non-incumbent transmission development is two complaints filed against the ISO by transmission developers.<sup>9</sup> LS Power acknowledges that the Commission concluded that the complaints were unfounded, but disregards the Commission’s judgment. Rather, LS Power contends:

Indeed, if anything, the Commission’s rulings on prior non-incumbent complaints, in the [ISO] footprint and elsewhere, each sent a clear and distinct message; any latitude to the transmission provider afforded by tariff language will be used to favor the incumbent sponsors and, so long as the decision is permitted by the latitude provided in the tariff, the Commission is bound to uphold the transmission provider’s decision.<sup>10</sup>

Each of the tariff provisions in question, however, had been approved by the Commission as just and reasonable and not unduly discriminatory or

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<sup>8</sup> LS Power at 5.

<sup>9</sup> LS Power at 6.

<sup>10</sup> *Id.*

prejudicial. The fact that certain developers unsuccessfully sought designation to build projects and filed complaints alleging discrimination – which were dismissed – does not provide or establish a pattern of discrimination or provide evidence that the tariffs provide too much latitude to favor incumbent transmission owners. LS Power essentially suggests not only that the ISO has a discriminatory approach to new entrants but also that the Commission has approved ISO tariff provisions that enable such discrimination, thereby failing to adequately enforce the requirements of the Federal Power Act that tariffs be nondiscriminatory and not unduly prejudicial.

Fundamentally, LS Power does not understand, or will not accept, the fact that the ISO employs a “top-down” transmission process, despite the Commission’s explicit endorsement of top-down processes in Order No. 1000<sup>11</sup> and in its prior approval of the ISO’s revised transmission planning process. The ISO does not conduct a planning process where any party can propose a transmission project without regard to prior findings of need. Nor does the ISO’s process limit the opportunity to propose a solution to regional needs to those who seek the opportunity to own the project.

Rather, the ISO, through an open and transparent stakeholder process, identifies the needs. It then solicits recommended solutions from all stakeholders, regardless of whether they are transmission developers and regardless of whether they have an interest in becoming a project sponsor. *All* entities, whether they are developers or not, have an opportunity to propose solutions. The stakeholders proposing projects understand that proposing a

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<sup>11</sup> Order No. 1000 at P 158.

project provides no right to build the project, indeed not even a priority. The ISO then identifies solutions, which may match a proposed solution, may combine proposed solutions, or may be a variant of a proposed solution.

After the ISO identifies the solutions to be included in the transmission plan, and the ISO Board approves the transmission plan, only then do potential project sponsors submit proposals to build the facilities required for the solution. At that point, the ISO determines if the potential project sponsor is qualified to construct the facilities required for the *specific* solution. The selection among multiple qualified potential project sponsors, if there is more than one, proceeds from that point.

The Commission approved this process in the RTTP Order. *Nothing* in Order No. 1000 required the ISO to abandon that process; indeed, the Commission explicitly endorsed it, citing the ISO's competitive solicitation process as an example of a process that provides greater potential opportunities for independent transmission developers to build new transmission facilities.<sup>12</sup> The Commission should recognize that the ISO's transmission planning process and cost allocation provisions, with the targeted tariff revisions included in the October 11 filing, comply with the regional requirements of Order No. 1000.

## **II. MOTION FOR LEAVE TO ANSWER PROTESTS AND FOR LEAVE TO ANSWER OUT-OF-TIME**

The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. Under Rule 213(a)(1) of the Commission's Rules of Practice and Procedure, a

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<sup>12</sup> Order No. 1000 at P 321 n.302.

party may answer any pleading unless otherwise prohibited. There is no prohibition of answers to comments.

Rule 213(a)(2) generally prohibits answers to protests.<sup>13</sup> The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute<sup>14</sup> and where the information assists the Commission in making a decision.<sup>15</sup>

As discussed below, LS Power's protest is based on fundamental misunderstandings regarding the ISO's transmission planning process. The ISO's response identifies these arguments and explains these misunderstandings, thus clarifying the issues and assisting the Commission's understanding. The ISO also believes that its response to SoCal Edison's limited protest provides additional information that will assist the Commission. The ISO therefore requests that the Commission accept this answer.

The ISO further requests leave to file this answer after the 15 day period generally required for answers to motions under Rule 213(d)(1). The ISO is a party to the ISO/RTO Council request for a 45-day reply comment period in this proceeding, which request is still pending in this proceeding. A number of parties filed comments as late as December 14, well after the November 26 deadline established by the Commission's notice in this proceeding. Allowing the ISO an additional ten days to file this answer will allow the ISO to provide a

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<sup>13</sup> 18 C.F.R. § 385.213(a)(2) (2012).

<sup>14</sup> See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (1999).

<sup>15</sup> See, e.g., *El Paso Electric Co., et al. v. Southwestern Pub. Serv. Co.*, 72 FERC ¶ 61,292 at 62,256 (1995); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008).

comprehensive response to issues raised in comments and protests and provide the Commission with a complete record to act on the important issues in this proceeding.

### **III. ANSWER**

#### **A. Phase 2 Request Window**

The ISO's transmission planning process includes a request window in phase 2 of the planning process during which participating transmission owners must, and other parties may, submit proposed solutions to identified reliability needs. LS Power asks the Commission to direct the removal of this existing tariff provision on the grounds that it creates a "pre-competitive solicitation for project submission" that risks either confusion as to the openness of reliability projects to non-incumbents or an unduly discriminatory process.<sup>16</sup> The phase 2 request window is neither confusing nor discriminatory; LS Power's arguments to the contrary appear to be based on a misunderstanding of the ISO planning process. Further, in its compliance filing (pages 82-84), the ISO discussed why a request window for reliability projects was appropriate and does not prejudice any potential project sponsor. LS Power fails to rebut the validity of these arguments, and therefore the ISO will not repeat all of those arguments here.

LS Power argues it is unclear why there is a need for a request window separate and apart from the competitive solicitation. It points out that the ISO does not need the request window for economic or public policy projects and contends that because the phase 2 request window is separate from the

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<sup>16</sup> LS Power at 7.

competitive process and wholly unnecessary, the Commission should look closely at its potential effect on the more important competitive process.

What LS Power fails to recognize, or at least to acknowledge, is that under the ISO's transmission planning process, new solutions to identified needs are not identified in the phase 3 competitive solicitation. Solutions are identified in phase 2 of the planning process based on (1) comments and proposals that stakeholders, including potential project sponsors, submit, with no exclusive rights to build or other "ownership" rights accruing to the party that submits a reliability project proposal through the request window; (2) solutions suggested in stakeholder comments during phase 2; and (3) solutions identified in the ISO's own analysis

This process maximizes the ISO's ability to identify the necessary transmission expansions and provides all parties the opportunity to become project sponsors for any of those expansions that are not upgrades to existing facilities. The existing request window process does not prejudice any party because all regional transmission solutions approved by the ISO are subject to competitive solicitation. LS Power fails to demonstrate how this process results in undue discrimination.

LS Power's contention that only the request window submissions will result in the solution that meets the identified reliability need, and that, in many instances, the ISO is likely also determining the result of the competitive process or so hamstringing that process as to lead to only one result<sup>17</sup> thus makes no sense. The ISO does not "presuppose" that the request window submissions will

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<sup>17</sup> *Id.* at 11-13.

result in the solution; rather, the tariff requires the ISO to use those request window submissions, combined with its own expertise, to determine the solutions to identified needs in each planning cycle. Although LS Power contends that having a request window that requires the submission of potential solutions without an ownership interest in such solutions does not encourage a full range of solutions,<sup>18</sup> the ISO finds it highly unlikely that potential transmission developers will sit out the process rather than provide solutions if they are confident that they are the most qualified to implement that solution. It is significant that *only* LS Power, of all the commenting or intervening transmission developers, believes that Order No. 1000 requires elimination of the request window.

Similarly, there is no logic in LS Power's argument that the ISO's requirement that participating transmission owners submit reliability projects in the request window provides them with an advantage.<sup>19</sup> That the ISO explained in the compliance filing that participating transmission owners are uniquely situated to evaluate reliability on their systems does not, as LS Power contends, imply that the ISO is predisposed to selecting the participating transmission owner's proposed solutions. Because they are not subject to the same obligations, the proposed revisions provide non-incumbent developers with certain strategic advantages. They can submit a proposed solution at the same time as the participating transmission owners, but they can also wait until after the participating transmission owners submit their required solutions and use the

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<sup>18</sup> *Id.* at 13.

<sup>19</sup> *Id.* at 11-12.

data and analysis in those solutions to develop their own alternative solutions and to explain why their alternatives are superior. This particularly benefits governmental agencies, public interest groups, and developers with limited resources because they can avoid the unnecessary expenditure of resources to identify solutions that another entity has already identified.

There is one area where the ISO agrees with LS Power's comments related to the request window. As LS Power notes, under the existing transmission planning process, the ISO distinguishes between "elements," which are open to the competitive solicitation process, and "projects," which are not. As a result of the tariff revisions to comply with Order No. 1000, all regional transmission solutions, other than upgrades and additions to existing facilities, are open to the competitive solicitation process. The ISO recognizes that there may be some potential for confusion in the use of the terms "project," "solution," "element," "upgrade," and "addition" in the revised tariff and is prepared to review the use of these terms in section 24 of the ISO tariff submit and submit any revisions needed to add clarity or ensure consistency in a compliance filing.

#### **B. Consideration of Needs Driven by Public Policy Requirements**

Both EON and PIO have raised concerns with the ISO's proposed tariff language regarding both the process for identifying the public policies to be considered in the annual planning process, and the tariff descriptions of potential public policies.<sup>20</sup> Although these parties suggest that additional clarifying language should be added to the tariff, with one exception discussed below there is no need for further tariff revisions.

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<sup>20</sup> EON at 1-3, PIO at 3-6.

The public policies that the ISO will use to identify transmission needs are developed during phase 1 of each planning cycle and described in the study plan. Proposed sections 24.3.1 to 24.3.3 of the ISO tariff describe the public policies that will be considered and the process by which stakeholders may submit proposed policies for ISO consideration. Specifically, section 24.3.1(g) provides that “policy requirements and directives, as appropriate, including programs initiated by state and federal regulatory agencies” will be inputs to the study plan. Section 24.3.2(i) reiterates that state or federal policy directives, consistent with the Federal Power Act, will be included in the study plan and section 24.3.3(a)(iii) describes the comment process during which stakeholders will have an opportunity to submit public policy proposals.

Sections 24.3.3 (e) and (f) added two additional requirements to the existing tariff language: (1) that the ISO will include in the study plan an explanation as to public policy proposals that were not chosen as inputs, and (2) that all public policy directives selected in one cycle will be carried over to the next one unless the ISO determines that such a directive has been fulfilled, modified or is otherwise not relevant, and in such cases the ISO will provide an explanation.

EON, AWEA, and PIO question the inclusion in section 24.3.3(a)(iii) of the requirement that public policy directives must not be inconsistent with the Federal Power Act.<sup>21</sup> As an initial matter, the ISO notes that the language in section 24.3.3(a)(iii) tracks existing tariff language in section 24.1 of the ISO tariff. Although the ISO agrees with PIO that the ISO’s compliance with the Federal

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<sup>21</sup> EON at 1-2; PIO at p. 5.

Power Act “goes without saying,” the ISO included this phrase because it is possible that, under some circumstances, a state policy or directive could conflict with the Act. In that regard, during the tariff development process for the revised transmission planning process, the specific issue was raised whether, if policy-makers in California did not agree with Arizona’s immigration policy and issued a policy directive that power could not be imported from Arizona, the ISO would be able to incorporate that directive into its planning process without violating the federal law. The proposed tariff language simply provides clarity that it cannot.

AWEA and PIO suggest that the tariff language should specify that policy directives could include those issued by municipal or county subdivisions of the state.<sup>22</sup> This additional clarification is unnecessary, however, because the legal authority of municipal and county subdivisions is derivative of state authority. While their directives are not statewide, they are “state” directives in the sense that they are issued under the authority of the state. Consistent with the proposed tariff language, parties may submit, and the ISO may consider, proposed policy directives, issued by state subdivisions. This is consistent with the Commission’s explanation, which AWEA quotes, that consideration of local requirements “is the intent of the word ‘within’ in Order No. 1000’s explanation that ‘state and local regulations’ meant enacted statutes . . . and regulations promulgated by the relevant jurisdiction, whether within a state or at the federal level.”<sup>23</sup>

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<sup>22</sup> PIO at 4-5.

<sup>23</sup> AWEA at 8, quoting Order No. 1000-A at P 319.

AWEA also states its understanding that the ISO intends to consider anticipated public policy requirements that have not yet taken effect and argues that the ISO should require the tariff to clarify that intent. The ISO believes that use of the term “public policy requirements or directives” in proposed section 24.4.6.6 is broad enough to encompass known and approved requirements that are not yet effective and does not believe further clarification is necessary.

AWEA is concerned that the ISO’s application of a “least-regrets” analysis to determine only the transmission upgrades or additions for Category 1 public policy requirements that “efficiently and effectively meet applicable policies under alternative location and integration assumptions and scenarios, while mitigating the risk of stranded investment” could result in non-comparable treatment for public policy requirements if not implemented properly, and seeks further clarification. AWEA is essentially seeking to re-litigate an issue decided when the Commission accepted the ISO’s revised transmission planning process tariff amendment filing. During the consideration of the revised transmission planning process, a number of parties, including AWEA’s regional partner, the California Wind Energy Association, similarly argued that the proposed criteria are not clear and that the “least regrets” approach is ambiguous. The Commission rejected these concerns and concluded that the ISO “has defined a reasonable framework for its analysis and identification of policy-driven elements.”<sup>24</sup> It also found that in light of the ISO’s “open and transparent process, stakeholders will be able to participate in and monitor the process to ensure that there is no undue

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<sup>24</sup> RTPP Order at P 197.

discrimination and to take appropriate action if there is any such behavior.”<sup>25</sup>

There is nothing in Order No. 1000 that calls these findings into question or requires additional clarification or changes to the methodology by which the ISO determines which public policy solutions are needed. Indeed, the ISO’s tariff is superior to the minimum requirements of Order No. 1000 with respect to public policy projects because Order No. 1000 does not even require a transmission provider to implement a separate class of transmission projects related to public policy requirements.<sup>26</sup>

EON also appears to be taking issue with the ISO’s process for stakeholder input on the selection of public policy requirements, but it is not clear exactly what the concerns are.<sup>27</sup> ISO tariff section 24.3.3 expressly states that, during phase 1 of the planning cycle and before the draft study plan is released, stakeholders will have the opportunity to submit comments on three topics for inclusion in the study plan: (1) demand response programs; (2) non-transmission alternatives; and (3) public policy directives. Although the precise monthly schedule for the entire planning cycle is set forth in the business practice manual,<sup>28</sup> all three phases of the planning process are described in sufficient detail in section 24 in its entirety that the ISO could not, consistent with its tariff, eliminate a stakeholder comment opportunity through the business practice manual. Furthermore, section 24.3.3(d) expressly provides stakeholders with a

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<sup>25</sup> *Id.*

<sup>26</sup> Order No. 1000 at P 220.

<sup>27</sup> EON at 2-3.

<sup>28</sup> Business Practice Manual for the Transmission Planning Process, Table 2.1 and section 3.2 *et seq.*

two-week period following the release of the draft study plan to provide input on the policy directives that the ISO has chosen (and the reasons given for why proposals were not chosen). Once again, this opportunity and the comment period are embedded in the tariff and cannot be eliminated or shortened in the business practice manual.

Furthermore, throughout phase 2 of the planning process, as the ISO conducts its studies, stakeholders have several opportunities to interact with the ISO with regard to the identification and evaluation of transmission needs that are driven by public policy requirements. Section 24.4.4 provides for comments on the conceptual statewide plan during the month after the plan is posted, and these comments can include proposed policy-driven transmission needs. In accordance with section 24.4.9(b), the ISO will conduct a stakeholder meeting to address proposed policy-driven elements prior to the issuance of the draft transmission plan. Once again, the business practice manual contains more specific dates for these stakeholder interactions, but the tariff framework clearly meets the Order 1000 requirements for stakeholder engagement in the development of policies and the evaluation of policy-driven elements.

Finally, PIO suggests that stakeholders should be permitted to comment on the ISO's decision to remove previously-selected policies from the baseline before the final study plan is released.<sup>29</sup> As discussed above, because stakeholders are given an early opportunity to submit policy directives and requirements prior to the release of the draft study plan, the ISO would include its decision to remove policies from the baseline in the draft study plan and

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<sup>29</sup> PIO at 6.

stakeholders would be able to submit comments pursuant to section 24.3.3(d). The ISO is willing to add tariff language to this effect in a subsequent compliance filing.

### **C. AWEA Planning Concerns**

AWEA expresses a number of concerns regarding the planning process consideration of transmission needs. AWEA's requests go beyond the requirements of Order No. 1000 and are inconsistent with the Commission's findings in the RTPP Order. Also, during the Order 1000 stakeholder process, AWEA did not submit comments on the ISO's Order No. 1000 compliance proposals or draft tariff language. Neither did its regional partner CalWea, which is a regular participant in ISO stakeholder initiatives. No other party raises the objections that AWEA offers.

#### **1. Planning Horizon**

AWEA contends that the ISO's 10-year planning horizon is too short. AWEA acknowledges that the Commission declined to specify an exact number of years that would constitute a minimum planning horizon for all filings, but asserts that it is "clear" that the ISO's proposed time horizon falls short of a horizon that would ensure that more cost-effective or efficient plans are being evaluated.<sup>30</sup> AWEA offers no support for this "clarity" other than the Commission's statement explaining the need for the rule that "[t]ransmission planning is a complex process that requires consideration of a broad range of

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<sup>30</sup> AWEA at 16.

factors and an assessment of their significance over a period that can extend from present out to 20, 30 years or more in the future.”<sup>31</sup>

AWEA neglects to note that a few commenters on Order No. 1000 specifically requested that the Commission require a planning horizon of 20 to 30 years.<sup>32</sup> The Commission rejected these requests, finding that “it is appropriate to leave to the transmission planning regions in the first instance adequate discretion to allow for the development and implementation of interregional transmission coordination procedures that suit the needs of the neighboring transmission planning regions.”<sup>33</sup> AWEA’s request that the Commission impose here what it specifically declined to impose in Order No.1000 is a collateral attack on that order. Moreover, the tariff provisions found by the Commission to be just and reasonable in the RTPP Order expressly provided for the ISO to use a planning horizon of a minimum of ten years, and nothing in Order No. 1000 supports a different conclusion.<sup>34</sup>

## **2. Integrated Planning**

AWEA contends that the ISO’s proposal falls short of Order No. 1000’s intended goals by establishing separate planning processes for different categories of transmission even though nearly all transmission serves multiple purposes. According to AWEA, “Using the proposed planning categories will tend to produce a result that is sub-optimal for cost-effectiveness and efficiency,

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<sup>31</sup> AWEA at 9. AWEA’s cites Order No. 1000 at P 565. This is presumably a typographical error. The quotation appears in paragraph 5 of Order No. 1000.

<sup>32</sup> See Order No. 1000 at PP 186, 379, 431

<sup>33</sup> Order No. 1000 at P 397.

<sup>34</sup> See June 4, 2010, RTPP tariff filing in Docket No. ER10-1401, transmittal letter at 77 and proposed tariff section 24.2.

and will also tend to bias the planning process against larger transmission projects, resulting in undue discrimination against some proposers of transmission projects.”<sup>35</sup>

AWEA is incorrect when it contends that the ISO uses separate planning processes for different categories of transmission facilities (“LCRIF”). In reality, the ISO uses a single integrated process. The ISO’s regional transmission planning process considers all needs; it simply considers them in sequence, which is a logical means of ensuring that all needs are met. The ISO first considers reliability needs, because ensuring that they are met is the most important role of a transmission provider, and identifies proposed solutions. In that process, it takes into account any merchant facilities that have been proposed and meet some of the reliability needs. It then identifies location constrained resource interconnection facility projects, projects to maintain the feasibility of long-term congestion revenue rights, and needed generator interconnection facilities, each of which fulfills particular specific functions under the ISO tariff.

At that point, the ISO considers policy-driven needs. The ISO does not do so in isolation from the previously identified solutions and does not consider those solutions frozen in stone. If the expansion of a reliability-driven solution is the best solution to the public policy need, the ISO will expand the reliability-driven solution. If a policy-driven solution meets a reliability need, or can be expanded to meet the reliability need more effectively and cost-efficiently than the previous reliability-driven solution, then the ISO will abandon or modify the

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<sup>35</sup> AWEA at 17.

previous reliability-driven solution. Finally, the ISO considers economically driven needs. As in the case of policy-driven needs, the process takes into consideration and re-evaluates and revises previously identified solutions to ensure the most effective and cost-efficient combination of solutions to meet all identified needs.

Section 24.2 (a) of the existing tariff, which the ISO's compliance proposal does not change, specifies one of the minimum requirements for the transmission planning process:

Coordinate and consolidate in a single plan the transmission needs of the CAISO Balancing Authority Area for maintaining the reliability of the CAISO Controlled Grid in accordance with Applicable Reliability Criteria and CAISO Planning Standards, in a manner that promotes the economic efficiency of the CAISO Controlled Grid and considers federal and state environmental and other policies affecting the provision of Energy.

This is a requirement for integrated planning that the sequential consideration of needs fulfills. AWEA's contention to the contrary is simply wrong.

### **3. Reliability Benefits of Transmission**

AWEA claims that the proposed planning methodology fails to account for the many benefits that transmission provides for improving power system reliability.<sup>36</sup> AWEA does not explain where that failure lies, and the ISO is at a loss to understand the nature of AWEA's argument. The transmission planning process, as described above, takes into consideration reliability benefits at all

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<sup>36</sup> AWEA at 18.

stages of the process. Specifically, section 24.4.6.2 of the ISO tariff states that the ISO will identify the need for any transmission upgrades or additions “required to ensure System Reliability consistent with all Applicable Reliability Criteria, and CAISO Planning Standards.” This was so when the Commission approved the revised transmission planning process and the ISO has proposed no changes that would interfere with this integrated transmission planning.

**D. Generator Interconnection Network Upgrades and Location Constrained Resource Interconnection Facilities**

During the stakeholder process, the ISO and its stakeholders considered the interplay between the ISO’s Order No. 1000 compliance requirements, LCRIF (tariff section 24.4.6.3) and network upgrades developed in the generation interconnection process that can be considered in the planning process (tariff section 24.4.6.5). This consideration took into account the Commission’s findings in Order No. 1000 that “issues related to the generator interconnection process and to interconnection cost recovery are outside the scope of this rulemaking” and that Order No. 1000 therefore “does not set forth any new requirements with respect to such procedures for interconnecting large, small, or wind or other generation facilities.”<sup>37</sup> Only LS Power has continued to argue that the LCRIF tariff provisions fall within the scope of Order No. 1000 and require modification. LS Power argues that the LCRIF projects, which may be proposed by any stakeholder but must be built by a participating transmission owner, must be open to competitive solicitation or the ISO must “show cause” as to why it is

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<sup>37</sup> Order No. 1000 at P 760.

inappropriate to do so.<sup>38</sup> LS Power has also suggested, without any basis in Order No. 1000, that the ISO must open up to competitive solicitation any large network upgrades developed in the generator interconnection process that “have not yet received approvals from CPUC.”<sup>39</sup> These suggestions lack merit and should be disregarded.

### **1. Location Constrained Resource Interconnection Facilities**

LS Power’s proposed treatment of LCRIF is beyond the scope of Order No. 1000 because (1) Order No. 1000 expressly states that its directives do not apply to facilities covered by Order No. 2003, (2) the LCRIF tariff language does not contain a right-of-first-refusal as defined in Order No. 1000, and (3) Order No. 1000 does not require, let alone contain, any discussion regarding the right of a transmission developer to become a participating transmission owner as defined in the ISO tariff if the developer possesses only generator interconnection facilities.<sup>40</sup> For purposes of Order No. 1000, “non-incumbent transmission developer” refers to two categories of transmission developers: (1) a transmission developer that does not have a retail distribution service territory or footprint; and (2) a public utility transmission company that proposes a project outside of its existing retail distribution service territory or footprint, where it is not

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<sup>38</sup> LS Power at 15.

<sup>39</sup> *Id.* at 16.

<sup>40</sup> As the ISO indicated in its Compliance Filing, the Commission has previously found that LCRIFs are generator interconnection facilities and the ISO’s treatment of them constitutes an acceptable variation from Order No. 2003’s *pro forma* generator interconnection procedures. Transmittal letter at 42-43.

the incumbent for purposes of that project.<sup>41</sup> An “incumbent transmission developer/provider is an entity that develops a transmission project within its own retail distribution service territory or footprint.”<sup>42</sup>

Contrary to LS Power’s suggestion, and consistent with the definitions used in Order No. 1000, the ISO tariff does not contain a provision granting a right-of-first-refusal for incumbents to build and own LCRIFs in their retail service territories. Instead, the ISO tariff contemplates that existing participating transmission owners, whether they be independent transmission developers or public utilities with a retail distribution service territory, will build LCRIFs for similar reasons that only existing participating transmission owners build network upgrades associated with large generator interconnections. The Commission recognized as much in the RTPP Order when it rejected the argument that entities that are not participating transmission owners (“non-PTOs”) may propose to build and own LCRIFs:

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. 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.

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<sup>41</sup> Order No. 1000 at P 225; Order No. 1000-A at P 425.

<sup>42</sup> *Id.*

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, . . . 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.<sup>43</sup>

As the Commission recognized in the RTPP Order, there is no undue discrimination here.<sup>44</sup> All entities that build and own network facilities and are willing to turn them over to the ISO's operational control are eligible to become participating transmission owners, and all participating transmission owners are eligible to build and own LCRIFs. LS Power's arguments to the contrary are essentially an effort to re-litigate the RTPP proceeding without a basis in Order No. 1000 for revisiting these issues.

Most importantly, as noted above, Order No. 1000 does not apply to the generator interconnection process, and the Commission had found LCRIF to be an acceptable variation from Order No. 2003 in the ISO's interconnection process. Nowhere does Order No. 1000 address, let alone dictate, which facilities a transmission owner or developer can turn over to the ISO's operational control in order to become a participating transmission owner. Thus, the ISO's treatment of LCRIFs is not inconsistent with Order No. 1000, and proposed changes to the LCRIF tariff provisions are beyond the scope of Order No. 1000.

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<sup>43</sup> RTPP Order at P 134.

<sup>44</sup> RTPP Order at P 136.

The LCRIF tariff provisions are also consistent with the purpose of the LCRIF category of transmission. The ISO's LCRIF proposal was designed solely as a funding mechanism to assist generation developers who were seeking to develop generation in areas remote from the grid. It simply provides an alternative funding mechanism and cost allocation scheme for a temporary period of time for what would otherwise be generator interconnections paid for by the interconnection customer. As generators come on-line to use the LCRIF, LCRIF costs associated with their capacity are removed from the transmission revenue requirements and the transmission access charge and assigned directly to such generators. Once the LCRIF is fully subscribed, the costs of the LCRIF are no longer included in the transmission access charge. It is not reasonable or practical for the ISO to enter into some type of temporary arrangement for transmission owners that would only be participating transmission owners on a temporary basis and would not turn over facilities that are integral to the ISO's core functions or which otherwise benefit other participating transmission owners. The Commission affirmed this arrangement when it approved the LCRIF tariff provisions and reaffirmed these conclusions in the RTPP Order. In particular, the Commission found that because LCRIFs are radial facilities, just like generator interconnection facilities, an entity that only seeks to build and turn over operational control of these facilities does not satisfy the criteria to enter into the transmission control agreement and become a participating transmission owner.<sup>45</sup> The Commission also stressed that the LCRIF provisions address a specific need presented by location constrained resources and are not unduly

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<sup>45</sup> RTPP Order at P 134.

discriminatory.<sup>46</sup> Specifically, the Commission stated that the LCRIF provisions were crafted to help location constrained resources overcome the financial barriers to interconnecting to the grid, not as a benefit to transmission owners.<sup>47</sup>

In summary, nothing in Order No. 1000 undermines these prior determinations. Nowhere does Order No. 1000 generally attempt to define what facilities a transmission owner or developer may turn over in order to become a participating transmission owner or find that transmission owners/developers can become participating transmission owners only by turning over radial facilities to the ISO's operational control.<sup>48</sup> Thus, Order No. 1000 does not require revisions to the LCRIF tariff provisions.

## **2. Delivery Network Upgrades Developed in the Generation Interconnection Process**

Section 24.4.6.5 of the ISO tariff, which the Commission approved as part of the ISO's revised transmission planning process, gives the ISO the discretion to consider in the planning process certain network upgrades developed in the generation interconnection process if the upgrade has not been included in an interconnection agreement and meets certain size and cost criteria. The purpose of the section was to provide a means by which the ISO could evaluate large network upgrades driven by resource interconnections and determine whether

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<sup>46</sup> *Id.* at P 136.

<sup>47</sup> *Id.* The Commission found there was no evidence that the provisions regarding the ability to build LCRIFs were unjust, unreasonable, unduly discriminatory, or preferential. *Id.*

<sup>48</sup> In the RTPP Order, the Commission recognized that LCRIF projects are likely to diminish over time as the revised transmission planning process becomes effective and any policy projects are vetted in the transmission planning process and "replace" LCRIF projects. The ISO's implementation of the revised interconnection tariff revisions will further obviate the need for LCRIF projects.

the upgrades should be “up-sized” for potential resource development. The ISO explained in the compliance filing that changes to the new generation interconnection and deliverability allocation process, recently approved by the Commission in Docket ER 12-1855, provide better integration of the transmission planning and generation interconnection processes but do not require revisions to section 24.4.6.5. Furthermore, Order No. 1000 does not require the ISO to modify that section because generation interconnection issues are outside the scope of the order.<sup>49</sup>

Despite this clear direction, LS Power nonetheless notes, without any support or specific information, that “several network upgrades” were “proposed” in the ISO’s generation interconnection process prior to approval of the new generation interconnection and deliverability allocation process and that “several of these have not yet received approvals from CPUC.” LS Power argues that the Commission should require the ISO to “open those (unidentified) upgrades” to competitive solicitation rather than allowing the interconnecting participating transmission owner to build the upgrades.<sup>50</sup>

Not only is this outcome not required by Order No. 1000 (and LS Power has not cited any section of the order that supports this recommendation), but it also raises a host of factual and legal issues that LS Power does not answer. For example, LS Power does not mention whether the network upgrades it refers

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<sup>49</sup> Order No. 1000 at P 760. *See also* Transmittal letter at 42, n. 104. As a practical matter, the new generation interconnection and deliverability allocation process renders section 24.5.4.6.5 moot because, starting with queue cluster 5, large delivery network upgrades will be developed in the transmission planning process and allocated to generation in the queue that meets certain milestone criteria.

<sup>50</sup> LS Power at 16.

to be embodied in executed generation interconnection agreements. If so, the requested direction would amount to an abrogation of agreements that may have already been approved by the Commission. Furthermore, even if the (unidentified) network upgrades are not yet identified in executed interconnection agreements, subjecting them to competitive solicitation would disrupt and delay the generation interconnection process, studies and business assumptions upon which interconnection customers have relied to obtain financing and make other decisions relating to their projects. Finally, in the absence of anything in Order No. 1000 requiring such action, LS Power's suggestion to reach back in time and change the generation interconnection procedure amounts to retroactive ratemaking and would not be permitted by the Commission.

**E. Construction Rights for Existing Facilities.**

As permitted by Order No. 1000, the ISO's compliance filing provides participating transmission owners the right to build upgrades to their existing facilities. Pattern objects to the ISO's tariff language implementing this right, even though Pattern admits that such tariff language is taken verbatim from the Commission's description of upgrade to existing facilities to which a right-of-first-refusal would apply. Pattern claims that it is inappropriate to use the Commission's exact terminology because the Commission did not intend by the Order to specify exact language for inclusion in a public utility's tariff. Pattern argues that relying on the Commission's exact language as to what constitutes an "upgrade" is confusing because the ISO uses the terms transmission "upgrades" and "additions" elsewhere in its tariff in a manner that could lead to confusion and disputes. In particular, Pattern refers to section 24.4.10 of the

tariff which provides that transmission upgrades or additions that are associated with both Regional Transmission Facilities and Local Transmission Facilities, but for which the ISO determines that it is not reasonable to divide construction responsibility among multiple project sponsors. As the sole example of the potential source of confusion, Pattern provides an example of a new 400 kV line to connect two existing sub-stations, such as Trans Bay Cable, and contends that under section 24.5.2 this could be deemed to be an “upgrade” subject to a right of first refusal for an incumbent transmission provider that owns the two existing sub-stations.<sup>51</sup>

If there is any confusion – and the ISO does not believe there is – it arises from the use of the terms “addition” and “upgrade” elsewhere in the tariff, not from the ISO adoption of the Commission’s description of facilities for which an existing transmission owner has a right to build. In Order No. 1000-A, the Commission clarified what constitutes an upgrade for right-of-first-refusal purposes and what does not. There is no rational basis for Pattern’s argument that the ISO cannot rely on the Commission’s exact language for inclusion in a tariff. To do otherwise would have resulted in an inconsistency with Order No. 1000-A. To the extent Pattern is contending that the Commission’s own definition of upgrade in Order No. 1000-A is erroneous or confusing, it should have sought rehearing of Order No. 1000-A. It did not and its presentation of the argument at this point is a collateral attack on Order No. 1000-A.

If the terms “upgrade” and “addition” are read in context, there is no confusion regarding how the new high voltage line in Pattern’s example above

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<sup>51</sup> Pattern Comments at 13.

would be treated. Section 24.5.2 states that for any upgrade to be subject to a right-of-first-refusal it must be an upgrade to a “part of an existing Participating PTO facility.” Because Pattern’s example of a proposed line would be a new line where none has existed before, it is not an upgrade or addition to an existing facility and it cannot be treated as an upgrade or addition that the transmission owner has a right to build under Order No. 1000 or section 24.5.2. Likewise, the TransBay Cable project is not affected by these provisions. The TransBay Cable was a brand new DC line where no line existed before. Clearly, it was not an upgrade to an existing facility. ISO notes that the proposed tariff language referenced by Pattern was modified and explained several times during the stakeholder process, mostly in response to comments submitted by LS Power, and no stakeholder other than Pattern, including LS Power, objects to it in their comments. Perhaps Pattern misapprehends the provision because it did not participate in that stakeholder process.

The ISO explained the meaning of section 24.4.10 in its Compliance Filing, stating that section 24.4.10 did not apply to upgrades to an existing transmission facility.<sup>52</sup> Because this tariff language has nothing to do with the right to build upgrades and additions to existing facilities in section 24.5.2, the ISO believes the meanings of the terms “addition” and “upgrade” is clear in this context. Nonetheless, as noted above, the ISO is prepared to review the use of the terms “project,” “solution,” “element,” “upgrade,” and “addition” throughout the tariff and make any changes it finds needed to add clarity or ensure consistency in a subsequent compliance filing.

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<sup>52</sup> Transmittal letter at 37.

## **F. Qualification**

### **1. Pre-Qualification**

During the stakeholder process, the ISO considered the concept of a separate pre-qualification process for project sponsors during the annual transmission planning process. There were two possible options for a pre-qualification process. One was a generic pre-qualification based on project sponsors' financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities. This pre-qualification would occur at some point during phase 2, prior to the approval of the final plan and before the ISO knows the specific transmission facilities that will be subject to competitive solicitation. The second option was pre-qualifying project sponsors after the ISO has finalized the transmission plan and determined the specific transmission solutions that will be subject to competitive solicitation. For the reasons explained in the compliance filing<sup>53</sup>, the ISO ultimately determined that a pre-qualification process would be problematic and not provide any significant benefits. Because no party has shown that the considerations set forth in the ISO's compliance filing are invalid, the ISO will not repeat all of those sound reasons herein. Below, the ISO explains why the other arguments raised by intervenors fail to demonstrate why a separate pre-qualification step is either appropriate or necessary.

Clean Line states that the qualification criteria under tariff sections 24.5.2.1(a) and (b) for project sponsors seeking to build cost-allocated projects apply to proposed projects rather than project sponsors, and asserts that this is

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<sup>53</sup> Transmittal letter at 47-50.

inconsistent with the definition of qualification criteria in Order No. 1000.

According to Clean Line, an entity's eligibility to propose a project for selection in the regional plan for cost allocation purposes should not be contingent on whether the project is already in the plan, and this criterion is circular and implies predetermination on the part of the ISO.<sup>54</sup> Clean Line appears to be arguing that a phase 2 pre-qualification is necessary.

Similarly, LS Power objects to the ISO's proposal to not address sponsor qualification prior to the competitive solicitation process in phase 3 and to reserve the issue of sponsor qualification to the sponsor selection process. According to LS Power, determining project sponsor qualifications after project submittal is inconsistent with the language in Order No. 1000 that requires transmission providers to establish appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection.<sup>55</sup> LS Power also argues that only non-incumbent developers will be at risk for being rejected as unqualified going into the solicitation process. LS Power contends that the ISO will use the issue of qualification to eliminate entities or projects from the

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<sup>54</sup> Clean Line at 11-12.

<sup>55</sup> LS Power at 17-18. LS Power's contention is inconsistent with its position early in the docket that was the precursor to the Order No. 1000 rulemaking. There, LS Power stated that in ERCOT, in order to qualify, project sponsors had to meet criteria to show their qualifications to build and own the proposed project. Comments of LS Power, Docket No. AD09-000, at 35 (Nov. 23, 2009). LS Power stated that it did not object to such qualification standards as long as they are consistently applied. Texas, however, does not employ a pre-qualification or qualification process separate and apart from the solicitation process. Rather, qualification decisions are all handled in the project sponsor selection and evaluation process, just as the ISO proposes. Tex. Admin. Code, tit. 16, R, 25.216. In light of LS Power's support for the ERCOT approach, which evaluates qualification as part of the selection process, not in a separate pre-qualification process. LS Power cannot reasonably argue that the ISO's proposal is flawed in proceeding in the same manner.

solicitation process, when the evaluation of proposal should address only project selection.<sup>56</sup> Although LS Power also appears to be advocating phase 2 pre-qualification, many of its criticisms of the ISO's explanations appear to conflate the two options considered in the stakeholder process.

These comments reflect a failure to understand the nature and purpose of the ISO's top-down planning process. The ability to propose a project as a solution is not "contingent whether the project is already in the plan" and there is no need for "criteria for determining an entity's eligibility to propose a transmission project for selection." During phase 2 of the transmission planning process, entities submit proposed solutions to the needs that the ISO has identified. *Every* interested stakeholder that wishes to do so is automatically qualified to submit a potential solution. Additional qualification criteria applicable to Phase 2 are not necessary because there is no ownership right connected to the phase 2 solution proposals or to the transmission solution that the ISO ultimately finds is needed. Unlike some other regions, the ISO does not employ a "bottoms up" planning process where sponsors submit projects and essentially have an ownership right in that project if it is found to be needed. Arguably a pre-qualification process may be appropriate in those circumstances, but it is not necessary in a top down planning process that utilizes a competitive solicitation. The open process for the submission of solutions to identified needs has the advantage of the widest possible range of traditional and innovative solutions to reliability, economic, and public policy needs. A pre-qualification process would limit the scope of the alternatives presented and would prevent some parties with

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<sup>56</sup> *Id.* at 18.

good ideas from putting solutions on the table for consideration. In other words, the ISO's model maximizes competition by permitting all stakeholders to suggest solutions to identified needs during Phase 2 of the planning process.

Thus, LS Power has it completely backward. The qualification process, because it occurs in phase 3, cannot eliminate projects from the solicitation process. The ISO determines the essential features of "projects," *i.e.*, the solutions, in phase 2. The proposals in Phase 3 are used to determine who can construct the solution in the most prudent, efficient, and cost-effective manner. This depends on what the project sponsor brings to the table, both in terms of its qualifications and its construction plan.

To the extent that by their comments Clean Line and LS Power intend to argue that the ISO's top-down planning is inconsistent with Order No. 1000, their arguments fly in the face of the unambiguous language of the order. The Commission specifically stated that "a public utility transmission provider's regional transmission planning process may utilize a "top down" approach, a "bottom up" approach, or some other approach so long as the public utility transmission provider complies with the requirements."<sup>57</sup> Although the Commission required a qualification process that "provide[s] each potential transmission developer the opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate and maintain transmission facilities,"<sup>58</sup> it did not specify when, in a top down process, that qualification must occur. LS Power and Clean Line also ignore the

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<sup>57</sup> Order No. 1000 at P 158.

<sup>58</sup> *Id.* at P 323.

facts that, as noted above, Order No. 1000 expressly permits a competitive solicitation model as an alternative to a project sponsorship model and that the Commission expected that there would be few if any changes needed to existing competitive solicitation models in order to comply with Order No. 1000.<sup>59</sup> Instead, they seek to dramatically overhaul the ISO's existing process beyond what is required by Order No. 1000.

Clean Line and LS Power appear to suggest that the order's requirement that regional transmission planners establish "appropriate qualification criteria for determining an entity's eligibility to propose a transmission project for selection in the regional transmission plan for purposes of cost allocation"<sup>60</sup> means that the process must include criteria at the stage when parties submit proposed solutions. In a sense, the ISO has provided such criteria – it has determined that all are qualified. Any interpretation of Order No. 1000 that goes beyond that and would require that the ISO create criteria that would disqualify parties from submitting proposed solutions – which is the necessary consequence of establishing criteria at this stage – would be contrary to the Commission's finding that top-down planning is acceptable under Order No. 1000. It would also be contrary to one of the Commission's two fundamental objectives in Order No. 1000 – "ensur[ing] that transmission planning processes at the regional level consider and evaluate, on a non-discriminatory basis, possible transmission alternatives and produce a transmission plan that can meet transmission needs

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<sup>59</sup> *Id.* at P 321.

<sup>60</sup> *Id.*

more efficiently and cost-effectively.”<sup>61</sup> For these reasons, as the ISO explained in its compliance filing, to the extent that the Commission’s statement implies the need for a qualification prior to the proposal of transmission solutions, the ISO’s process is – in the context of top-down planning – superior to that Order No. 1000 requirement. LS Power challenges the ISO’s position in this regard on the basis that the ISO offers no proof that the lack of a pre-qualification process will actually lead to proposals being submitted by prospective project sponsors that would otherwise not be submitted. This type of proposition, however, is not susceptible to empirical proof because it has yet to be implemented and, even if it had been, there would be no control group for comparison. It simply stands to reason that one will get more proposals if one does not disqualify entities up front prior to the submission of proposed solutions. Parties that might not survive a generic pre-qualification may prove qualified to develop projects that satisfy identified needs. Moreover, allowing parties that might eventually be deemed not to qualify to construct a project in an individual capacity to submit proposals leaves open the possibility of collaboration during the evaluation process. Again, the ISO believes that its approach maximizes competition and participation by permitting anyone with good ideas or particular strengths to suggest solutions, submit proposals to build, operate and maintain needed solutions, and participate in the collaborative process. On the other hand, LS Powers seeks to limit competition at the earliest possible stage, thereby potentially denying the ISO and ratepayers the particular benefits and advantages that “unqualified” sponsors might have.

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<sup>61</sup> *Id.* at P 4.

LS Power states that the ISO's general concerns that pre-qualification cannot address the potential project sponsor's ability to build a project on a short timeline or the fact that a potential project sponsor's qualification to build specific facilities can be affected by the specific scope and nature of the facility are easily addressed. According to LS Power, the qualification process could require that potential sponsors set forth in detail relevant information regarding projects for which they seek qualification.<sup>62</sup> In the context of a phase 2 pre-qualification, this information, however, would be irrelevant to the ISO's selection of solutions, because that selection does not take into account potential project sponsors. The ISO's qualification process requires potential sponsors to submit that information in phase 3 when they seek to build the specific solutions that are included in the regional plan. Asking for the submission of such information prior to that time would require potential project sponsors to speculate about the nature of the solutions the ISO will approve. This would just add an unnecessary layer and delay to the process. As the ISO has previously noted, in Phase 2, the ISO relies on planning cost estimates in determining the most cost-effective solutions that are needed, and the Commission recognized this fact in its order on the revised transmission planning process.<sup>63</sup>

LS Power also contends that the ISO concern that pre-qualification "not take into account a project sponsor's resources and ability to construct in a timely

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<sup>62</sup> LS Power at 19.

<sup>63</sup> RTPP Order at 217. In the opportunities for comment that stakeholders have during Phase 2, they are free to show why a particular alternative solution is the most efficient and cost-effective proposal.

manner a project that has a near term deadline for completion” is not a qualification issue, but an evaluation issue. According to LS Power:

If the CAISO has a near term need, its solicitation process will set forth that need with specificity. Then, the evaluation process should make it clear [sic] the project selected and the specific reason for selecting that project and sponsor. . . . Allowing the CAISO to make project selection decisions based on “disqualifying” project sponsors would be inconsistent with Order No. 1000’s [sic].

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Again, LS Power does not understand the ISO’s approved planning process. The selection of the solution and the selection of the project sponsor are two separate decision-making processes. Indeed, with regard to the latter, the ISO determines the potential sponsors’ qualifications, but only if potential sponsors identify different siting authorities does the ISO select the project sponsor. In phase 2, the ISO cannot “make project selection decisions based on ‘disqualifying project sponsors” because the qualifications of potential project sponsors are irrelevant to the choice of the solution. In phase 3, if there are multiple qualified project sponsors with specific project proposals to build the same solution, and if potential sponsors identify different siting authorities, then the ISO will indeed identify a specific reason for selecting a project and sponsor, as required by ISO tariff section 24.5.3.

LS Power is further concerned about the ISO’s explanation that it does not want to disqualify potential project sponsors in the phase 2 process because it wants to maximize the number of competing sponsors and allow potential

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<sup>64</sup> *Id.* at 19-20.

sponsors that it determines are not individually qualified in the phase 3 process to collaborate with others in order to overcome deficiencies. LS Power argues:

The CAISO's position is completely inappropriate and is fraught with the potential for mischief. CAISO should not be permitting "unqualified" sponsors to team up after submission. More importantly, CAISO's proposal runs the risk of CAISO forcing "collaboration" by threatening to disqualify a project sponsor, thereby forcing the prospective sponsor to collaborate with a "qualified sponsor" to save any hope of moving forward. At the very least, every CAISO decision to disqualify a non-incumbent sponsor after project submission will be called into question. If the CAISO's goal is to encourage collaboration, the best manner to encourage joint projects is to determine qualifications before the solicitation process. If an entity does not qualify on its own, it can address those issues by teaming with entities that do. If an entity does qualify, then it can collaborate from a position of equality.<sup>65</sup>

LS Power provides no basis for these arguments, and they simply make no sense. If the Commission's goal is to foster competition in order to ensure that needed solutions to transmission needs are met in the most prudent, efficient, and cost-effective manner, why should the ISO not permit potential sponsors that do not individually meet the qualification criteria to team up with others following submission of proposals to build? The purpose of the ISO's planning process is not to defend individual aspirants from competition, but to come up with the best solution for ratepayers.

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<sup>65</sup> *Id.* at 22.

According to LS Power, the ISO offers no opportunity for an entity to challenge the qualification decision or to address the issues that disqualify the entity. There is no basis for designing the planning process on the assumption that the ISO will act in bad faith. The ISO's planning process is fully transparent. If the ISO were to abuse the process, parties would have access to dispute resolution under the ISO tariff and, if necessary, the Commission in order to seek redress. As discussed above, the Commission cannot evaluate the ISO's compliance filing based on LS Power's unsubstantiated challenges to the ISO's ability to administer its tariff in a fair and nondiscriminatory fashion. Also, LS Power ignores that the ISO is required to retain an expert consultant to assist it in its project sponsor selection decisions, which should "circumvent any allegation of discriminatory selections."<sup>66</sup>

## **2. Qualification Criteria**

LS Power challenges the ISO's qualification criteria as vague. Although it did not mention concerns with this existing tariff qualification criterion during the stakeholder process, LS Power now states that the meaning of the tariff provision requiring that a project sponsor be "physically' capable of completing or operating and maintain a project" is unclear, and that it might mean whether the entity has the requisite rights. Apparently, LS Power is the only stakeholder that finds this unclear, as no other stakeholder brought this up. The plain means of physical ability, however, does not extend to legal rights. The simple question is whether the project sponsor has the necessary physical attributes – manpower and equipment or access to the necessary manpower and equipment to

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<sup>66</sup> RTPP Order at P 254.

complete an awarded project in a timely manner and to operate and maintain the transmission facility after construction. This language is unchanged from the existing, Commission-approved, revised transmission planning process. Nothing in Order No. 1000 converts this criterion from a just and reasonable provision to one that is impermissibly vague.

LS Power's other objection to the qualification criteria, which it also did not raise during the stakeholder process, is that the phrase "for the life of the project" is vague and cannot be valued in any reasonable manner. According to LS Power, the ISO offers no explanation regarding how it will make a determination as to a developer's capability for the next 30 to 40 years, and LS Power does not believe that the ISO is capable of offering such an explanation. The ISO cannot, of course, predict the future, but this criterion does not require it to do so. The ISO only needs to consider whether, at the time of the evaluation of qualifications, the project sponsor, taking into account its existing resources and commitments, has the capital and organizational structure such that it is not likely to fail during the expected life of the transmission element. Again, this language is unchanged from the existing, Commission-approved tariff language implementing the ISO's revised transmission planning process and, again, nothing in Order No. 1000 converts this criterion from a just and reasonable provision to one that is impermissibly vague.

### **3. Information Requirements**

In its compliance filing, the ISO explained that the project proposals must include plan of service details and supporting information sufficient to enable the ISO to determine whether the proposal meets the qualification criteria and the

project sponsor selection criteria set forth in the tariff.<sup>67</sup> The ISO noted that section 5.2.1 of the ISO's BPM for the Transmission Planning Process sets forth the extensive, detailed information that project sponsors must submit with their proposals and that the ISO proposes to retain these granular information requirements in the BPM.

Relying on paragraph 325 of Order No. 1000, LS Power contends this information must be in the ISO tariff.<sup>68</sup> LS Power is the only intervenor to raise this argument. Paragraph 325 requires transmission providers to identify in their tariffs the information that must be submitted by a transmission developer in support of a transmission project that it proposes in the regional transmission planning process.

The requirement in paragraph 325 is not applicable to the ISO's Phase 3 project sponsor selection process. Rather, it is designed for those planning processes where a project sponsor proposes a specific transmission project, which the project sponsor would construct and own, for inclusion in the regional transmission plan. Paragraph 325 requires that the tariff "identify in sufficient detail the information necessary to allow a proposed transmission project to be evaluated in the regional transmission planning process on a basis comparable to other transmission projects." In Phase 3 of the ISO's top-down transmission planning process, the ISO is not evaluating a proposed transmission project. Phase 3 occurs after the ISO has already identified the solutions to transmission needs to include in the transmission plan, and the only remaining question is

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<sup>67</sup> *Id.*

<sup>68</sup> *Id.* at 25-26.

determination of the entity that will construct and own the transmission projects the solution specifies. The information requirements in section 5.2.1 of the business practice manual pertain solely to the project sponsor qualification and selection criteria set forth in the tariff.<sup>69</sup>

The examples that Order No. 1000 provides<sup>70</sup> reinforce the conclusion that paragraph 325 is not applicable to the Phase 3 process. Engineering or cost analyses specified in paragraph 325 are not necessary because the ISO is not evaluating alternative transmission solutions in Phase 3. Likewise, the ISO does not need the project sponsor to provide studies showing the need for a particular project or why a particular transmission solution is superior to some other transmission solution. The ISO will already have made these assessments in Phase 2.

The Commission's discussion of information requirements does not even mention project sponsor qualifications or a project sponsor's ability to construct, own, operate and maintain needed transmission facilities, which are the focus of the information requirements in section 5.2.1 of the BPM. Nothing in the provisions of Order No. 1000 pertaining to project sponsor qualifications requires that the information to be submitted by a project sponsor to support its

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<sup>69</sup> For example, the information requirements in section 5.2.1 of the BPM include the following: (1) resumes of key management personnel that will be involved in obtaining siting approval and other required regulatory approvals and in constructing, operating and maintaining each project; (2) a summary of any history of bankruptcy, dissolution, merger, or acquisitions of the Project Sponsor in the current calendar year and the five calendar years immediately preceding its submission; and (3) a discussion of the types of resources contemplated by the Project Sponsor for operating and maintaining each project after it is placed into service. These are not of the level of materiality that the Commission has historically required to be included in the tariff.

<sup>70</sup> See Order No. 1000 at P 326.

qualification be specified in the tariff. Rather, they require only that the qualification criteria be reflected in the tariff.<sup>71</sup> The ISO's inclusion of the qualification criteria and selection criteria in sections 24.5.2.1 and 24.5.2.4, respectively, meets this requirement.

In Order No. 890, the Commission confirmed that it will continue to apply its "rule of reason"<sup>72</sup> in a manner that would not require all of a transmission provider's business practices to be included in its tariff.<sup>73</sup> This is the appropriate standard to apply in evaluating whether these information requirements should be in the tariff. Because the ISO's information submission business practices do not significantly affect rates, terms and conditions, but only set forth the information and details that Project Sponsors must submit to support their

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<sup>71</sup> Order No. 1000 at PP 323-24.

<sup>72</sup> As described in *Town of Easton v. Delmarva Power and Light Co. et al.*, 24 FERC ¶ 61,251 at 61,531 (1983), under the rule of reason the Commission "balance[s] [its] desire not to deprive utilities or groups of utilities of the flexibility they need to manage their own affairs by introducing substantial delay and layered decision-making into their operations . . . with the need for the full disclosure that furthers the purpose of having filing and posting requirements which provide real benefits to existing and potential customers or users of the services in question." In its Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139 at 61,988 (1993), the Commission adopted the description offered by the U.S. Court of Appeals for the District of Columbia Circuit in *City of Cleveland v. FERC*:

[T]here is an infinitude of practices affecting rates and service. The statutory directive must reasonably be read to require the recitation of only those practices that affect rates and service significantly, that are realistically susceptible of specification, and that are not so generally understood in any contractual arrangement as to make recitation superfluous. It is obviously left to the Commission, within broad bounds of discretion, to give concrete application to this amorphous directive.

773 F.2d 1368, 1376 (D.C. Cir. 1985) (emphasis in original).

<sup>73</sup> "The Commission disagrees with parties arguing that all of a transmission provider's rules, standards, and practices should be incorporated into its OATT. We believe that requiring transmission providers to file all of their rules, standards and practices in their OATTs would be impractical and potentially administratively burdensome." Order No. 890 at P 1651.

applications, the rule of reason does not require that the ISO include them in the tariff; it is permissible instead to include them in the business practice manual, as is the case under the ISO existing transmission planning process. The Commission approved this process in the RTPP Order. There is nothing in Order No. 1000 to suggest that the Commission has abandoned the rule of reason or that its application to the information submission requirements yields a different result than in the RTPP Order.

As the ISO gains experience with this new selection process, the ISO may find that certain previously adopted information requirements are unnecessary for the evaluation process or require the provision of too much information. The ISO may also find that it needs additional or different information in order fairly and adequately to evaluate a proposal's satisfaction of certain of the selection criteria specified in the tariff. Similarly, the unique circumstances associated with a particular needed transmission element may call for the submittal of particular information. The ISO needs the flexibility to modify or update information submission requirements over time without needing to file a tariff amendment to seek Commission approval of an information submission requirement. The ISO thoroughly vets the information requirements included in the business practice manual with stakeholders pursuant to its BPM Change Management Process. Stakeholders will have an opportunity to appeal any BPM changes.<sup>74</sup>

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<sup>74</sup> Under section 22.11.1.6 of the ISO tariff, any entity qualified to submit a proposed business practice manual revision, which includes any market participant, may appeal the decision regarding the business practice manual to a business practice manual appeal committee. If dissatisfied with the decision of the committee, the party may further appeal to the ISO Board of Governors.

Thus, the ISO submits that retention of these information submission requirements in the business practice manual is not only consistent with the Commission's prior determination that these types of details are appropriately omitted from the tariff, but it is also compliant with Order No. 1000.

## **G. Project Sponsor Selection Criteria and Report**

### **1. Specificity**

LS Power claims that the ISO's criteria for the competitive solicitation are vague. Once again, responding to LS Power's arguments is complicated by LS Power's failure to recognize the nature of the ISO's top-down transmission planning process. LS Power ignores the distinction between the selection of transmission solutions and the selection of a project sponsor. For example, the section title refers to the competitive solicitation, which concerns the selection of the *project sponsor*. Yet in the section, LS Power complains that the proposed tariff provisions "do not set forth 'how [the ISO] will evaluate and select among competing *solutions*' but rather only lists the multitude of factors upon which the ISO could base its decision."<sup>75</sup> (Emphasis added.) Then, in a footnote, LS Power refers to the ISO's proposal to post the most relevant selection criteria 30 days before the window for *project sponsor* proposals.<sup>76</sup> LS Power states that it was not until Order No. 1000 the Commission required the selection of the more efficient or cost-effective *project*, and then focuses on the Commission discussion in the RTTP Order of the ISO's criteria for selection of the *project*

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<sup>75</sup> LS Power at 28.

<sup>76</sup> *Id.* at 28 n.53.

*sponsor*.<sup>77</sup> It contends that in order to ensure the selection of the more efficient or cost-effective *project*,<sup>78</sup> the “main drivers for selecting an approved project sponsor’ should be relative cost in all but the most extreme circumstances.”<sup>79</sup>

Regardless of how one parses LS Power’s arguments, they have no merit. The ISO’s methodology for selection of the appropriate solution is comparable, or more robust, than the methodology and criteria the Commission has adopted in Order No. 1000 and elsewhere regarding how to select among competing solutions and resources. As LS Power recognizes, the purpose of the process is to identify the “most efficient or cost-effective” solution.<sup>80</sup> Citing the process of the New York Independent System Operator, the Commission stated that this is accomplished by the “identification of the criteria by which the public utility transmission provider will evaluate the relative economics and effectiveness of performance for each alternative offered for consideration.”<sup>81</sup> The Commission stated that acceptable tariff language that satisfies the aforementioned requirements could state that “solutions will be evaluated based on a comparison of their relative economics and effectiveness of performance.”<sup>82</sup> The ISO’s selection criteria more than satisfy this requirement from Order No. 1000.

The Commission has already approved in the RTPP order, the evaluation and selection methodologies for the ISO’s reliability, economic, and public policy

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<sup>77</sup> *Id.* at 28.

<sup>78</sup> *Id.* at 29.

<sup>79</sup> *Id.* at 30.

<sup>80</sup> See, e.g., Order No. 1000 at PP 2, 21, 321, 435.

<sup>81</sup> *Id.* at P 315, citing *N.Y. Indep. Sys. Operator, Inc.*, 129 FERC ¶ 61,044 at P 35 (2009).

<sup>82</sup> *Id.* at P 156, n. 155, n. 149

categories of transmission that meet this standard. Thus, contrary to LS Power's claims, the requirement to approve the most efficient or cost-effective solution (or some variation of this standard) did not arise for the first time in Order No. 1000; it already reflected the practice of the ISO. In determining the most economically efficient reliability solution, the ISO determines which solution is the most prudent and cost-effective in the long-run.<sup>83</sup> With respect to economic projects, the ISO assesses the degree to which, if any, the benefits of a solution outweigh its costs. Benefits may include any reduction in production costs, congestion costs, transmission losses, capacity, or other electric supply costs resulting from improved access to cost-efficient resources.<sup>84</sup> For policy driven elements, the ISO uses a "least regrets" approach that evaluates 10 criteria (including a cost criterion) to determine the solution that efficiently and effectively meets the applicable public policy under alternative resource location and integration assumptions, while mitigating the risk of stranded investment.<sup>85</sup> The Commission was "not persuaded by the argument that the proposed criteria are not clear, and that the least regrets approach is ambiguous." Importantly, the Commission also stated that the ISO has "defined a reasonable framework for identification and analysis of policy driven elements," and the ISO needs "flexibility" in connection with conducting its analysis and applying the criteria.<sup>86</sup> The Commission also found that the ISO's evaluation process was open and transparent and did not

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<sup>83</sup> *Transmission Tech. Solutions v. Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶61,077 (2011).

<sup>84</sup> ISO Tariff § 24.4.6.7.

<sup>85</sup> ISO Tariff § 24.4.6.6.

<sup>86</sup> RTPP Order at PP 155-65, 196-99.

give too much discretion to the ISO. Nothing in Order No. 1000 calls these prior conclusions into question.

It is worth noting that, other than LS Power, no party has challenged this process as part of the Order No. 1000 compliance proceeding. Moreover, through two planning cycles, no party has disputed the ISO's application of these criteria or filed a complaint at the Commission.

With regard to project sponsor selection, the Commission has already rejected assertions that the criteria in sections 24.5.2.1 and 25.5.2.4 are vague. In the RTTP Order, the Commission found that the "RTTP proposal includes sufficient factor and criteria for determining project sponsors and choosing among competing project sponsors to build the same transmission element" and that the ISO "proposed objective selection criteria."<sup>87</sup> Further, the Commission found that the "RTTP criteria for project sponsor qualification and selection to be . . . not unduly discriminatory or preferential" and "reject[ed] arguments that their application undermines competition between [participating transmission owners] and independent transmission developers."<sup>88</sup>

Order No. 1000's focus on the selection of the more efficient or cost-effective solution does not render these previous filings inadequate or inaccurate. At the time of the project sponsor selection, the ISO has already identified the more efficient or cost-effective solution. The remaining decision is the selection of the entity most qualified to build and own the facility, in which cost is just one consideration. LS Power ignores the fact that the Commission, citing the ISO's

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<sup>87</sup> *Id.* at PP 220-21, 231.

<sup>88</sup> *Id.* at P 231.

planning process, stated that Order No. 1000 “permits a region to use or retain an existing mechanism that relies on a competitive solicitation to identify preferred solutions to regional transmission needs, and such an existing process may require little or no modification to comply with the framework adopted in this Final Rule.”<sup>89</sup>

Moreover – contrary to LS Power’s assertion that the proposed revisions do not set forth the methodology for selection<sup>90</sup> – the compliance filing goes

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<sup>89</sup> Order No. 1000 at P 151.

<sup>90</sup> LS Power’s contention is contrary to positions it previously advocated before the Commission. LS Power praised the project sponsor selection methodology used by the Texas Public Utilities Commission (“PUC”) for the ERCOT and suggested to the Commission that the framework in Texas could serve as a model for competitive solicitations elsewhere. Comments of LS Power, Docket No. AD09-000, at 20-21 (Nov. 23, 2009). The ISO’s methodology is modeled after that used in ERCOT, the only other region in the country that uses a competitive solicitation to evaluate competing project sponsors. The Texas PUC’s methodology provides:

The commission will evaluate each CTP proposal received by considering, at a minimum, the current and expected capabilities of the Interested TSP to finance, license, construct, operate, and maintain the CTP Facility in the most beneficial and cost effective manner and the expertise of the Interested TSP’s staff, the Interested TSP’s projected capital and operating and maintenance costs for each CTP Facility, the Interested TSP’s proposed schedule for development and completion of the CTP Facility, the Interested TSP’s financial resources, the Interested TSP’s expected use of historically underutilized businesses ...and the Interested TSP’s understanding of the specific requirements to implement the CTP facilities in its CTP Proposal and, if applicable, the Interested TSP’s previous transmission experience and the interested TSP’s historical operating and maintenance costs for all of its existing transmission facilities.

Tex. Admin. Code, tit. 16, R. 25.216 (e).

LS Power stated that the Texas model “provides a framework for how competitive forces can be integrated into the transmission planning process to the benefit of consumers.” LS Power stressed how the Texas method ensures that projects are completed in the most beneficial and cost-effective manner. Like the ISO, the Texas PUC does not pre-assign weights to each individual selection criterion, does not employ a mathematical or other fixed formula to select project sponsors, and does not expressly state that cost is an important consideration, that cost should be given substantial weight, or that it should be the primary consideration.

beyond what the Commission has found previously sufficient by providing for the posting, 30 days in advance, of the most relevant criteria for each solution and by expanding existing section 24.5.2.3 to explain more completely the manner in which the ISO will analyze competing proposals:

The purpose of this comparative analysis will be to determine, taking into account all regional transmission elements for which the competing Project Sponsors have been approved or are seeking approval, the qualified Project Sponsor which is best able to design, finance, license, construct, maintain, and operate the regional transmission facility in a cost-effective, prudent, reliable, and capable manner over the lifetime of the transmission elements, while maximizing overall benefits and minimizing the risk of untimely project completion, project abandonment, and future reliability, operational or other relevant problems, consistent with Good Utility Practice, applicable reliability criteria, and CAISO documents.

LS Power's main complaint appears to be that the ISO's project sponsor selection process did not, in its first two years, result in the selection of new

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Unlike ERCOT's, the ISO's competitive solicitation applies to all regional transmission facilities and the ISO considers binding cost containment measures not estimates. As such, the ISO's methodology and selection criteria must include factors that are relevant to all of these transmission categories. The ISO's methodology is actually more robust than the Texas methodology in that the ISO will set forth for each solution subject to competitive solicitation the particular factors which it believes are key for purposes of selecting a project sponsor and in that binding cost containment commitments will always be a key factor in the ISO's project sponsor determinations. The Texas PUC methodology does not even go that far. Also, the Texas PUC, which can impose conditions on certificates of public convenience and necessity and regulate rates examines cost estimates; whereas the ISO, which is not a regulatory body and which cannot impose non-voluntary cost caps, must rely on binding cost containment proposals from project sponsors. In light of LS Power's advocacy of the ERCOT methodology, it is inconsistent for LS Power to claim that the ISO's tariff, which is consistent with the ERCOT selection methodology, does not constitute a methodology, and does not sufficiently address cost.

Similarly, in April 15, 2010 comments submitted during the ISO's revised transmission planning process, StarTrans urged use of the Texas example which "used a planning process combined with open bidding to obtain the most cost-effective transmission projects to bring renewable energy to markets" and was "open, competitive, and transparent" It is inconsistent for StarTrans to complain that the ISO's process is not transparent or fails to adequately consider cost given that the ISO modeled its methodology after the Texas PUC.

entrant projects or significantly enhance the opportunity for independent developers to participate.<sup>91</sup> LS Power's argument is misleading. The reason that the ISO has not approved any new project sponsor is that, except in the case of a reconductoring of an existing facility, the ISO has not determined through its planning process that there was a need for a new economic or public policy transmission facility, which are the only facilities eligible for competition under the existing planning process. These decisions whether to build economic and public policy projects are made in Phase 2 of the ISO's planning process. Thus, LS Power's suggestion that the Phase 3 project sponsor selection criteria and evaluation methodology are somehow the cause of the absence of projects assigned to nonincumbents is misleading. Significantly, no party has filed a dispute or complaint against the ISO's decisions in its planning process. In addition, LS Power ignores that the ISO has already identified at least one transmission facility in this year's planning process cycle that will be subject to competitive solicitation. Finally, LS Power ignores that the ISO has approved three new PTOs in connection with its approval of the TransBay Cable and Path 15 projects.

To the extent LS Power is referring to the ISO's conclusion that none of the 34 projects submitted in the 2008/2009 request windows for purposes other than "information only" were found to be needed by the ISO, its argument is still baseless. The projects which the ISO found were not needed included all of the projects submitted by the three investor-owned utilities. Thus, the rejection of the non-incumbent projects provides no evidence of discrimination against non-

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<sup>91</sup> LS Power Comments at 5-6 and 27.

incumbents. No submitted project was found to provide economic or public policy benefits. Indeed, the net economic benefit-to-cost ratio of all those projects ranged from 0 to 0.47%, with most falling in the range of 0.11% to 0.31% (which is not even remotely close to providing net economic benefits).<sup>92</sup> None were needed for public policy reasons; either they did not match the renewable resource portfolios established by the CPUC and the ISO or they corresponded to resources that had already gone through the generator interconnection study process and were to be served by previously determined generator interconnection in network upgrades. Importantly, no project sponsor pursued dispute resolution or filed a complaint with the Commission regarding the ISO's decisions.

LS Power is essentially complaining because the ISO declined to violate its tariff and approve a transmission project that failed to meet the need criteria in the tariff (and pass the costs of the unneeded project on to ratepayers), just in order to provide independent transmission developers the opportunity to build a project. The ISO refusal to do so is indicative of neither bias nor discrimination.

## **2. Preassigned Weighting of Criteria**

Pattern and LS Power urge the Commission to adopt some form of weighting rules for the ISO's criteria, a formulary approach, or some similar mechanism, in the selection process.<sup>93</sup> As the ISO discussed at length in its compliance filing, neither Order No. 1000 nor other Commission precedent

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<sup>92</sup> 2010-2011 Transmission Plan at 396-98, available at <http://www.caiso.com/Documents/Board-approvedISO2010-2011TransmissionPlan.pdf>.

<sup>93</sup> Pattern at 7-8; LS Power at 28-33.

requires the use of a mathematical formula or preassigned weights in the selection process.<sup>94</sup> The ISO also demonstrated why the use of preassigned weights and mathematical formulas is problematic and could result in an inappropriate result.<sup>95</sup> Indeed, the Commission concluded in the RTPP Order that it was “not convinced that metrics or weights for the least regrets criteria must be specified in the tariff.”<sup>96</sup>

Pattern does not even acknowledge these arguments or the Commission’s previous conclusions, let alone make any attempt to rebut them. Pattern merely states in a conclusory fashion that the Commission should adopt these requirements for the ISO. Such unsupported conclusory statements cannot serve as basis for finding the ISO’s proposed provisions noncompliant.

Although LS Power argued during the ISO stakeholder process that Order No. 1000 required the ISO to adopt some formula and pre-assigned weights for project sponsor selection criteria, LS Power now admits that Order No. 1000 does not require the use of a mathematical formula for selecting project sponsors or pre-assigning weights in the tariff to specific selection criteria,<sup>97</sup> but argues that the Commission should impose such requirements or similar requirements on the ISO because of the ISO’s purported history of discrimination against independents. The ISO has addressed this baseless accusation of bias in the Introduction and Overview and in section III.G.1 above. Unsupported allegations

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<sup>94</sup> Transmittal letter at 54-58.

<sup>95</sup> *Id.* at 57-58.

<sup>96</sup> RTPP Order at P 197.

<sup>97</sup> LS Power at 33.

and speculation cannot serve as the basis for undoing existing tariff provisions that are otherwise consistent with Order No. 1000 (and Order No. 890).

LS Power does not propose any specific measure or standard in its comments, but merely argues that the Commission should adopt some other standard than what the ISO has proposed.<sup>98</sup> LS Power's unsupported allegations of bias cannot serve as the basis for rejecting existing Commission-approved tariff provisions that are compliant with the express directives of Order No. 1000 and applicable Commission precedent. Because, as LS Power acknowledges, Order No. 1000 does not direct transmission providers to apply mathematical formulas or pre-assigned weights to competitive solicitations, there is no basis to find the ISO non-compliant by not including such measures.

LS Power also ignores that the ISO will retain an expert consultant to assist it in selection of project sponsors, and the Commission expressly found that this would alleviate concerns regarding any undue discrimination. Under these circumstances, it is disingenuous for LS Power to argue that the Commission should direct the ISO to adopt tariff revisions that Order No. 1000 does not require on the basis of LS Power's assertion that the ISO is biased and acts in an unduly discriminatory manner against non-incumbents.

## **2. Weight Given to Cost**

As mentioned above, LS Power states that cost should be the primary driver in project sponsor selection. WITG and Pattern contend that the ISO's selection criteria fail to properly weigh actual cost as a factor in selecting a project sponsor as required by Order No. 1000. WITG and Pattern contend that

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<sup>98</sup> *Id.* at 33-34.

the ISO must identify cost as the most significant factor in selecting a project sponsor.<sup>99</sup> They also assert that if a project sponsor is able to demonstrate the required qualifications to construct and operate transmission facilities, the only remaining factor should be which bidding sponsor has submitted the most favorable cost proposal.<sup>100</sup>

In the compliance filing, the ISO explained that both Order 1000 and prior Commission precedent recognize that cost is not the ultimate consideration and that there are other equally important considerations for project sponsor selection, such a reliability, timeliness of completion, the overall benefits provided by a proposal, and the mitigation, financial and other risks.<sup>101</sup> The ISO also demonstrated that basing ultimate determinations on cost could lead to problematic results and otherwise inappropriate project sponsor selections. The ISO identified numerous reasons why relying on cost as the ultimate driver would, among other things devalue or completely eliminate considerations pertaining to reliability, financial ability to build and maintain the project and complete it in a timely manner. The ISO also provided eight examples of how reliance on cost as the ultimate factor could result in selection of an inappropriate project sponsor. The ISO will not repeat all of those arguments here except to note that in the RTPP rehearing order the Commission ruled that it was inappropriate to give more weight to cost containment than to other no-cost selection criteria (such as a project sponsor's capabilities and financial

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<sup>99</sup> WITG at 7 and n.10, Pattern at 9-10.

<sup>100</sup> WITG at 6-7, Pattern at 8-9.

<sup>101</sup> Transmittal letter at 55-62.

resources).<sup>102</sup> The Commission recognized that other important considerations include a project sponsor's ability to finance, license, and timely complete a project and minimize risk of abandoned projects, as well as to carry a project through to completion and to continue to operate and maintain the facility once it is in service.<sup>103</sup> In Order No. 1000, the Commission also noted that reliability was an important factor in the evaluation process.<sup>104</sup> In Order No. 1000-A, the Commission rejected a rehearing request that the Commission require that a transmission provider select among multiple sponsors of identical transmission solutions by assigning the project to the entity that is willing to guarantee the net present value of its annual revenue requirement.<sup>105</sup> The protest and comments do not acknowledge the precedent and make no attempt whatsoever to rebut the ISO's arguments in the compliance filing.

The protest and comments also fail to acknowledge that in Phase 2 of the ISO's planning process, the ISO selects the transmission (or other) solution that is the most cost-effective, consistent with the goal of Order No. 1000.<sup>106</sup> In Phase 3, project sponsors are simply competing to build the most cost-effective solution that the ISO has selected. The criteria in making a project sponsor selection decision are not identical to the criteria that are used to determine the most cost-effective transmission (or other) solution, and none of these parties argues otherwise. As noted above, the purpose of the project sponsor selection

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<sup>102</sup> *Cal. Indep. Transmission Sys. Operator*, 137 FERC ¶ 61.062 at P 27.

<sup>103</sup> RTPP Order at PP 220-21, 231.

<sup>104</sup> Order No. 1000 at P 342.

<sup>105</sup> Order No. 1000-A at PP 450-55.

<sup>106</sup> See Transmittal letter at 59-60.

process is to determine the project sponsor that is best able to design, finance, license, construct, maintain, and operate the regional transmission facility in a cost-effective, prudent, reliable, and capable manner over the lifetime of the transmission elements. Cost-effectiveness is but one of these criteria. Giving primacy to cost, as LS Power, Pattern, and WITG contend, would not only disregard the other critical factors, but would not even necessarily produce the most cost-effective project. The Commission has found that cost-effective or efficient is not equivalent to least cost.<sup>107</sup> These intervenors are essentially trying to supplant the terms “efficient” and “effective” from the Commission’s standard.

Finally, Pattern argues that proposed section 24.5.2.4(e) should be revised to make clear that the financial capability of a prospective sponsor must be viewed in light of all the project proposals that are either pending or have been approved for that sponsor in a prior transmission planning cycle.<sup>108</sup> Pattern states that if a project sponsor in a competitive solicitation submits several proposals for different transmission elements and/or is in the process of developing or constructing one or more transmission projects awarded in prior

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<sup>107</sup> In *Transmission Tech. v. Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶¶ 61,077 (2011), the Commission denied a complaint alleging that the ISO’s decisions and actions with respect to the complainants’ proposed projects in the transmission planning process were unjust, unreasonable, and discriminatory. The Commission found that the ISO had selected the most prudent and cost-effective solutions in accordance with its tariff and BPM, even if some of the selected solutions were not the least-cost options. *Id.* at PP 82-86. See also *ITC Holdings Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 121 FERC ¶¶ 61,229, at P 92 (2007) (explaining that the Midwest ISO’s transmission planning expansion protocol requires the development of “a comprehensive regional plan designed to reflect the most efficient and cost-effective solutions,” and noting, with regard to “least cost options,” that the Midwest ISO must “consider” them, not that it must select them.)

<sup>108</sup> Pattern at 14.

competitive solicitations, the financial capability of the sponsor to undertake future projects must be viewed in the context of its overall capital program.

Proposed section 24.5.2.3(c), however, already includes the language Pattern desires. It provides that in its comparative analysis of competing project sponsors, the ISO will “tak[e] into account all regional transmission elements for which the competing Project Sponsors have been or approved or are seeking approval.” This provision applies not just to financial criteria, but to all applicable project sponsor selection criteria, because the award of multiple projects to a project sponsor can affect multiple aspects of a project sponsor’s capabilities, such as its physical and financial abilities to build multiple projects in a timely manner, its ability to capably operate and maintain multiple projects, and the risk that a project sponsor might abandon a project. Because this concept is already captured in section 24.5.2.3(c), it is unnecessary to add this language to the financial capabilities selection criterion.

The CPUC argues that, without going as far as specifying the weight of specific selection criteria, the tariff should specify that cost, including cost containment measures, shall be given a substantial weight and that this will make it clear that cost and cost containment cannot be given a small weight. According to the CPUC, this is not inconsistent with the Commission determination in the RTPP Order, that it is inappropriate to give cost containment, regardless of the form in which it is provided, more weight than non-cost project sponsor selection factors.<sup>109</sup> Yet, the CPUC’s recommendation is precisely inconsistent with the Commission’s determination. One cannot single

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<sup>109</sup> CPUC at 4, quoting RTPP Order at P 27.

out one factor as important without implying that it has greater weight than the other factors. The RTPP Order concluded that it was inappropriate to give cost greater weight, and it remains so at this time.

### **3. Consideration of Ability of Siting Authority to Enforce Cost Caps.**

As part of its provision for the consideration of voluntary cost caps as a project sponsor selection factor, proposed section 2.4.5.2.4(j) calls for consideration of “the authority of the selected siting authority to impose binding cost caps or cost containment measures on the project sponsor, and its history of imposing such measures.” LS Power objects to this provision. It states that this is a matter of state law, and “should not play a role in the federal selection of projects in a federally mandated transmission plan.”<sup>110</sup> The selection of a project sponsor, however, is not a “federal matter” such that the ISO must ignore the existence of state authorities. It is a simple fact that transmission developers may be subject to both state and federal regulation. There are many instances throughout the ISO tariff in which the ISO takes state regulation into account. For example, under section 40.1.1, the ISO confirms with the CPUC, local regulatory authority, or federal agency, as applicable, the accuracy of the election of resource adequacy status by a scheduling coordinator for any load serving entity, and the determination of the applicable authority is deemed binding. The ISO also generally defers to these authorities for the determination of resource adequacy requirements and the determination of the criteria to determine the types of resources that may be eligible to provide. The only relevant question is

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<sup>110</sup> LS Power at 40.

whether a specific siting authority's ability to enforce a cost cap is relevant. As the ISO noted in its compliance filing, particularly in instances where no project sponsor proposes a project cost cap, it would be beneficial for the ISO to take into account as one of many criteria the likelihood that the chosen siting authority will impose some type of cost containment measures, and how effective those measures will be.

LS Power asks whether it would be penalized if it agreed to a cost cap, but because of state jurisdictional limitations the siting authority did not have the "authority to impose" the agreed upon cap in the siting process. If a project sponsor voluntarily agrees to a cost cap, such that the Commission or some other regulatory authority with jurisdiction could enforce it when the sponsor seeks recovery in rates, the authority of the siting agency to impose a cap would not be relevant. If it does not, then that authority becomes a relevant consideration. As the ISO noted in the compliance filing, potential transmission developers other than municipal utilities and investor-owned utilities may have a choice of where to seek siting authority.

#### **4. Consideration of Rights of Way**

Proposed section 24.5.2.4(b) of the ISO tariff calls for the ISO to consider whether the project sponsor has existing rights of way and substations that would contribute to the project in question. WITG argues that section 24.5.2.4(b) inappropriately suggests that eligible sponsors must hold title or other interests in the real estate or facilities required to complete a project. They contend that such a requirement would obligate potential sponsors to acquire significant land and other real estate interests with no guarantee of being selected to construct

and operate the facilities, and that this would have the effect of favoring incumbents and would pose an unreasonable business risk for non-incumbent transmission developers. They request that the Commission require the ISO to focus instead on whether the applicant has demonstrated a plan to acquire the needed permits and rights of way, not whether the sponsor currently holds them.<sup>111</sup>

As an initial matter, WITG's description of section 24.5.2.4(b) is facially inaccurate. The section contains no requirement or suggestion that project sponsors must obtain rights of way. The possession of existing rights of way is only one of several criteria that the ISO will consider in selecting a project sponsor in those cases in which that responsibility falls upon the ISO. The focus of this criterion is on the possession of existing rights of way that would support a needed solution, such that no additional right-of-way would need to be procured, and permitting requirements could be reduced. It would be counterproductive and inconsistent with the intent of this section for a project sponsor to go out and procure right-of-way prior to project sponsor selection.

LS Power protests section 24.5.2.4(b) on a different basis. It complains that a separate selection criterion places too much emphasis on a property right that, according to LS Power, the ISO has no way of independently valuing; that,

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<sup>111</sup> WITG at 8. Startrans, which, as noted above, submitted comments identical to those of WITG, is an ISO participating transmission owner, did not participate in the Order No. 1000 stakeholder process, and submitted no comments on the ISO's draft proposals or proposed tariff language. WITG never objected to the rights-of-way selection criteria in any of the numerous comments it submitted in the stakeholder process.

in most instances, is not “exclusive” to the right holder; and which is largely of speculative value.<sup>112</sup>

Despite WITG’s and LS Power’s concerns, whether a project sponsor has existing rights of way is a relevant factor in selecting a project sponsor. As the ISO previously noted, the Commission has recognized that construction of the project at existing sub-stations would result in lower project costs and require fewer siting approvals, thereby reducing the risk of delay.<sup>113</sup> Moreover, this is an existing project sponsor selection criterion in the ISO’s revised transmission planning process that the Commission approved as just and reasonable. Nothing in Order No. 1000 compels its elimination. In Order No. 1000-A, the Commission clarified that transmission providers cannot include in their project sponsor *qualification* criteria a requirement that a transmission developer demonstrate that it either has or can obtain state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>114</sup> In the compliance filing, the ISO deleted other tariff language that might be read as inconsistent with this directive of Order No. 1000-A, but the language addressed by WITG and LS Power is not contrary to any requirement of Order No. 1000-A. To the contrary, the Commission acknowledged that the possession of rights of way is an advantage

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<sup>112</sup> LS Power at 41-42.

<sup>113</sup> *Primary Power, LLC v. PJM Interconnection, L.L.C.*, 140 FERC ¶ 61,054 at PP 12-13, 72-73 (2012).

<sup>114</sup> Order No. 1000-A at P 441.

that incumbent transmission owners possess in a competitive transmission planning process.<sup>115</sup>

In its compliance filing, the ISO explained that inclusion of this criterion was consistent with the Commission's affirmation of an incumbent's transmission owner's ability to highlight its strengths to bids to undertake transmission projects. WITG and LS Power's recommendation would preclude incumbent transmission owners from highlighting a particular type of strength that they may have and would unfairly hamper their participation in the competitive process. It is worth noting that incumbent transmission owners are not likely to possess this advantage often with regard to transmission solutions open to competitive solicitation, which are projects that do not constitute upgrades or additions to existing facilities. There is no evidence that the incumbent transmission owners have purchased (or compensated property owners for) rights of way that are unrelated to existing or previously planned facilities and hoarded those rights of way on speculation that the right of way may someday be needed for a transmission facility and that their possession would protect the incumbent transmission from competition. Cost recovery principles would dictate otherwise.<sup>116</sup>

The ISO also set forth in the compliance filing the factors that make consideration of rights of way relevant.<sup>117</sup> Nowhere does WITG or LS Power rebut these explanations or otherwise explain how Order No. 1000 negated the

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<sup>115</sup> Order No. 1000-A at PP 87-88.

<sup>116</sup> See, e.g., *San Diego Gas & Elec. Co.*, 118 FERC ¶ 61,073 at P 27 (2007) (requiring an certificate of public convenience and necessity prior to inclusion in rate base).

<sup>117</sup> Transmittal Letter at 69-73.

Commission's previous approval of the factor as part of the ISO's revised transmission planning process.

That the rights of way may not be exclusive does not alter the fact that a project sponsor's possession of rights of way or existing substations can avoid delays and reduce costs. LS Power's concerns about the ISO's ability to value the rights are also misplaced. The ISO uses planning cost estimates, which take into account the cost of rights of way, and the ISO also will employ an expert consultant to assist it in evaluating competing proposals (in those instances where the siting authority is not responsible for doing so), who will presumably have an expertise in such matters. The ISO notes that the Imperial Irrigation District filed an answer to protests in this proceeding in which it disputes LS Power's claim that transmission planners are unable to value rights of way.

LS Power's suggestion that project sponsors simply include the value of rights of way in their costs estimates is not a workable alternative. As the ISO has previously noted, it does not intend to rely on a project sponsor's cost estimate in the absence of a cost cap. While it is true that rights of way could allow a project sponsor to reduce costs and commit to a binding cost cap, LS Power ignores that possession of rights of way is not only relevant from a cost perspective. The availability of rights of way is relevant to the regulatory approvals, "NIMBY" attitudes, and environmental considerations which often are significant impediments to getting transmission built. Possession of rights of way will reduce the number of permit authorizations that are required, facilitate more timely receipt of authorizations, and mitigate adverse environmental impacts. Elimination of this criterion would deny consideration of these benefits.

LS Power contends that if FERC allows the tariff provision to remain, it should permit the ISO to include existing rights of way as a selection factor under the following strict limitations: (1) the entity must control 100 percent of the rights of way needed for the proposed project length; (2) to the extent that the project sponsor intends to recover the costs for acquiring the existing rights of way, it must affirmatively state that those costs are included in its cost estimates for comparison purposes; (3) if the rights of way relied upon are within or adjacent to the rights of way for an existing transmission line, the entity must include any incremental costs associated with utilizing the existing rights of way; and (4) rights of way cannot be a selection factor if a federal environmental impact statement is required for any portion of the route. With respect to the last condition, LS Power states that a proposed route cannot be prejudged for purposes of the National Environmental Policy Act (“NEPA”)<sup>118</sup> absent an environmental review.<sup>119</sup>

LS Power does not provide any justification for considering rights of way only if the entity controls 100 percent of the necessary rights. Although possession of only a portion of the rights of way does not provide benefits equal to possession of all needed rights of way, it is still an advantage because it will reduce project costs (albeit to a lesser degree), and may reduce permitting requirements for that portion of the project but the value of what is shown. As such, the ISO should consider such rights as part of the ISO’s comparative analysis of the relative benefits and advantage each sponsor shows.

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<sup>118</sup> 42 U.S.C. § 4321 *et seq.* (2006).

<sup>119</sup> LS Power at 42-43.

LS Power's second and third limitations are irrelevant in the context of the ISO's compliance filing. Proposed section 25.4.2.4(c) does not provide for the consideration of the ability to acquire or expand rights of way, only of the possession of existing rights of way. As discussed above, the ISO will consider the costs of rights of way as part of a proposed project's planning cost estimates and will not consider a project sponsor's cost estimate, except to the extent it includes a cost cap. Nonetheless, to the extent the Commission finds it appropriate, the ISO could modify the language in this section in a subsequent compliance filing to also require that a project sponsor in possession of relevant existing rights of way indicate whether it would incur any incremental right of way costs in connection with placing new and additional facilities on such existing right of way.

Finally, the ISO's selection of a project sponsor does not prejudice the results of NEPA review. NEPA does not apply to the ISO's adoption of its tariff, the ISO's subsequent development of the annual transmission plan, or the ISO's evaluation of proposed project sponsors in conjunction with Phase 3 of the annual transmission planning process. NEPA applies to "agencies of the Federal Government,"<sup>120</sup> and the ISO is not a federal agency.

If a project proposed by an approved project sponsor is subject to NEPA, the review will occur after development of the project detail and submission of the necessary application. Preparing the appropriate environmental document will be the responsibility of the federal agency with approval authority over the

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<sup>120</sup> See 42 USC § 4332 (2006).

project. NEPA requires an EIS to analyze alternatives to the proposed action.<sup>121</sup> The federal agency may require analysis of route alternatives, including the routes that are not confined to existing rights of way of the project sponsor, but the existence of rights of way may be relevant.<sup>122</sup> The extent to which the ability of a project sponsor may use existing rights of way may be affected by subsequent NEPA review would be a factor that the ISO would consider in determining the weight given the possession of rights of way in the evaluation.<sup>123</sup>

## **5. Posting of Key Project Sponsor Selection Criteria**

WITG contends that, under proposed tariff section 24.5.2.3(d), the ISO will release more specific selection criteria within thirty days after releasing a project to the competitive bidding process and that, because in most circumstances the competitive solicitation window will be about two months long, interested bidders will have only one month to review and respond to the “final” selection criteria. WITG argues that thirty days is an extremely short notice window that is impracticable.<sup>124</sup>

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<sup>121</sup> 42 USC § 4332(2)(C)(iii) (2006).

<sup>122</sup> The Commission’s own regulations for implementation of NEPA state that, when considering the proposed siting of electric transmission facilities, “The use, widening, or extension of existing rights-of-way must be considered in locating proposed facilities.” 18 CFR 380.15(d)(1).

<sup>123</sup> For example, the Bureau of Land Management’s May 2012 draft Environmental Impact Statement for the SunZia Southwest Transmission Project; Arizona considers the use of existing rights of way in evaluating alternative routes: “As a first step towards identifying feasible routes and substation sites, potential alternatives were reviewed based on their ability to maximize opportunities to locate the proposed transmission lines within existing corridors, while avoiding areas of higher constraint or sensitivity.” Draft SunZia EIS at 2-2, [http://www.blm.gov/nm/st/en/prog/more/lands\\_realty/sunzia\\_southwest\\_transmission/deis/sunzia\\_deis\\_volume.html](http://www.blm.gov/nm/st/en/prog/more/lands_realty/sunzia_southwest_transmission/deis/sunzia_deis_volume.html).

<sup>124</sup> WITG at 5.

In light of WITG's comments, the ISO has reviewed the language in the first sentence of proposed section 24.5.2.3 (d) and found that it does not accurately reflect the ISO's intent. The ISO intended to post the competitive solicitation factors that it believes are key for selecting a project sponsor for each specific needed Regional Transmission Facility subject to competitive solicitation within 30 days after posting of the "draft comprehensive transmission plan," not within 30 days after the "revised draft transmission plan." As indicated in the ISO's Compliance Filing, the "draft comprehensive transmission plan" is posted sometime in January<sup>125</sup> and the "revised draft transmission plan" is completed at the end of February and then circulated to the ISO Board in March for approval. By posting the criteria within 30 days after posting of the "draft comprehensive transmission plan," the ISO would be allowing approximately six weeks for project sponsors to begin assessing the criteria and prepare their competitive solicitation submissions before the ISO opens the window on April 1.<sup>126</sup> Thus, project sponsors have at least three months after the posting of the key selection criteria in February before the deadline for project sponsor submission closes on June 1. The ISO is ready to make this revision in section 24.5.2.3 (d) in a subsequent compliance. This posting obligation is consistent with the ISO's existing schedule and does not reduce the amount of time that project sponsors have to assess and develop their proposals. Indeed, the additional guidance the ISO will provide before the Board meeting benefits project sponsors because

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<sup>125</sup> Business Practice manual for the Transmission Planning Process, Table 2.1, item 20.

<sup>126</sup> *Id.* at Table 21, item 25.

they will now have more specific information available to them to enable them to start preparing their proposals even sooner.

WITG also argues that allowing the ISO to set broad guidelines in the tariff and in the initial solicitation notice violates the requirement in Order No. 1000 that transmission operators establish sponsor selection criteria in the provider's tariff, even if additional specifics are provided in a later notice during the solicitation process.<sup>127</sup> WITG misunderstands proposed section 24.5.2.3(d). That section states that the ISO will identify those selection criteria that will be key for purposes of selecting a project sponsor for the particular needed transmission solution, not that the ISO will post criteria that are more specific. The ISO will merely be identifying those existing tariff criteria that will be especially key for purposes of selecting a sponsor for a specific project, consistent with the comparative analysis specifications in proposed section 24.5.2.3(d). The ISO is not adding any new selection criteria. For example, there may be instances where the ability to complete a reliability solution within a fairly short timeline is a major consideration, because of the potential reliability standards violations the ISO could face if the line is not in-service in time. In other instances, timing of completion may not be an important factor and likely would not even be listed. The ISO will not be adding new criteria that it will consider that are not already reflected in the tariff. The proposed section simply gives the ISO sufficient flexibility to highlight key considerations, recognizing (as discussed above) that pre-assigned weights in the tariff for each criterion and a generic mathematical formula do not capture the fact that the important consideration will vary from

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<sup>127</sup> WITG at 6.

project-to-project depending, among other things, on the scope, nature, timing, and complexity of each individual regional transmission facility.

Pattern claims that section 24.5.2.3 (d) treats cost containment measures differently than other key criteria, and that the ISO will only provide information about the non-cost factors but will not provide any information regarding cost containments.<sup>128</sup> Pattern misunderstands the proposed tariff provision. Under the criteria of proposed section 24.5.2.3(d), the ISO will identify cost as an important consideration in each and every competitive solicitation, and the ISO will take cost into account in conducting a comparative analysis under section 24.5.2.3(c) of the degree to which each Project Sponsor meets the qualification and section criteria. The reason the ISO separately referred to cost containment commitments in this tariff section was to make it clear that cost will be identified as a key factor in every solicitation. On the other hand, that is not the case with all of the other factors and considerations; in some instances they may be key and reflected in the 30-day report, and in others they may not. The ISO does not believe that any further clarifications are needed to clarify the intent of this language in section 24.5.2.3(d).

The CPUC argues that, although specific weights for different sponsor selection criteria should not be established in the tariff itself, such weights should be specified in solicitations for specific projects proposals. According to the CPUC, this should be done sufficiently in advance of the deadline for submitting

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<sup>128</sup> Pattern at 8.

proposals, so that all potential developers have equal and meaningful opportunity to formulate their proposals with insight into how selection criteria will be used.<sup>129</sup>

The ISO's identification of the key selection factors will provide project sponsors with information about the factors which will be the most important for purposes of project sponsor selection. Providing greater specificity than the identification of key factors, as recommended by the CPUC, would lead to the type of formulary approach that, as discussed above, would eliminate the ISO's ability to assess the degree to which a project sponsor meets the various criteria. Such a formulaic approach would also fail to account for the various degrees of risk associated with each project sponsor. Different project sponsors may have different levels of risk associated with their financial capabilities, ability to complete the project in a timely manner, ability to operate and maintain the facility, and potential to abandon the project. For example, assume that the proposed schedule and the demonstrated cost containment capability were key factors. If project sponsor A was only slightly better on the schedule, and significantly worse on the cost containment, a pre-assignment of greater weight to the schedule might force the ISO to select project sponsor A, even though project sponsor B was better qualified all-around. It would be counter-productive to eliminate the ISO's flexibility to select project sponsor B.

As another example, a project sponsor might submit the lowest cost bid, but propose to use inferior materials or untested technologies that could be problematic in the long-run, leading to increases in O&M costs and/or the need for replacement facilities in the future, or delays in project completion. Under

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<sup>129</sup> CPUC at 4-5.

these circumstances, pre-assigning a high value to cost containment could result in an inappropriate selection determination.

The CPUC's approach would also significantly increase the ISO's burdens because within a very short period of time the ISO would be required to develop separate weights for each and every selection criterion for every single transmission solution that is subject to competitive solicitation. Further, this process would take place at a time when ISO staff is "fully booked" trying to evaluate stakeholder comments on the "draft transmission plan -- which are usually extensive -- and develop a "revised transmission plan" to be submitted to the Board by the end of February. Adopting the CPUC's proposal would only serve to delay the building of needed facilities.

Perhaps most importantly, there is no directive in Order No. 1000 that requires the ISO to pre-assign weights to all selection criteria at any stage prior to its evaluation of all of the project sponsor selections. The Commission declined to establish any specific or minimum selection criteria for selecting projects to be included in a regional plan.<sup>130</sup> As such, there is no basis for mandating the weighting approach requested by the CPUC.

Finally, LS Power argues that the ISO should be able to develop the key selection factors for different project types as a general rule, and exceptions could be dealt with on a case-by-case basis. Developing key selection factors for different project types is not more practical than doing it for all project types. For all the same reasons, discussed above, it would eliminate the ISO's ability to assess the degree to which a project sponsor meets the various criteria. Making

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<sup>130</sup> See, e.g., Order No. 1000-A at P 455.

“exceptions” on a case-by-case basis would defeat LS Power’s goal of providing guidance at an earlier stage, because potential transmission developers would never know when there were exceptions until the same time as the ISO proposed to provide the key factors for individual projects. Moreover, in light of the multitude of variable considerations, the exceptions would inevitably swallow up the rule. The key factors for evaluation depend upon the particular circumstances and needs of each individual project and will vary on a project-by-project basis. For example, the key factors will not be the same for all reliability projects (e.g., an extremely near-term reliability project where there is little if any margin for delay versus a solution that addresses a significantly longer term reliability need, and there is a little more cushion. Predetermination of key considerations for generic project types will not effectively assist either the project developer or the ISO.

## **6. Project Selection Report**

The CPUC contends that proposed section 24.5.3 regarding the posting of a report explaining sponsor selection for any particular project should be revised to provide greater disclosure and clarity regarding the role that costs and cost containment played in sponsor selection, and the cost implications of selecting one sponsor rather than another. Section 24.5.3 already accommodates this analysis, not just for cost containment, but for all of the selection criteria. Specifically, the proposed tariff provision requires the ISO to (1) set forth in a detailed manner the results of the comparative analysis, (2) indicate the reasons for the ISO’s decision, (3) discuss how the ISO’s decision is consistent with the objectives included in tariff section 24.5.2.3(c), including cost-effectiveness, and

(4) specifically identify the role of each the selection factors set forth on section 24.5.2.4 in determining the ultimate selection of project sponsors.

There is no basis to single out the cost containment criterion. ISO project sponsor selection decisions must be based on a comparative analysis of all the selection factors. Such a requirement is inconsistent with the tariff provisions that do not establish a rule that cost considerations will always have greater weight than other factors and the Commission's previous finding that cost should not be provided special weight. The requirements for the report should be consistent with the project sponsor selection.

The CPUC also argues that local regulatory authorities responsible should be given opportunity to review and comment on the selection report, and to receive reasoned response to those comments, before the selection is deemed complete. It is not clear, however, what purpose such a step would accomplish. This step would merely delay the process and potentially could introduce discriminatory factors, *e.g.*, the siting authority favoring project sponsors that will seek siting authorizations from that agency or will otherwise be subject to its jurisdiction. Regulatory authorities that are dissatisfied with the ISO's decision are free to challenge it through dispute resolution procedures or through a complaint with the Commission

#### **H. Deference to Siting Authority**

Under the ISO's compliance proposal, as under the existing transmission planning process recently approved by the Commission, if there are more than one qualified project sponsors, and the project sponsors will seek siting approval from the same authority, the ISO will defer to that authority for the determination

of the approved project sponsor. LS Power asks the Commission to reject this provision and require the ISO to select the approved project sponsor.<sup>131</sup>

In its compliance filing the ISO discussed why its existing tariff provisions deferring project sponsor selections to the siting authority if all project sponsors intend to seek their siting authorizations from the same regulatory authority.<sup>132</sup>

LS Power does not even address those substantive reasons. It is somewhat ironic that LS Power, who throughout its protest insists that the ISO is prejudiced against non-incumbent transmission developers, yet is protesting the deferral of the project sponsor selection decision to a third neutral party siting authority. LS Power acknowledges that the Commission has previously approved the ISO tariff provisions that allow a single siting authority to choose among competing projects,<sup>133</sup> but insists that it is inappropriate under Order No. 1000. LS Power cites no provision of Order No. 1000 that would change the earlier conclusion that the process was just and reasonable and not unduly discriminatory or prejudicial.

LS Power instead argues that Order No. 1000 was issued under jurisdiction expressly residing with the Commission and that the Commission should require each transmission planning entity to respect the jurisdictional roles of each regulatory authority; yet LSP Power offers no explanation as to why deferral to the siting authority would interfere with the Commission's jurisdiction.

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<sup>131</sup> LS Power at 44-45.

<sup>132</sup> Transmittal letter at 65-68.

<sup>133</sup> As the ISO has noted, the Commission has approved a similar deferral in the New York Independent System Operator's transmission planning process. *N.Y. Indep. Sys. Operator, Inc.*, 109 FERC ¶ 61,372 at P 19 (2004).

LS Power disregards the Commission's numerous statements throughout Order No. 1000 and Order No. 1000-A encouraging compliance filings that provide an appropriate role for state regulatory authorities. In Order No. 100-A, the Commission stated:

Regarding concerns about the role of state utility regulators in the regional transmission planning process, we support states' efforts to take an active role in the regional transmission planning process and encourage proposals that seek to establish a formal role for state commissions in the regional transmission planning process

<sup>134</sup>  
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The Commission went on to note, "We recognize that state utility regulators play an important and unique role in transmission planning processes, given that the states often have authority over transmission, permitting, siting, and construction

<sup>135</sup>  
.....

Ultimately, regardless of the ISO's choice, the siting agency will still have its say. The ISO would have preferred to defer all selection decisions to siting authorities, but that is not possible if the project sponsors are going to different authorities; some entity must decide who is permitted to make the siting application. That is not necessary when the sponsors intend to seek approval from the same siting authority, and there is no reason in such a case to interpose an additional step of ISO selection.

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<sup>134</sup> Order No. 1000-A at P 290.

<sup>135</sup> *Id.* at P 291.

**I. Information Requirements During Permitting and Construction; Delays in Construction and Mitigation Plans; Backstop Obligations**

Proposed tariff sections 24.6-24.6.4 address reporting requirements for approved project sponsors; a process for developing mitigation plans if project delay is likely to cause criteria violations; a process for selecting another project sponsor when the approved project sponsor has abandoned the project; and the obligation to build projects where there is no approved project sponsor or the project has been abandoned. These tariff sections were developed in response to recommendations from stakeholders and incorporate many suggestions from the stakeholder process.<sup>136</sup>

LS Power, Pattern and SoCal Edison protested or submitted comments on these sections. Both LS Power and SoCal Edison raised issues with respect to reassigning projects that have been abandoned and participating transmission owner backstop obligations. Pattern commented on the progress reporting process.

**1. Project Reassignment and Backstop Obligations**

LS Power argues that the language of section 24.6.2, which authorizes the ISO to take appropriate action to address reliability concerns if a project is delayed beyond the need date, is too broad and could be used by the ISO to prematurely re-assign the project. LS Power opines that project delays sometimes are not caused by actions or inactions by the sponsor, and that in all likelihood the ISO would be happy to take a project away from a non-incumbent and give it to an incumbent, regardless of whether such reassignment was

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<sup>136</sup> Transmittal letter, pages 73-74.

justified.<sup>137</sup> SoCal Edison, on the other hand, protests that the ISO should *not* have the authority to re-assign a project, at least not a public-policy or economic project, to the incumbent participating transmission owner in whose service territory the project is located.<sup>138</sup>

LS Power focuses on one sentence in section 24.6.2 that it has taken out of context. Sections 24.6-24.6.4 provide a logical scheme by which the ISO, the approved project sponsor, and the participating transmission owner will work together to address possible reliability concerns if the project is going to be delayed beyond the need date. The ISO conducts this activity during each annual transmission planning cycle, and often there are interim measures that can be implemented to address concerns before the project is completed. The ISO has included considerable reporting and conferring requirements into the proposed tariff language, applicable to incumbents and non-incumbents alike, and, when read together, these sections make it clear that re-assigning the project is a last resort. For example, section 24.6 provides that the approved project sponsor must make a good faith effort to obtain all permits and approvals. Obviously, if a project has been delayed because of the permitting process, the project sponsor has met this requirement. Section 24.6.1 requires detailed reports that will provide the ISO with sufficient information to determine whether the sponsor is taking all reasonable efforts to complete construction on a timely

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<sup>137</sup> LS Power at 45-46; at fn. 80 LSP also predicts that the ISO would be unlikely to reassign a project from an incumbent to a non-incumbent under similar circumstances.

<sup>138</sup> As LS Power should be aware, SoCal Edison raised these issues repeatedly during the stakeholder proceeding. LS Power's contention that the ISO would be happy to take the project away from a non-incumbent thus flies in the face of its repeated assertions that the ISO is prejudice in favor of incumbent transmission owners.

basis. The first sentence of section 24.6.2 (which LS Power did not quote or otherwise acknowledge or discuss in its comments) provides that, if a project is delayed, the ISO will issue a market notice and the ISO, the project sponsor (if the project has not been abandoned), and the participating TO will work together to develop a mitigation plan to address potential reliability concerns.

Development of a mitigation plan, which is required by Order No. 1000,<sup>139</sup> means that the parties will work together to address the interim “gap” before the project is completed. It is only if this gap cannot be addressed that the ISO would consider re-assigning the project (but is not required to do so) under section 24.6.4. Throughout both the reporting process and the mitigation plan development process, there will be ample opportunities for the project sponsor to assure the ISO of its competence and willingness to complete the project. There is no need for the additional tariff language that LS Power suggests.

Furthermore, LS Power’s suggested language is unworkable. The ISO cannot be expected to apply a tariff standard that requires “material evidence of lack of commercially reasonable competence or the ability to advance the reliability project.” The ISO will have considered the project sponsor’s competence during the competitive solicitation process, and “material lack of competence” might not be the reason that the project is delayed beyond reasonable expectations. Putting this limiting language into the tariff could make it impossible for the ISO to take the action needed to avert reliability violations. LS Power has provided no valid basis to insert unworkable and unnecessary language into the tariff on this issue.

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<sup>139</sup> Order No. 1000 at P 344.

SoCal Edison's concerns focus on policy-driven and economically driven projects that the approved project sponsor abandons. According to SoCal Edison, if a sponsor abandons such a project, the ISO should be required to re-evaluate the feasibility and continuing need for the project, including consideration of whether the project should be re-configured.<sup>140</sup> Should the project still be needed in its original design, SoCal Edison suggests that the ISO should consider the runner-up from the competitive solicitation to complete the project. If the project is re-configured, the ISO should conduct a new competitive solicitation to select a sponsor. SoCal Edison concludes that "if there are no viable alternatives" or no potential project sponsor is willing to build the "alternative" (the ISO assumes this means the re-configured project), the ISO should be required to declare that the project is not feasible and should not be built.<sup>141</sup>

As an initial matter, that a project is labeled as policy-driven or economically driven does not mean that it is not required for reliability. Because of the ISO's sequential review of transmission needs, a policy-driven or economically-driven project can supplant a reliability-driven project. That does not mean the reliability need is no longer present.

The ISO does agree with SoCal Edison that, where the approved project sponsor has abandoned a project, it would be reasonable for the ISO to consider the reasons why the project was abandoned. The proposed tariff language

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<sup>140</sup> SoCal Edison at 4-5.

<sup>141</sup> *Id.* at 5.

provides the ISO with the flexibility to do so, as well as considering alternatives to the project. Specifically, section 24.6.4 states:

If the CAISO determines that the Approved Project Sponsor cannot secure necessary approvals or property rights or is otherwise unable to construct a transmission addition or upgrade, or if the CAISO finds that an alternative Project Sponsor is necessary pursuant to Section 24.6.2, or if the Approved Project Sponsor determines that it is unable to proceed with construction and so notifies the CAISO, *the CAISO shall take such action as it reasonably considers appropriate, in coordination with the Participating TO and other affected Market Participants, to facilitate the development and evaluation of alternative proposals.*

(Emphasis added.)

Alternatives could include an assessment, as suggested by SoCal Edison, that the project is no longer needed as configured, that other mitigation solutions are more appropriate or that there is no longer a need at all. If, however, after considering the issue with the participating transmission owners and other stakeholders, the ISO finds that the project as originally designed or reconfigured is needed to serve customers on the ISO grid, then there must be a backstop obligation for load-serving participating transmission owners to build the project where there is no approved project sponsor selected in the competitive solicitation project. SoCal Edison's suggestion that the failure of the solicitation to produce an approved sponsor means that the project is not needed is not logically consistent, because, according to SoCal Edison, the ISO should have refreshed its needs analysis before re-opening the solicitation.

SoCal Edison comments that approved project sponsors should also have an obligation to build an abandoned economic or policy project.<sup>142</sup> This

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<sup>142</sup> *Id.*

recommendation is not quite clear, because the “approved” project sponsor is the one that is chosen to build the project and has not been able to complete it. If SoCal Edison means that all of the participants in the solicitation process should be obligated to build a project, the requirement is not practical. If the participants are not load-serving entities in the ISO balancing authority area, the ISO would have no certainty that the participants in one solicitation process would have the interest or capability to build a project years later after the winning bidder has abandoned the project. Furthermore, it would seem that simply opening another solicitation process, which is what section 24.6.4 requires the ISO to do, would accomplish the same purpose.

SoCal Edison also argues that the ISO cannot “direct” a participating transmission owner to build a project because it is up to the CPUC to approve siting for the project. SoCal Edison suggests that section 24.6.4 be amended to reflect that participating transmission owners must only make a good faith attempt to obtain permits, similar to the language in section 24.6. This change is unnecessary. The Transmission Control Agreement requires participating transmission owners to construct upgrades to their systems and recover the costs through the ISO transmission access charges.<sup>143</sup> This authority is captured in the word “direct.” The ISO has no control over siting agencies, of course, but section 24.6 only requires that project sponsors make at least a good-faith

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<sup>143</sup> See section 4.3 of the Transmission Control Agreement: “Participating shall be responsible for operating and maintaining those lines and facilities [placed under ISO operational control] in accordance with...procedures and directions of the ISO issued or given in accordance with this Agreement.” Section 11 applies the ISO tariff to expansions or reinforcements of the grid affecting transmission facilities placed under ISO control.

attempt to obtain permitting. The ISO would also note that current section 24.6 provides that the ISO may “direct” participating TOs to build transmission; this language was merely moved to section 24.6.4 in this compliance filing. Section 24.6 as it currently exists was approved as part of revised transmission planning process in 2010. Further, Order No. 1000 expressly recognizes that situations may arise where incumbent transmission providers are called upon to complete a transmission project that (1) another entity has abandoned, (2) the incumbent otherwise has an obligation to build and which has not been sponsored by another developer.<sup>144</sup> Order No. 1000 recognizes that both of these examples would be a basis for the incumbent to be granted abandoned plant authority.

Finally, SoCal Edison requests that the ISO add tariff language requiring new participating TOs to enter into a reliability standards agreement.<sup>145</sup> The ISO agrees, but would propose that this requirement be put into the BPM and other documents provided to potential bidders. Currently the tariff does not contain a reference to reliability standards agreements, although the ISO, in practice, has required new participating TOs to enter into such agreements.

## **2. Project Reporting Requirements**

Pattern raises a concern that certain information about project milestones and the sponsor’s ability to finish the project on a timely basis, if made public, could inadvertently cause delays and additional expenses in the permitting land acquisition process.<sup>146</sup> Pattern suggests that the ISO minimize public concerns

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<sup>144</sup> Order No. 1000 at P 267.

<sup>145</sup> SoCal Edison at 6.

<sup>146</sup> Pattern Comments at 15.

about a developer's ability to achieve a particular online date and that the ISO and developer should work cooperatively to keep each other informed on project process.

Pattern's concerns are unfounded. The ISO drafted proposed sections 24.6-24.6.4 specifically to minimize public dissemination of information about project milestones until the ISO determines that the project is going to be delayed and that there may be reliability concerns caused by the delay.<sup>147</sup> Proposed section 24.6.1 states that the milestone information will be provided by the sponsor to the ISO, and if the sponsor is not the participating transmission owner with a service territory in which the project is located, a copy will be provided to that participating transmission owner. Communications about the information will be limited to the ISO, the project sponsor and the participating TO, which is consistent with Pattern's comments. Pattern did not make any specific language change recommendations and none are needed.

#### **J. Interstate and Merchant Projects; Regional and Inter-regional Cost Allocation**

Clean Line raises a number of concerns about the ISO's regional transmission planning process. Because Clean Line did not participate in the ISO's stakeholder process, this is the ISO's first opportunity to address these matters. Many of Clean Line's comments relate to changes that are not required by Order No. 1000. Some of the comments reveal a fundamental misunderstanding of the ISO's existing process for evaluating transmission

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<sup>147</sup> Section 24.6.2.

needs and its regional cost allocation paradigm. In other comments, Clean Line prematurely pulls inter-regional issues into this regional compliance filing.

**1. Opportunities for Merchant Transmission Developers to Participate in the ISO's Regional Plan**

Clean Line first argues that the ISO's filing does not comply with Order 1000 because the annual transmission plan excludes consideration of "participant funded merchant transmission projects."<sup>148</sup> Clean Line acknowledges that the ISO's process does contemplate the submission of merchant projects through the annual request window, but argues that, according to the request window submission form in the business practice manual, such request window projects are limited to those that seek cost recovery through an allocation of incremental congestion revenue rights.<sup>149</sup>

Clean Line has overlooked tariff provisions addressing merchant transmission facilities and has misinterpreted the business practice manual sections. Under the ISO tariff, "merchant" projects are those transmission upgrades or additions that are not proposed for regional cost allocation but rather will be funded by the project proponent.<sup>150</sup> The developers of such projects may recover their costs through congestion revenue rights but are not required to do so. The key characteristic of a merchant project is that the sponsor does not recover the costs from ISO ratepayers. The ISO is otherwise indifferent as to

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<sup>148</sup> Clean Line at 5.

<sup>149</sup> *Id.* at 6.

<sup>150</sup> The definition in the ISO tariff of a Merchant Transmission Facility is "a transmission facility or upgrade that is part of the [ISO] Controlled Grid and whose costs are paid by a Project Sponsor that does not recover the cost of the transmission investment through the [ISO's] Access Charge or [Wheeling Access Charge] or other regulatory cost recovery mechanism."

how project sponsor recovers the costs of a merchant transmission facility. The business practice manual provisions cited by Clean Line are consistent with this concept. References to the fact that merchant transmission projects may recover costs through congestion revenue rights and through “direct charges to customers” are not inconsistent under the ISO’s framework.

Proposed section 24.4.6.1, in combination with the request window provisions in proposed section 24.4.3(a), describe how merchant transmission facilities participate in the ISO transmission planning process. A merchant project proponent must demonstrate the financial capability to pay the full cost of construction and must mitigate all operational concerns identified by the ISO as well as any impacts on the feasibility of long-term CRRs. The business practice manual explains that the ISO and the participating transmission owners in whose service territory the project will be located must conduct technical studies to assess the system reliability impacts. Thus, the ISO’s existing process provides opportunities, and a request window, for merchant transmission facilities to participate and be included in the regional plan if the conditions of section 24.4.6.1 are successfully fulfilled. Clean Line’s unfounded comments, based on a misreading of the tariff and the BPM, do not support the need for further transmission planning clarification or revisions.

Cost recovery, however, is a different issue. If the ISO determines in the planning process that it needs additional facilities, it designates a project sponsor to construct and own the facilities. The project sponsor places the new facilities under the ISO’s operational control and recovers the costs from load through the transmission access charge. If the transmission developer wishes to develop a

project that the ISO has not yet determined to be necessary in the transmission planning process, the ISO can include it in the plan as a merchant project, subject to the requirements described above. The ISO provides network service, however, and assessment of the transmission access charge does not depend upon which customers use whose facilities. To the extent a merchant transmission owner accepts compensation through congestion revenue rights, the compensation does not conflict with the ISO's assessment of the transmission access charge.

The ISO tariff, however, does not have a mechanism under which it, or another entity, charges end user customers directly for the use of particular transmission facilities. The ISO has no mechanism to schedule and track usage of a particular facility under its operational control. Accommodating a merchant transmission owner that wishes both (1) to place its facilities under the ISO's operational control and (2) to collect the cost directly from users of the facility would require significant revision to the ISO's tariff and software. This, however, is not a regional transmission planning issue and nothing in Order No. 1000 calls for tariff revisions to address this issue. Order No. 1000 clearly establishes that the requirements of the order applicable to "transmission facilities selected in a regional transmission plan for purposes of cost allocation" do not apply to other facilities that may be listed in a regional plan, "such as a local transmission facility or a merchant transmission facility."<sup>151</sup> The Commission further clarified:

With regard to the participation of merchant transmission developers in the regional transmission planning process, we conclude that, because a merchant transmission developer

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<sup>151</sup> Order No. 1000 at P 63.

assumes all financial risk for developing its transmission project and constructing the proposed transmission facilities, it is unnecessary to require such a developer to participate in a regional transmission planning process for purposes of identifying the beneficiaries of its transmission project that would otherwise be the basis for securing eligibility to use a regional cost allocation method or methods.<sup>152</sup>

These pronouncements with regard to merchant transmission are consistent with the ISO tariff treatment of merchant projects.

## **2. Merchant Transmission Projects Interconnecting to the ISO to Deliver Renewables.**

Clean Line next suggests that the ISO revise its tariff to address a transmission line that spans multiple planning regions but “exists” only in the ISO’s region.<sup>153</sup> Clean Line describes its Centennial West HVDC line as drawing on new renewable generation in New Mexico and Arizona that would not connect directly to the surrounding AC grid in any of the states it traverses and would therefore be a regional project only to the ISO. The ISO disagrees with Clean Line’s characterization. Clean Line’s proposal, as described, appears to be a generation interconnection facility comprised of a long gen-tie delivering renewables to the ISO grid. Such a line is not a networked facility. This arrangement would be appropriately submitted into the ISO’s generation interconnection process and is outside the scope of the transmission planning process and this Order 1000 compliance proceeding.<sup>154</sup>

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<sup>152</sup> *Id.* at P 163.

<sup>153</sup> Clean Line at 7.

<sup>154</sup> Order No. 1000, at P 760 clarified that generation interconnection procedures governed by Order No. 2003 are outside the scope of Order No. 1000.

### **3. Participation in Regional Plans; Partial Cost Allocation**

Clean Line then suggests that ISO's top-down regional planning process is unlikely to identify transmission upgrades that provide small benefits to ISO customers but significant benefits are provided to customers in other regions. Apparently these would be projects that are seeking cost recovery from ratepayers in more than one region. In order to solve this "problem", Clean Line suggests that the ISO create a new category of regional transmission projects that would be "candidates" for inter-regional transmission cost allocation and the ISO would evaluate using a different, and completely unspecified, set of benefits.<sup>155</sup> Should these projects ultimately not be selected for inter-regional cost allocation (apparently because they were not selected in the other regional plans), they would then be considered for regional cost allocation or just move forward as participant funded.

This recommendation not only would require the ISO to substantially revise its regional planning process, but it puts the cart before the horse from an inter-regional planning standpoint. The ISO and its neighbor planning regions are currently engaged in a stakeholder process to develop the procedures for evaluating inter-regional projects and allocating the costs among the regions. The ISO anticipates that the inter-regional procedures will include a "track" for consideration of inter-regional projects in each regional process. Requiring the ISO to incorporate such a concept into its process without input and coordination with the other regions would be a futile exercise subject to immediate modification once the inter-regional procedures are completed.

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<sup>155</sup> Clean Line at 8-9.

Clean Line also argues that if a merchant project is submitted into the ISO's process, the ISO should be required to "partially" allocate the costs of a project through the ISO tariff if it has some regional benefits.<sup>156</sup> As discussed previously, the ISO does not evaluate merchant projects to determine whether there are system benefits; rather, the ISO and the participating transmission owner studies the interconnection to assure that there are no adverse reliability impacts. Under the ISO's process, a merchant project is one that is not seeking cost recovery through the regional cost allocation mechanism. The ISO tariff does not have a mechanism to determine after the fact that the merchant project has some reliability benefit that merit the type of cost allocation project that Clean Line describes, and revising the tariff to do so is beyond the scope of this Order No. 1000 compliance proceeding.

This does not mean that a merchant project sponsor (or sponsor of a participant-funded project) that is unable to recover all costs from certain anchor customers is completely without recourse. For example, the sponsor could identify through comments the additional capacity as a potential solution for an identified transmission need during the Phase 2 process. If the ISO agreed, it could include it as one alternative solution in Phase 2 and the sponsor could support it in the competitive solicitation. There are a number of paths available under the ISO tariff that would enable the costs of excess merchant line capacity to ISO ratepayers, if found to be needed.

Finally, Clean Line appears to take issue with section 24.5.2.1(a)-(c), criteria used by the ISO in the competitive solicitation process to determine

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<sup>156</sup> *Id.*, 9-10.

whether a project sponsor meets basic qualifications to finance, construct and own a transmission project.<sup>157</sup> Clean Line argues that “an entity’s eligibility to propose a project for selection in the regional plan for the purposes of cost allocation should not be contingent on whether the project is already in the plan.” This statement again reflects a lack of understanding of the ISO’s process. The ISO identifies regional transmission solutions eligible for regional cost allocation in the transmission plan approved by the Board and the ISO then selects project sponsors for those transmission elements that are subject to competitive solicitation. Project sponsors submit proposals to build facilities *only* if the elements have been approved for regional cost allocation -- not the other way around. The ISO’s “top-down” approach to the planning process is completely consistent with Order 1000, for all of the reasons set forth in the transmittal letter<sup>158</sup>, and Clean Line has been unable to articulate a valid basis for changing it.

#### **IV. CONCLUSION**

For the reasons explained above, the Commission should reject the comments and protests subject to the clarifications and minor modifications agreed to by the ISO as discussed herein.

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<sup>157</sup> Clean Line does not refer to the tariff section but rather to page 44 in the transmittal letter that describes these criteria.

<sup>158</sup> See transmittal letter page 44; Order No. 1000 at P 328.

Respectfully submitted,

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Dated: December 21, 2012

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for these proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2012)).

Dated at Washington, D.C. on this 21st day of December, 2012.

*/s/ Michael E. Ward*

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