

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

California Independent System Operator
Corporation

Docket No. ER16-767-000

**MOTION FOR LEAVE TO SUBMIT ANSWER TO COMMENTS
AND ANSWER OF
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”) respectfully submits this motion for leave to answer, and answer,¹ to the Late-Filed Comments submitted by LSP Transmission Holdings, LLC (“LSP”) in this proceeding.

I. BACKGROUND

On January 27, 2016 the CAISO filed tariff amendments proposing the following: (1) revise the tariff to enhance the opportunity for project sponsors to collaborate on a joint application at the beginning of the competitive solicitation process (*i.e.*, prior to the due date for submitting project sponsor applications) and eliminating the collaboration period that occurs after project sponsors have submitted their applications and the CAISO has validated them; (2) revise Section 5.8 of Appendix X of the CAISO Tariff, *i.e.*, the *pro forma* Approved Project Sponsor Agreement (“APSA”), to require an approved project sponsor that no longer has responsibility for constructing the project, subject to applicable law, to transfer assets acquired for the project at their book value,

¹ The CAISO submits this motion and answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2014).

determined in accordance with the Commission's Uniform System of Accounts; (3) revise the tariff and the APSA to require project sponsors and approved project sponsors to provide the CAISO, participating transmission owners, and approved project sponsors with all initial Commission filings regarding the project; and (4) revise section 4 of the CAISO tariff to exempt approved project sponsors from the requirements of the participating transmission owner application process because those requirements are essentially duplicative of matters addressed in the competitive solicitation process.²

LSP filed Late-Filed Comments on February 19, 2016. LSP objects to the proposed revisions to section 5.8 of the APSA claiming, in conclusory fashion, that they are unnecessary, commercially appropriate, or in the best interest of solicitation participants or CAISO ratepayers.

No other intervenor shares LSP's views.³ For the reasons set forth herein and in the CAISO's January 27 tariff amendment filing, the Commission should approve the CAISO's proposed tariff revisions without modification and reject LSP's meritless arguments.

II. MOTION FOR LEAVE TO ANSWER COMMENTS

The CAISO respectfully requests authorization to respond to LSPs Late-Filed Comments. Notwithstanding Rule 213(a)(2),⁴ the Commission has accepted answers to

² The CAISO also proposed *de minimis* "clean-up" changes to the APSA.

³ In particular, no CAISO ratepayer objects to the proposed revisions or claims that they are not in the best interest of ratepayers. Indeed, CAISO ratepayers strongly supported the proposed revisions to APSA section 5.8 during the underlying stakeholder process. Likewise, no competitive solicitation participant or potential competitive solicitation participant, other than LSP, argues that the proposed revisions are inappropriate.

⁴ 18 C.F.R. § 385.213(a)(2) (2014).

protests that assist the Commission's understanding and resolution of the issues raised in the protest,⁵ clarify matters under consideration,⁶ or materially aid the Commission's disposition of a matter.⁷ The CAISO's answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues, and help the Commission to achieve a more accurate and complete record.⁸

III. ANSWER

As an initial matter, LSP's Late-Filed Comments are procedurally defective. LSP acknowledges that protests and comments in this proceeding were due on February 17, 2016. However, LSP has not filed a motion for leave to file its Late-Filed Comments, provides no reasons why its filing is late, and seeks no waiver (thus failing to show why good cause exists for the Commission to accept its Late-Filed Comments out-of-time).⁹ More importantly, as discussed below, LSP's substantive arguments lack merit.

A. **It is Appropriate For the CAISO to Proactively Address the Problems That Arise When a Project Sponsor Abandons a Needed Project and Take Steps to Facilitate Construction of Such Projects in a Timely and Cost-Effective Manner**

LSP first suggests that the CAISO's proposal is inappropriate and unnecessary because the CAISO, in its 2014 filing seeking Commission approval of the *pro forma* APSA, stated that "the suggested provision requiring transfer of ownership rights is unnecessary because a project sponsor has no motivation to hold rights in connection

⁵ *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (1999).

⁶ *Ariz. Pub. Serv. Co.*, 82 FERC 61,132 (1998); *Tenn. Gas Pipeline Co.*, 82 FERC 61,045 (1998).

⁷ *El Paso Natural Gas Co.*, 82 FERC 61,052 (1998).

⁸ *No. Border Pipeline Co.*, 81 FERC 61,402 (1997); *Hopkinton LNG Corp.*, 81 FERC 61,291 (1997).

⁹ 18 C.F.R. §385.2008.

with a project when it no longer is in a position to recover the costs of the project as a participating transmission owner [and] it has every reason to transfer those rights to the extent it can.”¹⁰ LSP claims this conclusion remains the same today, and the CAISO fails to show to the contrary.¹¹

LSP ignores the discussion at pages 19-20 of the January 27 filing. The CAISO will not repeat all of that discussion here. As the CAISO stated in the January 27 filing, after its initial decision in the *pro forma* APSA stakeholder process not to pursue such revisions, the CAISO gave additional thought to this issue. In its answer to comments and protests in the same *pro forma* APSA proceeding, the CAISO acknowledged the concern, but noted that it raised several unresolved issues not addressed during that stakeholder process. Accordingly, the CAISO committed to address the issue in the stakeholder proceeding that led to this tariff amendment, and the Commission, in its order approving the *pro forma* APSA, acknowledged the CAISO’s intent to “add the issue of compensation to the project sponsor for rights, title, or interest that it has acquired to a stakeholder process designed to enhance the competitive solicitation process”¹² The CAISO’s stakeholder process identified numerous considerations that ultimately led the CAISO to propose revisions to section 5.8 of the APSA. Those considerations, which include protecting ratepayers and facilitating construction of

¹⁰ Late-Filed Comments at 3. Footnote No. 6 of LSP’s Late-Filed Comments states that the CAISO submitted the *pro forma* APSA filing containing this statement on September 10, 2015. That is incorrect. The CAISO submitted the filing on September 10, 2014, not 2015.

¹¹ If, as LSP claims, an approved project sponsor that abandons a project will already be motivated to sell its assets to the extent it can, then there should not be any harm including such a requirement in the APSA. Indeed, LSP fails to identify any legitimate harm that approved project sponsors would face as the result of including the proposed revision to APSA section 5.8. The January 27 filing (pp.18-23) clearly demonstrated why approved project sponsors are not harmed by this provision.

¹² *California Independent System Operator Corporation*, 149 FERC ¶61,107 at P 51 (2014).

needed projects that approved project sponsors will not complete (particularly reliability projects) in a timely and cost effective manner, are described on pages 20-22 of the January 27 filing.

It is undeniable that risk exists; that a project may be abandoned (for any number of reasons).¹³ This risk has already become reality for the CAISO, as one approved project sponsor has terminated its APSA leaving generator interconnection projects scrambling.¹⁴ Further, a second approved project sponsor's parent has declared bankruptcy and, although thus far it has not impacted the awarded project, it brings closer to home both that there are real-world risks and problems that could cause a project to be abandoned, and the need for the CAISO to take proactive steps to mitigate the potential adverse impacts of any abandonment on the CAISO and CAISO ratepayers.

LSP attempts to downplay these facts stating that neither instance has yet resulted in an increased cost to ratepayers. Not only does this argument ignore that it is too soon to assess what the ultimate financial impacts of these events will be,¹⁵ it ignores that abandonment of transmission projects can and does occur, and abandonment creates the risk that costs to ratepayers could increase unnecessarily or that a project still needed (especially a project needed for reliability) may not be completed in a timely manner if the approved project sponsor abandons it. The CAISO's proposal proactively seeks to address such risks, mitigate them, and limit any

¹³ Indeed, the Commission has acknowledged such risk by granting project sponsors an abandoned plant incentive in connection with projects they build.

¹⁴ Eight APSAs have been executed thus far.

¹⁵ Termination of the APSA became effective only this week. Notice of Termination, Docket No. ER16-508 (Feb. 10, 2015) (termination effective February 22, 2016).

adverse impacts to the extent practicable. Adopting LSP's logic, there would be no need for someone to wear a seatbelt until after the person has actually flown through the front windshield. The CAISO's proposal represents a workable, prudent, measured, and fair attempt to address these potential risks before they arise, not afterwards, when the CAISO and CAISO ratepayers could face serious problems.

B. A Prudence Review Does Not Address the Need for the CAISO's Proposal or Adequately Protect the CAISO and CAISO Ratepayers from the Potential Consequences of Project Abandonment

LSP suggests that FERC's prudence review of an approved project sponsor's recovery of abandoned plant costs will provide sufficient protection to the CAISO and CAISO ratepayers.¹⁶ This argument misses the point of the CAISO's proposal. The intent of the proposed tariff provisions is not to punish approved project sponsors and limit the abandoned plant costs they can recover. Indeed, the revised APSA language clarifies that the revisions to APSA section 5.8 do not preclude an approved project sponsors' recovery of abandoned plant costs in accordance with Commission policy.¹⁷

Instead, the primary purpose of the tariff amendment is to help ensure that needed transmission projects still get built in a timely and cost-effective manner if the initial approved project sponsor abandons the project. Mere Commission prudence review of an approved project sponsor's filing to recover abandoned plant costs does not -- and cannot -- facilitate achievement of this objective because its sole focus is on the approved project sponsor's recovery of prudently incurred abandoned plant costs, not on using the acquired facilities to facilitate timely and cost-effective completion of

¹⁶ LSP Late-Filed Comments at 4.

¹⁷ January 27 filing at 21.

the project by the alternative project sponsor (and reduce abandoned plant costs). On the other hand, requiring an approved project sponsor that abandons a project to transfer assets it acquired for the project to the alternative project sponsor that needs them at their book value, consistent with the Commission's Uniform System of Accounts and subject to applicable law, can help facilitate achievement of the CAISO's objectives.

C. The Alternative Project Sponsor Should not be Required to Procure 100% of the Assets Acquired by the Approved Project Sponsor

LSP next argues that it is unfair to an approved project sponsor that abandons a project not to require the new project sponsor to buy 100 percent of the approved project sponsor's assets because that could leave the approved project sponsor with some assets that are unusable or worth less without the assets transferred to the project sponsor.¹⁸ LSP also states that some assets may have a current value greater than their book value, and allowing the new project sponsor to cherry-pick certain assets could impose an undue penalty on the approved project sponsors.

The CAISO thoroughly addressed these matters in its January 27 filing (pp. 21-22). LSP does not acknowledge this discussion or seek to rebut the CAISO's specific arguments. Approved project sponsors are not disadvantaged because they retain the ability to seek abandoned plant cost recovery for the assets they do not sell to the new project sponsor (or they can sell any unsold assets to someone else).¹⁹ Even though

¹⁸ LSP Late-Filed Comments at 3.

¹⁹ The new project sponsor may not need certain assets because it already has them (e.g., existing rights-of-way), or the assets the approved project sponsor acquired may not be necessary for completing the project (e.g., the siting authority requires a different route than the right-of-way that was procured by the approved project sponsor or the new project sponsor chooses a different route to avoid having to "underground" portions of the line at a higher cost), or the assets may have been imprudently acquired. The proposed tariff revisions allow the approved project sponsor to seek abandoned plant cost recovery for any assets the alternative project sponsor does not need or sell them to a third-party (at a negotiated price that could be in excess of market value). The CAISO also notes that the alternative project sponsor would also have to justify its costs to the Commission, and could face a potential prudence review

the market value of assets may change due to external forces, the book value of the assets would not change, and the Commission typically utilizes book value and cost (not market value) in determining rate recovery. The proposed revisions to section 5.8 do not undermine an approved project sponsor's legitimate expectations to recover their costs, and approved project sponsors are not being penalized.²⁰

LSP would allow approved project sponsors to abandon a project and sell the assets they acquired for the project at a higher price if the market value for such assets has increased. As the CAISO discussed in the January 27 filing, approved project sponsors should not be able to abandon a project and then hold the CAISO and CAISO's ratepayers hostage by demanding premiums above the book value of the assets acquired for projects that the CAISO needs to be built. The requirement only applies to assets the approved project sponsor has acquired for the project and asset transfers that occur after the approved project sponsor has executed the APSA. These are not merchant projects, which project sponsors are building on their own volition (and whose costs are not borne by CAISO ratepayers through a regional cost allocation process) and which the CAISO has not found to be necessary to meet a reliability, economic, or public policy need identified in the CAISO's annual transmission plan. The reason the approved project sponsor should have procured the assets in the first place

examining its procurement (or non-procurement) decisions. Thus, the alternative project sponsor is incented to ensure that it acts in a prudent manner in incurring costs for the project and determining what assets it should procure from the approved project sponsor. Also, to the extent the CAISO may open another competitive solicitation for the project, the CAISO will be able to consider the extent to which project sponsors are proposing to utilize the acquired assets of the initial approved project sponsor, thus potentially reducing overall costs to ratepayers.

²⁰ The opportunity to seek abandoned plant cost recovery and the ability to sell any needed assets to the alternative project sponsor at book value protects the approved project sponsor from decreases in market value or the risk that the Commission might deny abandoned plant recovery.

is because it won a CAISO competitive solicitation to build a transmission facility that the CAISO found to be needed in an annual transmission plan approved by the CAISO Board of Governors. Assets the approved project sponsor procures under these circumstances to meet a CAISO transmission need should, be provided to meet that need (particularly when the approved project sponsors is guaranteed cost recovery for the assets it sells to the alternative project sponsor). Approved project sponsors (and their teams) are voluntarily competing to build a project needed by the CAISO and will know of this obligation up front before they chose to participate in the competitive solicitation process. Approved project sponsors and their team members can plan accordingly with this up-front knowledge. It is basically a condition of participating in a CAISO competitive solicitation process.

D. The MISO Decision to Which LSP Refers Is Inapposite

LSP also refers to a MISO decision where the Commission rejected a provision that would have allowed MISO to require the termination or assignment of third-party contracts if a project is reassigned.²¹ LSP acknowledges that the proposed APSA revision pertains to assets, not contracts, but claims that assets could be encumbered by a variety of third party contracts. LSP provides no examples, evidence, or support for its conclusory claim, and the comparison to MISO is inapt.

MISO's proposed tariff provisions provided that if a Selected Developer Agreement (MISO's equivalent of the APSA) is terminated and MISO reassigns the project to another developer MISO would have the right to require the selected developer to assign a pending contract, order, or procurement directly to the entity

²¹ The citation for the MISO decision is 153 FERC ¶ 61,169 at P 100 (2015).

MISO has designated to complete the project.²² MISO's proposed tariff provisions also required the selected developer, to the extent practicable and appropriate under applicable contractual arrangements, to cancel any pending orders or contracts or return any materials or equipment not yet installed.²³

There are several critical differences between the CAISO's proposal and MISO's proposal that render LSP's reference to the MISO decision misplaced. First, as LSP acknowledges, the CAISO's proposal applies only to assets actually acquired by the approved project sponsor for the awarded project, not **pending** contracts/orders. Further, the revised APSA provisions do not impact service contracts.

Second, the CAISO's proposal does not involve the assignment or cancellation of a pending vendor contract. Further, the CAISO is not requiring approved project sponsors to include in their vendor contracts provisions that allow the CAISO, in its sole discretion, to require the approved project sponsor to assign the contract to some other entity designated by the CAISO. Also, unlike MISO, the CAISO's proposal does not require approved project sponsors to cancel pending contracts or return any material or equipment not yet installed, or to include such provisions in their vendor contracts. Unlike MISO, the CAISO is not "meddling" in pending contracts, dictating the terms of vendor contracts, or creating issues of potential "commercial practicality" regarding vendor contracts.

²² *Id.* at P 87, referring to proposed section 2.4B(1) of MISO's Selected Developer Agreement. The proposed provision also required the selected developer to take "such steps as are necessary in entering into contracts with third parties to secure and protect this right of [MISO]."

²³ Selected Developer Agreement, section 2.4b (2).

Third, in the MISO proceeding – unlike here -- numerous transmission developers objected to MISO’s proposed vendor contract assignability/cancellation requirements and identified reasons why the assignability/cancellation provisions were problematic. Although numerous transmission developers participated in the CAISO’s stakeholder process, only LSP objects to the proposed APSA section 5.8 revisions -- which do not even pertain to the assignability/cancellation of vendor contracts -- and LSP’s objection are unsupported and wholly conclusory.

The numerous transmission developers who protested MISO’s proposal argued that the proposal would (1) eliminate a transmission developer’s ability to use master services agreements (“MSA”) which often reduce the cost of goods and services because MSAs are typically tailored to the specific circumstances of the contracting parties and have unique terms and , thus, “tend to be unassignable;²⁴ (2) increase the costs of goods and services because allowing contracts to be assignable to a yet-to-be-identified counterparty adds significant risk that requires a cost increase to account for such risk;²⁵ (3) be problematic because it is “highly unusual to find counterparties willing to agree to unilateral and unconditional assignment rights” particularly because terms and conditions are generally determined based on a specific party’s reputation, ability to perform, and balance sheet,²⁶ (4) be “unworkable because it assumes that the counterparty to an agreement with the Selected Developer would agree to a blanket

²⁴ Motion to Intervene and Comments of XCEL Energy Service, at 29-30, Docket No. ER15-2657, (Oct. 7, 2015).

²⁵ *Id.* For example, Xcel Energy Services noted that issues “of counterparty credit, history of dealing with a counterparty, and other legal provisions or contracts could have a chilling effect on a Selected Developer’s ability to leverage or lower its costs of goods and services and, therefore, lower the overall cost of the Competitive Transmission Project.”

²⁶ Motion to Intervene and Comments of Nextera Energy Transmission, LLC, at 7, Docket No. ER15-2657, (Oct. 7, 2015);

right for an unidentified entity to assume the rights and obligations of the Selected Developer at an undefined point in the future;²⁷ (5) result in MISO interfering with independent contractual arrangements;²⁸ and (6) potentially force the selected developer to pay significant damages for canceling the contract increasing project costs.²⁹ Other protests stated that an assignability/cancellation requirement would interfere with vendor contracting, raise contracting costs, make it impossible to obtain contracts with vendors, or otherwise complicate bargaining because third parties would need to consider the resources and identity of an unknown assignee and the developer.³⁰

Some are exactly why the CAISO did not include “contracts” in its proposal and, instead, limited the applicability of the provision only to “assets acquired by the Approved Project Sponsor for the Project”. The CAISO’s proposal does not suffer from the same infirmities as MISO’s proposal because , *inter alia*, the CAISO (1) is not requiring that approved project sponsors include assignability or cancellation provisions in their procurement and services contracts, (2) is not requiring an approved project sponsor to assign or cancel a pending contract, (3) is not dictating the terms of approved project sponsor’s supplier contracts or otherwise “interfering” with such contracts, and (4) is not taking any actions that would inhibit vendor contracting or using MSAs. Unlike MISO’s proposal, the CAISO’s proposal does not impact the

²⁷ *Id.*

²⁸ Protest of Republic Transmission, LLC at 14, at 7, Docket No. ER15-2657, (Oct. 7, 2015);

²⁹ Comments of Transource Energy, LLC at 3, Docket No. ER15-2657, (Oct. 7, 2015).

³⁰ Motion to Intervene and Protest of Edison Transmission LLC at 15, Docket No. ER15-2657 (Oct. 7, 2015)

commercial practicality of vendor contracting and should reduce overall costs not increase the costs of vendor contracts as MISO's proposal might have.

Finally, the CAISO stresses that any transfer of assets under APSA section 5.8 is expressly subject to "applicable law".

In summary, the CAISO's proposal balances competing concerns by (1) mitigating the risks associated with abandoned projects, (2) facilitating the completion of abandoned projects still needed in a timely and cost-effective manner, (3) ensuring that CAISO's ratepayers do not face undue cost increases or duplicative charges for essentially the same assets or be held hostage to project sponsors that demand premiums after the fact for projects that are time sensitive or necessary to maintain the reliability of the CAISO grid, (4) fairly compensating approved project sponsors for the assets they acquire in connection with building a CAISO approved project consistent with the Commission's accounting rules, (5) confirming the opportunity for approved project sponsors to seek abandoned plant cost recovery for unsold assets, and (6) limiting the applicability of the provision to assets the approved project sponsor has acquired for the project and ensuring that any transfers are subject to applicable law.

IV. CONCLUSION

For the reasons set forth herein and in the CAISO's January 27 tariff amendment filing, the Commission should approve the CAISO's proposed tariff revisions without modification and reject LSP's Late-Filed Comments.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon each party on the official service list for this proceeding, under the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2013)).

Dated at Folsom, California on this 25th day of February, 2016.

/s/ Anna Pascuzzo

Anna Pascuzzo