

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

**California Independent System
Operator Corporation**

Docket No. ER14-1206-000

**ANSWER OF THE CALIFORNIA INDEPENDENT
SYSTEM OPERATOR CORPORATION TO COMMENTS**

The California Independent System Operator Corporation (ISO) respectfully submits its answer to the Comments of ITC Grid Development, LLC (ITC Grid) regarding the ISO's proposed tariff revisions filed on January 30, 2014. The amendments are intended to enhance the competitive solicitation process conducted in Phase 3 of the ISO's transmission planning process (TPP) by: 1) providing an opportunity for non-participating transmission owners who are approved project sponsors to recover pre-operation costs through the ISO's transmission access charge, if approved by the Commission; 2) clarifying that non-participating transmission owners who are approved project sponsors, and who have network facilities outside the ISO controlled grid, must turn over to ISO operational control only those facilities for which it was assigned responsibility under the competitive solicitation process; not other facilities it might own; 3) establishing a deposit and application fee for project sponsor submissions in the competitive solicitation process; 4) eliminating the requirement that approved project sponsors must initiate the siting approval no later than 120 days after selection as an approved project sponsor; and 5) clarifying the standards that will be applied if an approved project sponsor seeks to transfer its rights to build the project.

Three parties, Imperial Irrigation District (IID), MidAmerican Transmission, LLC (MAT) and ITC Grid, submitted comments on February 20, 2014.¹ Of these, IID and MAT expressed support for the ISO's tariff revisions and urged the Commission to approve the changes as proposed. ITC Grid, while generally supportive of some of the ISO's proposals, has recommended other tariff revisions and clarifications. The ISO hereby submits its answer to these comments and recommendations.²

I. Answer to ITC Grid Comments

ITC Grid fully supports the ISO's proposed tariff language that provides an opportunity for approved project sponsors who are not participating transmission owners to recover pre-operating rate incentives approved by the Commission. ITC Grid also agrees with the ISO's proposed clarifying language regarding approved project sponsors with existing network facilities outside the ISO controlled grid. ITC Grid's concerns focus on the proposed project sponsor application fee and certain aspects of the approved project sponsor agreement addressed in several tariff provisions, as well as one typographical error.

A. The Approved Project Sponsor Agreement to Refund Abandoned Plant Costs Belongs in the Approved Project Sponsor Agreement.

As explained in the transmittal letter, an important issue addressed in the competitive solicitation enhancements stakeholder initiative was lack of an opportunity for an approved project sponsor, who is not a participating transmission owner, to recover pre-operational rate incentives that the Commission may approve, such as abandoned plant cost recovery or

¹ Several other parties filed motions to intervene without comments: Southern California Edison, California Department of Water Resources, Transmission Agency of Northern California and Northern California Power Agency.

² The ISO is submitting this answer pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 CFR 385.213 (2013).

construction work in progress.³ During the stakeholder process, stakeholders expressed concern about the ISO's ability to recover such payments if they were subsequently rejected by the Commission. The ISO agreed to include a commitment to refund any disallowed costs in an approved project sponsor agreement.⁴ The ISO is currently negotiating such an agreement with IID and is considering its use as the template for a *pro forma* agreement for all approved project sponsors.

ITC Grid suggests that an approved project sponsor's agreement to refund disallowed costs be embodied in the tariff and also that the ISO be required to initiate a stakeholder process for the purpose of developing a *pro forma* stakeholder agreement. ITC Grid opines, with no support, that without these protections, there could be discrimination among approved project sponsors.⁵

Contrary to ITC Grid's suggestion, the refund obligation, in order to be effective, must be in the approved project sponsor agreement. If the approved project sponsor is a nonjurisdictional entity, the Commission would lack the authority to direct refund of any costs it disallowed.⁶ For this reason, the ISO would need an alternative mechanism to enforce the refund obligation. The inclusion of the obligation in the approved project sponsor agreement provides the necessary privity for the ISO to initiate a contract action if necessary. There are similar provisions in the Transmission Control Agreement to address this issue with participating transmission owners.⁷

³ Transmittal letter, pp. 5-8.

⁴ Transmittal Letter Attachment A, pp. 10-11.

⁵ ITC Grid comments, p. 4.

⁶ *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 764 (D.C. Cir. 2007).

⁷ See Transmission Control Agreement § 16.2.

ITC Grid also urges the Commission to direct the development of a *pro forma* agreement, again ostensibly to prevent discrimination. This topic arose several times during the stakeholder process, and the ISO expressed its willingness to address the approved project sponsor agreement with stakeholders. The ISO notes that it has scheduled a stakeholder meeting to address competitive solicitation topics for March 6, 2014, which will provide an opportunity to discuss the approved project sponsor agreement along with other topics. As a part of the ISO's effort to develop a *pro forma* agreement, the draft agreement will be posted on the ISO website and stakeholders will be provided an opportunity to submit proposed redline changes. Furthermore, the ISO and IID are nearing completion of negotiations on an approved project sponsor agreement, so the ISO will be submitting the first approved project sponsor agreement to the Commission for approval relatively soon. The ISO notes that any concerns regarding the potential for undue discrimination in the absence of a *pro forma* agreement are addressed by the fact that the ISO is required to file all approved project sponsor agreements for approval with the Commission until the Commission has approved a *pro forma* agreement. Thus, parties will be able to raise any potential undue discrimination issues in such filings, and the Commission will have the opportunity to address the issues before approving the agreements.

B. It is Not Appropriate to Provide for Recovery of All Application Fees.

ITC Grid states that it does not oppose the proposed competitive solicitation application fee and cost cap, but seeks "clarification" that a project sponsor will be able to recover such cost in rates. By way of clarification, ITC Grid first suggests that the ISO should develop tariff language that would allow all project sponsors, whether successful or not, to recover their application fees through the ISO's transmission access charge.⁸ The ISO opposes this proposal

⁸ *Id.*, p. 5.

because it would mean that project sponsors would bear none of the costs of participating in the competitive solicitation process and developing their proposals, thereby negating the fundamental purpose of the application fee and requiring the ISO's customers to pay all the costs of conducting the competitive solicitation process. This is inconsistent with prior orders where the Commission has found it appropriate for project sponsors to bear the costs of the competitive solicitation process.⁹ There is no basis to treat project sponsors in the ISO competitive solicitation process differently than project sponsors in MISO, Tampa Electric Company, *et.al.* and SPP with respect to this matter. The ISO has addressed this issue at length with stakeholders and has proposed a well-balanced application deposit and fee cap structure that encourages an efficient competitive solicitation process while allowing the ISO to recover its actual costs of conducting the process.

Furthermore, the ISO believes that allowing such recovery, even if one were to assume it is substantively wise, is not an appropriate matter for inclusion in the ISO tariff. The ISO's transmission access charge structure is a formula rate that allows a participating transmission owner (or an approved project sponsor who is not a participating transmission owner, as proposed herein) to recover its Commission-approved transmission revenue requirement, but does not identify specific costs that can be recovered through this charge. Ultimately, the Commission approves the reasonableness of costs to be recovered through a participating transmission owner/approved project sponsor's transmission revenue requirement, and it is not the ISO's role to single out a specific cost that "should" be recovered in rates. It is the Commission's role; therefore it is not appropriate to include the provision proposed by ITC Grid in the ISO tariff.

⁹ See the ISO's discussion of the MISO, Tampa Electric Company, *et.al.* and SPP application fees in the transmittal letter at pp. 14-16.

Finally, ITC Grid states that, alternatively, it should be clarified that any entity, whether participating transmission owner or not, seeking to recover application fees for a losing bid must obtain Commission approval before putting these costs into rates.¹⁰ The ISO has already addressed this concern in the proposed amendment to section 26.1. Specifically, the ISO proposes to add the phrase “as approved by FERC” to the description of the transmission revenue requirement components.

C. Except for Correcting Two Typographical Errors, the ISO’s Proposed Tariff Language is Reasonable and Should be Approved.

ITC Grid correctly notes that there is a typographical error in tariff section 24.6. In the next to last sentence of that section, in the existing tariff language, the second “not” should be removed and the ISO agrees to do so in a compliance filing. There is an additional typographical error in Appendix F, Schedule 3, section 5.2. In the last sentence of the section, which is the proposed tariff language, the word “be” should be inserted between “shall” and “consistent.” The minor change will also be addressed in a compliance filing.

Current section 24.6 generally prohibits an approved project sponsor from selling, assigning, or transferring the right to finance, construct, and own the awarded transmission project unless the ISO approves such sale, assignment, or transfer. During the competitive transmission improvement stakeholder process, LS Power suggested that the ISO add language indicating that ISO approval “will not be unreasonably withheld.” The ISO agreed with this suggestion and that language was added to section 24.6. In addition, SCE recommended that the transferee of an approved project sponsor be held to the same criteria used to select the approved project sponsor. The ISO also agreed with that recommendation, noting in the draft final

¹⁰ *Id.*, p. 6.

proposal that adding certain specific standards to the tariff language would provide a reasonable basis upon which to approve the proposed transfer.¹¹

The language added to section 24.6 that sets forth the standards to be met by transferees was drafted with stakeholders. According to the proposed language, the purchaser, transferee, or assignee must 1) meet the project sponsor qualification requirements in section 24.5.3.1; 2) honor any binding cost containment measures or cost caps agreed to by the approved project sponsor; 3) meet the selection factors that the ISO relied upon in selecting the approved project sponsor; and 4) assume the rights and obligations set forth in the approved project sponsor agreement. These standards will help to ensure that the purchaser, transferee, or assignee will meet the same requirements and abide by the same obligations that were applied to the approved project sponsor, so that the same project efficiencies and ratepayer benefits will be provided by the new owner. The standards also ensure that an approved project sponsor and any purchaser, transferee, or assignee cannot “game” the competitive solicitation process by transferring the rights to finance, construct, and own the project to an entity that might not otherwise have been qualified or selected in the first place. In particular, it ensures that any transferee will adhere to any applicable, binding, fixed cost caps agreed to by the approved project sponsor. Absent provisions such as those proposed by the ISO, any such binding commitments could be rendered moot.

ITC Grid asks the Commission to clarify that the proposed provisions of this section should not allow “RTO expansion” into the corporate structure of FERC jurisdictional entities.¹²

¹¹ See Transmittal Letter Attachment A, pp. 21-22.

¹² *Id.*, p. 7.

These concerns are not entirely clear, and the ISO notes that ITC Grid did not participate in the stakeholder process for this initiative where this concern could have been addressed.

The ISO believes that section 24.6 does not require further clarification. ITC Grid notes that if the purpose of the proposed tariff language is to require “new, non-incumbent developers” to meet the same rules as “incumbent developers,” ITC Grid supports the proposal. ITC Grid’s understanding of the language is correct. While the concepts addressed in the proposed language do not hinge on whether a developer is an “incumbent” or a “non-incumbent,” the point of the language is that an assignee or transferee of an approved project sponsor’s awarded project must meet the same criteria and assume the same obligations that the approved project sponsor agreed to meet when it was awarded the bid. The ISO does not believe that the requirements being proposed for section 24.6 in any way intrude into the corporate structure or rights of FERC jurisdictional entities. It essentially sets a condition for participation in the competitive solicitation and is intended to maintain the integrity of that solicitation and protect ISO ratepayers. Furthermore, the general prohibition in section 24.6 on project ownership transfers or assignments, without ISO approval, was found by the Commission to be just and reasonable as part of the ISO’s revised transmission planning process.¹³ Since the Commission did not find that this general prohibition interfered with corporate structures, the additional language proposed herein certainly does not.

II. Conclusion

The ISO’s proposed tariff language is well-supported by stakeholders and should be approved expeditiously so that it can be implemented during Phase 3 of the ISO’s 2013-2014 transmission planning process. The substantive concerns raised by ITC Grid are not well-

¹³ *California Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 (2010), *order on reh’g*, 137 FERC ¶ 61,062 (2011).

founded and should not cause the Commission to direct additional tariff changes. The ISO will correct the two non-substantive typographical errors in a compliance filing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 5th day of March 2014.

/s/ Anna Pascuzzo

Anna Pascuzzo