

Storage as a Transmission Asset

Stakeholder Comment Template

Submitted by	Company	Date Submitted
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Please use this template to provide your comments on the Storage as a Transmission Asset second revised straw proposal that was posted on October 16, 2018.



Submit comments to InitiativeComments@CAISO.com

Comments are due November 6, 2018 by 5:00pm

The second revised straw proposal, posted on October 16, 2018, as well as the presentation discussed during the October 23, 2018 stakeholder meeting, may be found on the [Storage as a Transmission Asset](#) webpage.

Please provide your comments on the second revised straw proposal topics listed below, as well as any additional comments you wish to provide using this template.

Cost Recovery Mechanism

The CAISO has proposed three alternative cost recovery mechanisms in the straw proposal:

1. Full cost-of-service based cost recovery with energy market crediting
2. Partial cost-of-service based cost recovery with no energy market crediting
3. Full cost-of-service based cost recovery with partial market revenue sharing between owner and ratepayer

Additionally, the CAISO envisions two potential scenarios for option 1: Direct assigned SATA projects and 2) when the project sponsor bids into TPP phase 3 competitive solicitation process, selecting this option. The CAISO has proposed the rules governing SATA bidding and cost recovery eligibility would differ slightly between these two scenarios. Please provide comments on these three options, including the two scenarios under option 1 and any other options the CAISO has not identified.

Comments:

As explained below, by imposing three alternative cost recovery mechanisms, the Second Revised Straw Proposal posted October 16, 2018 unlawfully imposes a rate design upon utilities seeking cost-recovery for energy storage in violation of the Federal Power Act.

The Federal Energy Regulatory Commission (“FERC”) provided guidance concerning “issues that arise for electric storage resources seeking to recover their costs through both cost-based and market-based rates concurrently.” *Utilization of Electric Storage Resources for Multiple Services When Receiving Cost-Based Rate Recovery*, 158 FERC ¶ 61,051 (2017) (“Policy Statement”). In the Policy Statement, the FERC identified key issues that any rate design must address: avoiding double recovery of costs, minimizing adverse impacts on wholesale electric markets, and maintaining RTO/ISO independence.

The FERC identified possible approaches to avoidance of double recovery, namely, (1) as proposed in *Western Grid*, 130 FERC ¶ 61,056 (2017), cost-based rates with no participation in wholesale electric markets, and crediting any market revenue credited back to the cost-based ratepayers; (2) cost-based rates with market-revenue applied to reduce the amount of the revenue requirement underlying the cost-based rate; and (3) allowance of “other ways . . . to prevent the double recovery of costs,” provided that “[a]ny solution would need to comport with cost-of service precedent cited earlier” in the Policy Statement. *Policy Statement* P. 19 and see PP. 9-19. The FERC also concluded that if double recovery is avoided, there will be no adverse impact on competition (i.e. price suppression) in wholesale markets. *Id.* at P. 23.

The FERC’s approach is consistent with the broad and flexible requirement of the Federal Power Act that rates be “just and reasonable,” and, that the right and obligation to establish rates in the first instance falls squarely on the asset owner and not on the CAISO. See the seminal case, *Atl. City Elec. Co. v. F.E.R.C.*, 295 F.3d 1 at 21 (D.C. Cir. 2002) (“*Atlantic City*”) (Court rejected FERC’s directive to transmission owners that they yield authority to PJM to file changes in tariff rates, terms, and conditions, noting, “[s]ection 205 of the Federal Power Act gives a utility the right to file rates and terms for services rendered with its assets”). See also *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (Similarly, the FERC lacks authority to impose a rate structure on RTO). Consequently, the FERC imposes

no specific rate design in the Policy Statement, thereby allowing the asset owner the right and flexibility to file its own rates.

Under *Atlantic City*, each utility has a right to devise just and reasonable rates, terms, and conditions as it sees fit, subject to FERC review and acceptance. What is more, a utility does not sacrifice these rights by participating in an RTO/ISO. The RTO/ISO has no right to set rates or determine rate design for a participating utility. This is settled law.

The Second Revised Straw Proposal sets out three approaches for a storage device to recover costs through cost-based rates but, contrary to the Policy Statement, it shuts the door, in FERC's words, to "other ways . . . to prevent the double recovery of costs." *Policy Statement* at P. 19. This error is consistent with another fundamental CAISO overstatement of its authority. In the Executive Summary, the CAISO states that the FERC Policy Statement mandates that "*the CAISO needs to be able to demonstrate that [detriment to markets, detriment to CAISO independence, and double recovery] would not arise.*" *Second Revised Straw Proposal* at 3 (emphasis supplied). But the Policy Statement requires no such demonstration from the CAISO. Indeed, although these important issues should be addressed, the obligation to address them falls to the asset owner, not the CAISO. Succinctly, as *Atlantic City* establishes, the asset owner has a statutory right to present a rate design to the FERC, not the CAISO. The CAISO has no authority to foreclose that right.

Apart from considerations of legal authority, as technologies and markets evolve, it is virtually certain that other approaches to rate design will also be just and reasonable. Although the CAISO may eventually conform its permitted rate structures to these advances to allow "other" approaches as FERC requires, inevitably the CAISO will be playing catch up to technological change. Stifling of creativity and commerce will result, necessarily penalizing the rate payers.

The CAISO's overly broad assumption of authority to the detriment of the asset owner infuses much of the Second Revised Straw Proposal, from its dictates concerning rate design options, to apparently limiting the functions of storage assets to thermal loading and voltage support, to an unduly narrow place for storage assets in the TPP, to a discriminatory preference for particular technologies. These matters are addressed more fully below and in Nevada Hydro's previous comments submitted in this proceeding.

The solution is evident. Just as the FERC provided guidance while allowing asset owners to develop new and different approaches, the CAISO also should permit this flexibility. The straw proposal should make clear that the rate concepts it describes are neither exclusive nor binding. Such an open architecture approach will foster creativity that keep pace and fosters technological change.

Options in the event of insufficient qualified project sponsors

The CAISO proposal would require all SATA projects sponsors to also submit a full cost-of-service bid as described in option 1, above. This bid would to be used in instances when there is fewer than three qualified project sponsors.

Please state your organization’s position as described in the Second Revised Straw Proposal (support, support with caveats or oppose). If you support with caveat or oppose, please further explain your position and include examples.

Comments:

In Second Revised Straw Proposal at § 5.3, the CAISO proposes that participation of at least three project sponsors be a precondition for the availability of partial cost-of-service or full cost of service with revenue sharing rate design options. If at least three project sponsors do not submit proposals, then the CAISO would mandate that the selected project use a full cost-of service rate design, as that design is described in section 5.2.1. As now explained, this restriction is both unnecessary and unlawful, and should be eliminated from the straw proposal.

As Nevada Hydro noted in earlier comments, the risk that only one or two project sponsors submit proposals is always a risk when the CAISO identifies a transmission need and seeks sponsors for a proposed transmission project. If these facts arise, the CAISO’s customary practice is to award the project to the sole qualified sponsor. Because the sponsor would need to file its rates with the FERC, this customary practice poses no risk that the sponsor would recover unduly high rates through the TAC. That filing would be subject to protest, thorough examination, and would not be effective without a FERC determination that the rates are just and reasonable. This customary practice would also apply to rates for the transmission functions of a storage asset. The proposed restriction on rate design, therefore, lacks any justification.

Moreover, even if the CAISO were to conclude that the proposed restriction would nevertheless tamp down rates, the CAISO has no lawful basis to impose its rate preferences. As noted above, as a matter of law under the Federal Power Act, the CAISO must permit storage asset owners to determine their own rates and rate design, subject, of course, to the just and reasonable standard of the Federal Power Act as determined solely by the FERC and not the CAISO. *See Atl. City Elec. Co. v. F.E.R.C.*, 295 F.3d 1 at 21.

Contractual Arrangement

The CAISO proposes to establish defined three contract durations: 10, 20, and 40 years. Additionally, the CAISO has eliminated its previously proposed TRR capital credit in favor of contractual requirements for maintenance of the resources.

Please provide comments on these two modifications to the CAISO’s proposal, stating your organization’s position as described in the Second Revised Straw Proposal (support, support with caveats or oppose). If you support with caveat or oppose, please further explain your position and include examples.

Comments:

The CAISO should avoid mandating specific contractual arrangements that could stifle technological development. To avoid impeding the development of new technologies with useful lives that cannot be anticipated at this time or impeding technological advances in the uses of traditional-style assets such as

pumped storage, the CAISO should not pre-determine a contractual duration except as reliability planning requires. Any other approach risks arbitrariness and, therefore, undue discrimination against particular technologies. For example, a pumped storage project would have a useful life well in excess of 40 years. Allowing a contract of that duration may yield highly competitive proposals that provide advantageous rates.

Market Participation

The CAISO has proposed that a SATA resource will be provided notification regarding its ability to participate in the market prior to real-time market runs, but after the day-ahead market closes. The CAISO will conduct a Load based SATA notification test to determine a SATA resource's eligibility to participate in the real-time market.

Please state your organization's position as described in the Second Revised Straw Proposal (support, support with caveats or oppose), including any alternative proposals. If you support with caveat or oppose, please further explain your position and include examples (please note that any alternative proposals should be specific and detailed).

Comments:

Notification of ability to participate in the market should occur at the earliest possible time consistent with the CAISO's operational requirements. To the extent a storage asset is not fully utilized in a transmission capacity, costs to ratepayers will effectively be lowered by affording the asset the most flexibility feasible to garner market revenues. Any unnecessary restrictions resulting from needlessly delayed notification will harm ratepayers, and potentially compromise the financial results for a project, thereby jeopardizing the availability of long-term financing and construction. To assure the widest availability and most economical use of storage assets, the CAISO should strive for flexibility in notifications, consistent with reliability, potentially on a project by project basis.

Consistent with FERC Policy Statement

The CAISO believes the revised straw proposal is consistent with the FERC Policy Statement. Specifically, that the straw proposal does not inappropriately suppress market prices, impact CAISO independence, nor result in double recovery of costs.

Please state your organization's position as described in the Second Revised Straw Proposal (support, support with caveats or oppose). If you support with caveat or oppose, please further explain your position and include examples. If you oppose, please clarify why and how the CAISO might address this issue.

Comments:

To be consistent with the Policy Statement, the SATA Proposal must allow storage to be studied and considered as a transmission solution to any transmission need as part of the CAISO's open-access, non-discriminatory transmission planning process on an equal footing with other transmission technologies.

Indeed, in a recent order involving Nevada Hydro’s petition for declaratory order, the FERC determined that “a request to designate LEAPS as a transmission facility is premature at this time”¹ because,

LEAPS has not been studied in the CAISO TPP to determine whether it addresses a transmission need identified through that process, and, if such a need were met, how the facility would be operated. *Id.* Absent such information, the Commission cannot make a reasoned decision on whether LEAPS is a transmission project and thus eligible for cost-recovery under the TAC.

Id. Similarly, the Commission stated,

Requiring LEAPS to be reviewed through the CAISO TPP is consistent with the Commission’s policy that regional transmission planning processes should identify transmission needs and solutions in a coordinated, nondiscriminatory process that is open to all interested stakeholders.

Thus, the FERC requires that consideration of storage as a transmission solution must be non-discriminatory. As Nevada Hydro indicated in prior SATA comments, any attempt to limit the ability of storage to be considered as a transmission solution was previously considered and rejected by the Commission in its consideration of comments (including comments filed by CAISO).

CAISO should revise the SATA proposal to make clear that storage will be considered as a solution to any transmission need in the TPP and will be studied on an equal footing with all other transmission solutions. CAISO should also eliminate any aspect of the SATA proposal that suggests that storage will be limited in its ability to be considered and studied as a transmission solution for any transmission need as well as any suggestion that the participation of the storage project in the market disqualifies the project from being included in the TPP and receive cost-based rates.

Further, this SATA proposal continues erroneously to discriminate against participation in markets. It states,

over reliance on market revenues to justify an energy storage resource as a transmission asset runs the risk of looking like a market resource and encroaching on local regulatory authority jurisdiction over resource adequacy and planning. This will require careful consideration on a case-by-case basis through the course of the annual TPP in Phase 2.

Second Revised Straw Proposal at 12-13. The FERC previously rejected the CAISO’s concern that storage be available to the CPUC as resource adequacy capacity subject to exclusive or primary CPUC jurisdiction. The Federal Power Act allows an owner to offer its resource into power or transmission markets as it elects, consistent with the capabilities of the resource and without restrictions imposed by local authorities. Interference by a local authority would violate the property rights of the asset owner, the Interstate Commerce Clause of the United States Constitution, and the Federal Preemption of the Federal Power Act.

¹ *Nevada Hydro Company, Inc.*, Docket No. E118-131 (September 20, 2018 at P 22); 164 FERC ¶ 61,197 (“Nevada Hydro September 20 Order”).

Further, the CAISO continues to maintain erroneously that “FERC’s guidance is that transmission assets should provide transmission services, focusing on thermal loading and voltage support.” Second Revised Straw Proposal § 9.3 at 46. Although the CAISO acknowledges that the FERC Policy Statement requires reconsideration of “a number of these issues,” it does not appear that the CAISO has accepted the FERC mandate that storage assets be considered for all transmission functions which they may perform. Nothing in the Policy Statement supports limiting storage assets to thermal loading and voltage support. The FERC’s discussion of these functions in the Policy Statement arises only in its description of the *Western Grid* case. *Policy Statement* at PP. 4, 5 and 7. Nevada Hydro provided further explanation of this CAISO error in its comments on the Revised Straw Proposal at pages 6-10, which it respectfully invites the CAISO to review.

Draft final proposal meeting or phone call

The stakeholder meeting for the second revised straw lasted approximately 2.5 hours. As a result, the CAISO requests stakeholder feedback regarding whether an in-person meeting is necessary for draft final proposal or if a stakeholder phone call will allow the CAISO to adequately address the remaining issues in the draft final proposal.

Please state your organization’s position as described in the Second Revised Straw Proposal (support, support with caveats or oppose). If you support with caveat or oppose, please further explain your position and include examples.

Comments:

Based on the important issues raised in these comments an additional in-person stakeholder meeting is necessary whereby the CAISO can explain its response to the comments and allow for further discussion.

Other

Please provide any comments not addressed above, including any comments on process or scope of the Storage as a Transmission Asset initiative, here.

Comments:

As discussed above there are several places (e.g., Section 4.1.1) where the SATA proposal reflects a policy of (i) limiting the ability of a storage project to be considered as a transmission solution to all transmission needs or (ii) the intent to ignore in the TPP the right of a storage project to be evaluated as a project receiving cost based rates and participating in the market while crediting revenues to the costs that ratepayers will incur. The SATA proposal seems to indicate that market benefits that reduce the cost of a storage project to ratepayers may eliminate its ability to be considered as a transmission solution. The SATA proposal also seems to suggest that only certain economic benefits may be considered in the TPP evaluation process. Any such undue discrimination cannot co-exist with the Policy Statement or the guidance provided in the Nevada Hydro September 20 Order. The SATA proposal must be revised to eliminate any such undue discrimination.

More specifically, the CAISO erroneously attributes to the FERC an unduly narrow criteria for determining whether a storage asset can be treated as a transmission asset, thereby qualifying for cost-based rates in whole or part. Contrary to the CAISO, the FERC has not required that storage be “the more efficient or cost effective solution” to a need. The CAISO’s reliance on this criterion would result in undue discrimination. No such FERC guidance is found in the Policy Statement, nor in the *Western Grid* or *Nevada Hydro* cases.² As the CAISO expressly recognized in the Second Revised Straw Proposal § 4.1 at 10, the FERC recently explained that

the Storage Policy Statement provides guidance only with respect to issues that must be addressed if an electric storage resource seeks to receive cost-based rate recovery for certain services, whether through transmission rates or any other cost-based rate, while also receiving market-based revenues for providing separate market-based services.

Nevada Hydro Company, Inc., 164 FERC ¶ 61,197 at P. 24 and see n.48 (2018).

Indeed, the FERC referred to a far broader criteria—whether the storage asset is “a means to address reliability needs (. . . and if the proposal specifies the CAISO-identified reliability constraints the project could mitigate). . . . *Id.* at P. 23. Therefore, the CAISO should delete the criteria stated in section 4.1.1 and treat energy storage in the same manner as it would treat any other proposed transmission solution to a reliability need.

² *Nevada Hydro Co. Inc.*, 122 FERC ¶ 61,272 (2008); *Western Grid Dev., LLC*, 130 FERC ¶ 61,056, reh’g denied, 133 FERC ¶ 61,029 (2010).