

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

Southern California Edison Company)

Docket No. EL10-1-000

**MOTION FOR LEAVE TO INTERVENE AND COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) submits this motion to intervene and comments on the petition for declaratory order filed by Southern California Edison Company on October 1, 2009 in this proceeding.¹ SCE’s petition requests the Commission’s approval of certain rate incentives for the proposed Eldorado-Ivanpah Transmission Project (“EITP”).

SCE’s petition raises certain general issues concerning the relationship between incentive requests for proposed transmission projects and the interconnection processes administered by interconnection authorities. These issues are primarily (1) whether the Commission should approve transmission rate incentives prior to or conditional on the approval of the proposed transmission project by the interconnection authority as a needed network upgrade and (2) whether the Commission should allow the recovery of the costs of “abandoned plant” if the proposed network upgrade is not approved by the interconnection authority. Very similar issues have been raised in recent filings by the ISO and others in response to requests for transmission rate incentives for projects that have not yet been approved through a transmission planning

¹ This motion and comments are submitted pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.214 (2008) and the Notice of Filing issued in this proceeding on October 7, 2009,

process. While the EITP is not currently being evaluated in the ISO's transmission planning process, it is currently being considered in the ISO's generator interconnection process as a potential network upgrade for the purpose of accommodating the energy to be delivered from proposed new generating facilities, including renewable resource facilities.

For the reasons discussed below, the ISO requests that the Commission either (1) wait to act on the petition until after the ISO has approved the project as a needed network upgrade under its Commission-approved tariff for its generator interconnection process or (2) confirm that the Commission's grant of some or all of the incentives requested in the petition does not, in any way, pre-judge the outcomes of the ISO generator interconnection process. Any determination of need for a proposed network upgrade can only be made after the ISO completes its generator interconnection process.

The Commission also should clarify that the costs to develop proposed network upgrades that are not constructed because they are not approved in the ISO generator interconnection process should not be entitled to "abandoned plant" cost recovery if the reason the upgrade is not constructed is the fact that it is not found to be needed and approved by the ISO. At a minimum the Commission should confirm that abandoned plant costs for a proposed network upgrade not approved by the ISO should not be recoverable in the ISO's transmission rates. Such abandoned plant cost recovery would be inconsistent with the terms of the ISO tariff and the Transmission Control Agreement between the ISO and its participating transmission owners.

Finally, the Commission should consider whether SCE's request for recovery of abandoned plant costs for this network upgrade should govern over provisions of the ISO's *pro forma* Large Generator Interconnection Agreement that would otherwise allocate costs associated with network upgrades to the generating facility developer in the event of termination of the agreement.

Despite the foregoing concerns, the ISO wishes to make clear that it is supportive of the construction of transmission facilities to accommodate the delivery of energy from renewable and other resources. In fact, the ISO has recently announced the initiation of a new stakeholder initiative to develop a comprehensive, integrated and coordinated process for evaluating projects designed to enable the state to meet a 33% Renewable Portfolio Standard goal. Nevertheless, the construction of network upgrades and other transmission facilities by the ISO's participating transmission owners is financed through recovery of the costs of construction and operation of these facilities through the ISO's transmission rates. It is for this reason that the ISO considers it particularly important for Commission orders directing recovery of incentives by transmission developers to be consistent with the ISO tariff provisions governing their approval.

I. BACKGROUND

As described in the petition, the proposed project will consist primarily of a new substation located in the Ivanpah Dry Lake Area in Southern California, the removal of 115 kV towers and lines, and construction of new double-circuit 220 kV towers and lines between the proposed new substation and SCE's existing ISO-controlled Eldorado Substation in Nevada. The project is intended to provide the electrical facilities necessary to deliver over the ISO grid up to 1,400 MW of location-constrained new solar generation proposed by independent power producers near and around the southern California-Nevada border to load in California. The petition indicates that there currently are eleven proposed projects, comprising 1,920 MW of potential generation, seeking to access the EITP via the ISO interconnection process and that all eleven of the requests in the interconnection queue for the area to be served by the EITP are solar generation.

In the petition, SCE acknowledges that it has not yet received final approval of the EITP from the ISO and that the EITP is not part of the ISO's overall regional planning process.² Rather SCE points out that the EITP was developed through the separate ISO generator interconnection process. SCE notes that the need for the EITP was identified through generator interconnection studies and makes clear that the generator interconnection agreements that will specify the requirement that the EITP be built still have to be approved and executed by the ISO.³ The ISO is currently in the process of negotiating a

² Petition at 4, fn. 9.

³ Petition at 4, fn. 9.

generator interconnection agreement with SCE and a generating facility developer in relation to the EITP.

In the petition, SCE requests that the Commission issue a declaratory order granting SCE transmission rate incentives pursuant to Section 219 of the Federal Power Act and the Commission's Order No. 679.⁴ Among other incentives, SCE asks for the recovery of "100 percent of prudently incurred transmission-related development and construction costs" if the EITP is canceled or abandoned for reasons outside SCE's control.

II. COMMENTS

These comments are intended to address general policy issues raised by the SCE petition and similar incentive requests submitted to the Commission. These comments do not reflect any particular concern the ISO has with the EITP proposal, which is being evaluated through the ISO's generator interconnection process. However, whenever a developer seeks incentives for a proposed transmission project before that project has been fully considered through an interconnection authority's generator interconnection process, there is a question as to how the incentive request affects the interconnection process, if at all. Commission orders to date addressing similar circumstances have left considerable uncertainty on this question, which in turn introduces uncertainty into the interconnection process. Consequently, the ISO urges the Commission

⁴ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

to clarify certain issues when acting on the petition consistent with the comments below.

A. The Commission’s Action on the Petition Should Not Pre-Judge the ISO’s Determination of the Need for the Project in the ISO Generator Interconnection Process

When faced with a request for incentives for a proposed transmission project still undergoing review in a generator interconnection and not yet found to be needed by the interconnection authority, the Commission has a number of options. One option would be for the Commission to defer action on the incentive request until the applicable authority determines if the project is needed. Although the Commission declined in Order No. 679 to make participation in a generator interconnection (or regional planning process) a pre-requisite to obtaining transmission incentives, nothing prevents the Commission from waiting for the results of a generator interconnection (or regional planning process) before acting on an incentive request.⁵ Such deferred action would be consistent with the Commission’s recognition in Order No. 679 that “[r]egional planning processes can help determine whether a given project is needed, whether it is the better solution, and whether it is the most cost-effective option in light of other alternatives (e.g., generation, transmission and demand response).”⁶

Alternatively, the Commission could make the grant of any incentives for a project under consideration in a generator interconnection process contingent on

⁵ There is no statutory deadline for acting on a petition for declaratory order.

⁶ Order No. 679 at P 58.

the inclusion of the project in the generator interconnection agreement for a proposed generating facility.

The ISO recognizes that SCE has requested action on the petition by early December,⁷ which may be in advance of the finalization of a generator interconnection agreement identifying the EITP as a needed network upgrade for the proposed new generating facilities in the area. While the ISO is in the process of negotiating an agreement with SCE and a generating facility developer that might satisfy this requirement, the ISO considers it premature to speculate on the outcome of these negotiations prior to the finalization of the agreement. Moreover, the ISO acknowledges that, in a number of orders, the Commission has granted incentives for a proposed transmission project before the project has been fully evaluated.⁸ The Commission's grant of these incentives has not been conditioned upon approval of the project by the interconnection authority.

To the extent the Commission grants the SCE petition before the finalization of a generator interconnection agreement identifying the EITP as a needed network upgrade, the Commission should expressly state that its grant of any incentives for the project does not prejudice the outcome of the ISO generator interconnection process or render an ISO determination of the need for the EITP unnecessary. Such a statement would be consistent with Commission

⁷ Petition at 1 (requesting Commission action within 60 days of the filing).

⁸ See, e.g., *Green Power Express LP*, 127 FERC ¶ 61,031 (2009) ("*Green Power Express*"); *Pioneer Transmission, LLC*, 126 FERC ¶ 61,281 (2009) ("*Pioneer*"); and *Pacific Gas and Elec. Co.*, 123 FERC ¶ 61,067 (2008) (*PG&E*).

determinations in a number of incentive orders. For example, the *Green Power Express* order noted:

As the Commission has previously found, ruling on a request for incentives pursuant to Order No. 679 does not prejudice the findings of a particular transmission planning process or the siting procedures at state commissions. Midwest ISO confirms that Green Power has submitted the Project into Midwest ISO's Commission-approved planning process and that any Commission action on Green Power's incentive request will not change how Midwest ISO evaluates the Project. Similarly, any finding on Green Power's request for incentives will not change how projects are considered under existing regional transmission planning initiatives nor have an impact on projects . . . that have already been incorporated into a transmission provider's expansion plans.⁹

The findings necessary for the Commission to grant incentives pursuant to Section 219 of the Federal Power Act and Order No. 679 are not a substitute for an ISO determination that a project is needed through the ISO generator interconnection process. Although an incentive applicant must show some benefits of a project, the criteria for receiving Order No. 679 incentive approval are different than the criteria for including a project as a needed network upgrade in a generator interconnection agreement. To determine that a network upgrade is needed for a generator interconnection under the ISO tariff, the ISO is required to perform detailed interconnection studies.¹⁰

If the grant of an Order No. 679 finding that a proposed project has reliability or economic benefits pre-determined the outcome of the ISO generator interconnection process, the objectives of that process would be undermined fundamentally. Instead of completing the interconnection process, project

⁹ *Green Power Express*, 127 FERC ¶ 61, 031 at P 42, *citing Pioneer*, 126 FERC ¶ 61,281, at P 40, and *Tallgrass Transmission LLC, et al.*, 125 FERC ¶ 61,248 at P 43 (2008).

¹⁰ See, e.g., Section 7 of Appendix Y of the ISO tariff.

developers could simply “race to the filing room,” submitting incentive requests that would short-circuit the detailed and comprehensive review of the most efficient solutions to generator interconnection requests by system planners acting in accordance with a Commission-approved generator interconnection process.

The ISO’s recent experience demonstrates why it is important for the Commission to explicitly state that approval of incentives under Order No. 679 does not pre-judge the outcome of generator interconnection processes. Some incentive recipients have already taken the position that receipt of Order No. 679 incentives from the Commission eliminates the requirement for a project to be approved by the ISO.

In that regard, the Nevada Hydro Company Inc. (“Nevada Hydro”) filed for rate incentives for its proposed Talega-Escondido/Valley-Serrano Interconnect project (the “TE/VS Interconnect”) in Docket No. ER06-278. In response to claims that the Commission should not approve incentive-based rates until the ISO has approved the TE/VS Interconnect in its transmission planning process, Nevada Hydro stated its expectation that Commission approval of incentive-based rates would “neither preempt CAISO or state planning nor predetermine their outcome.”¹¹ Once the Commission accepted some of the requested incentives,¹² however, Nevada Hydro took the position that, by approving incentives for the TE/VS Interconnect, “FERC has concluded that we have completed the evaluation processes that would otherwise be required by CAISO

¹¹ January 27, 2006, Response of Nevada Hydro in Docket No. ER06-278 at 8.

¹² *The Nevada Hydro Company, Inc.*, 122 FERC ¶ 61,272 (2008).

Tariff §24 and consequently [the ISO's] study plan is no longer necessary."¹³

This case illustrates the potential for uncertainty when the Commission approves incentives for a proposed network upgrade before that project has been fully considered and approved by the ISO through its generator interconnection process.

The ISO is not alone in raising these concerns. Based on similar questions resulting from the Commission's grant of incentives in the *Green Power Express* and *Pioneer* proceedings, the ISO/RTO Council has submitted requests for clarification in those proceedings.¹⁴ Specifically, the ISO/RTO Council has requested clarification on the following overarching question:

What is the interrelationship between the Commission's findings in its [incentive orders] concerning reliability and economics specific to section 219 of the FPA and the findings that ISOs and RTOs are required to make on reliability and economics (pursuant to their tariffs and Commission approved planning criteria) regarding which projects are to be included in, or excluded from, their respective regional planning processes?¹⁵

The ISO/RTO Council has also raised a number of more specific questions related to this overarching question. Whether or not the Commission addresses the ISO/RTO Council's questions in this proceeding, at a minimum the Commission should confirm that the grant of any incentives for the project does

¹³ April 7, 2008, letter from Nevada Hydro attached to the April 21, 2008, Motion for Clarification of the ISO in Docket No. ER06-278. This Motion for Clarification is still pending.

¹⁴ In addition to the ISO, the members of the ISO/RTO Council joining these requests for clarification were the other FERC-jurisdictional independent system operators and regional transmission organizations: ISO New England, Inc. ("ISO-NE"); Midwest Independent System Operator, Inc. (the "Midwest ISO"); New York Independent System Operator, Inc. ("NYISO"), PJM Interconnection, L.L.C. ("PJM"); and Southwest Power Pool, Inc. ("SPP").

¹⁵ See ISO/RTO Council Motions for Clarification in Docket No. ER09-75 (April 27, 2009) and Docket No. ER09-681 (May 8, 2009). These motions are still pending.

not prejudice the outcome of the ISO generator interconnection process or render an ISO determination of the need for the EITP unnecessary.

B. The Commission Should Not Permit Development Costs of a Proposed Project Not Found to Be Needed by the ISO to Be Recovered Under the ISO Tariff

With one exception, the ISO does not comment on the merits of the incentives requested in the SCE petition. The request for an abandoned plant cost recovery incentive for the project, however, raises additional policy issues about the interplay between Order No. 679 incentives and the ISO generator interconnection process.

In a number of orders the Commission has approved abandoned plant cost recovery incentives for proposed transmission projects that have not yet been found to be needed by an interconnection authority or a regional independent system operator or regional transmission organization.¹⁶ In some cases, the Commission has expressly made the grant of incentives, including abandoned plant cost recovery incentives, contingent on inclusion of a project in an independent system operator or regional transmission organization system plan.¹⁷ It is not clear whether an incentive to recover prudently-incurred costs if a project is “abandoned due to forces outside an applicant’s control” would apply if a transmission project is not constructed because the project is not found needed as a network upgrade and approved by the ISO through the generator interconnection process for inclusion in a generator interconnection agreement.

¹⁶ See, e.g., *Green Power Express*, 127 FERC ¶ 61, 031 at P 42, and *Pioneer*, 126 FERC ¶ 61,281, at P 40.

¹⁷ See, e.g., *Central Maine Power Co., et al.*, 125 FERC ¶ 61,182 at P 56 (2008) (“ . . . we will authorize incentives contingent on ISO New England including the project in the Regional System Plan as a Market Efficiency Upgrade.”).

SCE at least suggests that an abandoned plant cost recovery incentive would apply to the costs incurred prior to the finalization of a generator interconnection agreement identifying the project as needed even though “there is a considerable risk that the solar resources that are the impetus for the EITP ultimately will not be developed.”¹⁸

If the Commission approves an abandoned plant cost recovery incentive for the EITP, it should clarify that this incentive does not apply if the reason a project is abandoned is that the ISO does not determine that the project is needed through its incorporation as a network upgrade in a generator interconnection agreement. A policy that allows abandoned plant cost recovery for projects which do not go forward simply because an interconnection authority found that a project is not needed will create inappropriate and counter-productive incentives for developers to propose projects that are not really needed. While an Order No. 679 incentive request must demonstrate some benefits from a proposed project, the Commission’s policy of making case-by-case determinations of a project’s eligibility for incentives means that projects with little chance to be found needed as a network upgrade in a generator interconnection study and generator interconnection agreement could be eligible for abandoned plant cost recovery. Such a policy would shift the risks of developing transmission projects from developers to customers and encourage speculation on transmission projects that have little chance of becoming viable.

One way to avoid these inequitable results would be for the Commission to condition the availability of the abandoned plant cost recovery incentive on the

¹⁸ Petition at 29.

determination that a network upgrade is needed in the ISO generator interconnection process. In the alternative, the Commission should confirm that the ISO's determination whether a project is needed as a network upgrade and should be included in a generator interconnection agreement is not a "factor beyond the applicant's control" that creates a right for abandoned plant cost recovery under an Order No. 679 incentive.

It is especially important for the Commission to establish such a policy given the circumstances the ISO expects to face in the near future. If load serving entities in California are expected to meet a state-mandated 33% Renewable Portfolio Standard, there could be a proliferation of proposed projects to integrate renewable resources in numerous locations. Providing project developers with a no-risk opportunity to propose projects will encourage developers to submit projects that are not clearly needed. This could include, *inter alia*, proposals (1) to connect renewable resources in areas (a) where there are no proposed resources in the interconnection queue or where there are no resources with executed power purchase agreements or generator interconnection agreements, or (b) that are not highly ranked with respect to their potential for renewable energy production, or (2) to address congestion where none exists. Not only could this unnecessarily increase costs to ratepayers, it could unduly clog-up the ISO's generator interconnection and planning processes, thereby making it difficult for the ISO to timely study and approve the network upgrades and other transmission projects that are truly needed to meet the State's goals, maintain reliability, and mitigate congestion. The ISO's goal is

to develop a holistic, fully integrated state plan for achieving Renewable Portfolio Standards and other goals that reflects regional coordination efforts (e.g., the efforts of the Renewable Energy Transmission Initiative and the California Transmission Planning Group) and which will allow environmental and other goals to be achieved in the most efficient, reliable and cost-effective manner. Allowing projects that are not found to be needed for generator interconnections to recover their costs is not consistent with the goal of ensuring that *needed* transmission is built and will unnecessarily increase costs to ratepayers.

Further, absent such a clarification, permitting abandoned plant cost recovery for a proposed project in the ISO balancing authority area that is not found needed and approved by the ISO would conflict with the terms of the ISO tariff and the Transmission Control Agreement. Section 4.1.1 of the Transmission Control Agreement states that:

Any transmission lines or associated facilities that the ISO determines not to be necessary to fulfill the ISO's responsibilities under the ISO Tariff in accordance with Section 4.1.3 of this Agreement shall not be treated as part of a Participating TO's network for the purposes of this Section 4.1.

A proposed network upgrade that has not been determined to be needed in the ISO generator interconnection process also would not be "necessary to fulfill the ISO's responsibilities under the ISO Tariff."

If the EITP is not approved as a needed network upgrade in the ISO generator interconnection process through its incorporation into a generator interconnection agreement, SCE would have no ability to recover costs under the ISO tariff. In theory, SCE could file its own tariff separate from the ISO tariff for

the recovery of development costs, although it is not clear which customers, if any, could be charged under such a tariff.¹⁹ In any event, the Commission should confirm that a grant of an abandoned plant cost recovery incentive does not permit a developer with a proposed network upgrade not approved in the ISO interconnection process to recover development costs pursuant to the ISO tariff through the transmission access charge or any other mechanism.

Finally, Article 2.4 of the *pro forma* Large Generator Interconnection Agreement set forth in Appendix U of the ISO tariff provides that the generating facility developer is required to pay all costs incurred for network upgrades pursuant to most provisions for termination of the agreement. The Commission should expressly consider and address whether any authority granted to SCE for recovery of abandoned plant costs for the EITP through the ISO's transmission rates should govern over the provisions of the *pro forma* generator interconnection agreement in the event of termination of that agreement. While the provisions of the *pro forma* agreement can be modified through negotiation and filed with the Commission for approval as a non-conforming agreement, SCE's petition provides the Commission the opportunity to confirm the relationship of SCE's request to the terms of the *pro forma* to establish expeditiously the treatment of this issue with regard to the generator interconnection agreement.

¹⁹ The Commission appears to have contemplated this possibility in other incentive orders. See *Green Power Express*, 127 FERC ¶ 61,031 at P 52 ("We note, however, that if the Project is cancelled before it is completed, it is unclear whether Green Power will have any customers from which to recover the costs it incurred. Before it can recover any abandoned plant costs, Green Power states that it will, and we require it to, make a filing under section 205 of the FPA to demonstrate that the costs were prudently incurred. Green Power must also propose in its section 205 filing a just and reasonable rate and cost allocation method to recover these costs.").

With regard to the ISO's goal of supporting the achievement of California's Renewable Portfolio Standards discussed above, the ISO has recently announced the initiation of a stakeholder process intended to develop tariff provisions that would permit the ISO to approve proposed new transmission projects accessing renewable resources on a basis other than the ISO's current tariff provisions specifying its transmission planning process and generator interconnection process. In fact, the EITP is the type of project that might be a candidate for such an alternative ISO approval process. However, the development of tariff provisions to implement this intent is in its formative stages, and the envisioned process is not available to the ISO for considering the EITP at this time. Consequently, the ISO must maintain the foregoing position with regard to SCE's petition.

III. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 151 Blue Ravine Road, Folsom, CA 95630. The ISO is a balancing authority responsible for the operation of transmission facilities placed under the ISO's operational control pursuant to a Transmission Control Agreement between the ISO and participating transmission owners. The ISO conducts a generator interconnection process pursuant to Commission-approved generator interconnection provisions of the ISO tariff.²⁰

²⁰ ISO tariff Section 25.1 and Appendices S, T, U, V, W, Y, and Z.

The petition requests incentives for a proposed transmission project that is currently being evaluated under the ISO's generator interconnection process.²¹ In the petition, SCE states that it intends to provide "upfront financing" of the EITP if the EITP is found needed and approved in the ISO generator interconnection process.²² If this were to occur, the petition would impact transmission rates that the ISO collects under its tariff. No other party can adequately represent the ISO's interests. Accordingly, the ISO requests the Commission's permission to intervene with full rights of a party.

IV. COMMUNICATIONS

Please address all communications concerning this proceeding to the following persons:

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18 C.F.R. § 203(b)(3).

²¹ See, e.g., Petition at 4.
²² Petition at 7-9.

V. CONCLUSION

The ISO respectfully requests that the Commission grant its motion to intervene in the captioned proceeding, allow the ISO to participate in the proceeding with full rights as a party thereto, and act on the petition in a manner consistent with the comments filed herein.

Respectfully submitted,

*/s/ **Michael D. Dozier*** _____

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Dated: November 2, 2009

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in the captioned 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 2nd day of November, 2009.

/s/ Jane L. Ostapovich
Jane L. Ostapovich