

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

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

The California Independent System Operator Corporation (“ISO”) hereby submits this motion for leave to answer protests, and this answer to the protests regarding the ISO’s August 20, 2013 filing (“August 20 Compliance Filing”) to comply with the Commission’s April 18, 2013 Order in this proceeding.<sup>1</sup> As discussed below, the protests, with certain minor exceptions, are without merit. The Commission should approve the as-filed ISO tariff revisions to comply with the April 18 Order, with only such modifications as the ISO notes are appropriate in this answer.

**I. BACKGROUND AND OVERVIEW**

On October 11, 2012, the ISO filed revisions to its tariff to comply with the local and regional transmission planning and cost-allocation requirements of Order No. 1000<sup>2</sup> (“October 11 Compliance Filing”). In the April 18 Order, the Commission accepted the ISO’s compliance filing effective October 1, 2013, subject to the submission of a further compliance filing. In response, the ISO submitted its August 20 Compliance Filing.

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<sup>1</sup> *California Independent System Operator Corporation*, 143 FERC ¶61,057 (2013)(“April 18 Order”).

<sup>2</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

Although numerous parties protested the ISO's October 11 Compliance Filing, only three parties--LS Power Transmission, LLC ("LS Power"), Southern California Edison Company ("SCE"), and Neighboring Transmission Systems--protested the August 20 Compliance Filing, and the protests filed by SCE and the Neighboring Transmission systems are limited and targeted in nature. On the other hand, LS Power seeks to completely overhaul the ISO's Commissioned-approved transmission planning process and proposes other significant changes to the ISO's tariff. The changes recommended by LS Power, as well as its supporting arguments (1) constitute a collateral attack on the April 18 Order regarding specific findings of which LS Power did not seek rehearing, (2) exceed the scope of the ISO's compliance obligations under the April 18 Order and are not aligned with express Commission directives, (3) mischaracterize the ISO's existing and proposed transmission planning process tariff provisions, (4) constitute an attempt to re-litigate issues that were already litigated and decided in connection with the October 11 Compliance Filing, or (5) are without merit.

It is important to note in assessing LS Power's objections that no other ISO stakeholder, in particular no other non-incumbent transmission developer, has raised objections to the particular features of the ISO's compliance filing to which LS Power objects. Most telling, is the fact that although other independent transmission providers --- Pattern Transmission, Clean Line Energy Partners, StarTrans, I.O., -- and an association representing independent transmission providers (the Western Independent Transmission Group) protested the ISO's October 11 Compliance Filing, none of these other transmission developers has raised objections to the August 20 Compliance Filing. Indeed, the one non-public utility transmission developer that did intervene—

Citizens Energy--fully supports the tariff changes proposed by the ISO and urges the Commission to accept them without modification. Citizens states that the ISO has done an effective job in addressing issues associated with the new transmission planning framework, harmonizing all aspects of the April 18 Order, and establishing a framework that can work under a still evolving world of transmission development.<sup>3</sup> Citizens stresses that the dearth of written comments on the proposed tariff provisions “speaks loudly” in favor of the completeness of the ISO’s efforts.

Fundamentally, LS Power does not appear to understand that the ISO employs a “top-down” transmission process, despite the Commission’s endorsement of top-down processes in Order No. 1000,<sup>4</sup> its prior approval of the ISO’s revised transmission planning process,<sup>5</sup> and its approval of such process in the April 18 order.<sup>6</sup> Under the ISO’s “top down” approach, the ISO first determines in Phase 2 of the planning process what transmission facilities are the more efficient or cost-effective transmission solutions to meet identified needs, and then identifies those solutions in the comprehensive transmission plan. The ISO determines these needs through an open and transparent stakeholder process that provides **all** stakeholders, existing participating transmission owners, non-incumbent transmission developers, or stakeholders representing other interests, with the opportunity to suggest, both transmission and non-transmission solutions to meet identified needs and to discuss the options in an open stakeholder process. Suggesting a potential a transmission solution during the Phase 2 stakeholder

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<sup>3</sup> Citizens also stresses that the ISO did not act in isolation; rather, it “imbued its tariff provisions with significant stakeholder input” in developing and implementing these tariff provisions.

<sup>4</sup> Order No. 1000 at P 158.

<sup>5</sup> *California Independent System Operator Corporation*, 133 FERC ¶61,224 at PP 2, 4-11, 51(2010)(“RTPP Order”), *order on reh’g*, 137 FERC ¶61,062 (2011)(“RTPP Rehearing Order”).

<sup>6</sup> April 18 Order at PP 42, 54, 119, 219.

process provides no right to the stakeholder to build the project, not even a priority. Thus, unlike some other ISOs/RTOs, stakeholders do not sponsor specific projects they propose to own and construct. The ISO then identifies needed transmission solutions in the comprehensive transmission plan, which may, or may not, match a suggested solution, combine suggested solutions, or be a variant of a suggested solution.

After the ISO identifies the solutions to be included in the transmission plan, and the ISO Board approves the transmission plan, only then in Phase 3 do potential project sponsors submit proposals to build the solution(s), as identified in the transmission plan. At that point, the ISO determines if the potential project sponsor is qualified to construct the facilities required for the *specific* solution. The selection among multiple qualified potential project sponsors, if there is more than one, proceeds from that point.

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

The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. Under Rule 213(a)(1) of the Commission's Rules of Practice and Procedure, a party may answer any pleading unless otherwise prohibited. Rule 213(a)(2) generally prohibits answers to protests.<sup>7</sup> The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute<sup>8</sup> and where the information assists the Commission in making a decision.<sup>9</sup>

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<sup>7</sup> 18 C.F.R. § 385.213(a)(2) (2012).

<sup>8</sup> See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (1999).

<sup>9</sup> See, e.g., *El Paso Electric Co., et al. v. Southwestern Pub. Serv. Co.*, 72 FERC ¶ 61,292 at 62,256 (1995); *Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008).

LS Power's protest is based on fundamental misunderstandings regarding the ISO's transmission planning process and the proposed tariff changes, and raises new issues, arguments, and/or proposed remedies that LS Power did not previously raise in the stakeholder process. It is necessary for the ISO to address the contents of LS Power's protest in order to provide a complete record, clarify the issues, and assist the Commission's understanding. , LS Power's protest raises issues that the ISO did not have the opportunity to discuss in the August 20 Compliance Filing. LS Power admits that it did not provide any written comments on the drafts of the compliance filing tariff language that the ISO posted for review and comment, even though the ISO provided three opportunities for stakeholders to submit written comments. LS Power states that it voiced its concerns in the initial stakeholder conference call that was held on July 10, 2013.<sup>10</sup> LS Power did not submit written comments regarding the draft tariff language posted on June 27, 2013. On the July 10 stakeholder call, LS Power voiced general objections to the posted tariff language regarding the posting of the key selection criteria. When asked what specific tariff changes it would make to address its concerns, LS Power indicated that it did not have any and it still has not offered any in its protest. In response to LS Power's statements on the conference call, the ISO expressly invited LS Power to submit written comments and granted an extra week for LS Power, and other stakeholders, to submit comments on and revisions to the posted tariff language before the ISO would post a revised draft of the tariff language. Not only did LS Power not file any written comments during the first opportunity to do so before the initial stakeholder conference call, LS Power did not submit any written comments during the

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<sup>10</sup> LS Power Protest at 1-2.

one-week extension period in response to the ISO's invitation to do so, and it did not submit any written comments in response to the revised draft tariff language that was posted on July 25, 2013. Moreover, LS Power did not even participate in the stakeholder call held on July 29, 2013 to discuss the revised draft tariff language. However, in the instant protest, LS Power raises a number of issues, including issues it did not raise in the first stakeholder conference call.<sup>11</sup>

For these reasons, the Commission should accept this answer.

### **III. ANSWER**

#### **A. LS Power's Objections and Recommendations Constitute a Collateral Attack on the April 11 Order, Exceed the Scope of the ISO's Compliance Obligations and Are Without Merit.**

##### **1. The Qualification Process**

LS Power contends that the ISO failed to comply with a purported requirement that the project sponsor qualification must occur before submission of any required project sponsor application to compete to construct an identified transmission solution. As the basis for its claim, LS Power relies on a sentence from the April 18 Order directing the ISO to revise its tariff to "explicitly state what qualification requirements a potential transmission developer must satisfy before the transmission developer can submit a proposal to finance, own, and construct a regional transmission facility in the CAISO's regional transmission plan for purposes of cost allocation."<sup>12</sup> LS Power insists

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<sup>11</sup> The ISO also believes that its response to SCE's and Neighboring Transmission Systems' limited protests provides additional information that will assist the Commission.

<sup>12</sup> LS Power Protest at 9-10, citing April 18 Order at P 148. LS Power claims that the project sponsors "demanded" that they know they were qualified before submitting a project sponsor application. LS Power Protest at 9. This claim lacks any factual basis given that no other transmission developer has protested the August 20 Compliance Filing or asked the Commission to impose some sort of prequalification requirement. Moreover, LS Power was the only transmission developer that objected to the ISO's lack of a pre-qualification requirement in the October 11 Compliance Filing even though numerous other non-

that this statement means that the ISO must pre-determine a transmission developer's qualifications before the transmission developer submits an application in the competitive solicitation process to build, own, operate, and maintain a transmission solution(s) identified in the ISO's transmission plan.

The plain language of the sentence is to the contrary. Nowhere does the sentence expressly state, or even imply, that the ISO must first *determine* that a project sponsor is qualified for a specific transmission solution before it can submit a bid to construct and own the solution. Rather, all that the sentence requires is that the tariff specify up-front and in advance of any project sponsor submissions the qualification requirements a potential transmission developer must satisfy, and that new or unspecified qualifications cannot be introduced **after** project sponsor proposals are submitted. The ISO complies with this requirement because the proposed tariff provisions (1) permit **all** interested transmission developers to submit a proposal in the competitive solicitation process before the ISO makes any qualification determination,<sup>13</sup> (2) expressly state what information submission requirements a potential transmission developer must satisfy for purposes of qualification(section 24.5.2.1), (3) expressly state up-front what the qualification standard and criteria are, so the project sponsor will know

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incumbent transmission providers intervened and submitted protests or comments. April 18 Order at PP 130-38. Further, the ISO's proposal to eliminate the requirement that a project sponsor first be deemed qualified to participate in a collaborative process was supported by the Public Interest Organizations, *Id.* at P 137.

<sup>13</sup> This is consistent with the ISO's statements and intent in the October 11 Compliance Filing. October 11 Compliance Filing at 45, 49; ISO Answer to Protests, Docket No. ER13-103 at 38-39, 41, 43-44, filed December 21, 2012. The Commission did not expressly reject this concept in the April 18 Order. To the extent LS Power's interpretation is correct, the ISO satisfies that directive because **all** interested transmission developers are permitted to submit a project sponsor application; so, there are no specific pre-qualification requirements. This essentially constitutes the criteria -- none -- that must be satisfied before a project sponsor can submit a project sponsor application. Contrary to LS Power's proposal, the ISO's approach maximizes competition and allows more entities to seek to collaborate on a project, which is consistent with the overarching goal of Order No. 1000.

this before it submits a proposal,<sup>14</sup> and (4) require the ISO to make a separate qualification decision and to provide the opportunity for a project sponsor to cure any qualification deficiency.

Although LS Power insists that a “pre-qualification process is necessary,”<sup>15</sup> the Commission’s orders do not support this assertion.<sup>16</sup> Order No. 1000 does not mandate adoption of a pre-qualification process, and LS Power does not show otherwise. In Order No. 1000, the Commission ruled that it was inappropriate to impose a “one-size-fits-all” qualification requirement and that each planning region have the flexibility to formulate qualification criteria that best fit its transmission planning process and addresses the specific needs of the region.<sup>17</sup> For the reasons set forth herein and in the ISO’s prior pleadings in this proceeding,<sup>18</sup> the ISO’s approach best fits with the ISO’s “top down” planning process described above, addresses the needs of the region, maximizes competition, and enables the ISO not to have a right-of-right of first-refusal for incumbents to construct and own reliability solutions that are needed in the near-term.

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<sup>14</sup> This is consistent with the clear directive in the April 18 Order at PP 148, 151, 153.

<sup>15</sup> LS Power Protest at 10.

<sup>16</sup> In its prior pleadings in this proceeding, the ISO demonstrated why some type of pre-qualification process does not provide significant benefits and is problematic and inappropriate given the ISO’s specific transmission planning process and regional needs. October 11 Compliance Filing at 47-50; ISO’s Answer to Protests at 38-45.

<sup>17</sup> Order No. 1000 at PP 323, 324; Order No. 1000-A at PP 431,439-443. Order No. 1000’s focus was on (1) specifying fair and not unduly burdensome or discriminatory qualification criteria, (2) allowing a project sponsor to cure any deficiency in its qualifications, and (3) timely notifying a project sponsor of whether it satisfies the qualification criteria. The ISO’s proposed tariff provisions achieve these results.

<sup>18</sup> October 11 Compliance Filing at 47-50; ISO Answer to Protests at 36-45. The ISO will not repeat that discussion here.

LS Power points to the Commission's concern in the April 18 Order that, under the initial compliance filing "a potential transmission developer will not be in a position to understand what criteria it must satisfy to demonstrate that it has the necessary financial and technical expertise to develop, construct, own, operate, and maintain transmission facilities, and will only know whether it qualifies to submit a bid after it has gone through the process to actually submit a bid." Contrary to LS Power's claim, the proposed revisions address this concern. Potential project sponsors know exactly what the qualification criteria and information submission requirements are before they submit a project sponsor application: the information submission requirements are set forth in section 24.5.2.1; the qualification standard and criteria are specified in section 24.5.3.1. Thus, a project sponsor will know all of the requirements up-front and will be able to assess its own qualifications before it submits a project sponsor application. These sections comply with the Commission requirement that a project sponsor have an "opportunity to demonstrate that it has the necessary financial resources and technical expertise to develop, construct, own, operate, and maintain transmission facilities."<sup>19</sup> Finally, section 24.5.3.3 requires the ISO to make a separate qualification determination before the selection decision and to provide an opportunity for project sponsors to cure any qualifications.

The ISO's conclusion that these provisions comply with the April 18 Order is reinforced by the Commission's approval of tariff provisions permitting **all** project sponsors that submitted a project sponsor application to engage in the collaboration process and its finding that the relevant consideration is whether the transmission

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<sup>19</sup> April 18 Order at P 146.

developers participating in a joint proposal are qualified as a group (not individually).<sup>20</sup> The Commission found this approach would encourage more joint transmission projects, consistent with its statements in Order No. 1000. Under the Commission-approved tariff provisions, such collaboration occurs **after** the submission of applications by project sponsors to construct and own a needed regional transmission solution.<sup>21</sup> Moreover, the tariff does not require that a project sponsor first be found to be qualified before it can participate in the collaborative process. If the Commission intended, as LS Power contends, that the ISO must first determine that a project sponsor is qualified before it can submit a proposal to construct and own a needed transmission facility, the Commission could not have approved the tariff language in section 24.5.2.3, which eliminated the requirement that a project sponsor first be found to be qualified before it can collaborate with other project sponsors that have submitted the project sponsor application.

LS Power argues that project sponsors need to know that they are qualified before they go to the effort and expenses to submit a proposal in the competitive solicitation process and that without this certainty, few non-incumbents will participate in the competitive solicitation process and the full potential of Order No. 1000 will not be reached.<sup>22</sup> The actual participation of transmission developers in the three competitive solicitations the ISO has undertaken to date demonstrates the inaccuracy of this prediction. These competitive solicitations have attracted 10 individual bids from

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<sup>20</sup> April 18 Order at P 155. Tariff section 24.5.2.3.

<sup>21</sup> Tariff section 24.5.2.3.

<sup>22</sup> LS Power Protest at 9-10.

transmission developers and a joint proposal from three transmission developers.<sup>23</sup> The project sponsors included two incumbent participating transmission owners (one of whom teamed up with two non-incumbent project sponsors), one individual proposal from a municipal utility that is not a participating transmission owner, and eight individual (*i.e.*, non-joint) proposals from non-incumbent transmission developers. None of these project sponsors has complained about the burden and resources involved in preparing a project sponsor application or protested the ISO's August 20 Compliance Filing.

Because project sponsors are not submitting proposed transmission projects, but rather are seeking to demonstrate that they are best equipped to construct, finance, own, operate and maintain the ISO-identified solution(s), the application process need not consume substantial resources. The ISO will already have determined all of the specific transmission facilities that are needed and, in compliance with tariff section 24.4.7, and will have provided "sufficient engineering detail to permit Project Sponsors to submit complete proposals." Thus, project sponsors will not be required to provide engineering detail or studies, reliability impact assessments, system impact studies, facilities studies, load flow analyses, system design, or models with their proposals.<sup>24</sup>

LS Power seems to be operating under the erroneous assumption that if the ISO had a separate pre-qualification to determine if a project sponsor was qualified to construct and own the identified solution(s), project sponsors would only be required to submit a minimal amount of information. That simply is not the case and is inconsistent

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<sup>23</sup> LS Power did not participate in any of these competitive solicitations.

<sup>24</sup> See, e.g., *Tampa Electric Company, et al.*, 143 FERC ¶61,254 at PP 156, 166 (2013) ("*Tampa Electric Company*"); *ISO New England, Inc.*, 143 FERC ¶61, 150 at P272 (2013) ("*ISO New England et al.*"); *PJM Interconnection LLC*, 142 FERC ¶61,214 at PP 286, 295 (2013) ("*PJM*").

with the qualification and information requirements the Commission has approved for other ISOs (see *infra*). Even if the ISO were required to determine a project sponsor's qualifications before a project sponsor could submit the project sponsor application, a project sponsor would still need to submit the information specified in section 24.3.2.1 (a)-(i) so that the ISO would have sufficient information to make a fully informed decision that a project sponsor is qualified to finance, construct, own, operate, and maintain the identified solution that might cost several hundred million (or even more than a billion) dollars. This is not a decision to be taken lightly or based on submission of the minimal amount of information.

Any required solution-specific pre-qualification process would be problematic. First, it would require additional, unnecessary steps in the process: submission by project sponsors of a separate application providing sufficient information to demonstrate the project sponsor's qualification to build the identified transmission solution(s); a new cure opportunity to remedy any deficiencies in the information pertaining to a project sponsor's qualifications; a qualification decision by the ISO, and an opportunity for a project sponsor to remedy any deficiency in its qualifications; additional time for qualified project sponsors to prepare a second application regarding showing satisfaction of bid and complete solicitation selection ; to the extent a project sponsor is deficient in its information submissions, an opportunity to cure any information deficiencies in the second application identified by the ISO; and an ISO decision selecting an approved project sponsor(which involves a comparative analysis of a

project sponsor's satisfaction of each of the qualification and selection criteria).<sup>25</sup> On the other hand, the ISO's single application process, which includes both an opportunity to cure information deficiencies in the application and a separate opportunity to remedy any qualification deficiencies, along with a separate qualification determination, is much more efficient.

Second, LS Power's approach could unduly delay the ISO's comparative analysis of project sponsors and the date for selecting an approved project sponsor. Of particular concern to the ISO is that if the Commission were to impose additional solution-specific pre-qualification steps, it could be especially problematic and delay the approval, commencement, and timely completion of transmission facilities that are required to meet identified near-term reliability needs. Such a result is unacceptable, and the Commission has stated such in several orders, approving for other ISOs a limited right-of-first-refusal for incumbent transmission owners to construct reliability projects that are needed in the near-term to ensure that they are completed in a timely manner. In the process leading up to its October 11 Compliance Filing, the ISO concluded that it could avoid filing for a near-term reliability solution right-of-first-refusal, like other ISOs were proposing, only because of the streamlined and efficient competitive solicitation approach that it was proposing. If the Commission undoes that process and imposes the multi-layer process which LS Power advocates, the ISO will have to reconsider its prior decision and seriously consider proposing a right-of-first refusal for incumbent participating transmission owners to construct near-term reliability solutions to ensure that they are constructed in a timely manner. The ISO notes that

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<sup>25</sup> Such a requirement would essentially transform the competitive solicitation qualification and selection process a multi-step process with several new layers.

based on the one competitive solicitation that has concluded and a second one that is near conclusion, the time for the ISO to conduct its project sponsor evaluation and selection decision has greatly exceeded the deadlines established by the ISO, and the ISO has had to extend the dates for issuing a project sponsor selection decision. The ISO's actual experience makes it even more imperative that the Commission not impose additional layers into the process given the potential adverse impact on the timing of a project sponsor selection decision and, ultimately, on the timeliness of completion of the overall project. Adding additional layers will only serve to delay further these decisions that already exceed the amount of time the ISO expected it would need to make such decisions.<sup>26</sup> The ISO would prefer not to pursue a right-of-right-refusal for near-term reliability projects and instead adhere to its more efficient seamless qualification process that has the benefit of allowing all regional transmission solutions to be subject to competitive solicitation.

Without citing any language from Order No. 1000, the April 18 Order, or the Commission's decisions on the qualification process of other ISOs, and without explaining why, LS Power baldly asserts that the information submission items in section 24.5.2.1 (a)-(i) are related to solution development, not qualification. Again, LS Power misunderstands the ISO's process. At the point when project sponsors submit proposals to construct a solution, the ISO has already identified the needed solution(s). As the Commission recognized in discussing qualifications in Order No. 1000 and the

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<sup>26</sup> *ISO New England*, 143 FERC at PP 235-36 (a ROFR for reliability projects needed within three years to resolve reliability criteria violations); *Southwest Power Pool*, 144 FERC ¶61,059 at PP 195-196 (2013) (a ROFR for reliability projects needed within three years to resolve reliability criteria violations); *PJM*, 142 FERC at n. 354, 355, PP 235, 237-50 (ROFR for Immediate Need Projects that must be completed within three years or less and a ROFR with some conditions for Short-Term Projects that need to be completed in the 3-5 year time frame).

April 18 Order, transmission developers need to demonstrate their financial resources and technical expertise to develop, construct, own, operate, and maintain the transmission facility.<sup>27</sup> Order No. 1000 stated that the qualification requirements could address a range of issues, including commitments to be responsible for operation and maintenance of a transmission project.<sup>28</sup> The information requirements to which LS Power objects are undoubtedly relevant to these determinations and are also consistent with the Commission's determination that project sponsors and their teams must demonstrate that they are physically able to construct, operate, and maintain the transmission facilities.<sup>29</sup> Moreover, this information is clearly relevant to a project sponsor's qualification to build the solution in a timely manner.

Moreover, the ISO proposal is consistent with the tariff provisions that the Commission has approved for other ISOs. For example, the Commission approved ISO New England's information submission requirements and qualification criteria that are very similar to the ISO's proposed requirements and criteria.<sup>30</sup> The Commission found

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<sup>27</sup> Order No. 1000 at P 323; April 18 Order at PP 146-53.

<sup>28</sup> Order No. 1000 at P 324. In Order No. 1000-A, the Commission rejected LS Power's request to try to limit qualification criteria only to financial and technical matters because there is no "one-size-fits-all", standardized or minimum qualification criteria requirement, and each region will need to have flexibility to formulate and fashion qualification criteria that best fit its transmission planning process and the needs of the system. Order No. 1000-A at PP 432, 440.

<sup>29</sup> April 18 Order at P 152; *see also RPPP Order at n. 157, PP 219, 231*. LS Power singles out the requirement that the project sponsor provide the projected in service date with a construction plan and timetable. This item assists the ISO's determination whether the project sponsor is capable of completing the solution in a timely manner and is consistent with tariff provisions that the Commission has approved for ISO New England and others.

<sup>30</sup> *ISO New England*, 143 FERC at PP 267, 291. Section 4B.2 of Attachment K sets forth the information requirements that a potential project sponsor desiring to become a Qualified Transmission Project Sponsor must satisfy. These information submission requirements include: (1) current and expected capabilities to finance, license and construct the project and operate and maintain it for the life of the project; (2) financial resources of the applicant; (3) technical and engineering qualifications and expertise of the applicant; (4) previous record of the applicant regarding construction and maintenance of transmission facilities; (5) demonstrated ability of the applicant to adhere to construction maintenance on operating Good Utility Practice; (6) ability of the applicant to comply with all reliability standards; (7)

that ISO New England's information submission requirements "strike a reasonable balance between being not so cumbersome that they effectively prohibit transmission developers from proposing transmission projects, yet not so relaxed that they allow for relatively unsupported proposals."<sup>31</sup> ISO New England's Commission-approved tariff specifies qualification criteria that are almost identical to the ISO's qualification standard set forth in proposed section 24.5.3.1.<sup>32</sup> The ISO's and ISO New England's qualification-related information submission requirements are clearly relevant to a determination of whether a potential transmission developer meets the Commission-approved qualification standard. There is no difference to justify a conclusion that ISO New England's information submission requirements and qualification criteria comply with Order No. 1000, but the ISO's do not.<sup>33</sup>

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demonstrated ability of the applicant to meet development and completion schedules; and (8) experience of the applicant and its team in acquiring rights-of-way.

<sup>31</sup> *Id.* at P 291.

<sup>32</sup> The Commission-approved qualification standard specified in section 4B.3 of ISO New England's Attachment K is whether "the applicant is physically, technically, legally, and financially capable of constructing a Reliability Transmission Upgrade, Market Efficiency Transmission Upgrade, or Public Policy Transmission Upgrade in a timely and competent manner, and operating and maintaining the facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project."

<sup>33</sup> The ISO notes that the Commission approved PJM's qualification-related information requirements and qualification criteria that are similar to both the ISO's and ISO New England's. *PJM Interconnection, LLC*, at PP 273-74, 291 (2013); Schedule 6, section 1.5.8 (a), (c) and (f) of the PJM Operating Agreement. PJM proposed both an annual generic pre-qualification process where transmission developers could demonstrate their general capabilities to finance, construct, operate, and maintain transmission facilities. In addition, as part of their project proposal submissions, pre-qualified project sponsors had to demonstrate that they were qualified to finance, construct, own, and operate the specific transmission project they were proposing. In its order on PJM's Order No. 1000 compliance filing, the Commission rejected claims by LS Power that it was inappropriate to have these project-specific qualification criteria and information submission requirements because the transmission developer was already pre-qualified. *PJM*, 142 FERC at 274. The Commission rejected LS Power's claim that the qualification process should cease immediately following the close of the transmission project submission window. *Id.* The Commission's findings in *PJM* call for the similar rejection of LS Power's instant qualification recommendations. The findings support the ISO's conclusion that it is appropriate for the ISO to include qualification-related information requirements in the project sponsor application, so long as the ISO makes a separate qualification determination before it makes a project sponsor selection decision and grants transmission developers the opportunity to remedy any deficiency they have. PJM's provisions also divulge the problem with a pre-qualification that is based on a transmission provider's general

LS Power further argues that considerations such as whether a project sponsor has assembled a sufficiently sized team with the manpower, knowledge and skills required to undertake design, construction, operation and maintenance of the transmission solution is not a proper qualification criterion and inappropriately favors incumbents who may already have the infrastructure in place.<sup>34</sup> This contention is inconsistent with the Commission’s findings in the RTPP Order. In the RTPP Order the Commission approved the “physical capabilities” criterion -- set forth at that time in section 24.5.2.1, “Project Sponsor Qualification” -- along with other criteria, finding that the ISO’s qualification and selection criteria were just and reasonable, and not unduly discriminatory or preferential.<sup>35</sup> The Commission stated that the criteria ensure that project sponsors are qualified, have the capability to construct, operate and maintain the facilities, the ability to successfully construct the transmission facilities in a timely manner and to minimize the risk of abandoned projects, and the ability to carry a project through to completion and to continue to maintain and operate the facility once in service.<sup>36</sup>

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capabilities to finance and construct transmission facilities. Even if the a transmission developer is deemed generally qualified, it will still need to demonstrate that it is qualified to build the specific solution at issue based on the facts of that solution. A generic pre-qualification would not be sufficient. Also, the pre-qualified project sponsor would need to update its qualification information because the pre-qualification would have occurred months (or years) before the specific competitive solicitation. The ISO’s approach is more efficient and does not contain a seemingly unnecessary step and burden.

<sup>34</sup> LS Power Protest at 11.

<sup>35</sup> RTPP Order at n. 157, P 220, 231.

<sup>36</sup> *Id* at P 220, 231. The plain meaning of physical ability is whether the project sponsor has the necessary physical attributes – manpower and equipment or access to the necessary manpower and equipment to complete an awarded project in a timely manner and to operate and maintain the transmission facility after construction. This language is unchanged from the ISO’s existing, Commission-approved, revised transmission planning process. Nothing in Order No. 1000 or the April 18 Order converts this criterion from a just and reasonable provision to one that is impermissibly vague.

In the April 18 Order, the Commission expressly rejected LS Power’s argument that the Commission eliminate “physically” from the qualification criteria “physically, technically, and financially, capable of (i) completing the project in a timely and competent manner, and (ii) operating and maintaining the facilities consistent with Good Utility Practice and applicable reliability criteria for the life of the project”.<sup>37</sup> The October 20 Filing simply moved this language, with the additional detail that the Commission requested, to proposed section 24.5.3.1—the project sponsor qualification criteria section of the tariff.<sup>38</sup> LS Power did not seek rehearing of the Commission’s decision to reject LS Power’s arguments regarding inclusion of the physical capabilities phrase in the tariff; so, its argument constitutes a collateral attack on the April 18 Order.

LS Power also concludes its discussion of the submission and qualification process by asserting that the ISO’s compliance filing fails to separate the qualification requirements from the project sponsor information requirements as required by the April 18 Order.<sup>39</sup> This conclusion is patently erroneous. The proposed tariff provisions separate the information submission requirements from the qualification criteria because each is set forth in a separate section of the tariff (section 24.5.2.1 for the information submission requirements and section 24.5.3.1 for the qualification criteria). The proposed tariff provisions do state which of the information submission requirements are pertinent to the ISO’s qualification determination, but that is a

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<sup>37</sup> April 18 Order at P 152.

<sup>38</sup> As indicated in fn. 34 Commission approved the use of the term “physically capable”, contained in 4B.3 of Attachment K, as part of ISO New England’s qualification criteria under Order No.1000. Given that ISO New England’s qualification standard is almost identical to the ISO’s there is no basis to find that ISO New England’s use of the word “physically” is just and reasonable, but the ISO’s use if the same term in the same context is not just and reasonable.

<sup>39</sup> LS Power Protest at 11.

necessary feature because the ISO would be unable to make a fully informed qualification decisions if it lacked the necessary information. If this provision were removed, as LS Power suggests, project sponsors would not be required to submit any information to support their qualifications. Obviously, that was not the intent of Order No. 1000 or the April 18 Order.

## **2. The Posting Of Key Selection Criteria**

LS Power claims that the ISO's selection process fails to determine the more efficient or cost-effective transmission solution.<sup>40</sup> In support of its claim, LS Power alleges that the ISO failed to comply with the Commission's directive that it must explain how the key selection criteria it posts will result in a transmission plan reflecting the more efficient or cost-effective transmission solution. LS Power states that the ISO did not seek rehearing of this directive. It wrongly asserts that the ISO now seeks to tell the Commission that it cannot comply with the directive because it will already have determined the more efficient or cost-effective solution in Phase 2 of the planning process, and the directive's application to the Phase 3 competitive solicitation process is in error.<sup>41</sup>

LS Power fails to understand the ISO's process. The ISO's existing and proposed tariff provisions reflect that the determination of the more efficient or cost-effective solution is a two-step process. In Phase 2, the ISO determines the specific solution(s) that will *address the identified need* in more efficient or cost-effective manner. In many cases, there will be only one such solution, but the proposed tariff provisions expressly recognize that there could be more than one solution that could be

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<sup>40</sup> LS Power Protest at 2-6.

<sup>41</sup> LS Power Protest at 3.

the more efficient or cost-effective one depending on the outcome of the Phase 3 competitive solicitation, and the ISO can identify all of these possible solutions in the transmission plan. The ISO must then determine the project sponsor that can *construct* the solution , *inter alia*, in the more efficient or cost-effective manner, or to the extent there are multiple identified solutions, which solution is the most efficient or cost-effective as a result of the Phase 3 competitive solicitation.

The ISO notes that section 24.5.4, which the Commission approved in its April 18 Order, provides that the ISO will select a qualified project sponsor that is “*best* able to design, finance, license, construct, maintain, and operate the particular transmission facility in a *cost-effective, efficient, prudent, reliable, and capable* manner over the lifetime of the facility, while maximizing overall benefits and minimizing the risk of untimely project completion, project abandonment, and future reliability, operational and other relevant problems, consistent with Good Utility Practice, applicable reliability criteria, and CAISO documents.” (Emphasis added.) The identification of key criteria are directly relevant to that determination because they allow project sponsor to provide a complete picture of their ability to meet the ISO’s needs and satisfy the aforementioned Commission-approved standard that the ISO will apply for purposes of selecting an approved project sponsor.

Phase 3 will play an additional role in determining the efficient or cost-effective solution. In the August 20 filing, the ISO proposed tariff language in section 24.5.1 to provide that

[I]f the CAISO determines in Phase 2 of the transmission planning process that more than one transmission solution could constitute the more efficient or cost-effective solution to meet a specific identified need depending on the outcome of the competitive solicitation, the CAISO shall

have the authority to identify more than one potential transmission solution in the comprehensive Transmission Plan. Under these circumstances, based on the outcome of the competitive solicitation, the CAISO will make the final determination of what alternative solution identified on the Board approved comprehensive Transmission Plan constituted the more efficient or cost-effective transmission solution to be selected for construction.

The ISO's proposed tariff provisions make clear that the key selection factors will *not* interfere with the Phase 2 determination of the solution or solutions that will address the identified need in the more efficient or cost-effective manner. The ISO has proposed tariff language in section 24.5.1 stating that "the posting of the key selection criteria shall not undermine the ISO's prior determination in Phase 2 of the transmission planning process of the more efficient or cost-effective transmission solution to be reflected in the comprehensive Transmission Plan."

The ISO submits that the aforementioned tariff changes, in conjunction with the other tariff revisions reflected in the August 20 Compliance Filing, comply with the directive in the April 18 Order. These provisions ensure that the posting of the key selection factors must be consistent with the requirement that a regional transmission plan identify the more efficient or cost-effective transmission solution(s). They also ensure that the ISO will have the necessary information to determine who can construct that solution in the more efficient or cost-effective manner. Finally, if the transmission plan identifies more than one solution that could be the more efficient or cost-effective one, the ISO will be able to determine which solution ultimately is the more efficient or cost-effective one based on the outcome of the Phase 3 competitive solicitation.

Contrary to LS Power's assertion, nowhere in the August 20 Filing does the ISO state that the Commission's directive "was in error" or that the ISO was not complying with the Commission's directive. To the contrary, the ISO has complied with the

Commission's directives. Thus, there was no need for the ISO to seek rehearing of the April 18 Order.

What the ISO did state in the August 20 Compliance Filing was that in order to comply with this specific compliance directive, it was necessary to take into account and "harmonize" all of the relevant Commission approvals, findings, and compliance directives to ensure that (1) the tariff was internally consistent and transparent, and did not contain any provisions that might be inconsistent, ambiguous, or confusing, and (2) the transmission planning process was transparent, effective and reflected a clear *ex ante* understanding of what was required.<sup>42</sup> This is consistent with the goals of Order No. 1000.<sup>43</sup> As discussed herein and in the August 20 Compliance Filing, the ISO has effectively achieved this result. Citizens Energy agrees. The Commission does not desire inconsistent tariff provisions or a tariff in which all of the related provisions are not in harmony.

LS Power also objects to the fact that (1) the posted key selection criteria do not eliminate or replace the requirement that the ISO must assess all of the qualification and selection criteria, not just the key factors, (2) the ISO cannot post key selection criteria that are different than or unrelated to the specified and approved qualification and selection criteria that are the subject of the comparative analysis, and (3) the key selection criteria must be consistent with the approved project sponsor selection standard and the qualification and selection criteria set forth in the tariff.<sup>44</sup>

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<sup>42</sup> August 20 Compliance Filing at 10-16.

<sup>43</sup> See, Order No 1000 at P 328; Order 1000-A at PP 52, 431, 445, 455.

<sup>44</sup> LS Power Protest at 3-4.

LS Power's objections are unjustified. First, the tariff language approved by the Commission requires the ISO to consider all of the selection criteria, and the Commission found that these criteria are not unduly discriminatory and effectively consider cost containment. Contrary to LS Power's objections, the ISO cannot propose tariff language regarding the posting of key selection criteria that undermines the express Commission-approved tariff requirement that the ISO consider all of the approved selection criteria. Because the Commission concluded that these Phase 3 selection criteria, in conjunction with the Phase 2 requirements, demonstrate that the ISO adequately considers cost and cost-effectiveness in its regional transmission planning process when evaluating both proposed transmission facilities and proposals from project sponsors to finance, construct, own, operate and maintain such facilities and results in transmission solutions that identify the more efficient or cost-effective transmission solutions,<sup>45</sup> the proposed tariff language ensures that the key criteria will likewise ensure selection of the more efficient and cost-effective solution.

Moreover, the tariff provision stating that the ISO cannot post key selection criteria that are different than or unrelated to the existing qualification and selection criteria, is consistent with the Commission's statement that the posting of the most relevant criteria from the list of approved selection criteria is consistent with the Commission-approved evaluation and selection methodologies.<sup>46</sup> The Commission has found the ISO's project sponsor selection criteria to be just and reasonable and to effectively address cost considerations and contribute to an overall process that will

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<sup>45</sup> April 18 Order at P 233.

<sup>46</sup> *Id* at PP 233, 241. In its Answer to Protests filed on December 21, 2012 (at page 75), the ISO also made it clear that it was not posting key selection criteria that were more specific than the existing criteria and was not adding any new selection criteria that are not already in the tariff.

result in selection of the more efficient or cost-effective transmission solution; this proposed tariff language ensures that the key selection criteria will serve the same purpose. The ISO notes that the selection standard reflected in section 24.5.4 already identifies cost-effectiveness as a factor, and the ISO is proposing to add the word “efficient” to the standard. Thus, the standard ensures that the ISO will consider both efficiency and cost-effectiveness. Because the Commission has found that the ISO’s approved evaluation and selection methodologies result in identification of the more efficient or cost-effective transmission solution, the proposed tariff provision requires that the posting of the key selection criteria also must be consistent with that result.

LS Power also objects to the fact that the key criteria are for informational purposes and not determinative of the ISO’s selection.<sup>47</sup> LS Power argues that the “key” selection criteria must be more important than the other criteria and that the ISO is essentially making its decisions in a “black box.”<sup>48</sup> LS Power misunderstands the role for which the ISO included the key selection factors in the tariff in the first place. In its October 11 Compliance Filing, the ISO stated that the purpose of posting the key selection criteria was to add more transparency to the process and “offer[ing] guidance to project sponsors in the preparation of their project proposals.”<sup>49</sup> In its Answer to Protests (page 75) , the ISO stated that the proposed posting of key selection criteria were intended to enable the ISO to “highlight key considerations.” The ISO also stated that the “posting of the key selection factors will provide project sponsors with information about the factors which will be the most important for purposes of project

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<sup>47</sup> *Id.* at 4.

<sup>48</sup> LS Power Protest at 7.

<sup>49</sup> October 11 Compliance Filing, Transmittal Letter at 53.

sponsor selection.<sup>50</sup> The proposed tariff language reflects the ISO's original intent in posting the key selection criteria, and the Commission did not expressly reject this concept in its April 18 Order. This proposed tariff provision also ensures that the posting of the key selection criteria cannot in any way undermine the goal of selecting the more efficient or cost-effective transmission solution because it is for informational purposes only.

Relatedly, LS Power objects to the fact that the ISO tariff does not make it clear that the cost factors will outweigh non-cost factors in the selection process.<sup>51</sup> In support of its claim, LS Power refers to the Commission's orders on MISO's and SPP's Order No. 1000 compliance filings where the Commission purportedly rejected their process on the grounds that cost factors were outweighed by non-cost factors.<sup>52</sup>

These cases are inapt and do not impose the broad directives that LS Power claims they do. In that regard, both MISO and SPP pre-assign weights to each of the specific criteria used to select the winning applicant in the competitive solicitation. The Commission found that SPP and MISO did not justify or explain why they assigned a "**significantly higher**" percentage to non-cost-based criteria relative to the cost-based criterion (22.5% and 30%, respectively).<sup>53</sup> Moreover, MISO weighed cost and reasonably descriptive facility design quality as a single combined criterion without giving specific weights to the two components comprising this criterion. The Commission did not reject MISO and SPP's weighting, but instead directed MISO and

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<sup>50</sup> Answer to Protests at p. 77.

<sup>51</sup> LS Power Protest at 8.

<sup>52</sup> *Id.* at 8-9.

<sup>53</sup> *Southwest Power Pool*, 144 FERC ¶61,059 at P 284 (2013) ("SPP"); *Midwest Independent Transmission System Operator, Inc.*, 142 FERC ¶61,215 at PP 339-40 (2013) ("MISO").

SPP to make a further compliance filing *either* (1) to revise the evaluation process to reflect greater weighting of costs in evaluating transmission developer bids in order to reflect the relative efficiency and cost effectiveness of any proposed transmission solution, *or* (2) to further explain and justify why their respective weighting of costs complied with Order No. 1000. The Commission's express concern in both orders was not that cost factors were weighted less than non-cost factors, but that the cost criterion was "**significantly higher**" than the weight given to non-cost criteria and, in MISO's case, was combined with a non-cost factor in a single criterion.<sup>54</sup>

The ISO's evaluation process does not suffer from the infirmities identified in the SPP and MISO decisions. The ISO does not rely on pre-assigned weights for each of the selection criteria and does not rely on mathematical formulas. The Commission rejected efforts by LS Power and others to seek to impose such a requirement on the ISO or to add more specificity to its tariff regarding how the ISO would apply the selection criteria.<sup>55</sup> Rather, the Commission found that it was appropriate and reasonable to give the ISO the necessary flexibility in conducting its analysis and applying the selection criteria.<sup>56</sup> The Commission also rejected requests by LS Power and others that cost be the primary factor in selecting an approved project sponsor and should not be given more weight than other selection factors,<sup>57</sup> finding that the ISO's

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<sup>54</sup> SPP at P 284; MISO at P 339.

<sup>55</sup> April 18 Order at PP 182-84, 229-30. LS Power previously admitted in its Protest of the ISO's October 11 Compliance Filing that Order No. 1000 does not require the use of a mathematical formula for selecting project sponsors or pre-assigning weights in the tariff to specific selection criteria. LS Power Protest at 33.

<sup>56</sup> April 18 Order at P 230.

<sup>57</sup> *Id.* at PP 232-234. This finding was consistent with the Commission's previous determination in the RTPP proceeding that it was inappropriate to give cost more weight than cost factors. RTPP Order at PP 220-223, *order on reh'g*, 137 FERC ¶61,062 at P 27.

selection criteria adequately consider cost, and cost is not an “afterthought in the CAISO’s regional transmission planning process, as LS Power implies.”<sup>58</sup> In particular, the Commission specified how the ISO appropriately considers costs and cost-effectiveness in its regional transmission planning process both in evaluating proposed transmission facilities and in selecting an approved project sponsor during the competitive solicitation.<sup>59</sup> The Commission added that the ISO’s “evaluation criteria . . . appropriately consider whether a transmission developer’s capability to construct, operate and maintain a particular transmission project when selecting among competing transmission developers” and “while cost and cost containment are important selection factors, other factors may be considered as well” consistent with Order No. 1000.<sup>60</sup> Nowhere does Order No. 1000 require that cost factors outweigh non-cost factors.<sup>61</sup>

LS Power did not seek rehearing of these Commission findings and is trying to relitigate the Commission’s determinations regarding the justness and reasonableness

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<sup>58</sup> April 18 Order at P 233.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.* This is consistent with the ISO’s un-rebutted demonstration in its October 11 Compliance Filing that basing the ultimate determination on cost could lead to problematic, unjustifiable, and inappropriate project sponsor selections based on the specific needs, complexities, and requirements of the identified transmission solution. October 11 Compliance Filing at 54-62; see *also*, ISO’s Answer to Protests at 51-65. The ISO will not repeat that discussion here.

<sup>61</sup> Order 1000 and prior Commission precedent recognize that there are important considerations other than cost for project sponsor selection such as reliability and the ability to comply with reliability obligations, timeliness of completion, relative effectiveness, a project sponsor’s ability to finance, license and timely complete a project and minimize the risk of abandonment, carry a project through to completion, and to operate and maintain it once the project is in service, the overall benefits provided by a proposal, and mitigation of financial and other risks. *RTPP Order* at PP 220-21, 231; Order No. 1000 at PP 315, 342. In the *RTPP Reh’g Order*, the Commission rejected similar arguments to what LS Power raises here and ruled that it was inappropriate to give more weight to cost-containment than to other non-cost criteria (such as a project sponsor’s capabilities and financial resources). *RTPP Reh’g Order*, 137 FERC at P 27. In Order No. 1000 (P 342), the Commission noted that reliability was an important factor in the evaluation process. In Order No. 1000-A, the Commission rejected LS Power’s rehearing request that the Commission require that a transmission provider select from multiple sponsors of the same transmission solution by assigning the project to the entity that is willing to guarantee the lowest net present value of its annual revenue requirement. Order No. 1000-A at PP 450-55.

of the ISO's treatment of cost in the project sponsor selection process and in determining which solutions are the more efficient or cost-effective. This constitutes a collateral attack on the April 18 Order.

LS Power uses the discussion of key factors to resurrect its argument that the Phase 2 of the ISO's transmission planning process will determine the transmission plan "prior to the involvement of non-incumbent developers in determining the more efficient or cost-effective solution" and that the ISO does not discuss how the ISO will determine the more efficient or cost-effective transmission solution.<sup>62</sup> The ISO has already discussed above how Phase 3 contributes to the final determination of the more efficient or cost-effective transmission solution. LS Power's contention here, however, is simply erroneous. Non-incumbent developers, like all stakeholders, have a full opportunity to contribute to the transmission plan by suggesting solutions. What they do not have is a right to "reserve" a particular solution to themselves in the event it is selecting. This is the nature of the ISO's top-down process which the Commission has fully endorsed in the April 18 Order. In that order, the Commission approved all tariff provisions pertaining to Phase 2 of the ISO's transmission planning process, with the sole exception of directing the ISO to revise sections 24.4.6.2 (Reliability Transmission Solutions) and 24.4.6.4 (Solutions to Maintain the Feasibility of Long-Term CRRs) to use the standard "the more efficient or cost effective manner" instead of the "most prudent and cost effective manner" for purposes of identifying the transmission facility that is needed in the comprehensive transmission plan during Phase 2.<sup>63</sup>

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<sup>62</sup> LS Power Protest at 4-5.

<sup>63</sup> April 18 Order at PP 41-62.

The Commission found that the ISO's transmission planning process specified in the ISO's October 11 Compliance Filing complies with the requirements of Order No. 1000, subject to the modification described in the preceding sentence.<sup>64</sup> Of particular note, the Commission found that the ISO conducts a transmission planning process with stakeholders that produces a comprehensive transmission plan that meets the needs of CAISO's region more efficiently and effectively and stated "with respect to the requirement to plan on a regional basis to identify more efficient or cost-effective transmission solutions, we find that the CAISO will analyze the need for transmission upgrades and additions in accordance with the methodologies set forth in section 24 of its Tariff, the Transmission Control Agreement, and the applicable Business Practice Manual."<sup>65</sup> LS Power's argument constitutes a collateral attack on the April 18 order and the Commission should disregard it.

### **3. A Project Sponsor's Financial Qualification Requirements**

LS Power claims that the ISO's determination of a project sponsor's financial qualifications is unduly stringent and discriminatory. It notes that the project sponsor application requests credit-rating information and a "showing of the Project Sponsor's most recent audited financial statements that the Project Sponsor's assets are in excess of its liabilities as a percentage of the total cost of the transmission solution and financial funding ratios," and the tariff is vague because it does not indicate whether each of these items is mandatory for participation or merely informational. LS Power argues that to the extent credit ratings are required for participation, the financial requirements are unduly discriminatory. In support of its argument, LS Power cites a

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<sup>64</sup> April 18 Order at P 54.

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

prior Commission decision finding SERTP's financial qualification criteria to be unfair and unreasonably stringent because SERTP did not allow sufficient flexibility to enable a transmission developer to demonstrate its financial qualifications other than by demonstrating a good credit rating. LS Power urges the Commission to reject the ISO's purported requirement that an entity must have a credit rating in order to be qualified.<sup>66</sup>

LS Power's concerns are unfounded. LS Power's interpretation of section 24.5.3.1(b) as "mandating" that a project sponsor have a credit rating in order to be qualified or selected is inconsistent with a plain reading of the tariff and misrepresents the ISOs proposal. Proposed Section 24.5.3.1(b) provides that the ISO will assess:

whether the Project Sponsor and its team have sufficient financial resources including, but not limited to, satisfactory credit ratings and other financial indicators as well as their demonstrated ability to assume liability for major losses resulting from failure of any part of the facilities associated with the transmission selection. (Emphasis added).

LS Power points to no language in the tariff expressly requiring a project sponsor to have a credit rating or it will not be qualified. Thus, project sponsors have the flexibility to demonstrate how they are financially qualified to build, own, operate, and maintain the transmission solution that they seek to build.<sup>67</sup> The *SERTP* case<sup>68</sup> cited by LS Power is simply not on point. SERTP's proposal lacked flexibility because it failed to allow for an alternative in lieu of a credit rating. The ISO's proposed tariff language does not suffer the same infirmity.<sup>69</sup>

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<sup>66</sup> LS Power Protest at 15.

<sup>67</sup> See proposed sections 24.5.2.1 and 24.5.3.1(b).

<sup>68</sup> *Louisville Gas & Electric Co., et al*, 144 FERC ¶61,054 (2013) at P 154 ("*SERTP*").

<sup>69</sup> The only financial information specified in SERTP's proposal was (1) a credit rating of BBB- or higher from Standard & Poors or a credit rating of Baa3 from Moody's **and** documentation of its capability to finance US energy projects equivalent to or greater than the cost of the transmission project. *SERTP* at P

LS Power also complains about section 24.5.2.1(c) which requests project sponsors to provide “[i]nformation showing the Project Sponsor’s ability to assume liability for major losses resulting from failure of, or damages to, the transmission facility, including damage after the facility has been placed into operation’s reliance.” It states that the Commission rejected a similar requirement proposed by Tampa Electric Company as being too vague to explain to prospective developers how they could meet the criterion.<sup>70</sup> In fact, the Commission did not reject Tampa Electric’s proposed tariff revision. Rather, it gave the parties the option of “explain[ing] why this proposed criterion is necessary and not unduly discriminatory when transmission developers are already required to demonstrate their financial resources” or removing the criterion.<sup>71</sup> The ISO’s proposal does not present the same concerns.

The ISO tariff provision cited by LS Power is an *information* requirement, not a qualification criterion. The relevant qualification consideration in section 24.5.3.1 is “whether the Project Sponsor and its team have sufficient financial resources, including, but not limited to, satisfactory credit ratings and other financial indicators as well as the demonstrated ability to assume liability for major losses resulting from failure of any part of the facilities associated with the transmission solution.” In other words, the “demonstrated ability” is simply one factor that the ISO will consider in evaluating financial resources. It is, however, an important factor. The inability of a project sponsor to cover major losses could lead to needed facilities not being replaced in a timely

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143. On the other hand, the ISO’s information submission provisions in section 24.5.2.1 identify numerous options beside a credit rating, and that does not take into account the “including, but not limited to” language in section 24.5.3.1.

<sup>70</sup> LS Power Protest at 15, citing *Tampa Electric Co., et al*, 143 FERC at P 151 (2013).

<sup>71</sup> *Id.*

manner, or of a failure to meet a participating transmission owner's obligations under the Transmission Control Agreement<sup>72</sup> and NERC Reliability Standards.

With respect to information request in in section 24.5.2.1 (c) to which LS Power objects, the ISO provision, unlike that of Tampa Electric Company, *et al.* , does not require a demonstration separate from other financial capabilities. Rather, the ISO tariff expressly grants project sponsors maximum flexibility to submit any "information" showing their ability to assume liability for major losses resulting from failure or damage to transmission facilities that might assist the ISO's evaluation. That may well be a reference to financial information submitted in response to other information requirements, but the tariff places no limitations on what information a project sponsor can submit to support its qualifications with respect to this matter. This is consistent with the ISO's overarching principle of promoting competition to the maximum effect possible. The tariff provision provides increased transparency and clarity to project sponsors that this is a component of a project sponsor's capabilities that the ISO will consider as part of its project sponsor assessment. Failure to specify this item could cause confusion as to whether it is covered by a general provision regarding "financial ability to operate and maintain a transmission facility". That would create unnecessary confusion among project sponsors and potentially increase disputes and litigation. The

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<sup>72</sup> This information submission request is also consistent with, and a necessary corollary to, the obligation of a participating transmission owner, including a transmission developer that is selected in the competitive solicitation and who will become a participating transmission owner, under the Transmission Control Agreement. For as long as a facility remains under the ISO's operational control, the participating transmission owner must operate and maintain the facility in accordance with the Transmission Control Agreement, applicable reliability criteria, ISO operating procedures, and other applicable requirements. It is also obligated to (1) maintain, repair, replace, and maintain the rating and technical performance of such facilities in accordance with applicable reliability criteria and the performance standards specified in Appendix C to the Transmission Control Agreement, and (2) take all steps necessary and consistent with Good Utility Practice, *inter alia*, to return to operation such facility as soon as possible and restore availability to levels inherent to the facility when the degradation has occurred. Transmission Control Agreement at sections 4.3, 5.5, 6, 6.3, 7.3.2, 14, and Appendix C.

ISO's proposed tariff provisions eliminate any doubt that this is a factor to be considered.<sup>73</sup>

Moreover, to the extent the ISO requires more information to assess a project sponsor's ability to assume liability for major losses, the proposed tariff provides two opportunities to remedy any deficiency: once following the application submission and another after the ISO makes its preliminary project sponsor qualification decision. All of these factors, working in conjunction, provide project sponsors with a sufficient opportunity to meet the information submission requirements. The ISO does not know all of the options that may exist for a project sponsor to meet this information submission item. Under these circumstances, it is best to give project sponsors unlimited ability to provide whatever supportive information they feel as appropriate to demonstrate satisfaction of this information submission request, rather than proscribe what would be an incomplete listing of possible information.

It is worth noting that no other potential transmission developer has raised the concerns LS Power raises, either in response to the compliance filing or elsewhere. The ISO has received project sponsor applications for three competitive solicitations that requested project sponsors to submit the information currently found in Section 5.2.1 of

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<sup>73</sup> To the extent LS Power is suggesting that this provision is unduly preferential toward incumbent transmission owners --- although LS Power provides no arguments or evidence how it is because it applies both to incumbents and non-incumbents -- the ISO notes that the provision only applies to the specific solution that the project sponsor is competing to build, and not to pre-existing facilities or financial commitments not relevant to the specific transmission solution. Even assuming *arguendo* that the provision is easier for incumbent transmission developers to demonstrate -- which it is not -- the such provision is not unduly discriminatory or preferential given the express language of Order No. 1000, which states that "an incumbent utility is free to highlight its strengths to support transmission projects in the regional transmission plan or bids to undertake transmission proposals in regions that choose to use solicitation processes." The Commission stated that strengths that could be demonstrated included, *inter alia*, experience in building and maintaining transmission facilities and access to funds needed to maintain reliability." Order No. 1000 at P 260. Clearly, financial ability to cover major losses to needed transmission facilities must include "the access to funds needed to maintain reliability."

the ISO's BPM for Transmission Planning, which information includes information requested in proposed tariff section 24.25.2.1( c). None of the project sponsors that submitted applications in these solicitations had any problems submitting information in response to this information submission item. Information in support of this item includes, *inter alia*, letters of credit, letters of intent from financial institutions regarding financial commitments to support the project sponsors, insurance policies or the ability to obtain insurance to cover such losses, the use of account set-asides or accumulated funds, the revenues earned from the project, sufficient credit ratings or other evidence showing sufficient financial basis that these can be covered in the normal course of business, and contingency financing. The ISO has not found any project sponsors' applications to be deficient with respect to satisfying this information submission item.<sup>74</sup> These submissions also demonstrate that the information submitted to satisfy this information requirement can be distinct from the information submitted to show a project sponsor's general financial capability to construct, operate, and maintain the identified transmission solution. This calls for a separate information submission request (which still might be satisfied by referring to a company's general financial capability and its ability to get financing).<sup>75</sup>

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<sup>74</sup> LS Power has not participated in any of these three competitive solicitations, but the fact that the transmission developers that have participated and had no problems in providing information to meet this information submission requirement and have not protested this provision is empirical evidence that the requirement does not raise the concern that the Commission identified in Tampa Electric's filing.

<sup>75</sup> The ISO notes that the Commission approved PJM's Order No. 1000 provisions contained in section 1.5.8 of Attachment A to PJM's tariff that potential transmission developers submit evidence demonstrating "the ability of the entity to address and timely remedy failure of facilities." This is basically the same information that the ISO is seeking.

#### 4. The “Life Of The Project” Provision

LS Power recognizes that in the April 18 Order the Commission rejected LS Power’s argument that the phrase “for the life of the project” was vague and failed to identify the information required to establish the capability. LS Power notes that the Commission stated that it’s “directive for CAISO to include more detailed qualification criteria in its tariff, as discussed above, will provide additional clarity as to the specific information that prospective transmission developers must submit to demonstrate that they satisfy CAISO’s qualification criteria, addressing LS Power’s concern.”<sup>76</sup> LS Power infers from this that the Commission directed the ISO to provide “additional clarity regarding the information the prospective developer must submit to satisfy this qualification criterion.”<sup>77</sup> The Commission made no such directive. Rather, the Commission’s reference is to its previous general requirement that the ISO include more detailed qualification criteria in its tariff and that the ISO provide the qualification criteria and information requirements in its tariff rather than in a business practice manual and to separate them.<sup>78</sup> The ISO has done that by proposing separate and distinct tariff provisions for information submission requirements and qualification criteria and including in its tariff the information currently contained in section 5.2.1 of the Transmission Planning BPM.<sup>79</sup>

The ISO also points out that the Commission approved the following qualification criteria that includes the phrase for the “life of the project” for ISO New England: “the

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<sup>76</sup> LS Power Protest at 16. Although LS Power provides no citation, the Commission’s statement is in P 152.

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

<sup>78</sup> April 18 Order at PP 149-50.

<sup>79</sup> *Id.* at P 149.

ISO will determine whether the Applicant is physically, technically, legally and financially capable of...operating and maintaining the facility consistent with good utility practice for the life of the project.<sup>80</sup> Interestingly, LS Power also protested ISO New England's use of the phrase "for the life of the project," and the Commission rejected its protest. The Commission found that ISO New England's "for the life of the project" phrase was reasonable...that ISO New England, in evaluating the qualifications of a transmission developer, consider whether the developer's existing resources and commitments provide sufficient assurances that the developer will be able to operate and maintain a facility for the life of the project.<sup>81</sup> As discussed *supra*, ISO New England's qualification criteria which uses the phrase for the "life of the project" is almost identical to the ISO's qualification criteria found in section 24.5.3.1. However, the ISO provides more detail regarding this standard in proposed sections 24.5.2.1 (information submission requirements) and 24.5.3.1 (project sponsor qualification) than does ISO New England in sections 4B.2 and 4B.3 of Attachment K, which were approved by the Commission. If the use of the phrase "for the life of the project" was just and reasonable for ISO New England, it must be just and reasonable for the ISO whose tariff includes more detail and specificity regarding this matter.

Finally, to the extent the Commission believes that the ISO's proposed tariff language is deficient, the appropriate remedy is to order a further compliance filing, not simply reject the provisions. However, the ISO submits that its compliance filing is not deficient with respect to this matter.

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<sup>80</sup> *ISO New England, Inc.*, 143 FERC at P 273, approving proposed tariff section 4B.3 of Attachment K.

<sup>81</sup> *Id.*

**B. The Commission Should Reject Neighboring Transmission Systems Protest Regarding The ISO'S Obligation to Pay For Upgrades On A Neighboring System Necessitated By The ISO's Approval Of New Transmission Facilities On The ISO-Controlled Grid**

In the August 20 Compliance Filing, the ISO revised section 24.10 to provide that the ISO may agree to bear the costs associated with transmission facilities in neighboring transmission systems needed for mitigation of an impact of new ISO transmission facilities. The section provides that the ISO would recover those costs through the ISO's regional access charge. SCE notes that the ISO's access charge only recovers the costs of facilities under the CAISO's operational control and only cost of participating transmission owners. SCE also asks the Commission to direct the ISO to revise the tariff to state that any ISO agreement to include the costs of upgrades in neighboring transmission systems in the ISO's transmission access charge be subject to FERC approval.<sup>82</sup>

That the tariff currently provides only for the recovery in the transmission access charge of costs under the ISO's operational control is not problematic, because the new tariff language in section 24.10 authorizes the recovery of the mitigation costs associated with upgrades on another transmission system as a result of the approval of a new transmission facility during the ISO's transmission planning process. It was the ISO's intention that mitigation costs associated with a required upgrade on a neighboring transmission upgrade that the ISO agrees to bear would be the responsibility of the approved project sponsor who will be constructing and owning the transmission facilities on the ISO-Controlled Grid that necessitated such upgrades.

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<sup>82</sup> *Id.* 2, 6-7.

Such mitigation costs would be recovered through the participating transmission owner's transmission revenue requirement, which in turn is always subject to approval by the Commission. To the extent the Commission believes that these provisions require further clarification to address SCE's concerns, the ISO can do so in a subsequent compliance filing. However, there is no need to expressly state in the tariff that any increases in a participating transmission owner's transmission revenue requirement or the transmission access charge to account for the costs of necessary mitigation upgrades on the system of a neighboring transmission provider requires Commission approval because the Federal Power Act and the Commission's regulations already require that any rate change be approved by the Commission and that it be found to be just and reasonable.

Neighboring Systems request clarification that if a transmission project proposed in the ISO is expected to have an adverse impact on the reliability of a neighboring system and neither the ISO nor the project sponsor agrees to pay for the necessary mitigation, the project cannot proceed.<sup>83</sup> They assert that such an interpretation would be consistent with (1) the Western Electricity Coordinating Council ("WECC") Project Coordination and Path Rating Processes, which the CAISO, as a member, has agreed to follow; (2) the mandatory Reliability Standards of the North American Electric Reliability Corporation ("NERC"); and (3) existing contracts.<sup>84</sup> They ask that the Commission reject the tariff language for which they seek clarification if their interpretation is not correct.

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<sup>83</sup> Neighboring Systems Comments at 1-2.

<sup>84</sup> *Id.* at 5.

ISO is concerned that the requested clarification may sweep too broadly. Pursuant to its agreements, the ISO adheres to the WECC path rating process. Not all potential impacts involve rated paths however. Section 24.10 requires the ISO to more broadly examine the impacts on neighboring regions and to coordinate with the neighboring systems with regard to mitigating any impacts on those systems. This coordination should ensure that the ISO's transmission plan will reflect how and what the ISO has done to address the needs of its planning region while accurately accommodating all impacts on other Planning Regions.<sup>85</sup> When such impacts are discovered or identified, the ISO is committed to redesign or establish operational control protocols within its planning region to mitigate the impact in the other planning region. The ISO does not, however, simulate contingencies in another planning region's system for purposes of assessing the performance and impact on another region's system as part of the development of its transmission plan, with the possible exception of a path rating. This is consistent with WECC policy and the ISO's current practice.

It is conceivable that while the ISO's transmission plan is compliant with these procedures, it could nonetheless result in certain changes in flow or voltage, or could have short-circuit or sub-synchronous resonance impacts on an adjacent planning region. The adjacent planning region should discover such issues when it completes its assessment of its own system and should provide that information to the ISO in conjunction with the ISO's transmission planning stakeholder process in which new transmission solutions are evaluated. Because it is a contingency on the neighboring

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<sup>85</sup> The ISO's planning process is open to all interested stakeholders, including neighboring transmission systems, and the ISO tariff (sections 24.2, 24.3.1, 24.8.4, 24.10) and BPM for Transmission Planning (sections 3.1.1, 7) require the ISO to coordinate with neighboring systems and attempt to obtain relevant information from them.

system that results in the compliance issue, it is the neighboring system's responsibility to address it. The ISO does not believe the requested clarification is necessary. The ISO complies with the WECC path rating process and the proposed tariff language in section 24.10 does not conflict with this obligation. Furthermore, the ISO tariff in numerous sections obligates the ISO to comply with WECC and NERC reliability standards. The ISO must also comply with all contracts to which it is a party and cannot modify them through a tariff amendment. If any neighboring system believes the ISO has violated these requirements, it can resort to the ISO's dispute process or to the Commission.

Neighboring Systems nonetheless contends that, in response to the April 18 Order, the ISO should have described in its compliance filing all contracts to which its participating transmission owners are parties that require mitigation of impacts on other systems.<sup>86</sup> The Commission imposed no such requirement in the Compliance Order. Rather, the Commission simply required the ISO to identify any impacts on other systems and indicate whether the CAISO has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within CAISO's transmission planning region.<sup>87</sup> The contracts between the participating transmission owners and others are not agreements of the ISO. Nonetheless, the ISO notes that if it designates a project sponsor to construct a transmission solution, nothing in that designation would relieve the project sponsor of

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<sup>86</sup> *Id.* at 12-14.

<sup>87</sup> April 18 Order at P 302. As indicated in the August 20 Compliance Filing (p. 18), the ISO has reviewed many other ISO/RTO filings to comply with Cost Allocation Principle No.4 and is not aware of any other ISO/RTO, who has provided such information, nor has the Commission required the filing of such information in these companies' compliance filings. Also, the April 18 Order and Order No. 1000 do not require the ISO to bear such mitigation costs, unless it voluntarily agrees to do so. *Id.* at P 282, citing Order No. 1000 at P 657.

any responsibility for mitigation costs that arises from a contract to which the project sponsor is a party. It would then be appropriate for the Project Sponsor to seek to include those costs in its transmission revenue requirement. Section 24.10 is not intended to address obligations arising under existing contracts to which the ISO is not a party.

In sum, with regard to section 24.10, the Commission directed the ISO to (1) revise its tariff to provide for identification of the consequences of a transmission facility selected in the regional transmission plan for purposes of cost allocation; and (2) address in the further compliance filing whether the CAISO region has agreed to bear the costs associated with any required upgrades in another transmission planning region and, if so, how such costs will be allocated within CAISO's transmission planning region.<sup>88</sup> With the clarification in response to SoCal Edison's concern, this is precisely what the further compliance filing did.

## **C. Response SCE's Limited Protest**

### **1. Financial Security**

In the April 18 Order, the Commission ordered the ISO to revise the qualification criteria for project sponsors to provide "sufficient detail to prospective transmission developers about what information they must provide for CAISO to determine their eligibility to finance, own, and construct a regional transmission facility." In response, the ISO revised tariff section 24.5.2.1 to provide a list of the financial information a project sponsor should provide. SCE contends that the revisions "lack sufficient detail to enable prospective project sponsors to know the financial security requirements and

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<sup>88</sup> *Id.*

alternatives, if any.”<sup>89</sup> SCE recommends tariff revisions to require the project sponsor to demonstrate its ability to meet the financial security requirements and, citing the credit rating and collateral requirements applicable to sponsors of merchant transmission facilities and recommends that the tariff be revised to include similar creditworthiness or collateral standards.<sup>90</sup>

In its October 11 Compliance Filing, the ISO did not include financial security requirements for project sponsors. The Commission did not direct the inclusion of such requirements in the April 18 Order. Similarly, the Commission has not imposed this obligation on other planning regions. The recommendation that the ISO add such requirements is beyond the scope of this compliance filing. SCE appears to recognize this, because it notes that the requirements could be developed through the ISO’s current stakeholder process on competitive transmission improvements.<sup>91</sup> Because there is no existing financial security requirement, there is no basis at this time for SCE’s suggestion that a project sponsor be required to demonstrate its ability to meet those requirements. A future stakeholder process is the appropriate forum to address such matters.

## **2. Reassessment**

SCE notes that the ISO proposes to revise ISO Tariff section 24.6.4 to specify that, in evaluating alternative solutions in the event that a project sponsor is unable to proceed with construction, the ISO must assess whether the transmission facility is still needed. SCE requests the Commission to direct the ISO to add a provision stating that

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<sup>89</sup> SCE Comments at 3.

<sup>90</sup> *Id.* at 4.

<sup>91</sup> *SCE Comments* at 3 n.6.

the ISO will abandon the project if it is no longer needed.<sup>92</sup> The ISO believes its ability to forgo a project that is no longer necessary is implicit in the requirement for reassessment of whether the project is still needed, but the ISO has no objection to adding the provision that SCE requests in a further compliance filing if the Commission so directs.

### **3. Clerical Error**

SCE points out an erroneous addition of the word “not” in revised section 24.6. The ISO agrees that the word should be deleted.

### **IV. CONCLUSION**

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

Respectfully submitted,

**By: /s/ Anthony J. Ivancovich**

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Dated October 4, 2013

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<sup>92</sup> *Id.* at 5.

## CERTIFICATE OF SERVICE

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

Dated at Folsom, CA on this 4<sup>th</sup> day of October, 2013.

*Anna Pascuzzo*

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