

138 FERC ¶ 61,075
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

California Independent System Operator Corporation Docket No. ER11-2705-002

ORDER ON COMPLIANCE FILING

(Issued February 1, 2012)

1. On December 2, 2011, the California Independent System Operator Corporation (CAISO) filed tariff revisions to comply with the Commission's October 20, 2011 order¹ concerning CAISO's revised transmission planning process (RTPP) (compliance filing). As discussed below, we accept in part and reject in part the compliance filing, subject to further modification, effective as requested.²

I. Background

2. On June 4, 2010, CAISO submitted tariff revisions to implement its RTPP.³ On December 16, 2010, the Commission conditionally accepted the RTPP.⁴ Under the RTPP, incumbent transmission owners maintain the responsibility to build: (1) reliability-driven projects;⁵ (2) projects to maintain the feasibility of long term congestion revenue rights (CRR);⁶ (3) location-constrained resource interconnection

¹ *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,062 (2011) (October 20, 2011 Order).

² Tariff section 24.4.6.2 and section 24.4.6.4 are accepted, effective December 2, 2011, subject to further modification. Tariff section 24.5.2.3 (b) is accepted, effective December 20, 2010.

³ CAISO June 4, 2010 RTPP Proposal, Docket No. ER10-1401-000.

⁴ *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 (2010) (RTPP Order).

⁵ See CAISO Tariff section 24.4.6.2.

⁶ See CAISO Tariff section 24.4.6.4. CRRs are financial instruments made available through allocation or auction that enable CRR holders to manage their exposure

(continued...)

projects;⁷ and (4) large generator interconnection procedure network upgrades within their service territory.⁸ Incumbent transmission owners do not have the responsibility to build and own economic and policy-driven elements included in CAISO's comprehensive transmission plan.⁹ Instead, both incumbents and non-incumbents can propose to construct and own these economic and policy-driven elements, and CAISO considers a set of factors outlined in the tariff to pick among competing proposals.¹⁰ The Commission directed CAISO to submit a compliance filing that, among other things, clearly delineated the boundaries for the categories of transmission projects that meet reliability needs or maintain the feasibility of long term CRRs for which the incumbent transmission owner retains the responsibility to build.

3. In the RTPP Order, the Commission noted that CAISO had clarified that, if a transmission upgrade solves a reliability or long-term CRR feasibility problem while simultaneously providing additional benefits, the upgrade would no longer fall within the narrow definition of a reliability-driven or long-term CRR feasibility project that an incumbent transmission owner would have the exclusive responsibility to build.¹¹ The Commission found that this clarification was an "important distinction" and therefore directed CAISO to make a compliance filing to include language in the tariff "to clarify that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project."¹² The Commission gave the same directive regarding long-term CRR

to congestion costs in a locational marginal pricing market. CAISO is obligated to ensure the continued feasibility of long-term CRRs that it allocates over the length of their terms and to identify any transmission additions or upgrades required to do so in its RTPP, including demand-side management, remedial action schemes, constrained-on generation, interruptible load, and reactive support.

⁷ See CAISO Tariff section 26.6.

⁸ See CAISO Tariff section 24.4.6.5.

⁹ Transmission "elements" identified in the comprehensive transmission plan are transmission facilities, additions, or upgrades that are either policy-driven or economically-driven and subject to an open solicitation process for a project sponsor to build such elements. RTPP Order, 133 FERC ¶ 61,224 at P 10.

¹⁰ See *id.* P 202.

¹¹ *Id.* P 60, 71. See also CAISO September 8, 2010 Initial Post-Technical Conference Comments, Docket No. ER10-1401-000, *et al.*, at 10-11.

¹² *Id.* P 60.

feasibility projects that had additional benefits.¹³ The Commission also directed CAISO to include tariff language addressing how CAISO will identify the existence of additional benefits.¹⁴

4. On January 18, 2011, CAISO filed a motion for clarification of the RTPP Order. CAISO argued that the Commission mischaracterized the clarification CAISO made regarding reliability-driven projects that also provide additional benefits. CAISO stated that it meant to explain that CAISO could not deliberately expand the scope of a potential reliability-driven project, after it was initially approved, to address economic or policy needs and still deem it a reliability project. Thus, CAISO asked the Commission to clarify that a reliability-driven or long-term CRR feasibility project that has incidental economic or policy benefits, but does not meet the criteria to be approved as an economic or policy-driven transmission element, does not lose its character as a reliability or long-term CRR feasibility project. CAISO also sought a similar clarification that an approved economic or policy-driven transmission element that also eliminates an identified reliability need or ensures the feasibility of long-term CRRs does not, because of that fact, lose its character as an economic or policy-driven transmission element.¹⁵

5. On January 19, 2011, CAISO submitted its compliance filing. In its compliance filing, CAISO revised tariff sections 24.4.6.2 and 24.4.6.4 consistent with its motion for clarification.¹⁶

6. In the October 20, 2011 Order, the Commission denied CAISO's motion for clarification. The Commission explained that it had relied on CAISO's statements to find that the RTPP was just and reasonable, reiterating its finding from the RTPP Order that "the distinction between a project that provides only reliability benefits and a project that provides reliability benefits while simultaneously providing additional benefits [is] an important distinction."¹⁷ The Commission found that CAISO's clarification of its statements on rehearing would be contrary to that important distinction. Accordingly, the

¹³ *Id.* P 71.

¹⁴ *Id.* P 60, 71.

¹⁵ CAISO January 18, 2011 Motion for Clarification, Docket No. ER10-1401-001 at 9-10.

¹⁶ CAISO January 19, 2011 Compliance Filing, Docket No. ER11-2705-000 at 3-5 (Compliance Filing).

¹⁷ October 20, 2011 Order, 137 FERC ¶ 61,062 at P 20 (citing RTPP Order, 133 FERC ¶ 61,224 at P 60, 71).

Commission rejected CAISO's proposed tariff sections 24.4.6.2 and 24.4.6.4 as unjust and unreasonable, and directed CAISO to revise its tariff as directed in the RTPP Order.¹⁸

7. On November 17, 2011, the Commission granted an extension of time to comply with the Commission's directives until December 2, 2011. On December 2, 2011, CAISO submitted its compliance filing.

II. Notice and Responsive Pleadings

8. Notice of the compliance filing was published in the *Federal Register*, 76 Fed. 77,221 (2011), with interventions and comments due on or before December 23, 2011. A timely motion to intervene was filed by Pattern Transmission LP. Timely motions to intervene and comments were filed by Pacific Gas and Electric Company (PG&E) and Southern California Edison (SoCal Edison). A timely motion to intervene and protest was filed by the Western Independent Transmission Group (WITG). The Public Utilities Commission of California filed a notice of intervention. CAISO filed an answer.

III. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept CAISO's answer and will, therefore, reject it.

B. CAISO Compliance Filing

1. Proposed Tariff Revisions

10. CAISO proposes criteria that it states will distinguish reliability or long-term CRR feasibility projects that provide demonstrable public policy or economic benefits from those that provide only incidental public policy or economic benefits. With regard to identifying additional public policy benefits, CAISO proposes to evaluate eligible reliability projects and long-term CRR feasibility projects to determine if they provide public policy benefits in accordance with the procedures and criteria specified in tariff

¹⁸ *Id.*

section 24.4.6.6.¹⁹ Thus, a transmission upgrade or addition that is identified as a reliability project or long-term CRR feasibility project is found to be consistent with the criteria listed in section 24.4.6.6 or if it eliminates the need for or reduces the size or scope of what would otherwise be a policy-driven transmission element, it will be subject to competitive solicitation.²⁰ CAISO claims that requiring CAISO to re-categorize reliability projects that are not consistent with the criteria and standards for policy-driven elements set forth in tariff section 24.4.6.6 would not result in an orderly and cost-effective planning process for fulfilling public policy directives.²¹

11. With regard to economic benefits, CAISO asserts that almost every new transmission facility will provide some unavoidable, minimal economic benefits. CAISO argues that without a reasonable threshold by which economic benefits are deemed meaningful, no reliability project would retain its classification as a reliability project. Thus, CAISO will re-categorize a reliability-driven project or long-term CRR feasibility project and make it subject to a competitive solicitation process as an economic project if the economic benefits of the project are equivalent to or greater than ten percent of the cost of the project.²² CAISO contends that ten percent is an appropriate threshold because it is low enough to broadly expand the pool of resources eligible for competitive solicitation, but high enough to exclude projects with *de minimis* economic benefits.²³

12. CAISO notes that, consistent with the RTPP Order, the project selection criteria, as described in tariff section 24.5.2, will apply to reliability projects that provide policy or economic benefits in the same manner as they apply to transmission elements initially

¹⁹ Pursuant to CAISO Tariff section 24.4.6.6, policy-driven elements are those transmission upgrades and additions that are needed to meet state or federal policy requirements or directives as specified in the study plan.

²⁰ Compliance Filing at 6-7.

²¹ *Id.* at 6.

²² CAISO conducts high priority economic planning studies and any other studies it deems necessary to identify if any upgrades or additions provide economic benefits that address (a) congestion identified by the CAISO in the congestion data summary published for the applicable transmission planning process cycle and the magnitude, duration, and frequency of that congestion; (b) local capacity area resource requirements; (c) congestion projected to increase over the planning horizon used in the transmission planning process and the magnitude of that congestion; or (d) integration of new generation resources or loads on an aggregated or regional basis. CAISO Tariff section 24.4.6.7.

²³ *Id.* at 7-8.

designated as policy-driven or economically driven. However, CAISO proposes to limit the proposed tariff revisions to projects that are eligible for cost recovery under CAISO's high voltage transmission access charge (200 kV and above). CAISO explains that although low voltage facilities are included in the CAISO planning process, the costs of such facilities are not included in the system-wide transmission access charge because they do not provide system-wide benefits. Thus, CAISO proposes to exclude low-voltage facilities because they do not provide the type of region-wide, policy or economic benefits that CAISO understands to be the Commission's concern. In that regard, CAISO asserts that the proposed limitation is consistent with the principles in Order No. 1000,²⁴ which eliminates federal rights of first refusal for projects that are eligible for regional cost allocation, but not for local facilities.²⁵ Further, CAISO states that applying the tariff revisions to low voltage facilities would result in inconsistent application of the provision and inequitable treatment of CAISO's participating transmission owners because not all participating transmission owners have turned over their low voltage facilities to CAISO's operational control.²⁶

13. CAISO requests an effective date of December 2, 2011 for the proposed tariff revisions so that they can apply to the 2011/2012 planning cycle. CAISO states that it has completed the 2010/2011 transmission plan and assigned construction responsibility for reliability projects in May 2011. CAISO argues that a December 2, 2011 effective date is most consistent with the Federal Power Act (FPA) and precedent regarding the filed rate doctrine and rule against retroactive ratemaking.²⁷ CAISO contends that, although the compliance filing involves neither a rate refund nor a rate increase, it is still subject to the filed rate doctrine and rule against retroactive ratemaking because the Commission did not "fix" a rate or otherwise provide sufficient notice of the nature of the compliance tariff provisions to permit their retroactive application. CAISO asserts that the Commission did not in any way specify or prescribe the standards or methodology that would apply in determining whether a reliability-driven project should be reclassified as a public policy or economically driven transmission element. CAISO claims that the statements of general policy contained in the RTPP Order and October 20, 2011 Order do

²⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, Order No. 1000, 76 Fed. Reg. 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011).

²⁵ *Id.* P 313.

²⁶ Compliance Filing at 8-9.

²⁷ *Id.* at 10.

not provide sufficient notice for retroactive application of compliance filings consistent with that policy.²⁸

14. CAISO contends that, even if the Commission were to determine that notice was sufficient to permit retroactive effectiveness, the Commission retains the discretion to apply the new provisions prospectively.²⁹ CAISO asserts that it is the Commission's general policy to make rate design changes effective prospectively, because market participants cannot revisit economic decisions that relied on the existing rate design. CAISO states that here, transmission owners have already incurred significant costs by relying on the authorizations issued in the transmission plan for 2010/2011. Further, CAISO asserts that revisiting the assignment of construction responsibility at this time could potentially cause critical in-service dates for the projects to be missed, jeopardizing grid reliability.³⁰

15. CAISO also submits modifications to section 24.5.2.3(b) to allow 120 days rather than 60 days for seeking siting approval.

2. Comments and Protests

16. PG&E supports CAISO's proposed tariff revisions and urges the Commission to accept the compliance filing.³¹ SoCal Edison supports CAISO's proposed revisions with the modifications described in its original comments on the RTPP proposal and also requests that the Commission accept the compliance filing with two separate effective dates: (1) a December 20, 2010 effective date for section 24.5.2.3, which will allow 120 days for siting approval; and (2) a December 2, 2011 effective date for the remainder of the revisions, as requested by CAISO.³²

17. WITG argues that CAISO has failed to comply with the Commission's directives in both the RTPP Order and the October 20, 2011 Order and requests that the Commission reject the compliance filing. WITG asserts that the Commission's

²⁸ *Id.* at 12 (citing *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 580 (D.C. Cir. 1990)).

²⁹ *Id.* (citing *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218, at P 24 (2006); *PJM Interconnection, L.L.C.*, 105 FERC ¶ 61,123, at P 67 (2003) (directing that certain tariff provisions under PJM's Regional Transmission Expansion Plan would not become effective until the date of the Commission's order on rehearing and compliance)).

³⁰ *Id.* at 12-13.

³¹ PG&E December 23, 2011 Comments.

³² SoCal Edison December 23, 2011 Comments.

acceptance of the RTPP was premised expressly on CAISO revising the tariff to clarify that a transmission upgrade that solves a reliability problem or maintains the feasibility of long-term CRRs while providing additional benefits would be subject to the competitive solicitation process. WITG maintains that the RTPP is not just and reasonable in the absence of such a clarification.³³

18. WITG contends that CAISO's proposed 10 percent threshold is a "purely arbitrary delineation" between projects that are subject to the competitive solicitation process and those that incumbent transmission owners have the exclusive right to build. WITG further contends that CAISO offers no support for this proposal other than the conclusory statement that ten percent is neither too high nor too low. Moreover, WITG asserts that the Commission already rejected, in the October 20, 2011 Order, CAISO's argument that the Commission did not intend to require CAISO to re-categorize reliability-driven projects with incidental economic benefits.³⁴

19. WITG also argues that CAISO's proposed revisions are inconsistent with the Commission's finding in Order No. 1000 that the elimination of federal rights of first refusal is necessary to ensure just and reasonable rates for Commission-jurisdictional transmission services. WITG contends that, under RTPP, the exclusive right for incumbent transmission owners to build certain transmission projects, and CAISO's expansion of the categories of projects that are exclusively the right of incumbent transmission owners to build, is clearly inconsistent with the requirements of Order No. 1000. WITG notes that despite establishing a compliance period, the substantive provisions of Order No. 1000 went into effect on October 1, 2011. Thus, WITG requests that the Commission require CAISO to revise its tariff to eliminate the exclusive right of incumbent transmission owners to construct any facilities that have been selected in a regional transmission plan for purposes of cost allocation, regardless of how those projects are categorized (i.e., reliability-driven, or for economic or public policy reasons). WITG insists that the Commission must direct CAISO to amend tariff sections 24.4.6.2 and 24.4.6.4 to clarify that any transmission project found to provide any level of economic or policy benefits must be categorized as an economic or public policy project that is not subject to an exclusive right to build by the incumbent utility.³⁵

³³ WITG December 23, 2011 Protest at 4-5.

³⁴ *Id.* at 5-6 (citing October 20, 2011 Order, 137 FERC ¶ 61,062 at P 20).

³⁵ *Id.* at 6-8.

3. Commission Determination

20. The Commission accepts in part, and rejects in part, CAISO's compliance filing, to be effective as requested.³⁶ We find that CAISO's proposed revisions distinguish projects that solve a reliability need or maintain long-term CRR feasibility and also have additional benefits, consistent with the Commission's directive in the RTPP Order and the October 20, 2011 Order. We also find that the proposed revisions clarify how the additional benefits will be measured within each transmission planning cycle.

21. Specifically, the Commission finds that CAISO's proposed revisions make the required clarification regarding the criteria for determining when a reliability or long-term CRR project will be subject to competitive solicitation as a policy-driven project. We find that CAISO makes a reasonable and practicable distinction by establishing that a reliability or long-term CRR project will be open for competitive solicitation as a policy-driven project if the project is found to be consistent with the criteria set forth in section 24.4.6.6³⁷ or otherwise resolves or reduces the need for an identified policy-driven need.³⁸

22. We also find that CAISO's proposed revisions establish an acceptable threshold for measuring additional economic benefits by specifying that if the economic benefits of a reliability or long-term CRR project are equal to or greater than ten percent of the costs of the project, the project will be open to competitive solicitation as an economic project.³⁹ While the Commission in its prior RTPP Orders did not explicitly require a cutoff such as the ten percent threshold proposed by CAISO, the Commission did not rule out such a measure. We find that this ten percent threshold strikes an appropriate balance between requiring projects with additional benefits to fall outside the reliability or long-term CRR feasibility categories, while at the same time not forcing projects with inconsequential benefits to be subject to open bidding.

23. We disagree with WITG's argument that the ten percent threshold should be rejected as an unsupported and arbitrary delineation. The Commission did not specify in the RTPP Order or the October 20, 2011 Order how CAISO should identify additional

³⁶ Tariff section 24.4.6.2 and section 24.4.6.4 are accepted, effective December 2, 2011, subject to further modification. Tariff section 24.5.2.3 (b) is accepted, effective December 20, 2010.

³⁷ The criteria for identifying policy-driven projects are those that meet "state and federal policy requirements or directives." Tariff section 24.4.6.6.

³⁸ Compliance Filing at 6-7; proposed Tariff sections 24.4.6.2, 24.4.6.4.

³⁹ Compliance Filing at 7-8; proposed Tariff sections 24.4.6.2, 24.4.6.4.

benefits for purposes of determining whether a reliability or long-term CRR project should be reclassified as an economic project. As discussed above, we find that the ten percent threshold represents a reasonable balance for delineating project categories. Moreover, WITG has not shown that CAISO's proposed threshold is unjust, unreasonable, unduly discriminatory, or otherwise inconsistent with the Commission's directives in the RTPP Order and October 20, 2011 Order.

24. We also reject WITG's request to require CAISO to revise the RTPP to eliminate incumbent transmission owners' exclusive right to construct any facilities selected in a regional transmission plan for purposes of cost allocation, regardless of how those facilities are categorized. First, we find that this request constitutes an impermissible collateral attack on the RTPP Order. In the RTPP Order, the Commission accepted CAISO's proposed tariff provisions regarding reliability and long-term CRR projects, finding that CAISO's proposed tariff sections 24.4.6.2 and 24.4.6.4 did not substantively change CAISO's existing tariff provisions, including the incumbent transmission owner's right to build, which the Commission previously found to be just and reasonable.⁴⁰ The Commission also declined a request to initiate an investigation under FPA section 206 to determine whether the existing right of first refusal for reliability and long-term CRR projects remained just and reasonable, and found that the issue would be more properly addressed in the rulemaking proceeding that resulted in Order No. 1000.⁴¹ Thus, the proper forum for WITG to make its request would have been on rehearing of the RTPP Order, which WITG did not request.

25. Second, we find that WITG's request is a collateral attack on Order No. 1000. Although Order No. 1000 requires the elimination of federal rights of first refusal for projects selected in a regional transmission plan for purposes of cost allocation, it does so on a prospective basis. Order No. 1000 compliance filing with respect to elimination of federal rights of first refusal for projects selected in a regional transmission plan for purposes of cost allocation are due on October 11, 2012.⁴² If WITG objected to the compliance date set by the Commission, either in general or specifically with respect to CAISO, its remedy was to request rehearing of Order No. 1000 on that basis. It did not. Further, we find that granting WITG's request would effectively require us to apply Order No. 1000 to CAISO in an unduly discriminatory manner. The fact that CAISO had pending revisions to its transmission planning process on the effective date of Order No. 1000 does not justify holding CAISO to an abbreviated compliance schedule when other public utility transmission providers have the full 12 months.

⁴⁰ See RTPP Order, 133 FERC ¶ 61,224 at P 59, 68.

⁴¹ *Id.* P 62, 69-70.

⁴² Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 256, 268, 792.

26. For the foregoing reasons we accept CAISO's proposed revisions that identify additional benefits and clarify that reliability and long-term CRR projects that are found to provide such additional benefits will be subject to competitive solicitation as economic or policy-driven projects.

27. However, the Commission rejects CAISO's revisions to limit the applicability of these tariff revisions to projects eligible for cost recovery under CAISO's high voltage transmission access charge (i.e., those of 200 kV and above) as beyond the scope of the compliance filing. The Commission's directives in the RTPP Order and October 20, 2011 Order dealt solely with the issue of identifying and reclassifying reliability or long-term CRR projects that provide additional economic or policy benefits. The Commission did not direct CAISO to further distinguish between high-voltage and low-voltage facilities in making its determination about which projects would be open to competitive solicitation. If CAISO would like to include this distinction in its tariff, it must submit a separate section 205 filing or, if appropriate, include this proposal in its Order No. 1000 compliance filing. We therefore direct CAISO to submit a compliance filing within 15 days of the date of this order removing the language in proposed tariff sections 24.4.6.2 and 24.4.6.4 that limits applicability of the revisions accepted here to those facilities eligible for cost recovery under CAISO's high voltage transmission access charge.

28. Finally, we also accept CAISO's change to section 24.5.2.3 (b) to allow 120 days rather than 60 days for seeking siting approval as in compliance with the Commission's direction in the October 20, 2011 Order, effective December 20, 2010, as requested by CAISO.⁴³

The Commission orders:

(A) CAISO's compliance filing is hereby accepted in part and rejected in part, subject to modification, to be effective December 20, 2010 and December 2, 2011, as discussed in the body of this order.

⁴³ While the Commission accepts the effective dates requested by the CAISO, it makes no determination with respect to CAISO's arguments regarding notice for retroactive application of CAISO's compliance filing.

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(B) CAISO is directed to make a compliance filing within 15 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)

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