



**California ISO**  
Shaping a Renewed Future

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**FERC Order No. 1000  
Compliance Filing Requirements**

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**Draft Final Proposal**

July 10, 2012  
Market and Infrastructure Development

FERC Order No. 1000 Compliance Filing Requirements  
Draft Final Proposal

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## 1. Executive summary

On July 21, 2011, the Federal Energy Regulatory Commission (FERC) issued an order in Docket No. RM10-23-000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities* (Order No. 1000).<sup>1</sup> On May 17, 2012, FERC issued an order on rehearing and clarification in the same docket (Order No. 1000-A).<sup>2</sup> Order No. 1000 and Order No. 1000-A<sup>3</sup> reform FERC's electric transmission planning and cost allocation requirements for public utility transmission providers.

Order No. 1000 builds on the reforms of FERC Order No. 890 with the objective of correcting perceived remaining deficiencies with respect to transmission planning processes and cost allocation methods. Accordingly, Order No. 1000 specifies certain requirements in three primary topic areas: (1) regional planning and cost allocation; (2) non-incumbent transmission developers; and, (3) interregional planning and cost allocation. The focus of this draft final proposal is on the first two of these requirements; more specifically, on the tariff amendments necessary to meet the compliance requirements for regional planning and cost allocation and non-incumbent transmission developer requirements, which are to be filed with FERC by October 11, 2012.

The steps the ISO will take to develop a framework for compliance with interregional planning and cost allocation, for which tariff amendments are to be filed with FERC by April 11, 2013, will be the subject of later efforts in this same stakeholder initiative. These steps are not a subject of this draft final proposal.

In developing the tariff amendments necessary to meet the compliance requirements for regional planning and cost allocation and non-incumbent transmission developers, the ISO is relying on the existing ISO transmission planning process, existing tariff provisions, and existing business practice manuals to the greatest extent possible.

With regard to the October 11, 2012, compliance requirements, the ISO believes that its existing tariff provisions achieve many of the requirements set out in Order No. 1000 for regional planning and cost allocation as the term *regional* is used in Order No. 1000.<sup>4</sup> In particular, the

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<sup>1</sup> 136 FERC ¶61,051.

<sup>2</sup> 139 FERC ¶61,132.

<sup>3</sup> For purposes of convenience in this draft final proposal, the ISO will generally use the term Order No. 1000.

<sup>4</sup> The term "regional" differs in use in FERC Order No. 1000 than in conventional use in the western interconnection. Within the regulatory framework established by FERC in Order No. 1000, the ISO considers itself to be a "regional planning entity" planning for the needs of its footprint defined by the transmission facilities placed under its operational control. Planning activities with other regional planning entities inside the western interconnection would be considered interregional planning activities. However, for other purposes prior to Order No. 1000 and within the framework established by the Western Electricity Coordinating Council, the western interconnect itself was considered a region, and various entities, including the ISO, participating in coordinated planning activities were characterized as "sub-regional" planning groups. The terminology used in this draft final proposal is based on the FERC Order No. 1000 unless expressly noted otherwise.

ISO's planning process for transmission additions and upgrades inside the ISO's footprint already contains many of the provisions required by Order No. 1000, most notably:

- A framework for developing and approving policy-driven transmission projects which address the needs of federal and state policy requirements;
- A competitive solicitation process that provides an opportunity for non-incumbent transmission developers to propose to build and own transmission elements which the ISO finds to be needed in its transmission planning process;
- Development of an annual conceptual statewide transmission plan ensuring coordination on a broader basis; and
- A cost allocation methodology applied across the ISO's regional footprint.

The ISO believes its existing tariff to be largely compliant with Order No. 1000. However, based on its review of Order No. 1000 as well as on two rounds of input from stakeholders in this initiative, the ISO has concluded that there may be some existing provisions that do not align completely with the detailed regional requirements enunciated in Order No. 1000.

Consequently, some tariff modifications may be necessary. The following sections of this paper describe these requirements in more detail, explain whether the existing tariff is compliant with a requirement, and for those that are not, provide the ISO's proposal.

## 2. Stakeholder process and next steps

The ISO launched this stakeholder initiative to develop possible tariff revisions necessary to comply with the requirements of Order No. 1000 when it posted an issue paper on February 29, 2012. The issue paper was followed by a stakeholder meeting on March 15 and written comments from stakeholders on March 26. Based on the initial stakeholder input received, the ISO produced a straw proposal posted on May 22, held a stakeholder web conference on June 5, and received the latest round of stakeholder input on or about June 15. The present proposal is a work product that benefits from these two rounds of stakeholder interaction and input.

The ISO intends to take this initiative to its Board of Governors for approval at their September 2012 meeting. Accordingly, the ISO proposes the following dates for the remaining steps of the stakeholder process in order to complete the compliance filing to be filed with FERC by October 11, 2012:

February 29	Post issue paper <b>[completed]</b>
March 15	Stakeholder meeting <b>[completed]</b>
March 26	Stakeholder comments due <b>[completed]</b>
May 22	Post straw proposal <b>[completed]</b>
June 5	Stakeholder web conference <b>[completed]</b>
June 15	Stakeholder comments due <b>[completed]</b>
July 10	Post draft final proposal <b>[completed]</b>
July 17	Stakeholder web conference
July 26	Final stakeholder comments due on draft final proposal
TBD	Post draft tariff language

TBD	Stakeholder comments due on draft tariff language
TBD	Stakeholder call on draft tariff language
September 13-14	Board of Governors meeting
October 11	FERC filing

A schedule for completing the interregional activities filing will be the subject of later efforts in this same stakeholder initiative and is not a subject of this paper.

### 3. Scope of initiative

Order No. 1000 specifies certain requirements in three primary topic areas: (1) regional planning and cost allocation; (2) non-incumbent transmission developers; and, (3) interregional planning and cost allocation. The scope of this initiative covers all three of these topic areas.

The focus of this draft final proposal, however, is on the first two of these topic areas; more specifically, the tariff amendments necessary to meet the compliance requirements for regional planning and cost allocation and non-incumbent transmission developer requirements, which are to be filed with FERC by October 11, 2012.

The steps the ISO will take to develop a framework for compliance with interregional planning and cost allocation, for which tariff amendments are to be filed with FERC by April 11, 2013, will be the subject of later efforts in this same stakeholder initiative and is not a subject of the present paper.

In developing the tariff amendments necessary to meet the regional compliance requirements, the ISO intends to rely on the existing ISO transmission planning process, existing tariff provisions, and existing business practice manuals to the greatest extent possible. In other words, the ISO intends to build upon rather than revisit the progress the ISO and stakeholders have already made on many of the substantive issues with which Order No. 1000 is concerned. The ISO's revised transmission planning process, developed through a stakeholder process and approved by FERC in 2010, already addresses many of the requirements of Order No. 1000 in categories (1) and (2) above. Although the ISO is continually seeking to further improve its infrastructure-related policies and processes, there are ongoing and future stakeholder initiatives for doing so. Thus the ISO's compliance with Order No. 1000 is not intended to serve as a forum for revisiting or redesigning elements of the ISO's transmission planning process that the ISO expects to be largely compliant with Order No. 1000.

It is on this foundation that the ISO presents its draft final proposal for stakeholder consideration and comment.

### 4. Draft Final Proposal

The focus of this draft final proposal is on the tariff amendments necessary to meet the compliance requirements for regional planning and cost allocation and non-incumbent transmission developer requirements, which are to be filed with FERC by October 11, 2012.

The following sections of this paper describe these requirements in more detail, explain whether the existing tariff is compliant with a requirement, and for those that are not, provide the ISO's proposal.

Many stakeholders requested clarification on whether the ISO proposal would apply only to new transmission facilities or whether existing transmission facilities would also be affected. In response, the ISO clarifies here that any tariff amendments made to comply with Order Nos. 1000 and 1000-A would apply only to new transmission facilities on a going forward basis. Existing transmission facilities and facilities that have already been approved through the ISO's transmission planning process or generator interconnection procedures would not be affected. Consistent with paragraph 65 of Order No. 1000, the requirements of the final rule are only intended to apply to new transmission facilities, which are those transmission facilities that are subject to evaluation within a public utility transmission provider's local or regional planning process after the effective date of the public utility transmission provider's filing adopting the relevant requirements of the final rule. Stated differently, the requirements of the final rule will apply to the evaluation of any new transmission facility that occurs after the effective date of the ISO's compliance filing to adopt the transmission planning and cost allocation reforms adopted in Order No. 1000.

In Order No. 1000, FERC recognized that the final rule may be issued in the middle of a transmission planning cycle and directed transmission providers to explain in their respective compliance filings how they intend to implement the requirements of the final rule. The ISO's filing to comply with Order 1000 will not occur until October 11, 2012, which falls in the middle of the ISO's 2012-2013 planning process. The ISO cannot predict the amount of time that FERC will need to evaluate the ISO's compliance filing, and recognizes that FERC's review time will likely be affected by the degree of consensus regarding the ISO's filing, as well as the sheer number of compliance filings that FERC will receive on October 11, 2012. The ISO therefore expects that it would be required to apply any compliance filing tariff amendments to new transmission projects or elements found to be needed in the 2012-2013 transmission planning process, provided that FERC issues an order approving the ISO's compliance filing without significant modification by February 2013. Receiving a FERC order beyond that point would make it impractical to apply the changes proposed in the present paper to new projects or elements approved in the 2012-2013 transmission plan, as that plan must be submitted to the ISO Board of Governors for approval in March 2013 and any competitive solicitation process would commence immediately following Board approval. Therefore, if FERC's order on the ISO's compliance filing is issued after February 1, 2013, or FERC issues an earlier order materially modifying the ISO tariff amendments, the ISO expects that the proposed changes will apply to new projects or elements approved in the 2013-2014 transmission planning process.

To the extent stakeholders desire to implement the Order No. 1000 reforms in the current (2012-2013) planning cycle, we are committed to working with stakeholders to seek consensus on all of the issues, which would probably facilitate issuance of a FERC order in a timely manner.

## 4.1. Regional planning requirements

### 4.1.1. Participation in a regional transmission planning process

Each public utility transmission provider must participate in a regional transmission planning process that satisfies the transmission planning principles of Order No. 890 and produces a regional transmission plan.<sup>5</sup> According to Order No. 1000, all ISOs and RTOs conduct a regional planning analysis and develop the type of regional transmission plan contemplated by the rule.<sup>6</sup> Therefore, the ISO is a regional planning entity and the participating transmission owners in its footprint can be considered to be participants in an Order No. 890/1000 compliant transmission planning process. The ISO's transmission planning process has already been found to satisfy the Order No. 890 planning principles. Because the ISO's existing structure and governance are consistent with the structure of a regional planning entity, compliance with this requirement of Order No. 1000 does not require any reforms.

### 4.1.2. Consideration of public policy requirements

Local and regional transmission planning processes must consider transmission needs driven by public policy requirements established by state or federal laws or regulations. Each public utility transmission provider must establish procedures to identify transmission needs driven by public policy requirements and evaluate proposed solutions to those transmission needs.<sup>7</sup>

At about the same time that FERC was considering the issues identified in its Notice of Proposed Rulemaking (NOPR) released on June 17, 2010<sup>8</sup>, the ISO had submitted for approval its revised transmission planning process (RTPP) proposal to address the need to plan transmission infrastructure to support California's ambitious renewable portfolio standard (RPS) policy goals, and to establish a planning framework that would enable it to address potential future public policy directives and requirements that affect infrastructure needs. The ISO filed tariff language substantially modifying its transmission planning process, including new provisions for identifying and approving public policy driven transmission additions and upgrades, on June 4, 2010. FERC issued its order conditionally approving those changes on December 16, 2010, enabling the ISO to implement the new provisions to a limited extent in the last few months of the 2010-2011 planning process and more fully in the 2011-2012 process, and the final compliance filing was approved on February 1, 2012. The ISO believes that the approved tariff changes establishing a public policy category of transmission fully satisfy the requirements of Order No. 1000.

The ISO's 2010 revisions to the transmission planning process created a "public policy-driven" category of transmission elements that enables the ISO to identify and approve additions and upgrades needed to meet state and federal policy requirements and clearly delineate these upgrades from existing categories of transmission. These revisions established a process for specifying the public policy requirements the ISO will consider in a given planning cycle,

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<sup>5</sup> Paragraph 68, Order No. 1000.

<sup>6</sup> *Id.* Paragraph 80.

<sup>7</sup> *Id.* Paragraph 203

<sup>8</sup> The issues addressed in Order No. 1000 and Order No. 1000-A were identified in this particular NOPR.

identifying the appropriate transmission additions and upgrades to meet the public policy requirements, and allowing stakeholders to actively participate in the public policy aspects of the planning process. The ISO believes that the policy-driven transmission category in its existing tariff meets or exceeds the requirements set forth in Order No. 1000.

One stakeholder, the Sierra Club, disagrees and expresses concerns about stakeholder participation in the ISO's consideration of public policy requirements. Specifically, Sierra Club states that the ISO "unduly limits" the scope of public policy requirements to the 33% RPS statutory mandate.<sup>9</sup> The Sierra Club also argues that the existing tariff erroneously focuses solely on compliance with RPS objectives, even though there are other policy objectives that impact the State's approach to clean energy. The Sierra Club also suggests that the ISO's planning process does not permit stakeholders to participate in the identification of the public policies that should be assessed in the planning process.

The Sierra Club does not correctly characterize the ISO's current transmission planning process. While recent planning cycles have identified the 33% RPS mandate as a public policy directive that must be considered, the transmission planning tariff provisions do not limit the evaluation of policy directives and requirements to the RPS goals. Indeed, the transmission planning tariff provisions were developed explicitly to be flexible enough to support potential future public policy requirements, and as such do not specifically mention the RPS mandate. Also, contrary to the Sierra Club's claims, the ISO's transmission planning process provides numerous opportunities for stakeholders to participate in the identification of public policy objectives that the ISO should consider. The opportunity to identify the public policy requirements and directives to be considered in each year's transmission planning process commences immediately at the start of each transmission planning cycle. Phase 1 of the transmission planning process, which the ISO conducts in the first quarter of each calendar year and includes stakeholder review and input, is where the ISO develops the Uniform Planning Assumptions and the Study Plan. Among the specified inputs into that process are policy requirements and directives, as appropriate including programs initiated by state and federal regulatory authorities.<sup>10</sup> The tariff then requires that the Unified Planning Assumptions and Study Plan (which form the foundation for each transmission planning study process) identify state or federal requirements or directives that the ISO will utilize to identify policy-driven transmission elements.<sup>11</sup> Most importantly, the Unified Planning Assumptions and Study Plan are developed in an open stakeholder process that provides stakeholders multiple opportunities to provide input regarding what policy directives and requirements the ISO should consider during the planning process.<sup>12</sup> Thus, during the development of the Unified Planning Assumptions and Study Plan stakeholders have ample opportunity to recommend consideration of the other policy directives Sierra Club identifies in its comments.<sup>13</sup>

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<sup>9</sup> Sierra Club comments at 1.

<sup>10</sup> ISO Tariff Section 24.3.1(g).

<sup>11</sup> ISO Tariff Section 24.3.2(i).

<sup>12</sup> ISO Tariff Section 24.3.3.

<sup>13</sup> Sierra Club comments at 4-9.



Phase 2 of the transmission planning process also provides opportunities for stakeholders to comment on how state policy initiatives should be taken into account in the ISO's determination of what transmission is needed to meet state or federal policy requirements or directives. For example, section 24.4.4 of the tariff requires the ISO to post a conceptual statewide plan that identifies, among other things, potential transmission upgrade or addition elements needed to meet state and federal policy directives and requirements. Stakeholders are given the opportunity to submit comments on the conceptual statewide plan and suggest alternative solutions. Section 24.4.6.6 of the tariff allows the ISO to determine what transmission facilities (or non-transmission alternative solutions) are needed to meet state and federal policy requirements or directives. The multiple opportunities for stakeholders to provide input during Phase 2 of the stakeholder process are set forth in section 24.4.9 of the tariff.

In approving the ISO's RTPP proposal, FERC found that the process enhanced the ISO's transmission planning by improving transparency and openness and expanding stakeholder participation. FERC noted that RTPP encouraged statewide collaboration and the consideration of state and federal directives and requirements that might require additional transmission infrastructure, and offered enhanced opportunities for stakeholder participation, input, review and comments. With respect to Phase 2 of the planning process and the identification of transmission elements needed to meet state and federal public policy directives and requirements, FERC found that the ISO's implementation of policy-driven tariff provisions will be an open and transparent process, and all stakeholders will have an opportunity to review the ISO's assumptions, analysis and recommendations and provide input in that process. With respect to the ISO's "least regrets" approach to planning for public policy needs, FERC found that stakeholders have many opportunities at various stages of the planning process to comment on the ISO's assumptions, analyses, and results and would be able to clearly understand the ISO's methodology and provide input on the ISO's approach.

Thus, the ISO's planning process already provides the Sierra Club with the opportunities it desires to suggest what policy directives or requirements the ISO should take into account in each annual planning cycle. The important point for any stakeholders concerned about the public policy aspects of transmission planning is to actively participate in that process starting with Phase 1 of each planning cycle.

#### **4.1.3. Consideration of non-transmission solutions**

The Clean Coalition in its written comments states that the ISO has not provided any discussion on how it will address non-transmission alternatives. The Clean Coalition asks that the ISO proactively discuss potential approaches for addressing non-transmission matters. The ISO notes that in Order No. 890 FERC required transmission providers to implement tariff provisions requiring that all resources – both transmission and non-transmission resources – be treated comparably in the planning process. In Order No. 1000, FERC stated that it was merely maintaining the requirement previously adopted in Order No. 890, but ensuring that it applied to regional transmission planning. FERC stated that issues pertaining to non-transmission alternatives, including cost recovery were beyond the scope of Order 1000.<sup>14</sup>

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<sup>14</sup> Order No. 1000 at PP 155-156, 779.

In its Order No. 890 compliance filing, the ISO added provisions to its tariff to ensure the comparable treatment of transmission and non-transmission alternatives. FERC found the ISO's tariff provisions to be just and reasonable and in compliance with Order No. 890. Because the ISO tariff already reflects these comparability requirements, and the ISO qualifies as a regional planning entity under Order No. 1000, the ISO is in compliance with both Order Nos. 890 and 1000. Under the ISO's current tariff, in developing the Unified Planning Assumptions and Study Plan in each annual cycle of the ISO transmission planning process, the ISO will consider demand response programs and generation and other non-transmission solutions that are proposed for inclusion in long-term planning studies as alternatives to transmission additions or upgrades. Further, during Phase 2 of the transmission planning process, the ISO opens a request window for the submission of demand response or generation projects proposed as alternatives to transmission additions or upgrades. Non-transmission alternatives will be considered local or regional depending on whether they are alternatives to a local project or a regional transmission project or element. The ISO applies the same criteria for determining whether to adopt a transmission solution or a non-transmission solution to meet an identified need.

#### **4.1.4. Local vs. regional transmission facilities**

Certain portions of Order Nos. 1000 and 1000-A rely upon a distinction between regional and local transmission facilities. Under the orders, public utilities must establish a cost allocation methodology for regional facilities included in a regional plan or explain how existing cost allocation methodologies satisfy the requirements of the orders. Public utilities must also remove from their tariffs any federal right of first refusal for construction of regional transmission facilities selected in the regional transmission plan for purposes of regional cost allocation. These requirements do not apply to local transmission facilities, which the order described as those located solely within a transmission provider's retail distribution service territory or footprint that are not selected in the regional plan for purposes of regional cost allocation but may be reflected in the regional plan.

The distinction between regional and local facilities has been embodied in the ISO tariff since well before the issuance of Order No. 1000. The legislation creating the ISO (California Assembly Bill 1890<sup>15</sup>) directed the development of a new transmission access charge and established a default methodology (if neither board action nor dispute resolution produced an alternative methodology) of a uniform "regional" transmission access charge and a utility specific "local" transmission access charge. The default methodology set forth in the statute defined regional transmission as 230 kV and above, and local transmission as below 230 kV.

In preparing the new access charge, the ISO worked extensively – for over two years – with a stakeholder Transmission Access Charge Working Group (TACWG). One of the alternatives considered, which the ISO eventually adopted, was a modification of the legislation's criterion for the regional/local split. During the process, the ISO and the TACWG modeled and evaluated extensive data across the potential scenarios, including different voltage levels for the regional/local split. The result of these efforts is reflected in the current transmission access

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<sup>15</sup> Statutes of 1996, Chapter 854.

charge – a high voltage access charge for 200 kV and above (regional) facilities and a low voltage access charge for below 200 kV (local) facilities. The costs of low voltage facilities are allocated solely to the applicable PTO, and such PTO charges customers within the PTO's retail distribution service territory or footprint that take service from the low voltage facilities, via its transmission owner tariff. In some instances, these customers may be municipal utilities that are embedded within another transmission provider's retail distribution area, and which take transmission service from the other transmission provider from its low voltage facilities. From a transmission planning standpoint, both high and low voltage transmission facilities are reflected in the transmission plan, however, only the high voltage facilities are eligible for regional cost allocation.

The ISO has concluded that the 200 kV split reasonably reflects the functional characteristics, operations, configuration, and nature of the transmission facilities comprising the ISO controlled grid and that its historical approach to the regional and local distinction fulfills the Commission's objectives in establishing a regional/local distinction in Order Nos. 1000 and 1000-A.

In the previous version of this paper, and supplemented by presentation materials used in the June 15 stakeholder web conference, the ISO proposed definitions for local, regional, and interregional transmission projects. The proposed definitions attempted to address the local versus regional issue by suggesting an approach focusing on the interconnections that a new project may have rather than in terms of whether a project is located within the retail service distribution territory of a participating transmission owner. This approach led the ISO to identify the possible instance where a new line below 200 kV interconnected the service territories of two participating transmission owners and therefore could be viewed as a regional project and be eligible for regional cost allocation. This potential outcome was a cause for concern among many stakeholders because it suggested to some a larger scope for including projects in the regional category, with a resulting upward pressure on the transmission access charge. Some of these same stakeholders suggested that the ISO reconsider such an approach and instead treat all new projects at or above 200 kV as regional and those below 200 kV as local.

A variation of the ISO's approach focusing on interconnections (as set out in the previous version of this paper) was advocated by one party in the original transmission access charge proceeding mentioned above. It argued that certain low voltage facilities that interconnected with another control area should be treated as regional. In that proceeding, the ISO opposed the establishment of a functional test as administratively unworkable, potentially requiring an analysis of every transmission line. FERC staff agreed with the ISO that a bright line test was preferable, as did the Administrative Law Judge. FERC affirmed the rejection of this functional test.

Therefore, upon consideration of stakeholder comments received in response to the previous version of this paper, the ISO is persuaded that it should not now adopt a test that was previously rejected on all levels. The ISO proposes in this draft final proposal to retain the present 200 kV criterion as the basis for the split and simply revise the tariff to (1) make clear that high voltage transmission facilities are synonymous with regional transmission facilities and low voltage transmission facilities are synonymous with local transmission facilities, and (2) add

the requirement from Order Nos. 1000 and 1000-A that a local facility must also be located within the retail distribution service territory or footprint of a transmission provider.<sup>16</sup>

The criteria specified in the tariff for assessing the need for and identifying a transmission upgrade or addition will not be changed in this compliance filing, and will be the same for local projects and regional projects. Consistent with the existing tariff, the ISO will post its preliminary technical study results regarding reliability needs. As is done today, the reliability technical studies will assess the reliability needs for all transmission under the ISO's operational control, *i.e.*, both local and regional. Following the posting of the technical study results, the participating transmission owners will submit their proposed reliability projects to the ISO through a submission window. As reflected in section 24.4.3 of the existing tariff, following the participating transmission owner submission, other stakeholders will then have an opportunity to propose any transmission upgrades or additions to ensure system reliability in the submission window as well as proposals to retain the feasibility of long-term CRRs and non-transmission alternative solutions to reliability concerns, as discussed above.<sup>17</sup>

The ISO would essentially keep intact the general provisions of Phase 2 of the transmission planning process. The ISO notes that it already examines both local and regional requirements, but now will expressly describe and identify the resulting facilities as either local or regional in the transmission plan. Specifically, during Phase 2 of the planning process, the ISO will assess which local and regional projects are needed for reliability, economic, policy or long-term congestion revenue requirement reasons, applying the criteria set forth in the tariff. In doing so, the ISO will also assess whether any local projects could be replaced with more efficient, cost-effective regional projects that could be open to competition, and the costs allocated through the region-wide transmission access charge.

Consistent with Order No. 1000's distinction between regional and local projects, all regional projects are subject to the applicable provisions of Phase 3 of the ISO's transmission planning process (*i.e.*, competitive solicitation), unless they constitute upgrades to existing facilities, *i.e.*, "an improvement to, addition to, or replacement of a part of, an existing transmission facility." This definition of the exception is taken directly from Order No. 1000-A paragraph 426. One stakeholder believes that the tariff should specifically identify the examples of upgrades to existing facilities that FERC included in its discussion of this issue. Because FERC cited only examples, and did not limit the definition of transmission upgrades to existing facilities, the ISO does not believe it appropriate to include that language.<sup>18</sup>

With respect to the issue of who has the right to build on existing rights-of-way, Order No. 1000 states that the determination of such issues is a matter of state law. As discussed in greater

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<sup>16</sup> The ISO notes that Order No. 1000 also requires planning and cost allocation for interregional facilities. As explained in Section 3 of the draft final proposal, tariff amendments to comply with the interregional requirements will be the subject of later efforts in this same initiative and is not a subject of the present paper. These later efforts will address such topics as the definition of interregional facilities.

<sup>17</sup> Market Participants may also submit LCRIF and merchant transmission proposals during this window, but such proposals are not the subject of Order No. 1000 compliance requirements.

<sup>18</sup> As FERC noted in Order No. 1000-A, "It is not feasible, however, to list every type of improvement or addition, or name all the parts of lines, towers and other equipment that may be replaced or otherwise upgraded, and we will not do so here." Order No. 1000-A at paragraph 426.

detail later in this paper in section 4.3.3, the ISO is therefore eliminating the current tariff language of section 24.5 providing a right to build on existing rights-of-way in order to defer appropriately to state law, and is not limiting the ability of a non-participating transmission owner without relevant rights-of-way to propose to build new transmission facilities that may ultimately utilize on existing rights-of-way. Instead, the ISO will rely upon the appropriate jurisdictional authorities to enforce state law on rights-of-way. Also as discussed later in this paper, the ISO will continue to consider rights-of-way as one of the many factors that are relevant to the selection of an approved project sponsor to the extent that the possession of or ability to obtain right-of-way affects the cost and schedule of the needed and approved transmission facility.

Also consistent with Order No. 1000's distinction between regional and local projects, only the applicable participating transmission owner would have the right to build the needed local project. Although other stakeholders can propose local projects, they do not have the right to build and own local projects. To the extent a participating transmission owner declines to pursue or cannot complete construction of a needed local project, the ISO will apply its backstop provisions to determine who should build such a needed local project (see further discussion of these backstop provisions in section 4.3.9 of this paper). If, on the other hand, a reliability solution found to be needed by the ISO constitutes a regional project, the project shall be open to competitive solicitation subject to tariff section 24.5 (except as modified per the discussion in section 4.3.3 of this paper).

## 4.2. Cost allocation requirements

As discussed above, Order No. 1000 requires each public utility transmission provider to participate in a regional transmission planning process that has a regional cost allocation methodology for new transmission facilities selected in the regional transmission plan for purposes of cost allocation. Each ISO or RTO must demonstrate, in a compliance filing, that its methodology for allocating the costs of new transmission facilities selected in the regional transmission plan is consistent with six cost allocation principles. Lastly, Order No. 1000 recognizes that a variety of cost allocation methodologies may satisfy these principles.

The existing ISO tariff provides a cost allocation mechanism that spreads costs for regional, *i.e.*, high voltage transmission (facilities at or above 200 kV) across the transmission service customers within the entire ISO footprint. Local, *i.e.*, lower voltage transmission (facilities below 200 kV), costs are assigned to individual participating transmission owners and such costs are recovered on a localized basis by the individual participating transmission owner. The ISO's high voltage transmission charge is a "postage stamp" rate that is an appropriate regional cost allocation methodology for new transmission facilities selected in the regional transmission plan for purposes of cost allocation because the high voltage grid provides benefits across the entire ISO region by providing reliable and economic service and enabling the development of renewable energy in order to meet state policy goals.<sup>19</sup> The ISO believes that the existing tariff framework meets the requirements of Order No. 1000, and no additional changes are necessary. Thus, the ISO does not intend to modify the transmission access

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<sup>19</sup> *Id.* Paragraph 605.

charge provisions of its tariff, except for some changes in terminology to better reflect the regional/local terminology of Order Nos. 1000 and 1000-A.

Stakeholders have requested that the ISO clearly articulate the nature of “local” cost allocation. The local cost allocation is the same as the allocation of the costs of low voltage transmission facilities under the existing tariff (Section 26 and Appendix F, Schedule 3). Only the terminology will change. In that regard, the local access charge is utility specific and determined and charged by each participating transmission owner for service on its local transmission facilities.

Similarly, the costs of new regional facilities will be allocated in the same manner as the costs of high voltage transmission facilities under the existing tariff (Section 26 and Appendix F, Schedule 3). In general, the regional access charge is paid by all utility distribution customers and metered subsystem operators based on their gross load connected to a regional transmission facility, whether directly or through intervening distribution facilities. The costs of new transformers and substations will continue to be allocated in the manner set forth in the ISO’s existing tariff.

### **4.3. Non-incumbent transmission developer requirements**

Order No. 1000 requires public utility transmission providers to remove from FERC-approved tariffs and agreements a federal right of first refusal for a transmission facility selected in a regional transmission plan for purposes of cost allocation, subject to certain limitations:

- This does not apply to a transmission facility that is not selected in a regional transmission plan for purposes of cost allocation.
- This does not apply to an upgrade or improvement to, addition on, or replacement of a part of an existing transmission facility.
- This allows, but does not require, public utility transmission providers in a transmission planning region to use competitive bidding to solicit transmission projects or project developers.

As was already mentioned in section 4.1.2 of this draft final proposal, at about the same time that FERC was considering the matters raised in the Notice of Proposed Rulemaking that resulted in Order No. 1000, the ISO was working on its RTPP. The RTPP tariff changes comply with most of the requirements of Order No. 1000 regarding opportunities for non-incumbent transmission developers. In particular, the ISO’s revisions to the transmission planning process made the following important changes, among others, a new competitive solicitation process whereby all interested project sponsors, including both independent transmission developers and existing participating transmission owners, have an equal opportunity to propose to construct and own policy-driven transmission elements and transmission elements that provide economic benefits in excess of their costs, that the ISO first finds to be needed in its planning process. This process, referred to as Phase 3 of the transmission planning process, is initiated after the annual comprehensive transmission plan goes to the ISO Board and receives Board approval.

Following FERC approval in December 2010, the ISO implemented the revised transmission planning process during the latter part of the 2010-2011 transmission planning cycle. It is against this existing planning framework that the ISO evaluates its compliance with the requirements of Order No. 1000. For the most part, the ISO's revised transmission planning process provides opportunities for non-incumbents to participate that align with the Order No. 1000 planning reforms.

#### **4.3.1. Right of first refusal**

In Order No. 1000, FERC calls for the elimination of incumbents' rights of first refusal for all transmission projects that are subject to regional cost allocation, with the limitations noted above. Under the ISO's existing tariff provisions, and as discussed above in sections 4.1.4 and 4.2 of this paper, all high voltage (at or above 200 kV) lines in the transmission plan are subject to regional cost allocation. Lower voltage lines (below 200 kV) under the ISO's operational control are considered "local" facilities as that term is used in Order No. 1000 and are not subject to regional cost allocation. The costs of low voltage facilities are allocated to the applicable PTO who recovers the costs of such facilities in its transmission owner tariff rates only from its transmission customers within the PTO's local service area that actually withdraw energy from those low voltage facilities. The ISO intends to retain this split.

Under the ISO tariff, PTOs with a PTO service territory do not have a right of first refusal to build and own transmission facilities that are needed to meet policy-driven or economically-driven needs, or reliability projects that also provide incidental public policy or economic benefits (except with regard to an upgrade or improvement to, addition on, or replacement of a part of an existing participating transmission owner facility as discussed below).<sup>20</sup> Under the current tariff, a PTO with a PTO service territory has an *exclusive right to build and own* (which is encompassed by the Orders' usage of the term "right of first refusal") reliability and Long-Term CRR projects within its service territory and that do not provide incidental economic or policy-driven benefits. The ISO planning process also has a category of transmission that consists of certain additional components or expansions of network upgrades to be reflected in large generator interconnection agreements (LGIA). The responsibility for building and owning such additional components or expansions depends on the category of those upgrades or additions, e.g., reliability, public policy or economic.

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<sup>20</sup> Strictly speaking the current ISO tariff does not contain any rights of first refusal, because under the tariff a participating transmission owner cannot refuse to build a transmission facility that has been approved in the ISO's transmission plan and is assigned to that participating transmission owner in accordance with the tariff. What participating transmission owners do have under the tariff, with regard to certain categories of approved transmission facilities, is an exclusive right to build and own. We recognize, however, that Orders 1000 and 1000-A use the term "right of first refusal" to include exclusive-right-to-build-and-own provisions, and therefore adopt this usage in this initiative. Nevertheless, it is important to understand that where the ISO's compliance filing does NOT remove or modify an existing "right of first refusal" (in the terminology of the orders), this should not be read to mean or imply that a participating transmission owner has a right to refuse to build a transmission facility for which it is responsible under the tariff.

Order No. 1000 provides that there should not be any rights of first refusal for so called regional transmission facilities. Accordingly, to be consistent with Order No. 1000 the ISO will propose tariff amendments to:

- Eliminate existing tariff provisions that give PTOs with a PTO Service Territory the exclusive right to build and own reliability and Long-Term CRR transmission upgrades and additions (and associated facilities) that are 200 kV or greater (*i.e.*, regional facilities) and that are reflected in the ISO's regional transmission plan (except with respect to an upgrade or improvement to, addition on, or replacement of a part of an existing participating transmission owner facility discussed below), regardless of whether these transmission elements provide incidental policy-driven or economic benefits;
- Clarify that there is no exclusive right for PTOs with a PTO service territory to build and own additional components or expansions of LGIP network upgrades that constitute regional facilities which are not otherwise assigned to such PTO as a generator interconnection facility under tariff section 24.4.6.5; and,
- Modify tariff language to clarify that the competitive solicitation process for policy-driven projects, economic-driven projects, and reliability projects generally does not apply to local projects that are comprised of facilities below 200 kV, as discussed above.

Consistent with the distinction between local and regional projects discussed earlier, the ISO will propose tariff language that modifies the existing right of first refusal and exclusive right and obligation to build needed reliability projects, currently set forth in tariff Section 24.4.6.2 and applicable to both local and regional reliability projects. The proposed tariff language will clarify that local reliability projects, local policy-driven projects, local economically-driven projects and local projects needed to maintain congestion revenue right feasibility will be financed, constructed and owned by the participating transmission owner, but that regional elements in each of these categories, identified in Phase 2 of the ISO transmission planning process, will be subject to the Phase 3 competitive solicitation process.

#### **4.3.2. LGIP facilities and Location Constrained Resource Interconnection Facilities**

LS Power recommends that the ISO modify its tariff to permit non-incumbents to build and own Location Constrained Resource Interconnection Facilities (LCRIF). The CPUC also argues that there should not be a right of first refusal for LGIP-driven network upgrades. In Order No. 1000, FERC ruled that issues related to the generator interconnection process and to interconnection cost recovery were beyond the scope of the final rule. The ISO notes that FERC approved the LCRIF program as a just and reasonable variation from Order No. 2003's generator interconnection policies. Thus, changes to the ISO's LGIP and LCRIF tariff provisions are beyond the scope of any compliance filing in response to Order No. 1000.

Even assuming for the sake of argument that the tariff provisions pertaining to LCRIFs are not beyond the scope of Order No. 1000, Order No. 1000 does not require any changes to them, nor are any changes appropriate. LS Power does not define who constitutes a "non-incumbent."



For purposes of Order No. 1000, “non-incumbent transmission developer” refers to two categories of transmission developer: (1) a transmission developer that does not have a retail distribution service territory or footprint; and (2) a public utility transmission company that proposes a project outside of its existing retail distribution service territory or footprint, where it is not the incumbent for purposes of that project.<sup>21</sup> An “incumbent transmission developer/provider is an entity that develops a transmission project within its own retail distribution service territory or footprint.<sup>22</sup> Contrary to LS Power’s suggestion, and consistent with the definitions used by FERC in Order No. 1000, the ISO tariff does not contain a provision granting a right-of-first refusal for incumbents to build and own LCRIFs. Stated differently, the right to construct and own a particular LCRIF is not limited to the PTO in whose service territory the LCRIF will be located. All PTOs, both public utilities and independent transmission providers (and incumbents and non-incumbents as defined in Order No. 1000), are permitted to build needed LCRIFs anywhere on the ISO grid. Thus, the ISO’s treatment of LCRIFs is not inconsistent with Order No. 1000.

However, under Sections 2.2 and 4.1 of the ISO’s Commission-approved Transmission Control Agreement (TCA), a transmission owner can become a PTO only by turning over to the ISO’s operational control “transmission lines and associated facilities forming part of the transmission network that it owns or to which it has Entitlements.” Under Section 4.1.1 of the TCA, “radial lines and associated facilities interconnecting generation do not constitute part of a participating transmission owner’s transmission network.” The only exception is generation interconnection facilities “which may be identified from time-to-time interconnecting ISO Controlled Grid Critical Protective Systems or Generators contracted to provide Black Start or voltage Support” a category that does not include LCRIF. Thus, a party that owns and seeks to turn over to the ISO’s operational control solely radial lines cannot become a PTO. Thus, the ISO tariff permits all PTOs to own and construct needed LCRIF anywhere on the ISO system and to place them under the ISO’s operational control but, under the TCA, no transmission owner or developer can become a participating transmission owner by seeking to place only LCRIF under the ISO’s operational control. This provision has been in the TCA since ISO start-up and applies with equal force to PTOs with a retail service territory and to independent transmission developers that do not have a service territory.

There is no undue discrimination here. All entities that build and own network facilities and are willing to turn them over to the ISO’s operational control are eligible to become PTO, and all PTOs are eligible to build and own LCRIF anywhere on the ISO system; they are not limited to LCRIF within their footprint. Thus, the ownership of LCRIF is not limited to participating transmission owners with service territories, *i.e.*, “incumbents” as that term is defined in Order No. 1000. Further, the TCA provisions that preclude a transmission owner from becoming a participating transmission owner solely by turning over radial lines (including LCRIF) to the ISO apply (and have been applied) with equal force to all transmission owners, including the existing participating transmission owners.

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<sup>21</sup> Order No. 1000 at P 225; Order No. 1000-A at paragraph 425.

<sup>22</sup> *Id.*

Moreover, the TCA's limitation of PTO status to entities with network facilities is reasonably related to the ISO's core mission of maintaining reliable grid operations and effectively managing congestion on the ISO controlled grid perform control area responsibilities. Unlike network facilities, radial lines (with the exception of those types of radial lines expressly identified in the TCA as necessary to maintain system reliability) are not integral to the ISO's every day achievement of those objectives. Thus, this minimum eligibility requirement is not discriminatory on its face and is reasonably related to the ISO's core purpose. FERC has explicitly approved the distinction between network facilities and radial facilities. Under the TCA provisions approved by the FERC, a transmission owner that does not meet the minimum eligibility requirements to become a PTO is not entitled to receive the benefits (or bear the burdens) accorded to PTOs.

These tariff and TCA provisions are also consistent with the purpose of LCRIF category of transmission. The ISO's LCRIF proposal was designed solely as a funding mechanism to assist generation developers who were seeking to develop generation in areas remote from the grid. It simply provides alternative cost allocation for a temporary period of time for what would otherwise be generator interconnections built by either the participating transmission owner or the interconnection customer and paid for by the interconnection customer. This is precisely how the Commission described the LCRIF proposal in approving the concept; it also noted that the ISO sought a finding that the proposal was an appropriate variation from Order No. 2003's default generator interconnection policies.

The costs of LCRIF are not intended to remain in the transmission access charge (TAC) permanently. They are intended to be allocated to generators as they come on-line. The LCRIF provisions of the ISO tariff are only intended as a temporary funding mechanism. As generators come on-line to use the LCRIF, LCRIF costs associated with their capacity are removed from the TAC and assigned directly to such generators. Once the LCRIF is fully subscribed, the costs of the LCRIF are no longer included in the TAC. It is therefore not reasonable or practical for the ISO to enter into temporary PTO arrangements for transmission owners that would only be PTOs on a temporary basis and would not turn over facilities that are integral to the ISO's core functions or which benefit other PTOs.

FERC reaffirmed these positions in its RTPP orders. In particular, it found that because LCRIF are radial facilities, just like LGIP facilities, an entity that that only seeks to build and turn over operational control of these facilities do not satisfy the criteria to enter into the TCA and become a PTO. FERC also stressed that the LCRIF provisions address a specific need presented by location constrained resources and are not unduly discriminatory. Nothing in Order No. 1000 undermines this prior determination. In particular, FERC only eliminated the right of first refusal for transmission developers seeking to develop regional projects within their service territory. Order No. 1000 did not require the elimination of any tariff or contract provisions that require a transmission developer (either and incumbent or non-incumbent as defined in Order No. 1000) to first be a PTO before it can construct and own radial LCRIF.

#### ***4.3.3. Elimination of the right of first refusal for existing rights-of-way***

The ISO tariff currently provides participating transmission owners with the exclusive right to build on their rights-of-way. In that regard, Section 24.5.2 of the ISO's tariff states that

If the selected project involves an upgrade to or addition on an existing Participating TO facility, *the construction or ownership of facilities on a Participating TO's right-of-way*, or the construction or ownership of facilities within an existing Participating TO substation, the Participating TO will construct and own such upgrade or addition facilities unless the Project Sponsor and Participating TO agree to a different arrangement. [Emphasis added.]

In Order No. 1000, FERC stated that it was not altering an incumbent transmission provider's use and control of its existing rights-of-way, which is governed by state law.<sup>23</sup> Order No. 1000 also provided that incumbent transmission owners' have a right of first refusal for upgrades to their own transmission facilities. Order No. 1000-A provided additional clarification on these two points. In response to Order No. 1000-A, the ISO is (1) eliminating the tariff provision that accords a right-of-first refusal for transmission providers to build on their own rights-of-way, and (2) clarifying the right-of-first refusal that transmission owners have with respect to upgrades on their existing transmission facilities. Specifically, the ISO proposes to revise section 24.5.2 of its tariff as follows:

*If the selected project involves an upgrade or improvement to, addition on, or replacement of a part of an existing Participating TO transmission facility, including an existing sub-station, ~~the construction or ownership of facilities on a Participating TO's right-of-way~~, the Participating TO will construct and own such upgrade or addition facilities unless the Project Sponsor and Participating TO agree to a different arrangement.*

This language is consistent with the clarification offered in Order No. 1000-A<sup>24</sup>. LS Power states that the definition of existing facility should be limited to the purported definition in Order No. 1000 -- "such as reconductoring or a tower changeout." LS Power ignores the express clarification provided in Order No. 1000-A that the identification of reconductoring and tower changeouts were merely examples of potential actions that constitute upgrades to an existing transmission facility and FERC's statement that "it is not feasible, however, to list every type of improvement or addition, or name all the parts of lines, towers and other equipment that may be replaced or otherwise upgrades."<sup>25</sup> Accordingly, the ISO will not adopt the limiting language proposed by LS Power.

LS Power also states that there is no right of first refusal on substations; so, the ISO should eliminate any reference to substations. The ISO is not maintaining a right of first refusal for existing substations, but because substations and the equipment located within them are existing transmission facilities, the permitted right of first refusal for upgrades applies to any upgrade of, addition or improvement to, or replacement of an existing substation or the equipment within an existing substation.

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<sup>23</sup> *Id.* At paragraph 319.

<sup>24</sup> Order 1000-A at paragraph 426.

<sup>25</sup> *Id.*

#### 4.3.4. Pre-qualification of project sponsors

Section 24.5.2.1 of the ISO tariff sets forth the project sponsor qualifications that the ISO will consider to determine if a project sponsor meets the bare minimum qualifications to be able to finance, own, and construction a transmission element. The qualification criteria from section 24.5.2.1 are repeated here for convenience:

- (a) whether the proposed project is consistent with needed transmission elements identified in the comprehensive transmission plan;
- (b) whether the proposed project satisfies Applicable Reliability Criteria and ISO Planning Standards; and
- (c) whether the Project Sponsor and its team are 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.

Under the current tariff, the project sponsor must submit qualification information at the same time as the project sponsor submits its entire “package” to be considered in the competitive solicitation process, which includes a significant amount of information as to how the sponsor and the proposal meet the other selection criteria. This approach requires a project sponsor to make a significant effort to put the entire proposal together before knowing whether the ISO will approve the qualification information. In the event the ISO finds that a project sponsor failed to meet the minimum qualifications to build, own, operate and maintain a project, and the sponsor is unable to cure those deficiencies, the project sponsor will have spent a significant amount of time and resources developing a complete project proposal that would have been unnecessary had the ISO performed an initial assessment of project sponsor qualifications.

Presumably in light of this, some stakeholders suggested in previous comments that the ISO should determine project sponsor qualification (to submit a project proposal) in advance of the submission of detailed project proposals. The ISO agrees with this concept and in the previous version of this paper proposed a couple possible approaches for a pre-qualification process. Given that the draft transmission plan is presented to stakeholders toward the end of January of each year, the ISO had suggested a prequalification process based on either:

1. The party seeking to be pre-qualified specifies the generic type of facilities, volume, and capital ceiling it will be seeking to be pre-qualified for, together with its qualifications. For example, the party could specify a number of miles of overhead or underground transmission line, the range of voltages, number of substations, and aggregate capital amount; or,
2. The party seeking to be pre-qualified could select a list of representative projects from the draft transmission plan, and include that list with its qualifications.

In the present paper, based on stakeholder comments and further consideration by the ISO, the ISO is proposing a pre-qualification process using the approach presented in number 2 above. The ISO proposes that such a pre-qualification process would start in late January – *i.e.*, when the draft transmission plan is presented to stakeholders, but in advance of Phase 3 and the

submission of specific proposals to build the needed regional project and the selection process for that project. Under such an approach, project sponsors will be separately pre-qualified for each individual regional project for which they are interested in submitting a proposal to build and own. Pre-qualification will be conducted on a project-by-project basis and determine whether the project sponsor is qualified to build and own each project individually. The pre-qualification process will not determine whether a project sponsor is qualified to build and own all of the projects for which they intend to compete in the aggregate – that will be evaluated in Phase 3 of the transmission planning process and is discussed further below.

A project sponsor who is not successfully qualified as an eligible sponsor will be provided an opportunity to “cure” the identified gap. In the event the ISO finds that a project sponsor does not meet the minimum qualifications to build and own a particular transmission element, and the project sponsor is unable to cure the deficiency, the project sponsor will not have had to expend all of the time and resources required to develop a full-fledged proposal for that particular transmission element.

The ISO proposes to employ a pre-qualification process that only applies the qualification criteria set forth in the aforementioned tariff section 24.5.2.1(c). Given that the qualification process would now be a project-by-project pre-qualification process, the ISO proposes to move the aforementioned criteria in tariff sections 24.5.2.1(a) and (b) to tariff section 24.5.2.4 and be treated as project sponsor selection criteria, not basic qualification criteria. This will save a project sponsor’s time and resources in the event it does not meet the basic qualifications to compete for a particular project.

The CPUC in its recent written comments suggested that the ISO should allow pre-qualification up to a particular level of physical and financial complexity prior to specific projects being identified for competitive solicitation and prior to bid submittal. One concern with this more generic pre-qualification approach is that it does not take into account a project sponsor’s ability to construct in a timely manner a specific project that has a deadline for completion. Also, it does not take into account any issues that may be project specific and for which a generic pre-qualification criteria would be difficult to apply. Finally, any pre-qualification process that is done too far in advance would require project sponsors to update their information at the time specific transmission elements were identified and immediately prior to the competitive solicitation process. Negative updates could result in a previously qualified project sponsor now being unqualified. Having only a single pre-qualification for each project after the needed projects have been determined could avoid unnecessary duplication and additional administrative burdens. However, such an approach potentially could delay the start of the competitive solicitation process.

PG&E in its written comments suggests that there should be a qualification requirement to ensure that the project developer is financially capable to pay penalties for a NERC violation from delay in constructing a reliability element, and that the qualifications for developing reliability elements should be aligned with the heightened importance of these projects. This seems to suggest that there should be lower qualification requirements for other transmission categories than for reliability elements. The ISO does not support lower qualification requirements for other types of projects, because once a transmission element is energized and turned over to ISO operational control, it must perform to the same standards regardless of how

it was categorized during the transmission planning process. The qualification criteria in the tariff address this concern by considering a project sponsor's financial and technical capability to operate and maintain the facility consistent with Good Utility Practice and Applicable Reliability Criteria. The FERC has also recognized, in its order on the ISO's RTPP, that the ISO's qualification and selection criteria will help ensure that a project sponsor is able to continue to maintain and operate a facility once it is in service and that the risk of abandoned projects is minimized. However, the ISO does recognize that the consequences of delay for reliability projects can be more severe than delays affecting economic and policy projects and addresses that issue in section 4.3.7 of the present proposal.

Given that project sponsors may seek to qualify to build multiple projects, SCE suggests that "concentration risk" must be taken into account – *i.e.*, the potential risk incurred in the event that multiple projects from the same sponsor are selected. SCE recommends that ISO require a "bid deposit" fee – once a bidder is accepted, those not selected would have their fee returned; however, the fee would be forfeited if a winning bidder fails to honor its bid. SCE is concerned that in the absence of such a fee, numerous companies will submit bids to create a placeholder and may not choose to honor their bids. Although the ISO agrees that concentration risk needs to be taken into account, it does not agree that implementation of a bid deposit fee is the best approach. Instead, as mentioned earlier, the ISO proposes to evaluate whether a project sponsor can build and own multiple projects in Phase 3 of the transmission planning process. To the extent project sponsors have any limitations in the total number of projects they can build or if their selection to build one project would prevent them from building another project, they are free to indicate those preferences and limitations when they submit their qualifications. The ISO does not desire to unduly limit project sponsors from competing to build projects at the early stages of the process.

The ISO notes that Section 5.2.1 of the transmission planning process business practice manual (BPM) already provides the following:

For each question, if the Project Sponsor is proposing to finance, construct, and own multiple transmission elements, the Project Sponsor should also indicate how its response would change depending on how many of its proposals are approved. For example, the Project Sponsor should describe how the projected in-service date of a project would be affected if two or more of the Projects Sponsor's proposals are approved.

The ISO proposes this approach not for the pre-qualification process but for the project sponsor selection process in Phase 3. The ISO does not believe that requiring a bid deposit is necessary to deter project sponsors from simply submitting placeholder applications. To the extent project sponsors do not participate in good faith or immediately back out of projects they are selected to build, the ISO expects that such behavior would be taken into account the next time the project sponsor seeks to bid on a project in the competitive solicitation process, or referred to FERC, if appropriate.

The ISO welcomes any suggestions that stakeholders might have on this subject.

#### **4.3.5. Submission of proposals**

In Order No. 1000, FERC calls for tariff revisions to identify: (a) the information that must be submitted by a prospective transmission developer in support of a transmission project it proposes in the regional transmission planning process; and, (b) the date by which such information must be submitted to be considered in a given transmission planning cycle.

Further, the tariff must have a transparent and not unduly discriminatory process for evaluating whether to select a proposed transmission facility in the regional transmission plan for purposes of cost allocation. Order No. 1000 does allow competitive solicitations such as the ISO's process, which was referenced in the Order. The ISO believes that its current project selection process and competitive solicitation process are aligned with the Order No. 1000 requirements.

#### **4.3.6. Selection criteria**

FERC approved the competitive solicitation provisions of the ISO's tariff in its order approving the RTPP. ISO tariff section 24.5.2.4 sets forth 10 selection criteria for the ISO to consider in its determination of the appropriate approved project sponsor for a needed project. The transmission planning process BPM sets forth the information that project sponsors must submit to enable the ISO to conduct an evaluation of the selection criteria. The three project sponsor selection qualification criteria in tariff section 24.5.2.1, and previously discussed in section 4.3.4 of the draft final proposal, are also relevant and repeated here:<sup>26</sup>

- (a) whether the proposed project is consistent with the needed transmission elements identified in the comprehensive transmission plan;
- (b) whether the proposed project satisfies Applicable Reliability criteria and the ISO's planning standards; and
- (c) whether the Project Sponsor and its team are 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.

In addition, section 24.5.2.3(c) of the ISO tariff provides that the ISO will select an approved project sponsor based on a comparative analysis of the degree to which each project sponsor meets the selection criteria set forth in section 24.5.2.1 of the tariff and a consideration of the factors set forth in section 25.5.2.4 of the tariff. The ISO notes that the selection criterion in tariff section 24.5.2.4(j) permits a proposed project sponsor to demonstrate cost containment capability and any other advantages that the project sponsor and its team may have to build a specific project, including any binding agreement by the project sponsor and its team to accept a cost cap that would preclude project costs above the cap from being recovered through the TAC. Thus, the ISO gives project sponsors the full ability to identify any and all advantages

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<sup>26</sup> As previously mentioned in section 4.3.4 of the draft final proposal, the ISO proposes to move the criteria in tariff sections 24.5.2.1(a) and (b) to tariff section 24.5.2.4 and treat them as project sponsor selection criteria, not basic qualification criteria.

they have and does not place any undue restrictions on a project sponsor's ability to compete to build a needed project.

Section 24.5.2.3(c) of the tariff also provides that the ISO will engage an expert consultant to assist with the selection of project sponsors. The BPM for the transmission planning process requires the ISO to post a detailed report regarding the selection of approved project sponsors. As the ISO indicated in its pleadings in the RTPP proceeding, the report will set forth the bases for the ISO's decisions in a transparent manner so that if stakeholders disagree with the ISO's reasoning or decisions, or believe that the ISO did not follow its tariff, they will have sufficient information to support a complaint with FERC or pursue other dispute resolution options.

LS Power submitted comments contending that the ISO's competitive solicitation process is not compliant with Order No. 1000 because it fails to indicate how the ISO will evaluate competing proposals. In its comments, Western Independent Transmission Group (WITG) states that the ISO must provide a weighting scheme in advance for each of the specific attributes evaluated in the selection process. LS Power made similar comments on the last stakeholder call, suggesting that the ISO needed to assign specific weights to each of the selection criterion. LS Power, California Municipal Utilities Association (CMUA) and the Bay Area Municipal Transmission Group (BAMx) argue that cost needs to be the driver in the selection process.

The ISO disagrees with these comments. In its RTPP orders, FERC expressly found that the ISO's proposed provisions and criteria for selecting project sponsors were just and reasonable and not unduly discriminatory or preferential. FERC found that the ISO's criteria were aimed at ensuring that the project sponsors are qualified and have the capability to construct, operate and maintain the facilities. FERC also stressed that given the long lead time to construct and bring transmission facilities on-line, it was important that project sponsors have the ability to finance, license and successfully construct transmission facilities in a timely manner so that policy goals driving the need for the projects could be met and to minimize the risk of abandoned projects. FERC stated that the RTPP included sufficient criteria and factors for determining the project sponsors and choosing between competing sponsors who submit qualified proposals to build the same transmission element found to be needed by the ISO. FERC rejected proposals to modify these provisions and found that the provisions allowed project sponsors to demonstrate their individual advantages and qualifications appropriately.

In particular, FERC specifically rejected arguments that it was appropriate to give more weight to one cost component than another. Importantly, FERC noted that in Phase 2 of the RTPP – before the competitive solicitation process even commences – the ISO will already have selected the most cost effective transmission solution to meet the identified transmission need. Project sponsors are only competing to build the transmission elements which the ISO has already found to be the most efficient and cost-effective.<sup>27</sup> FERC expressly rejected arguments

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<sup>27</sup> In its initial RTPP order, the Commission also found that the ISO's provisions for determining which policy projects are needed was open and transparent. That process lists 10 criteria that the ISO will assess to determine which policy projects are needed. FERC specifically rejected proposals to require the ISO to assign specific weights to each of these criteria, finding that the ISO needed flexibility in applying the criteria. FERC found that this approach was open and transparent and would allow stakeholders to monitor the process to ensure that no undue discrimination was occurring and to take appropriate action if there was such behavior.



that the application of the selection criteria undermines competition between incumbent transmission owners and independent transmission developers. Rather, FERC concluded that while all transmission developers have different experience and qualifications to offer, the criteria provided by the RTPP were a reasonable balance for considering many different factors and allowing all interested project sponsors to demonstrate their individual abilities, experience and assets. FERC also noted that the ISO's voluntary agreement to use an expert consultant to assist in the evaluation and selection of proposed sponsors would avoid discriminatory selections.

FERC also rejected the concept that cost must be the primary driver in the selection process. In its RTPP rehearing order, FERC found that "it was inappropriate to give cost containment, regardless of the form in which it is provided more weight than non-cost project sponsor selection factors (such as capabilities and financial resources of project sponsor and team)." FERC stated that "the non-cost factors are equally important."<sup>28</sup>

Nothing in Order No. 1000 requires the significant changes proposed by WITG, BAMx, CMUA, and LS Power to the project sponsor selection methodology and criteria that were approved by FERC only months before issuance of Order No. 1000. Indeed, in Order No. 1000, FERC expressly found that "this Final Rule permits a region to use an existing mechanism that relies on a competitive solicitation to identify preferred solutions to regional transmission needs and, as such, an existing process may require little or no modifications to comply with the framework adopted in this Final Rule."<sup>29</sup> FERC specifically mentioned the competitive solicitation process it had approved for the ISO. Nothing in Order Nos. 1000 or 1000-A suggests that the ISO must modify those existing procedures to require specific weights to be accorded to each of the selection criteria.<sup>30</sup> In particular, nowhere in those orders does FERC require – or even mention – the implementation of a mathematical methodology for selecting project sponsors that contains pre-established weights in the applicable selection criteria.

Indeed, in Order No. 1000-A, FERC rejected LS Power's requests for rehearing regarding the criteria for selecting a transmission developer. FERC stressed that Order 1000 merely required regional transmission providers to establish criteria to assess a transmission developers qualifications and adopt transparent and not unduly discriminatory criteria for selecting a new transmission project in a regional transmission plan, consistent with the transmission planning

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<sup>28</sup> One of LS Power's rehearing requests rejected by FERC in Order No. 1000-A was a suggestion that one mechanism to select among multiple sponsors of identical projects is to select the entity that is willing to guarantee the lowest net present value of its annual revenue requirement.

<sup>29</sup> Order No. 1000 at P 321.

<sup>30</sup> The ISO does not find persuasive LS Power's citation to Paragraph 315 of Order No. 1000 as supporting its position that Order No. 1000 requires a pre-defined methodology for selecting project sponsors with pre-established weights for each of the selection criteria. Paragraph 315 did not impose any specific new requirements for the selection process other than the removal of federal rights-of-first-refusal. Paragraph 315 generally describes the requirements that FERC has previously imposed. FERC's orders on the RTPP tariff amendment and the ISO's Order No. 890 compliance filing demonstrate that the ISO has met these requirements. The question posed in Paragraph 315 is whether or not a right-of-first-refusal interferes with the implementation of the procedures that have been put in place, not whether additional procedures are necessary. Because the ISO will not retain any right-of-first-refusal for regional transmission facilities, the ISO is ensuring that its competitive solicitation process will not be "adversely affected by federal rights of first refusal."

principles of Order No. 890.<sup>31</sup> FERC declined to set any other minimum standards for the criteria used to select a transmission facility in a regional transmission plan.

FERC further stated that it expected the qualification and selection criteria to vary by regions and that “LS Power has not persuaded us that flexibility is inappropriate.”<sup>32</sup> Given that the Commission has already found the ISO’s project and project sponsor selection process to be open, transparent, consistent with the principles of Order No. 890, and not unduly discriminatory or preferential, there is nothing in Order No. 1000 that requires the ISO to make the significant modifications suggested by stakeholders.<sup>33</sup>

Moreover, there are many practical reasons why having pre-set weights for each of the selection criteria is not workable. First, pre-set weights fail to account for the degree of difference between potential project sponsors with respect to each of the selection criteria. Under these circumstances, a specific project sponsor may “barely nose out other competitors” under one or more criteria but be woefully inadequate compared to other project sponsors when it comes to experience, financial capabilities, technical expertise, or likelihood that it can complete the project in a timely manner. Pre-established weights cannot account for these differences. For example, should a project sponsor whose agreed-to bid cap is one dollar lower than a competitor be awarded a project if its financial, technical, and physical abilities to timely complete and reliably maintain the project are significantly less than other potential project sponsors and create significantly more risk than other project sponsors.

Second, the importance of the various selection factors could vary depending on the category of transmission being built, whether the specific project needs to be completed by a certain date, and the potential adverse economic, policy or reliability impacts of not completing the specific project in a timely manner.

Third, the importance of the various selection factors could be impacted by the number of projects a project sponsor is seeking to build. Generic pre-established criteria would look at the

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<sup>31</sup> The ISO notes that the references to Order No. 1000 contained in Appendix A of LS Power’s comments generally pertain either to (1) the selection of transmission facilities in the regional transmission plan that efficiently and cost effectively meet identified transmission needs compared to other alternative transmission (or non-transmission facilities, or (2) FERC statements that elimination of rights-of-first-refusal will lead to the identification and evaluation of more efficient and cost-effective alternatives. They do not pertain to or even mention the criteria and methodology used in a competitive solicitation methodology like the ISO’s to select a project sponsor to build and own projects which the ISO already has found are needed. Likewise, nowhere these paragraphs, does FERC expressly require that weights be accorded to each of the specific selection criteria in a competitive solicitation process or that the transmission planner adopt some mathematical formula for selecting project sponsors.

<sup>32</sup> Order No. 1000-A at paragraph 455.

<sup>33</sup> As FERC has recognized, transparency simply means that a transmission provider has provided access to the basic criteria, assumptions, processes and methodologies used to develop the transmission plan. Order No. 890 at pages 461, 471; Order No. 890 at paragraph 181. FERC’s orders on the ISO’s Order No. 890 and RTPP tariff filings find that the ISO satisfies the transparency and other requirements of Order No. 890. Given that the ISO (1) identifies the criteria it will assess and how it will assess those criteria, and (2) is required to post a detailed report setting forth the reasons for its determinations in the competitive solicitation process, the ISO satisfies any transparency requirements. The fact that the ISO is required to retain an expert consultant to assist it in the competitive solicitation selection process goes above and beyond any requirement in Order Nos. 890 or 1000 regarding transparency and the non-discriminatory and preferential application of its tariff.

selection process for each project in the vacuum of the specific project being considered. However, the fact that a project sponsor is bidding on multiple projects, and has been awarded a project or project(s), could impact its ability to adequately finance or timely complete another project that it is bidding on. The ISO must conduct the project sponsor selection process in a holistic manner that takes into account a project sponsor's capabilities given all of the projects it is bidding on and/or has been awarded. Pre-set, generic metrics do not capture this.

Fourth, the ISO's selection process allows all project sponsors to highlight any and all advantages they have to support their request to be awarded a specific project. The ISO does not know what each and every one of those advantages are or how significant they might be. The ISO's competitive solicitation process encourages project sponsors to be creative and innovative and maximize benefits for ratepayers, minimize any problems associated with the projects, reduce project risk, and ensure completion in a timely manner. This is exactly what Order No. 1000 is trying to encourage. However, that would be "chilled" or even worse, prohibited, if the ISO were forced to rely on metrics with pre-established weights. FERC has recognized that flexibility is necessary, all project sponsors should be given the opportunity to demonstrate the full panoply of benefits they can provide.

Fifth, relying on cost as the driver would inappropriately devalue or eliminate considerations pertaining to reliability, financial ability to build and maintain the project, and the project sponsor's capabilities to license, construct, construct, operate and maintain the facility in a timely and proper manner. In both Order No. 1000 and the RTPP orders, FERC has stressed the need for flexibility and rejected arguments that cost should be the determinative factor in selecting a project sponsor. A few examples (among many possible examples) highlight this problem. Specifically, relying on cost as a driving factor could result in the ISO having to approve projects that (1) use lower quality materials that could affect the life of the project and lead to increased and nearer-term operating and maintenance problems; (2) have inadequate staffing; (3) will be at increased risk for outages and inadequate maintenance in future years; (4) have an increased risk of project abandonment, especially if problems are encountered that increase the cost of the project; (5) cannot demonstrate an ability to comply with Applicable Reliability Criteria; (6) have potentially would have insufficient capital or insurance to handle facility failures or emergencies; and (7) are at increased risk for not being completed in a timely manner or not being completed properly.

#### **4.3.6.1. Selection criteria pertaining to rights-of-way**

ISO tariff section 24.5.2.4, which sets forth the project sponsor selection criteria under the ISO's competitive solicitation process, includes the following two selection criteria (among others):

- (b) the Project Sponsor's existing rights-of-way and substations that would contribute to the project in question;
- (c) the experience of the Project Sponsor in acquiring rights-of-way and the authority to acquire rights-of-way, by eminent domain if necessary, that would facilitate approval and construction.

LS Power commented that rights-of-way should not be a factor in selecting project sponsors, and requested the elimination of these two selection criteria. When FERC approved the ISO's

revised transmission planning process in December 2010, it approved the project sponsor selection criteria proposed by the ISO, including the two aforementioned criteria, as being just and reasonable, transparent, equally applicable to both incumbent and non-incumbent transmission providers and not unduly discriminatory or preferential. There is nothing in Order No. 1000 that requires the elimination of these selection criteria; indeed, statements in Order Nos. 1000 and 1000-A support retention of these selection criteria.

The ISO recognizes that in Order No. 1000-A, FERC clarified that transmission providers cannot use as part of the project sponsor qualification criteria that a transmission developer demonstrate that it either has or can obtain state approvals necessary to operate in a state, including state public utility status and the right to eminent domain, to be eligible to propose a transmission facility.<sup>34</sup> The ISO stresses, however, that these two criteria are not qualification criteria that can make a potential project sponsor ineligible to propose a project; they are merely one of many criteria that the ISO will consider in selecting a project sponsor for a needed transmission element. To that end, the ISO notes that that project sponsor qualification criteria are set forth separately in a different tariff section, tariff section 24.5.2.1, and those qualification criteria do not contain any references to rights-of-way. However, to eliminate any potential confusion, the ISO will modify section 24.5.2.4(c) by eliminating the words “and the authority to acquire rights-of-way by eminent domain, if necessary.” As a result, the existing language in section 24.5.2.4(c) would read as follows:

(c) the experience of the Project Sponsor in acquiring rights-of-way ~~and the authority to acquire rights-of-way, by eminent domain if necessary,~~ that would facilitate approval and construction.

The ISO does not believe that any other changes are appropriate or required by Order No. 1000. In that regard, Order No. 1000-A clarifies that nothing in the order is intended to preclude the transmission provider from taking into account the particular strengths of an incumbent transmission provider or a non-incumbent transmission developer during its evaluation.<sup>35</sup> As FERC recognized in Order No. 1000, “an incumbent utility transmission provider is free to highlight its strengths to support transmission project(s) in the regional transmission plan, or bids to undertake transmission projects in regions that choose to use solicitation processes.” For example, FERC recognized that incumbent transmission providers may have unique knowledge of their own transmission systems, familiarities with the communities they serve, economies of scale, experience in building and maintaining transmission facilities, and access to funds needed to maintain reliability, and stated that removal of the right of first refusal did not diminish the importance of these factors or preclude an incumbent (or any other project sponsor) from highlighting their strengths to support a transmission project. Possession of rights-of-way and experience in acquiring rights-of-way are clearly potential benefits that can be used for a transmission project because they could result in a reduced cost for a project, impact the timing of completion of a project, promote efficiency and potentially reduce or mitigate local opposition. Also, possession of rights-of way and experience in acquiring rights-of-way clearly fall within the categories of “economies of scale” and “familiarity with the communities being

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<sup>34</sup> Order No. 1000-A at paragraph 441.

<sup>35</sup> *Id.* Paragraph 454.

served,” factors which FERC stated in Order No. 1000 are valid selection criteria to be considered.

Building on existing rights-of-way, as opposed to having to buy new rights-of-way or paying to use another entity’s existing rights-of-way is a factor that can impact the overall cost of the project, just like other cost components of a project. For example, just as a project sponsor’s commitment not to seek rate incentives as part of its proposal is a factor the ISO will consider in its selection process, so too should the existence of existing rights-of-way that can support all or a portion of the project, because it too is a factor that could make a proposal more cost-effective. As the ISO indicated in its pleadings in the RTPP proceeding, no single cost factor will be accorded undue weight. As the FERC has required, the ISO must apply its selection criteria in a non-discriminatory manner. As indicated above, in approving the ISO’s RTPP proposal, FERC found that the ISO’s proposed criteria were just and reasonable and not unduly discriminatory or preferential. In particular, FERC noted that the criteria allowed project sponsors to demonstrate their individual advantages and qualifications appropriately, just as Order No. 1000 permits. FERC also expressly found that the selection criteria constituted a reasonable balance for considering many different factors and allowing all interested project sponsors to demonstrate their individual abilities, experience, and assets. There is nothing in Order No. 1000 finding these selection criteria to be unjust and unreasonable; rather, Order No. 1000 expressly embraces criteria like these.

LS Power stresses in its comments that a goal in Order No. 1000 was to achieve more efficient, cost-effective transmission solutions for needs; yet, seeks to eliminate from consideration criteria that impact both of those results. The rights-of-way language of tariff sections 24.5.2.4(b) and (c) posits only two of many criteria that could contribute to a particular project sponsor’s practical or cost advantage in building and owning a transmission element and therefore should be considered by the ISO along with the rest of the criteria of tariff section 24.5.2.4 in making its decision. To the extent a project sponsor has secured rights-of-way that would contribute to a transmission element the ISO finds is needed (i.e., a new line that is not an upgrade to an existing facility or substation), the ISO will take that fact into account in the selection process.

The ISO will apply these (and all other) selection criteria in a non-discriminatory manner, and they are not limited to ISO PTOs. To the extent, a transmission developer has already acquired rights-of-way for a project, or a non-PTO transmission provider has rights-of-way that could be used to support a project, they will be allowed to make that demonstration. The ISO notes that there have been instances in California where transmission developers (other than incumbent PTOs) have acquired or possessed rights-of-way for potential transmission facilities before such facilities were even submitted for consideration in the ISO’s transmission planning process. Also, it is possible that a transmission developer seeking to develop a merchant transmission project could acquire rights-of-way in the course of developing its merchant project, and then subsequently bid on a needed transmission element that could utilize some or all of the rights-of-way it previously acquired. Moreover, it is not unrealistic that a municipal utility, federal power authority, or some other transmission owner that is not a Participating Transmission Owner has rights-of-way that could support (1) a joint transmission project, or (2) a proposal by that individual transmission owner to build and own a needed transmission element and then

become a PTO by turning the facility over to the ISO's operational control. To the extent a transmission developer has rights-of-way that could be used to support a needed project, if another project sponsor were to propose to build and own the same transmission element under Phase 3 of the ISO's proposed planning process, the fact that some other transmission developer had already secured these rights-of-way and permits would be a legitimate factor (among many) for the ISO to take into consideration in the selection process because it reduces uncertainty, supports timely completion of the project, and can reduce the total cost of a project. Further, the FERC has strongly supported regional (and interregional) collaboration and the pursuit of joint projects between neighboring transmission owners because such projects can prevent duplication of facilities, build off of existing efficiencies (such as existing rights-of-way), and result in economies of scale. Not permitting a non-PTO municipal utility, federal power authority, or other transmission owner from demonstrating the existence of rights-of-way as a benefit that it can provide will only deter regional collaborative efforts and hamper the ISO in its efforts to attract new PTOs and approve efficient and cost-effective transmission solutions, to the detriment of the ISO's ratepayers.

The ISO acknowledges that it cannot predict – and should not be put in the position of attempting to predict – whether a particular transmission project route will get the necessary regulatory approvals. Likewise, the ISO cannot predict whether local communities along a particular route are more likely to support (or oppose) a particular project compared to communities on another route. These are issues that are traditionally handled in the siting and permitting process, and the ISO does not address them in the ISO's project approval process. However, if a project sponsor has already secured rights-of-way that can support a project, that is a much more concrete indicator of the feasibility of the specific proposal.

As a final point, the ISO is also aware that state law provides that in approving new transmission to achieve RPS goals, the following should be considered: (1) the utilization of rights-of-way by upgrading existing transmission facilities instead of building new transmission facilities, where technically and economically justifiable; (2) the expansion of existing rights-of-way, if technically and economically feasible when construction of new transmission is required; and (3) the creation of new rights-of-way when justified by environmental, technical and economic reasons.<sup>36</sup> The ISO's inclusion of the rights-of-way selection criteria is consistent with state law. Moreover, under the ISO tariff, to the extent competing project sponsors intend to use the same siting authority (e.g., the CPUC) for their project, that siting authority, not the ISO, will determine who builds the project.

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<sup>36</sup> California Public Utilities Code, Section 1005.1 The ISO also notes that State law requires that before public utilities can lease, assign, or otherwise dispose of their rights-of-way to a third-party, they must secure approval from the CPUC (see California Public Utilities Code Section 851). Under Section 1001 of the California Public Utilities Code, where any public utility seeks to construct or extend facilities that interfere, or are about to interfere with the operation of the line, plant or system of another public utility, the CPUC, on the complaint of the affected public utility or public agency may after hearing make such order and prescribe such terms and conditions for the location of the lines, plants or systems affected as it may deem just and reasonable. A public utility includes any corporation or person owning, controlling, operating, or managing transmission facilities within California (see California Public Utilities Code Sections 216, 217, 218, and 767).

#### **4.3.7. Information requirements during permitting and construction**

Several stakeholders raised the need for additional tariff provisions providing additional information from project sponsors during the project permitting and construction phase, to ensure that progress can be accurately tracked. The concern for projects remaining on schedule has been heightened as the projects that are eligible for competitive solicitation have expanded from economic and policy projects to include reliability projects as well. The ISO agrees that the consequences of delay for reliability projects can be far more severe than delays affecting economic and policy projects, as the impacts of the latter delays are more easily assessed and less likely to result in failure to comply with federal and regional mandatory reliability standards.

SCE has proposed tariff language that sets forth a reporting requirement for approved project sponsors, beginning soon after the sponsor is selected. The proposed tariff language also includes a process by which the ISO would notify PTOs to prepare a mitigation plan if project delays or other failures to reach milestones might cause reliability violations. The ISO agrees that project progress reporting requirements and a process by which possible reliability violations should be addressed by the affected PTO are matters that should be included in the tariff. SCE's tariff language proposals are helpful and will be considered as the ISO drafts the necessary tariff changes for stakeholder review and comment. As noted in the draft final proposal, reporting requirement details will be addressed in the transmission planning process BPM.

#### **4.3.8. Re-evaluation of the regional transmission plan**

Order No. 1000 requires each public utility transmission provider to amend its tariff to require reevaluation of the regional transmission plan to determine if delays in the development of a transmission facility require evaluation of alternative solutions, including those proposed by the incumbent, to ensure incumbent transmission providers can meet reliability needs or service obligations.<sup>37</sup> In response to concerns raised in comments, the FERC noted that not all delays would trigger re-evaluation of a regional project, but that where a delay could impact the incumbent's ability to meet reliability needs, local options or alternative regional transmission solutions should be considered.

The ISO's transmission planning process is conducted annually and status updates on previously approved projects are included in each transmission plan. Project delays are taken into consideration and, to the extent a delay in a project created a need for other mitigation solutions, the ISO would identify those needs. The tariff also provides that the ISO may, at its discretion, open a new competitive solicitation for projects where the selected sponsor is unable to complete the project. The same tariff section also permits the ISO to assign the project to the participating transmission owner with a service territory (see tariff section 24.6).

Also, as discussed above in section 4.3.7 of this paper, the ISO is proposing that new tariff language be developed to address the situation in which a project sponsor is failing to meet its milestones.

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<sup>37</sup> *Id.* At P 329.

#### **4.3.9. Backstop obligations of participating transmission owners**

Tariff section 24.6 provides that if an approved project sponsor is unwilling or unable to complete a project, the ISO may, at its discretion, either direct the PTO with a service territory in which the project originates or terminates to build it, or to hold a competitive solicitation. In its comments SCE has requested that the ISO modify this language so that the ISO would have the authority to direct a PTO with a PTO service territory to complete only projects needed to resolve reliability concerns. SCE points to paragraph 490 of Order 1000-A where the Commission stated that “nothing in Order 1000 requires an incumbent TO to construct a non-incumbent transmission developer’s project..”

The ISO notes that paragraph 490 also states that “...some RTOs and ISO may have authority under their tariff...to direct a member to build a transmission facility under certain circumstances.” The Commission therefore concluded that “... this issue is beyond the scope of this proceeding...” Accordingly, the ISO does not believe that changes to tariff section 24.6 are warranted as part of the Order No. 1000 compliance filing. The tariff clearly gives the ISO the discretion to either direct a PTO build a project or hold a competitive solicitation. Should the circumstances arise where a non-incumbent transmission provider abandons a project, the ISO can take into consideration the need for the project and whether reliability concerns will be created for the PTO in whose service territory the project is being constructed.

#### **4.3.10. Enrollment process**

Several paragraphs of FERC Order No. 1000-A discuss a requirement that regional planning entities have an enrollment process describing how non-public utility transmission providers will make the choice to become part of a regional for planning purposes.<sup>38</sup> The ISO understands that this enrollment process does not apply to stakeholders who would otherwise participate in the regional planning process and make suggestions as to regional transmission needs. Rather, the enrollment process would apply to public or non-public utility transmission providers who wish to join in a regional process and thereby participate in the cost allocation mechanisms applicable to regional projects identified in a regional plan. Currently the ISO’s planning region is made up of the PTOs who have turned transmission facilities over to the ISO’s operational control and who have become PTOs by signing the Transmission Control Agreement (TCA).<sup>39</sup> The ISO is the planning coordinator for the facilities turned over to its control. The process by which a non-public utility or non-incumbent utility provider can become a PTO is already embedded in the ISO tariff. Any non-PTO that is selected in the ISO’s competitive solicitation process to construct and own a transmission project will become a PTO upon energizing the project and execution of the TCA. Therefore, the ISO tariff contains an enrollment process that includes identification of the participants and is compliant with Order 1000-A.

The ISO remains willing to consider expansion of its regional planning functions to include non-PTOs (both non-public utility transmission providers and public utility transmission providers). However, such expanded regional planning would require additional tariff modifications and

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<sup>38</sup> See, for example, paragraphs 275, 277-278, and 417-420.

<sup>39</sup> The TCA is multi-party and identifies the transmission facilities turned over to ISO control as well as the rights and responsibilities of the signatory parties.



agreements, including new cost recovery provisions. To date there have been no transmission providers who have shown an interest in entering into these regional planning arrangements; so, the ISO does not plan to include tariff proposals in its compliance filing.

#### 4.4. Intervener funding

In the most recent round of written stakeholder comments, two stakeholder consumer advocacy groups, Sierra Club and the California Consumer Alliance (CCA), have asked the ISO to reconsider the issue of funding mechanisms. While recognizing that such funding mechanisms are not required by FERC Order No. 1000, both parties argue that without funding, non-market participants cannot effectively participate in the ISO's processes.<sup>40</sup> In its comments, CCA urges the ISO "to review its records of TPP participants and determine whether non-market participants have been represented in a manner that is on par with stakeholders who stand to profit from the process."<sup>41</sup>

Interestingly, a consumer advocacy group in which Mr. Dickerson (the spokesperson for CCA) was very actively involved provides a good example of effective consumer participation in the ISO's consideration and evaluation of a proposed 500 kV transmission project known as the Central California Clean Energy Transmission Project (C3ETP). The ISO worked very closely with Mr. Dickerson and the other consumer representatives, holding on-location meetings, conference calls and providing ample opportunity for these stakeholders to suggest alternatives to the project.<sup>42</sup> While the need for a 500 kV central valley reinforcement is still under consideration in the ISO planning process, the C3ETP study process concluded when the ISO approved other mitigation solutions for the immediate reliability needs that would be been addressed by the larger transmission line.<sup>43</sup>

CCA also suggests that in order to effectively participate in the ISO's transmission planning process, non-market participants must have access to proprietary software programs, specialized tools and other highly technical data that is expensive to obtain.<sup>44</sup> The ISO does not believe that effective participation requires this level of involvement. As an independent entity with planning coordinator responsibilities dictated by NERC planning standards, the ISO is charged with reliably planning and operating the bulk transmission system under its operational control and has no financial stake in any particular solution (transmission or otherwise) when a need is identified. The ISO staff is available to explain its study results to interested stakeholders and to answer questions about planning assumptions and other details. If non-market participants believe it would be helpful, the ISO can provide additional less technical descriptions of its studies and the extent to which alternatives were considered.

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<sup>40</sup> Sierra Club comments at 3-4; CCA comments at 1-3.

<sup>41</sup> CCA comments at 2.

<sup>42</sup> See the documents at the following link:

<http://www.caiso.com/informed/Pages/StakeholderProcesses/CompletedStakeholderProcesses/CentralCaliforniaCleanEnergyTransmissionProject.aspx>

<sup>43</sup> See pages 266-267 in the document at the following link:

<http://www.caiso.com/Documents/Final2010ISOTransmissionPlan.pdf>.

<sup>44</sup> CCA comments at 2-3.

Finally, both Sierra Club and CCA recognize that the CPUC has intervenor compensation funding mechanisms available for consumer advocacy participation in its proceedings. For the most part, major transmission projects approved for cost recovery through the ISO process will be submitted to the CPUC for a certificate of convenience and necessity (CPCN). As part of this CPCN proceeding the CPUC must find that the project under consideration is “needed” to serve the public interest. This “need” evaluation will likely involve an analysis of the ISO’s studies, and all interested parties, including consumer advocates who may avail themselves of intervenor compensation, may examine the ISO’s findings through discovery, testimony and cross-examination.<sup>45</sup> It would seem that providing *ratepayer* funding to participants in the ISO process, and then providing *ratepayer* funding to the same participants at the CPUC in consideration of the same project, constitutes charging the ratepayers twice. The ISO’s stakeholder process is open, transparent and compliant with the requirements of FERC Orders 890 and 1000. The ISO does not see a need to reconsider its previous determination that a consumer funding mechanism is not needed at this time.

#### 4.5. Interregional planning requirements

TransWest Express expresses concerns that the ISO is postponing adopting any interregional planning tariff provisions until April 2013. TransWest also argues that the ISO needs to expand and clarify in a more transparent manner its process for evaluating the costs and estimated benefits of proposed transmission solutions.

Order No. 1000 does not require the interregional planning reforms that it adopted to be proposed in a compliance filing until April 2013. The ISO cannot unilaterally implement these interregional planning and cost allocation reforms. It requires close collaboration and agreement among the various regional entities with which the ISO interconnects, and most of them are still in the process of formulating their processes for complying with the regional planning reforms adopted in Order No. 1000.

In any event, TransWest Express ignores the fact that the ISO already has tariff provisions that allow for the consideration of interstate transmission solutions in the planning process. For example, among the inputs the ISO will consider in developing the Unified Planning Assumptions and Study Plan are (1) WECC base cases, as modified for the relevant planning horizon, (2) planned facilities in interconnected balancing authority areas (BAAs), and (3) economic planning study requests (which can include studies to assess upgrades necessary to integrate new generation resources or loads on and aggregated or regional basis. Section 24.4.5 of the tariff expressly permits stakeholders to identify potential interstate lines in their comments on the conceptual statewide plan. The ISO’s tariff provisions regarding economically-driven and policy-driven transmission solutions do not preclude consideration of interregional transmission facilities and, the ISO has in fact considered the need for interregional transmission solutions in its transmission plans.

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<sup>45</sup> See, for example, the list of parties that submitted briefs in the CPUC Sunrise Powerlink proceeding at page 11 in the document at the following link:  
[http://docs.cpuc.ca.gov/WORD\\_PDF/FINAL\\_DECISION/95750.PDF](http://docs.cpuc.ca.gov/WORD_PDF/FINAL_DECISION/95750.PDF).

The ISO also notes that FERC has previously found that the ISO's tariff provisions for economic and public policy projects are transparent, just and reasonable, and not unduly discriminatory or preferential. For example, with respect to policy-driven projects, FERC found that the ISO's criteria for determining the need for policy-driven projects reasonably set forth a framework under which the ISO will identify needed policy-driven elements. FERC expressly rejected requests to include additional criteria for determining needed policy-driven projects, as well as arguments that the criteria gave the ISO too much discretion in the selection of policy-driven elements. FERC stressed that as revised by FERC, the tariff provisions would ensure that the ISO's implementation of policy-driven tariff provisions will be open and transparent process, and that all stakeholders would have an opportunity to review the ISO's assumption's, analysis, and recommendations and provide input into the process. FERC also found that the ISO's least regrets approach adequately weighs current needs and potential future policy needs in order to avoid stranded investment. Further, FERC noted that the comprehensive planning process was an effective and efficient means to identify needed transmission elements, while limiting overbuilding and stranded investment. FERC found that the policy-driven tariff provisions approved by FERC provided sufficient detail, as well as openness and transparency to assess the need for policy-driven elements. With respect to the ISO's "least regrets" approach set forth in the tariff, FERC rejected arguments that the criteria were not clear and that the "least regrets" approach was ambiguous. FERC concluded that it was not necessary to have metrics or weights for the least regrets criteria because the framework for the ISO's analysis and identification of policy-driven elements was reasonable. FERC also found that the ISO's scenario based approach required flexibility in the implementation of the "least regrets" approach and in applying the criteria. In addition, FERC noted that the ISO was required to conduct its process in an open and transparent manner and that stakeholders have numerous opportunities at various stages of the process to review and comment on the ISO's assumptions, analysis and study results. Because of this openness and transparency, they would be able to monitor the process for any undue discrimination and to take appropriate action.

Order No. 1000 does not expressly require the ISO to adopt any specific additional reforms in this area.