

January 13, 2023

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Re: California Independent System Operation Corporation

**Filing of Applicant Participating Transmission Owner
Agreement with TransWest Express, LLC,
Service Agreement No. 7587**

Docket No. ER23-____-000

Dear Secretary Bose:

The California Independent System Operator Corporation (“CAISO”) submits for Commission acceptance an Applicant Participating Transmission Owner Agreement (“APTOA”) between the CAISO and TransWest Express LLC (“TransWest”).¹ The APTOA sets forth the terms and conditions that will govern TransWest’s responsibilities and relationship with the CAISO prior to such time as the CAISO assumes operational control over the TransWest Express Transmission Project (“Project”), an interregional high-voltage transmission project proposed to be energized in 2027.

Last month, the CAISO Board of Governors (“Board”) approved TransWest’s application to become a participating transmission owner (“Participating TO”) in the CAISO with regard to the Project, subject to certain conditions discussed below. In the meantime, the APTOA will allow TransWest to assist the CAISO and existing Participating TOs in evaluating generator interconnection requests of wind projects in Wyoming that are expected to request interconnection to the CAISO controlled grid via the Project, as well as any other similar generator interconnection requests. The APTOA is very similar to the CAISO’s Approved Project Sponsor Agreement that was conditionally

¹ The CAISO submits this filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d. Capitalized terms not otherwise defined herein have the meanings set forth in the CAISO Tariff. The APTOA is provided in Attachment A to this filing and is designated as CAISO Service Agreement No. 7587.

accepted by the Commission.² The CAISO requests that the Commission accept the APTOA effective March 15, 2023.

I. Background

A. Board Approval of TransWest as a Participating TO

Transmission owners that place their transmission facilities and entitlements under the CAISO's operational control become Participating TOs pursuant to an agreement among the CAISO and Participating TOs called the Transmission Control Agreement ("TCA").³ The TCA describes how the CAISO and each Participating TO will discharge its respective duties and responsibilities with regard to the operation of those facilities and entitlements.⁴

The Project consists of transmission facilities located in Wyoming, Colorado, Utah and Nevada that are primarily intended to deliver power from wind generation resources in Wyoming to California. The Commission has previously granted TransWest negotiated rate authority and approved an open solicitation process for the Project.⁵ TransWest subsequently conducted the open solicitation process, which resulted in all of the north-to-south capacity of the Project being awarded to Power Company of Wyoming LLC ("PCW"). TransWest then executed customer agreements with PCW for all of the Project's north-to-south capacity. TransWest negotiated these customer agreements with PCW to provide the funding required for TransWest to proceed with development of the Project.⁶ TransWest currently expects to energize the Project in 2027.

² CAISO Tariff, Appendix X; see *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,107 (2014); see also Letter Order in Docket No. ER21-196 (2021) (accepting the S-Line Entitlement Agreement that was developed from the Approved Project Sponsor Agreement).

³ An entitlement means the right of a Participating TO obtained through contract or other means to use another entity's transmission facilities for the transmission of energy. Transmission Control Agreement, Appendix D, definition of "Entitlements." The transmission facilities may also be subject to encumbrances, which are legal restrictions or covenants binding on a Participating TO that affect the operation of any transmission lines or associated facilities and which the CAISO needs to take into account in exercising operational control over such transmission lines or associated facilities if the Participating TO is not to risk incurring significant liability. TCA, Appendix D, existing definition of "Encumbrance."

⁴ *Cal. Indep. Sys. Operator Corp.*, 82 FERC ¶ 61,325, at 62,276-79 (1998).

⁵ See *TransWest Express LLC*, 174 FERC ¶ 61,160 (2021)

⁶ See *TransWest Express LLC*, Commission letter order, Docket No. ER21-645 (Feb. 16, 2022). PCW is an affiliate of TransWest.

The TCA and the CAISO Tariff set forth procedures for transmission owners to apply to the CAISO to become Participating TOs.⁷ After initial discussions with the CAISO concerning the Project, TransWest submitted an application for Participating TO status that was posted to the CAISO website on July 21, 2022.⁸ In the application, TransWest stated its intent to place the Project under the CAISO's operational control.⁹ TransWest also stated in its application that the costs of the Project would not be included in the CAISO's Transmission Access Charge; rather, TransWest intends that the transmission capacity will be paid for by its transmission customer (*i.e.* PCW). The transmission customer will in turn use its long-term transmission rights on the Project to deliver wind energy and capacity to California.

As the owner of a transmission project with Commission-approved negotiated rate authority and Commission acceptance of its open solicitation, TransWest proposed to join the CAISO as a Participating TO under certain terms and conditions that take into account its agreements with PCW. Primarily, the PCW transmission service agreements with TransWest will encumber the north-to-south capacity of the Project and be reserved for delivery of the associated wind energy and capacity to California. The CAISO expects to account for these existing TransWest customer arrangements through addition of a new model for participation in the CAISO, called the Subscriber PTO Model. The Subscriber PTO Model will be implemented through future targeted revisions to the TCA and the CAISO Tariff.¹⁰

On December 15, 2022, the CAISO Board authorized TransWest to become a Participating TO, conditioned upon TransWest executing the TCA, which necessarily must include provisions setting forth the finalized Subscriber PTO Model, and upon the Commission's acceptance of a Transmission Owner Tariff for TransWest.¹¹

⁷ CAISO Tariff Section 4.3.1.1; TCA Section 2.2. This application process does not apply to Approved Project Sponsors. TCA Section 2.1.2.

⁸ See <http://www.caiso.com/Documents/TransWestPTOApplication.pdf>.

⁹ *Id.* at 5.

¹⁰ The CAISO is discussing the Subscriber PTO model with stakeholders. See <http://www.caiso.com/informed/Pages/MeetingsEvents/MiscellaneousStakeholderMeetings/Default.aspx>, at the tab entitled "New participating transmission owner update."

¹¹ See <http://www.caiso.com/informed/Pages/BoardCommittees/Default.aspx>. As explained on page 2 of the December 7, 2022 memorandum from Neil Millar, Vice President, Infrastructure and Operations Planning, to the CAISO Board ("Board Memorandum"), if a satisfactory Subscriber PTO Model cannot be developed, the CAISO expects that TransWest may instead move forward as an independent generation-only balancing authority. The Board Memorandum is provided for ease of reference in Attachment B to this filing.

B. Overview of the Subscriber PTO Model Under Development

The CAISO is not currently seeking a Commission order addressing the substance of the Subscriber PTO Model currently in development. Nonetheless, the CAISO provides some background regarding this model as it may pertain to the Commission's evaluation of the APTOA presented in this filing.¹²

Currently the CAISO is the transmission service provider for facilities under its operational control within its balancing authority area. Under the Subscriber PTO Model, transmission owners would be allowed to join the CAISO balancing authority area as Participating TOs with transmission lines and facilities subject to subscription agreement encumbrances that will be administered pursuant to the transmission owner's Open Access Transmission Tariff ("OATT") and the CAISO Tariff. The CAISO is working with stakeholders on the Subscriber PTO Model so that the Project will have the opportunity to move forward – or not – depending on whether the subscriber to the Project (PCW) can contract its wind resources to California load serving entities sufficient to consider the Project commercially viable. Comparable projects would have a similar opportunity to move forward in the future under the Subscriber PTO Model.

Use of the Subscriber PTO Model will allow California load serving entities to consider procurement of a bundled wind resource (including the costs of transmission to deliver it to their load). As a result, California load serving entities will be able to determine the most economic and best fit for their own resource portfolios, without the CAISO having to decide on the transmission build-out or having CAISO ratepayers fund the construction and operation of such projects. The CAISO anticipates that the Subscriber PTO Model could facilitate transmission projects with negotiated rates that are intended to address state or federal public policy requirements.¹³ For example, the Subscriber PTO Model could be used to address the public policy requirements contained in the "Preferred System Plan" established by the California Public Utilities Commission and the California Energy Commission to ensure long-term sufficient electricity resource investments, including transmission, for the delivery of electricity and

¹² The CAISO plans to submit the targeted revisions to the TCA and the CAISO Tariff described above for Commission acceptance after the Subscriber PTO Model is finalized.

¹³ Thus, the Subscriber PTO model therefore will accommodate state and federal policies in a manner comparable to Order No. 1000, under which public utility transmission providers must consider transmission needs driven by public policy requirements in their local and regional transmission planning processes. See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051, at PP 203-24 (2011), *order on reh'g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, at PP 203-16 (2012).

the reduction of greenhouse gas emissions in California.¹⁴ This plan calls for approximately 25,500 MW of new supply-side renewable resources by 2032, including but not limited to out-of-state wind resources.¹⁵

II. The Applicant Participating Transmission Owner Agreement

A. Background and Purpose

The Project was not identified through the transmission planning process and thus TransWest is ineligible to execute an Approved Project Sponsor Agreement for its Project.¹⁶ However, in light of the anticipated request by PCW for generator interconnection to the CAISO controlled grid via the Project, the CAISO has concluded that an agreement with TransWest comparable to the Approved Project Sponsor Agreement is appropriate. The APTOA will serve as that agreement with TransWest on a stand-alone basis.¹⁷

Specifically, because the CAISO has not completed the stakeholder process for the Subscriber PTO Model, the CAISO and TransWest have

¹⁴ TransWest previously submitted multiple study requests for the Project in the CAISO's TPP. However, the Project could not be approved as a regional or interregional project under CAISO operational control for a number of reasons, including that the resource planning decisions underpinning policy-driven transmission needs did not support inclusion of the Project in the TPP at that time.

¹⁵ See <https://www.cpuc.ca.gov/news-and-updates/all-news/cpuc-approves-long-term-plans-to-meet-electricity-reliability-and-climate-goals>. The starting point scenarios provided to the CAISO for transmission planning studies by the CEC and the CPUC under the Preferred System Plan call for 1,500 MW of out-of-state wind generation by 2032. The "High Transportation Electrification" portfolio calls for 4,828 MW of out-of-state wind generation by 2035 and the 20-year outlook calls for 10,000 MW of out-of-state wind generation by 2040. These projects also call for roughly matching levels of off-shore wind, as well as California wind resources. The Preferred System Plan also calls for other types of new supply-side renewable resources.

¹⁶ Appendix A to the CAISO Tariff defines the Approved Project Sponsor Agreement as "[a]n agreement between an Approved Project Sponsor and the CAISO establishing the terms and conditions under which the Approved Project Sponsor will complete the siting and construction of the transmission facilities that the Approved Project Sponsor *was selected to construct and own under Section 24*" of the CAISO Tariff, which sets forth the CAISO's Transmission Planning Process (emphasis added). The Approved Project Sponsor Agreement is Appendix X to the CAISO Tariff.

¹⁷ An agreement similar to the APTOA may be appropriate for support of the Subscriber PTO Model under consideration with stakeholders. If that is the determination of the CAISO working with its stakeholders, such an agreement may be included as a *pro forma* service agreement along with the other TCA and tariff changes to support the Subscriber PTO Model. In the meantime, and even if a *pro forma* agreement were included in the CAISO tariff, the APTOA would satisfy the interim arrangements between the CAISO and TransWest with consideration of amendments as may be appropriate to align with the final Subscriber PTO Model.

executed the APTOA to allow generator interconnections to the Project to be studied in queue cluster 15 of the CAISO's generator interconnection process opening April 1, 2023. PCW's wind-powered generation will need to be studied to determine if network upgrades – reliability and deliverability – are required on the existing CAISO controlled grid to ensure deliverability of PCW's wind generation to CAISO load. The study process will provide phase I results that are scheduled to be published January 2024; phase II results that are scheduled to be published in December 2024; and the transmission planning deliverability allocation results that are scheduled to be published in March 2025. Given this timing, PCW will not know its full cost of delivering the wind generation by December 2024, and PCW will not know if the generation will receive full capacity deliverability status by March 2025.¹⁸ This cost information is critical for development of the Project because it will help inform whether California load serving entities want to contract for energy and capacity from the Wyoming wind project under construction by PCW.

Further, the CAISO Tariff does not include provisions applicable to transmission facilities of approved Participating TOs that are under development like the Project. The CAISO Tariff also does not address the obligations (detailed below) that TransWest needs to assume in advance of turning over operational control of the Project to the CAISO. Therefore, those matters must be included in a separate agreement similar to the way in which the details of a generator interconnection are included in a generator interconnection agreement. The APTOA will serve that purpose as to TransWest and its Project. In addition, the APTOA is necessary because, although the CAISO Governing Board has approved TransWest as a Participating TO, TransWest is not subject to the CAISO Tariff until such time as it enters into the TCA and turns the Project transmission facilities over to CAISO operational control. Thus, the APTOA “bridges the gap” until the CAISO Tariff and the TCA can govern TransWest's relationship with the CAISO as a Participating TO.¹⁹ Based on these rationales for the APTOA and the contractual provisions described below, the Commission should accept the APTOA as just and reasonable.

¹⁸ These dates are based on the standard timelines set forth in the Generator Interconnection and Deliverability Assessment (“GIDAP”) procedures under Appendix DD to the CAISO Tariff and the Business Practice Manual for the GIDAP. If the CAISO has another “super cluster,” for generation queue purposes, as it did for its generation queue cluster 14, the dates may need to be extended. See *Cal. Indep. Sys. Operator Corp.*, 176 FERC 61,207 (2021) (accepting extension of timelines and other revisions to accommodate queue cluster 14).

¹⁹ The recitals in the APTOA set out this framework.

B. Detailed Description of the APTOA

Article 1 provides definitions for certain capitalized terms in the APTOA.²⁰ It also provides that other terms have the definition given them in the article of the APTOA in which they occur or in Appendix A of the CAISO Tariff.²¹

Article 2 governs the effective date, term, and termination of the APTOA. The APTOA is effective upon execution, subject to acceptance by the Commission, if applicable. Except for certain specified sections, the APTOA terminates when TransWest turns the Project transmission facilities that are the subject of the APTOA over to CAISO operational control. The exceptions are necessary for provisions that must continue in effect, such as insurance and limitations on liability, after the APTOA terminates. Either the CAISO or TransWest may terminate the APTOA if, after consultation, the parties agree that the Project is not reasonably expected to be completed or if either party determines the Project will not become part of the CAISO Controlled Grid.

Article 3 sets forth the interaction among the CAISO Tariff, the TCA, and the APTOA. Pursuant to Article 3, TransWest agrees to comply with all applicable tariff provisions, to become a Participating TO, and to enter into the TCA when the Project is initially turned over to CAISO operational control. The APTOA provides that in the case of a conflict between the CAISO Tariff and the APTOA, the Tariff governs. In addition, once TransWest executes the TCA, the TCA will govern in case of conflicts between the TCA and the APTOA.

Article 4 sets forth TransWest's obligation to seek transmission interconnection service from other Participating TOs or any other entity to whose facilities the Project will connect, and to enter into a transmission interconnection service agreement. A facility cannot interconnect to an existing part of the grid without the cooperation of the owner of the existing facilities. The existing facilities may also require upgrades. It is not reasonable to expect the interconnecting transmission owner to enable the interconnection and construct the upgrades without an agreement that sets forth the specifications and schedule for the work. For these reasons, the provisions in Article 4 are appropriate.

Pursuant to Section 4.3, TransWest agrees that a handbook developed by the other Participating TOs will govern certain interconnection requirements, if

²⁰ Like other CAISO agreements, the APTOA consists of numbered articles and sections within those articles.

²¹ Repeating definitions unnecessarily can lead to confusion if the tariff term is redefined and the contractual term is not. It is standard CAISO policy to limit definitions in an agreement to those that are not in the CAISO Tariff or require modification for use in the agreement.

applicable.²² Section 4.4 requires TransWest to meet performance standards consistent with applicable laws and regulations, applicable reliability standards, and good utility practice. Section 4.5 provides for information exchange between the parties regarding the Project and any changes to technical data that may arise.

Section 4.6 addresses the possibility that TransWest may plan to use the Project in order to fulfill certain interconnection requests in its queue. It requires the use of the CAISO's process for generation projects seeking interconnection to the facilities that will be turned over to CAISO operational control. The CAISO will process requests for interconnection to the Project under the CAISO procedures, except that TransWest will have the rights and obligations under the CAISO procedures that it would have if it were already a Participating TO.

Pursuant to Section 4.7, the parties recognize and agree that the CAISO is the planning authority for the Project transmission facilities from the time this Agreement goes into effect, regardless of the timeline for Project construction or energization. This section provides clarity for TransWest with respect to its role in implementing the provisions contained in Section 24 of the CAISO Tariff. Section 4.8 of the APTOA provides that the CAISO and TransWest will cooperate with each other to maintain their respective tax statuses.

Article 5 requires metering consistent with CAISO Tariff requirements. This provision is necessary because the Project is creating three new CAISO balancing authority area interconnection boundaries.

Article 6 requires operating communications with the CAISO consistent with the CAISO Tariff and the interconnecting entity. It also states that TransWest will provide the dedicated data circuit necessary to transmit TransWest data to the CAISO and the interconnecting Participating TO as set forth in Appendix B to the APTOA regarding security arrangements details. Consistent with Section 5.2 of the TCA, which establishes the need to provide operational data to the CAISO subsequent to the transfer to CAISO operational control, Article 6 of the APTOA establishes the obligation of each party to perform its operational responsibilities prior to the CAISO's assumption of operational control in accordance with applicable reliability requirements and other requirements made applicable by the CAISO's procedures or the APTOA.

²² The CAISO notes that interconnection handbooks for Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are publicly available on each entity's website. In most instances, these Participating TOs will be the Participating TOs that are interconnecting with projects such as TransWest's.

Moreover, Article 6 requires the parties to establish procedures for start-up, testing, and energization of the Project.

Articles 7 and 8 are standard contractual provisions addressing regulatory requirements and governing laws and notices. Article 9 contains standard provisions concerning force majeure.

Article 10, which provides the terms and conditions for default, allows a 90-day opportunity to cure a breach. A breach is defined as a failure to perform or observe a material term or condition of the APTOA. Section 10.2 provides the right to terminate the APTOA if the breach is not capable of being cured. Section 10.3 addresses TransWest's right under Section 12.1 to assign the APTOA for financial security collateral purposes if it gives notice to the CAISO, including assignee contact information. Section 10.3 states that if the CAISO has received notice of assignment for collateral security purposes, the CAISO must provide any notice of contract breach provided to TransWest to the collateral assignee, and the collateral assignee has the right, but not the obligation, to cure the breach on behalf of TransWest. This provision allows the APTOA to continue in place under certain circumstances and could prevent the need for choosing a new Project sponsor if the collateral assignee is able to cure the breach.

Articles 11-18 are standard contractual provisions also contained in other CAISO agreements with some minor changes. These provisions cover indemnity and consequential damages, assignment, severability, comparability, confidentiality, disputes, representations and warranties, and covenants, respectively. Section 11.3 and 11.4 survive termination of the APTOA.

III. Effective Date

The CAISO requests that the Commission accept the APTOA effective March 15, 2023.

IV. Communications

In accordance with Rule 203(b)(3) of the Commission's Rules of Practice and Procedures,²³ the CAISO requests that all communications regarding this filing should be addressed to the following individual, whose name should be put on the official service list established by the Commission with respect to this submittal:

Roger E. Collanton
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V. Service and Posting

The CAISO has served this filing on TransWest, the CPUC, the CEC, and all parties with effective scheduling coordinator service agreements under the CAISO Tariff. In addition, the CAISO has posted the filing on the CAISO website.

VI. Contents of Filing

In addition to this transmittal letter, this filing includes the following attachments:

Attachment A	APTOA between the CAISO and TransWest
Attachment B	Board Memorandum on Participating TO Application of TransWest

²³ 18 C.F.R. § 385.203(b)(3).

VII. Conclusion

For the reasons stated above, the CAISO requests that the Commission accept this Applicant Participating Transmission Owner Agreement with TransWest effective March 15, 2023. If there are any questions concerning this filing, please contact the undersigned.

Respectfully submitted,

/s/ John Anders

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Attachment A – Applicant Participating Transmission Owner Agreement

between

TransWest Express

and

California Independent System Operator Corporation

January 13, 2023

**APPLICANT PARTICIPATING TRANSMISSION OWNER
AGREEMENT
BETWEEN**

TRANSWEST EXPRESS LLC

AND

**CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION**



**APPLICANT PARTICIPATING TRANSMISSION OWNER AGREEMENT
TRANSWEST EXPRESS LLC
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

THIS APPLICANT PARTICIPATING TRANSMISSION OWNER AGREEMENT ("Agreement") is made and entered into this 19 day of December, 2022, between TransWest Express LLC, a limited liability company organized and existing under the laws of the State of Delaware ("Applicant PTO"), and the California Independent System Operator Corporation, a California nonprofit public benefit corporation organized and existing under the laws of the State of California ("CAISO"). Applicant PTO and the CAISO each may be referred to as a "Party" or collectively as the "Parties."

RECITALS

WHEREAS, the CAISO exercises Operational Control over the CAISO Controlled Grid and is responsible for organizing the generator interconnection and transmission planning processes for the CAISO Balancing Authority Area; and

WHEREAS, TransWest Express LLC applied to become a Participating TO in accordance with the Transmission Control Agreement; and

WHEREAS, the CAISO Governing Board approved the TransWest Express LLC application to become a Participating TO at its meeting on December 15th, 2022; and

WHEREAS, TransWest Express LLC must obtain transmission interconnection service to connect the Project to the CAISO Controlled Grid; and

WHEREAS, prior to executing the Transmission Control Agreement and becoming a Participating TO, TransWest Express LLC must participate in the Generator Interconnection Process and Transmission Planning studies including determining the reliability of any requested Generator Interconnection to the Project and the CAISO Controlled Grid.

NOW, THEREFORE, in consideration of and subject to the mutual covenants contained herein, it is agreed:

ARTICLE 1. DEFINITIONS

When used in this Agreement, a term with initial capitalization shall have the meaning set forth in this Article 1 or the recitals, or if not defined in this Article 1 or the recitals,



shall have the meaning specified in the Article in which it is used or in the CAISO Tariff, Appendix A.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state, and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the Western Electricity Coordinating Council or its successor.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Balancing Authority Area of the Interconnecting PTO's Transmission System to which the Project is directly connected, including requirements adopted pursuant to Section 215 of the Federal Power Act.

Breach shall mean the failure of a Party to perform or observe any material term or condition of this Agreement.

Breaching Party shall mean a Party that is in Breach of this Agreement.

Confidential Information shall mean any confidential, proprietary, or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy, or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, subject to Article 15.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 10 of this Agreement.

Effective Date shall mean the date on which this Agreement becomes effective as specified in Article 2.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. §§ 791a et seq.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, earthquake, or explosion, any order, regulation, or restriction imposed by governmental, military, or lawfully established civilian authorities, or any other cause beyond the reasonable control of the Parties that could not have been avoided through the exercise of Good Utility Practice. A Force Majeure event does not include (1) acts of negligence or intentional wrongdoing by the Party claiming Force Majeure; (2) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic; (3) economic



hardship of either Party; or (4) failure or delay in granting of necessary permits for reasons not caused by Force Majeure.

Good Utility Practice shall mean any of the practices, methods, and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety, and expedition. Good Utility Practice is not intended to be limited to any one of a number of the optimum practices, methods, or acts to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

Governmental Authority shall mean any federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include the Applicant PTO, the CAISO, or any Affiliate thereof.

Interconnecting PTO shall mean any Participating TO, other than the Applicant PTO that owns or is building transmission facilities to which the Project will interconnect.

Interconnection Handbook shall mean a handbook, developed by the Interconnecting PTO and posted on the Interconnecting PTO's web site or otherwise made available by the Interconnecting PTO, describing technical and operational requirements for controls and protection equipment for transmission connected to the Interconnecting PTO's portion of the CAISO Controlled Grid, as such handbook may be modified or superseded from time to time. Interconnecting PTO's standards contained in the Interconnection Handbook shall be deemed consistent with Good Utility Practice.

Party or Parties shall mean the CAISO, the Applicant PTO, or the applicable combination of the above.

Project shall mean the 405-mile, 3,000 MW HVDC transmission line from Wyoming to the Intermountain Power Project (IPP) and the 267-mile, 1,500 MW AC transmission line from IPP to TWE Crystal and an interconnection to the Harry Allen – Eldorado 500 kV transmission line, as more specifically outlined in TransWest's application. The Project will initially consist of the HVDC line from Wyoming to IPP with 1,500 MW of capacity and the 500 kV AC line from IPP to TWE Crystal and the interconnection to the Harry Allen – Eldorado 500 kV transmission line. Subsequently, the capacity of the HVDC line from Wyoming to IPP will increase to the full 3,000 MW.



Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under this Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Transmission Interconnection Facilities shall mean the Interconnecting PTO's or other entity's transmission facilities, including any modification, additions, or upgrades, that are necessary to physically and electrically interconnect the Project to the Interconnecting PTO's Transmission System.

Transmission Interconnection Service shall mean the service defined in Section 4.2 of this Agreement.

ARTICLE 2. EFFECTIVE DATE, TERM, AND TERMINATION

2.1 Effective Date. This Agreement shall become effective upon acceptance by the Federal Energy Regulatory Commission ("FERC"). The CAISO shall promptly file this Agreement with FERC upon execution in accordance with Section 3.1, if required.

2.2 Term of Agreement. This Agreement shall remain in effect until termination consistent with Section 2.3.

2.3 Agreement Termination.

2.3.1 Except for the obligation set forth in Sections 11.3 and 11.4, this Agreement shall terminate when the Project has been turned over to CAISO Operational Control.

2.3.2 A Party may terminate this Agreement in accordance with Article 10.

2.3.3 The CAISO or Applicant PTO may file with FERC a notice of termination to terminate this Agreement if the CAISO or Applicant PTO concludes, after consultation with the other Party, that the Project is not reasonably expected to be completed. In addition, either Party may file with FERC a notice of termination to terminate this Agreement if either Party concludes that the Project will not become a part of the CAISO Controlled Grid.

2.3.4 Notwithstanding Sections 2.3.1, 2.3.2 and 2.3.3, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination and FERC has accepted the notice of termination.



ARTICLE 3. REGULATORY FILINGS AND CAISO TARIFF COMPLIANCE

- 3.1 Filing.** The CAISO shall file this Agreement (and any amendment hereto) with the appropriate Governmental Authority. The Applicant PTO may request that any information included in such filing be subject to the confidentiality provisions of Article 15. If the Applicant PTO has executed this Agreement, or any amendment to this Agreement, the Applicant PTO shall reasonably cooperate with the CAISO with respect to such filing and to provide any information reasonably requested by the CAISO needed to comply with applicable regulatory requirements.
- 3.2 Agreement Subject to CAISO Tariff.** The Applicant PTO shall comply with all applicable provisions of the CAISO Tariff.
- 3.3 Relationship Between this Agreement and the CAISO Tariff.** If and to the extent a provision of this Agreement is inconsistent with the CAISO Tariff and dictates rights and obligations between the CAISO and the Applicant PTO, the CAISO Tariff shall govern.
- 3.4. Requirement to Become a Participating TO Upon Completion of the Project.** The Applicant PTO agrees that the Project shall be placed under CAISO Operational Control upon energization of Phase 1 of the Project.
- 3.5 Relationship Between this Agreement and the Transmission Control Agreement.** Once the Applicant PTO has entered into the Transmission Control Agreement, if and to the extent a matter specifically addressed in this Agreement is inconsistent with the Transmission Control Agreement, the terms of the Transmission Control Agreement shall govern.

ARTICLE 4. SCOPE OF SERVICE

- 4.1 Transmission Facilities.** The Applicant PTO shall build and connect to the CAISO Controlled Grid the Project as described in the Participating TO application approved by the CAISO Governing Board.
- 4.2 Transmission Interconnection Service.** Transmission Interconnection Service allows the Applicant PTO to connect the Project to the facilities of an Interconnecting PTO or a transmission system that is not part of the CAISO Controlled Grid. The Applicant PTO shall request Transmission Interconnection Service from the Interconnecting PTO or other entity. The Applicant PTO must obtain a separate agreement for Transmission Interconnection Service from the Interconnecting PTO or any other entity to whose facilities the Project will interconnect. This separate agreement with each Interconnecting PTO or other entity must provide, at a minimum, for the Interconnecting PTO or other entity to take any procedural steps required in this Agreement with respect to the

transmission interconnection and must identify the Transmission Interconnection Facilities that an Interconnecting PTO is responsible for, and must pay for in accordance with Section 24.14.2 of the CAISO Tariff. The CAISO may facilitate the coordination between the Applicant PTO and the Interconnecting PTO contemplated by this Agreement.

- 4.3 Applicant PTO to Meet Requirements of the Interconnecting PTO's Interconnection Handbook.** If applicable, the Applicant PTO shall comply with the Interconnecting PTO's Interconnection Handbook for the transmission interconnections.
- 4.4 Performance Standards.** Each Party shall perform all of its obligations under this Agreement in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice. To the extent a Party is required to take or prevented from or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this Agreement for its lack of compliance therewith, and if such Party is the CAISO, then the CAISO shall have the authority to amend this Agreement unilaterally to eliminate the conflict with such regulations or standards and shall submit the amendment to FERC for approval, if applicable.
- 4.5 Information Exchange.** As soon as reasonably practicable after the Effective Date, the Applicant PTO shall provide information to the CAISO regarding the status of the Project on a quarterly basis, including changes to technical data that may arise after the CAISO Governing Board approval of the Project, or more often if requested by the CAISO.
- 4.6 Generator Interconnection Study Process.**
- 4.6.1** Any requests for generation interconnection to the Project submitted to the Applicant PTO shall be directed to the CAISO Interconnection Request process. The Applicant PTO shall assume the functions of a Participating TO in accordance with Appendix DD of the CAISO Tariff, including performing Phase I, Phase II, and reassessment analysis for generator interconnection requests to the Project. The Applicant PTO will be reimbursed for the actual costs incurred for the analysis by customers similar to the Participating TOs.
- 4.6.2** Any Generator Interconnection Agreements for interconnection to the Project shall be executed consistent with the relevant terms and conditions of the CAISO Tariff.
- 4.7 Planning Authority.** The CAISO is the Planning Authority, as that term is defined by NERC, for the Project from the time this Agreement goes into effect, regardless of the status of Project construction or energization. As such, the



Applicant PTO shall be subject to the rights and obligations set forth in CAISO Tariff Section 24 and the Business Practice Manual for Transmission Planning Process that are applicable to Participating TOs as they pertain to the Project.

- 4.8 Tax Status.** Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this Agreement is intended to adversely affect the CAISO's or the Applicant PTO's tax exempt status with respect to the issuance of bonds, including Local Furnishing Bonds, if any.

ARTICLE 5. METERING

- 5.1 General.** The Applicant PTO shall comply with any Applicable Reliability Standards and the Applicable Reliability Council requirements regarding metering. The Applicant PTO and CAISO shall comply with the provisions of the CAISO Tariff regarding metering, including Section 10 of the CAISO Tariff. Power flows to and from the Project shall be measured at or, at the CAISO's option for its respective Metering Equipment, compensated to, the Scheduling Point. The CAISO shall provide metering quantities to the Applicant PTO upon request in accordance with the CAISO Tariff by directly polling the CAISO's meter data acquisition system. The Applicant PTO shall bear all reasonable documented costs associated with the purchase, installation, operation, testing, and maintenance of the Metering Equipment.

ARTICLE 6. OPERATIONS

- 6.1 General.** Each Party shall comply with Applicable Reliability Standards and the Applicable Reliability Council operating requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.
- 6.2 CAISO Obligations.** The CAISO shall cause the Interconnecting PTO's transmission system to be operated and controlled in a safe and reliable manner during testing and synchronization and before the Applicant PTO turns the Project over to CAISO Operational Control. The CAISO may provide operating instructions to the Applicant PTO consistent with this Agreement and the Interconnecting PTO's and CAISO's operating protocols and procedures as they may change from time to time. The Interconnecting PTO and CAISO will consider changes to their operating protocols and procedures proposed by the Applicant PTO.
- 6.3 Applicant PTO Obligations.**
- 6.3.1** TransWest shall maintain satisfactory operating communications with the CAISO in accordance with the provisions of the CAISO Tariff and with the

Interconnecting PTO's or other entity's dispatcher or such other representative designated by the Interconnecting PTO or other entity during synchronization, testing, and energization. TransWest shall provide standard voice line, dedicated voice line, and facsimile communications at the Project's control room or central dispatch facility through use of either the public telephone system or a voice communications system that does not rely on the public telephone system. TransWest shall also provide the dedicated data circuits necessary to provide Approved Project Sponsor data to the CAISO and Interconnecting PTO as set forth in Appendix B, Security Arrangements Details. The data circuits shall extend from the Project to the locations specified by the CAISO and Interconnecting PTO. Any required maintenance of such communications equipment shall be performed by the TransWest. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, and equipment clearances.

6.3.2 The Applicant PTO shall at its own expense, operate, maintain, and control the Project in a safe and reliable manner and in accordance with this Agreement in advance of turning over Operational Control to the CAISO. The Applicant PTO shall not energize the Project with the Interconnecting PTO's or other entity's transmission system until the Interconnecting PTO or other entity provides prior written approval.

6.4 Start-Up and Synchronization. The Parties shall establish agreed procedures for start-up, testing, and energization of the Project to the CAISO Controlled Grid prior to start-up of the Project. The Applicant PTO shall be responsible for proper start-up and energization of the Project in compliance with the established procedures.

ARTICLE 7. REGULATORY REQUIREMENTS AND GOVERNING LAWS

7.1 Regulatory Requirements. Each Party's obligations under this Agreement shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, and compliance with the prior notice requirements of such Governmental Authorities. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this Agreement shall require the Applicant PTO to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended, or the Public Utility Regulatory Policies Act of 1978, or the Energy Policy Act of 2005.



7.2 Governing Law.

- 7.2.1** The validity, interpretation and performance of this Agreement and each of its provisions shall be governed by the laws of the state of California, without regard to its conflicts of law principles.
- 7.2.2** This Agreement is subject to all Applicable Laws and Regulations.
- 7.2.3** Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

ARTICLE 8. NOTICES

- 8.1 General.** Unless otherwise provided in this Agreement, any notice, demand, or request required or permitted to be given by a Party to another and any instrument required or permitted to be tendered or delivered by a Party in writing to another shall be effective when delivered and may be so given, tendered, or delivered by (i) recognized national courier, (ii) depositing the same with the United States Postal Service with postage prepaid for delivery by certified or registered mail, addressed to the Party, or (iii) personal delivery to the Party, at the address set out in Appendix A, Addresses for Delivery of Notices.

A Party must update the information in Appendix A as information changes. A Party may change the notice information in this Agreement by giving five Business Days written notice prior to the effective date of the change. Such changes shall not constitute an amendment to this Agreement.

- 8.2 Alternative Forms of Notice.** Any notice or request required or permitted to be given by a Party to another and not required by this Agreement to be given in writing may be given by telephone, facsimile, or e-mail to the telephone numbers and e-mail addresses set out in Appendix A.

ARTICLE 9. FORCE MAJEURE

9.1 Force Majeure.

- 9.1.1** No Party shall be considered to be in Default with respect to any obligation hereunder if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Section shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred, and when the Force Majeure



is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

ARTICLE 10. DEFAULT

- 10.1. General.** No Default shall exist where failure to discharge an obligation, other than the payment of money, is the result of Force Majeure as defined in this Agreement or the result of an act or omission of the other Party. Upon a Breach, the affected non-Breaching Party shall give written notice of such Breach to the Breaching Party. The Breaching Party shall have thirty (30) calendar days from receipt of the Default notice within which to cure such Breach; provided however, if such Breach is not capable of cure within thirty (30) calendar days, the Breaching Party shall commence such cure within thirty (30) calendar days after notice and continuously and diligently complete such cure within ninety (90) calendar days from receipt of the Default notice; and, if cured within such time, the Breach specified in such notice shall cease to exist.
- 10.2 Right to Terminate.** If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the affected non-Breaching Party shall have the right to declare a Default and terminate this Agreement by written notice at any time until cure occurs and be relieved of any further obligation hereunder and, whether or not such Party terminates this Agreement, to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article shall survive termination of this Agreement.
- 10.3 Notice to Financing Parties.** If, as contemplated by Section 12.1, the Applicant PTO has provided notice to the CAISO of an assignment of this Agreement for collateral security purposes to aid in providing financing for the Project, then (a) if such notice of collateral assignment so indicates and contains notice information for the collateral assignee, the CAISO shall provide a copy to collateral assignee identified in such notice of any notice of Breach given by the CAISO to the Applicant PTO and (b) such collateral assignee shall have the right, but no obligation, to effect cure of the Breach on behalf of the Applicant PTO, and any performance of any obligations under this Agreement by such collateral assignee shall be accepted by the CAISO to the same extent as though the Applicant PTO had directly performed such obligations.

ARTICLE 11. INDEMNITY, CONSEQUENTIAL DAMAGES. AND INSURANCE

- 11.1 Indemnity.** Each Party (the "Indemnifying Party") shall at all times indemnify, defend, and hold the other Party (the "Indemnified Party") harmless from any and all Losses arising out of or resulting from the Indemnifying Party's action or



inactions of its obligations under this Agreement, except in cases of negligence or intentional wrongdoing by the Indemnified Party.

11.1.1 Indemnified Party. If the Indemnified Party is entitled to indemnification under this Article 11 as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under Section 11.1 to assume the defense of such claim, such Indemnified Party may at the expense of the Indemnifying Party contest, settle, or consent to the entry of any judgment with respect to, or pay in full, such claim.

11.1.2 Indemnifying Party. If the Indemnifying Party is obligated to indemnify and hold the Indemnified Party harmless under this Article 11, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Loss, net of any insurance or other recovery.

11.1.3 Indemnity Procedures. Promptly after receipt by the Indemnified Party of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Section 11.1 may apply, the Indemnified Party shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party. If the defendants in any such action include the Indemnified Party and the Indemnifying Party and if the Indemnified Party reasonably concludes that there may be legal defenses available to it that are different from or additional to those available to the Indemnifying Party, the Indemnified Party shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Party having such differing or additional legal defenses.

The Indemnified Party shall be entitled, at its expense, to participate in any such action, suit, or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit, or proceedings if and to the extent that, in the opinion of the Indemnified Party and its counsel, such action, suit, or proceeding involves the potential imposition of criminal liability on the Indemnified Party, or there exists a conflict or adversity of interest



between the Indemnified Party and the Indemnifying Party, in which event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Party, and (ii) shall not settle or consent to the entry of any judgment in any action, suit, or proceeding without the consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned, or delayed.

- 11.2 Consequential Damages.** In no event shall any Party be liable under any provision of this Agreement for any losses, damages, costs, or expenses for any special, indirect, incidental, consequential, or punitive damages, including loss of profit or revenue, loss of the use of equipment, cost of capital, or cost of temporary equipment or services, whether based in whole or in part in contract or in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to another Party under another agreement shall not be considered to be special, indirect, incidental, or consequential damages hereunder.
- 11.3 Insurance.** On and after commencing construction of the Project, the Applicant PTO shall carry insurance for the Project consistent with Good Utility Practice and that is customary and market for a project of this type.
- 11.4 Continuity of Obligations.** The obligations and liability limitations under this Article 11 shall survive termination of the Agreement.

ARTICLE 12. ASSIGNMENT

- 12.1 Assignment.** With the exception of assignment for collateral security purposes in accordance with this Section and Section 10.3, this Agreement may be assigned by a Party only with the written consent of the other Party, which consent shall not be unreasonably withheld. The Applicant PTO may assign this Agreement without the consent of CAISO as collateral security for purposes to aid in providing financing for the Project, provided that the Applicant PTO will promptly notify CAISO of any such assignment, including identification of the assignee and contact information. Any financing arrangement entered into by the Applicant PTO pursuant to this Article shall provide that prior to or upon the exercise of the secured party's, trustee's, or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee, or mortgagee shall notify the CAISO of the date and particulars of any such exercise of assignment rights. Any attempted assignment that violates this Article is void and ineffective. Any assignment under this Agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof.



ARTICLE 13. SEVERABILITY

- 13.1 Severability.** If any provision in this Agreement is finally determined to be invalid, void, or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement, or covenant of this Agreement.

ARTICLE 14. COMPARABILITY

- 14.1 Comparability.** The Parties shall comply with all applicable comparability and code of conduct laws, rules, and regulations, as amended from time to time.

ARTICLE 15. CONFIDENTIALITY

- 15.1 Confidentiality.** Confidential Information shall include all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by a Party to the other Party prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by a Party, the other Party shall provide in writing the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

- 15.1.1 Term.** During the term of this Agreement, and for a period of three (3) years after the expiration or termination of this Agreement, except as otherwise provided in this Article, each Party shall hold in confidence and shall not disclose Confidential Information to any person.

- 15.1.2 Scope.** Confidential Information shall not include information that the receiving Party can demonstrate: (1) is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known

through no wrongful act or omission of the receiving Party or Breach of this Agreement; or (6) is required, in accordance with Section 15.1.7 of this Agreement, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this Agreement. Information designated as Confidential Information shall no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

15.1.3 Release of Confidential Information. No Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, Affiliates (limited by the Standards of Conduct requirements set forth in Part 358 of FERC's regulations, 18 C.F.R. Section 358), and subcontractors, or to parties who may be or considering providing financing to or equity participation with the Applicant PTO, or to potential purchasers or assignees of the Applicant PTO, on a need-to-know basis in connection with this Agreement, unless such person has first been advised of the confidentiality provisions of this Article and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article.

15.1.4 Rights. Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by a Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

15.1.5 No Warranties. The mere fact that a Party has provided Confidential Information does not constitute a warranty or representation as to its accuracy or completeness. In addition, by supplying Confidential Information, no Party obligates itself to provide any particular information or Confidential Information to the other Party or to enter into any further agreements or proceed with any other relationship or joint venture.

15.1.6 Standard of Care. Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication, or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this Agreement or its regulatory requirements.

15.1.7 Order of Disclosure. If a court or another Government Authority or entity with the right, power, and apparent authority to do so requests or requires any Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request or requirement so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party shall use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

15.1.8 Termination of Agreement. Upon termination of this Agreement for any reason, each Party shall, within ten (10) calendar days after receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete, with such destruction, erasure, and deletion certified in writing to the other Party, or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party, unless subject to retention for litigation or regulatory purposes.

15.1.9 Remedies. The Parties agree that monetary damages would be inadequate to compensate a Party for another Party's Breach of its obligations under this Article. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article.

15.1.10 Disclosure to FERC, its Staff, or a State. Notwithstanding anything in this Article to the contrary, and pursuant to 18 C.F.R. Section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within

the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 C.F.R. Section 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. A Party is prohibited from notifying the other Party prior to the release of the Confidential Information to FERC or its staff. The Party shall notify the other Party when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time any of the Parties may respond before such information would be made public, pursuant to 18 C.F.R. Section 388.112. Requests from a state regulatory body conducting a confidential investigation shall be treated in a similar manner if consistent with the applicable state rules and regulations.

15.1.11 Subject to the Exception in Section 15.1.10. Subject to the exception in Section 15.1.10 and consistent with the provisions of Sections 15.1.3 and 15.1.7, Confidential Information shall not be disclosed by a Party to any person not employed or retained by that Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this Agreement or as a transmission service provider or a Balancing Authority including disclosing the Confidential Information to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of another Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this Section 15.1.11, the disclosing Party shall promptly notify the other Party in writing and shall assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order, or other reasonable measures.

ARTICLE 16. DISPUTES

16.1 General. All disputes arising out of or in connection with this Agreement whereby relief is sought by or from the CAISO shall be settled in accordance with the provisions of Section 13 of the CAISO Tariff, except that references to the CAISO Tariff in such Section 13 of the CAISO Tariff shall be read as references to this Agreement. Disputes arising out of or in connection with this Agreement not subject to provisions of Section 13 of the CAISO Tariff shall be resolved as follows:

- 16.2 Submission.** In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this Agreement or its performance, such Party (the “disputing Party”) shall provide the other Party with written notice of the dispute or claim (“Notice of Dispute”). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) calendar days after the other Party’s receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this Agreement.
- 16.3 External Arbitration Procedures.** Any arbitration initiated under this Agreement shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) calendar days after the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) calendar days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration, except prior arbitration. The arbitrator shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association (“Arbitration Rules”) and any applicable FERC regulations; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article, the terms of this Article shall prevail.
- 16.4 Arbitration Decisions.** Unless otherwise agreed by the Parties, the arbitrator shall render a decision within ninety (90) calendar days after appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator may be appealed solely on the grounds that the conduct of the arbitrator, or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with, and approved by, FERC if it affects jurisdictional rates, terms, and conditions of service, Transmission Interconnection Facilities, or Network Upgrades.



- 16.5 Costs.** Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) the cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

ARTICLE 17. REPRESENTATIONS, WARRANTIES, AND COVENANTS

- 17.1 General.** Each Party makes the following representations, warranties, and covenants:

17.1.1 Good Standing. Such Party is duly organized, validly existing, and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Project and transmission facilities owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted, and to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

17.1.2 Authority. Such Party has the right, power, and authority to enter into this Agreement, to become a Party hereto, and to perform its obligations hereunder. This Agreement is a legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization, or other similar laws affecting creditors' rights generally and by general equitable principles, regardless of whether enforceability is sought in a proceeding in equity or at law.

17.1.3 No Conflict. The execution, delivery, and performance of this Agreement does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement, or instrument applicable to or binding upon such Party or any of its assets.

17.1.4 Consent and Approval. Such Party has sought or obtained, or, in accordance with this Agreement, will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery, and performance of this Agreement, and it will provide to any Governmental Authority notice of any actions under this Agreement that are required by Applicable Laws and Regulations.

ARTICLE 18. MISCELLANEOUS

- 18.1 Binding Effect.** This Agreement and the rights and obligations hereof shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.
- 18.2 Conflicts.** In the event of a conflict between the body of this Agreement and any attachment, appendices, or exhibits hereto, the terms and provisions of the body of this Agreement shall prevail and be deemed the final intent of the Parties.
- 18.3 Rules of Interpretation.** This Agreement, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) the singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement, including this Agreement, document, instrument, or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section, or Appendix means such Article or Section of this Agreement or such Appendix to this Agreement, or such Section of the CAISO Tariff or such Appendix to the CAISO Tariff, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section, or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".
- 18.4 Entire Agreement.** This Agreement, including Appendix A attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, any Party's compliance with its obligations under this Agreement.



18.5 No Third Party Beneficiaries. This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest, and, where permitted, their assigns.

18.6 Waiver. The failure of a Party to this Agreement to insist, on any occasion, upon strict performance of any provision of this Agreement shall not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this Agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, or duty of this Agreement. Termination or Default of this Agreement for any reason by the Applicant PTO shall not constitute a waiver of the Applicant PTO's legal rights to obtain an interconnection from the CAISO. Any waiver of any provision of this Agreement shall, if requested, be provided in writing.

18.7 Headings. The descriptive headings of the various Articles and Sections of this Agreement have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this Agreement.

18.8 Multiple Counterparts. This Agreement may be executed in two or more counterparts, each of which is deemed an original but all of which constitute one and the same instrument.

18.9 Amendment. The Parties may by mutual agreement amend this Agreement by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

18.10 Modification by the Parties. The Parties may by mutual agreement amend the Appendix to this Agreement by a written instrument duly executed by all of the Parties. Such amendment shall become effective and a part of this Agreement upon satisfaction of all Applicable Laws and Regulations.

18.11 Reservation of Rights. The CAISO has the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder with respect to any rates, terms and conditions, charges, classifications of service, rule, or regulation. The Applicant PTO shall have the right to make a unilateral filing with FERC to modify this Agreement pursuant to Section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations. Each Party shall have the right to protest any such filing by another

Party and to participate fully in any proceeding before FERC in which such modifications may be considered.

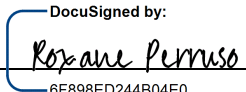
18.12 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon any Party. No Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

18.13 Joint and Several Obligations. Except as otherwise provided in this Agreement, the obligations of the CAISO and the Applicant PTO are several, and are neither joint nor joint and several.




IN WITNESS WHEREOF, the Parties have executed this Agreement in multiple originals, each of which shall constitute and be an original effective agreement between the Parties.

TransWest Express LLC

By: 
Name: Roxane Perruso
Title: Executive Vice President and Chief Operating Officer
Date: 12/19/2022

California Independent System Operator Corporation

By: 
Name: Neil Millar
Title: Vice President Infrastructure and Ops Planning
Date: 12/17/2022



Appendix A

Addresses for Delivery of Notices

Notices:

Applicant PTO:

TransWest Express LLC
Attn: Lisa Christian, General Counsel
555 Seventeenth Street, Suite 2400
Denver, CO 80209

Lisa.Christian@tac-denver.com

CAISO:

California ISO
Attn: Infrastructure Contracts & Management
250 Outcropping Way
Folsom, CA 95630

RegulatoryContracts@caiso.com



Alternative Forms of Delivery of Notices (telephone or e-mail):

Applicant PTO:

Roxane Perruso
Roxane.perruso@tac-denver.com
(303) 249-2622

CAISO:

Deb Le Vine
dlevine@caiso.com
(916) 351-2144

Riddhi Ray
rray@caiso.com
(916) 608-1056

Appendix B

Security Arrangements Details

Infrastructure security of CAISO Controlled Grid equipment and operations and control hardware and software is essential to ensure day-to-day CAISO Controlled Grid reliability and operational security. FERC will expect the CAISO, all Participating TOs, market participants, and Interconnection Customers interconnected to the CAISO Controlled Grid to comply with Applicable Reliability Criteria. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

The Interconnection Customer shall meet the requirements for security implemented pursuant to the CAISO Tariff, including the CAISO's standards for information security posted on the CAISO's internet web site at the following internet address:
<http://www.caiso.com/pubinfo/info-security/index.html>

Attachment B – Board Memorandum
regarding the
Applicant Participating Transmission Owner Agreement
between
TransWest Express
and
California Independent System Operator Corporation
January 13, 2023

Memorandum

To: ISO Board of Governors
From: Neil Millar, Vice President, Infrastructure and Operations Planning
Date: December 7, 2022
Re: **Decision on Participating Transmission Owner Application of TransWest Express LLC**

This memorandum requires ISO Board of Governors action.

EXECUTIVE SUMMARY

In July 2020, TransWest Express LLC (“TransWest”) submitted an application to become a participating transmission owner with respect to its proposed transmission facilities connecting up to 3,000 MW of wind generation in Wyoming with California (“Project”). In accordance with the procedures established by the Transmission Control Agreement (“TCA”) and the ISO tariff, Management reviewed the TransWest application and the stakeholder comments submitted and now recommends that the ISO Board of Governors approve the ISO’s acceptance of the TransWest application. TransWest satisfies all elements of the process to become a participating transmission owner applicable at this time and will satisfy all others prior to execution of the TCA. Approval of the TransWest’s application at this time will allow the Project to progress towards potential development, including submission of generator interconnection requests to the ISO which will determine and advance the commercial outcome of the Project.

If the Project is developed, the transmission lines and associated facilities would become part of the ISO controlled grid and extend the ISO balancing authority area accordingly. To facilitate this potential expansion, Management will continue working with participating transmission owners, stakeholders and TransWest to establish a new model for participation as a transmission owner (“Subscriber PTO Model”). Management intends at this time to pursue a protocol that would be added to the TCA as an amendment whereby the entity willing to build a transmission line finds subscribers to pay for the transmission facilities in accordance with their Open Access Transmission Tariff, versus fully incorporating the transmission facilities’ cost into the ISO’s transmission access charge or developing transmission in exchange for congestion revenue rights as a merchant transmission project.

The Subscriber PTO Model will allow the off-takers of the generation to make their own economic decisions with respect to which out-of-state wind projects to invest to satisfy the California Public Utility Commission’s current “Preferred System Plan.” At the same time,

this new model will allow the ISO to retain the ability to use its tariff authority with some conforming changes and its existing software systems to implement the protocol. This approach will facilitate development of projects that demonstrate their viability through the procurement process and will avoid the risk of stranded ISO ratepayer costs.

In addition, TransWest will need to solicit and confirm off-taker commitments following the submission of the proposed Wyoming wind generation through the ISO's generator interconnection process. The generator interconnection process is needed at this time to fully understand the costs of the Project. This requires TransWest to act as a participating transmission owner for purposes of transmission planning and generator interconnection processes, and provide status reports to the ISO among other requirements. Given that TransWest will not execute the TCA until shortly before the Project is energized, the ISO and TransWest have negotiated a new agreement, the Applicant Participating Transmission Owner Agreement, which will bridge the timeframe from now until execution of the TCA and allow TransWest to perform critical tasks similar to projects approved in the ISO's transmission planning process.¹

Accordingly, the approval recommended today is somewhat conditional in nature, as the eventual execution of the TCA depends on a satisfactory Subscriber PTO Model being developed and the necessary tariff changes being in place, as well as on TransWest moving forward with the construction of the Project. If a satisfactory Subscriber PTO Model cannot be developed, the ISO expects that TransWest may move forward as an independent generation-only balancing authority without gaining all of the operational inefficiencies that being a participating transmission owner entails.

Approval of the ISO's acceptance of the TransWest application by the ISO Board of Governors is imperative now as the next generation interconnection study process opens in April 2023, and the deliverability results will not be known until March of 2025 for that study process.² Approval of TransWest as a future Participating TO allows TransWest to execute the Applicant Participating Transmission Owner Agreement, become a Participating TO upon fulfillment of the conditions cited in the motion below, and allows the ISO to file the Applicant Participating Transmission Owner Agreement in January with an expected FERC decision by March of 2023. Otherwise, TransWest will not have sufficient certainty to submit the necessary interconnection requests and determine the commercial viability of the Project.

Moved, that the ISO Board of Governors approve the ISO's acceptance of the application of TransWest Express, LLC for Participating Transmission Owner status, conditioned on (1) TransWest Express, LLC executing the Transmission Control Agreement and (2) the Federal Energy Regulatory Commission's

¹ This new agreement is based upon a similar ISO *pro forma* service agreement executed by transmission projects selected in the competitive solicitation process, the Approved Project Sponsor Agreement.

² The Project is currently scheduled for a 2027 energization date.

acceptance of a Transmission Owner Tariff, as set forth in the memorandum dated December 7, 2022.

DISCUSSION AND ANALYSIS

The California Public Utility Commission's ("CPUC") current "Preferred System Plan" calls for 1,500 MW of out-of-state wind by 2032. The "High Transportation Electrification" portfolio calls for 4,828 MW of out-of-state wind by 2035. The starting point scenario provided to the ISO for transmission planning studies by the California Energy Commission and the CPUC for the 20-year outlook calls for 10,000 MW of out-of-state wind by 2040. These portfolios also call for roughly matching levels of off-shore wind, as well as California wind resources. Since the state has not made a determination as to which projects will supply California's wind resource need, the ISO is trying to develop an opportunity for these developers that doesn't increase the transmission access charge, which is currently \$16.62/MWH, and doesn't pick the winner by selecting a project in the Transmission Planning Process.

The ISO was approached by TransWest last spring with respect to the Project.³ The Project consists of a 405-mile, 3,000 MW HVDC transmission line from Wyoming to the Intermountain Power Project ("IPP") in Delta, Utah, and then a 267-mile, 1,500 MW AC transmission line from IPP to TWE Crystal and an interconnection to the ISO's Harry Allen – Eldorado 500 kV transmission line. The Project will initially consist of the HVDC line from Wyoming to IPP with 1,500 MW of capacity and the 500 kV AC line from IPP to TWE Crystal and the interconnection to the Harry Allen – Eldorado 500 kV transmission line. Subsequently, the capacity of the HVDC line from Wyoming to IPP will increase to the full 3,000 MW.⁴ The first stage of the Project is expected to be completed in 2027.

In accordance with the procedures established pursuant to section 4.3 of the ISO tariff and section 2 of the TCA, TransWest submitted an application to the ISO on July 21, 2022 that proposed TransWest join the ISO as a new participating transmission owner. In order for an applicant to become a participating transmission owner, sections 2.2.3 and 2.2.5 of the Transmission Control Agreement require that the ISO accept the application. Section 2.2.3 of the Transmission Control Agreement states that the ISO shall permit a party to become a participating transmission owner if it determines that:

1. The applicant's transmission lines and associated facilities, including entitlements, that are to be placed under the ISO's operational control can be incorporated into the ISO controlled grid without any material adverse impact on its reliability;
2. Incorporating such transmission lines and associated facilities and entitlements into the ISO controlled grid will not put the ISO in breach of

³ TWE had previously submitted multiple study requests into the ISO's transmission planning process, but approving the project as a regional or interregional project under ISO operational control did not occur for a number of reasons, largely due to the resource planning decisions underpinning policy-driven transmission needs not supporting the development at that time.

⁴ TWE has held a FERC approved open solicitation process for the north-south capacity of the Project, and the Power Company of Wyoming ("PCW") has obtained all the subscription rights for the north-south capacity from Wyoming to the new substation on the Harry Allen – Eldorado 500 kV line.

- applicable reliability criteria and its obligations as a member of Western Electricity Coordinating Council;
3. Objections by the ISO under Section 4.1.3 shall have been withdrawn or determined by the ISO Governing Board to be invalid;
 4. All applicable regulatory approvals of the applicant's TO Tariff have been obtained, which approvals shall specify that the effective date of the TO Tariff is the date that the ISO assumes operational control of the applicant's transmission lines and associated facilities and entitlements; and
 5. The applicant is capable of performing its obligations under this Agreement.

TransWest satisfies the first and second elements because the transmission lines and associated facilities will be an addition to the ISO controlled grid, expanding the ISO balancing authority area to Wyoming.

TransWest also satisfies the fifth element because they have demonstrated in their application that they have the ability to perform the operational obligations under the TCA. These obligations include compliance with the transmission maintenance standards, processing generator interconnection requests, and other actions associated with the physical facilities themselves. TransWest has been very responsive to the ISO during the participating transmission owner application process and has demonstrated its willingness to perform obligations associated with the TCA.

The third and fourth elements are addressed through the conditional nature of the Board's approval. While neither stakeholders nor the ISO have any objections to TransWest's transmission rights in the Project, there are discussions ongoing regarding the market impacts associated with the addition of the Subscriber PTO Model. While the ISO intends to use mostly existing tariff functionality for the Subscriber PTO Model, the ISO will need to make some minimal administrative changes and add a subscriber charge concept to the ISO tariff. These details are still being reviewed with TransWest, the TCA parties and stakeholders.

If the ISO's acceptance of the application is approved, the Project will be incorporated into the 2023-2024 TPP and the generation will be studied in cluster 15 generator interconnection process which opens April 1, 2023 to ensure that the Project can be operated safely and reliably by the ISO. This analysis will determine 1) any network upgrades required on the existing ISO grid to ensure reliability; 2) any network upgrades required on the existing ISO grid to ensure deliverability of the Wyoming wind generation to ISO load serving entities; and 3) establish the costs associated with those upgrades that will be paid for by TransWest's subscriber – the Power Company of Wyoming. These costs will then allow load serving entities to know the full cost of being a subscriber to the Project.

The approval of the application today, and the execution of the transitional Applicant Participating Transmission Owner Agreement, allows discussions to continue and the Subscriber PTO Model to be finalized. The Subscriber PTO Model provides an opportunity for the Project to move forward – or not – depending on the progress the resources that subscribed to the Project through the TransWest process make in getting contracts for their wind resources. This approach allows the load serving entities to determine what is the

most economic and best-fit for their own portfolios taking any ISO decision out of the equation. The ISO intends to implement this model as a win-win arrangement versus trying to unduly extract value from those paying for the Project for the benefit of the ISO's existing ratepayers. This model will increase load serving entities opportunities to meet their renewable portfolio standard requirement and other state policy procurement requirements without increasing the ISO's transmission access charge. The model also allows the ISO to facilitate out-of-state wind procurement without making a determination of which project wins. Any transmission project in the future will be able to avail itself of this model. Management will follow up with the Board on the development of Subscriber PTO Model that would support the Project and future development opportunities.

The Subscriber PTO Model will require an amendment to the TCA that allows transmission owners to join the ISO balancing authority area as a participating transmission owner with transmission lines and facilities that are encumbered with subscriber rights. In turn, the subscriber rights will be treated as an existing contract in accordance with the ISO tariff. The Subscriber PTO will pay for the entire cost of the Project and will not recover any costs for the initial Project through the ISO's transmission access charge.⁵ The protocol will require the Subscriber PTO to adhere to all of the requirements of a participating transmission owner in the ISO tariff and TCA. To the extent there is excess transmission capability on the Project that can be used by ISO market participants, the capacity will be included in the market optimization and scheduling coordinators will be allowed to use it, but the user will pay a subscriber charge in addition to the transmission access charge.⁶ The Subscriber PTO will be required to seek FERC approval of the subscriber charge similar to the other Participating TOs for the ISO to include that rate in its tariff.

Since the project won't be energized until 2027, TransWest provided in their application a draft transmission owner tariff which would be filed with FERC closer to the energization date. The draft transmission owner tariff included in the application is similar to other existing participating transmission owners' tariffs. The TCA, once negotiated with the parties and discussed with stakeholders will ultimately factor in the Subscriber PTO Model protocol and the proposed motion states that FERC's acceptance of these filings is an express condition of accepting TransWest as a participating transmission owner.⁷ TransWest would also need to execute the TCA closer to its energization date. Accepting TransWest's application subject to these conditions at this time is necessary to support the

⁵ If subsequent generators want to interconnect to the Subscriber Participating Transmission Owner line, then the ISO tariff rules for generator interconnection will also apply and the Subscriber Participating Transmission Owner may apply to FERC for a Transmission Revenue Requirement that will be added to the ISO's transmission access charge because the subscribers did not build the line for such additional generation.

⁶ The principle of reciprocity under the Western Energy Imbalance Market ("WEIM") would remain and this charge would not apply to real-time transfers of energy with adjacent WEIM balancing areas. Under the proposed Extended Day-Ahead Market design, the additional transfer capability created by the addition of the Project may be eligible for revenue recovery through the mechanism for that purpose being considered in that initiative.

⁷ The Subscriber PTO Model once finalized will be filed at FERC for approval as soon as possible to provide comfort to TransWest, PCW and the off-takers regarding the treatment of the Project.

implementation timeline of TransWest analysis of the Project and timely transferring operational control of the Project to the ISO.

POSITIONS OF THE PARTIES

As required by section 2.2.2 of the TCA, the ISO posted TransWest's application for participating transmission owner status on the ISO website for 60 days to give interested parties an opportunity to review the application and submit comments to the ISO. The ISO received comments from ten stakeholders (both PTO and non-PTO) on the application and separately on the draft Subscriber PTO Model itself.⁸ The comments stem not from the addition of the Project, but instead how the Subscriber PTO Model will impact interconnections, market scheduling and price formation, and a desire to have a competitive transmission process to approve the Project that demonstrates the benefit to the ISO controlled grid. Most stakeholders support the concept and seem to be in favor of allowing load serving entities the opportunity to determine which out-of-state wind projects they choose to serve their load, but they do have questions about how that should be accomplished. These comments, therefore, do not relate to the approval being recommended today, but to the nature of the Subscriber PTO Model itself that is not being finalized today.

Some stakeholders philosophically oppose the use of encumbrances for subscriber rights, but agree that the subscriber should be afforded protection from transmission costs and congestion price differences for use of their facilities. *i.e.*, the "perfect hedge," and scheduling priority on the line they have paid for. The ISO has accommodated encumbrances on the ISO controlled grid since the initial start-up and has built software systems to incorporate these rights into the market systems. By using existing tariff functionality and software systems, integrating the Subscriber PTO Model will result in minimal changes to how the ISO manages encumbrances for others if this functionality is used.⁹

Some stakeholders are leery of the subscriber charge. The subscriber charge will be applied to transactions in the market by non-subscribers that use the Project since the cost of the Project is not recovered in the ISO's transmission access charge. The ISO believes that, consistent with open access principles, the Project should not be used by non-subscribers without compensation. The subscriber charge will be developed in accordance with TransWest's transmission owner tariff and approved by FERC similar to all the inputs to ISO's transmission access charges for other Participating TOs.

Generator interconnection studies will be done in accordance with the ISO tariff to determine the impact, if any, to other participating transmission owners, and the process that the Power Company of Wyoming will go through for connecting its Wyoming wind generation is

⁸ After posting the application, the ISO held a stakeholder briefing on August 1, 2022 which discussed the Subscriber PTO Model, the merits and issues that still needed discussion.

⁹ This is the same functionality the ISO intends to use in EDAM for honoring existing contract rights in the EDAM balancing authority areas.

no different than any other generator interconnecting to the ISO controlled grid except as described in this document.

As discussed above, with respect to the desire to have a competitive transmission process to choose the line, a benefit analysis is not required because the Project is not going to be designated by the ISO's transmission planning process nor recovered through the ISO's transmission access charge. It will be up to the load serving entities that subscribe to the Project to make the determination of whether the Project is economical and a best-fit for themselves. Moreover, by having the subscribers pay for the Project and all network upgrades required on the existing ISO grid, there is very little potential for stranded assets or costs to existing ratepayers who remain non-subscribers.

CONCLUSION

Based on the criteria set forth in the Transmission Control Agreement, Management has concluded that the application submitted by TransWest satisfies all of the requirements for acceptance applicable at this time and recommends that the Board approve the ISO's acceptance of TransWest's application for participating transmission owner status conditioned on (i) TransWest's execution of the Transmission Control Agreement, and (ii) FERC's acceptance of TransWest's transmission owner tariff.



ISO Board of Governors

December 15, 2022

General session

Decision on PTO Application for TransWestExpress LLC

Motion

Moved, that the ISO Board of Governors approve the ISO's acceptance of the application of TransWest Express, LLC for Participating Transmission Owner status, conditioned on (1) TransWest Express, LLC executing the Transmission Control Agreement and (2) the Federal Energy Regulatory Commission's acceptance of a Transmission Owner Tariff, as set forth in the memorandum dated December 7, 2022.

Moved: Governor Bhagwat

Second: Governor Borenstein

ISO Board of Governors Action: Passed		Vote Count: 5-0
Bhagwat	Y	
Borenstein	Y	
Galiteva	Y	
Leslie	Y	
Schori	Y	