

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

**Electric Transmission Incentives Policy
Under Section 219 of the Federal Power
Act**

Docket No. RM20-10-000

**COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

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The California Independent System Operator Corporation (“CAISO”) submits these comments in response to the Federal Energy Regulatory Commission’s (Commission) Notice of Proposed Rulemaking (NOPR) issued on March 20, 2020 in the captioned docket.

I. BACKGROUND

In the NOPR, the Commission proposes to revise its regulations that implemented Section 219 of the Federal Power Act in light of changes in transmission development and planning over the last few years. Among other revisions, the Commission proposes to depart from the risks and challenges approach it currently uses to evaluate requests for transmission incentives and instead focus on granting incentives based on the benefits to consumers of transmission infrastructure investment identified in Section 219, namely ensuring reliability and reducing the cost of delivered power. The Commission proposes to offer public utilities a return on equity (ROE) incentive for transmission projects that provide sufficient economic benefits, as measured by the degree to which such benefits exceed project costs, based on *ex ante* and *ex post* assessments. The Commission also proposes to provide up to 50 basis points of ROE for transmission projects that demonstrate reliability benefits based on

quantitative analysis, if possible, and qualitative analysis. Further, the Commission proposes to allow project developers to recover 100 percent of the prudently incurred costs of transmission facilities that are abandoned due to factors beyond the control of the project developer from the date the project is approved in the regional transmission planning process. The Commission also proposes several other revisions to its transmission incentive program that the CAISO does not address in these comments.

II. EXECUTIVE SUMMARY

The CAISO appreciates the opportunity to provide comments on the NOPR. The CAISO's comments focus on four topics raised by the NOPR, all of which directly or indirectly implicate ISO and RTO transmission planning processes:

- (1) the potential disconnect between the drivers for approving reliability projects in the transmission planning process and the NOPR's drivers for awarding ROE incentives and the problems this can pose for ISO/RTO transmission planning processes;
- (2) the NOPR's proposals to (a) afford ISO/RTO production cost study results a rebuttable presumption when determining whether a project merits an ROE incentive, and (b) use ISO/RTO production cost modeling study results as the basis for establishing eligibility thresholds, which is well-beyond the intended use of such studies. This will make transmission planning processes even more challenging and contentious, and unnecessarily increase litigation risk for ISOs/RTOs;
- (3) support automatic authorization of the abandoned plant incentive dating back to the date a project is approved in the transmission planning

process, rather than the date of the Commission's order approving the abandoned plant incentive following an applicant's submission of a petition for declaratory order; and

- (4) the need to clarify any grant of incentives, ROE or non-ROE, is not intended to prejudge the outcome of otherwise applicable ISO and RTO transmission planning processes and does not constitute approval of a project.

Regarding ROE incentives for reliability projects, one sentence in the NOPR suggests reliability projects that provide benefits above and beyond meeting NERC reliability standards will be eligible for ROE incentives, but the proposed rule itself does not explicitly state this requirement, nor is this apparent standard expressly stated elsewhere in the NOPR's discussion of ROE incentives for reliability projects. Also, if there is such an "above and beyond" requirement, it is unclear whether (1) the NOPR intends to provide the ROE adder only to transmission projects that meet a higher reliability standard explicitly specified in an ISO/RTO tariff (e.g., the CAISO Planning Standards) that constitutes a basis for approving a reliability transmission project in the regional planning process, or (2) the ROE adder is available when an applicant demonstrates a project provides certain reliability benefits that are "above and beyond" meeting a NERC reliability standard, without requiring the benefits also be "tied" to meeting a "higher" non-NERC reliability standard specified in the tariff. If the Commission is imposing an "above-and-beyond" requirement, the CAISO requests the Commission clarify it applies only for projects that satisfy (1) immediately above.

Making the ROE incentive available for “above and beyond” reliability benefits not tethered to a specific tariff provision that authorizes approval of reliability projects that meet a standard above and beyond the NERC reliability standards would create a problematic disconnect between the objectives of the transmission planning process and the standard for awarding ROE incentives for reliability projects. It could put project proposals at odds with the overriding objective of Order No. 1000 and the transmission planning process by incentivizing developers to design projects focused on meeting the NOPR’s list of enhancements eligible for ROE incentives, rather than merely addressing the identified reliability need in a more cost-effective or efficient manner. Encouraging developers to propose projects with benefits that are not particularly germane to mitigating identified reliability needs and tariff standards, and awarding incentives for benefits not considered (or even needed or valued) in the planning region can unduly divert planners’ resources and attention from their primary responsibilities, cause confusion and delays, and foster increased contention in the planning process. ROE incentives should be tied to explicit standards in a planning region’s tariff (including standards that go above and beyond the NERC reliability standards) so they reflect actual and valued regional needs and do not unduly disrupt regional planning processes.

In switching to a benefits-based approach for economic transmission projects, the Commission proposes to use ISO/RTO production cost modeling results to establish the thresholds above-which economically-driven projects would be eligible for ROE incentives. Further, in determining whether a specific project meets the threshold, the Commission will accord the results of an ISO/RTO cost-benefit analysis a rebuttable

presumption. The proposed added importance of ISO/RTO cost-benefit studies to ratemaking determinations is problematic. ISOs and RTOs, including the CAISO, do not use their production cost modeling studies for ratemaking purposes, and they are not intended for such purposes. Rather, the CAISO uses such studies to evaluate whether a new project provides net benefits and is eligible for approval as an economic project. Because the CAISO's production cost models are projections of benefits 40-50 years into the future and are based on a multitude of assumptions, they are not precise and certain indicators of the actual benefits a particular project will generate. Using ISO/RTO production cost results to determine ROE incentives for economic projects will attribute a level of exactitude and certainty to them that is unjustified for ratemaking purposes. However, the NOPR essentially proposes to accord results of these production cost models a rebuttable presumption for purposes of determining ROE incentives.

By placing new and added significance on ISO/RTO cost-benefit studies, the NOPR needlessly places a "target" on such studies, inviting increased stakeholder challenge in transmission planning processes or complaint proceedings at the Commission. The CAISO is concerned that, absent reasonable and targeted modifications, the NOPR proposal will unduly disrupt ISO/RTO planning processes, create more controversy and contention in the planning process, divert transmission planners attention away from core planning responsibilities, and increase the litigation risk for ISOs and RTOs.

The CAISO recommends two carefully tailored modifications to the NOPR proposal to address these concerns. These narrow changes would not undermine the

NOPR's benefits-based approach or the overall goals of the NOPR. First, the Commission should not accord a rebuttable presumption for the results of ISO/RTO cost-benefit analyses. This recommendation recognizes that such studies are not intended to be used in the ratemaking context and are inexact and uncertain regarding the actual level of future benefits a project may have. Removing the rebuttable presumption designation would, in turn, (1) help mitigate the potential adverse impacts on, and disruptions of, ISO/RTO transmission planning processes and (2) reduce the litigation risk facing ISOs and RTOs because their cost studies would no longer have the significance the NOPR proposes for them. Issues affecting ROE incentives are appropriately addressed in the applicant's incentive ratemaking proceeding, not in an ISO/RTO planning process, and especially not in a separate Section 206 complaint proceeding challenging the results of an ISO/RTO production cost modeling study. Under the CAISO's proposal, ISO/RTO production cost studies can still be an input into the ROE incentive ratemaking process; they just will not be accorded a rebuttable presumption. For example, they might be used as a starting point or guidance for the deliberations. The NOPR already allows applicants to submit their own benefit studies, so the CAISO's targeted proposal will not unduly disrupt or undo the processes contemplated in the NOPR.

Second, the Commission should not establish new ROE incentive eligibility thresholds every five years (or on any other pre-scheduled basis) based on the results of ISO/RTO production cost studies during that intervening period. The goal of the NOPR is to reward "highly beneficial" projects. Which economic projects "happened" to be studied in a given five-year period – as opposed to some other five-year period -- is

not indicative of whether a specific project is “highly beneficial.”¹ Under the NOPR proposal, the eligibility threshold for any five year period could vary widely from one five-year period to the next, depending on the economic studies ISOs and RTOs decided to conduct during that period, the number of economic projects that were studied, and what the specific benefit-to-cost ratios of each studied project were. This can cause disparate treatment of projects with identical benefit-to-cost ratios: one being eligible for incentives in one five-year period, but the other being ineligible in a subsequent five-year period. This result is unfair and arbitrary. An economic project’s eligibility for an ROE adder should not depend on when it was studied in the planning process; it should depend on the level of the net benefits it provides and whether it is “highly beneficial.” Adopting the CAISO’s proposed approach not only will address this inherent unfairness, it will further reduce contention in the transmission planning process and the litigation risk for ISO’s and RTOs. If eligibility thresholds will not change every five years (or some other set period of time) based on the results of ISO/RTO cost-benefit studies, stakeholders will be less inclined to dispute every element of every cost-benefit study in the planning process in an attempt to drive up, or drive down, the final benefit-cost ratio.

The CAISO notes that since the Commission issued the 2012 Transmission Incentives Policy Statement it has evaluated ROE incentives requests among other things, based on a project’s ability to reduce “severe and chronic congestion.” The Commission has approved and rejected ROE adders for individual projects based on their level of production cost benefits, *i.e.*, whether the congestion being reduced was

¹ For example, if ISOs and RTOs studied only projects with low benefit-to-cost ratios during a given five year period, the eligibility threshold would be driven significantly downward, and it might be questionable whether the projects eligible for ROE incentives truly were “highly beneficial.”

“severe or chronic” not just “noteworthy.” In other words, the Commission already has been utilizing an approach that examines benefits. Just as the Commission has successfully evaluated “chronic and severe congestion” levels and production cost savings in prior ROE incentive proceedings, the Commission should continue to assess what constitutes a project with “high economic benefits” without relying on a new batch of ISO/RTO cost studies to re-set eligibility thresholds every five years (or on any other pre-established schedule). The CAISO’s approach can work effectively whether the Commission adopts a fixed benefit-cost threshold level, a sliding scale, a stepped benefit-cost level that remains fixed, or no specified threshold at all, as is the case today.

The CAISO supports the NOPR’s proposal to change the effective date for the abandoned plant incentive to the date transmission projects are accepted in the regional transmission planning process. At that point in time, the planning region has decided to proceed with the transmission project, and transmission developers can begin incurring costs on the project immediately. The existing approach denies developers recovery of prudent costs they incur on an abandoned project from the date the project is approved in the transmission planning process to the date the Commission approves the abandoned plant incentive. The CAISO also recommends the abandoned plant incentive automatically apply, so the project sponsor does not have to file a separate petition for declaratory order to obtain the incentive. Automatic authorization of the abandoned plant incentive would streamline the process, provide greater up-front certainty to project sponsors, and reduce their risk exposure.

Finally, consistent with precedent, the Commission should clarify that any grant

of incentives, ROE or non-ROE, is not intended to prejudge the outcome of any applicable transmission planning process and does not constitute approval of a project.

III. COMMENTS

A. Proposed Benefits Supporting ROE Incentives for Reliability Projects May Have Little or No Connection to the Drivers Supporting Approval of Reliability Projects and May Not Be Needed in the Region

1. The Commission Should Clarify the Standard for Approving ROE Incentives for Reliability Projects

The Commission proposes a separate ROE incentive of up to 50 basis points for transmission projects that provide significant and demonstrable reliability benefits above and beyond the requirements of the NERC reliability standards.² The Commission would evaluate reliability benefits on a case-by-case basis. The NOPR identifies the following reliability benefits that would support eligibility for ROE incentives: (1) transmission projects that significantly increase import or export capability between balancing authorities, which can provide access to additional generation capacity to prevent load shedding or restore generation balance in an emergency; (2) transmission projects that cause an Interconnection Reliability Operating Limit (IROL) being downgraded to a routine System Operating Limit likely to produce significant and demonstrable reliability benefits; (3) transmission projects that improve the bulk power system's ability to operate reliably during foreseen and unforeseen contingencies beyond the NERC transmission planning requirements or other local planning criteria; (4) transmission projects that reduce the complexity of the transmission system by eliminating the need for one or more remedial action schemes (RAS); and (5)

² NOPR at P 64.

transmission projects that use network management technologies.³ The Commission also states it will consider transmission projects that improve resilience or promote disaster recovery in awarding reliability incentives.⁴

The NOPR states that applicants should support their incentives request by providing a quantitative analysis where possible, and if unable to do so, to provide a qualitative analysis demonstrating the transmission project provides one or more significant and demonstrable reliability benefits to address specific reliability needs. The NOPR states that such analyses should include, for example, reduced loss of load probability, reduced unserved energy under various contingencies, reductions in reliability unit commitments, increases in export or import capability, and improvements in voltage stability.⁵ The Commission will then review the potential reliability benefits to determine whether and how much of an ROE incentive to award the transmission project.⁶ The Commission seeks comment regarding whether there are different or additional elements it should consider, how an applicant can demonstrate projects provide these benefits absent a quantitative analysis, and how the Commission can measure or evaluate an applicant's demonstration.⁷

As an initial matter, the CAISO requests the Commission clarify what the applicable standard (or showing requirement) is for a reliability project to be eligible to receive an ROE adder. In different places, the NOPR appears to offer potentially

³ *Id.* at PP 68-72.

⁴⁴ *Id.* at PP 68-73.

⁵ *Id.* at P 74.

⁶ *Id.*

⁷ *Id.* at P 75.

different standards. First, in Paragraph 64 of the NOPR, the Commission states that it proposes “an ROE incentive for certain transmission projects that produce significant and demonstrable reliability benefits *above and beyond the requirements of the NERC reliability standards* (emphasis added).” However, the italicized wording is not reflected in the proposed regulations contained in the NOPR. In that regard, proposed Section 35.35 (d) (iii) merely provides for “up to 50 basis points increase in return on equity incentives for reliability benefits.” Similarly, the italicized wording is not referenced in other paragraphs of the NOPR, which simply state the ROE incentive is available “for transmission projects that provide significant and demonstrable reliability benefits.”⁸

Also, if there is an “above and beyond” benefits requirement, it is unclear whether the ROE incentive is available only if a transmission project meets an explicit reliability planning standard in an ISO/RTO tariff that goes above and beyond the NERC standards and constitutes a basis for approving new transmission projects in the region. Or does the NOPR intend the ROE incentive to be available where a project provides reliability benefits in the NOPR that are “above and beyond” the NERC reliability standards even if they are not tied to meeting a “higher,” non-NERC-related reliability standard specified in the applicable ISO/RTO tariff. If the Commission is imposing an “above-and-beyond” requirement, the CAISO requests the Commission clarify it applies only for projects that satisfy (1) immediately above.

The CAISO urges the Commission to clarify that if it is requiring a project show benefits “above and beyond the requirements of the NERC reliability standards” to be eligible for the ROE incentive, it be tied to project approval under an explicit reliability

⁸ See NOPR at PP 65, 66, 73-75

standard in a planning region's tariff that goes above and beyond the NERC standards, e.g., the CAISO Planning Standards. As discussed below, absent such a requirement, regional transmission planning processes may be significantly and adversely affected.

2. Rewarding Projects for “Above and Beyond” Benefits not Tethered to an Explicit Reliability Standard in the Tariff That Goes Beyond the NERC Standards Is Problematic

The CAISO's transmission planning process includes three phases: (1) development of unified planning assumptions; (2) application of reliability, economic, policy screens, and project identification; and (3) competitive solicitations for approved regional transmission projects. During the second phase of the transmission planning process, the CAISO assesses and approves reliability projects to meet NERC national reliability standards, Western Electricity Coordinating Council (WECC) regional reliability standards, and the CAISO Planning Standards. The CAISO Planning Standards are reliability standards tailored to the CAISO system that go above and beyond the generally applicable NERC and WECC reliability standards.⁹ However, it is unclear what specific reliability standards or reliability criteria are driving many of the “reliability” projects the NOPR identifies as being eligible for ROE incentives. Such “reliability” benefits are insufficient by themselves to justify approving a reliability project under the CAISO tariff unless they are associated with a project that (1) is needed to ensure compliance with NERC or WECC reliability standards or the CAISO Planning Standards

⁹ CAISO Tariff section 24.4.6.2. For example, the CAISO Planning Standards include (1) a Planning for High Density Urban Load Area Standard (Section 6), and (2) an Extreme Event standard that permits the CAISO to approve projects designed to address extreme event occurrences in certain areas of the grid (Section 7). These allow for the CAISO to approve transmission projects to meet specific reliability needs that would be above and beyond those specified in the NERC planning standards. <http://www.caiso.com/Documents/ISOPlanningStandards-September62018.pdf>.

and (2) constitutes the “more cost-effective or efficient solution” to the identified reliability need.

If an ROE incentive is available for “above and beyond” benefits not tethered to NERC or WECC reliability standards or the CAISO Planning Standards there will be a disconnect between the NOPR’s efforts to award ROE incentives for “reliability” projects and reliability planning in the CAISO’s transmission planning process.¹⁰ Under such circumstances, the NOPR could be interpreted as seeking to drive selection of transmission solutions that might not otherwise be selected in the transmission planning process. It does not necessarily follow that a transmission solution that provides the additional benefits identified in the NOPR will constitute the more cost-effective or efficient solution to address an identified reliability violation or that they will even be required to meet a tariff specified need in the first instance. The CAISO is concerned any Final Rule implementing an “additional benefits” approach might incentivize developers to design projects focused on meeting the NOPR’s list of enhancements eligible for incentives rather than addressing the specific, identified reliability issue in a more cost-effective and efficient manner. Any new-found focus on the additional benefits identified in the NOPR could turn the transmission planning process on its head and undermine a fundamental goal of Order No. 1000, *i.e.*, choosing the most cost-effective and efficient solutions that address the identified reliability need. Further, increasing project costs and driving project selection based on unspecified reliability

¹⁰ If the NOPR is merely stating that ROE incentives may be available for reliability projects that meet a specified ISO/RTO tariff standard that goes above and beyond the NERC reliability standards, *e.g.*, the CAISO Planning Standards, that may not cause a disconnect. But a disconnect can arise if the Commission proposes to award ROE incentives for benefits that are not necessary to meet a reliability standard explicitly specified in the tariff.

standards could increase opposition in state siting processes, making it more difficult to obtain siting authorizations for projects that are needed to meet identified reliability needs.

Moreover, some of the “benefits” identified in the NOPR may not be needed or valued in a given planning region, may not be required to meet an identified reliability need, or may not be relevant to satisfying the specific tariff standards for approving reliability projects in a given region. For example, NERC reliability standards permit the use of a RAS. These are not necessarily overly complex. Incentivizing investment to eliminate a RAS may be unwarranted. Similarly, a region may already have more than sufficient import and export capability, making additional capability between balancing authorities unnecessary and superfluous. ROE incentives should have some connection to the needs and reliability standards in a planning region. However, the NOPR invites developers to raise in their submittals to the Commission a host of benefits that may have little or no connection to the drivers the RTO/ISO assessed to approve the particular project in the first place. Thus, the NOPR could drive consideration of benefits that are not particularly germane to mitigating identified reliability needs under the tariff and reward results not considered in the planning process or not needed in the region. This might cause a disconnect between the transmission planning process and the incentives process. This, in turn could engender litigation, divert transmission planners’ attention from their primary planning responsibilities, cause inefficient use of planning staff time and resources, cause confusion as to how the Commission’s “benefits” metrics interact with the established planning drivers embodied in RTO/ISO tariffs, and potentially hamper efforts to obtain

state siting approvals for needed projects. ROE incentives should be tethered to explicit standards in a planning region's tariff (including standards that go above and beyond the NERC reliability standards) so they reflect regional needs and objectives and do not unduly disrupt regional planning processes.

B. The CAISO Applies Its Production Cost Simulation Analyses to Determine Whether to Approve an Economic Transmission Project, not for Ratemaking Purposes

1. The NOPR's Proposed Use of ISO/RTO Production Cost Study Results to Determine Eligibility for ROE Incentives for Economic Projects Is Problematic

The Commission proposes to grant ROE incentives to economic transmission projects based on an economic benefits test. The NOPR would provide a 50-basis point ROE incentive for transmission projects that have meet an *ex ante* benefit to cost ratio that places them in the top 75th percentile of all projects.¹¹ The NOPR would provide an additional 50 basis point ROE incentive for transmission projects that exhibit a benefit-to-cost ratio in the top 10 percent of transmission projects at the time of transmission project completion based on applying the projects actual costs to the projected benefits.¹² The Commission would establish the respective thresholds based on the benefit-to-cost ratios for projects studied in ISO and RTO planning regions over a five-year period, and it would establish separate thresholds for projects less than or equal to \$25 million and projects above \$25 million.¹³ The Commission would

¹¹ NOPR at P 57.

¹² *Id.* at P 59.

¹³ *Id.* at PP 57-58. The NOPR recognizes: “[T]he six RTOs/ISOs use sophisticated software modeling to identify the relative benefits and costs of proposed new transmission projects premised upon transmission projects’ economic benefits. There is now an opportunity for the Commission to leverage the RTOs/ISO’ efforts to better target incentives at transmission projects that demonstrate sufficient

reevaluate the thresholds every five years based upon an examination of the benefit-to-cost ratios of transmission projects studied in transmission planning regions during that timeframe.¹⁴ The Commission would update for inflation the dividing line between small and large transmission projects annually.

The Commission proposes to limit its analysis of economic benefits to actual production cost, similar measures of congestion reduction, and certain other quantifiable benefits that are verifiable and not duplicative.¹⁵ The Commission would provide a “rebuttable presumption” that economic benefits measured in benefit-to-cost ratios derived by RTOs/ISOs for proposed transmission projects within their footprints would be included in the determination of an applicant’s transmission project’s benefits.¹⁶ Applicants may submit their own cost-benefit studies for consideration; although, they will not receive a presumption that they are appropriately included in a determination of economic benefits.¹⁷

In Phase 2 of the CAISO’s regional transmission planning process, the CAISO utilizes the so-called Transmission Economic Assessment Methodology (TEAM) to determine if a transmission solution is needed to meet an economic need.¹⁸ This

economic benefits, as measured by the degree to which such benefits exceed related transmission project costs.” *Id.* at P 30.

¹⁴ *Id.* at P 62.

¹⁵ *Id.* at P 50.

¹⁶ *Id.*

¹⁷ *Id.* at P 54.

¹⁸ A copy of a document explaining the TEAM methodology is on the CAISO’s website: http://www.caiso.com/Documents/TransmissionEconomicAssessmentMethodology-Nov2_2017.pdf

transparent and well-documented methodology specifies benefits that can be categorized into the following categories:

- **Production benefits:** Benefits resulting from changes in the net ratepayer payment based on production cost simulation as a consequence of the proposed transmission upgrade.
- **Capacity benefits:** Benefits resulting from increased importing capability into the CAISO Balancing Authority Area (BAA) or into a Local Capacity Requirement (LCR) area. Decreased transmission losses and increased generator deliverability contribute to capacity benefits as well.
- **Public-policy benefit:** Transmission projects can help to reduce the cost of reaching renewable energy targets by facilitating the integration of lower cost renewable resources located in remote area, or by avoiding over-build.
- **Renewable integration benefit:** Interregional transmission upgrades help mitigate integration challenges, such as over-supply and curtailment, by allowing sharing energy and ancillary services (A/S) among multiple BAAs.
- **Avoided cost of other projects:** If a reliability or policy project can be avoided because of the economic project under study, then the avoided cost contributes to the benefit of the economic project.

Importantly, the CAISO uses the TEAM methodology for the sole purpose of determining whether to approve a potential transmission solution that likely will provide net benefits as an economic transmission project. TEAM is not used for ratemaking purposes of any type and is not designed to establish with precision the actual level of benefits a project will deliver. Using TEAM results to establish eligibility thresholds for

ROE incentives and to determine whether a specific new economic project should be awarded an ROE adder, as the NOPR proposes, is beyond the intended purpose and function of TEAM and would attribute a level of exactitude and certainty to the studies that, simply put, is unwarranted.

This is understandable because forward looking benefit calculations are inherently uncertain. The CAISO's production cost studies project benefits for the life of the transmission project -- 40-50 years into the future depending on the type of the project. TEAM bases the benefits portion of the cost/benefit calculation to evaluate economic transmission projects on simulated production runs of projected future price and load payment changes. The CAISO's analysis is based on projections/forecasts of a myriad of inputs including, but not limited to, future load patterns, fuel costs, generation technology costs, prices, resource additions and retirements, state policies/procurement objectives, grid topography, and dispatch scenarios. Further, the ultimate costs of a proposed project are not known at the time of any planning process production cost simulation and can change for any number of reasons.¹⁹ All such projections and assumptions that are inputs into TEAM, by definition, cannot be exact and certain as to future results, especially when projecting out over 40-50 years. Further, future benefits levels for certain benefit categories are extrapolated for the life of the project after a certain period of time. Yet the NOPR would grant a rebuttable presumption to the benefit-cost ratios arising from ISO/RTO production cost simulations

¹⁹ Of course, any concern regarding project cost uncertainty can be remedied by only awarding ROE incentives for economic projects based on the actual completed costs of a project.

and establish eligibility thresholds using such ratios to determine a project's eligibility for ROE incentives.

The CAISO cautions that using forecasted results from the transmission planning process will not – and cannot by definition -- provide an accurate and certain assessment of the actual benefits that will result on a year-to-year basis from implementing a new transmission project. Uncertainty regarding grid conditions exists and is increasing, not decreasing, especially in this era of rapid transformation of the electricity industry and more extreme weather conditions. Grid conditions are dynamic, and any number of factors can affect the yearly (and long-term) efficacy of a new transmission project, including, among others, generation and transmission additions (and retirements), new technologies, enhanced energy efficiency and demand response, natural gas prices, generation and transmission outages, rapid growth of variable energy resources and distributed energy resources, changes in load, new weather patterns, drought, and fires. All of these factors can affect flows on the transmission system and change the benefits that were forecasted earlier during the transmission planning process. Yet the NOPR essentially proposes to base ROE incentives on the results of ISO/RTO production cost modeling studies that are imprecise and not guaranteed.

The NOPR recognizes the potential concerns of imbuing ratemaking consequences to ISO/RTO transmission planning studies – activities that heretofore have been entirely separate and unrelated. These include interfering with transmission planning efforts, causing inefficient use of staff time, and engendering contention and

potential litigation.²⁰ However, the NOPR would now intertwine the two by using the benefit-to-cost ratios used in the planning process as a basis for determining ROE incentives for new transmission projects. The CAISO is concerned that the new-found, added significance given ISO/RTO benefit-cost studies (for both transmission developers and ratepayers) will make the planning process more contentious as stakeholders (seeking either to increase or reduce a project's net benefit levels) use the planning process as a forum to build a record supporting their positions. The primary forums for incentive ratemaking debates heretofore have been in Section 205 rate proceedings and incentive rate proceedings at the Commission, not ISO and RTO planning processes.

The CAISO is also concerned that the proposal will unnecessarily expose ISOs/RTOs to increased litigation risk as stakeholders may be more inclined to pursue Section 206 complaints challenging ISO/RTO cost-benefit analyses given their new ratemaking significance. In 2019, the Commission rejected one such complaint that challenged the results of the CAISO's production cost study.²¹ That effort consumed a significant amount of CAISO staff time and resources and considerably diverted transmission planners' attention from their transmission planning responsibilities. Unfortunately, the NOPR proposal increases the risk that the CAISO, and other ISOs and RTOs, will face this untenable position more often given the new significance to be accorded ISO/RTO production cost studies. In addition to increasing litigation risk for ISOs/RTOs and contention in the transmission planning process, the NOPR's proposals

²⁰ NOPR at P 44.

²¹ *Nevada Hydro Company, Inc. v. California Independent System Operator Corporation*, 169 FERC ¶61,044 (2019).

to utilize ISO/RTO cost-benefit results in establishing ROE incentive eligibility thresholds and approving ROE incentives could disrupt transmission planning efforts, unduly distract planners from their primary, day-to-day planning responsibilities, and unnecessarily expend ISOs' and RTOs' limited resources.

2. Two Targeted Modifications Could Mitigate the Problems Created by the NOPR Proposal Without Undermining the NOPR's Objectives and Benefits Approach

The CAISO proposes two targeted modifications to the NOPR proposal that would help mitigate the aforementioned concerns and risks without undermining the NOPR's objectives and without moving away from the benefits approach the Commission desires. Specifically, in any Final Rule, the Commission should

- (1) not adopt a rebuttable presumption for ISO and RTO cost benefit study results, and
- (2) not establish benefit-cost threshold level(s) to establish eligibility for ROE incentives that will change every five years (or on some other pre-established schedule) based on the results of more recent ISO/RTO cost-benefit analyses.

a. Eliminating the Rebuttable Presumption for ISO/RTO Study Results

Declining to adopt a rebuttable presumption for the results of ISO/RTO production cost studies would recognize that such studies are not primarily intended for ratemaking purposes and are inexact and not predictive of the actual level of future benefits a project may have. This modification would also benefit regional transmission planners by mitigating the potential adverse impacts on transmission planning processes and reducing the litigation risk because ISO/RTO cost-benefit results would

not have the significance the NOPR affords them.

Discussion regarding a project's eligibility for ROE incentives appropriately belongs in the applicant's incentive ratemaking proceeding, not in an ISO/RTO planning process, and certainly not in a separate Section 206 complaint proceeding challenging the results of an ISO/RTO production cost modeling study. The CAISO's modified approach will allow regional planning process cost-benefit analyses to serve the purpose for which they were intended -- to determine whether a specific project should to be approved in the planning process. Under the CAISO's proposal, ISO/RTO production cost studies can still be a data point to be considered in the ROE incentive ratemaking process; they just will not be accorded a rebuttable presumption.²² The Commission might consider using ISO/RTO study results as a starting point or as guidance in its assessment and deliberation. Parties would be able to debate the pros and cons of all studies and supporting documentation in the incentive rate proceeding. The CAISO also notes that the NOPR already contemplates that parties and consultants may submit non-ISO/RTO studies, analyses, and testimony in the incentive ratemaking proceeding, and the Commission will consider them.²³ Thus, merely removing the rebuttable presumption for ISO/RTO study results will not unduly upend, disrupt, or undo the process and procedures the Commission has proposed in the NOPR for evaluating ROE incentive requests.

²² This is consistent with their use in incentive rate proceedings today in assessing whether a transmission project will reduce "severe or chronic congestion." See, e.g., *New York Independent System Operator, Inc. et al.*, 171 FERC ¶61,159 at P 8 (2020); *Next Era Energy Transmission New York*, 162 ¶ FERC ¶61,196 at P 38 (2018).

²³ NOPR at P 54.

b. The Commission Should Not Adopt ROE Incentive Eligibility Thresholds that Change Periodically Based on ISO/RTO Production Cost Study Results

The CAISO also recommends the Commission not adopt cost-benefit threshold level(s) to establish eligibility for ROE incentives that change every five years (or on some other set schedule) based on the results of recent ISO/RTO cost-benefit analyses. The Commission’s goal appears to be to provide ROE incentives to “highly beneficial” economic projects that provide “sufficient economic benefits.”²⁴ However, because the NOPR proposal would change the threshold levels every five years based on recent study results, it may not achieve that goal. Under the NOPR proposal, the eligibility thresholds could swing widely from one five-year period to the next depending on whether more higher benefit (or lower benefit) projects were studied during that period.²⁵ This can produce a high net benefit threshold in one five-year period and a low net benefit threshold in another. This could result in projects that are not “highly beneficial” receiving ROE adders simply because projects with lower net benefits were predominant during the particular five-year study period used to establish the threshold; whereas, otherwise “highly beneficial” projects could be denied ROE incentives because mostly higher benefit projects were studied in a different five-year period. Indeed, such approach could result in projects with identical net benefit ratios being treated differently – one being ineligible for ROE incentives because a higher threshold

²⁴ NOPR at PP 4, 41, 46.

²⁵ Also, the NOPR appears unclear as to whether an economic transmission project awarded an ROE incentive based on the applicable threshold at the time it received the incentive would “lose” the incentive if the threshold is lowered in a subsequent five-year period. Such a result would be inconsistent with existing practice and add uncertainty. On the other hand, there would be disparate treatment if a project retains a previously approved ROE incentive during a subsequent five-year period in which new projects approved during such period would be unable to receive the incentive due to a changed (*i.e.*, increased) eligibility threshold level. The CAISO’s proposed modification avoids this problem.

is in-place, but the other, approved a few years later, receiving an ROE adder because the eligibility threshold is significantly lower. These arbitrary and unfair results can occur because the NOPR's *changing* eligibility threshold levels are entirely dependent on the number and nature of the of economic projects studied in the most recent prior five-year period and their specific benefit-to-cost ratios. An economic project's eligibility for an ROE adder should not depend on the mere happenstance of its timing; it should be based on the overall level of net benefits it provides, and similarly situated projects should be treated similarly. Stated differently, what projects were studied in ISO/RTO planning processes in any given time period is not directly indicative of whether a project is highly beneficial or provides significant net benefits. The CAISO's proposal would remove the potential unfairness and arbitrariness inherent in the NOPR's approach.

The CAISO's recommendation also has the benefit of not relying on the results of ISO/RTO production cost studies, which are not intended for ratemaking purposes or to specify precise and certain levels of future benefits. Further, it recognizes that ISOs and RTOs do not use uniform metrics for calculating benefit-to-cost ratios and thus would not establish threshold levels being based on a hodgepodge of non-uniform cost study methodologies. Moreover, periodically changing future threshold levels based on the results of recent ISO/RTO studies could encourage stakeholders to challenge every cost and benefit component of every ISO/RTO cost-benefit study to seek to increase, or decrease, the net benefit levels, knowing the Commission will use final, adopted net benefit levels to establish future eligibility threshold levels. This will needlessly increase contention in the transmission planning process and unduly expose ISOs and RTOs to

increased litigation risk. The CAISO's targeted modification addresses these concerns without undermining the objectives of the NOPR.

Under the CAISO's proposal, the Commission would not change the eligibility threshold on some pre-set schedule based on the results of recent ISO/RTO studies. The CAISO's proposal will work whether the Commission adopts a single, fixed threshold level, a sliding benefits scale, a stepped-benefit level approach,²⁶ or no specified threshold level at all to determine ROE incentive eligibility, as long as the Commission does not periodically change the threshold levels based on recent ISO/RTO cost studies. Any threshold(s) could be set at a level(s) the Commission determines will incentivize projects that deliver "sufficient economic benefits," "high economic benefits," or some other standard the Commission deems is appropriate.

Since Order No. 679, the Commission has had extensive experience evaluating projects that reduce congestion by varying amounts or demonstrate different production cost benefit levels to determine whether to grant ROE incentives. The Commission has effectively undertaken this analysis without needing to establish specified eligibility thresholds and without needing to change eligibility thresholds periodically based on the results of ISO/RTO production cost studies. The Commission can build upon that experience.

In the 2012 Transmission Incentives Policy Statement,²⁷ the Commission elaborated on the type of projects that might require more than a base ROE under the

²⁶ For illustrative purposes only: a 10 basis point adder for a 2.0 benefit ratio; 30 basis point adder for a 3.0 benefit ratio, and 50 basis point adder for a benefit ratio of 4.0 or above.

²⁷ *Promoting Transmission Incentives Through Pricing Reform*, 141 FERC ¶61,129 at P 21 (2012) (2012 Transmission Incentive Policy Statement).

risks and challenges paradigm. These included, *inter alia*, “projects that relieve chronic and severe congestion that has demonstrated cost impacts on customers.” In individual incentive rate proceedings, the Commission has considered whether to grant an ROE adder, and how much the adder should be, based on how much congestion the project would eliminate and what the project’s production cost benefits would be, *i.e.*, whether the project is relieving “severe or chronic congestion.”²⁸ Eliminating congestion is a benefit under the NOPR’s proposed benefits approach.²⁹ Thus, a project that provides “high economic benefits” under the NOPR’s framework is not much different than a project that relieves “chronic and severe congestion” under the existing risks and challenges paradigm. Just as the Commission has consistently and successfully evaluated “chronic and severe congestion” levels and the magnitude of production cost savings in prior ROE incentive proceedings, the CAISO urges the Commission to implement the NOPR’s benefits approach without re-setting eligibility thresholds every five years (or on any other pre-established schedule) based on a new batch of ISO/RTO cost studies and without affording ISO/RTO cost studies a rebuttable presumption.

²⁸ See, e.g., *New York Power Authority*, 169 FERC ¶61,125 at PP 40,45 (2014) (\$4.5 billion in congestion costs over a five year period); *New York Independent System Operator, Inc. et al.*, 171 FERC ¶61,159 at PP 40-44 (2020) (considering the production cost savings the project would provide); *Midcontinent Independent System Operator, Inc.*, 165 FERC ¶61,083 at PP19-21 (project provides congestion relief in a range comparable to other projects receiving the same ROE adder); *NextEra Energy Transmission New York*, 162 FERC ¶61,196 at PP 37-38 (2018) (discussing the project’s production cost benefits); *PJM Interconnection, LLC, et al.*, 158 FERC ¶61,089 at P 70 (projects congestion cost benefits are “noteworthy” but insufficient to warrant an ROE adder); *PJM Interconnection, LLC, et al.*, 155 FERC ¶61,097 at P 87(2016) (rejecting ROE adder because although studies showed project resolved congestion, it did not relieve “chronic and severe grid congestion”).

²⁹ Another consideration as to whether a project warrants an ROE adder under the 2012 Transmission Incentives Policy Statement is whether a project “unlocks” constrained generation resources. Both the CAISO’s tariff and TEAM methodology considers this as an economic benefit in approving economic projects. Because the Commission has already considered this benefit in awarding ROE adders under a risks and challenges regime, it should be readily adaptable to a benefits-focused regime.

As indicated above, the Commission can adopt the CAISO's recommendation whether it specifies a single, fixed threshold level, a sliding scale, a stepped benefits approach, or establishes no specified thresholds (as is the case today when it evaluates whether project reduce "severe or chronic" congestion). Regarding data points, a starting point in considering where to set the threshold level might be the 1.25 benefit-to-cost ratio that several ISOs and RTOs have established for approving economic projects. The Commission might consider whether some sort of "uncertainty" factor is appropriate to account for the fact that no production cost study can perfectly predict the actual benefits a project will provide over its useful life. Beyond that, the Commission can assess other information available to it, including the information it referred to in the NOPR to set the proposed thresholds. The Commission can also refer to its prior decisions under the 2012 Transmission Incentives Policy Statement, which describe the production cost savings individual projects awarded (and denied) ROE incentives have provided based on whether they relieved "severe or chronic congestion." In any event, it is unnecessary for the Commission to reestablish the eligibility thresholds based on a set schedule and the results of recent ISO/RTO production cost studies.

3. Using CAISO Production Cost Models in Incentive Rate Proceedings Will Require Parties to Execute Appropriate Non-Disclosure Agreements for Use in the Incentive Rate Proceeding

The Commission recognizes that obtaining and using some production cost modelling results may require non-disclosure agreements (NDAs) or result in other restrictions being imposed.³⁰ The Commission seeks information regarding the

³⁰ NOPR at P 52.

dissemination of production cost modeling information and the derivation of benefit-to-cost ratios and whether these practices could hamper an applicant from using ISO/RTO modeling results to seek an ROE incentive.³¹

CAISO stakeholders can execute an NDA that provides them access to the market participant portal for transmission planning process purposes. This allows stakeholders to access the production cost models and data used in the planning process; but they can only use the information and models for purposes of participating in the CAISO's transmission planning process. Access to the CAISO's production cost models and other data often is needed in siting proceedings before the California Public Utilities Commission. Parties must sign a separate NDA to use the models in these proceedings. The CAISO envisions that a similar process would be required for parties to use the models in any incentive ratemaking proceeding.

4. Double Counting of Benefits Should Not Occur

Finally, the NOPR creates the potential for the double counting of benefits. The Commission recognizes this and seeks comment on how measurement of economic benefits can be distinguished from measurement of other types of benefits considered for purposes of other incentives so that double counting of benefits does not occur.³² The CAISO tariff distinguishes which metrics qualify a project for approval as a reliability project or an economic project. As indicated above, the CAISO may approve a project as a reliability project only if it is needed to meet NERC/WECC reliability standards or the CAISO Planning Standards. On the other hand, under CAISO tariff section

³¹ *Id.*

³² NOPR at P 55. .

24.4.6.7, the CAISO can undertake high priority economic studies to determine if transmission solutions are needed to address congestion, local capacity area requirements, or integrate new generation or loads on an aggregated basis. The CAISO may approve an economic project if the benefits of the project exceed the costs. Under the tariff, benefits can include a reduction in production costs, transmission losses, capacity, or other electric supply costs resulting from improved access to cost efficient resources.

The NOPR states that reliability benefits include increasing import or export capability between balancing authorities or reducing reliability unit commitments.³³ However, these are potential economic benefits under the CAISO's TEAM analysis. For example, under TEAM, projects that increase importing capability may be considered for a resource adequacy benefit, public-policy benefit, or renewable integration benefit in addition to potentially reducing congestion and production costs.³⁴ Increased import capability can provide access to lower cost resources generally and lower cost renewable resources in particular. It may facilitate Ancillary Services sharing across regions, reducing overall ancillary services costs. These benefits can be captured in the production cost simulation. Projects that increase exporting capability may be considered for a public policy benefit or renewable integration benefit.³⁵ Such projects can promote energy and ancillary services sharing among balancing authorities, potentially reducing the ancillary services requirements for the combined areas. Also, such projects can help relieve oversupply and resource curtailment issues. Such

³³ NOPR at P 74.

³⁴ TEAM Document at Sections 2.5.1, 2.5.5, and 2.5.6.

³⁵ *Id.* at Sections 2.5.5 and 2.5.6.

projects will change the unit commitment and economic dispatch, and benefits will be captured through the production cost simulation. A project that reduces the need for reliability unit commitments can provide an economic benefit in the form of reduced electrical supply costs under Tariff section 24.4.6.7. This benefit will be captured in the production cost simulation.

Thus, projects increasing import/export capability or reducing reliability supply commitments can provide economic benefits and contribute to a project receiving an economic project ROE incentive if it meets the established threshold. If the CAISO approves a new project that increases capacity at the interties or reduces reliability unit commitments, as an economic project, not to address a reliability need,³⁶ a project sponsor should not be eligible to receive both an economic project-based ROE incentive and a reliability project-based ROE incentive. The Commission should address the potential for double incentives from the same project in its Final Rule.

C. The Commission Should Automatically Authorize the Abandoned Plant Incentive Effective on the Date a Project Is Approved in the Transmission Planning Process and Without Requiring Project Sponsors to Submit Separate Petitions for Declaratory Order

In the NOPR, the Commission proposes to continue providing non-ROE incentives to all transmission projects that demonstrate they either will ensure reliability or reduce the cost of delivered power by reducing transmission congestion.³⁷ These incentives include the abandoned plant incentive, construction work in progress incentive, hypothetical capital structure, accelerated depreciation for rate recovery and

³⁶ For example, there may not be a reliability need for this type of project, or the project does not meet the criteria for approving reliability projects under the CAISO tariff.

³⁷ NOPR at P 82.

regulatory asset treatment.³⁸ Applicants for these incentives will remain eligible for the rebuttable presumption that transmission projects approved through regional transmission planning processes or state siting approvals ensure reliability or reduce the cost of delivered power by reducing congestion.³⁹ The Commission also proposes to change the effective date the abandoned plant incentive commences from the date the Commission issues an order granting 100 percent recovery of abandoned plant costs for a particular project, to the date that transmission project is selected in a regional planning process for purposes of cost allocation.⁴⁰

The CAISO supports the continued availability of these non-ROE incentives. They facilitate the development of needed transmission projects and help place incumbent and non-incumbent transmission developers on a level playing field.

The CAISO strongly supports the NOPR proposal to change the effective date for the abandoned plant incentive to the date transmission projects are accepted in the regional transmission planning process. The CAISO also requests such abandoned plant incentive automatically apply from that date so a project sponsor does not have to file a separate petition for declaratory order to obtain the abandoned plant incentive. Although the abandoned plant authorization would be automatic, recovery of actual abandoned plant costs would remain subject to a Section 205 filing to ensure the costs were prudently incurred. Abandoned plant pre-authorization effective on the date the project is approved in a regional transmission planning process will provide increased

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at P 84.

certainty to project sponsors, reduce their risk exposure, and reduce administrative burdens and costs, all while retaining the Section 205 protections for ratepayers.

The CAISO believes pre-authorizing abandoned plant recovery effective on the date of project approval in the regional transmission planning process is appropriate when the subsequent decision to abandon the project is not within the control of project developer.⁴¹ After a project is approved in the regional transmission planning process, a transmission developer can begin incurring costs on the project. The existing approach, which allows only for recovery of costs prudently incurred after the Commission issues its order granting abandoned plant recovery, can unfairly deny developers recovery of abandoned plant costs they incur from the date the project is approved in the transmission planning process to the date the Commission issues its order approving the abandoned plant incentive.⁴²

The CAISO tariff obligates approved project sponsors to make a good faith effort to obtain all approvals and property rights for and to construct needed transmission projects reflected in the annual transmission plan for which they are responsible.⁴³ Within 120 days after the CAISO selects an approved project sponsor, the approved

⁴¹ Today, transmission developers face significant risk developing and pursuing projects particularly given the rapid changes occurring in the industry, the risk that planning regions may find that projects approved in one transmission plan are no longer needed in a subsequent transmission plan as the result of changed circumstances, and the significant challenges developers face in obtaining siting approvals. These and other factors can lead to project abandonment. Although the CAISO can consider potential abandonment and regulatory risk in determining which transmission solutions to approve, the CAISO does not determine which facilities ultimately are approved and sited. State and federal siting authorities control siting decisions; these decisions are beyond the CAISO's control and the control of individual transmission developers.

⁴² For example, the CAISO cancelled the Gates-Gregg project, and the joint project sponsors were unable to recover project costs they incurred prior to the date of the Commission's order granting the abandoned plant incentive.

⁴³ CAISO tariff section 24.6.

project sponsor must submit a construction plan to the CAISO.⁴⁴ It is particularly important that approved project sponsors proceed with reliability projects in a diligent and expeditious manner so such projects can be completed in a timely manner, and the CAISO does not face potential reliability criteria violations. Automatically authorizing the abandoned plant incentive effective on the date the project is approved in the transmission planning process promotes this undertaking. Because approved project sponsors must immediately commence project development after the project is approved in the transmission planning process, the abandoned plant incentive should be automatically authorized back to that point in time to mitigate against any risk of cost non-recovery. This will encourage participation in competitive transmission processes, promote the timely and diligent pursuit of approved projects, and protect transmission developers from undue risk. Absent automatic authorization of the abandoned incentive, project sponsors will face uncertainty whether their petition for declaratory order will be accepted, and they might be dis-incentivized from incurring the costs necessary to promptly pursue approved projects.

D. The Commission Should Clarify that Granting Incentives Does Not Constitute Approval of a Transmission Project

The NOPR states that non-ROE incentives will be “available to all transmission projects that meet the Commission’s rebuttable presumptions for transmission projects that result from fair and open regional transmission planning, receive construction approval from an appropriate state commission or state siting authority, or otherwise demonstrate that they are needed to ensure reliability or reduce the cost of delivered

⁴⁴ CAISO tariff section 24.6.1.

power by reducing transmission congestion.”⁴⁵ Consistent with precedent, the Commission should clarify that any grant of incentives, ROE or non-ROE, is not intended to prejudge the outcome of any applicable transmission planning process, including the CAISO’s, and does not constitute approval of a project.⁴⁶ Project sponsors should not be able to use the incentives process to end-run applicable planning and approval processes that are not at issue in the NOPR. Incentives should be conditioned on approval of the project in the transmission planning process.⁴⁷

IV. CONCLUSION

For the foregoing reasons, the Commission should adopt a Final Rule in this proceeding consistent with the discussion herein.

Respectfully submitted,

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⁴⁵ NOPR at P 38.

⁴⁶ *Western Grid Development, LLC*, 130 FERC ¶61,056 at PP 2, 16 (2010) (*Western Grid*); *Green Power Express, LP*, 127 FERC ¶61,031 at P 42 (2009).

⁴⁷ *Western Grid* at P 2.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom this 1st day of July, 2020.

/s/ Martha Sedgley
Martha Sedgley