UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)**	**Docket Nos. ER10-1401-000**

ANSWER TO COMMENTS, MOTION FOR LEAVE TO ANSWER AND ANSWER TO PROTESTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("ISO") hereby moves for leave to answer protests and provides its answer to comments and protests regarding the ISO's June 4, 2010, filing of tariff revisions implementing a revised transmission planning process.[1] The ISO submits that the comments and protests provide no basis for the Commission to reject or significantly modify the ISO's proposal.

Nonetheless, the ISO requests that the Commission accept the ISO's commitment in this Answer to make several tariff clarifications and modifications in response to comments and protests. These clarifications and modifications will not result in any significant changes to the ISO's filing and the ISO is prepared to make these changes in a compliance filing if so directed by the Commission.

The ISO also renews its request that the Commission act promptly on the proposed tariff provisions and allow them to become effective on August 3, 2010. Because of the length of time required to complete the siting and project approval process, obtain all necessary permits, and construct the unprecedented number

[1] The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure.

of new high voltage transmission facilities that will be needed to meet California's 33 percent Renewable Portfolio Standard by 2020, these matters must be addressed in the current planning cycle. This can only occur if the ISO can implement the revised tariff provisions without delay.

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I. BACKGROUND

As described in the ISO's June 4 filing, California has established an ambitious policy directive under which load serving entities must achieve a 33 percent Renewable Portfolio Standard ("RPS") by 2020. Achieving that goal will require significant enhancements to California's transmission infrastructure. To support that effort, the ISO undertook to revise its transmission planning process to better identify and achieve the needed transmission infrastructure improvements in the most effective and efficient manner. Following a lengthy stakeholder process, the ISO filed tariff revisions to implement a revised process that includes a new category of policy-driven transmission facilities, *i.e.,* facilities that are needed to facilitate achievement of state and federal policy requirements and directives, provides for enhanced regional collaboration efforts, and establishes an open solicitation process whereby both qualified independent transmission developers and existing participating transmission owners can compete on a level playing field to build and own needed policy-driven and economically driven transmission elements identified in the ISO's final transmission plan. The following are key features of the ISO's revised process:

- Develop a statewide conceptual transmission plan through collaboration with other transmission planners and transmission providers in California that will serve as one of many inputs into the ISO's planning process;

- Establish in the ISO tariff a new category of transmission additions and upgrades, referred to as "policy-driven" transmission elements, that are needed to meet state and federal policy requirements and directives that are not inconsistent with the Federal Power Act (such as 33 percent RPS by 2020);

- Integrate the planning and approval of policy-driven transmission elements into a revised Order 890-compliant transmission planning process;

- Create better synergies between the Large Generator Interconnection Procedures ("LGIP") and the Order No. 890 transmission planning process;

- Provide opportunities for stakeholder participation and input to the process;

- Continue to provide for the consideration of demand response, generation and other types of resources as alternatives to the approval of new transmission facilities;

- Not adversely affect the ability of generation resources in the ISO's interconnection queue – many of which support compliance with the RPS – to qualify for funding under the American Recovery and Reinvestment Act of 2009;

- Finalize a comprehensive transmission plan for the ISO balancing authority area with formal findings of need in sufficient detail to elicit specific proposals to build the needed transmission elements;

- Create a framework whereby all interested Project Sponsors, including both independent transmission developers and existing participating transmission owners, will have an equal opportunity to propose to construct and own policy-driven transmission facilities and transmission projects that provide economic benefits; with regard to the economic category, remove an existing tariff provision that grants a right of first refusal for participating transmission owners to build ISO-identified economic transmission projects;

- Allow Project Sponsors that submitted economic project proposals in the ISO's 2008 and 2009 request windows to build and own their projects if found to be needed by the ISO to meet policy-driven or economic transmission needs;

- Establish a clear mechanism for choosing among competing proposals and provide objective criteria, based on those used by the Public Utility Commission of Texas in similar circumstances, to use when the ISO is the entity that must chose among the proposals;

- Retain existing tariff provisions regarding the responsibility for building reliability-driven projects, Large Generator Interconnection Policy ("LGIP") Network Upgrades, Location Constrained Resource Interconnection ("LCRI") facilities, and facilities needed to maintain

the feasibility of allocated long-term Congestion Revenue Rights; and

- Maintain full compliance with Order No. 890.

Over the course of the robust stakeholder process leading up to the ISO's tariff amendment filing, the ISO modified earlier versions of its proposal in several important ways to respond to stakeholder comments and concerns, including: (1) removing an earlier provision granting a right of first refusal for participating transmission owners to build and own policy-driven and economically beneficial transmission elements; (2) adopting a mechanism and criteria for the ISO to decide among competing proposals to build the same plan element when such proposals would be submitted to different governmental siting authorities for approval; (3) deferring the proposed integration of the LGIP transmission planning processes until the 2011/2012 cycle to prevent, *inter alia,* any negative impacts on interconnection customers needing to qualify for American Recovery and Reinvestment Act ("ARRA") funding by the end of 2010; and (4) specifying a practical, objective distinction between LGIP-driven Network Upgrades to be built by participating transmission owners and policy-driven or economically driven transmission elements that are open to all Project Sponsors to build and own.

As of June 30, thirty-one parties had filed motions to intervene. Of these, twenty-four have filed protests or comments.

II. MOTION FOR LEAVE TO FILE ANSWER

Numerous parties filed comments or protests on the ISO's revised transmission planning process proposal.[2] Although an answer to comments is

[2] Protests or comments were submitted by Bay Area Municipal Transmission Providers ("BAMx"), California Dept. of Water Resources ("CDWR"), California Wind Energy Association

not barred by the Commission rules, Section 385.213(a)(2) of the Commission's regulations generally prohibits answers to protests. Accordingly, the ISO moves for waiver of Section 385.213(a)(2) to the extent necessary to allow the ISO to answer the protests to the proposed tariff revisions. The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute.[3] Answers have also been accepted where the information assists the Commission in making a decision.[4] Good cause exists to permit this answer because it will assist the Commission in reaching its ultimate determination with respect to the substantive issues raised by the comments.

III. ANSWER

Many parties intervening in this proceeding support the ISO's filing. For example, the CPUC stated that the "proposed TPP revisions will significantly enhance the efficiency and coordination of the overall process of planning, permitting and developing transmission to support California's environmental and energy policy goals."[5] The CPUC and many other commenters representing a wide range of industry segments noted that the ISO made significant changes to earlier versions to address stakeholder concerns and that the ISO's proposal

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("CalWEA"), California Municipal Utilities Association ("CMUA"), California Public Utilities Commission ("CPUC"), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California ("Six Cities"), the City and County of San Francisco ("CCSF"), DayStar Farms and Critical Path Transmission, LLC ("DayStar"), Desert Southwest Power, LLC ("DSWP"), Green Energy Express LLC ("Green Energy Express"), Imperial Irrigation District ("IID"), Large Scale Solar Association ("LSSA"), Metro Renewable Express LLC and Pony Express LLC ("MRE/PE"), The Nevada Hydro Company ("Nevada Hydro"), NextEra Energy Resources, LLC ("NextEra"), Northern California Power Agency ("NCPA"), Pacific Gas and Electric Co. ("PG&E"), Pattern Transmission LP ("Pattern"), Sacramento Municipal Utility District ("SMUD"), San Diego Gas & Electric Company ("SDG&E"), Southern California Edison Co. ("SCE"), Transmission Agency of Northern California ("TANC"), Western Grid Development, LLC ("WGD"), and Western Independent Transmission Group ("WITG").

[3] *See Southwest Power Pool, Inc.,* 89 FERC ¶ 61,284 at 61,888 (1999).

[4] *See El Paso Elec. Co.,* 72 FERC ¶ 61,292 at 62,256 (1995).

[5] CPUC at 4.

achieved balance through the stakeholder process. IID for example noted that the stakeholder process "culminated in a delicate balancing of the interests of different stakeholders."[6] DayStar stated that "the CAISO is to be commended on its objectivity and willingness to consider all reasonable stakeholder recommendations."[7]

Some commenters seek modifications to the ISO's revised transmission planning process which would unravel this balancing of interests. As discussed below, the ISO submits that most of the protests and recommended modifications are misplaced and should be rejected. However, the ISO agrees that the following modifications to its proposal would be appropriate:

(1) the CPUC's recommendation to remove the words "consistent with Section 24.3.2" from Section 24.3.2(d);

(2) the CPUC's recommendations to eliminate the qualifying phrase "consistent with Section 24.3.2(a)" in Section 24.3.3 and to add the term "other non-transmission alternatives" in describing the alternatives that may be submitted;

(3) the CPUC's recommendation to modify Section 24.4.6.2 by adding tariff language that fills in a gap in the section's list of lower-cost alternatives to the construction of transmission additions and upgrades;

(4) DayStar's recommendation that tariff language be added to Section 24.4.6.6 such that, if the ISO classifies a project as Category 2 and later reclassifies the project, or a substantially identical project, as Category 1, then the original Project Sponsor of a project proposed in the 2008-2009 request windows should have the right to construct the project;

(5) DayStar's recommendation to replace the term "Project Sponsor" with "Project Sponsor and its team" in Section 24.5.2.1;

(6) the recommendation of TANC, CMUA, SMUD, and IID to modify proposed Section 24.15.1 to reflect the ISO's current practice as to

[6] IID at 7.
[7] DayStar at 3.

the rights and responsibilities of non-participating transmission owners who desire to jointly sponsor transmission projects with Project Sponsors who are participating transmission owners (or who would be eligible to become participating transmission owners;

(7) TANC's recommendation that Sections 24.6 and 24.11.3 be clarified to indicate that they do not require non-participating transmission owners participating in a joint project to execute the Transmission Control Agreement or turn facilities over to the ISO's Operational Control; and

(8) Green Energy Express's recommendation that proposed Sections 24.5.2.2 and 24.5.2.3 be modified to state that Project Sponsors, once approved, must seek authority from the appropriate agencies within 120 days.

As a preliminary matter, the ISO notes that a number of commenters support their criticisms or recommendations with citations to the Commission's recent Notice of Proposed Rulemaking on transmission planning and cost allocation issues.[8] The ISO submits that it would be premature for the Commission to evaluate the ISO's proposed revision of its transmission planning process based on the Commission's tentative conclusions and suggested requirements in the NOPR. The NOPR is, by definition, a proposal and not a final rule. The tentative conclusions of the NOPR will be subjected to considerable analysis and debate, in which the ISO intends to participate, prior to their finalization. Many parties will provide additional information, evidence, perspectives, and arguments in response to the Commission's tentative conclusions and, if history is any guide, the Commission's final rule is likely to

[8] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 131 FERC ¶ 61,253 (2010) ("NOPR"). For example, certain commenters suggest that the ISO's filing does not comply with proposed regional coordination requirements in the NOPR. Some commenters suggest that the ISO's filing should be revised to reflect a NOPR proposal to adopt a "first in time" principle for the selection of competing projects. Other commenters note that the NOPR proposes to eliminate any references to rights-of-first-refusal in a transmission provider's tariff. Still other commenters note that much of the ISO's filing is consistent with the NOPR.

modify and clarify the NOPR's conclusions and proposed requirements at least in part. The ISO believes that its revised transmission planning process is generally consistent with the principles underlying the NOPR, as well as the Commission's initial conclusions and proposed requirements. The most notable example is the NOPR's recognition of the need for a policy-driven planning criterion to reflect state and federal policy initiatives. Nonetheless, to the extent there are any differences between the ISO's proposal and elements of the NOPR, it would be counterproductive for the Commission to reject or modify portions of the ISO's proposal based on the NOPR before potentially determining in the final rule that similar provisions would be just and reasonable. Rather, the Commission should evaluate the ISO's proposal based on current Commission precedent and standards, and based on the evidence in this proceeding.

Some protesters, such as Green Energy Express,[9] contend it would be "premature" for the Commission to approve the ISO's revised transmission planning process in light of the preliminary findings of the NOPR. Just the opposite is true. In the absence of the final rulemaking, the ISO should have the right to implement enhancements to procedures that the Commission has previously found to be just and reasonable, provided those enhancements also are just and reasonable. In the event that the Commission subsequently decides in its final rule that some of these procedures are no longer just and reasonable, the ISO can make revisions in compliance with the final rulemaking. If the Commission instead were to reject the ISO's proposal based on its ***preliminary*** findings, and subsequently reverse those findings, the ISO would need to start

[9] Green Energy Express at 17-18.

over with a new Section 205 filing. This would be both inefficient and contrary to the Commission's responsibility under the Federal Power Act to base its decisions on factual findings supported by the record.

To the extent that commenters are suggesting that the Commission delay implementation of a revised transmission planning process until ruling on the NOPR, their recommendations are counter to the entire purpose of the ISO's proposal. As explained in the ISO's June 4 filing, it is critical that the Commission approve the ISO's revised planning process by August, because the planning efforts to meet 33 percent RPS by 2020 need to commence immediately. The Commission should not wait until issuance of a final order in the NOPR proceeding to rule on the ISO's proposal. The Commission should allow the ISO to make any needed modifications to its planning process at a later date in compliance with the Commission's final rule.

A. Phase 1

1. Unified Planning Assumptions and Study Plan

In the June 4 filing, the ISO provided a description of the process for developing the Unified Planning Assumptions and Study Plan during Phase 1 of the revised transmission planning process.[10] In particular, the ISO noted that proposed ISO Tariff Sections 24.3.1 (Inputs to the Unified Planning Assumptions and Study Plan) and 24.3.2 (Contents of the Unified Planning Assumptions and Study Plan) were based on existing ISO Tariff Sections 24.2.1.1 and 24.2.1.2, with minor changes and clarifications for consistency with other provisions in the revised planning process.

[10] *See* pages 22-27 of the June 4, 2010, transmittal letter ("Transmittal Letter").

Parties who actively participated in the ISO's stakeholder initiative did not file substantive comments or protests involving these aspects of Phase 1. In its comments, the CPUC requests that the tariff language proposed in Section 24.3.3, Stakeholder Input – Unified Planning Assumptions/Study Plan be modified.[11] That language provides for a comment period during which stakeholders may submit certain types of proposals for consideration in the development of the draft Unified Planning Assumptions and Study Plan, including "(ii) Generation and other non-transmission alternatives, consistent with Section 24.3.2(a) proposals as alternatives to transmission additions or upgrades." The CPUC suggests that removing the phrase "consistent with Section 24.3.2(a)" will improve clarity. The ISO agrees and will remove this language in a compliance filing.

Only CDWR, a party that submitted no written comments on the white papers or draft tariff language during the stakeholder process, takes issue with the substance of the previously approved tariff language. As discussed below, CDWR requests that the Commission address topics that are outside the scope of the proposed revisions to the transmission planning process. Accordingly, the Commission should disregard CDWR's comments and not require the ISO to make the requested changes to its proposed tariff language.

a. Compensation for a Contractual RAS Scheme and Pricing for Demand Response

CDWR requests that the Commission require the ISO to confirm that the planning process will include the use of demand response resources in the base

[11] CPUC at 6.

case or assumptions of the ISO's Unified Planning Assumptions and Study Plan. CDWR suggests that these assumptions would include the Remedial Action Scheme ("RAS") for load dropping contained in a contract between CDWR and PG&E and requests that the ISO be required to add tariff language indicating how CDWR would be compensated for this RAS scheme when its contract with PG&E expires.[12] CDWR also discusses how demand response resources should be compensated generally. Proposed Section 24.3.1 expressly contemplates the inclusion of demand response programs in the base case or assumptions for the comprehensive transmission plan. Under Section 24.3.3, stakeholders can submit demand response programs for consideration in the development of the draft Unified Planning Assumptions and Study Plan. Thus, CDWR's concerns are addressed in the ISO's proposal.

Further, CDWR's request that the Commission require the ISO to implement tariff provisions describing how the RAS scheme contained in its contract with PG&E will be priced after the contract expires is inappropriate and far beyond the scope of this proceeding. CDWR's arguments regarding time-of-use pricing are likewise well beyond the scope of this proceeding. As CDWR acknowledges in its comments, some of the demand response initiatives and proceedings that are underway will address these issues, including CDWR's specific Participating Load market issues.[13] Those initiatives are the proper forums for CDWR to raise its general concerns on demand response-related issues.

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[12] CDWR at 3-4.

[13] For example, CDWR provides references to the ISO's Pilot Participating Load Report and CDWR demand response issues associated with the ISO's new market design that are anticipated to be addressed in 2011. CDWR at n.3.

b. The Unchanged Tariff Sections Describing Information Reporting Requirements

CDWR seeks clarification of the "breadth" of the reporting requirements in Section 24.8 and subsections 24.8.1 through 24.8.5, which it mistakenly claims are new requirements.[14]

These sections are not new. These provisions are included in existing ISO Tariff Section 24.2.3, with subsections 24.2.3.1 (information required from PTOs), 24.2.3.2 (information required from participating generators), 24.2.3.3 (information requested from load serving entities), 24.2.3.4 (information solicited from planning groups, neighboring systems and regulatory agencies) and 24.2.3.5 (obligation to provide updated information). The ISO proposed these sections in its Order No. 890 compliance filing submitted on December 21, 2007, and the ISO made slight modifications to certain of these sections in its October 31, 2008 compliance filing.[15] These existing tariff provisions have been approved by the Commission.[16]

The ISO has not proposed any substantive changes to these provisions in this proceeding. The ISO has merely renumbered these sections as Section 24.8 and subsections 24.8.1 as part of its effort to reorganize the transmission planning tariff provisions. The ISO notes that CDWR submitted comments in response to the ISO's original Order No. 890 compliance filing and the second

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[14] CDWR at 9.

[15] See ISO's Order No. 890 Compliance Filing, Docket No. OA08-62-000, at 13-14 (Dec. 21, 2007); ISO's Order No. 890 Compliance Filing, Docket No. OA08-62-003, at 10, 14, 19 (Oct. 31, 2008).

[16] Cal. Indep. Sys. Operator Corp., 127 FERC ¶ 61,172 (2008); Cal. Indep. Sys. Operator Corp., 123 FERC ¶ 61,283 (2009).

compliance filing, and never questioned the meaning of these provisions.[17] The Commission has previously found the language contained in Section 24.8 and its subsections to be just and reasonable, and no changes have been proposed by the ISO. Moreover, in its comments, CDWR fails to present any valid arguments that would support modifications to these previously approved sections.

2. Nature of Statewide Conceptual Transmission Plan – Collaboration with Regional and Sub-regional Planning

Several commenters argue that the ISO's revised transmission planning process should be modified to require the ISO to coordinate with other regional or sub-regional planning groups or entities, including interconnected balancing authority areas, in the development of a statewide conceptual transmission plan. More specifically, SMUD seeks assurance from the ISO that it will not pursue a unilateral approach to transmission planning, now or in the future.[18] CMUA, TANC, and BAMx seek adoption of a tariff requirement that the ISO participate in development of the conceptual transmission plan with regional and sub-regional bodies.[19] IID proposes that the ISO be subject to a tariff requirement to engage in regional coordination by inviting all interconnected balancing authority areas and WECC-registered planning authorities in California to participate in the development of any conceptual statewide transmission plan during Phase 1.[20] LSSA seeks to promote coordination among balancing authority areas throughout the western states to implement renewable zones across the region, and from that perspective argues that the ISO's revised transmission planning

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17 *See* CDWR Protest and Motion to File Out of Time, Docket No. OA08-68-000 (Feb. 4, 2008); CDWR Comments, Docket No. OA08-62-003 (Nov. 21, 2008).

18 SMUD at 4.

19 CMUA at 11-12; TANC at 5-7; BAMx at 16-18.

20 IID at 9-12.

process contains “no indication”, but should provide, that the planning process will be coordinated with balancing authority areas in other states as required by Order No. 890.[21] These suggestions exceed the requirements of Order No. 890.[22]

These parties do not raise any arguments that require modifications to the ISO’s proposed tariff provisions. In fact, they go far beyond what is required under Order No. 890. The ISO’s proposal affirmatively provides that the process will involve coordination with regional and sub-regional transmission plans and panning entities, including interconnected balancing authority areas. Specifically, proposed Section 24.2(c) states as follows:

> The Transmission Planning Process shall, at a minimum:
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> (c) Seek to avoid unnecessary duplication of facilities and ensure the simultaneous feasibility of the CAISO Transmission Plan and the transmission plans of interconnected Balancing Authority Areas, and otherwise coordinate with regional and sub-regional transmission planning processes and entities, including interconnected Balancing Authority Areas.

Similarly, proposed Section 24.3.2(l) provides that the ISO will consider as an input into the Unified Planning Assumptions and Study Plan the planned facilities in interconnected balancing authority areas. Section 24.4.3 contemplates that any request window projects that affect other interconnected balancing area authorities will have been reviewed by the applicable regional or sub-regional planning authority. Section 24.4.4 contemplates ISO coordination with interconnected balancing area authorities and regional or sub-regional

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[21] LSSA at 5-7.

[22] *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007) (“Order No. 890”).

planning authorities to develop a conceptual statewide plan. Section 24.8.4 provides that the ISO will obtain from interconnected balancing authority areas and regional and sub-regional planning groups within the WECC information that is anticipated to be useful to the ISO in the transmission planning process. Section 24.13 provides that the ISO will be a member of WECC and other applicable regional and sub-regional organizations and participate in applicable coordinated planning processes. Section 24.13.1 is an entire tariff section dedicated to the scope of the ISO's regional and sub-regional planning participation.

In addition, the proposed revised Business Practice Manual ("BPM") for the Transmission Planning Process acknowledges that regional coordination through a robust sub-regional planning process is an important objective of the ISO's transmission planning process, which includes specific requirements to exchange information with sub-regional planning groups and, in their absence, directly with interconnected transmission providers.[23] The BPM further states that the ISO will request the participation of numerous interconnected transmission providers and other regional and inter-state entities in the transmission planning process.[24]

These numerous tariff and BPM provisions, individually and collectively, make it clear that the ISO's transmission planning activities will involve regional

[23] BPM for Transmission Planning Process, proposed revision dated June 24, 2010, at p. 54.

[24] *Id.* at 55. The enumerated groups include WestConnect Sub-Regional Groups (which include SMUD, TANC, and WAPA) Los Angeles Department of Water and Power, ColumbiaGrid, the Northern Tier Transmission Group, the Northwest Transmission Assessment Committee of the Northwest Power Pool, Southwest Area Transmission, Western Arizona Transmission Studies, Renewable Energy Transmission Initiative, and Arizona Biennial Transmission Assessment.

and sub-regional coordination with other entities and balancing authority areas, inside and outside of California. Layering additional requirements on the ISO is unwarranted and not required by Order No. 890. Indeed, the Commission has already found that the ISO's regional coordination tariff provisions are consistent with Order No. 890, and the ISO is enhancing them here.[25] The ISO's transmission planning process is an open, transparent, and structured opportunity for interconnected neighbors to exchange planning information and objectives. It is conducted in parallel to initiation of the development of the statewide conceptual plan in Phase 1. The ISO participates in the activities of CTPG, a planning group that encompasses all of the interconnected balancing authority areas in California. Through these activities, the ISO coordinates with neighboring systems to ensure simultaneous feasibility of their respective plans and assess the possibility of efficiencies through mutual cooperation.

There is no basis to require the ISO to adopt tariff provisions to require it to develop a conceptual statewide plan in conjunction with other entities. While regional coordination is required under Order No. 890, the Commission did not mandate a specific form of regional coordination that must be undertaken, and certainly did not require the ISO to develop a statewide conceptual plan in conjunction with other entities. The Commission already found the ISO to be in compliance with Order No. 890 without such a requirement. The courts have held that the Commission lacks the authority to direct the form that a public utility's regional coordination must take. As the Court held in *Atlantic City Elec. Co., et al., v. FERC,* 295 F.3d 1, 353 (D.C. Cir. 2002):

[25] *Cal. Indep. Sys. Operator Corp*., 123 FERC ¶ 61,283 at P 150 (2008).

> FERC's expansive reading of its section 203 jurisdiction cannot be reconciled with section 202, which has been definitively interpreted to make clear that Congress intended coordination and interconnection arrangements be left to the "voluntary" action of the utilities. *See* 16 U.S.C. § 824a(a). Section 202 provides that "the Commission is empowered and directed to divide the country into regional districts for the *voluntary* interconnection and coordination of facilities for the generation, transmission, and sale of electric energy." *Id*. (emphasis added). That provision does not provide FERC with any substantive powers "to *compel* any particular interconnection or technique of coordination." *Duke Power Co. v. Federal Power Comm'n,* 401 F.2d 930, 943 (D.C.Cir.1968) (emphasis in original); *see Central Iowa Power Coop. v. FERC,* 606 F.2d 1156, 1167-68 (D.C.Cir.1979).

The ISO's proposal provides for sufficient regional coordination. To go further as prompted by the commenters would be to exceed the Commission's authority.

Finally, as part of the collaborative process, LSSA suggests that the revised transmission planning process should be modified to address information sharing and coordinated planning processes with adjoining sub-regions.[26] This suggestion is misdirected. The ISO posts its transmission planning studies on its website. In addition, under the recently released revised BPM for Transmission Planning Process, the ISO will exchange information, participate in regional technical studies, and provide any information requested in the transmission planning process to facilitate the activities of interconnected transmission providers and other entities (subject to confidentiality limitations).[27]

3. CTPG or Statewide Conceptual Transmission Plan Process – Openness and Transparency

The CPUC proposes that Section 24.4.4 be amended to: (1) specify the minimum amount of time stakeholders will have to submit comments following posting of the conceptual statewide plan on the ISO's website; and (2) provide for

[26] LSSA at 5-7.

[27] BPM for Transmission Planning Process, pp. 60-62.

stakeholders to have the opportunity to discuss the conceptual statewide plan during either the first or second stakeholder meeting during Phase 2 as described in Section 24.4.9. The ISO believes that details related to procedural timelines are more appropriately included in a BPM than in the tariff. The ISO will address the procedural details the CPUC noted by submitting revisions through the change management process for inclusion in the BPM for the transmission planning process.

LSSA, Pattern, WGD and WITG argue that the CTPG process lacks openness and transparency, and is not compliant with Order No. 890 principles. The parties arguing that the CTPG process is not compliant with the principles of openness and transparency in Order No. 890 are doing so in order to use the ISO's instant filing as a vehicle to gain membership into CTPG. As the ISO explained during the stakeholder process and in the transmittal letter in this docket, however, the reasoning advanced by these parties is fundamentally flawed. CTPG is a voluntary group comprised of various California planning authorities and load-serving transmission providers – it is not a FERC-jurisdictional entity subject to Commission order that it expand its membership. CTPG is a planning body comprised of entities with planning and load-serving responsibilities to achieve the Order No. 890 requirement for regional coordination. – it is not a market participant and its activities are outside the scope and authority of any ISO Tariff provision that would require it to comply with Order No. 890. Most importantly, CTPG is not a decision-making body – contrary to the arguments of LSSA and Pattern, it will not unduly direct the

development of the ISO's final comprehensive plan and will not determine what projects get built and by whom.

Of critical importance, the ISO's revised transmission planning process complies with Order No. 890 by maintaining or strengthening those existing transmission planning process tariff provisions that the Commission has already approved as complying with Order No. 890. To the extent that this proposal modifies the existing Order No. 890-compliant provisions, the proposed modifications enhance compliance. They do not diminish the process.

4. CTPG or Statewide Conceptual Transmission Plan Process – Delegation

Green Energy Express maintains that the ISO is inappropriately delegating its transmission planning authority and functions to CTPG, even if CTPG is not a decision-making body and will not determine which projects will be built pursuant to the ISO's revised transmission planning process. Green Energy Express argues that the CTPG process should comply with Order No. 890. Green Energy Express recommends that the Commission direct the ISO to undertake independent modeling and analysis in a process that is open and transparent to all stakeholders, in addition to the input the ISO receives from CTPG and other external entities.[28] CalWEA also alleges that the ISO should not delegate transmission planning to CTPG.[29] DayStar views CTPG as the de facto creator of the baseline statewide transmission plan, which DayStar claims the ISO will "vigorously support and defend" since it helped develop the plan.[30]

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28 Green Energy Express at 22-25.
29 CalWEA at 13.
30 DayStar at 3-4.

These arguments overstate the role of CTPG study results in the ISO's planning process. Although CTPG's conceptual statewide plan will be an informative and important input into the proposed ISO Phase 2 process, the CTPG conceptual statewide plan will be only one input into that process, and all elements of that plan that relate to the ISO's balancing authority area will be reassessed in the course of the ISO's Phase 2 process to formulate the final ISO plan. To this end, the ISO will be conducting its own separate and parallel planning process, and all of CTPG's assumptions, results, and recommendations will be vetted through the ISO's process along with other assumptions, results, and proposals that CTPG did not address. The ISO will evaluate the transmission elements identified in the CTPG conceptual plan under the same criteria and with the rigor that it reviews all other projects and potential elements. Thus, the Phase 2 analytical and stakeholder processes already contained in the ISO's transmission planning proposal will fully address the interests of these parties in a rigorous and transparent transmission planning process.

B. Phase 2

1. Categories of Transmission Projects and Elements

Pattern raises several arguments regarding the different categories of transmission projects and elements referenced in the ISO's revised transmission planning tariff provisions. Pattern notes that there are differences among the categories in terms of which types of entities may construct and own the

transmission expansion project and how that entity is selected. Pattern contends that this is unduly discriminatory and cannot be accepted by the Commission.[31] The distinctions between different categories of transmission additions and upgrades that may be included in the comprehensive system plan are clearly set forth in the tariff. No other intervenor shares Pattern's concerns. In Section III.B.6, *infra,* the ISO demonstrates the errors in Pattern's claim that distinctions between policy-driven elements, LCRI facilities and expanded LGIP Network upgrades are unclear.[32] In response to Pattern's general concerns about the different categories of transmission projects, the ISO notes that most of these categories have already been approved by the Commission and that the ISO's proposal creates only two new categories: policy-driven upgrades and expanded LGIP Network Upgrades.[33] The creation of the former category was the driving force behind the revised transmission planning process proposal (and is consistent with the Commission's transmission planning NOPR) and the latter serves to avoid inefficiencies and duplication. Each of the other categories exists in the current ISO Tariff; involves different construction responsibilities; and serves a particular purpose that is well-defined in the tariff. Pattern does not attempt to show otherwise. The distinction between economic projects and reliability projects is a traditional distinction acknowledged by the Commission[34]

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[31] Pattern at 9.

[32] *Id.* at 13-15.

[33] The 2008-2009 request window projects cannot really be considered a separate category, because they are just economically driven proposals that are being partially grandfathered and are relevant only for the 2010-11 planning cycle.

[34] *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118 at P 39 (2005) ("While many transmission investments may provide both economic and reliability benefits to the system, there is a reasonable basis for the distinction here: Base Plan facilities are those that are included in the SPP Transmission Expansion Plan as needed for reliability purposes, while Economic Upgrades are not required to reliably serve SPP's obligations for long-term firm transmission

and recognized in most regional transmission organization ("RTO") and independent system operator tariffs as well as in the ISO Tariff.[35] LGIP Network Upgrades are a product of Order No. 2003. LCRI facilities are a narrow category of radial generator interconnection lines that the Commission approved to assist certain generators by facilitating the connection of location constrained resources to the grid.[36] Finally, the category of transmission projects needed to preserve the feasibility of long-term CRRs is very narrowly defined and required to comply with a Commission rule on long-term firm transmission rights.[37] Nothing in the ISO's proposed revised transmission proposal negates the need for these pre-existing categories of transmission which the Commission has recognized are different than policy-driven transmission facilities. Indeed, in the NOPR (P 64), the Commission recognizes that its proposed new category of public policy transmission projects "would be a supplement to, and would not replace, any existing requirements with respect to the consideration of reliability needs and application of the economic studies principle in the transmission planning process

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service."); *Midwest Indep. Transmission Sys. Operator*, 118 FERC ¶ 61,209 at P 181 (2007) ("We agree that economic and reliability projects share certain characteristics, and that the benefits associated with each may not be completely distinguishable. However, acknowledging these areas of overlap does not mean that any cost allocation policy that draws distinctions between economic and reliability projects must be unjust and unreasonable.").

[35] *See* ISO Tariff, Sections 24.1.1, 24.1.2; Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, Appendix FF; New York Independent System Operator, Inc., Open Access Transmission Tariff, Attachment Y, Section 31.1.1; PJM Operating Agreement, Schedule 6; Southwest Power Pool, Open Access Transmission Tariff, Appendix O.

[36] See Cal. Indep. Sys. Operator Corp., 121 FERC ¶ 61,286 (2007).

[37] ISO Tariff language establishing this category of transmission facilities was first accepted by the Commission in its July 2007 order, 120 FERC ¶ 61,023, conditionally accepting the ISO's filing to comply with *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (2006).

2. Request Window

a. Lack of Request Window for Certain Projects

One commenter, Pattern, objects to the ISO's elimination of a request window for submission of economically driven projects and to the lack of a request window for policy-driven projects. Pattern argues that the ISO instead should conduct an open solicitation for Project Sponsors, existing transmission owners and independent transmission developers alike, to propose to build and own any request window proposal for an economically driven or policy-driven project that is included in the ISO's final transmission plan. It contends that the request window approach provides an incentive for potential Project Sponsors independently to study and develop innovative solutions.[38]

Pattern's discussion of this topic is silent on a crucial detail. Pattern does not say whether or not its concept of a request window for economically driven and policy-driven transmission proposals would entail a "first in time" right for the sponsor of a proposal to build and own its proposed facilities if those facilities are included in the ISO's comprehensive transmission plan. If Pattern does not intend such a first-in-time right, then the ISO believes that the comment opportunities in its proposed Phase 2 stakeholder process provide ample opportunity and incentive for potential Project Sponsors to develop and submit innovative solutions as Pattern suggests. Indeed, the ISO fully intends in Phase 2 to take into consideration all comments and suggestions offered by stakeholders in the process of developing the comprehensive plan. Thus, there would be no material difference between the ISO's and Pattern's proposals. If

[38] Pattern at 19.

Pattern intends, however, that the submission of a policy-driven or economically-driven proposal would confer a first in time right to the sponsor, then the ISO believes that Pattern's proposal would add unnecessary cost, complexity, and delay to the planning process and unduly tax the ISO's and stakeholders limited resources, while reducing the benefits of competition and offering little or no offsetting benefit to ratepayers.

As the ISO discussed in its transmittal letter, the ISO's revised transmission planning process – which carefully modified in part the ISO's current request window provisions – is intended to accomplish the goals that Pattern articulates, but much more efficiently and in a manner that encourages greater competition, which ultimately benefits ratepayers.[39] It does this by separating the process for identifying the most cost- effective transmission upgrades and additions to meet specific needs, from the process for selecting the Project Sponsors most suitable to build and own the identified facilities. As explained below, separating these two processes actually expands the role of competition and the competitive opportunities for potential Project Sponsors in the transmission development process, while still providing opportunities and incentives for parties to offer the most innovative solutions to transmission needs.

The ISO's planning proposal will provide all entities a nondiscriminatory opportunity to identify potential economic and policy needs that could be addressed in the ISO's comprehensive plan and to propose additions or upgrades to resolve those needs that the ISO as system planner determines should be addressed, while eliminating the drawbacks and inefficiencies of the

[39] Transmittal Letter at 40-44.

current process. It would be highly inefficient to allow parties to submit economically driven and policy-driven projects in a request window prior to the ISO's determination of a need for such projects and to force the ISO to study those projects. Such an approach is inconsistent with the open solicitation framework the ISO is proposing. With a process that confers a first in time right to parties who submit proposals, project proponents would have incentives to submit numerous proposals (and numerous variations thereof) in order to establish rights to build and own projects, and the ISO would then be in the position of conducting analyses of large numbers of projects that have not been identified in any Economic Planning Study and for which there is no ISO-identified need that would justify the ISO's assessing the costs of those projects to ISO customers. This would result in a planning process where the ISO's efforts are focused on evaluating individual projects on a case-by-case basis whether they are needed or not, rather than determining what is needed and planning to meet those needs.[40]

The ISO has already observed these inefficiencies in the current ISO planning process, and that is why the ISO has instead proposed a comprehensive planning approach whereby the ISO first identifies the preferred additions and upgrades to address transmission needs, and then conducts an open solicitation process for policy-driven and economically-driven projects. Under a request window approach which provides Project Sponsors with a first in time right, the ISO would have to evaluate all request window projects in a

[40] Of course, if sponsors of such projects believe they are justified independently of the ISO's determination of need, the sponsors have the ability to build them as merchant transmission.

rigorous enough manner to sustain its rejection of unneeded or non-cost-effective proposals, or its selection of one winning Project Sponsor when others have proposed similar projects, against the inevitable protests of parties who have substantial economic interests in the ISO's acceptance of their proposals. The inefficiency of using resources in this way should be obvious. The ISO would be required to commit scarce resources to rigorously assess dozens or even hundreds of non-reliability project proposals that do not relate to identified needs and which ultimately are not needed.[41] That is not effective or efficient transmission planning.

Allowing entities to propose projects prior to a determination of need is the reverse of an efficient planning process and contrary to typical practices. Government agencies and other entities typically determine their needs and *then* solicit proposals. They do not provide potential contractors with an ability to force the agency to evaluate the relative merits of projects that the potential contractor thinks have merit but that address no need previously identified by the relevant agency or company.

A highly relevant illustration of the effectiveness of the ISO's proposed alternative to the request window approach is the process employed by the Public Utilities Commission of Texas ("Texas PUC") for evaluating Competitive Renewable Energy Zone transmission facilities. That process did not follow a

[41] The ISO notes that it already has more than 30 non-reliability projects pending from the 2008 and 2009 request windows, and the addition of the new category of policy-driven transmission upgrades would likely vastly increase the number of submissions in any request window. For reliability-driven projects, the ISO first identifies the reliability need and proposes a solution to the need, and then solicits alternative solutions to meet that need. This process has worked much more effectively and efficiently than the process for economically driven projects whereby the ISO evaluates individual projects on a case-by-case basis that may not be proposed to meet a specified need.

request window process to solicit the submission of individual project proposals irrespective of any previously identified needs. Rather, the Texas PUC process first identified the applicable Competitive Renewable Energy Zones that should be accessed in ERCOT and then determined the needed transmission facilities to access those areas through its planning process. Finally, the Texas PUC provided for an open solicitation to build the identified needed facilities. Similarly, the ISO's proposed process would first identify the needed upgrades and additions, and then allow competition to build and own those facilities through an open solicitation process. Other ISOs, such as the New York ISO and ISO-New England, plan in a similar manner; they only seek proposals *after* they determine a need. The Commission has found these transmission planning process provisions just and reasonable and in compliance with the requirements of Order No. 890.[42] There is no reason for the Commission to require the ISO to operate differently.[43]

The ISO's proposed process provides incentives for everyone to actively participate and provide quality inputs in the planning process because, once the ISO identifies a needed policy-driven or economically driven transmission element, all potential transmission developers will have the opportunity to compete to build and own that project. If a project is automatically awarded to the person who submitted the project in the request window, that will discourage

42 *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068 (2008); *ISO New England, Inc.,* 123 FERC ¶ 61,161 (2008).

43 In similar contexts, the Commission has recognized that procedures which require a system operator to study multiple speculative projects, many of which are unlikely to move forward, can prevent an ISO or RTO from providing efficient service to customers. *See, e.g., Interconnection Queuing Practices,* 122 FERC ¶ 61,252 (2008) (noting that backlogs in the processing of interconnection requests not only deprive generation developers of needed business certainty, they also undermine other important public goals).

other potential transmission developers from participating in the planning process evaluation of that project to identify modifications that would improve that project or alternatives that would be even better solutions to an identified need, because they would not have any right to build the revised or alternative project.[44] Pattern's approach also does not provide any of the ratepayer benefits that accompany an open solicitation process like that used by the Texas PUC and proposed by the ISO. Under a request window process that provides first in time rights, there is no incentive for a Project Sponsor to propose any rate caps on the project, forgo any rate incentives, or agree to any other cost containment measures, because there is no further competition once the preferred transmission upgrades and additions have been identified; the sponsors of the preferred facilities will automatically get to build them if they are found to be needed. In contrast, the open solicitation process proposed by the ISO will allow ratepayers to reap the benefits of increased competition.

The input provided by independent transmission developers during the stakeholder process helped convince the ISO to propose the open solicitation approach rather than a request window approach. For example, StarTrans noted

[44] Allowing a party to propose economically driven and policy-driven projects through a request window prior to a determination of need by the system planner encourages entities to propose their projects as broadly as possible (or propose numerous alternatives) in order to "stake a claim" that their project already addressed needs in the event the ISO were to determine there was a need. If multiple project sponsors were to submit similarly broad proposals, it would be difficult for the ISO to determine the scope of each project sponsor's proposal, which is problematic because the transmission solution needed to address a specific need identified by the ISO may not be identical to any individual proposal. This situation could only be complicated if a party proposes a project in a given planning cycle which essentially is a variation or a modification of a project proposed by a different party in a prior cycle. Allowing an entity to claim that submission of a broadly defined project will provide the proponent with some claim to superficially similar projects in the ISO's later selection of projects to address an ISO-identified need will only encourage project sponsors to submit every conceivable proposal to stake their claim. That is not an efficient process.

during the stakeholder process that "the Texas CREZ process used an open, transparent, competitive process to attract the most ***innovative*** and cost-effective transmission projects to bring renewable energy to the rest of the system."[45] StarTrans also noted that "transmission owners and developers came from across the nation to bring their best transmission development ideas and skills to help Texas meet its renewable energy goals."[46] StarTrans' comments make it clear that innovative ideas will be proposed – and in fact have been proposed – in an open solicitation process.

Pattern also argues that ISO's proposal reflects an inconsistent approach to the development of a comprehensive transmission plan after which Project Sponsor proposals would be considered, in that the request window is only being eliminated for categories of cost-of-service projects for which independent developers can compete.[47] The preservation of the request window for certain categories but not others is not inconsistent with the preparation of a comprehensive transmission plan. For reliability-driven projects and projects to maintain the feasibility of long-term CRRs, the ISO first identifies the need for any project, and parties then submit solutions to meet those needs in the request window. Parties do not submit projects in the request window to address a need that has not been identified.[48] The principles underlying the use of the request

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[45] StarTrans January 10, 2010 stakeholder comments at 21.

[46] *Id.* Similarly, as LS Power recognized in its November 23, 2009 comments in Docket No. AD09-8 (pp.20-21), an open solicitation process like that used Texas results in projects that are the most beneficial and cost-effective to consumers.

[47] Pattern at 18-19.

[48] The ISO notes that the request window also applies to merchant projects. However, the ISO's approval authority for merchant transmission is more limited than its approval authority for transmission projects which will be included in the ISO's transmission access charge. A merchant transmission project will be in the transmission plan if it does not threaten reliability or pose operational problems and if the project sponsor is creditworthy. *See* proposed ISO Tariff

window for these projects are the same principles that support the open solicitation approach established for policy-driven and economically driven projects. In that case, however, the ISO is seeking to provide greater opportunities for competition in addressing the needs identified by the system planner. The objection that the ISO is only eliminating the request window for projects for which independent developers can compete misses the entire point of the ISO's proposal. A request window is incompatible with an open solicitation process that is open to all potential Project Sponsors.

The CPUC supports the elimination of the request window for economically driven and policy-driven projects.[49] It requests clarification, however, regarding the submission of non-transmission alternatives during the request window. In particular the CPUC recommends (1) elimination of the qualifying phrase "consistent with Section 24.3.2(a)" in Section 24.3.3; and (2) addition of the term "other non-transmission alternatives" in describing the alternatives that may be submitted. These changes are acceptable to the ISO, and the ISO is prepared to make these changes in a compliance filing if so directed by the Commission.

The CPUC also suggests that Section 24.4.6.2 be modified to add "storage" to the list in that provision of lower-cost alternatives to the construction of transmission additions or upgrades. The ISO believes that adding "other non-transmission alternatives" to the list will better address the gap identified by the CPUC. The ISO will include this change in a compliance filing.

Section 24.4.6.1. In order to evaluate other categories of transmission, the ISO must know whether such projects are needed.

[49] CPUC at 12.

b. Section 24.4.2 Permits Third Parties to Propose Reliability Upgrades or Additions.

CDWR correctly notes that the ISO's current transmission planning process specifically contemplates that non-participating transmission owner third parties may submit reliability-driven projects through the request window[50] and seeks confirmation that the revised transmission planning process does not "alter or impair" this process.[51] Proposed ISO Tariff Section 24.4.2 contains the same language from current Section 24.1.2; therefore, the ISO can confirm that there is no change in the process. The ISO notes that CDWR raised this issue in prior Order 890 comments and received similar assurances. Furthermore, CDWR has participated in the ISO's planning cycles with regard to its needs for transmission service to serve its pumping loads.

CDWR's comments with respect to requests for reliability upgrades "in order to ensure firm service to new or expanded loads" seem to reflect a misunderstanding of the ISO's services and confusion about what is being requested. As explained briefly on pages 78-79 of the Transmittal Letter, the ISO's specific service model does not differentiate between types of customers and types of service requests (firm, point-to-point, network, *etc.*). The ISO does not have native load. All of the ISO's customers, including CDWR, receive the same firm daily service. The ISO has not, does not now, and does not propose to provide an opportunity for wholesale transmission customers to seek different types of transmission service. When a customer such as CDWR (wholesale

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[50] *See* current ISO Tariff Sections 24.1.2 and 24.2.3(f).

[51] *See* CDWR at 8. Note that proposed ISO Tariff Sections 24.4.2 and 24.4.6.2 also retain the obligation of participating transmission owners with service territories to construct, finance and own reliability driven projects.

load) seeks reliability upgrades through the request window, the ISO tests the system to ensure that the appropriate load assumptions have been included in its planning studies and to determine whether there is a need for transmission upgrades. These studies are part of the ISO's technical studies. Should there be a need for reliability upgrades due, in part, to load assumptions including CDWR's pumping load, the ISO will direct the participating transmission owner to construct such upgrades. The revised transmission planning process does not modify this aspect of the existing process and therefore does not impact CDWR's ability to request assurances from the ISO that its transmission needs are being met by the ISO controlled grid.[52]

3. Treatment of LGIP Projects

In general, parties support the ISO's stated objective to better coordinate the LGIP and the transmission planning process.[53] However, a few parties have raised concerns about the substantive and procedural details of the ISO's proposal to assess certain LGIP Network Upgrades as part of the comprehensive planning process, as discussed below.

a. Deferring the LGIP Coordination Process until the 2011/2012 Planning Cycle

CalWEA, Six Cities and CMUA argue that the Section 24.4.6.5 LGIP coordination process should not be deferred until the 2011/2012 planning cycle. CalWEA, supported by LSSA, apparently believes that the ISO's proposed

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[52] Currently CDWR has contractual arrangements for transmission service with PG&E, and the details of those arrangements are outside the scope of this proceeding.

[53] For example, the CPUC notes that: "The CPUC agrees that fuller and more efficient integration of the LGIP and the TPP, especially to deal with renewable generation needs, requires revisions to the TPP itself. Such revisions are provided by the proposed TPP revisions that are the subject of this filing." CPUC at 9.

evaluation process will have the effect of relieving many generators from the responsibility of funding Network Upgrades needed to interconnect their projects and that it is in the best interests of ratepayers to push as much of the cost responsibility for the build-out of the network into the ISO's transmission access charge.[54] Six Cities and CMUA argue that the ISO should not "exempt" LGIP Network Upgrades from review in the 2010/2011 planning cycle because unnecessary costs could be pushed through the LGIP process and that could have a "massive impact" on participating transmission owner revenue requirements and the transmission access charge.[55]

Both of these arguments overstate the impact of deferring these projects. Consideration of LGIP Network Upgrades in the transmission planning process is not likely to "reliev[e] many generators from the responsibility of funding Network Upgrades needed to interconnect their projects," as CalWEA believes. Only LGIP Network Upgrades meeting certain criteria will be considered in the revised transmission planning process and there is no reason to believe that a large number of those Network Upgrades will be modified or enhanced. Those LGIP Network Upgrades that do not meet these criteria will be processed only under the LGIP.

Further, the deferral does not involve projects that would have "an undefined but potentially massive impact on transmission revenue requirements"[56] as Six Cities expects. Although the LGIP process is currently coordinated with the transmission planning process, the coordination does not

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54 CalWEA at 17.
55 CMUA at 12-14, Six Cities at 4-5.
56 *Id.* at 4.

result in LGIP Network Upgrades substituting for necessary transmission expansions and upgrades. The LGIP Network Upgrades necessary for interconnection are determined through the LGIP, regardless of the coordination; the process will remain the same in the 2010/2011 cycle.

As the ISO indicated in it is June 4 filing, the deferral is a reasonable accommodation to the achievement of the goals of the American Recovery and Reinvestment Act. During the stakeholder process some interconnection customers expressed concern that consideration of their Network Upgrades under the transmission planning process would make it impossible for them to meet the December 31 start of construction deadline for ARRA financial cash grants, or prevent them from timely executing their LGIAs in accordance with the timelines specified in the existing tariff (which must occur within a 90-day timeframe after on the issuance of LGIP Phase 2 studies, and which will be September-October for the transition cluster). In light of the importance of the incentives in the ARRA to the achievement of RPS goals, the ISO proposed to defer application of the LGIP assessment provisions for the current planning cycle.

CalWEA argues that the ISO can allow generators to proceed with their LGIAs and if upgrades in those agreements are later incorporated into the planning process and the ISO's transmission plan, the agreements can be amended and the generators' financial security released.[57] A project developer's (and the participating transmission owner's) funding and permitting requirements require a certain degree of certainty about the legal arrangements and the costs

[57] CalWEA at 16.

and construction schedules for upgrades necessary to interconnect the generating facility by the anticipated commercial operation date. If these details create uncertainty about the ability of the generating facility to begin sale of energy to the grid by the commercial operation date, this might jeopardize the ability of the interconnection customer to meet obligations in the power purchase agreement, which might in turn jeopardize construction financing, completion of the project business structure and ultimately meeting the ARRA qualifying deadline.

Indeed, individual stakeholders have approached the ISO and the Governor's office stating that any uncertainty regarding the transmission build-out or subjecting LGIP-identified studies to further review in the transmission planning process will preclude them from obtaining financing and meeting the ARRA deadlines. In that regard, an LGIA that specifies transmission facilities that are subject to change based on a subsequent review in the planning process will create sufficient uncertainty to jeopardize financing. Also, if an LGIA is signed under these circumstances, the participating transmission owner will not be able to move forward until it has certainty as to which facilities it will need to construct. Any changes to those facilities in the planning process will not occur until March 2011. Even if the ISO does not change the facilities, that determination will not occur until sometime in December. Any such delays would preclude the projects from receiving their financing and beginning construction before year end as required to achieve the desired ARRA benefits.

Six Cities and CMUA argue that the ISO could undertake an expedited evaluation of the specific projects eligible for ARRA assistance based on the

inputs received during the initial stages of the revised planning process.[58] CMUA/Six Cities' suggestion that only ARRA-eligible generators be moved forward through the LGIP is not practicable. Interconnection studies are conducted in clusters and needed Network Upgrades are identified for all interconnection customers collectively within an electrical area of the grid. Thus, ARRA customers cannot be singled out for study and still ensure an efficient expansion plan.

Moreover, employing an expedited process is at odds with the very nature of preparing a comprehensive transmission plan. Potential enhancements cannot be evaluated until all studies, as well as the determination of necessary reliability upgrades, have been completed. The results of the expedited assessment could inappropriately impact outcomes later on in the planning process.

Finally, deferral is also appropriate because the ISO is planning a stakeholder process later this year to address LGIP issues such as timing coordination with the transmission planning process. CalWEA and others will have the opportunity to address coordination issues at that time.

b. Transparency of the Transmission Planning and LGIP Processes

BAMx raises concerns that the ISO's proposed review of LGIP Network Upgrades in the transmission planning process does not provide sufficient transparency into the development of such Network Upgrades. Specifically, BAMx argues that the proposed tariff language does not detail how interested

[58] CMUA at 12-14, Six Cities at 5.

parties can obtain access to LGIP studies and thus does not comply with Order 890 transparency requirements.[59]

These assertions are without merit. The ISO already provides access, pursuant to its standard non-disclosure agreement, to interconnection study base case information that is not commercially sensitive.[60] The process steps by which interested parties may access this information are set forth in the BPM. To the extent BAMx desires to propose enhancements to this process, it has an opportunity to do so in the BPM revision process currently underway.[61] The ISO also notes that Order No. 890 pertains to the transmission planning process not the Large Generator Interconnection Process.

c. Relationship of the Transmission Planning Process and the LGIP

MRE/PE also raises an unsupported objection with regard to LGIP Network Upgrades. MRE/PE complains:

> Under the express terms of the [transmission planning process], all transmission projects, including Network Upgrades identified through the LGIP, should be submitted through the Request Window for processing in the TPP…[62]

MRE/PE appears to be referring to the current transmission planning process,[63] but neither the current transmission planning process nor the proposed revised transmission planning process provides that LGIP Network Upgrades are submitted through the request window.[64] Moreover, the current

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59 BAMx at 12-14.

60 *See* ISO Non-Disclosure and Use of Information Agreement for Market and Infrastructure Development, Section 2(b), available on the ISO's website at http://www.caiso.com/1f4f/1f4f8bf4240c0.pdf

61 See http://www.caiso.com/235f/235f939f8dc0.html and https://bpm.caiso.com/bpm/prr/list

62 MRE/PE at 7.

63 *Id.* at 4.

64 *See* ISO Tariff Section 24.2.3, proposed ISO Tariff Section 24.4.3.

tariff does not provide for consideration of LGIP Network Upgrades other than as part of the Unified Planning Assumptions and Study Plan.[65] In contrast, as discussed below, the proposed revised transmission planning project specifically calls for consideration of expanded LGIP Upgrades in the transmission planning process and provides independent transmission companies the opportunity to compete to build upgrades and additions that would not have been included in an LGIA. MRE/PE's contentions have no basis in either the current tariff or in the ISO's proposal.

To the extent MRE/PE is arguing that all LGIP projects should be submitted through a request window, that suggestion would be contrary to Order No. 2003 and the ISO's LGIP process, and beyond the scope of this proceeding.

4. Development and Evaluation of Policy-Driven Elements

a. General Concerns

Green Energy Express argues that the need for policy-driven elements should be determined before proposed LCRIF and expanded LGIP Network Upgrades are added to the comprehensive plan, or at least simultaneously with the consideration of these projects. In the same vein, Green Energy Express opines that proposed Section 24.4.6.6(j), providing that the ISO consider the effects of other additions or upgrades being considered for approval, is vague and provides little transparency as to how the ISO will consider transmission alternatives.[66]

These comments misunderstand the logic of the ISO's proposed comprehensive planning approach. Policy-driven elements are network facilities

[65] ISO Tariff Section 24.2.1.1.

[66] Green Energy Express at 26-27.

needed to achieve specific policy goals, such as achieving 33 percent RPS standards, *over and above* the infrastructure needed to meet identified reliability needs, interconnect generation, and maintain the feasibility of long-term CRRs. Developing policy-driven elements first, without regard to the transmission upgrades that the ISO is otherwise required to evaluate would create the risk of overbuilding and stranded investment, and would thus undermine the objectives of comprehensive planning. In contrast to policy-driven transmission elements, LCRI facilities are radial generation tie facilities, so their approval does not impact the consideration of policy-driven projects. LCRI facilities may affect the need for reliability upgrades, however, and therefore need to be included as planning assumptions when considering the need for policy-driven elements. Similarly, LGIP Network Upgrades are required to be built under timelines specified in the LGIP tariff provisions in order to connect generation in the ISO queue. For such upgrades that are included directly in LGIAs and not considered in the transmission planning process for possible modification, there seems to be no disagreement with including them as assumptions for the comprehensive plan. For LGIP Network Upgrades that *are* considered for possible modification in the transmission planning process, however, the ISO fully intends to evaluate the potential benefits of any such modification in the same analytical process where it considers the need for policy-driven elements. Thus it is possible, as the ISO explained in its filing, that policy-driven elements identified in the plan could fulfill the requirements of particular LGIP-identified network upgrades and make the latter unnecessary, as long as the interconnection needs of the relevant interconnection customers are met. But such an outcome is only possible

through a comprehensive planning approach as the ISO has proposed. There is nothing "ambiguous" or "vague" about this concept, and the ISO believes that this approach satisfies the suggestion by Green Energy Express that the need for policy-driven elements be considered simultaneously with expanded LGIP network upgrades.

CalWEA challenges several aspects of the ISO's policy-driven element proposal. First, CalWEA claims that the applicable tariff sections do not state whether approved Project Sponsors must finance policy-driven elements, in addition to constructing and owning them.[67] CalWEA is incorrect. Under proposed tariff Section 24.5.1, Project Sponsors will submit proposals to "finance, own and construct the transmission elements in the comprehensive Transmission Plan." Similarly, proposed Section 24.6 refers to the rights of approved Project Sponsors to "finance, own and construct" projects.

Next, CalWEA argues that "conditionally approved" transmission will add to commercial uncertainty and hinder generation development.[68] Presumably CalWEA is referring to Category 2 policy-driven elements, which are those elements that could be needed to achieve policy goals but are not recommended for approval in the current planning cycle. As provided in Section 24.4.6.6, such elements will be studied in the next annual cycle but do not receive "conditional approval."[69] Category 2 elements are nothing more than inputs into the Study Plan for the next cycle. If a Category 2 element were identified as an LGIP Network Upgrade in a subsequent Phase II interconnection study, it would be

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67 CalWEA at 14-15.

68 *Id.* at 20.

69 An earlier version of the ISO's proposal did include the concept of conditional approval for Category 2 policy-driven elements, but as the proposal evolved this concept was dropped.

financed and constructed according to the LGIP/LGIA time schedule, including possible assessment by the ISO pursuant to Section 24.4.6.5. Rather than hindering renewable development, identifying a transmission element as Category 2 may in fact encourage renewable development in the area of the line because resource developers will know in advance that the ISO has identified the line as one that is potentially needed to meet 33 percent RPS if more resources are planned for the area.

Finally, CalWEA takes issue with the Section 24.4.6.6 (d) reference to "the supply cost function" of the resources in particular energy zones and argues that it is inappropriate to consider generation mix or integration costs in making decisions about policy-driven elements because these considerations are within the purview of the CPUC's resource procurement process.[70] The ISO disagrees. Such information has been used in the past by the ISO in evaluating the potential benefits of specific transmission projects and criterion is included for this reason.[71] Resource cost curves are regularly used to evaluate transmission alternatives**.**

b. Inclusion of the "Least Regrets" Scenario Analysis in the Tariff

CalWEA argues that the ISO should explicitly describe in proposed Section 24.4.6.6 how the ISO "plans to use least-regrets modeling to place meaningful limits on the scope of new transmission construction."[72] According to CalWEA, without such a description of the "least regrets" methodology, the ISO's

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[70] *Id.* at 20-21.

[71] See In the Matter of the Application of San Diego Gas & Electric Company, CPUC Docket No. A.06-08-010 (D. 08-12-058, Dec. 24, 2008), at 130.

[72] CalWEA at 7-12.

process for identifying policy-driven elements does not comply with Order 890 transparency requirements.[73]

Proposed Section 24.4.6.6 does contain a description of the "least regrets" methodology, but does not use that term. It identifies ten criteria that the ISO may use:

> …to determine the need for, and indentify such policy-driven transmission upgrade or addition elements that efficiently and effectively meet applicable policies *under alternative resource location and integration assumptions and scenarios, while mitigating the risk of stranded investment*, the ISO may consider…

The ten criteria set forth in Section 24.4.6.6 provide specific objective criteria which the ISO may consider in its annual assessment of the need for policy-driven elements. It may well be that one or more of these criteria will not be applicable under certain circumstances or that certain criteria should be weighted more than other criteria. The ISO's proposal is consistent with the approach that the Commission approved for LCRI projects, namely, inclusion in the Tariff of a list of criteria by which the ISO can evaluate to determine the need for a specific LCRI project.[74] Indeed, the ISO's approach for policy-driven projects was modeled, in part, on the approach the Commission approved for LCRI. Similarly, for economically-driven projects, the Tariff identifies economic benefits the ISO considers to evaluate need, but does not prescribe a specific

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[73] BAMx generally objects to the discretion afforded by Section 24.4.6.6 in identifying policy-driven elements. As a general matter, the ISO does not agree that the study methodologies used to identify needed transmission projects or elements must be described in detail in the tariff. These details are more appropriately described in the BPM and in the annual Study Plan. For example, the current ISO Tariff does not describe the methodology that will be used in the evaluation of economic planning study requests, nor does the current tariff describe the study methodologies used to identify reliability-driven projects, economically-driven projects, LCRI projects, or projects to maintain the feasibility of long-term CRRs. These tariff sections were approved by the Commission as part of the ISO's Order 890 compliance filings and therefore necessarily were found to meet the transparency requirements.

[74] *See* current ISO Tariff Section 24.1.3.4.

methodology.[75] Likewise, there is no basis to require the ISO to specify a particular "least regrets" methodology in the tariff. Rather, the ISO must have flexibility to apply the specified criteria to the specific circumstances that it faces.

c. Appropriate Indicia of Commercial Interest

Both NextEra and DayStar raise concerns about the ISO's proposed indicia of commercial interest in determining the need for policy-driven elements, as described in proposed Section 24.4.6.6(a). These parties argue that having a signed power purchase agreement in California does not reflect the viability of a generation project and, similarly, that financial security postings or evidence of independent financial wherewithal are probably a better indication of project viability than interconnection agreements.[76]

PPAs and LGIAs are, of course, just some of the many data points the ISO will assess in determining need. Moreover, while the ISO agrees with DayStar that much of the generation in the queue might not be constructed, an executed LGIA is nonetheless a good indicator of the likelihood that a generation developer has moved forward through the queue process and has the resources necessary to finance and build the project. Under the LGIP, interconnection customers must post financial security and be committed to a construction schedule by the time an LGIA is executed.[77] Indeed, in approving the ISO's LCRI proposal, the Commission found that executed LGIAs were an appropriate measure of commercial interest.[78] The Commission also found that the ISO

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[75] *See* current ISO Tariff Section 24.1.1 (b).
[76] DayStar at 4-6; NextEra at 3-5.
[77] See current ISO Tariff, Appendix U, Section 11.3.
[78] *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,286 at PP 10-11, 48 (2007), *reh'g denied*, 127 FERC ¶ 61,178, at P 40 (2009).

could consider executed PPAs as a basis for evaluating commercial interest.[79] These commercial interest criteria are set forth Section 24.1.3.2 of the ISO's existing tariff (and Section 24.4.6.3.4 or the proposed tariff).

d. Recovery of Capital Costs of Policy-Driven Elements Through the ISO's Transmission Access Charge.

CCSF opposes the recovery of the costs of policy-driven elements through the ISO's transmission access charge.[80] CCSF opines that these infrastructure upgrades differ from other categories of transmission because they are not least-cost resources providing universal benefits to all users. Rather, according to CCSF, policy-driven elements provide benefits to developers and discrete subsets of customers that should be reflected in a cost allocation mechanism.[81] CCSF contends that, as with LCRI facilities, the cost recovery mechanism for policy-driven elements should consider the overall effect that such infrastructure additions could have on the transmission access charge in order to mitigate potential "rate shock."

The ISO strenuously disagrees with CCSF. There can only be a state or federal directive or requirement necessitating a policy-driven element if a legislative or executive authority has decided that it is in the *public interest for such goal to be implemented.* Any suggestion that a 33 percent RPS requirement is intended to benefit only generation developers and a limited subset of customers is sorely misplaced. In the case of California's 33 percent RPS by 2020 standard the ISO's comprehensive transmission plan does not

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79 *Id.* at PP 11, 48.
80 CCSF at 5-11.
81 *Id.* at 7.

consider the individual transmission needs of particular load serving entities and the progress of these load serving entities in achieving their RPS targets. Rather, the plan will ensure that *all* load-serving entities with obligations to meet the 33 percent RPS targets will be able to do so by procuring resources that are fully deliverable to the ISO grid.

The ISO certainly understands the concerns expressed by CCSF (and other stakeholders) regarding the costs of transmission needed to meet the 33 percent RPS standards. The ISO's proposal addresses these concerns by providing in Section 24.4.6.6 that the ISO will consider planning level cost estimates in evaluating the need for policy-driven elements in comparison to alternative transmission elements, as well as other additions or upgrades and non-transmission alternatives, so that the ISO can identify cost-effective alternatives. Such concerns do not justify a separate cost allocation mechanism. Finally, CCSF does not enunciate any reasons why the costs of policy-driven transmission elements should be allocated any differently than the costs of reliability projects, economically-driven projects, LCRI facilities, and facilities designed to maintain the feasibility of long-term CRRs.

There is also no basis to add a cost cap like that which is in place for LCRI. LCRI was a special financing mechanism and applies to the construction of certain generation tie facilities that normally are not recovered in the transmission access charge. LCRI facilities provide transmission solely for the interconnected generation. If they become network facilities, they are fully included in the transmission access charge. Policy-driven elements are network facilities from the day they are energized. Moreover, imposing a cost cap for

policy-driven projects could result in a scenario where more transmission is needed to meet a specific policy goal, but it cannot be approved because of a cost cap. This could result in a failure to meet state RPS requirements.

e. Scope of State and Federal Policy Goals

CCSF argues that proposed Section 24.4.6.6 contains the description of the public policy requirements that the ISO will use to develop policy-driven elements will allow the ISO to make "unilateral decisions" through reliance upon "provisional or non-binding" requirements.[82] BAMx argues that "policy driven" justifications should be limited to limited to state and federal laws and regulations. BAMx also argues that Section 24.4.6.6 should specifically include tariff language that would describe how the ISO will rely on state level proceedings, particularly with respect to the issues addressed in the CPUC-ISO Memorandum of Understanding.

The ISO's proposal defines policy-driven elements that are necessary to meet federal or state *requirements or directives.* This does not leave room for "unilateral decisions" relying upon "provisional or non-binding" requirements. Restricting such projects to those required by laws and regulations, however, would confine the ISO's options too narrowly. There may be binding state and federal policies that must be incorporated into the ISO's transmission planning process but might not be laws or regulations, such as judicial orders, regulatory decisions, or executive orders. For example, California's 33 percent RPS by 2020 standard is contained in a Governor's Executive Order.[83]

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[82] CCSF at 12.

[83] *See* http://gov.ca.gov/executive-order/11072/.

Contrary to the claims of BAMx, there is no need to add any tariff provisions to implement the MOU between the CPUC and the ISO. The MOU merely sets forth high level principles as to how the ISO will coordinate with the CPUC with respect to certain matters. The ISO coordinates with all sorts of entities including regional planning authorities and interconnected balancing area authorities. The scope of that coordination is not specified in the tariff. Rather the BPM contains some general provisions regarding such coordination. Under the MOU, the CPUC will provide inputs and scenarios into the ISO's planning process just like other stakeholders provide inputs. Nowhere does the tariff state that the CPUC's inputs will dictate the ISO's decisions in the planning process and what transmission elements will be adopted. The ISO Tariff does not contain specific provisions pertinent to each individual stakeholder dictating how the inputs of those individual stakeholders will be treated; nor should there be specific tariff provisions indicating how the ISO will treat the CPUC's inputs. BAMx has provided no basis for adding more detail to the tariff that would restrict the flexibility of the ISO to implement the MOU and other information from the CPUC and Local Regulatory Authorities.

5. Treatment of 2008 and 2009 Request Window Projects

Three parties submitted comments or protests regarding the ISO's proposed treatment of projects submitted during the 2008 and 2009 request windows. DayStar asks that tariff language be added to Section 24.4.6.6 such that, if the ISO classifies a project as Category 2 and later reclassifies the project, or a substantially identical project, as Category 1, then the original Project

Sponsor of a project proposed in the 2008-2009 request windows should have the right to construct the project. The ISO believes that this clarification is equitable and consistent with the ISO's general proposal for addressing 2008 and 2009 request windows. As such, the ISO would not object to a Commission directive to include such language in a compliance filing.[84]

Pattern states that the ISO did not accede to its request that the tariff provisions provide that an earlier 2008 or 2009 request window submission from a qualified entity would have a preference over a later submission. It asks that such a principle be included for the 2008 and 2009 request window projects.[85]

The ISO does not believe that such a preference is appropriate in this circumstance. In response to stakeholder concerns, the ISO has proposed special treatment of 2008 and 2009 request window projects as an accommodation to expectations under the existing transmission planning process. The current ISO Tariff does not contain any "first in time" provision, and there is nothing in the Tariff that provides Project Sponsors that submit a request window proposal with any legitimate expectation of a "first in time" preference. Rather, all pending project proposals are evaluated according to their benefits and their cost-effectiveness, and the ISO approves the best project. In the case of competing projects, the ISO evaluates those factors comparatively. The ISO does not believe that Project Sponsors should gain any additional preferences as a result of the ISO's partial "grandfathering" of the 2008 and 2009 request window projects. It suffices that, although the current ISO Tariff does not contain

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84 DayStar at 5.

85 Pattern at 23.

a policy-driven category of transmission, the ISO has proposed that if any 2008 or 2009 request window project corresponds to a policy-driven transmission element that is needed, the sponsor of the request window project will get to build and own it.

DSWP contends that requiring it to comply with an 'entirely new process" at this stage of advanced development of the Desert Southwest Transmission Project will have serious negative consequences. It notes that under the proposal, the ISO will make decisions about projects submitted during the 2008 and 2009 request windows until March 2011 at the earliest, at which time it will be impossible for DSWP to commence construction by the ARRA deadline of September 2011.[86]

As discussed below, arguments regarding the treatment of any specific project proposal under the current ISO Tariff are beyond the scope of this proceeding. In any event, DSWP's arguments that the ISO's proposed treatment of 2008 and 2009 request window projects unfairly penalizes it are without foundation.

First, DSWP is not disadvantaged. In its protest, DSWP notes that in October 5, 2005, the Bureau of Land Management issued a Final Environmental Impact Statement, followed by a Record of Decision granting the necessary rights-of-way for the project in September 2007. DSWP also notes that the project's California Environmental Quality Act review was completed in December 2007. However, DSWP waited to submit its proposal to the ISO until November 30, 2009 – the last day of the 2009 request window. The typical

[86] DSWP at 2, 6-7.

practice is for project developers to obtain a need determination from the ISO and then seek the necessary siting and permitting authorizations. DSWP elected to follow a different course.

In any event, contrary to DSWP's comments, neither the current tariff nor the current BPM provide that non-reliability projects will be approved by ISO management or the Board during the planning cycle in which they were submitted. Under the current transmission planning process, projects with capital costs of $50 million require separate Board approval and are presented for Board approval in accordance with the study schedule established for each project.[87] Moreover, because the costs of DSWP's project exceed $200 million, it would be a Large Project under the current ISO Tariff. Large Projects are subject to a separate study and public participation process which most likely encompasses more than one planning cycle.[88] Even if a proposed project is not a Large Project, under the current planning provisions the ISO may defer for consideration in a subsequent planning cycle those transmission project proposals that are "at a conceptual stage or require additional study." Under the proposed revised transmission planning process, the Board will act on the 2010/2011 transmission plan containing any 2008 or 2009 request window projects in March 2011.[89] DSWP's ability to meet the ARRA deadline is thus unaffected by the ISO's consideration of its project under the proposed tariff provisions because DSWP's expectation that its project would have been approved by March, 2010 under the current transmission planning process is

[87] *See* current ISO Tariff Section 24.2.4(d).
[88] *See* current ISO Tariff Section 24.2.4(c).
[89] *See* BPM for Transmission Planning Process, Section 2.1.2.

mistaken. Indeed, DSWP may benefit from the revised transmission planning process because DSWP states that its project is needed to meet the 33 percent RPS requirements. However, there is no policy-driven category of transmission in the current ISO Tariff. Under the ISO's proposal, DSWP will get to build its project if it is needed for either economic or policy reasons.

Moreover, DSWP does not have a vested interest in having its project evaluated under the existing tariff. A public utility always may always propose changes to a contract or rate schedule under "the ordinary just and reasonable standard . . . whenever the contract includes provisions permitting the parties to seek such changes."[90] The ISO Tariff includes such a reservation of filing rights for the ISO.[91] Thus, for example, as part of the implementation of the ISO's new market design, the Commission evaluated existing transmission contracts to determine which were protected by the *Mobile-Sierra* doctrine, such that the rights holder had a reasonable expectation of continued service under the terms of the contract.[92] Absent such an expectation, the parties to these contracts could not expect continue treatment under the contract. DSWP does not even have any contract that could provide such reasonable expectations.

DSWP's arguments are thus misplaced. The ISO's proposal treats it fairly and in accordance with the law.

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[90] *Williston Basin Interstate Pipeline Co.*, 115 FERC ¶ 61,081 at P 10 (2006), *citing United Gas Pipe Line Co. v. Memphis Light Gas and Water Division*, 358 U.S. 103 (1958).

[91] "Nothing contained herein shall be construed as affecting, in any way, the right of the CAISO to furnish its services in accordance with this CAISO Tariff, or any tariff, rate schedule or Scheduling Coordinator Agreement which results from or incorporates this CAISO Tariff, or unilaterally to make an application to FERC for a change in rates, terms, conditions, charges, classifications of service, Scheduling Coordinator Agreement, rule or regulation under FPA Section 205 and pursuant to the FERC's rules and regulations promulgated thereunder." ISO Tariff, Section 15.

[92] See Public Utilities With Existing Contracts in the California Independent System Operator Corporation Region, 112 FERC ¶ 61,007 (2005).

6. Incumbent PTOs' Rights to Build

Several parties protest the limited right to build of participating transmission owners that the current ISO tariff provides, and the revised transmission planning process would provide.[93] The ISO recognizes that the Commission has proposed to eliminate such rights in the NOPR. As discussed above, however, the ISO contends that the Commission should evaluate the proposed revised transmission planning process under current precedent and policies. Contrary to the protests, the ISO's proposal is consistent with precedent and policies.

A number of protesters[94] argue to the contrary, citing *Primary Power, LLC*[95] and *Central Transmission, LLC v. PJM Interconnection, LLC*.[96] The ISO explained in the June 4 filing that *Primary Power* set forth no generally-applicable Commission policy on the right of third parties to construct Network Upgrades or additional facilities on the property, transmission lines or in the substations owned by an existing participating transmission owner. Rather, *Primary Power* merely interpreted a provision of the PJM tariff that allows PJM to designate an existing transmission owner or some other entity to build needed projects identified in its transmission plan and cautioned that PJM must administer that

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93 The ISO recognizes that in the NOPR the Commission refers to the right of a transmission owner to build as a "right of first refusal." The ISO uses the term "right to build" here to be clear that the participating transmission owners with a right to build do not have an option under the ISO Tariff to refuse to finance, construct, and own the facilities.

94 Green Energy Express at 16, MRE/PE at 7/8, Pattern at 7-8, WITG at 7, WGD at 4, 6.

95 131 FERC ¶ 61,015 (2010), *reh'g pending*.

96 131 FERC ¶ 61,243 (2010).

provision non-discriminatorily.[97] *Central Transmission* does not modify the Commission's holdings in *Primary Power*; it simply applies that holding to the circumstances addressed in the Central Transmission complaint.[98]

Green Energy Express also cites the Commission's ruling with regard to the GridSouth RTO filing that existing participating transmission owners should not have a right of first refusal in their service territories and directing GridSouth to undertake competitive solicitation for transmission expansion and upgrades.[99] GridSouth, however, proposed a blanket right of first refusal. The Commission has subsequently explained that a limited right of first refusal may be permissible under its precedents. In ruling on Southwest Power Pool's compliance filing, the Commission noted that "broad" rights of first refusal might violate its precedent, citing the GridSouth decision, and that participating in the transmission planning process by third parties may be discouraged by a broad transmission owner right of first refusal. It found, however, that it could not determine the breadth of Southwest Power Pool's right of first refusal proposal in its Order No. 890 compliance filing and directed Southwest Power Pool to file clarifying language.[100] The Commission subsequently approved a limited right of first refusal for SPP.[101] The ISO, also, is proposing a limited right to build, and is making economic and policy driven projects subject to an open solicitation process with no right of first refusal.

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97 131 FERC ¶ 61,015 at PP 63-65.
98 131 FERC ¶ 61,243 at P 46.
99 *Carolina Light & Power Co.*, 94 FERC ¶ 61,273, *reh'g denied* 95 FERC ¶ 61,282 (2001).
100 *Southwest Power Pool, Inc.,* 124 FERC ¶ 61,028 at PP 40-41 (2008).
101 *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,171 at PP 42-50 (2009).

As the Commission considers the ISO's intention to retain certain tariff provisions that provide a limited right to build for participating transmission owners, the ISO wishes to emphasize that the Federal Power Act does not contemplate changes to the proposed rates, terms, and conditions of a utility tariff based on the policy preferences of a regulator, such as whether competition is good or bad for fostering innovation or for meeting environmental policy goals. As a public utility, the ISO is entitled under Section 205 of the Federal Power Act to determine the best means of providing service to its customers, as long it results in terms and conditions that are just and reasonable and not unduly discriminatory. Moreover, relevant to evaluating whether the ISO's proposal is just and reasonable, the D.C. Circuit has explained:

> [T]he [Supreme] Court has articulated the interests that must be protected through such a determination: "[T]he fixing of 'just and reasonable' rates[ ] involves a balancing of the investor and the consumer interests." [*FPC v. Hope Natural Gas Co*., 320 U.S. 591, 602, at 603 (1944)]. Both interests are economic and tied directly to the transaction regulated: "the investor interest has a legitimate concern with the financial integrity of the company whose rates are being regulated," *id.*, while there is a "consumer interest in being charged non-exploitative rates." *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1178 (D.C.Cir.1987).[102]

Thus, before it can reject the ISO's proposed limited right to build for participating transmission owners, the Commission must find substantial evidence that independent transmission developers are similarly situated to participating transmission owners (in connection with the specific category of transmission project) or that the right to build produces unjust or unreasonable rates for *ISO customers*. As discussed *infra,* the ISO does not believe that the record contains

[102] *Grand Council of the Crees v. FERC*, 198 F.3d 950, 957 (D.C. Cir. 2000).

such evidence. Indeed, no commenter has submitted any factual evidence that customers will benefit if all additions or upgrades that have traditionally been constructed by the existing owners of the transmission system will now be open to competitive solicitation.

a. Location Constrained Resource Interconnection Facilities

Arguments against a participating transmission owner's right to build Location Constrained Resource Interconnection ("LCRI") facilities fall into two categories. First, some protesters argue that the distinction between LCRI facilities and policy-driven elements is unclear. Pattern, for example, argues that unless it can compete for the right to build LCRI facilities, it can only build policy driven elements that do not qualify as LCRI facilities or that the participating transmission owner declines to build.[103] WITG suggests that Project Sponsors will designate their projects based on the category most beneficial to them.[104] These arguments are based on a misunderstanding of the nature of LCRI facilities.

The distinction between LCRI facilities and policy facilities is crystal clear. LCRI facilities are radial facilities, *i.e.*, generation ties. Under proposed Section 24.4.6.3.2 (and its counterpart in Section 24.1.3.1 of the current ISO Tariff), an LCRI facility cannot, at the time of its in-service date, be a network facility and it cannot be eligible for inclusion in a participating transmission owner's transmission revenue requirement other than as an LCRI facility. Policy-driven elements, in contrast, are network transmission facilities that the owner will place

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[103] Pattern at 13-14.

[104] WITG at 7-8. *See also* DSWP at 2, 8.

under the ISO's operational control and include it its transmission revenue requirement.[105] Thus, LCRI facilities and policy-driven elements are completely distinct types of transmission lines and cannot be confused.

Second, some protesters take issue with the ISO's statement that, under the current ISO Tariff, existing participating transmission owners have a right to build LCRI facilities (and the ISO is not proposing to change these provisions in the instant tariff amendment).[106] These arguments also flow from a misunderstanding of the role of LCRI facilities. Under Section 26.4.6 of the revised ISO Tariff, the costs of the unsubscribed portion of an LCRI facility are recovered through a participating transmission owner's transmission revenue requirement. Under Sections 2.2 and 4.1 of the ISO's Commission-approved Transmission Control Agreement, a transmission owner can become a participating transmission owner only by turning over to the ISO's operational control "transmission lines and associated facilities forming part of the transmission network that it owns or to which it has Entitlements." However, under Section 4.1.1 of the Transmission Control Agreement, "radial lines and associated facilities interconnecting generation do not constitute part of a participating transmission owner's transmission network." The only exception is generation interconnection facilities "which may be identified from time-to-time interconnecting ISO Controlled Grid Critical Protective Systems or Generators contracted to provide Black Start or voltage Support" a category that does not include LCRI facilities. Further, the Commission has ruled that radial generation-

105 *See* proposed ISO Tariff Section 24.15.
106 Green Energy Express at 19, WITG at 5-6.

ties cannot be included in a participating transmission owner's transmission revenue requirement[107] except as an LCRI facility.[108] Thus, a party that owns – and seeks to turn over to the ISO's operational control – solely radial lines cannot become a participating transmission owner. That is, the ISO tariff permits all participating transmission owners to place LCRI facilities under the ISO's operational control but, under the Transmission Control Agreement, no transmission owner or developer can become a participating transmission owner by seeking to place only LCRI lines under the ISO's operational control.

There is no undue discrimination here. All entities with network facilities connected to the ISO grid are eligible to become participating transmission owners, and all participating transmission owners are eligible to build and own LCRI facilities. Contrary to the suggestion of some protesters, the ownership of LCRI facilities is not limited to participating transmission owners with service territories. Further, the Transmission Control Agreement provisions that preclude a transmission owner from becoming a participating transmission owner solely by turning over radial lines (including LCRI facilities) to the ISO apply (and have been applied) with equal force to all transmission owners, including the existing participating transmission owners.

Moreover, the Transmission Control Agreement's limitation of participating transmission owner status to entities with network facilities is reasonably related

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[107] *Southern Cal. Edison Co.*, 112 FERC ¶ 61,014 at PP 41-42 (2005); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061 at P 65 (2007).

[108] *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,286 at PP 63-65 (2007).

to the ISO's core mission of maintaining reliable grid operations and performing balancing authority area responsibilities.[109]

Unlike network facilities, radial lines (with the exception of those types of radial lines expressly identified in the Transmission Control Agreement) are not integral to the ISO's every day achievement of those objectives. Thus, this minimum eligibility requirement is not discriminatory on its face and is reasonably related to the ISO's core purpose. As noted above, the Commission explicitly approved the distinction between network facilities and radial facilities. Under the Transmission Control Agreement provisions approved by the Commission, a transmission owner that does not meet the minimum eligibility requirements to become a participating transmission owner is not entitled to receive the benefits (or bear the burdens) accorded to participating transmission owners.

These tariff and Transmission Control Agreement provisions are also consistent with the purpose of LCRI category of transmission. The ISO's LCRI proposal was designed solely as a funding mechanism to assist generation developers who were seeking to develop generation in areas remote from the grid. [110] It simply provides alternative cost allocation for a temporary period of time for what would otherwise be generator interconnections built by either the participating transmission owner or the interconnection customer and paid for by

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[109] *See also Pacific Gas and Elec. Co., et al.,* 81 FERC ¶ 61,122 at 61,562 and 61,568 (1997) (rejecting a proposed change to Section 4.1.1 of the Transmission Control Agreement and accepting the ISO's explanation that the test used in that section "is founded on the Commission's order No. 888 technical and functional test to distinguish transmission from local distribution. In the ISO's judgment the test provides a reasonable means to fulfill its obligation to ensure reliable operations."); *Pacific Gas and Electric Co.,* 77 FERC ¶ 61,204 at 61,822 (1996); *See also Central Iowa Power Coop., et al. v FERC*, 606 F.2d 1156 (D.C. Cir. 1979) (affirming a Commission decision conditionally approving a power pool agreement and noting that criteria for selection of members of the pool in accordance with the valid interests of the pool reasonably furthers the interests of the power pool).

[110] *Cal. Indep. Sys. Operator Corp*., 119 FERC ¶ 61,061 at PP 62-63.

the interconnection customer. This is precisely how the Commission described the LCRI proposal in approving the concept; it also noted that the ISO sought a finding that the proposal was an appropriate variation from Order No. 2003's default generator interconnection policies.[111] The Commission plainly understood that participating transmission owners would be responsible for construction of LCRI facilities.[112]

The costs of LCRI facilities are not intended to remain in the transmission access charge permanently, and LCRI facilities do not remain under the ISO's operational control permanently. The LCRI provisions of the ISO tariff are only intended as a temporary funding mechanism. As generators come on-line to use the LCRI, LCRI costs associated with their capacity are removed from the transmission access charge and assigned directly to such generators. Once the LCRI facility is fully subscribed, the costs of the LCRI are no longer included in the transmission access charge. The ISO has not been established to serve as a "revolving door" for transmission owners that would only be participating transmission owners on a temporary basis and which are not turning over facilities that are integral to the ISO's core functions. .

In any event, the meaning of the current LRCI provisions is not at issue here. Although these provisions are being renumbered, the ISO does not propose to change the existing tariff language. These unchanged tariff provisions are unrelated to and do not impact the justness and reasonableness of the tariff provisions the ISO is proposing to modify and vice-versa. Thus,

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111 *Id.* at P 1.
112 *Id.* at PP 72, 76.

changes to the existing LCRI tariff provisions and the participating transmission owner eligibility requirements in the Transmission Control Agreement are beyond the scope of this proceeding. The appropriate remedy is for protesters to file a complaint alleging that the current Commission-approved ISO Tariff language governing LCRI facilities and the minimum participating transmission owner eligibility requirements are no longer just and reasonable. They would bear the burden of proof on this issue. Protesters, however, have not provided any evidence showing that these tariff and Transmission Control Agreement provisions are no longer just and reasonable. Indeed, they do not even discuss the applicable Transmission Control Agreement provisions in their protests.

b. Network Upgrades Identified in the LGIP

The ISO explained in the June 4 filing that, if the ISO determines in the transmission planning process that certain Network Upgrades identified in the LGIP Phase II studies should be enhanced, the participating transmission owner to whose facilities the new generation is interconnecting shall be responsible for building and owning such enhanced facilities if the original Network Upgrade would have been included in a LGIA as part of the Phase II studies if built under the LGIP. If, however, the ISO determines through the transmission planning process that a Network Upgrade identified in the LGIP Phase II study should be enhanced as described above, and then determines that as a consequence of such enhancement there is a need for other transmission additions or upgrades, the responsibility to build such other facilities will be determined according to the category of the other additions or upgrades.

The ISO noted that under Sections 5.1 and 11.3 of the Commission's *pro forma* LGIA and the ISO's LGIA, construction of necessary Network Upgrades is the responsibility of the participating transmission owner to whose existing facilities the generator will interconnect.[113] The ISO believes that these rights and obligations of participating transmission owners should not be altered merely because modifications to a Network Upgrade identified in the Phase II LGIP studies are being considered for possible modification under the transmission planning process, rather than under the LGIP.

Several parties contest the ISO's statement that participating transmission owners have the right to build Network Upgrades under the ISO's current LGIA. The premises for these arguments are, quite simply, erroneous. Green Energy Express, for example, argues:

> Sections 5.1 and 11.3 of the LGIA simply provide that construction of necessary LGIP-based Network Upgrades is the responsibility of the "Participating TO" to whose existing facilities the generator will interconnect. However, the term "Participating TO" is *not*—as the CAISO's interpretation would imply—defined explicitly with reference to "existing" PTOs in California. Rather, under the LGIA, the Participating TO is defined simply as the counterparty to the interconnecting generator in the agreement, and *could* be any entity that would own, operate and maintain the Participating TO Transmission System with which the generator would interconnect . . . .[114]

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[113] *See also, Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, FERC Stats. & Regs. 31,160 at PP 230-36 (2004). There are two variations of the *pro forma* LGIA in Appendices V and Z to the ISO tariff (as well as two variations of the *pro forma* LGIP in Appendices U and Y). The agreements have certain differences, depending upon whether an interconnection request is studied serially or through a queue cluster. Both agreements are substantively identical concerning the role of the participating transmission owner as the builder of Network Upgrades.

[114] Green Energy Express at 13-14 (footnotes omitted).

WITG makes a similar argument.[115]

Notwithstanding Green Energy Express's claims to the contrary, "Participating TO" is not defined in the LGIA at all, let alone as "the counterparty." The responsibility of the "Participating TO" to construct Network Upgrades is set forth in Section 12.1 of the LGIP. The LGIP incorporates the definitions in Appendix A of the ISO Tariff and "Participating TO" is defined in the Appendix A as "[a] party to the Transmission Control Agreement whose application under Section 2.2 of the Transmission Control Agreement has been accepted and who has placed it transmission assets and Entitlements under the CAISO's Operational Control in accordance with the Transmission Control Agreement." Not only does the definition speak in terms of completed, not potential, acts, but in addition Section 2.2.5 of the Transmission Control Agreement provides, "A Party whose application under this Section 2.2 has been accepted shall become a Participating TO *with effect from the date when its TO Tariff takes effect*." (Emphasis added.) In addition, the LGIA acknowledges the LGIP as controlling the procedures for interconnection and the LGIP adopts the definitions of Appendix A of the ISO Tariff. (The LGIA also states that the ISO Tariff will control in the event of any conflict with the terms of the LGIA.) Accordingly, Section 12.1 of the LGIP and Sections 5.1 and 11.3 of the LGIA refer only to existing participating transmission owners. It makes no difference that, as WITG argues,[116] the LGIA does not explicitly "prohibit" other entities from constructing

[115] WITG at 6 n.11; MRE/PE also asserts that there is not existing right of participating transmission owners to build LGIP Network Upgrades, but does not even challenge the ISO's references to the LGIA.

[116] WITG at 6.

Network Upgrades; it effectively does so by conferring exclusive responsibility to build on the interconnecting participating transmission owner.

Moreover, numerous other provisions of the ISO's LGIP and LGIA and the Commission's *pro forma* LGIP and LGIP contemplate that large generators will connect to existing facilities owned by participating transmission owners. For example, Sections 2.4.2 and 3.5.1 of the ISO's LGIP and Article I of the LGIA contemplate interconnection to the "CAISO-Controlled Grid" at a point of interconnection where the generator's interconnection facilities connect to the "Participating Transmission Owner's Transmission System." The "CAISO-Controlled Grid" and the "Participating Transmission Owner's Transmission System" are defined as facilities owned and operated by the participating transmission owner that have been turned over to the ISO's operational control. As discussed above, under the Transmission Control Agreement these necessarily must be existing facilities of existing participating transmission owners. The *pro forma* LGIP and LGIA definitions and substantive provisions similarly contemplate connection to facilities owned and operated by a "Transmission Provider" that are used to provide service under the tariff. By definition, these are necessarily existing facilities, not yet-to-be-built facilities.

It is no surprise that Order No. 2003 does not expressly prohibit construction of Network Upgrades by non-participating transmission owners who, by definition, have not yet turned facilities over to the operational control of the ISO. Order No. 2003 was concerned with the relationship between transmission providers and those seeking interconnection the transmission providers' networks:

> This Final Rule requires all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for interconnecting generators larger than 20 MW. The Commission expects that this Final Rule will prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market.
>
> This Final Rule requires public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs . . . to add Standard Large Generator Interconnection Procedures . . . and a Standard Large Generator Interconnection Agreement.[117]

In other words, Order No. 2003 presumed that existing transmission owners would fulfill the requirements of the LGIP and LGIA. As the ISO noted in its June 4 filing, providing ***potential*** transmission owners an opportunity to build Network Upgrades identified in interconnection studies would turn Order No. 2003 on its head. Indeed, if the Commission were to determine that Order No. 2003 required a transmission provider like the ISO to open up construction of LGIP Network Upgrades to competitive solicitation, it would radically transform the generator interconnection process across the country and likely create substantial delays and uncertainty in the connection of generation (renewable or otherwise) to the transmission grid. It would also fly in the face of the Commission's clear and consistent legal and factual findings (discussed in the Transmittal Letter at 68-71) that existing transmission owners are responsible for building upgrades on their facilities, rights-of-way, and sub-stations. Because LGIP Reliability Upgrades and Delivery Network Upgrades constitute upgrades to an existing transmission owner's system, they are responsible for building and owning such facilities.

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[117] Order No. 2003 at PP 1-2 (footnotes omitted).

Green Energy Express goes on to argue that even if the LGIA does contemplate that participating transmission owners have a right to build LGIP Network Upgrades, that right does not extend to expanded versions of the Network Upgrades.[118] Green Energy Express fails to acknowledge the limitations on the right to build expanded LGIP Network Upgrades that is included in the ISO's proposal. The participating transmission owners' right to build extends ***only*** to expansion and additions to a Network Upgrade that would have been included in a LGIA as part of the Phase II studies if built under the LGIP. This is the logical corollary of the existing transmission owner's right to build the original Network Upgrade that would have been included in the LGIA. Take the example, which the ISO presented in the June 4 filing, of a single circuit Network Upgrade from point A to point B identified in the LGIP Phase II studies that is modified through the transmission planning process to a double circuit facility. Simply put, it would not be practical, consistent with Good Utility Practice, consistent with Commission precedent (and legal and factual findings), or consistent with the existing transmission owner's property rights to have the participating transmission owner build the single circuit Network Upgrade identified under the LGIA Phase II studies and then another entity modify the existing transmission owner's single circuit Network Upgrade on its right-of-way to a double circuit facility (and own that modification to the existing transmission owner's line). Moreover, this approach would not promote reliability or safety. As discussed in the June 4 filing letter and herein,[119] the Commission has long

[118] Green Energy Express at 15.
[119] Transmittal Letter at 69-71.

recognized that third-parties do not have the right to build facilities on facilities, right-of-way, and sub-stations owned by other transmission providers and that such a practice would jeopardize safe and reliable operations.

Similarly, the existing participating transmission owner will be responsible for building any additional identified upgrades that are identified in the LGIP process as necessary to maintain the reliability of its system. The Commission recognized in Order No. 2003-A that requiring a transmission provider to cede ownership of stand-alone Network Upgrades and the transmission provider's Interconnection Facilities under the LGIA was inconsistent with Commission precedent.[120] In rejecting arguments that Interconnection Customers should be able to own, operate and maintain stand-alone Network Upgrades and Transmission Provider Interconnection Facilities, the Commission recognized that "such a regime would fragment the Transmission System, thereby undermining reliability."[121]

Allowing third-parties to build LGIP projects will add substantial complications to the generator interconnection process which are likely to cause significant delays in the processing of interconnection requests and create needless confusion and increased uncertainty for interconnection customers. If a participating transmission owner is not assigned to build the upgrades it is obligated to construct under the LGIA, it may not be able to enforce compliance

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[120] *Standardization of Generator Interconnection Agreements and Procedures,* Order No. 2003-A at P 230, FERC Stats. & Regs. ¶ 31,160 (2004). The Commission did note that the transmission owner *may* agree to permit the Interconnection customer to construct or own these facilities. The ISO's proposed tariff language expressly preserves this opportunity for the participating transmission owner and another Project Sponsor to agree that the Project Sponsor can build or own certain upgrades/facilities on the participating transmission owner's system, right-of-way, or substations.

[121] Order No. 2003-A at P 236.

with the LGIA the participating transmission owner is obligated to sign under the Commission's interconnection rules. A competitive process for LGIP projects could delay generator interconnections and commercial in-service dates of generators. Under the LGIP and LGIA, the right to finance, own, and construct additions and expansions necessary to effectuate the interconnection is thus appropriately assigned to the transmission owners who have the current obligation to provide interconnection service.

These considerations, as well the participating transmission owners' obligation to build under Order No. 2003, also rebut any claims of discrimination.[122] Such factors establish that, with regard to LGIP Network Upgrades, existing transmission owners are not similarly situated to transmission developers who do not have existing facilities to which generators will interconnect. Moreover, it is well-established that distinctions between Network Upgrades and other types of transmission expansions are not discriminatory.[123]

Finally, as with LCRI facilities, certain protesters contend that the scope of the expanded LGIP Network Upgrades category is ambiguous and that providing participating transmission owners with a right to build expanded LGIP Network Upgrades would allow the ISO to "game" the system and to favor participating transmission owners by classifying economically driven and policy-driven transmission elements as expanded LGIP Network Upgrades.[124] This argument is at odds with the unambiguous language of the proposed tariff amendments and the clear examples that the ISO provided in its transmittal letter. Under

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122 *See* Green Energy Express at 11-12.

123 See, e.g., *Old Dominion Elec. Coop. v. FERC*, 518 F.3d 43, 53 (D.C. Cir. 2008).

124 *See, e.g.,* Pattern at 14-15, WITG at 7-8.

proposed Section 24.4.6.5, the potential expanded LGIP Upgrades must originally have been identified in a Phase II Interconnection Study. These studies do not identify upgrades for policy-driven or economically driven reasons, but only those Network Upgrades required for interconnection. There is thus no potential for gaming with regard to such upgrades and it is only additions and expansions of these particular upgrades (*i.e.,* those that would have been included in the LGIA) that are subject to a participating transmission owner right to build. Although the expanded LGIP upgrades may include other additions or expansions of facilities based on policy-driven or economically driven reasons, the right to build these other additions or expansions is explicitly determined in the exact same manner as policy-driven or economically driven elements or determined – so again, there is no opportunity for gaming.

c. Reliability-Driven Projects

Although no protests focus specifically on the right of participating transmission owners to build reliability-driven projects, protests against that right are encompassed within the general arguments against providing participating transmission owners with any right to build. The participating transmission owners' right to build reliability-driven projects is explicit in the ISO's existing tariff, and the ISO does not propose to change it. Just as with the LCRI tariff provisions discussed above, these unchanged tariff provisions do not impact the justness and reasonableness of the tariff provisions the ISO is proposing to modify and vice-versa. Thus, changes to the existing reliability-driven project tariff provisions to amend the right-to-build obligations are beyond the scope of this proceeding. The appropriate remedy is for protesters to file a complaint

alleging that the current Commission-approved ISO Tariff language governing the responsibility for building reliability driven projects are no longer just and reasonable. The burden is therefore on protesters to establish that such a right to build is no longer just and reasonable;[125] they have not satisfied this burden.

Participating transmission owners have been designated as the sole builders of reliability driven projects under the ISO tariff since the ISO commenced operations in the 1990s.[126] Section 24.1.2 in the current ISO Tariff explicitly states that participating transmission owners shall have the responsibility to construct, own and finance and maintain reliability driven projects in their PTO Service Territory. The corresponding language in proposed Section 24.4.6.2 is substantively identical to these provisions. The ISO is aware of no change of circumstances that would render these provisions unjust and unreasonable.

The existing tariff language reflects the basic tenet that transmission owners should be responsible for maintaining reliability on their facilities on a long-term basis. As such, a third-party transmission owner should not be given the responsibility for maintaining reliability on another transmission owner's facilities unless that transmission owner has contracted the right away or declined to build needed facilities. That would essentially cede control over long-term reliability on a transmission provider's system to a third party. The Commission has recognized on numerous occasions that because existing

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[125] *See, e.g.*, *Midwest Independent Transmission System Operator*, 103 FERC ¶ 61,090 at P 20 (2003) ("If a customer believes that a transmission owner's existing rates are no longer just and reasonable, it can file a complaint under section 206 of the FPA.").

[126] *See* Section 3.2 of the ISO Tariff filed with the Commission in 1997 and accepted by the Commission in *Pacific Gas and Electric Co., et al.*, 80 FERC ¶ 61,128, at 61,433-35 (1997).

transmission owners bear the risk and responsibility for reliably operating and maintaining their transmission systems, they should have sole responsibility for constructing upgrades to their facilities.[127] If the Commission were to reverse course on this, it would have explain away past precedent and factual findings.

If anything, recent developments in electric utility standards support the continued justness and reasonableness of this provision. As a result of the Energy Policy Act of 2005, transmission-owning public utilities are now subject to reliability standards which are mandatory under federal law. Failure to comply with those standards could result in sizeable financial penalties assessed by either NERC or the Commission. Participating transmission owners with a service territory also have obligations under state law to maintain the reliability of their transmission facilities in order to ensure the continued delivery of energy to native load customers. As the California Legislature recognized in Assembly Bill 1890 – the statue that created the ISO – "transmission and distribution of electric power remain essential services imbued with the public interest that are provided over facilities owned and maintained by the state's electrical corporations." Under Section 451 of the California Public Utilities Code, public utilities are required, *inter alia,* to furnish and maintain adequate and efficient instrumentalities, equipment and facilities as are necessary to promote the safety, health, comfort, and conveniences of its patrons and the public. Allowing

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[127] *See Cambridge Electric Light Company,* 96 FERC ¶ 61,205 at 61,874 (2001); *Virginia Electric Power Company,* 93 FERC ¶ 61,307 at 62,054 (2000), *order on re'hg,* 94 FERC ¶ 61,164 at 61,589 (2001); *Carolina Power & Light Company,* 93 FERC ¶ 61,032 at 61,072-73 (2000). The Commission has also recognized that where the interconnection of a third-party transmission provider's facilities to the facilities of an existing transmission owner requires system upgrades to maintain reliability, avoid overloads, and for other reasons, such facilities are the responsibility of the existing transmission owner. *PJM Interconnection LLC,* 102 FERC ¶ 61.277 at PP 21, 44 (2003).

third parties to be responsible for upgrades or system additions needed to maintain the reliability of facilities owned by existing public utilities that are use to serve native load customers may make it extremely difficult or impossible for California public utilities to comply with their obligations under state law.

Reliability driven projects are those projects needed to maintain reliability consistent with Applicable Reliability Criteria and ISO Grid Planning Standards. Under the ISO's planning process the ISO assesses reliability on the bulk power system by studying the performance on the following systems: the Northern-California PG&E System, within which there are eight local areas; the Southern California SCE System; and the Southern California SDG&E System. Through the ISO's planning process, these areas are subjected to intense scrutiny to ensure these areas are compliance with the Applicable Reliability Criteria and the ISO Grid Planning Standards. If the ISO finds a reliability requirement in any of these areas that needs to be addressed, the ISO directs the participating transmission owner on whose system the reliability concern exists to upgrade its facilities to address the requirement. Stated differently, each participating transmission owner is responsible for providing the necessary reliability upgrades to its system to ensure it is compliant with all reliability standards. It could hinder the ability of participating transmission owners to ensure their long-term compliance with mandatory reliability standards if the ISO planning process were used as a vehicle to allow a third party to construct, own, finance and maintain transmission upgrades and additions needed to protect the reliability of the existing facilities of participating transmission owners.

Pattern suggests that such concerns are misplaced and that there is no evidence that construction by independent transmission developers presents a threat to reliability.[128] It is simply bad policy to suggest that participating transmission owners be forced to rely upon third parties to ensure the reliability of their systems absent their voluntarily foregoing that right or contracting for reliability services with a third-party transmission owner. The fact of the matter is that if the third-party does not perform, the reliability issue will arise on the system of participating transmission owner. In other words, the participating transmission owner would not be able to control the reliability of operations on its system and may have to bear additional costs because the third-party failed to perform.

Notwithstanding these concerns, the ISO fully supports efforts to encourage innovation by independent transmission developers. It does not, however, believe that such efforts require forcing existing participating transmission owners to rely on others to ensure the reliability of their systems. Retention of the existing provisions of the ISO tariff concerning construction and ownership of reliability driven project allows the participating transmission owners to continue to satisfy their obligations to their native load customers within their service territories.

The ISO also notes that utilities in much of the country are not subjected to the prospect of having third party developers to build the upgrades or additions needed to address reliability needs on the public utility's system. Transmission-owning public utilities that are not members of an ISO or RTO can build new

[128] Pattern at 8.

transmission projects to address reliability needs on their systems by simply obtaining a certificate of public convenience and necessity from their state regulatory commission or applicable local regulatory authority. If the Commission were to compel the ISO to eliminate the designation of participating transmission owners as the exclusive builders and owners of reliability driven projects, the Commission would be treating utilities in an ISO or RTO region differently from utilities in other parts of the country and would create a significant disincentive for such transmission owners to join or maintain membership in ISOs and RTOs. Further, it would be like forcing a transmission owner to involuntarily contract with a third-party to provide reliability services to it.

The ISO recognizes that the Commission may choose to impose new responsibilities on transmission-owning public utilities that are not members of an ISO or RTO through the NOPR. However, the Commission's authority to require regulated public utilities to involuntarily engage in regional coordination and accept the planning decisions of a regional planning entity are unclear. In any event, the Commission should not prejudge the outcome of the NOPR in ruling on the ISO's proposed revised transmission planning process, especially given state law as well as the Commissions' own precedent and factual findings regarding the responsibility for transmission owners to build and own the facilities necessary to maintain reliability on their individual systems.

d. Construction on Existing Facilities, Right-of- Way and Substations

MRE/PE contends that the tariff provisions in Section 24.5.2 create a right-of-first refusal for an existing transmission owner on any policy-driven or

economically driven project that: (1) includes facilities that constitute an upgrade of or an addition on an existing participating transmission owner facility; (2) involves the construction or ownership of new facilities on an existing participating transmission substation; or (3) or involves construction or ownership of facilities on existing participating transmission owner rights-of-way.[129]. MRE/PE erroneously contends that these tariff provisions will create a right of first refusal for virtually all policy-driven or economically driven projects.

MRE/PE misrepresents the ISO's proposal. In the transmittal letter for the June 4 filing, the ISO clearly stated that:

> [T]he participating transmission owner would only have the right to build those discrete components of the project that constitute upgrades to or additions on its existing facilities or new facilities constructed on its right of way or within existing substations. This provision does not give the participating transmission owner the right to build the other components of the needed transmission element. The components of the transmission element that do not involve a participating transmission owner's existing facilities or rights-of-way will be subject to the open solicitation process, and any interested Project Sponsor will have the opportunity to propose to construct and own such facilities.[130]

The ISO also provided a clear example of how this provision would work in practice. Contrary to MRE/PE's claim, the ISO is not giving the existing transmission owner the right to build the entire policy-driven or economically-driven transmission element which the ISO finds to be needed just because a piece of the element is located on the transmission owner's right-of-way or substation. Rather, the existing transmission owner only has the limited right to build and own those new upgrades/additions that will be on its existing facilities,

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129 MRE/PE at 9-10.

130 Transmittal Letter at 68.

rights-of-way, and substations. The remainder of the policy-driven or economically driven element will be subject to the open solicitation provisions of the tariff.

Although numerous independent transmission developers intervened in this proceeding, MRE/PE is the only one that finds the underlying premise of the proposed tariff provisions in Section 24.5.2 objectionable, and it provides no detailed explanation as to why the ISO's proposed tariff revisions are not just and reasonable. As the ISO explained in the June 4 filing, the provisions in Section 24.5.2 are consistent with clear and consistent Commission precedent and sound legal, factual and public policy underpinnings .[131] The Commission has correctly recognized in numerous decisions that existing transmission owners have the risk and responsibility for operating their transmission systems and, as such, they have sole responsibility to construct and own transmission provider interconnection facilities, upgrades to and additions on existing facilities, facilities on their rights-of-way, and substation facilities that they own, unless they enter into some other arrangement with a third-party transmission developer.

The ISO's approach is limited in nature because only those discrete components of a project that involve construction and ownership of facilities/upgrades on an existing transmission owner's facilities, property and substations would be build by the transmission owner. All other components will be subject to the open solicitation process. Thus, the ISO's proposal constitutes a balanced and workable solution, provides opportunities for independent transmission providers, and is consistent with Commission precedent.

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[131] Transmittal Letter at 68-71.

Green Energy Express suggests that, in order to ensure that the scope of Section 24.5.2 is as narrow as possible, the Commission should require the ISO to establish technical criteria for determining the appropriate scope of upgrades to an incumbent transmission owner's facilities or rights-of-way.[132] Green Energy Express does not identify any specific criteria that are needed or explain with any specificity why such criteria are needed. Rather Green Energy Express merely makes a general unsupported assertion that technical criteria are needed to ensure that the provisions are not unduly discriminatory and preferential. Green Energy Express claims that the Static Var Compensator facilities at issue in *Primary Power* are a category of facilities that could unnecessarily be subject to these provisions. Aside from making this blanket claim, Green Energy Express offers no explanation as to how such facilities are inappropriately affected by an existing transmission owner's right to build on its own facilities, rights-of-way, and substations. Indeed, Green Energy Express's recommendation is inconsistent with the Commission's own statements in the *Primary Power* case. In *Primary Power,* the Commission stated that Primary Power had obtained (or was going to obtain) the necessary rights-of-way to build its transmission facilities.[133] The Commission then noted that merchant transmission developers have no right to build on transmission facilities owned by others.[134] Nothing in *Primary Power* or other cases holding that transmission developers do not have the right to build on the facilities, rights-of-way or substations of others suggests that such a right might exist if certain technical criteria are not satisfied.

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132 Green Energy Express at 21.
133 *Primary Power, LLC,* 131 FERC ¶ 61,015 at n. 57 (2010).
134 *Id.* citing *PJM Interconnection LLC,* 102 FERC ¶ 61,277 at P 21.

C. Phase 3

1. Initial Project Sponsor Qualification

Pattern contends that the Project Sponsor qualification criteria and selection factors set forth in Section 24.5.2, which apply only to Project Sponsors seeking to finance, construct and own policy-driven elements, economically driven-elements projects and 2008 and 2009 Request Window submissions, should apply to all categories of transmission (*i.e.,* including those where participating transmission owners have a right to build). Pattern notes that in the not too distant past, the financial viability of the incumbent transmission owners in California was very much in doubt. Pattern's argument makes little sense. In cases where the Approved Project Sponsor is determined by the ISO Tariff, any review of qualifications by the ISO is redundant.

2. Referral to Siting Authority

CCSF urges the Commission to reject the ISO's proposal that the ISO decide between competing project proposals when the Project Sponsors intend to take their projects to different siting authorities.[135] CCSF instead proposes that the ISO's consideration of any project pending multiple siting authorities should wait until both authorities have completed their review. CCSF claims that this properly recognizes state authority in transmission siting.

CCSF is the only intervenor that objects to the ISO's proposed approach for deciding among project proposals where competing proposals are submitted to different siting authorities. Neither the CPUC nor any other municipal or federal siting authority objects to the ISO's resolution of this issue. Likewise no

[135] CCSF at 12-14.

entity that will be submitting transmission projects for approval objects to the ISO's proposed approach. Indeed, as the ISO explained in its June 4 filing, the ISO originally proposed to defer all competing proposals to state siting authorities regardless of whether one or more siting authority was considering proposals to build a specific element of the plan. However, many stakeholders strongly objected to that approach. They pointed out that there is no state process for choosing among competing projects when the Project Sponsors go to different siting authorities. The ISO's revised its approach to address these stakeholder concerns. Moreover, because there is no process in the state for choosing among competing projects that are submitted to different siting authorities, the ISO's approach does not in any way impinge on site siting authority. The lack of such a process means that waiting until all siting authorities have completed their review will not resolve the fundamental question of which project proposal will be selected to address a needed transmission element in the approved plan. It is appropriate for the ISO to make the decision in these limited circumstances because it is the ISO's responsibility alone to determine which projects are included in the ISO's transmission access charge.

Stakeholders identified valid reasons for rejecting the approach first considered by the ISO and now suggested by CCSF. Specifically, they noted that such an approach would result in the duplication of effort before different siting authorities and the incurrence of significant costs by multiple parties on projects that only one entity can build and own. CCSF's recommended approach will only result in unnecessary, lengthy, wasted and duplicate efforts by multiple Project Sponsors before different siting authorities under circumstances where none of

the siting authorities can resolve the issue because there is no statewide process to decide between competing projects that are submitted to different agencies. On the other hand, the modified approach adopted by the ISO will provide for an up-front determination before multiple Project Sponsors spend millions of dollars and a significant amount of time and effort pursuing siting approval for projects that ultimately only one of them can build.

3. Criteria for Selecting a Project Sponsor

a. The Right-of-Way Selection Criterion

Pattern notes that one of the Project Sponsor selection factors to be considered in Section 24.5.2.4 is "the Project Sponsor's existing rights of way and substations that would contribute to the project in question." Pattern states that Section 24.5.2 already gives the incumbent transmission owner the right to construct and own facilities within its existing right-of-way and to construct and own additions within its substations. Pattern states that it is not clear whether the reference to existing rights-of-way is intended to give the incumbent transmission owner a competitive advantage for the remainder of project beyond the rights granted by Section 24.5.2. Pattern argues that participating transmission owners should not have the automatic right to construct and own transmission upgrade projects due solely to the fact that the participating transmission owner has a right-of-way or substation that is impacted by the upgrade.[136]

The right-of-way selection criterion in Section 24.5.2.4(b) is intended for a different purpose than the right-of-way provisions in Section 24.5.2. Pattern

[136] Pattern at 25.

correctly notes that under the provisions of Section 24.5.2, if a needed transmission element involves construction and ownership of upgrades to or additions on existing facilities, rights-of-way, and sub-stations an existing transmission owner has the right to build and own such facilities. However, as discussed above, Section 24.5.2 does not give the transmission owner the right to build the remaining components of the policy-driven or economically driven project that are not on its right-of-way. In contrast, the items listed in Section 24.5.2.4 are proposed as comparison criteria the ISO will use to decide between two or more Project Sponsors that propose to build the same element of the ISO's final transmission plan. For this purpose, the right-of-way language of Section 24.5.2.4(b) posits one of many criteria that could contribute to a particular Project Sponsor's practical or cost advantage in building and owning the element and therefore should be considered by the ISO along with the rest of Section 24.5.2.4 in making its decision. Thus, if the transmission element in question involved upgrades or additions to a transmission owner's existing facilities, etc., the language of Section 24.5.2 would ensure that the transmission owner is entitled to build and own those parts of the project, whereas the Section 24.5.2.4 criteria, including 24.5.2.4(b), would be used by the ISO to decide which Project Sponsor would build and own the remaining parts of the project. Stated differently, the ISO is not proposing that an existing transmission owner have the right to build the entirety of the project just because it has a facility or substation that must be upgraded as a component of a needed transmission element. However, to the extent a Project Sponsor has secured rights-of-way that would contribute to the remainder of a transmission element the ISO finds is needed

(*i.e.,* a new line that is not an upgrade to an existing facility or sub-station), the ISO will take that fact into account in the selection process.

The assertion that this criterion only benefits existing transmission owners is mistaken. For example, DSWP notes that it has already received a Final Environmental Impact Statement and Record of Decision granting the necessary rights-of-way for its project.[137] DSWP notes that the Bureau of Land Management rights-of-way incorporate all necessary state permits for the project. *Id.* Hypothetically, if another Project Sponsor were to propose to build and own the same transmission element under Phase 3 of the ISO's proposed planning process, the fact that DSWP had already secured these rights-of-way and permits is a factor that would be taken into consideration in the ISO's selection in accordance with Section 24.5.2.4. Similarly, to the extent any other Project Sponsor has secured rights-of-way that could contribute to a needed transmission element, the ISO will take that into consideration.

b. Project Sponsor Qualification Criteria

DayStar is the only intervenor who argues that the requirement that a Project Sponsor must demonstrate that it is "physically, technically and financially capable" of completing and operating the proposed project in Section 24.5.2.1 is overly vague and subjective.[138] DayStar recommends tariff language that provides that: (i) Qualification criteria evaluate the qualifications of proposed project teams in their totality, not just the Project Sponsor itself; (ii) if the ISO determines a Project Sponsor lacks the physical, technical or financial

[137] DSWP at 4, n.6.
[138] DayStar at 4-5.

capabilities to complete the project, a specific procedure must be defined in the tariff that allows the Project Sponsor to remedy any specific deficiencies determined by the ISO; and (iii) in order ensure that independent transmission developers are not unduly discriminated against, the tariff language should include a specific procedure for a Project Sponsor's direct appeal to the Commission in cases of ISO determination of non-qualification.

As the ISO explained in the June 4 filing, the proposed qualification criteria generally are consistent both with the qualification criteria that the Public Utilities Commission of Texas utilizes to evaluate project sponsors proposing to build Competitive Renewable Energy Zone transmission facilities and the criteria that regulatory commissions typically use to evaluate applications for certificates of public convenience and necessity.[139] Given that these qualification criteria are widely used, there is no basis to find that they are unreasonable.

The ISO does not object to amending the language in Section 24.5.2.1 to replace the term "Project Sponsor" with "Project Sponsor and its team." The ISO already has included this language in the Project Sponsor selection factors in Section 24.5.2.4. This change would make Section 24.5.2.1 consistent with Section 24.5.2.4.

The ISO does not believe that the Commission should direct the ISO to create a process that allows a Project Sponsor to remedy any deficiencies if the ISO determines that the Project Sponsor lacks the financial, technical or physical ability to construct and operate the project. Such a process would not be akin to curing an application that is technically deficient. Instead, such a process would

[139] Transmittal Letter at 60.

provide Project Sponsors with an opportunity to materially and significantly revise the substance of their project proposal after the fact. The ISO's determination would occur only after the ISO had already gone through the time-consuming process of evaluating the Project Sponsor's application and any other competing applications submitted by other Project Sponsors. That will unnecessarily and inappropriately delay the evaluation process. The selection criteria are clear, and the information that Project Sponsors are required to provide to support their applications is clear. Indeed, DayStar does not object to the ISO's proposed information submission requirements. If Project Sponsors submit the requisite information, but fail to qualify, they should not be given "two bites at the apple," especially in circumstances where there are other applicants who are qualified based on their submissions.

Finally, if a party believes that the ISO has acted in a discriminatory manner or otherwise violated its tariff in applying its Project Sponsor selection criteria, the party has the ability to initiate proceedings under the ISO's dispute resolution provisions that apply to transmission planning, including the ability to file a complaint directly with the Commission.[140] There is no justification for some other form of "appeal" to the Commission.

c. DayStar's Proposed Selection Criterion

DayStar argues that one project evaluation criterion that is absent in Section 24.5.2.4 is an overall assessment of whether a proposed transmission line (as well as the underlying renewable generation) will get the regulatory and

[140] *See* Transmittal Letter at 64.

community support to actually be permitted and constructed.[141] DayStar states that the tariff criteria should explicitly include the level of public support or resistance for a project.

The ISO notes that it has proposed two criteria in Section 24.5.2.4 that address related concerns and that are more appropriate: (1) any existing rights-of-way that the Project Sponsor has that would contribute to the project; and (2) the experience of the Project Sponsor and its team in acquiring rights-of-way and the authority to acquire to acquire rights of way by eminent domain, if necessary, that would facilitate approval and construction. The latter criterion is one used by the Public Utilities Commission of Texas to evaluate proposals to build transmission projects related to Competitive Renewable Energy Zones ("CREZ"). The ISO cannot predict – and should not be put in the position of attempting to predict – whether a particular transmission project route will get the necessary regulatory approvals. Likewise, the ISO cannot predict whether the towns along a particular route are more likely to support (or oppose) a particular project compared to towns on another route. These are issues that are traditionally handled in the siting and permitting process, and the ISO has not addressed them in the ISO's project approval process.

If the Project Sponsor has already secured necessary right-of-way for the project, that is a much more concrete indicator of the feasibility of the project. Also, the mere fact that there may be public opposition to a project does not mean that the project will not be certificated. In CPUC certificate of public convenience and necessity proceedings, parties routinely object to the siting of

[141] DayStar at 7-8.

transmission facilities in their vicinity, but that has not precluded the CPUC from certificating needed transmission projects. To the extent a particular Project Sponsor can clearly demonstrate tangible support for its project that will facilitate approval of its proposed route, the Project Sponsor has the ability to make that showing to the ISO in its application pursuant to proposed tariff Section 24.5.2.4(j). For all these reasons, DayStar's proposed amendment is neither necessary nor appropriate.[142]

d. The Project Sponsor Selection Factors

MRE/PE claims that the Project Sponsor selection factors are the sort of standards that unfairly and unjustly can be used by the ISO to exclude independent transmission developers, such as MRE/PE.[143] MRE/PE argues that these criteria focus not on whether the Project Sponsor can accomplish the task, but almost entirely upon whether the Project Sponsor is more akin to an incumbent utility.

There is no merit to this claim. The proposed Project Sponsor selection factors are based on the criteria that the Public Utilities Commission of Texas adopted for purposes of evaluating proposals from applicants to construct and own CREZ-related transmission facilities.[144] The solicitation process conducted by the Public Utilities Commission of Texas resulted in independent transmission

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[142] The ISO also questions the appropriateness of a selection criterion that looks at the likelihood that the underlying generation will be approved. Under the revised planning process, the ISO will already have determined that a transmission element is needed between two points to support achievement of the 33 percent RPS initiative. If the generation does not materialize, it will affect all of the project applications proposing to build that transmission element. If such a criterion has any merit – and the ISO does not think it does – it would more appropriately be considered as a factor in determining what policy driven transmission elements to approve pursuant to Section 24.4.6.6. It is not an appropriate criterion for evaluating competing applications to build the same needed transmission element.

[143] MRE/PE at 6.

[144] Transmittal Letter at 57-58.

developers being selected to construct a number of the needed CREZ-related transmission facilities.[145] Based on this evidence there is no basis to the claim that these criteria prevent independent transmission developers from being selected. Indeed, during the lengthy stakeholder process that preceded the ISO's tariff amendment filing, several independent transmission developers urged the ISO to adopt the project selection approach used by the Public Utilities Commission of Texas.[146] They noted that this process resulted in many qualified established owners and developers competing to build CREZ-related transmission facilities.

MRE/PE's general claim that the criteria do not focus on whether the Project Sponsor can accomplish the task is wholly without merit. On their face, these criteria clearly and directly pertain to a Project Sponsor's financial, physical and technical ability to construct, own, operate and maintain the project. Further, the proposed criteria allow the Project Sponsor to demonstrate any specific advantages it has, or benefits it can provide, to build the project. The ISO also drafted its tariff provisions to make it clear that the criteria apply not just to the Project Sponsor, but also to the Project Sponsor's entire team. The Commission should summarily reject MRE/PE's unsupported claims, especially given that no other party to this proceeding (including other independent transmission developers) makes the claim that the ISO's criteria focus on whether a Project Sponsor is more akin to an incumbent utility.

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[145] Comments of LS Power Transmisison LLC, at 2, 5. 20-21, Docket No. AD08-9 (November 23, 2009).

[146] *See Id.* and StarTrans January 19, 2010, stakeholder comments at 3, 21-22.

4. The Proposed Cost Containment Criteria

A number of parties provided comments and protests regarding the proposed Project Sponsor Evaluation Criteria pertaining to cost containment. The CPUC, which is responsible for "serv[ing] the public interest by protecting consumers and ensuring the provision of safe and reliable utility service and infrastructure at reasonable rates," does not object or offer any modifications to the ISO's proposed cost containment criteria. CDWR – one of the largest individual consumers of electricity on the grid – supports the cost containment language proposed by the ISO.[147] The protests to the ISO's proposed cost containment provisions can be grouped into several categories, and the ISO addresses these protests *seriatim* below.

a. Cost Comparisons Among Alternative Projects

TANC, Pattern, MRE/PE, BAMx, and CMUA, argue that the ISO's proposal would benefit from some greater cost comparison analysis, although these parties differ on the exact nature of the proposed analysis.

TANC suggests that the ISO apply cost comparison analysis like it uses to evaluate LCRI facilities under 24.4.6.3 (c) of the tariff ("whether the projected cost of the facility is reasonable in light of its projected benefits, in comparison to the costs and benefits of other alternatives for connecting Generating Units") and facilities necessary to maintain the feasibility of Long-Term CRRs under Section 24.4.6.4 of the tariff ("consider lower cost alternatives to the construction of

[147] CDWR at 5-6.

transmission additions or upgrades.")[148] BAMx also supports the cost comparison analysis referenced by TANC.[149]

In fact, the ISO will perform this type of analysis in developing its comprehensive transmission plan in Phase 2 of the planning process. However, as explained below it is not appropriate or useful to apply this type of cost analysis for deciding between competing proposals to build the same transmission element under Phase 3 of the revised planning process. In addressing how best to upgrade or expand transmission to address an identified need, a fundamental principle of prudent transmission planning is to identify the most cost-effective way to meet the need. This principle will apply to the new category of policy-driven elements as it does today to reliability projects and for comparing alternatives for LCRI and maintaining the feasibility of long-term CRRs. Under this approach the ISO generally applies planning level costs, which reflect current cost benchmarks for the standard components involved in building or upgrading transmission facilities (*e.g.,* cost per mile of transmission line construction, substation equipment, transformers). These planning level costs are reflective of current costs in California and are specifically intended to be used to determine the most cost-effective transmission facilities to meet the identified need. For example, in the LCRI context, there may be several available paths to transmit energy from a particular energy resource area to one of a number of substations to interconnect to the grid. One path may require a 100-mile transmission line, while another path may require a 50-mile line. In this

148 TANC at 14-15
149 BAMx at 7.

example, all else being equal, the 50-mile line would have a significantly lower cost than the 100-mile line. It may be the case, however, that each line requires somewhat different substation upgrades at the point of interconnection. The ISO would use planning level costs to estimate the construction cost of each interconnection path and assess which one meets the need most cost effectively. As such, in developing its comprehensive transmission plan, the ISO uses these planning level costs to provide a relative cost comparison between materially different facility alternatives that could meet the indentified need.

Planning-level costs cannot, however, usefully distinguish between competing proposals to build what is essentially the same facility. This is the situation it will face in Phase 3 of the revised transmission planning process. Because the ISO's transmission plan will already have identified the need and a plan of service for a particular element, including the source and sink points of the transmission line, planning-level cost estimates would not reveal any differences among submitted proposals to build that element. Therefore the ISO would have to rely on project cost estimates submitted by the sponsors themselves to decide between competing proposals for the same element. As the ISO explained in its filing, such estimates are not an acceptable basis for selecting a Project Sponsor.[150] The goal of a Project Sponsor in submitting a cost estimate is to submit the winning proposal, which creates incentives to "low-ball" the projected cost. Hence, such estimates are unreliable. Indeed, the ISO's own transmission planning experience shows that often there are significant differences between the estimated cost and the actual cost to build the project.

[150] Transmittal Letter at 65-67.

Moreover, the ISO has no ability to require that only the submitted cost estimates be reflected in rates. Accordingly, the ISO believes that its proposal to allow Project Sponsors to accept voluntary cost caps or other cost containment measures is a reasonable means of addressing the cost containment issue, especially given that no intervenor has identified a better alternative.

Pattern agrees with the ISO regarding the general inaccuracy of submitted cost estimates and the need to discount the accuracy of those estimates. Pattern believes nonetheless that the estimates can still provide some reliable information. For example, Pattern states that a transmission addition that requires 100 miles of new transmission is likely to cost more than an addition requiring only 50 miles. If both projects provide comparable benefits, it is likely the shorter line would cost less. However, Pattern also states that cost estimates will play a role in economic projects and it is unreasonable for the ISO not to consider them.[151] Pattern's example does not address the issue which the ISO has raised of deciding between competing proposals to build the same transmission element. Pattern's example addresses two entirely different project solutions to the same identified need; a 50 mile line and a 100 mile line for which the ISO proposes to use planning level cost estimates when considering the most cost effective solution. As such, Pattern's argument does not apply to the Phase 3 problem of deciding between competing proposals to build the same transmission element. To the extent, a Project Sponsor was proposing some materially different route, the ISO would be able to assess the proposal by applying planning level costs.

[151] Pattern at 23-24.

b. Least Cost Planning

BAMx and CMUA take the position that the Project Sponsor Qualification Criteria in Section 24.5.2.1 – not the Project Sponsor Selection Factors in Section 24.5.2.4 – should be revised to assess whether (1) the proposed project is consistent with the needed transmission elements in a least cost manner that minimizes the increase in the transmission access charge, and (2) the selection of the Project Sponsor is most likely to result in the lowest impact on the transmission access charge after considering, at a minimum, expected capital cost, capital cost containment proposals and/or overrun protection, expected financing and expected Operation and Maintenance Costs. The latter criterion appears to mean that, in order to even be found qualified to build a needed transmission element, a Project Sponsor that submits a proposal -- even if it is the only Project Sponsor to propose to build the transmission element -- would be required to demonstrate the ability to build it at least cost.

The arguments raised by BAMx, CMUA, WGD and MRE/PE that would require the ISO to approve the least-cost project should be summarily rejected. There are several reasons why it is not appropriate to apply "least cost" as the primary – or even a primary – criterion in planning transmission additions and upgrades and approving Project Sponsors. The Chair of the Commission has recognized that the Commission is not authorized to require ISOs and RTOs to conduct least-cost planning.[152] Rather, the Commission's responsibility is to ensure reliability and rates that are just and reasonable, which is generally

[152] Preliminary hearing transcript of testimony of Hon. Jon Wellinghoff before the House Subcommittee on Energy and Environment of the Committee on Energy and Commerce, March 23, 2010, at 56-58, available at http://energycommerce.house.gov/Press_111/20100323/transcript.03.23.2010.ee.pdf.

accomplished through rate cases and prudency reviews. Similarly, the selection criteria employed by the Public Utilities Commission of Texas to evaluate proposals to build CREZ-related transmission facilities – on which the ISO's proposal is modeled – are not based on least cost planning.[153]

This is not to say that the ISO should not seek cost-effective solutions to transmission needs, but the Commission cannot compel a form of "least-cost planning" that fails to consider or devalues such factors as reliability, and ignores the limitations on the ISO's authority to enforce least-cost construction. Requiring the ISO to approve Project Sponsors based on least-cost would, *inter alia,* result in the ISO foregoing considerations pertaining to reliability, financial ability to build and maintain the project, and the Project Sponsor's capabilities to license, construct, operate and maintain the facility in a timely and proper manner. This could result in the ISO approving projects proposals that (1) use lower quality materials, (2) have inadequate staffing, (3) will be at increased risk for outages and inadequate maintenance in future years, (4) cannot demonstrate an ability to comply with Reliability Standards, and (5) have insufficient capital or insurance to handle facility failures or emergencies. That is not appropriate.

From a practical standpoint, to have real meaning a least cost determination cannot be based on a sponsor's submitted estimate of the cost to build, operate and maintain a transmission element. Least cost is only realized in terms of the actual cost incurred to build, operate and maintain a transmission element or the actual costs that a Project Sponsor ultimately recovers in rates, which is typically impossible to know with certainty at the time a Project Sponsor

[153] *See* Tex. Admin, Code, tit. 16, R,25.216.

must be evaluated. Even if submitted cost estimates were reasonably credible, the ISO has no ability to enforce them, ensure that rates reflect only these estimates, or constrain any cost increases that may occur between project approval and completion of construction. That authority rests solely with the Commission.

MRE/PE argues that the ISO should be required in the tariff to evaluate the economic savings of competing projects. Otherwise, the ISO is unjustly ignoring the cost savings of projects by independent developers.[154] It is not clear from MRE/PE's comments, however, what kinds of cost savings and demonstrations thereof would be reliable, credible and enforceable and therefore appropriate for use in choosing an approved Project Sponsor. The ISO is giving Project Sponsors an opportunity to agree to cost caps. If a Project Sponsor believes that it can provide cost savings then it can agree to a cost cap. Anything less than that is merely an unenforceable and unreliable cost estimate that could be manipulated to support a claim that the Project Sponsor can build the transmission element at a lower cost than some other potential Project Sponsor.

Similarly, WGD erroneously claims that the ISO's methodology would not allow Project Sponsors other than the incumbent participating transmission owners to show they could develop a project at least cost. To the contrary, the Proposed Project Sponsor Selection Criteria apply to all Project Sponsors -- independent transmission providers and participating transmission owners alike None of the other independent transmission providers that intervened in this

[154] MRE/PE at 6.

proceeding endorse the position espoused by WGD and MRE/PE. Indeed, the cost cap concept was suggested by an independent transmission developer – Pattern – during the stakeholder process.

c. Inappropriate Reliance on Cost Estimates

WGD suggests that the ISO should not be concerned about unreliable cost estimates or Project Sponsors "low-balling" their cost estimates because other agencies and regulated entities regularly procure products and services through competitive solicitations. That analogy is not apropos. The big difference is that in the competitive solicitation processes run by these entities, respondents submit bids to provide the service or product, and the agency or regulated entity then signs a *contract* with the winning bidder based on the submitted bid. On the other hand, a Project Sponsor's submitted cost estimate is not a binding agreement to build the transmission project at the estimated price or to limit cost recovery to the amount of the estimate. The ISO's proposal does, however, provide a mechanism analogous to competitive solicitations. Under the ISO's proposal all Project Sponsors – independents and investor owned utilities – will have the opportunity to voluntarily agree to a binding cap on the costs they can recover through the ISO's transmission access charge in connection with building the project. The ISO will consider such cost containment proposals along with the other specified criteria in determining which Project Sponsor to select for a given transmission element.

In developing its proposal for evaluating project proposals in Phase 3, the ISO was mindful of the fact that regulatory agencies such as the CPUC will

regularly impose a cost cap on a regulated entity in an order on an application for certificate of public convenience and necessity. In cases where the ISO will decide among competing proposals because the Project Sponsors elect to submit to different siting authorities, the ISO would not know, at the time of the decision, the ultimate level of any cap the CPUC might later impose on its regulated entity. Therefore, as the ISO indicated in its Transmittal Letter, no potential Project Sponsor should gain an advantage, or be placed at an undue disadvantage, based on the regulatory requirements of the siting authority that will authorize its project. Alternatively, if an independent transmission developer wants to compete with the investor-owned utilities on the exact same playing field, that entity has the opportunity to select the CPUC as its siting authority, and the CPUC will compare its proposal with any investor owned utility proposals in the course of a Certificate of Public Convenience and Necessity proceeding. The CPUC – not the ISO – would select the Project Sponsor in that circumstance. Thus, the ISO's proposal provides clear opportunity for independent transmission developers to compete directly with incumbent participating transmission owners.

The ISO's selection criteria also provide all entities submitting project proposals the opportunity to demonstrate the particular advantages (cost or otherwise) they have to build a project. Under these circumstances, there is no basis to WGD's claim that independents are being denied an opportunity to demonstrate that they can build a project at lower cost than their competitors. The selection criteria apply to all Project Sponsors, PTOs and non-PTOs alike.

d. Tariff Language Reflecting a Project Sponsor's Willingness to Forego Rate Incentives

NCPA and CMUA request that the Commission direct the ISO adopt tariff language stating that the ISO must consider in its selection criteria the willingness of a Project Sponsor to forgo the incentive rates contemplated in Order No. 679, the Energy Policy Act of 2005 and numerous Commission orders.[155] The ISO's proposed tariff Section 24.5.2.4(j) permits Project Sponsors to demonstrate any advantages they may have in building a project, including a willingness to forego a relevant rate incentive, but the ISO does not believe that it should be required to adopt an express selection criterion singling out or placing undue weight on a Project Sponsor's willingness to forego available rate incentives. Placing inordinate weight on this one cost advantage (or any other individual cost component) could be counterproductive. For example, a company with an equity-rich capital structure may forego a rate incentive but still have a higher overall cost of capital than a company with less equity that receives an incentive rate adjustment. Under these circumstances, the company that did not accept a rate incentive should not have a tariff advantage for purposes of Project Sponsor selection just because it forwent incentive rates. This same concern arises whenever a single cost component is examined or given credit in a vacuum without regard to a total cost cap. As the ISO indicated above, agreement to a binding total cost cap on the project is the most meaningful measure of cost containment because it would be enforceable. Other specific cost containment measures can be considered under the ISO's proposal, but they need to be considered in the context of the other criteria of Section 24.5.2.4 and should not be given undue weight or any tariff-based advantage.

[155] CMUA at 7. NCPA at 15.

e. Treatment of Joint Projects

CDWR requests adoption of the additional requirement that any joint project not entail duplicative costs among the joint owners and, if it does, that the ISO select a single technically qualified developer instead. The ISO believes that this situation would be addressed under its proposed criteria and therefore there does not need to be a specific, additional tariff provision indicating that the ISO will carefully review jointly sponsored projects during the planning process to ensure that there are no duplicative costs associated with redundant overhead or other costs associated with multiple builders. The ISO's proposal provides the ISO with sufficient ability to evaluate the relative advantages and benefits of project proposals without singling out joint projects for special treatment under the tariff.

5. Commenter Proposals to Require an Independent Evaluator

WITG agrees that the ISO is the appropriate entity to decide between competing projects when Project Sponsors seek approval from different lead agencies, but WITG asks the Commission to direct the ISO to employ a third-party observer whenever it engages in processes of qualifying potential Project Sponsors and selecting between competing transmission projects.[156] WITG states that its request is based on positive experience with a similar process mandated by the CPUC in connection with its jurisdictional utilities' annual solicitation for renewable energy. According to WITG, the observer would follow the process at every stage and certify that it was fair and non-discriminatory from

[156] WITG at 9-10.

beginning to end. The third-party observer would submit a public report to the ISO providing a detailed critical assessment of the robustness of the evaluation of competing proposals, including the effectiveness of the selection criteria, and a determination of whether the criteria were fairly applied. Pattern advances a similar proposal and claims that an independent evaluation that is provided to the ISO as a tool to its decision-making process will add transparency to the process, provide Project Sponsors useful information as to how their proposals are analyzed and help to better focus future proposals to address what are viewed as shortcomings in the sponsor's current proposal.[157]

Both WITG and Pattern claim that their recommendations are not motivated by any concern about the ISO's independence. Yet if these claims are sincere and these parties are not seeking to establish a new (and redundant) basis for challenging any ISO decisions they find unfavorable, then the rationale for their recommendations becomes less clear.

The rationale that supports the independent evaluator for the RPS procurement process does not apply to the ISO. There is a more discernable need for an independent evaluator in the context of investor-owned utilities' RPS procurement solicitations because such utilities have shareholder interests to protect. In that regard, the RPS solicitations may involve bids submitted by affiliated companies, proposals by the utility itself to build a project, or situations where a bidder proposes to sell a project or build a project under a turnkey contract that would ultimately be owned by a utility. The ISO understands that one role of the independent evaluator in these circumstances is to ensure that no

[157] Pattern at 24-25.

affiliate has an undue advantage over non-affiliates in the solicitation process. That is not the case here. The ISO is an independent entity. It has no financial interest in any of the projects that will be proposed or any of the sponsors that will be proposing them and it has no shareholder interests which could be affected by the ISO's selection of a proposed project. Thus, the circumstances that support an independent evaluator in the utility procurement solicitation process are unlike the circumstances here.

D. Procedural Issues

1. Effective Date

BAMx argues that the revised process does not need to go into effect on August 3. It asserts that the ISO has not provided enough time for parties to review the Business Practice Manual changes. It asks the Commission to allow more time for parties to review tariff and BPM and then order ISO to re-submit it.[158]

As an initial matter, the ISO notes that the Federal Power Act does not contemplate the relief BAMx requests. Under Section 205 of the Federal Power Act, the Commission can, within 60 days after the ISO's filing, accept, suspend, or reject the filing. It can only do so according to whether it concludes the filing is just, reasonable, and not unduly discriminatory. It cannot, however, direct the ISO to extend the effective date of a proposed change to the ISO tariff based on a desire of other parties to review materials that are not part of the filing and which are not required to evaluate the justness and reasonableness of the proposed tariff provisions.

[158] BAMx at 8-9; 14-15.

In addition, there is no substantive basis for BAMx's request. The BPM revisions are not relevant to the issue before the Commission in this proceeding – whether the proposed *tariff provisions* are just and reasonable. The ISO's proposed tariff revisions must stand or fall on their own. A BPM cannot make an unjust or unreasonable tariff provision just and reasonable and it cannot make a just and reasonable tariff provision unjust and unreasonable.

In Order No. 890, the Commission re-affirmed its long-standing practice that the Commission will apply its "rule of reason" in a manner that does not require all of a transmission provider's business practices to be included in its tariff:

> The Commission disagrees with parties arguing that all of a transmission provider's rules, standards, and practices should be incorporated into its OATT. We believe that requiring transmission providers to file all of their rules, standards and practices in their OATTs would be impractical and potentially administratively burdensome.

Order No. 890 at P 1651. The administrative burden referenced in Order No. 890, however, would surely exist if a transmission provider was required to publish drafts of all related rules, standards, and practices before public comments would be due on a tariff amendment.

The Commission has recognized that one reason why certain rules, standards, and practices need not be included in a transmission provider's tariff is that some details in a provider's manuals may need to be updated frequently.[159] This justification is inconsistent with the argument that commenters

[159] *See, e.g., California Independent System Operator,* 119 FERC ¶ 61,053 at P 15 (2007) (rejecting calls that the ISO include the ISO's Credit Policy Guide in the ISO Tariff).

should be afforded the opportunity to review related BPMs before commenting on a proposed tariff amendment.

ISO proposed tariff amendments typically are proposed in advance of BPM revisions or, in many cases, the development of a BPM. This is also the case for other independent system operators and regional transmission organizations. To the ISO's knowledge, however, the Commission has never based a determination of whether a tariff provision is just and reasonable on the contents of a BPM.[160]

The ISO has implemented a robust BPM change management process which the Commission has found to be just and reasonable and consistent with prior Commission directives.[161] This BPM change management process will be triggered once the Commission has ruled on the proposed tariff amendments that will implement the ISO's revised transmission planning process.[162] The BPM review process that the ISO recently initiated provides stakeholders with two extra opportunities to review and provide comments on proposed changes to the transmission planning BPM well in advance of the BPM change management process. This additional stakeholder process will assist the ISO in implementing the revised transmission planning process during the 2010/2011 cycle once the Commission has ruled on the proposed tariff amendments. Additionally, because

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[160] *See, e.g., Midwest Independent Transmission System Operator, Inc.*, 125 FERC ¶ 61,060, at PP 45, 50 (2008) (accepting a tariff amendment while acknowledging the statement of the Midwest ISO that it is still "in the process of developing appropriate Business Practice Manuals to address how it can determine the deliverability of load modifying resources").

[161] *California Independent System Operator Corp.,* 122 FERC ¶ 61,271 at P 83 (2008).

[162] The ISO notes that the transmission planning BPM was submitted with the initial Order 890 compliance filing and also with the October 31, 2008 compliance filing (errata filed on November 3, 2008). These submissions were in advance of the effective date of the ISO's change management process and therefore were developed with stakeholders as part of the Order 890 stakeholder processes.

the ISO intends to propose non-substantive reformatting changes to the current BPM, stakeholders will have an opportunity to become familiar with the revised format. Under no circumstances should this advance opportunity for BPM review that the ISO has offered its stakeholders be viewed as a reason to delay approval of the proposed tariff language.[163]

Indeed, review of the proposed BPM is unlikely to give BAMx any additional information regarding the tariff language filed in this proceeding. The revisions to the BPM themselves are straightforward and cannot be inconsistent with the tariff language. In addition, the ISO provided an 85 page explanation of the need for the amendments and their operation in its tariff filing. This should provide more than enough information for BAMx to formulate its comments.

2. Request for Hearing

WGD and MRE/PE ask that, if the Commission does not reject the ISO's filing, it suspend it and set it for hearing "to resolve the many material facts that are in dispute."[164] WGD appears to recognize that "an evidentiary hearing is only necessary when material issues of fact are in dispute and cannot be resolved on the basis of the written record."[165] Despite its assertion, WGD does not identify any material fact in dispute. Indeed, the ISO is not aware of any material facts in dispute regarding this filing. The issues raised by the protestors are policy questions, not requiring a hearing. Given that the Commission acted on every ISO's and RTO's Order No 890 compliance filing without a hearing and is

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[163] The Commission has recognized that, to the extent any party believes a BPM-related action or inaction on the part of the ISO renders rates unjust or unreasonable, the proper remedy is to file a complaint under Section 206 of the Federal Power Act. 122 FERC ¶ 61,271 at P 84.

[164] WGD at 7, MRE/PE at 11-12.

[165] *See, e.g., Cal. Indep. Sys. Operator Corp.,* 124 FERC ¶ 61,271 at P 324 (2008).

addressing significant transmission planning issues similar to those raised herein in a NOPR proceeding, there is no basis to warrant a hearing on the ISO's proposal. The ISO submitted a filing letter with over 80 pages of explanation and justification of its filing, as well as background materials reflecting the extensive stakeholder process leading up to the ISO's filing. Twenty-four parties have taken the opportunity to present their arguments. The record submitted concerning this filing is more that substantial enough to provide information necessary for a Commission decision.

E. Miscellaneous

1. Jointly Developed Projects

TANC, CMUA, SMUD and IID take issue with the language of proposed Section 24.15.1 (Section 24.11.1 in the current tariff).[166] That section, which the ISO did not propose to change as part of this revised transmission planning process, states:

> All transmission additions and upgrades constructed in accordance with this Section 24 shall form part of the CAISO Controlled Grid and shall be operated and maintained by a Participating TO in accordance with the Transmission Control Agreement.

These parties argue that such language creates uncertainty as to the rights and responsibilities of non-participating transmission owners who desire to jointly sponsor transmission projects with Project Sponsors who are participating transmission owners (or who would be eligible to become participating transmission owners). In particular, CMUA notes that this section could be interpreted as requiring all lines co-owned by a participating transmission owner

[166] TANC at 11-13; CMUA at 8-10; SMUD at 6-7 and IID at 15-17.

to be located within the ISO's BAA or physically operated or maintained by a participating transmission owner.[167]

The ISO has never interpreted this tariff language as requiring (1) non-participating transmission owners to turn their portion of jointly-owned facilities over to the ISO's operational control and become participating transmission owners, or (2) such jointly-owned facilities to be in the ISO's balancing authority area. Indeed, existing ISO Tariff Section 17 contemplates that non-participating transmission owners can have facilities located within the ISO's balancing authority and specifies how the ISO will work with the holders of such ownership rights with regard to scheduling and other operational issues.

The four parties who raised this issue have each proposed the same revisions to Section 24.15.1:

> All transmission additions and upgrades constructed by Participating TOs in accordance with this Section 24 that ~~shall~~ form part of the CAISO Controlled Grid ~~and~~ shall be operated and maintained by a Participating TO in accordance with the Transmission Control Agreement. Where such transmission additions and upgrades are jointly developed by Participating TOs and non-Participating TOs, nothing herein shall be construed to require that the non-Participating TO transfer its portion of the transmission additions or upgrades to the CAISO's Operational Control or place such facilities within the CAISO's Balancing Authority Area.

Because these proposed modifications reflect current practice, the ISO agrees to make them in a subsequent compliance filing if so ordered by the Commission.

TANC raises similar concerns with proposed Sections 24.6 and 24.11.3, both of which contain references to approved Project Sponsors turning facilities over to the ISO's operational control or becoming signatories to the Transmission

[167] CMUA at 9.

Control Agreement. TANC seeks clarification that these sections do not require non-participating transmission owners participating in a joint project to execute the Transmission Control Agreement or turn facilities over to the ISO's operational control. Although the language of these sections seems unambiguous, the ISO is willing to clarify the language as follows in both sections in a subsequent compliance filing if the Commission determines that it is necessary:

> **24.6 Obligation to Construct Transmission Projects**
>
> * * *
>
> …The Approved Project Sponsor shall not sell, assign or otherwise transfer its rights to finance, construct and own the project before the project has been energized and, <u>if applicable</u>, turned over to the CAISO's Operational Control unless the CAISO has approved such proposed transfer.
>
> **24.11.3 Conferral of Right to Build Facilities on Third Party**
>
> Where the conditions of Section 24.11.2 have been satisfied and it is possible for a third party to obtain all approvals and property rights under applicable federal, state and local laws that are necessary to complete the construction of transmission additions or upgrades required to be constructed in accordance with this CAISO Tariff (including the use of eminent domain authority, where provided by state law), the CAISO may confer on a third party the right to build the transmission addition or upgrade, which third party shall, <u>if applicable,</u> enter into the Transmission Control Agreement in relation to such transmission addition or upgrade.

2. The Requirement for Project Sponsors to Seek Siting Authority within Sixty Days

Green Energy Express questions the requirement in proposed Section 24.5.2.2 and 24.5.2.3 that Project Sponsors, once approved, must seek authority from the appropriate agencies within sixty days. Green Energy Express argues

that sixty days does not provide sufficient time for an application to be prepared and filed with the environmental regulatory body, and that 120 days would be a more reasonable deadline.[168] The ISO does not object to this change if the Commission finds it to be appropriate.

F. The Existing Transmission Planning Process

Nevada Hydro contends that the ISO has implemented its current tariff discriminatorily and that the Commission should "rectify this situation" before approving a revised transmission planning process. It asks that the Commission direct the ISO to approve pending transmission project proposals by independent developers.[169] DSWP contends that the ISO has not complied with existing tariff provisions regarding projects submitted during the 2008 and 2009 request windows and that the Commission should direct the ISO to approve those projects under the existing tariff provisions.[170] Neither Nevada Hydro nor DSWP offer any specific facts to support their claim.

The ISO obviously disagrees with these assertions and believes it has operated in full compliance with its tariff, but the ISO will not respond here because these complaints have no place in this proceeding. This is a proceeding under Section 205 of the Federal Power Act and the ***only*** issue in this proceeding is whether the ISO's proposed tariff amendment is just and reasonable and not unduly discriminatory. The Federal Power Act provides a mechanism in Section 206 by which parties can complain about the ISO's compliance with its tariff. Significantly, despite their assertions that the ISO has

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168 Green Energy Express at 26.
169 Nevada Hydro at 20.
170 DSWP at 5-8

violated its tariff for two years, neither Nevada Hydro nor DSWP has filed a complaint.[171]

The Commission has consistently held that parties cannot use Section 205 proceedings to bypass the requirements of Section 206.[172] The Commission should make no exception here and should disregard comments that go beyond the scope of this proceeding.

[171] The ISO notes that on July 2, 2010, Green Energy Express filed a Petition for a Declaratory Order asking for a determination whether participating transmission owners have the right to build LCRI facilities, requesting that in the alternative it be treated as a complaint.

[172] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61.218 at PP 58-59 (2009); *Cal. Indep. Sys. Operator Corp.*, 110 FERC ¶ 61,071 at P 15 (2005); *Cal. Indep. Sys. Operator Corp.*, 108 FERC ¶ 61,022 at P 116 (2004).

IV. CONCLUSION

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

Respectfully submitted,

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Dated: July 15, 2010

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. on this 15th day of July, 2010.

/s/ Michael E. Ward

Michael E. Ward
Alston & Bird LLP