

186 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips, Chairman;
Allison Clements and Mark C. Christie.

California Independent System Operator Corporation Docket No. ER23-2917-001

ORDER ACCEPTING PROPOSED TARIFF REVISIONS

(Issued March 12, 2024)

1. On September 22, 2023, as amended January 12, 2024, California Independent System Operator Corporation (CAISO) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and part 35 of the Commission’s regulations,² proposed revisions to its Open Access Transmission Tariff (Tariff) to implement the Subscriber Participating Transmission Owner (Subscriber PTO) model. In this order, we accept the proposed revisions, effective December 21, 2023, as requested.

I. Background and Filing

2. CAISO explains that the revisions implement the Subscriber PTO model to enable transmission project developers to join CAISO without the transmission project being identified and selected to meet a transmission need identified through the CAISO transmission planning process. CAISO asserts that the revisions leverage the Commission’s merchant transmission facility policy.³ CAISO explains that California energy policy and increased demand for carbon-free resources have driven the need for new transmission development. CAISO states that, to that end, it has coordinated with the state’s energy planning and regulatory entities to adopt a more proactive approach to resource procurement, transmission planning, and interconnections. CAISO explains that the Subscriber PTO model was designed with stakeholders to enhance opportunities for the construction of new transmission in locations outside the CAISO balancing authority

¹ 16 U.S.C. § 842d.

² 18 C.F.R. pt. 35 (2023).

³ Transmittal at 2-3, 12-13 (citing *Allocation of Capacity on New Merch. Transmission Projects & New Cost-Based, Participant-Funded Transmission Projects; Priority Rts. to New Participant-Funded Transmission*, 142 FERC ¶ 61,038, at PP 2-6 (2013) (2013 Policy Statement)).

area (BAA)⁴ so as to facilitate delivery of critically needed resources and to address state, municipal, county, or federal policy requirements or directives.⁵

A. Subscriber PTO Model

3. CAISO proposes to define a Subscriber PTO as a participating transmission owner (Participating TO) whose transmission assets and Entitlements⁶ were constructed, and for which the associated transmission capacity is subject to long-term contractual obligations, to deliver energy, capacity, and associated attributes to satisfy state, municipal, county, or federal policy requirements or directives.⁷ Under the current Tariff, Participating TOs recover their transmission revenue requirements for regional transmission facilities through CAISO's Transmission Access Charge (TAC).⁸ The proposed revisions would establish a new model for transmission project developers to receive transmission project funding through subscribers separate from CAISO's established TAC process, while also allowing the developer to place its subscriber-funded transmission facilities under CAISO's operational control. CAISO states that subscribers to the new transmission project will be solely responsible for funding the project costs, rather than ratepayers funding the project through CAISO's TAC.⁹

⁴ References to the CAISO BAA refer to the collection of generation, transmission, and loads within the metered boundaries of the CAISO Balancing Authority. See CAISO, CAISO eTariff, app. A (Definitions), Balancing Authority Area (0.0.0).

⁵ Transmittal at 2-3.

⁶ Entitlements are the right of a Participating TO obtained through contract or other means to use another entity's transmission facilities for the transmission of energy. CAISO, CAISO eTariff, app. A (Definitions), Entitlements (0.0.0).

⁷ A Subscriber PTO will be subject to all obligations of a PTO with regard to facilities placed under CAISO operational control. CAISO, Proposed CAISO eTariff, § 4.3.1 (Nature of Relationship) (7.0.0), § 4.3.1.3(c).

⁸ The TAC is designed to recover each Participating TO's transmission revenue requirement for the costs of its transmission facilities and is paid by load. CAISO, CAISO eTariff, § 26.1 (Access Charges) (5.0.0), § 26.1(h); *id.*, app. F (Rate Schedules) (28.0.0), Schedule 3; *id.*, app. A (Definitions), Transmission Access Charge (TAC) (0.0.0).

⁹ Transmittal at 3.

4. CAISO explains that prospective Subscriber PTOs must follow the application process set forth in the Tariff and Transmission Control Agreement,¹⁰ and must receive approval from the CAISO Board. Following Board approval, a new Subscriber PTO must execute the Transmission Control Agreement, place its transmission assets and Entitlements under CAISO's operational control, and satisfy the requirements applicable to a Participating TO.¹¹ CAISO proposes that, in return for funding the Subscriber PTO facilities, the subscribers will receive scheduling priority on the facilities. To ensure that the subscriber rights holder maintains its priority on the Subscriber PTO facilities, CAISO proposes to use its existing functionality developed for Encumbrances and treat Subscriber Encumbrances as Existing Contracts.¹² CAISO specifies that a transmission owner or developer of a transmission project outside the existing CAISO BAA may apply to join the CAISO BAA as a Subscriber PTO with planned or existing transmission assets and Entitlements subject to Encumbrances, pursuant to subscription agreements, that will ultimately be administered pursuant to a Subscriber PTO's tariff and CAISO's Tariff.¹³

¹⁰ The Transmission Control Agreement is the agreement between CAISO and Participating TOs establishing the terms and conditions under which TOs will become Participating TOs and how CAISO and each Participating TO will discharge their respective duties and responsibilities. CAISO, CAISO eTariff, app. A (Definitions), Transmission Control Agreement (TCA) (0.0.0).

¹¹ Transmittal at 3, 5 (citing CAISO, Proposed CAISO eTariff, § 4.3.1 (Nature of Relationship) (7.0.0), § 4.3.1.1).

¹² CAISO states that "Encumbrances on the CAISO controlled grid generally consist of Existing Contracts entered into by the transmission owners prior to the CAISO operations date, sometimes referred to as Existing Transmission Contracts or ETCs." *Id.* at 3. CAISO states that "[a]n Existing Contract means a contract which grants transmission service rights in existence on the CAISO Operations Date (i.e., March 31, 1998), including any contracts entered into pursuant to such contracts, as may be amended in accordance with their terms or by agreement between the parties thereto from time to time." *Id.* at 7 n.17.

¹³ CAISO, Proposed CAISO eTariff, § 4.3A.1 (Nature of Relationship) (1.0.0). CAISO proposes that, for an applicant to become a Subscriber PTO, the applicant must provide written information to the CAISO regarding its transmission assets, Entitlements, and Subscriber Encumbrances used to provide subscriber rights that includes: (1) the size and location of the transmission assets and Entitlements; (2) the cost to build the transmission assets; (3) a schedule for depreciation of the transmission assets; and (4) the initial Subscriber Encumbrance term for the transmission assets and any rollover rights specified in the Subscriber Participating TO's application to become a Participating TO.

5. CAISO explains that, under its current Tariff, existing rights holders are held harmless from the cost of transmission and congestion because they have already paid for the transmission service through the Existing Contract. CAISO further states that existing rights holders have scheduling priority rights on the transmission paths their rights concern.¹⁴ Similar to other existing rights holders, CAISO asserts, subscribers of the underlying transmission project have already paid for the cost of transmission and expected congestion because they entirely funded the underlying transmission project. As such, CAISO states that the subscriber rights holder will be exempted from transmission service charges, bid cost recovery allocation, offsets, and integrated forward market congestion allocation because the subscriber rights holder has already paid for transmission costs.¹⁵ To implement these features for a Subscriber PTO, CAISO proposes new definitions for the terms Subscription Agreement, Subscriber, Subscriber Encumbrance, and Subscriber Rights, and revised definitions of Existing Transmission Contracts and Existing Rights.¹⁶

6. CAISO states that any initial subscriber-owned generation interconnecting to the CAISO-controlled grid via the Subscriber PTO's transmission facilities will be studied pursuant to the interconnecting transmission owner's transmission interconnection process, rather than the generator interconnection process.¹⁷ Under the proposal, if any such generation is included in the planned resource portfolios of the California Public

Transmittal at 22 (citing CAISO, Proposed CAISO eTariff, § 4.3A.2 (Application and Approval Processes) (1.0.0)).

¹⁴ CAISO, CAISO eTariff, § 11.2.1 (IFM Settlements) (5.0.0), § 11.2.1.5; *id.* § 11.2.4 (CRR Settlements) (19.0.0), § 11.2.4.5.1; *id.* § 11.5.7 (Congestion Credit and Marginal Cost of Losses Credit) (4.0.0), § 11.5.7.1.

¹⁵ Transmittal at 3-4, 7-8, 21.

¹⁶ CAISO, Proposed CAISO eTariff, app. A (Definitions), Subscription Agreement (0.0.0); *id.* Subscriber (0.0.0); *id.* Subscriber Encumbrance (0.0.0); *id.* Subscriber Rights (0.0.0), *id.* Existing Transmission Contracts (ETC) Or Existing Contracts (2.0.0); *id.* Existing Rights (2.0.0).

¹⁷ Transmittal at 4. CAISO explains that, “[t]o study the transmission interconnection, power needs to flow on the line. Therefore, a generator associated with the transmission interconnection study does not need to be studied twice (i.e., a generator connecting to the CAISO controlled grid via the interconnecting transmission project need not go through the CAISO generator interconnection process because it has already been studied in the transmission interconnection process).” *Id.* See CAISO, Proposed CAISO eTariff, § 4.3A.4 (Interconnection of Subscriber Participating TO Transmission) (1.0.0), § 4.3A.4.1; *id.*, § 25.1 (Applicability) (10.0.0), § 25.1(g).

Utilities Commission (CPUC) or other local regulatory authorities and CAISO's transmission planning process identifies the need for transmission upgrades to make that generation deliverable, the Subscriber PTO's subscribers will have the first option to acquire the additional deliverability. If deliverability upgrades are not identified in the transmission planning process and the generator interconnecting via the Subscriber PTO desires deliverability upgrades, the interconnection customer will be responsible for the cost of the deliverability upgrades, consistent with CAISO's generator interconnection process.¹⁸ Once the Subscriber PTO's transmission facilities are placed in service, if a new generator seeks to connect to the Subscriber PTO's transmission facilities, CAISO will evaluate the new generator as it does any other potential generation projects interconnecting to the CAISO-controlled grid (i.e., via CAISO's generator interconnection process).

7. Under CAISO's proposal, any capacity on the Subscriber PTO's transmission facilities not used by subscribers will be made available for market participants through the CAISO day-ahead and real-time markets.¹⁹ Specifically, CAISO proposes that any capacity on a Subscriber PTO's transmission facilities that is not subject to an Encumbrance as of the date of the Subscriber PTO's application to become a Subscriber PTO will not be treated as subscriber rights, and instead will be treated as available transmission capacity.²⁰ Further, to the extent subscribers do not schedule their Encumbrance in the real-time market, CAISO will make the transmission capacity underlying the Encumbrance available for use by other market participants.

1. Subscriber PTO Compensation for Non-Subscriber Use

8. The revisions would allow the use of a Subscriber PTO's initial transmission facilities by non-subscribers and will require payment for their use. Specifically, in accordance with the Tariff, CAISO will assess the TAC for non-subscriber imports that use the scheduling points on the Subscriber PTO's transmission facilities and will assess the Wheeling Access Charge (WAC),²¹ for non-subscriber exports and wheeling through

¹⁸ Transmittal at 4. CAISO, Proposed CAISO eTariff, § 4.3A.4 (Interconnection of Subscriber Participating TO Transmission) (1.0.0), § 4.3A.4.2.

¹⁹ Transmittal at 4.

²⁰ CAISO, Proposed CAISO eTariff, § 4.3A.8 (Access to Available Transmission Capacity of a Subscriber Participating TO) (1.0.0).

²¹ The WAC is paid by entities that export from or wheel through the CAISO-controlled grid and is used to recover a portion of a Participating TO's transmission revenue requirement. CAISO, CAISO eTariff, § 26.1 (Access Charges) (5.0.0), § 26.1(h); *id.*, app. A (Definitions), WAC (0.0.0); *id.*, app. F (Rate Schedules) (28.0.0), Schedule 3).

transactions that use such scheduling points. CAISO explains that the Subscriber PTO will receive on a monthly basis, in arrears, the applicable non-subscriber usage payment amounts for non-subscriber use of Subscriber PTO facilities.²² A Subscriber PTO must obtain Commission approval of a non-subscriber usage rate prior to the Subscriber PTO's facilities being placed into service, which will then be used to calculate the non-subscriber usage payment amounts.²³

9. Under the proposal, each Subscriber PTO may develop a non-subscriber usage rate including a \$/MWh charge that cannot be greater than the applicable TAC²⁴ rate at the time the Subscriber PTO files its non-subscriber usage rate for approval with the Commission.²⁵ Thus, while non-subscribers will pay CAISO the current TAC or WAC, the Subscriber PTO would receive an amount no greater than the TAC rate via the non-subscriber usage rate accepted by the Commission. CAISO explains that, if the total TAC and WAC revenue contributed by transactions on the Subscriber PTO's facilities exceeds the total calculated non-subscriber usage payment then the excess amount will be added back to the regional access charge (Regional Access Charge)²⁶ for allocation to the other Participating TOs besides the Subscriber PTO.²⁷

10. Under the proposal, the non-subscriber usage payment amounts will be funded first by using WAC revenue received by CAISO for the scheduling points that the Subscriber PTO added to the CAISO BAA. CAISO explains that, if the WAC revenue is insufficient to fully pay the non-subscriber usage amounts, then the remainder will be

²² Transmittal at 31.

²³ *Id.* at 33 (citing CAISO, Proposed CAISO eTariff, § 4.3A.7 (Cost Recovery and Usage Cost for Subscriber Participating TO) (1.0.0), § 4.3A.7.2; *id.*, app. F (Rate Schedules) (29.0.0), Schedule 3, §§ 7.1, 8.1).

²⁴ CAISO's proposed Tariff language in Schedule 3, § 7.1 states that the non-subscriber usage rate will be no greater than the applicable Access Charge rate. Thus, the non-subscriber usage rate will be no greater than the TAC or WAC, as applicable.

²⁵ *Id.* (citing CAISO, Proposed CAISO eTariff, § 26.1 (Access Charges) (7.0.0), § 26.1(h); *id.*, app. F (Rate Schedules) (29.0.0), Schedule 3, § 7.1).

²⁶ The Regional Access Charge is the Access Charge applicable under Section 26.1 to recover the regional transmission revenue requirements of each Participating TO. CAISO, CAISO Proposed eTariff, § 26.1 (Access Charges) (7.0.0), § 26.1(h); *id.*, app. F (Rate Schedules) (29.0.0), Schedule 3); CAISO, CAISO eTariff, app. A (Definitions), Regional Access Charge (RAC) (0.0.0).

²⁷ Transmittal at 32.

paid by using TAC revenue received by CAISO from the non-subscribers prior to allocating the TAC revenue to the other Participating TOs.²⁸

11. CAISO states that any concerns regarding a specific non-subscriber usage rate should be addressed in a future Commission proceeding concerning that rate.²⁹

2. Subscriber PTO Role in Transmission Planning and Generator Interconnection Processes

12. CAISO states that, after a Subscriber PTO's initial transmission facilities become part of the CAISO-controlled grid, the Subscriber PTO will be subject to the same obligations as any other Participating TO under the Tariff and the Transmission Control Agreement. CAISO explains that, like any other Participating TO, a Subscriber PTO will construct transmission facilities in accordance with the existing Tariff. Specifically, CAISO states that a Subscriber PTO may construct additions and upgrades to its transmission assets and Entitlements and Subscriber Encumbrances used to provide subscriber rights pursuant to the transmission planning process, but such additions and upgrades will not provide additional subscriber rights. CAISO also explains that requests for interconnection to the Subscriber PTO's additions and upgrades will be made pursuant to the Tariff's transmission planning process and generator interconnection and deliverability allocation procedures.³⁰

13. CAISO states that a Subscriber PTO may seek Commission approval of a transmission revenue requirement for additions and upgrades to its transmission assets and Entitlements undertaken to facilitate an interconnection or pursuant to the transmission planning process, unless such additions or upgrades are for the benefit of subscribers of the Subscriber PTOs' transmission facilities in the use of their subscriber rights consistent with their original Participating TO application. Additionally, CAISO states that a Subscriber PTO may only receive revenue from the Regional Access Charge for generator network upgrades or network upgrades identified and approved under the generator interconnection and transmission planning processes, and in the generator interconnection and deliverability allocation procedures for existing Participating TOs

²⁸ *Id.* at 31-32. Each monthly non-subscriber usage payment amount equals the applicable non-subscriber usage rate multiplied by the sum of the absolute value of the MWh flow of a non-subscriber's imports at the applicable scheduling point(s), plus the sum of the absolute value of the MWh flow of a non-subscriber's exports at the applicable scheduling point(s). *Id.* at 32.

²⁹ *Id.* at 33.

³⁰ *Id.* at 35-36 (citing CAISO, Proposed CAISO eTariff, § 4.3A.6 (Process Applicable to Construction of Subscriber Participating TO) (1.0.0)).

that are not used to provide subscriber rights.³¹ CAISO proposes to modify existing Tariff provisions regarding the Regional Access Charge to exclude the costs of a Subscriber PTO's transmission assets used to provide subscriber rights from the existing Tariff provisions requiring that a Participating TO include such costs in its regional transmission revenue requirement.³²

II. Notice of Filing and Responsive Pleadings

14. Notice of CAISO's filing was published in the *Federal Register*, 88 Fed. Reg. 66,832 (Sept. 28, 2023), with interventions and protests due on or before October 13, 2023. Brookfield Renewable Trading and Marketing LP, City of Santa Clara, California, the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, Utah Division of Public Utilities, Modesto Irrigation District, Northern California Power Agency, Invenenergy Transmission, LLC, and Ameren Services Company filed timely motions to intervene. NextEra Energy Resources, LLC (NextEra), California Municipal Utilities Association, California Department of Water Resources State Water Project (SWP), SunZia Transmission, LLC (SunZia), Bear Valley Electric Service, Inc. (Bear Valley), and Golden State Clean Energy, LLC (Golden State) filed timely motions to intervene and comments in support. TransWest Express LLC (TransWest) filed a timely motion to intervene and comments. Southern California Edison Company and Pacific Gas and Electric Company (collectively, Protestors) filed a combined timely motion to intervene, comments, and protest. On March 11, 2024, CPUC filed a motion to intervene out-of-time.³³

15. Answers to the protest were filed by CAISO (CAISO October 30 Answer), SunZia, NextEra, and TransWest. On November 13, 2023, Protestors filed an answer to the CAISO October 30 Answer. On November 17, 2023, CAISO filed an answer in response to Protestors' answer (CAISO November 17 Answer).

16. On December 14, 2023, the Commission issued a deficiency letter. Notice of CAISO's response (Deficiency Response) was published in the *Federal Register*, 89 Fed.

³¹ *Id.* at 36 (citing CAISO, Proposed CAISO eTariff, § 4.3A.7 (Cost Recovery and Usage Cost for Subscriber Participating TO) (1.0.0), § 4.3A.7.3(b)).

³² *Id.* (citing CAISO, Proposed CAISO eTariff, § 24.14.4 (RAC Treatment of New Regional Transmission Facilities Costs) (3.0.0)).

³³ By virtue of its notice of intervention in response to CAISO's Deficiency Response, CPUC is a party to this proceeding. Therefore, we need not address its motion to intervene out-of-time.

Reg. 3646 (Jan. 19, 2024), with interventions and protests due on or before February 2, 2024. CPUC filed a notice of intervention.

A. Pleadings

17. Several commenters express support for the Subscriber PTO model and CAISO's proposed Tariff revisions.³⁴ These commenters encourage the Commission to accept the proposal, arguing that it will benefit ratepayers and not increase the TAC.³⁵ Golden State, while supportive of the Subscriber PTO model, notes its concern about different processes between in-state resources, which go through the CAISO generator interconnection process, and out-of-state resources, which may use the Subscriber PTO model.³⁶

18. TransWest states that it supports the Subscriber PTO Tariff revisions, asserting that the Subscriber PTO model will benefit customers by providing new transmission facilities at no cost to ratepayers.³⁷ However, TransWest requests that the Commission provide guidance regarding the structure of a non-subscriber usage rate that will not be subject to cost-based revenue requirements. TransWest argues that the Subscriber PTO model contemplates use of a cost-based transmission revenue requirement, but allows the use of alternative revenue structures, subject to Commission approval. TransWest asserts that the issue of a just and reasonable non-cost-based rate, such as the proposed non-subscriber usage rate, is an issue of first impression.³⁸

B. Protest

19. Protestors object to CAISO's proposed application of a non-subscriber usage rate for non-subscriber use of a Subscriber PTO's line. Protestors argue that this severable aspect of CAISO's proposal is difficult to implement and will increase the TAC customers must pay.³⁹ Protestors assert that it is unjust and unreasonable for TAC customers to "make payments" to the Subscriber PTOs when CAISO did not deem the

³⁴ Comments in support were filed by SunZia, Golden State, SWP, NextEra, and Bear Valley.

³⁵ SWP Comments at 4, NextEra Comments at 2, SunZia Comments at 1-2.

³⁶ Golden State Comments at 6-9.

³⁷ TransWest Comments at 4.

³⁸ *Id.* at 7-8.

³⁹ Protestors at 2-3.

projects necessary for reliability, economic, policy, or other reasons through the CAISO transmission planning process. Protestors argue that, without this finding, it would be inappropriate for the Subscriber PTO to recover its costs through the TAC.⁴⁰ Protestors assert that the fundamental concept of a Subscriber PTO is that subscribers should be fully responsible for funding the Subscriber PTO transmission facilities.

20. Protestors request that the Commission reject the proposed non-subscriber usage rate because, they assert, despite CAISO's repeated assurances that the TAC will not increase, the non-subscriber usage rate could increase the TAC when non-subscribers use excess capacity on the Subscriber PTO's facility to export energy outside CAISO's BAA.⁴¹ Protestors assert that, if a new Subscriber PTO facility results in the elimination of an existing scheduling point, there will be no wheeling revenue from that point going forward. Protestors explain that, under the current tariff, TAC customers get a credit for WAC revenue received by PTOs when their lines are used to export power. Protestors assert that the TAC could increase because wheeling revenue from exports using the Subscriber PTO's facility will benefit the Subscriber PTO as opposed to reducing the CAISO ratepayers' TAC. Protestors argue that the result is that certain WAC revenue will remain the private benefit of the Subscriber PTO.⁴²

21. Protestors also assert that TAC customers could pay additional costs to the Subscriber PTO when there is a difference between the TAC and the non-subscriber usage rate. Specifically, they state that, if wheeling revenues from non-subscriber exports are insufficient to fund the non-subscriber usage payment, the remaining requirement would be assessed to TAC customers. Protestors explain that, if the non-subscriber usage rate is greater than the WAC, the Subscriber PTO will receive all revenues while TAC customers are charged an uplift to provide the Subscriber PTO with the shortfall, thus increasing the TAC.⁴³

22. Protestors assert that, if subscribers have fully funded the Subscriber PTO's transmission costs, collection of additional costs would result in an unjust and unreasonable double collection. However, Protestors contend that, if only a portion of costs have been paid for by subscribers, any additional rates should be based on the amount of unfunded costs. Protestors note that, where a developer is building both transmission and generation, it is possible that subscribers will pay an all-in bundled rate which includes transmission, renewable energy credits, and resource adequacy capacity.

⁴⁰ *Id.* at 4, 9-10.

⁴¹ *Id.* at 5.

⁴² *Id.* at 7-8.

⁴³ *Id.* at 10-11.

Protestors assert that, if subscribers pay a single payment to the Subscriber PTO, it would be impossible to unbundle this payment to determine the residual transmission costs, and thus impossible to determine non-subscriber usage rates. Protestors also assert that CAISO's proposal incents Subscriber PTOs to declare as high a residual cost as possible, which would lead to a higher non-subscriber usage rate.⁴⁴

23. Protestors contend that the ratemaking needed to support the proposal is potentially unworkable based on traditional cost-of-service principles. Protestors also note that, under the proposal, the Subscriber PTO will file a rate case with the Commission to determine the non-subscriber usage rate. However, Protestors contend that two key elements of rate development will be challenging to provide: (1) the total accrued revenue needed; and (2) the quantity of transactions over which the revenue will be distributed.⁴⁵

24. Protestors note that other Participating TOs have Commission-approved formula rates which encompass all recoverable transmission costs, allow true-ups, and allow the incorporation of wheeling revenues.⁴⁶ Instead of a non-subscriber usage rate, Protestors alternatively propose the use of congestion revenue rights (CRR)⁴⁷ to compensate Subscriber PTOs for non-subscriber use of their facilities. Protestors note that the Tariff has an existing framework regarding CRRs – the merchant model.⁴⁸ Protestors assert that the merchant model could be used in lieu of the non-subscriber usage rate, and that the Subscriber PTO would still retain usage rights to the line. Protestors state that this

⁴⁴ *Id.* at 12-13.

⁴⁵ *Id.* at 11.

⁴⁶ *Id.* at 15.

⁴⁷ CRRs are the equivalent financial product to financial transmission rights (or FTR) in other Regional Transmission Organizations and Independent System Operators (RTO/ISO). Similar to FTRs, CRRs are valued at the difference in the marginal cost of congestion between a source/sink pair. *See Cal. Indep. Sys. Operator Corp.*, 163 FERC ¶ 61,237, at n.66 (2018).

⁴⁸ Protest at 15-16. As part of its regional transmission planning process, CAISO allows project sponsors to propose merchant transmission facilities if the project sponsor demonstrates the financial capability to pay the full cost of construction and operation of the transmission facility and agrees to turn over operational control of the transmission facility to CAISO. A merchant transmission facility does not receive rate recovery through the TAC; in exchange for transmission capacity, it receives long-term CRRs. *See* CAISO, CAISO eTariff, § 24.4.6 (Categories of Transmission Solutions) (6.0.0), § 24.4.6.1; *id.* § 36.11 (CRR Allocation to Merchant Transmission Facilities) (0.0.0).

approach guarantees that TAC customers will avoid paying the Subscriber PTO through an increased TAC and prevents “administratively burdensome ratemaking.”⁴⁹

C. Answers

25. SunZia and NextEra assert that the issue of how a future non-subscriber usage rate will be calculated is premature and outside of the scope of this proceeding, noting that a Subscriber PTO will make a filing with the Commission, pursuant to section 205 of the FPA, to implement its proposed rate.⁵⁰ TransWest maintains that Subscriber PTOs should be paid by CAISO on behalf of market participants because participants will have access to the transmission service on the Subscriber PTO line. TransWest notes that the Commission has stated that its “jurisdiction is clearly broad enough to allow it to ensure that all beneficiaries of services provided by specific transmission facilities bear the costs of those benefits regardless of their contractual relationship with the owner of those transmission facilities.”⁵¹ NextEra disagrees with Protestors’ assertion that the non-subscriber usage rate is a severable component of CAISO’s proposal, asserting that doing so would exceed the Commission’s authority because, under section 205, the Commission may not unilaterally impose a new rate scheme.⁵² NextEra maintains that the Subscriber PTO model is a necessary step towards “transmission policies that incentivize the development of needed transmission infrastructure.”⁵³ SunZia adds that it has an Open Access Transmission Tariff (OATT) on file with the Commission; therefore, SunZia asserts that if it participates in the Subscriber PTO program, it has transparent, transmission-only rates that would serve as the basis to determine its non-subscriber usage rate.⁵⁴

26. TransWest reiterates its request for the Commission to provide guidance regarding the structuring of a non-subscriber usage rate, and requests that the Commission confirm

⁴⁹ Protest at 16.

⁵⁰ SunZia Answer at 3-4, NextEra Answer at 3-4.

⁵¹ TransWest Answer at 5 (citing *Transmission Plan. & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000. . 136 FERC ¶ 61,051, at P 531 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S. C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014)).

⁵² NextEra Answer at 2.

⁵³ *Id.* at 4-6.

⁵⁴ SunZia Answer at 4-5.

that Subscriber PTOs will not be required to use traditional cost-based support when determining their rates. TransWest states that, although non-subscriber usage rates will be addressed in future rate filings, the Commission should provide guidance now to expedite the development of Subscriber PTO projects. TransWest argues that capping the non-subscriber usage rate at the TAC is an appropriate fee structure for non-subscribers because the Commission has previously determined that the TAC is a just and reasonable rate. TransWest avers that, if it were required to file an OATT, instead of operating under the Subscriber PTO model, market participants such as Protestors would still have to pay a Commission-approved rate for transmission service.⁵⁵

1. CAISO October 30 Answer

27. In response to Protestors' argument that the TAC will increase, CAISO asserts that neither the TAC nor the WAC will increase as a result of the proposal because the original costs of the Subscriber PTO transmission facilities will be excluded from the calculation of these charges. CAISO disagrees with Protestors' assertion that scheduling points could be eliminated under the Subscriber PTO model, instead stating that the proposal will add scheduling points to the CAISO BAA, resulting in additional revenue. CAISO asserts that the collection of the non-subscriber usage payment will not increase the TAC or WAC because CAISO will apply the existing TAC or WAC rates before deducting from those amounts the revenue associated with the non-subscriber usage payment amount.⁵⁶ CAISO dismisses Protestors' assertion that the Subscriber PTO could receive a non-subscriber usage rate that exceeds the TAC and WAC in place, noting that the proposed revisions cap the non-subscriber usage rate compensation to the TAC at the time of filing.⁵⁷ CAISO also notes that the TAC revenue is generally greater than expected based on the calculation of gross load provided in the annual formula rates of Participating TOs, and that any difference between the non-subscriber usage rate and the WAC will flow to other Participating TOs. CAISO explains that the WAC and TAC are expected to increase for the foreseeable future, dismissing Protestors' concerns that the non-subscriber usage rate could be higher than the TAC.⁵⁸

28. CAISO maintains that the use of a non-subscriber usage rate is consistent with the Commission's open access and cost causation principles. CAISO states that Commission precedent requires the owner of a subscriber-funded transmission project to make any

⁵⁵ TransWest Answer at 8-10.

⁵⁶ CAISO October 30 Answer at 6-9.

⁵⁷ *Id.* at 14 (citing CAISO, Proposed CAISO eTariff, app. F (Rate Schedules) (29.0.0), Schedule 3, § 7.1).

⁵⁸ *Id.* at 13-17.

unsubscribed capacity on its transmission project available for service on an open access basis.⁵⁹ CAISO argues that the Commission should reject Protestors' alternate proposal to use CRRs in lieu of the non-subscriber usage rate, noting that the Commission, under section 205, does not extend its review of a proposal to alternative rate designs. Additionally, CAISO states that the Commission has previously found that, "[u]pon finding that CAISO's Proposal is just and reasonable, [the Commission] need not consider the merits of alternative proposals."⁶⁰ CAISO also contends that the use of CRRs would increase uncertainty regarding revenue recoverable for use by non-subscribers.⁶¹

29. Regarding Golden State's request that CAISO extend its proposal to in-state resources, CAISO notes that the Subscriber PTO model was developed for resources outside of the CAISO BAA, and that resources within the BAA area have different opportunities to deliver energy within the CAISO footprint not viable for resources outside the BAA. CAISO explains that, for example, the Tariff provides for location-constrained resource interconnection facilities, which can be conditionally approved when it is determined that the facility will, among other things, connect the CAISO-controlled grid to two or more Location Constrained Resource Interconnection Generators.⁶²

2. Protestors' Answer

30. Protestors continue to argue that CAISO's proposal would be unjust and unreasonable because it would be inconsistent with CAISO's assessment of the WAC, which is assessed to exports, and thus inappropriately compensates Subscriber PTOs for imports. Protestors state that they are even more concerned that WAC revenue over the Subscriber PTO facility may be insufficient to fund the non-subscriber usage payment amount as, if the Subscriber PTO is compensated for usage in both directions, the potential revenue needed will be greater than if it were only compensated for traditional exports.⁶³ Protestors assert that a Subscriber PTO will not increase TAC revenues because the existence of a Subscriber PTO will not increase CAISO gross load given that

⁵⁹ *Id.* at 18-19 (citing 2013 Policy Statement, 142 FERC ¶ 61,038; *TransWest Express LLC*, 174 FERC ¶ 61,160, at P 35 (2021) (*TransWest*)).

⁶⁰ *Id.* at 20-21 (citing *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,135, at P 44 (2012)).

⁶¹ *Id.* at 22.

⁶² *Id.* at 26-27, 30.

⁶³ Protestors Answer at 2-3 (citing CAISO October 30 Answer at 3).

gross load is essentially the sum of all retail end use load of PTOs. Protestors also assert that CAISO's claim that its proposal will not create rate pancaking is wrong. Protestors argue that imports, not exports, will see pancaked rates because TAC customers pay the existing transmission charge plus an additional charge for any power import from the Subscriber PTO by any non-subscriber.⁶⁴

31. Protestors state that CAISO's proposal will likely require CAISO TAC customers to fund the Subscriber PTO any time non-subscriber power flows over the Subscriber PTO line. Protestors argue that this is unjust and unreasonable because TAC customers have no control over when this power flows and, since Subscriber PTO lines bypass the CAISO transmission planning process, TAC customers never agreed to include the line in the CAISO grid or to pay for it.⁶⁵ Protestors claim that CAISO's assertion that the TAC or WAC rate will not be increased to include a transmission revenue requirement for the Subscriber PTO facilities initially placed under CAISO operational control is incomplete and incorrect. Protestors argue that, although CAISO's proposal excludes initial Subscriber PTO costs, when non-subscriber power flows over the Subscriber PTO line, CAISO customers are charged *as if* costs are included in the TAC.⁶⁶ Protestors maintain that the relevant issue is whether CAISO transmission customers will be required to pay for any portion of the Subscriber PTO non-subscriber usage payment amount.⁶⁷

32. Protestors assert that any incremental requirement to fund a Subscriber PTO with revenues extracted from the TAC billing mechanism will affect TAC costs assessed to all load-serving Participating TOs, and thus increase costs to their retail customers. Protestors explain that, since the TAC billing mechanism is designed to pay out exactly the amount of TAC revenues it receives so that CAISO remains revenue neutral, any amount of revenue disbursed to a Subscriber PTO will increase TAC costs to the load-serving PTOs by exactly that amount. Protestors argue that the Tariff itself shows that a non-subscriber usage charge is not required from a cost-causation perspective because the existing merchant model does not contain anything like the non-subscriber usage charge, but instead utilizes CRRs. Protestors additionally assert that, whether TransWest may happen to create new scheduling points is not determinative and continue to argue that the negative TAC impact remains even if a scheduling point is not eliminated.⁶⁸

⁶⁴ *Id.* at 4.

⁶⁵ *Id.* at 4-5.

⁶⁶ *Id.* at 5 (emphasis in original).

⁶⁷ *Id.* at 5-6.

⁶⁸ *Id.* at 6-7.

33. Protestors also disagree with CAISO's argument that relying on CRRs would undermine the viability of the Subscriber PTO model because the current merchant transmission model has not resulted in development of new transmission projects. Protestors argue that the merchant model is entirely different from the proposed Subscriber PTO model, explaining that a merchant transmission owner has no source of funding aside from CRRs and receives no scheduling priority for subscribers.⁶⁹ Protestors state that a Subscriber PTO may already be fully funded by its subscribers, will have scheduling priority rights, and, under Protestors' alternative proposal, will receive CRRs.

34. Additionally, Protestors argue that the non-subscriber usage rate is a severable aspect of the proposed Tariff provisions and that modification of such is in line with past Commission modifications to tariff filings since *NRG Power Mktg., LLC v. FERC*, 862 F.3d 108 (D.C. Cir. 2017) (*NRG*), was decided.⁷⁰

3. CAISO November 17 Answer

35. CAISO argues that Protestors have not met the burden of demonstrating that the proposal should be modified or accepted conditionally. CAISO asserts that Protestors failed to rebut CAISO's explanation that the proposed non-subscriber usage rate under the Subscriber PTO model is consistent with Commission precedent requiring the owner of a subscriber-funded transmission project to make any unsubscribed capacity on its transmission project available for service on an open access basis.⁷¹ CAISO contends that the non-subscriber usage rate is an important element of the CAISO's overall proposal and should not be severed from the other proposed Tariff enhancements. CAISO also disagrees with Protestors' claim that, because CAISO proposes to calculate the non-subscriber usage amount based on both imports and exports on the Subscriber PTO facility but will only collect WAC revenue for exports over the Subscriber PTO facility, the WAC amount that CAISO collects may be insufficient to fund the non-subscriber usage payment amount. CAISO states that it would collect WAC for exports by non-subscribers and pay the non-subscriber usage payment amounts. CAISO explains that, in the unlikely event that WAC revenue collected by CAISO is insufficient to fully pay the non-subscriber usage payment amounts for both imports and exports on the Subscriber PTO transmission facilities, then the remainder will be paid by using TAC revenue received by CAISO prior to allocating the TAC revenue to the other Participating TOs. Additionally, CAISO disagrees with Protestors' claim that the proposal will result in rate pancaking, arguing that the model will not result in any load in

⁶⁹ *Id.* at 8.

⁷⁰ *Id.*; *NRG*, 862 F.3d at 115-16.

⁷¹ CAISO November 17 Answer at 1-2.

the CAISO BAA paying both the TAC and a separate charge for non-subscriber imports on Subscriber PTO facilities.⁷²

36. CAISO states that Protestors are wrong in assuming that all other uses of the CAISO-controlled grid will remain equal after a Subscriber PTO joins CAISO. CAISO reiterates that it is extremely unlikely that WAC revenue would be insufficient to cover the non-subscriber usage payment amounts, because all information indicates that load in the CAISO BAA will continue to increase and the pool of revenue available will also increase and may very well be served by imports over the Subscriber PTO facilities. Additionally, CAISO notes that a Subscriber PTO may increase the number of CAISO scheduling points, and additional exports over these new scheduling points will increase WAC revenues.⁷³

D. Deficiency Letter and Response

37. On December 14, 2023, Commission staff issued a deficiency letter requesting additional information. On January 12, 2024, CAISO submitted its Deficiency Response. In its Deficiency Response, CAISO proposed Tariff revisions⁷⁴ to state that CAISO will not adjust or recalculate Regional Access Charges or regional wheeling charges to account for Commission-approved non-subscriber usage rates.⁷⁵ CAISO also proposed Tariff revisions to reflect that, in the event the TAC decreases, the Subscriber PTO will be required to adjust its non-subscriber usage rate to ensure it does not exceed that current TAC.⁷⁶

38. In response to staff's question regarding a possible shortfall in non-subscriber usage payments in a given year, CAISO explains that, for non-subscriber PTOs, any shortfall in non-subscriber usage payment amounts that are funded through TAC revenues would be addressed pursuant to the relevant revisions in Appendix F, Schedule 3. Specifically, CAISO explains that new Section 10.1(c) rolls the shortfall in the Regional Access Charge revenue adjustment over to a subsequent month and, if there is insufficient revenue to resolve the shortfall, non-load-serving Participating TOs and

⁷² *Id.* at 3-4.

⁷³ *Id.* at 4.

⁷⁴ CAISO, Proposed CAISO eTariff, app. F (Rate Schedules) (29.0.0), Schedule 3, § 8.1.

⁷⁵ CAISO Deficiency Response at 3-4.

⁷⁶ CAISO, Proposed CAISO eTariff, app. F (Rate Schedules) (29.0.0), Schedule 3, § 7.1.

approved project sponsors would include any under-recovery in the regional transmission revenue balancing account.⁷⁷

39. Additionally, in response to staff's question seeking information about how non-subscriber usage payment shortfalls affect the TAC over time, assuming no change in gross load year over year, CAISO states that shortfalls in non-subscriber usage payments could increase the TAC if there were both no load growth and limited WAC revenues. However, CAISO predicts that it is extremely unlikely that there would be both no load growth as well as limited WAC revenues in a given year. CAISO states that it anticipates that a Subscriber PTO may increase the number of CAISO scheduling points and that additional exports over these new scheduling points will increase WAC revenues. CAISO maintains that load in the CAISO BAA will continue to increase and that the pool of revenue available will also increase.⁷⁸ Nevertheless, CAISO states that, while it is theoretically possible that the non-subscriber usage rate could result in some increase to the TAC over time, it would not result in the recovery of any original facility cost through the TAC because such recovery is expressly precluded.

40. With respect to assessing the TAC on imports that are not part of a wheeling through transaction, CAISO responds that section 26.1(a) specifies that market participants withdrawing energy imported over Subscriber PTOs' transmission facilities that is then withdrawn from the CAISO-controlled grid, *i.e.*, load, will pay the TAC.⁷⁹ CAISO states that, beyond this payment of the TAC by load, the existing Tariff does not separately charge an Access Charge for imports that are not part of wheeling through transactions. CAISO explains that the CAISO market only charges a WAC to exports and wheeling through transactions. CAISO states that none of the Tariff revisions submitted in its filing alter this existing framework.

41. Finally, in response to an issue raised regarding which access charges would apply when an import bid clears the day-ahead or real-time market at a Subscriber PTO's scheduling point, CAISO explains that, if the import bid served CAISO load, the TAC would apply, and, if the import bid were for exports out of the CAISO BAA, the scheduling coordinator would pay the WAC. CAISO adds that the applicable access charge would apply once to any non-subscriber use of Subscriber PTO transmission

⁷⁷ CAISO Deficiency Response at 8-11.

⁷⁸ *Id.* at 10-11.

⁷⁹ *Id.* at 12.

facilities to avoid “rate pancaking,” and would not be in addition to access charges assessed based on load in CAISO that is served by the import.⁸⁰

III. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

43. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2023), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers from CAISO, NextEra, Protestors, SunZia, and TransWest because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

44. We accept CAISO’s proposed Tariff revisions, as modified by the Deficiency Response, effective December 21, 2023, as requested. For the reasons discussed below, we find that CAISO’s proposed revisions to implement the Subscriber PTO model are just and reasonable and not unduly discriminatory or preferential.

1. Subscriber PTO Model

45. We find that CAISO’s proposed Subscriber PTO model is consistent with Commission precedent regarding the development, operation, and cost recovery of merchant transmission facilities. Commission policy requires merchant transmission developers to turn over operational control of their facilities to an RTO/ISO,⁸¹ or instead to file and provide non-discriminatory transmission service pursuant to the Commission’s *pro forma* OATT.⁸² Because CAISO is providing a framework for Subscriber PTOs to

⁸⁰ *Id.* at 13.

⁸¹ See *TransEnergie U.S., Ltd.*, 91 FERC ¶ 61,230, at 61,840 (2000) (*TransEnergie*); *Neptune Reg'l Transmission Sys., LLC*, 96 FERC ¶ 61,147, at 61,633 (2001) (*Neptune*); *Ne. Utils. Serv. Co.*, 98 FERC ¶ 61,310, at 62,328 (2002) (*Northeast Utilities II*).

⁸² See *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 47 (2009) (*Chinook*). See also 2013 Policy Statement, 142 FERC ¶ 61,038 at P 4, n.7 (“[T]he Commission will continue to require merchant and other transmission developers either

turn over operational control of their transmission facilities to CAISO, we find that CAISO's proposal is consistent with this precedent. Specifically, CAISO's proposal would require a prospective Subscriber PTO to satisfy the requirements applicable to a Participating TO, execute the Transmission Control Agreement, and receive approval from the CAISO Board to join CAISO as a new Participating TO and place its transmission assets and Entitlements under CAISO's operational control.⁸³

46. The Commission also requires owners of merchant transmission facilities to provide third parties with non-discriminatory access to unsubscribed capacity on the merchant transmission facility.⁸⁴ Additionally, regarding subscribed but unused capacity on a merchant transmission facility, the Commission has long recognized the importance of making such unused capacity available to third parties in a secondary market to enhance competition.⁸⁵ CAISO's proposal provides a path for unused and unsubscribed capacity on a Subscriber PTO's facilities to be made available on an open access, non-discriminatory basis. Therefore, we find CAISO's proposal to be consistent with this precedent as well. Specifically, CAISO's proposal would treat as available transmission capacity any capacity on a Subscriber PTO's transmission facilities that is not subject to an Encumbrance as of the date of the Subscriber PTO's application to become a Subscriber PTO.⁸⁶ Further, to the extent that subscribers do not schedule their Encumbrance in the real-time market, CAISO will make the transmission capacity underlying the Encumbrance available for use by other market participants.

47. The Commission has long required a merchant transmission facility's owner and its willing customers to assume the full market risk for the cost of constructing the facility, and ensure that no captive customers are required to pay for the cost of the facility.⁸⁷ Here, subscribers of the capacity on the Subscriber PTO's transmission

to file an OATT *or to turn over control to an RTO or ISO.*) (emphasis added).

⁸³ Transmittal at 5.

⁸⁴ See, e.g., *TransEnergie*, 91 FERC at 61,839. See also *Neptune*, 96 FERC at 61,631 ("Neptune will make all of the remaining [unsubscribed] capacity available on a short-term basis for sale in the open seasons administered by the RTO.").

⁸⁵ See, e.g., *Chinook*, 126 FERC ¶ 61,134 at P 39.

⁸⁶ CAISO, Proposed CAISO eTariff, § 4.3A.8 (Access to Available Transmission Capacity of a Subscriber Participating TO) (1.0.0).

⁸⁷ See, e.g., *TransEnergie*, 91 FERC at 61,838; *Neptune*, 96 FERC at 61,634; *Ne. Utils. Serv. Co.*, 97 FERC ¶ 61,026, at 61,074 (2001) (*Northeast Utilities I*); *Chinook*, 126 FERC ¶ 61,134 at P 38; 2013 Policy Statement, 142 FERC ¶ 61,03 at PP 2, 6.

facilities will be responsible for paying the entire cost of constructing those transmission facilities, and no transmission revenue requirement for the Subscriber PTO transmission facilities will be included in the TAC.⁸⁸ Therefore, we find CAISO's proposal to be consistent with the Commission's policy regarding cost recovery for merchant transmission facilities. Regarding compensation for non-subscriber use of the Subscriber PTO's transmission facilities, we discuss the non-subscriber usage rate below.

48. Additionally, we note that the proposed application process to become a Participating TO, such as requiring that a new Subscriber PTO execute the Transmission Control Agreement, place its transmission assets and Entitlements under CAISO's operational control, and satisfy the requirements applicable to a Participating TO, is generally consistent with the process applicable to Participating TOs under CAISO's Tariff.⁸⁹ We also find that CAISO's proposal to use encumbrances to provide the Subscriber PTO's subscribers with scheduling priority on the Subscriber PTO's transmission facilities is consistent with Commission precedent and appropriately recognizes the firm transmission rights of subscribers of merchant transmission facilities.⁹⁰ The Commission has permitted owners of merchant transmission facilities to provide subscribers with firm transmission rights, even when the owner of the merchant transmission facility turns operational control of the facility over to an RTO/ISO.⁹¹ Regarding Golden State's concerns that different processes apply to in-state resources, which go through the CAISO generator interconnection process, and out-of-state resources, which would use the Subscriber PTO model, we note that CAISO has clarified that its proposed model applies to resources that are outside of the CAISO BAA, some of which may be in-state.⁹² We agree with CAISO that resources within the CAISO BAA have different opportunities to deliver energy within the CAISO footprint that are not

⁸⁸ CAISO, Proposed CAISO eTariff, app. F (Rate Schedules) (29.0.0), Schedule 3; *id.*, § 4.3A.7 (Cost Recovery and Usage Cost for Subscriber Participating TO) (1.0.0), § 4.3A.7.3.

⁸⁹ Transmittal at 3, 5 (citing CAISO, Proposed CAISO eTariff, § 4.3 (Nature of Relationship) (7.0.0), § 4.3.1.1).

⁹⁰ *Pro forma* OATT section 13.2(iv) ("Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff.").

⁹¹ *See, e.g., TransEnergie*, 91 FERC at 61,838.

⁹² Transmittal, attach. D, Board Memorandum and Vote Subscriber PTO Model, at 6, n.9 (noting that "Out-of-state" is a term used by the CPUC and clarifying that this model addresses resource and transmission development that is outside of CAISO's BAA and that in some cases, in-state resources may still be outside of CAISO's BAA).

viable for resources outside the CAISO BAA.⁹³ CAISO's Subscriber PTO model is specifically designed to address the unique circumstances of parties operating outside of the CAISO BAA; thus, we find it appropriate that the Subscriber PTO model will be available to resources outside the CAISO BAA.

2. Non-Subscriber Usage Rate

49. We accept CAISO's proposed Tariff revisions governing the non-subscriber usage rate, as modified by CAISO's Deficiency Response, which will allow Subscriber PTOs to make unsubscribed and unused capacity available to the CAISO market and earn revenue for use by non-subscribers through the non-subscriber usage rate. With respect to Protestors' concerns regarding the formulation of the non-subscriber usage rate (i.e., how the rate will be constructed), we agree with CAISO that this issue is outside of the scope of the current proceeding and is more appropriately addressed in any future proceedings in which a Subscriber PTO files a specific non-subscriber usage rate with the Commission under FPA section 205. Similarly, regarding Protestors' alternative proposal to use CRRs for compensation for non-subscriber use of the Subscriber PTO facility in lieu of the non-subscriber usage rate, because we find CAISO's proposal to be just and reasonable, we need not consider alternative proposals.⁹⁴ We also disagree with Protestors' arguments that the proposed revisions regarding the non-subscriber usage rate should be severed and rejected.⁹⁵

50. Regarding Protestors' concerns that the TAC could increase as a result of the non-subscriber usage rate, we find, based on the record before us, that the Subscriber PTO model is unlikely to result in an increase in the TAC, and, should an increase occur, any such increase would not be due to the Subscriber PTO recovering any of the costs for constructing the Subscriber PTO's initial transmission facilities through the TAC. Additionally, the proposed Tariff revisions are designed to help mitigate several ways that the TAC could be impacted. First, the revisions ensure that the non-subscriber usage rate is no higher than the TAC, meaning that the deduction of the non-subscriber usage rate from TAC revenues would not create a significant deficit in TAC revenues.⁹⁶ In its

⁹³ CAISO October 30 Answer at 26-27.

⁹⁴ See, e.g., *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 691 (D.C. Cir. 1995); *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (when determining whether a rate was just and reasonable, the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs").

⁹⁵ We note that CAISO states that the non-subscriber usage rate portion of its proposal should not be severed from the other revisions. CAISO November 17 Answer at 3.

⁹⁶ CAISO, Proposed CAISO eTariff, app. F (Rate Schedules) (29.0.0), Schedule 3, § 7.1.

Deficiency Response, CAISO clarifies that the non-subscriber usage rate must be adjusted downward if the TAC decreases in the future in order to ensure that the non-subscriber usage rate continues to be lower than the TAC.⁹⁷ Second, the revisions state that CAISO may not adjust or recalculate the TAC or the WAC to account for Commission-approved revisions to non-subscriber usage rates.⁹⁸ With the amended Tariff language, we find that the proposed Tariff revisions ensure that Subscriber PTOs cannot charge a non-subscriber usage rate that is higher than the TAC, and therefore that there will be no TAC increase due to the non-subscriber usage rate exceeding the TAC.

51. We reiterate our finding that CAISO's proposal ensures that subscribers of the capacity on the Subscriber PTO's transmission facilities will be responsible for paying the entire cost of constructing those transmission facilities, and that no transmission revenue requirement for the Subscriber PTO transmission facilities will be included in the TAC. Moreover, because there is not a specific rate before the Commission to be evaluated in the instant filing, any concerns regarding the specific makeup of the non-subscriber usage rate are beyond the scope of this proceeding and will be addressed in any future section 205 filings by Subscriber PTOs seeking to establish non-subscriber usage rates.

52. Protestors assert that Subscriber PTOs should not be compensated for non-subscriber use of Subscriber PTOs' transmission facilities, arguing that the Subscriber PTOs' transmission facilities will be fully paid for by subscribers. As an initial matter, and contrary to Protestors' arguments, the Commission has not held that a facility's costs can be allocated to customers only following a determination that the facility is necessary for reliability, economic, policy, or other reasons through the CAISO transmission planning process. In any case, we disagree with Protestors that compensation for non-subscriber use of a Subscriber PTO's transmission facilities conflicts with the Commission's longstanding policy that a merchant transmission facility's owner and its willing customers must assume the full market risk for the cost of constructing the merchant transmission facility, and that no captive customers are required to pay for the

⁹⁷ CAISO Deficiency Response at 6-7.

⁹⁸ CAISO, Proposed CAISO eTariff, app. F (Rate Schedules) (29.0.0), Schedule 3, § 8.1. A Subscriber Participating TO may not seek Commission approval of a transmission revenue requirement for the original costs or any subsequent incurred costs for transmission assets and Entitlements and Subscriber Encumbrances used to provide subscriber rights or receive revenue for such transmission assets and Entitlements from the Regional Access Charge, even after all Subscriber Encumbrances on the transmission assets and Entitlements terminate. *Id.* § 4.3A.7 (Cost Recovery and Usage Cost for Subscriber Participating TO) (1.0.0), § 4.3A.7.3.

cost of the facility.⁹⁹ The Commission has held that owners of merchant transmission facilities must make available unsubscribed capacity, provided that the merchant transmission owner demonstrates that it is doing so in a manner that is just, reasonable, and not unduly discriminatory or preferential.¹⁰⁰ Further, as discussed above, subscribers of the capacity on the Subscriber PTO's transmission facilities will be responsible for paying the entire cost of constructing those transmission facilities, and no transmission revenue requirement for the Subscriber PTO transmission facilities will be included in the TAC. Thus, we do not believe there is a conflict between allowing for compensation for non-subscriber use of a Subscriber PTO's transmission facilities and Commission policy regarding how transmission developers may recover the costs of constructing merchant transmission facilities.

53. Protestors hypothesize that the TAC that transmission customers must pay could increase because wheeling revenue from exports using the Subscriber PTO's facility will exclusively benefit the Subscriber PTO as opposed to reducing the CAISO ratepayers' TAC, as is the case with Participating TOs' WAC revenues. However, we agree with CAISO that the WAC revenues collected for non-subscribers' exports at the new scheduling points created by a Subscriber PTO's facilities will likely be new revenue that would not have existed prior to the Subscriber PTO's transmission facilities being placed under CAISO's operational control.¹⁰¹ CAISO will distribute a portion of these new WAC revenues, to be determined in a future Subscriber PTO rate filing, to the Subscriber PTO in the form of the non-subscriber usage payment amount, and the remainder will be credited to the TAC, to the benefit of TAC customers.

54. Nevertheless, we agree with Protestors and CAISO that it is possible that the non-subscriber usage rate could potentially result in some increase to the TAC over time due to shortfalls in the non-subscriber usage payment amount. CAISO explains that, if WAC revenue collected by CAISO is insufficient to fully pay the non-subscriber usage payment amounts for both imports and exports on the Subscriber PTO transmission facilities, then the remainder will be paid by using TAC revenue received by CAISO prior to allocating the TAC revenue to the other Participating TOs. Thus, payments made to a Subscriber PTO with revenues from the TAC billing mechanism could impact TAC costs assessed to load because the TAC is designed to recover and pay out the exact revenue requirement

⁹⁹ See, e.g., *TransEnergie*, 91 FERC at 61,838; *Neptune*, 96 FERC at 61,634; *Northeast Utilities I*, 97 FERC at 61,074; *Chinook*, 126 FERC ¶ 61,134 at P 38; 2013 Policy Statement, 142 FERC ¶ 61,03 at PP 2, 6.

¹⁰⁰ See, e.g., *TransWest*, 174 FERC ¶ 61,160 at P 37; *Chinook*, 126 FERC ¶ 61,134 at P 47.

¹⁰¹ CAISO October 30 Answer at 13-14.

of the Participating TOs. Paying the non-subscriber usage rate out of the TAC billing mechanism could require increases to the TAC to ensure that the non-subscriber usage amount is fully funded. CAISO acknowledges that this understanding is “theoretically” correct.¹⁰² However, CAISO explains that any increase in the TAC would not be due to the Subscriber PTO recovering any of the costs for constructing the Subscriber PTO’s transmission facilities through the TAC, because such recovery is expressly precluded. We find that this concern does not render the proposal unjust and unreasonable because whether such impact will materialize, and to what extent, is speculative given the unknown variables (e.g., the change in CAISO load, the approved non-subscriber usage rate, the volume of exports versus imports, and the location and use of Subscriber PTO scheduling points) that could determine whether payment of the non-subscriber usage rate from the TAC billing mechanism would actually, or meaningfully, impact the TAC.

3. TransWest Request for Guidance

55. We find that TransWest’s request for the Commission to provide guidance on a potential framework to determine the non-subscriber usage rate is outside the scope of this proceeding as there is no specific rate before the Commission. As discussed above, the Commission will address the issue at the time Subscriber PTOs propose specific non-subscriber usage rates in future FPA section 205 filings.

The Commission orders:

CAISO’s proposed Tariff revisions, as modified by CAISO’s Deficiency Response, are hereby accepted, effective December 21, 2023, as requested, as discussed in the body of this order.

By the Commission. Commissioner Clements is concurring with a separate statement attached.

(S E A L)

Debbie-Anne A. Reese,
Acting Secretary.

¹⁰² CAISO Deficiency Response at 11. CAISO explains that the TAC could theoretically increase over time due to shortfalls in the non-subscriber usage payment amount if there is no load growth within CAISO, imports on the Subscriber PTO’s transmission facilities significantly exceed exports, and the non-subscriber usage rate is nearly equal to the TAC.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation

Docket No. ER23-2917-001

(Issued March 12, 2024)

CLEMENTS, Commissioner, *concurring*:

1. I fully support the Commission’s approval of California Independent System Operator Corporation’s (CAISO) proposed Subscriber Participating Transmission Owner (Subscriber PTO) model. As CAISO notes, the Subscriber PTO model “will allow new interconnections across the Western Interconnection, enhancing inter-regional transmission resilience, deliverability, and resource adequacy.”¹

2. I write separately to highlight that, while the Commission accepts CAISO’s proposal as consistent with Commission precedent regarding the development, operation, and cost recovery of merchant transmission facilities,² it does so because this is how CAISO justified its proposal to be just and reasonable. In reaching this conclusion, the Commission does not hold that any model involving subscribers must necessarily be justified pursuant to the Commission’s merchant transmission policy framework. For example, whether it would be just and reasonable and not unduly discriminatory under the Federal Power Act to provide for a hybrid cost allocation tariff that provides for some facility costs to be allocated to captive customers and other facility costs to be borne by subscribers is outside the scope of this proceeding and nothing in this order should be read to resolve that question. It is possible that, in appropriate circumstances, such a structure may facilitate infrastructure that both lowers costs for consumers and provides critical reliability benefits. I encourage the Commission and stakeholders to explore whether and how hybrid cost allocation approaches may prove to be a useful tool to develop needed transmission.

For these reasons, I respectfully concur.

Allison Clements
Commissioner

¹ Transmittal at 2.

² Order, 186 FERC ¶ 61,177, at P 45 (2024).