

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation on the Commission's Own
Motion into Methodology for Economic Assessment of
Transmission Projects.

Investigation 05-06-041

**REPLY COMMENTS OF THE CALIFORNIA
INDEPENDENT SYSTEM OPERATOR REGARDING THE
ALTERNATE PROPOSED DECISION OF PRESIDENT PEEVEY**

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I. Introduction

Opening comments on the Alternate Proposed Decision (APD) were filed by the CAISO, TURN, DRA, SCE, PG&E and Global Energy. Of these comments, only TURN and the DRA took issue with the rebuttable presumption process adopted in the APD and urged the Commission to instead adopt the Proposed Decision issued on June 20, 2006. SCE, PG&E and Global Energy proposed language changes to the APD.¹ The CAISO hereby submits its comments in reply to the positions taken by these parties in their opening comments.

II. Response to Comments of SCE, PG&E and Global Energy

SCE suggested that the APD be modified in two respects: 1) that cost information need not be updated for the purposes of the economic evaluation unless the costs used in the evaluation have become outdated by more than 5%; and 2) that applicants be permitted to provide summaries of input and output data instead of raw data that could involve hundreds of iterations. SCE has also requested that such summaries and descriptions be provided pursuant to data requests, making it easier to address confidentiality concerns. The CAISO concurs with these recommendations.

PG&E seeks clarification that projects for which the need determination is based on §24.1.1.2 of the CAISO tariff are not subject to the rebuttable presumption. That section provides, in pertinent part, that where the sponsor of a transmission project, other than a Participating Transmission Owner (PTO) (such as an IOU), commits to funding the full cost of construction and operation of a transmission addition, and demonstrates the financial ability to satisfy its financial commitments, the CAISO Board may deem the addition needed without more. While the CAISO does not foresee the likelihood of implicating the Commission's jurisdiction under these limited circumstances, the CAISO recognizes that the absence of a detailed CAISO economic assessment may support

¹ Global Energy continued to express concerns about the rebuttable presumption but suggested additional safeguards should the APD be adopted.

different treatment. However, the CAISO also recommends that the Commission otherwise ensure that non-PTO project proponents are treated equally to traditional utilities in CPCN proceedings.

Finally, with respect to the modifications proposed by Global Energy, the CAISO believes that such recommendations are unnecessary. Global Energy's concerns that the CAISO Board-approved evaluation conform to the requirements of the APD are addressed in both in the form of an explicit safeguard as well as one of the two grounds upon which the presumption can be rebutted. Safeguard No. 2 (APD, 23) provides that the evaluation must meet all of the requirements of Attachment A in order to be eligible for the presumption. Once the presumption is triggered, parties may then rebut the presumption with evidence that the Board-approved evaluation failed to meet these minimum principles and requirements (APD, 24). Global Energy's first recommended modification, therefore, appears to be superfluous.

Global Energy's second recommendation that the CAISO Board be required to participate in the CPCN proceeding appears to be not only unnecessary, but also counter-productive. The suggestion is that representatives of the CAISO Board enter an appearance in the proceeding, in addition to the CAISO staff sponsors of the Final Evaluation, for the sole purpose of justifying the process followed by the Board to determine whether the evaluation met the requirements of Attachment A. Global Energy fails to articulate the need for this participation given that the procedural basis of the CAISO process constitutes an area for rebutting the presumption as discussed above. Furthermore, rather than streamlining the litigation process as the rebuttable presumption is intended to do, mandatory participation by the CAISO Board will likely expand the litigation and distract from the proceeding's proper focus of whether the project is economically efficient.

III. Comments of TURN and DRA.

Setting aside the hyperbole regarding the political genesis of the APD, TURN contests the proposed rebuttable presumption on the basis that Commission adoption is improper and, if adopted, it fail to speed up the transmission siting process. Neither of TURN's arguments warrants rejection of the APD.

TURN contends that the rebuttable presumption constitutes an impermissible delegation of Commission authority to the CAISO to determine economic need pursuant to §§1001 *et seq.*² TURN also notes that California law does not support such use of rebuttable presumptions. It bears emphasizing that the rebuttable presumption proposal does not eliminate, or even reduce in importance, the Commission’s role in ultimately ruling on the reasonableness of the CPCN application. Similarly, TURN’s argument fails to apprehend that the project proponent must still initially satisfy its burden of proof. However, under the APD, the project proponent meets this obligation through establishing CAISO approval and compliance with the articulated procedural safeguards. The authorities cited by TURN are consistent with this outcome. Thus, TURN’s intimation that the project proponent need not present any affirmative case to obtain a CPCN or that California law does not permit application of the rebuttable presumption is incorrect.

The CAISO believes that the safeguards adopted in the APD provide the level of transparency needed to alleviate TURN’s due process concerns. But more importantly from a due process perspective, the CAISO study results, and the process to reach those results, will still be subject to full Commission scrutiny. Due process demands nothing more.

TURN goes further by expressing concern that the CAISO will not be able to fulfill its new procedural obligations such that a Commission decision based on the CAISO study results will not withstand legal challenges on appeal.³ This is a non sequitur. If the CAISO fails to fulfill its procedural obligations, there will be no application of the rebuttable presumption by the Commission to trigger appellate review. Perhaps recognizing the inadequacy of this argument, TURN relies on the allegation that the CAISO has shown a disregard for rules and process that should give the Commission pause when considering the APD. While the CAISO vigorously objects to TURN’s characterization that the described incidents demonstrate a “disregard” for the Commission’s rules and process, the CAISO does not dispute that it has belatedly responded to discovery and filed certain pleadings out of time. However, these situations

² See TURN comments, 4-5; TURN reply brief, 2.

³ TURN comments, 10-12.

have no bearing on whether the CAISO will not take seriously the trust that the APD places in its ability to conduct the public participation and economic evaluation process in accordance with objectivity and transparency.

With respect to the contention that the rebuttable presumption will not expedite the regulatory process for transmission siting, TURN advances three arguments. First, it asserts that delay in transmission proceedings is caused primarily by the need for a project proponent to gain a consensus among competing and diverse interests.⁴ Second, TURN claims the “critical path” remains the environmental analysis, not economic claim of need. Third, TURN believes the rebuttable presumption is unnecessary to better integrate state generation policy with transmission planning since this integration is already occurring in dockets such as resource adequacy (RAR) and long term procurement (LTPP).

The CAISO admires TURN’s optimism, but believes that such optimism should not substitute for tangible, even if incremental, efforts to currently gain efficiencies. In this regard, the CAISO agrees with PG&E that the use of the rebuttable presumption will streamline current procedures by focusing the parties on the CAISO study results rather than constantly revisiting issues that the CAISO and the project proponents have already analyzed.⁵ Moreover, the CAISO acknowledges that should the LTPP and RAR proceedings evolve into highly integrated planning forums, the need for a rebuttable presumption may dissipate. However, until such time as those complex proceedings demonstrate their efficacy, any concrete steps that might (and are likely to) rationalize the planning process should be encouraged.

TURN correctly notes that one of the safeguards set forth in the APD requires the CAISO to submit the evaluation in sufficient time to have it included in the scope of the proceeding. TURN uses this safeguard to assume that the “quantity” of the issues subject to adjudication in the CPCN proceeding will be reduced, but merely shift focus. Nonetheless, the mere *possibility* that the process may not become more efficient (a concept with which the CAISO does not agree) because the focus just shifts to the CAISO study and process does not constitute a valid reason to abandon the rebuttable

⁴ *Id.*, 8. TURN does tacitly admit that these delays may give rise to the argument that the rebuttable presumption is necessary (see fn. 20).

⁵ PG&E comments, 2.

presumption notion in its entirety. Rather, if experience vindicates TURN's prediction, the Commission simply remains free to reassess or reverse its own procedures.

Finally, TURN questions whether the Commission should accept the CAISO Board approval of an economic evaluation in light of the fact that the Board rarely rejects a project recommended by the CAISO staff for approval and that the rebuttable presumption is therefore being given to the staff itself.⁶ Although phrased differently, this argument is similar to the one raised by Global Energy discussed above, and the CAISO would offer a similar response: the findings of the Board can be challenged as one of the two grounds for rebutting the presumption. Thus, the fact that the Board is being charged with the responsibility of ensuring that the safeguards have been met has no special significance. This, of course, does not require that Board members actually participate in the hearing process, but the Board findings can be scrutinized during the hearing. As with TURN's other issues, this concern should not deter the Commission from adopting the APD.

The DRA raised several issues that were also contained in the TURN comments. The DRA has opined, for example, that the safeguards might not provide sufficient due process to withstand legal challenges in the form of appeal from a Commission decision.⁷ For the reasons set forth in response to TURN's concerns, the Commission should not reject the APD based on the comments submitted by DRA.

Respectfully submitted,



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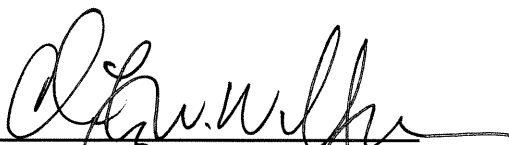
⁶ TURN comments, 14-15. This argument appears to be based largely on the comment author's belief while serving on the CAISO Board that the economic evaluation of transmission projects conducted by the CAISO staff should not be afforded special weight or deference by the CPUC.

⁷ DRA comments, 3.

CERTIFICATE OF SERVICE

I hereby certify that I have served, by electronic and United States mail, a copy of the foregoing Reply Comments of The California Independent System Operator Regarding the Alternate Proposed Decision of President Peevey to each party in Docket No., I.05-06-041.

Executed on November 6, 2006 at Folsom, California.


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