

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

California Independent System)	
Operator Corporation)	Docket No. ER14-2824-000
)	

**MOTION FOR LEAVE TO SUBMIT ANSWER TO COMMENTS AND
PROTESTS AND ANSWER OF
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”) respectfully submits this motion for leave to answer and answer¹ to the protests and comments submitted in the above-captioned proceeding in response to the CAISO’s filing of a *pro forma* Approved Project Sponsor Agreement (“APSA”). The CAISO requests that the Commission accept the *pro forma* APSA as described below.

I. BACKGROUND

On September 10, 2014, the CAISO submitted the *pro forma* APSA as an amendment to the CAISO’s tariff. Under the CAISO’s transmission planning process, the CAISO employs a competitive solicitation process to select approved project sponsors to construct certain transmission solutions included in the CAISO’s annual transmission plan. The *pro forma* APSA sets forth the terms and conditions that will govern an approved project sponsor’s responsibilities and relationship with the CAISO during the period from selection to the time that the CAISO assumes operational control over the transmission solution. The CAISO requested that the Commission accept the *pro forma* APSA effective November 10, 2014.

¹ The CAISO submits this motion and answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2014).

Nine parties have sought to intervene in this proceeding.² Four parties submitted comments, protests, or limited protests: LSP Transmission Holdings, LLC; NextEra Energy Transmission, LLC; Southern California Edison Company, and TransCanyon, LLC. The CAISO does not oppose any of the interventions.

II. MOTION FOR LEAVE TO ANSWER PROTEST

The CAISO respectfully requests authorization to respond to the protests filed in this proceeding. Notwithstanding Rule 213(a)(2),³ the Commission has accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in the protest,⁴ clarify matters under consideration,⁵ or materially aid the Commission's disposition of a matter.⁶ The CAISO's answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues, and help the Commission to achieve a more accurate and complete record, on which all parties are afforded the opportunity to respond to one another's concerns.⁷

Accordingly, the Commission should accept this Answer.

² California Department of Water Resources, State Water Project; California Public Utilities Commission; Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; Exelon Corporation; LSP Transmission Holdings, LLC; NextEra Energy Transmission, LLC; NRG Companies; and Southern California Edison Company. TransCanyon, LLC, moved to intervene out-of-time.

³ 18 C.F.R. § 385.213(a)(2) (2014).

⁴ *Sw. Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (1999).

⁵ *Ariz. Pub. Serv. Co.*, 82 FERC 61,132 (1998); *Tenn. Gas Pipeline Co.*, 82 FERC 61,045 (1998).

⁶ *El Paso Natural Gas Co.*, 82 FERC 61,052 (1998).

⁷ *No. Border Pipeline Co.*, 81 FERC 61,402 (1997); *Hopkinton LNG Corp.*, 81 FERC 61,291 (1997).

III. ANSWER

A. **The *Pro Forma* APSA Appropriately Assigns Responsibility for Interconnection Arrangements to the Approved Project Sponsor and the Interconnecting Entity.**

Section 4.2 of the *pro forma* APSA requires the approved project sponsor to negotiate an interconnection agreement with the transmission operator to whom it is interconnecting. It does not provide for the CAISO to be a party to that agreement. Both NextEra⁸ and LSP Transmission Holdings⁹ contend that the CAISO should play an active role in this arrangement just like the role the CAISO plays in the generator interconnection process, at least when the interconnecting entity is a participating transmission owner. NextEra contends, without providing any evidence and admitting that it has no evidence, that the incumbent participating transmission owner may have an incentive to delay the non-incumbent's development of the transmission solution in the hope that the CAISO will reassign construction responsibility for the project to the incumbent.¹⁰ NextEra recommends that the Commission should (1) require the CAISO and the incumbent participating transmission owner to file their interconnection procedures as part of the CAISO tariff, and (2) require that the CAISO enter into a contractual relationship with the interconnecting participating transmission owner as part of the interconnection process for the transmission project.

NextEra's and LSP Transmission Holdings' recommendations are misplaced and unnecessary. The participating transmission owners have Commission-approved tariffs

⁸ NextEra Protest at 2-3.

⁹ LSP Transmission Holdings Protest at 2-5.

¹⁰ NextEra Protest at 3

that address transmission facility interconnections, and the provisions of those tariffs are not the subject of this proceeding.

NextEra's and LSP Transmission Holdings' recommendation is based purely on speculation and without any specific evidence that the existing tariff framework is unjust and unreasonable. Indeed, because the participating transmission owners already have Commission-approved transmission interconnection tariff provisions in place, to the extent they fail to comply with those provisions or act in an unduly discriminatory or preferential manner, interconnecting transmission owners can seek recourse at the Commission.

As discussed *infra* in response to another claim raised by NextEra, the CAISO agrees, in a compliance filing, to clarify in the *pro forma* APSA that approved project sponsors will not be penalized for delays caused by the interconnecting participating transmission owner. This addresses NextEra's concern that a participating transmission owner may seek to delay an awarded project with the hope that the CAISO might reassign the project to the participating transmission owner as the result of delay. The Commission does not need to overhaul the existing transmission facility interconnection framework and tariff provisions to achieve this result.

Further, to the extent the Commission believes that transmission interconnection reform is needed, such issue appropriately should be addressed on a nationwide basis, not in a CAISO *pro forma* APSA proceeding. NextEra and LSP Transmission Holdings seek to impose transmission interconnection requirements similar to those that the Commission approved in Order No. 2003 with respect to generator interconnections. The Commission promulgated those requirements through a general rulemaking

proceeding applicable to all transmission providers. If necessary, that is the appropriate approach for any reevaluation of transmission interconnections. With the adoption of Order No. 1000, the speculative concern raised by NextEra and LSP Transmission Holdings would apply in many planning regions throughout the country because the Commission has eliminated the right of first refusal. Thus, non-incumbents can compete against incumbents to build projects in every planning region—projects that will interconnect to the existing facilities of competing incumbent transmission owners.

Moreover, the current construct of not including in competitive solicitations the project's interconnection to existing participating transmission owner facilities avoids the concern of an incumbent participating transmission owner charging a competitor more than it would charge itself to interconnect. Transmission rates are cost of service, and Section 24.14.2 allows for participating transmission owner cost recovery.

Finally, LSP Transmission Holding's concern that if an incumbent transmission owner is a bidder in the competitive solicitation it will have little incentive to negotiate the terms of an interconnection agreement before bid submission is misplaced and based on a misunderstanding of the CAISO process.¹¹ The CAISO would not expect participating transmission owners to negotiate interconnection agreements prior to the determination of the approved project sponsor. Because there may be multiple competing project sponsors, only one of which the CAISO will select, such negotiations would entail a pointless expenditure of both the participating transmission owner's and the project sponsors' resources. The "wires-to-wires" interconnection that the participating transmission owner will build is not part of the transmission solution that is

¹¹ LSP Transmission Holdings Protest at 5.

the subject of the competitive solicitation. Thus, participating transmission owner actions (or inaction) regarding the interconnection of facilities cannot disadvantage other project sponsors in the competitive solicitation process. Once the CAISO selects an approved project sponsor, the approved project sponsor can seek interconnection from the interconnecting participating transmission owner, and the participating transmission owner will have an obligation to interconnect under its tariff. Thus, the CAISO's framework provides no opportunity for a participating transmission owner to undermine the proposal of a non-incumbent project sponsor based on transmission facility interconnection. The CAISO has already conducted competitive solicitations that included multiple non-incumbents in addition to the project sponsor and has not encountered any interference by participating transmission owners with the development of competing applications.

B. The Pro Forma APSA's Requirements Regarding Specifications for Major Project Equipment and Materials Are Reasonable.

Section 5.4 of the proposed *pro forma* APSA requires the approved project sponsor to submit specifications for major project equipment or materials to the CAISO and interconnecting participating transmission owner for review and comment at least 30 days before the start of procurement. NextEra raised two concerns.

First, NextEra contends that the requirement is vague because it fails to define "major."¹² Every project differs, however, and it would thus be nearly impossible to establish a definition of the term "major" that would fit all projects and not be arbitrary. It is the CAISO's intent, and has been the CAISO's practice, to determine which project equipment and material is major in the context of the particular project in consultation

¹² NextEra Protest at 4.

with the approved project sponsor. If the approved project sponsor considers it necessary, the parties could identify the major equipment or materials in Appendix A of its APSA. By limiting the specifications that the approved project sponsor must submit to the CAISO and interconnecting participating transmission owner, the *pro forma* APSA reduces the burden on the approved project sponsor.

NextEra also believes that it is unclear whether the approved project sponsor may submit project specifications on a rolling basis, to reflect the fact that the procurement is staggered.¹³ The CAISO's intent is that the approved project sponsor submit the specifications 30 days prior to the procurement of the equipment or material to which the specifications apply. Thus, the specification submittal would be on a rolling basis, 30 days prior to when the approved project sponsor intends to release the equipment or material for specification. The CAISO acknowledges, however, that the requirement of section 5.4 that the approved project sponsor submit specifications 30 days prior to the date that procurement "is scheduled to commence" might be interpreted as inconsistent with that intent. The CAISO therefore requests that the Commission direct it to clarify section 5.4 on compliance.

Finally in this regard, NextEra objects to section 5.4's provision of 90 days for the CAISO to review final specifications (180 if they have changed). NextEra contends these times are excessive in light of the CAISO's prior review of the specifications.¹⁴ First, NextEra fails to recognize the difference between the initial and final review. Section 5.4.1 allows the CAISO and interconnecting participating transmission owner to review the specifications for specific equipment and material that the approved project

¹³ *Id.* at 4-5.

¹⁴ *Id.* at 5.

sponsor plans to procure. The level of review addresses specifications for the particular equipment and material, e.g., the cable, towers, and transformers. Section 5.4.2 allows the CAISO and interconnecting participating transmission owner to review the overall project specifications including, among other things, one-line diagrams, protection interconnections, line sag, and metering plans if applicable. Reviewing this overall project detail is more time-consuming than reviewing the bid packages for procurement of specific equipment and materials.

The time periods reflected in the *pro forma* APSA parallel those used in the CAISO's generator interconnection agreements. The CAISO's experience shows that these time frames appropriately balance the workloads of CAISO personnel with the ability to move forward with transmission and generation interconnections.

C. The CAISO Must Have Flexibility to Respond to Changes in Project Vendors.

Section 5.5.5 of the *pro forma* APSA provides that if the approved project sponsor decides to use a vendor or other project team member that is different from the vendor or other project team member the project sponsor specified in its project proposal, the approved project sponsor must notify the CAISO and the CAISO may "take whatever action is necessary to ensure that the selected vendor or Project team member will at a minimum provide the same level of service that would have been provided" by the original vendor or Project team member. NextEra complains that this gives the CAISO too much discretion.¹⁵

NextEra fails to appreciate that the qualifications and capabilities of the project team, which includes vendors and contractors, are a fundamental part of the CAISO's

¹⁵ *Id.* at 5-6.

determinations of the project sponsor's qualifications under section 24.5.3.1 of the CAISO tariff and a critical component of the selection process. It was at the insistence of potential project sponsors that the CAISO included consideration of the entire "project team" in this evaluation and referenced the "project team", not just the project sponsor, in the tariff. Use of a different vendor or other team member, therefore, could invalidate the CAISO's determination regarding the qualifications of the project sponsor. For example, the project sponsor's use of a particular vendor may have been a factor in the CAISO's selection of that project sponsor. If the project sponsor subsequently changes the vendor to a much less qualified or problematic vendor, one of the bases for the CAISO's selection will have been rendered moot. It is critical, therefore, that the CAISO have the flexibility to ensure that this does not occur and that the CAISO and CAISO ratepayers do not "get something different than they bargained for."

Moreover, the CAISO's discretion is not unlimited. The CAISO can only take such actions as are "necessary to ensure that the selected vendor or Project team member will at a minimum provide the same level of service." To the degree an approved project sponsor believes the CAISO has abused that discretion, it can seek redress through dispute resolution procedures.

D. The CAISO Agrees that Approved Project Sponsors Should Not Be Penalized for Delays Caused by the Interconnecting Participating Transmission Owner.

NextEra notes that section 5.8 of the proposed *pro forma* states that if the approved project sponsor cannot obtain the necessary approvals or property rights or otherwise cannot construct the project in a timely manner, the CAISO may take such action as it determines to be necessary in accordance with section 24.6.4 of the CAISO tariff, which includes selection of an alternative project sponsor. NextEra argues that

the approved project sponsor should not be penalized in this manner if the interconnecting participating transmission owner is responsible for the delay.¹⁶

The CAISO agrees. Under section 24.6.4 of the CAISO tariff, as part of the evaluation of alternatives to be considered in the event of such a delay, the CAISO will take into account “the reasons that the Approved Project Sponsor was unable to construct the transmission solution.” Under these circumstances, it would not be reasonable for the CAISO to terminate the APSA when the alternative is to address the interconnecting participating transmission owner’s delay.

E. The *Pro Forma* APSA Appropriately Requires CAISO Consent for Modifications to the Project.

Section 5.9 requires the approved project sponsor to provide the relevant drawings, plans, and specifications for modifications to the CAISO at least 90 calendar days in advance of the commencement of the work and gives the CAISO up to 30 days to provide its approval. NextEra argues that the CAISO should have no more than 45 days in which to review the proposed modification.¹⁷ NextEra has misread the section. The CAISO has only 30 calendar days from the date of submission of the modification request to approve the request.

NextEra also argues that the provision should apply only to major modifications.¹⁸ Southern California Edison makes a similar argument.¹⁹ The CAISO does not agree. The CAISO understands “modifications to the project” to refer to alterations in the project details, specifications, and other information provided to the CAISO. The CAISO

¹⁶ *Id.* at 6-7.

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 7.

¹⁹ Southern California Edison Protest at 9.

will select the approved project sponsor and monitor construction of the project based on this information, which will be included in Appendix A of the approved project sponsor's APSA. It should not be up to the approved project sponsor to determine which modifications it considers major; under such circumstances, the CAISO may be left unaware of a modification that it considers major until it is too late to take any action. The CAISO deems any information provided to it regarding the project as material. The approved project sponsor is free to make any modifications to its work that are not part of the project as the project sponsor has defined it to the CAISO in Appendix A to the APSA.

F. The Representation of Providing Accurate and Complete Technical Specifications Is Not that the Specifications Submitted in the Bid Stage Will Not Change.

NextEra seeks to confirm that the representation in section 24.1.5 of the proposed *pro forma* APSA that the technical specifications the approved project sponsor has provided to the CAISO are "accurate and complete" applies to the specifications included in the project application and is not a guarantee that the specifications will not change.²⁰ The *pro forma* APSA itself provides for changes to specifications as the project evolves; thus the CAISO does not consider it reasonable to interpret such a representation as a representation that the specifications will not change. The CAISO does, however, believe that the representation is a continuing obligation, and applies to the accuracy and completeness of any modified specifications during the life of the APSA.

²⁰ NextEra Protest at 7-8.

G. The Definition of *Force Majeure* in the *Pro Forma* APSA Derives from the Term “Uncontrollable Force” in the CAISO Tariff and Is Reasonable.

Southern California Edison points out that the definition of “*force majeure*” in the *pro forma* APSA is not the same as the definition in the CAISO tariff and asks clarification.²¹ The difference arises because although the CAISO tariff defines the term “*force majeure*,” it does not use the term within the tariff. Rather, section 14 of the CAISO tariff, which is entitled “Force Majeure, Indemnity, Liabilities, and Penalties” uses the defined term “uncontrollable force” when referring to events beyond a party’s control. Certain agreements, however, use the term “*force majeure*” with the definition provided in the tariff.

When it sought a tariff waiver in connection with the September 2011 outage in the southwest, the CAISO made a commitment to undertake a stakeholder process in order to better define the interaction between *force majeure* events and obligations under the CAISO tariff. That process is underway. In the interim, because the *pro forma* APSA implements provisions of section 24 of the CAISO tariff, the CAISO concluded it was appropriate as a general matter to use the tariff definition regarding events beyond a party’s control, *i.e.*, to define “*force majeure*” in the same manner as “uncontrollable force”:

Any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, flood, earthquake, explosion, any curtailment, order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities or any other cause beyond the reasonable control of the CAISO or Market Participant which could not be avoided through the exercise of Good Utility Practice.

²¹ Southern California Edison Protest at 2.

In response to stakeholder questions, however, the CAISO also concluded that some clarification is appropriate to specify certain circumstances that were not beyond the reasonable control of a party or could be avoided through exercise of good utility practice:

(1) acts of negligence or intentional wrongdoing by the Party claiming Force Majeure; (2) economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic; (3) economic hardship of either Party; or (4) failure or delay in granting of necessary permits for reasons not caused by Force Majeure.

The CAISO considers these additions clarifications, rather than modifications.

Southern California Edison seeks clarification that the reference to "economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic" excludes only those economic conditions that are not otherwise a force majeure event. TransCanyon seeks revision of the definition to make this clear.²²

The CAISO does not intend economic conditions that render a Party's performance of this Agreement unprofitable or otherwise uneconomic to constitute force majeure. Unlike in the case of a merchant transmission project, when an entity agrees to build a project that the CAISO has determined is necessary on a cost-based basis, the entity accepts the risk that economic conditions might change. Ordinarily, this is not a significant risk because the sponsor is guaranteed recovery of its prudent and just and reasonable expenditures. The only circumstance in which there is likely to be a greater risk is when the project sponsor agrees to a fixed cost cap or other cost-containment measure. However, a project sponsor that the CAISO selected as the approved project

²² TransCanyon Comments at 1-2.

sponsor based on its use of a cost cap should not later be able to avoid its commitment by pointing to changed economic circumstances.

H. There Is No Need to Require an Approved Project Sponsor to Post Financial Security.

Noting that PJM Interconnection, L.L.C., requires its equivalent of an approved project sponsor to post financial security, Southern California Edison asks that the Commission direct the CAISO to conduct a stakeholder process to examine if the CAISO should have a similar requirement.²³ TransCanyon makes a similar request, but only for reliability-driven projects.²⁴ Although the CAISO does not believe that the lack of a financial security requirement is a problem that warrants such a stakeholder process, the CAISO is seeking stakeholder input on that question.

The CAISO's evaluation of project sponsors under section 24.5.3.1 includes a complete examination of the project sponsor's financial resources, including its ability "to assume liability for major losses resulting from failure of any part of the facilities associated with the transmission solution." The selection criteria under section 24.5.4 include "the current and expected capabilities of the Project Sponsor and its team to finance, license, and construct the facility and operate and maintain it for the life of the solution." There is no reason to require a project sponsor that has undergone this extensive evaluation and met these criteria to undertake the additional burden of posting financial security. The CAISO has not imposed such a burden on the current participating transmission owners when it assigned them to construct transmission projects and the CAISO believes that approved project sponsors should receive similar

²³ Southern California Edison Protest at 3-4.

²⁴ TransCanyon Comments at 2.

treatment. Neither Southern California Edison nor TransCanyon have established the need for such security so as to justify the Commission directing a stakeholder process. The CAISO is, however, exploring with stakeholders whether the issue should be part of the current competitive solicitation enhancements stakeholder process.

I. Assignment for Collateral Security Should Not Require CAISO Consent.

Section 16.1 of the *pro forma* APSA prohibits assignment of the APSA without the CAISO's consent. The CAISO must evaluate the assignee to ensure that the assignee is qualified to construct the project. At the urging of stakeholders that are potential project sponsors, the CAISO exempted assignment for collateral security purposes. Southern California Edison contends that there should be no such exemption because it might allow assignment of construction responsibility to an unqualified entity.²⁵

Section 16.1 provides that “that the Approved Project Sponsor shall have the right to assign this Agreement, without the consent of the CAISO, for collateral security purposes to aid in providing financing for the Project, provided that the Approved Project Sponsor shall promptly notify the CAISO of any such assignment, including identification of the assignee and contact information.” Thus, the only time the approved project sponsor can assign its APSA without the CAISO's consent is for financing purposes. It cannot be done for construction responsibility as SCE contends.

The reality is, however, that project sponsors must obtain financing to construct transmission solutions and may not have other assets to pledge as collateral. Banks and other entities financing the project will almost by definition not be qualified to take

²⁵ Southern California Edison Protest at 4-6.

over construction of the project. Elimination of the exemption of assignment for collateral security purposes would thus impose a major obstacle to the participation of non-incumbents in transmission construction, contrary to the Commission's intent in Order No. 1000.²⁶

The CAISO does not consider it realistic to expect a financing entity to seek to assume construction responsibility in the case of a financial collapse of the approved project sponsor. The financing entity will have every incentive to reassign the APSA and, because the reassignment will require CAISO approval, to identify a qualified alternative project sponsor. The exemption therefore presents minimal risk, and the need for a broad pool of potential project sponsors outweighs what risk exists.

J. The CAISO Agrees That Imposing a Reasonable Obligation Regarding the Transfer of Assets is Appropriate, But the Issue Must Be Examined Further with Stakeholders.

Section 5.8 of the *pro forma* APSA provides that the approved project sponsor “agrees to work with CAISO, the alternate Project Sponsor, and, if applicable, the Interconnecting PTO to transfer responsibility for the Project to the alternative Project Sponsor” if the CAISO designates such an alternative project sponsor. Southern California Edison contends that the *pro forma* APSA should “require a Project Sponsor that abandons a needed project to transfer (a) all right, title, and interest in real and personal property, (b) all rights under agreements associated with the Project, including any interconnection agreements, and (c) any rights, title or interest that may have been pledged or assigned to any third parties (including without limitation, lenders, contractors or subcontractors) to the alternative Project Sponsor” at the sole discretion

²⁶ See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 at PP 253-56 (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).

of the new approved project sponsor.²⁷ Southern California Edison believes that otherwise the failed project sponsor would have the ability to compromise the timely and cost-effective transfer of responsibility.

The CAISO understands Southern California Edison's concern but also believes that Southern California Edison's proposal raises a number of issues, including the compensation to the project sponsor for the rights, title, or interest that it acquired. The CAISO proposes to add this issue to the "Competitive Solicitation Process Enhancements" stakeholder process that the CAISO is commencing. The first stakeholder call is scheduled for October 14.

K. There Is No Reason to Create Third-Party Beneficiary Rights in the *Pro Forma* APSA.

Southern California Edison contends that the *pro forma* APSA should provide rights to third-party beneficiaries in order to allow an interconnecting participating transmission owner acting as a backstop or an alternative Project Sponsor selected by the CAISO to fulfill its responsibilities.²⁸ Southern California Edison does not explain why the CAISO would not be in a position to enforce the APSA as necessary to ensure construction of the project or would otherwise decline to do so. The only CAISO *pro forma* contract that creates third-party beneficiary rights is the Reliability Must-Run contract, which governs relationships among three entities, the CAISO, the responsible utility, and the reliability must-run owner. The reason behind that construct was that the CAISO tariff established the roles and responsibilities between the CAISO and participating transmission owner who paid the costs incurred by the reliability must-run

²⁷ Southern California Edison Protest at 6-7.

²⁸ *Id.* at 7.

entity and the *pro forma* contract established the roles and responsibilities between the CAISO and the reliability must-run entity. The *pro forma* APSA presents no such circumstances and thus no reason to depart from standard CAISO practice regarding such rights.

L. There Is No Need to Require an Approved Project Sponsor to Procure Insurance.

In its transmittal letter, the CAISO explained it has concluded that it would be inappropriate and unnecessary to require approved project sponsors to carry insurance coverage beyond that which is required by law. Southern California Edison advocates that at the least the CAISO should require the approved project sponsor to procure insurance in accordance with Good Utility Practice.²⁹

Among other reasons for its conclusion, the CAISO explained that such a requirement would create an additional financial requirement beyond that required by the tariff. Southern California Edison counters that PJM Interconnection, L.L.C., proposed such a requirement and the Commission accepted it. That the Commission accepted such a requirement as just and reasonable, however, does not mean that it is necessary.

Southern California Edison nonetheless argues that the approved project sponsor could face a catastrophic loss, and that the CAISO and its ratepayers may have to make up the shortfall. The CAISO, however, is not a guarantor of approved project sponsors. Moreover the *pro forma* APSA does not impose any financial obligations on the CAISO or its ratepayers. Thus there is nothing in the tariff or *pro forma* APSA that would require the CAISO to take on an approved project sponsor's

²⁹ *Id.* at 8-9. The CAISO is unclear whether the standard of Good Utility Practice encompasses the maintenance of certain types of insurance and, if so, which types.

liabilities if the project sponsor cannot meet them. In the absence of such a potential liability, there is no reason for the CAISO to interfere with the approved project sponsor's business decisions. Moreover, the existing participating transmission owners are not required to procure insurance under the Transmission Control Agreement; thus, the approved project sponsors should not be held to a higher financial standard.

M. Approved Project Sponsors Should Be Able to Recover the Just and Reasonable Costs of Any Additional Specification Beyond the Initial Functional Requirements the CAISO Issued at the Time of the Competitive Solicitation.

Section 5.5.3 of the *pro forma* APSA requires that the approved project sponsor remedy any failure of the project to meet the standards and specifications provided by the interconnecting entity. TransCanyon asks that the CAISO clarify that this would not require the approved project sponsor to bear the costs of any additional specifications beyond the initial functional requirements the CAISO issued at the time of the competitive solicitation.³⁰ The CAISO would expect that the approved project sponsor would be able to recover any cost that the Commission determines to be just and reasonable project costs, regardless of the source of the costs. In order to resolve any doubts, however, the CAISO would not object to a Commission directive to specify that an approved project sponsor may include additional just and reasonable costs, such as interconnection costs, under section 5.5.3 in its transmission revenue requirement.

The CAISO expects that part of TransCanyon's concern may be the impact of such additional costs on a cost cap or other cost containment measure. Application of cost containment measures to such costs would be inequitable because the approved project sponsor would not have been aware of these additional costs when it submitted

³⁰ TransCanyon Comments at 3.

its project proposal. The CAISO would therefore request that the Commission further direct it, on compliance, to provide that any cost cap or cost containment measure included in an APSA will exclude bearing the costs of any additional specifications beyond the initial functional requirements for the transmission solution that the CAISO issued at the time of the competitive solicitation.

N. Indemnification Requirements in the *Pro Forma* APSA Do Not Extend Beyond the Approved Project Sponsor's Actions.

TransCanyon notes that section 5.5.4 of the *pro forma* APSA does not limit an approved project sponsor's indemnification obligation to claims arising from the approved project sponsor's construction of the project, but rather simply to claims arising from project construction. TransCanyon is concerned that this may make the approved project sponsor liable for claims arising from actions not directly within its control.³¹ TransCanyon's concern is unfounded. Section 5.5.4 states that indemnification for claims arising from the project construction is according to the terms and conditions of section 15.1 of the APSA. Section 15.1 requires each party to indemnify the other from all losses "arising out of or resulting from the Indemnifying Party's action or inactions of its obligations under this Agreement." Thus, the approved project sponsor does not assume liability for losses arising from actions that are not within its control.

It would be a mistake, however, to limit liability to claims arising from "the approved project sponsor's construction of the project." This could lead to disputes regarding claims arising from actions of vendors and subcontractors when the action is subject to the approved project sponsor's control, but not specifically an action of the

³¹ *Id.* at 4.

approved project sponsor. The proposed language of section 5.5.4 avoids such disputes while preserving the limitations in section 15.1.

IV. CONCLUSION

For the reasons discussed above, the CAISO asks that the Commission reject the protests and approve the *pro forma* APSA as filed.

Respectfully submitted,

/s/ Michael E. Ward

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Dated: October 14, 2014

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 this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2013)).

Dated at Washington, DC on this 14th day of October, 2014.

/s/ Daniel Klein

Daniel Klein