

December 2, 2011

The Honorable Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket Nos. ER10-1401-000; ER10-2191-000**

**Green Energy Express LLC and
21st Century Transmission Holdings, LLC
Docket No. EL-10-76-000**

Dear Secretary Bose:

The California Independent System Operator Corporation (“CAISO”) hereby submits this filing to comply with the Commission’s October 20, 2011 Order in this docket.¹ The October 20 Order, *inter alia*, denied in part and accepted in part the CAISO’s compliance filing concerning its revised transmission planning process (“RTPP”). This submission sets forth additional revisions to the CAISO’s open access transmission tariff as directed by the Commission in that order. The CAISO requests that the Commission rule on the CAISO’s compliance filing by February 1, 2012, so that the CAISO will know with certainty the specific rules that will apply to reliability projects in the 2011/2012 planning cycle, thereby enabling the CAISO to ensure that reliability needs identified in this planning cycle can be addressed in a certain and timely manner.

I. Introduction and Background

On June 4, 2010, the CAISO proposed revisions to its transmission planning process intended to facilitate long-term planning for the transmission additions and upgrades needed to meet California’s ambitious renewable energy targets. Among other things, the CAISO proposed to implement comprehensive planning that will identify infrastructure needs for the CAISO balancing authority area and provide opportunities for potential project sponsors to submit proposals in

¹ *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,062 (2011) (“October 20 Order”).

response to identified needs. The RTPP introduced a new category of transmission—policy-driven transmission elements—and a process for soliciting proposals and selecting the entities who will build and own policy-driven and economically driven transmission elements. The Commission approved the RTPP, subject to certain modifications and clarifications.²

In the RTPP Order, the Commission addressed the issue of the responsibility for construction of reliability-driven projects in the RTPP. Relevant to this issue, one area of uncertainty and some controversy during the stakeholder process and the technical conference regarding the RTPP had been the nature of the distinctions between the categories of projects. In response to these concerns, the CAISO stated in its Initial Post Technical Conference Comments:

As the CAISO indicated at the technical conference, reliability driven projects are limited to projects intended to mitigate specifically identified reliability issues on existing participating transmission owner facilities. Under the tariff, the scope of reliability driven projects cannot be expanded to cover public policy needs or projects to provide economic benefits. Reliability projects are limited solely to projects that meet identified reliability needs in a cost-effective manner. If an upgrade solves a reliability problem and also provides additional non-reliability driven benefits such as accessing renewables or mitigating congestion costs, the CAISO anticipates that additional project cost would have to be incurred to realize such additional benefits, and the project would no longer fit the narrow definition of a reliability project.³

The CAISO made a similar statement with regard to projects to ensure the feasibility of long-term CRRs.⁴

The Commission responded to these comments in the RTTP Order:

CAISO further clarifies in its pleadings that if a transmission upgrade solves a reliability problem while simultaneously providing

² *Cal. Indep. Sys. Operator Corp.* 133 FERC ¶61,224 (2010) (“RTPP Order”).

³ Initial Post Technical Conference Comments of the California Independent System Operator Corporation, Docket No. ER10-1401 at 10, filed September 8, 2010.

⁴ *Id.* at 10-11 (“Section 24.4.6.4 projects are limited to transmission upgrades or additions needed to maintain the feasibility of previously-released Long-Term CRRs. Under the existing tariff provisions, the scope of these projects cannot be expanded to cover public policy needs or projects to provide economic benefits. If an upgrade is necessary to maintain the feasibility of long-term CRRs and also provides additional benefits such as accessing renewables or mitigating congestion costs, the CAISO anticipates that additional project cost would have to be incurred to realize such additional benefits, and the project would no longer fit the narrow definition of this category, *i.e.*, the most cost-effective means of maintaining the feasibility of long-term CRRs.”).

additional benefits, the project would no longer fall within the narrow definition of a reliability project for which a PTO would have the exclusive right to build. We note that such language is not included in section 24.1.2 of CAISO's existing tariff or RTPP proposed tariff section 24.4.6.2. Because this is an important distinction, we direct CAISO to make a compliance filing within 30 days of issuance of this order. Consistent with CAISO's pleadings, the compliance filing should include language to clarify that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project. Additionally, the compliance filing should include tariff language addressing how CAISO will identify the existence of such additional benefits.

Such a project may instead be categorized as a policy-driven or economically-driven element, for which . . . all transmission developers would have an opportunity to compete for the right to build.⁵

The Commission made the same directive regarding projects to ensure the feasibility of long-term CRRs.⁶ Thus, in its RTPP Order, the Commission did not prescribe the specific tariff language, standards, and criteria that the ISO should apply to determine the existence of additional benefits. Rather, the Commission left it to the ISO to submit tariff language addressing how it would propose to identify the existence of such additional benefits.

The CAISO sought clarification regarding this directive. The CAISO stated that the Commission's summary description of the CAISO's position could be read to vary from the CAISO's original statements in its Initial Post Technical Conference Comments and that the situation described in the CAISO's comments concerned a proposed project that has some transmission additions or upgrades that resolve criteria violations but also includes other additions or upgrades that are determined under the transmission planning process to be needed for economic or policy reasons. The CAISO asked the Commission to clarify that (1) economically driven and policy-driven transmission elements approved in the transmission planning process that also eliminate a reliability need or ensure the feasibility of long-term CRRs do not, because of that fact, lose their character as economically driven or policy-driven transmission elements, and (2) reliability-driven projects and projects to ensure the feasibility of long-term CRRs that have incidental economic or policy benefits, but are not deliberately expanded in scope to obtain such benefits or approved as economically driven and policy-driven

⁵ RTPP Order at PP 60-61.

⁶ *Id.* at P 71.

transmission elements, do not lose their character as reliability-driven projects or projects to ensure the feasibility of long-term CRRs.

Consistent with the requested clarification, the CAISO submitted the following language (the underlined language constituted the compliance language):

The CAISO, in coordination with each participating TO with a PTO Service Territory will, as part of the Transmission Planning Process and consistent with the procedures set forth in the Business Practice Manual, identify the need for any transmission additions or upgrades required to ensure System Reliability consistent with all Applicable Reliability Criteria and CAISO Planning Standards. . . . The Participating TO with a PTO Service Territory in which the transmission upgrade or addition deemed needed under this Section 24 will have the responsibility to construct, own and finance, and maintain such transmission upgrade or addition. If, as part of the Transmission Planning Process, the CAISO identifies a Category 1 policy-driven element or an economically-driven element as being needed under Sections 24.4.6.6 and 24.4.6.7 that eliminates an identified reliability concern under Applicable Reliability and CAISO Planning Standards, such element will retain its categorization as Category 1 policy-driven or economic element, respectively. If a transmission addition or upgrade required to ensure System Reliability provides other benefits without any expansion of its scope to explicitly include such benefits, such transmission addition or upgrade will retain its categorization as a reliability project.

The CAISO submitted parallel language regarding projects to ensure the feasibility of long term CRRs.

In the October 20 Order the Commission denied the requested clarification and rejected this portion of the compliance filing:

We deny CAISO's motion for clarification. The Commission relied on CAISO's statements to find that the RTPP was just and reasonable and not unduly discriminatory. Indeed, in the RTPP Order, we found the distinction between a project that provides only reliability benefits and a project that provides reliability benefits while simultaneously providing additional benefits to be an important distinction. CAISO's clarification of its statements on rehearing would be contrary to that important distinction. For these reasons, we deny CAISO's request for rehearing. Accordingly, we find that proposed tariff sections 24.4.6.2 and 24.4.6.4 in the compliance filing are unjust and unreasonable and reject them. We

direct CAISO to revise its tariff, within 30 days of the date of this order, as directed in the RTPP Order.⁷

With this compliance filing, the CAISO submits modified tariff language in response to the Commission's directive in the October 20 Order. Consistent with the RTPP Order, the tariff language sets forth the criteria by which the CAISO will determine whether reliability-driven projects and projects to maintain the feasibility of long term CRRs provide additional economic or public policy benefits such that all transmission developers will have an opportunity to compete for the right to build and own the project.

II. Tariff Modifications

In order to comply with the Commission's mandate, the CAISO has endeavored to develop a metric that will distinguish reliability or Long Term CRR projects that provide certain and demonstrable public-policy or economic benefits and therefore should be reclassified and open to competitive solicitation from those that could be viewed as providing an uncertain or miniscule amount of public-policy or economic benefits. Specifically, the CAISO submits the following proposed tariff language to comply with the October 20 Order:

24.4.6.2

A reliability-driven upgrade or addition found to be needed pursuant to this section which is eligible for cost recovery under the CAISO's High Voltage Transmission Access Charge shall be subject to the provisions of Section 24.5 if such addition or upgrade also provides demonstrable economic or public policy benefits as described below. The CAISO will find that a needed reliability-driven transmission upgrade or addition also provides economic benefits if its economic benefits exceed ten (10) percents of its costs, consistent with the determination of costs and benefits for economically-driven projects under Section 24.4.6.7 and in accordance with the procedures set forth in the Business Practice Manual. The CAISO will assess whether a needed reliability-driven upgrade or addition also serves to meet state or federal policy requirements or directives as specified in the Study Plan for the current planning cycle, in accordance with the procedures and criteria set forth in Section 24.4.6.6 and the Business Practice Manual. If the CAISO finds that a needed reliability upgrade or addition also is needed under Section 24.4.6.6, or eliminates or partially fills the need for a policy-driven transmission element

⁷ October 20 Order at P 20 (footnotes omitted).

found to be needed under Section 24.4.6.6, such addition or upgrade shall be subject to the provisions of Section 24.5.

The CAISO is proposing comparable language in Section 24.4.6.4 with respect to Long Term CRR projects.⁸

As discussed below, the metrics proposed reflect the manner in which the CAISO evaluates each type of project in the transmission planning process.

A. Public Policy Benefits.

Under section 24.3.2(i) of its tariff, the CAISO identifies specific state or federal requirements or directives that the CAISO will use to identify policy-driven transmission elements. These requirements or directives are included in the Study Plan for the particular planning cycle. Then, under section 24.4.6.6, the CAISO determines the need for, and identifies, Category 1 policy-driven elements that efficiently and effectively meet the stated policies under alternative resource location and integration assumptions, while mitigating the risk of stranded investment. These elements address the universe of public-policy needs identified for the current planning cycle and, accordingly, reflect the only public-policy benefits that are relevant to that planning cycle.

The CAISO does not understand the Commission's directive in the October 20 Order as requiring the CAISO to attribute public-policy benefits to, and thus re-classify for competitive solicitation, reliability projects that do not meet or contribute to meeting an identified policy need and provide the relevant benefits consistent with the criteria and standards set forth in Section 24.4.6.6 of the tariff. To do otherwise would render irrelevant the process for planning an orderly and cost-effective development of transmission elements for fulfilling public policy directives that was the centerpiece of the CAISO's RTPP tariff amendment.

For example, it would seem inappropriate to attribute policy-driven benefits to a reliability project that is located near a low ranked renewable resource area that is not included in the CAISO's or the California Public Utility Commission's base case resource portfolio used in the planning process. Such an area would not drive the identification of or justify the need for any transmission additions or upgrades under the policy-driven category, and therefore would not offer any public-policy benefits to which a needed reliability project in the area could contribute. To attribute public-policy benefits to a needed reliability project whose location does not contribute to any of the resource areas in the planning

⁸ This compliance filing also revises Tariff Section 24.5.2.3(b) to allow 120 days rather than 60 days for seeking siting approval, as directed by the Commission in the October 20 Order and the earlier RTPP Order. The CAISO proposes a December 20, 2010 effective date for this change because the Commission gave specific instructions in its RTPP Order to make this exact change. RTPP Order at P 242.

portfolios would be inconsistent with the approved logic by which public policy benefits are specified and public policy transmission elements are identified and approved, in accordance with the public policy criteria in Section 24.4.6.6.

As the proposed tariff language indicates, the CAISO will evaluate eligible reliability projects to determine if they provide public policy benefits in accordance with the procedures and criteria specified in Section 24.4.6.6. Consistent with the planning process for policy-driven projects, the proposed tariff provisions provide that a transmission upgrade or addition that is identified as reliability-driven will be subject to a competitive solicitation if it is found to be needed under Section 24.4.6.6 or otherwise resolves or reduces an identified policy-driven need, that is, if the CAISO determines that it is needed under section 24.4.6.6 or if it eliminates the need for or reduces the size or scope of what would otherwise be a Category 1 policy-driven transmission element approved under section 24.4.6.6. This approach will ensure that the CAISO's evaluation of the transmission that is needed to effectively and efficiently meet public policy goals is not undermined by its approval of reliability projects.

B. Economic Benefits.

Under section 24.4.6.7, the CAISO takes into consideration all other categories of transmission identified for approval in the current planning cycle and conducts economic studies to evaluate whether additional transmission elements are needed to address congestion identified in the congestion data summary, local capacity area resource requirements, projected increased congestion, and the integration of new generation resources or loads. The CAISO then identifies and approves transmission elements to meet these needs through a cost-benefit analysis that includes reductions in production cost, congestion costs, losses, and capacity or other electric supply costs resulting from improved access to cost-effective resources. A transmission element is considered a needed economically-driven transmission element if the benefits outweigh the costs.

In considering the situation where a needed reliability project provides additional but unintended economic benefits and should therefore be re-categorized for the purpose of competitive solicitation, the CAISO does not understand that the Commission's October 20 Order intended that the project's economic benefits must exceed its costs and thereby qualify it as an economically-driven element in order to be re-categorized. At the same time, the CAISO does not understand that the Commission intended that the most miniscule unintended economic benefits of a reliability project should cause its re-categorization because, applying such a criterion, virtually every transmission addition and upgrade arguably could be treated as an economic project for the purposes of competitive solicitation, and the rights of participating transmission owners under section 24.4.6.2 to build reliability projects – *a right that the Commission specifically approved over protests* – would be meaningless. In practice, almost every new transmission facility will provide some unavoidable, minimal reduction in line

losses, even if such reductions are not an explicit purpose of the project, and such de minimis line loss avoidance would not justify the construction of a new upgrade or addition.⁹ Absent a reasonable threshold by which economic benefits are deemed meaningful, no reliability project would retain its classification as a reliability project.

Based on the argument above, the CAISO proposes to use the same cost-benefit analysis and assess the same benefits that are used to identify an economically-driven element to determine if transmission expansion that is identified as reliability-driven will be subject to a competitive solicitation because of economic benefits, except that the CAISO will make this determination if the economic benefits of the project are equivalent to or greater than ten percent of the cost of the project. The CAISO believes that ten percent is an appropriate threshold. It is low enough to broadly expand the pool of resources eligible for competitive solicitation; in comparison, section 24.4.6.7, as noted, requires that there be net benefits. On the other hand, it is high enough to exclude projects with de minimis, unintended, or unclear economic benefits.

Moreover, in calculations such as determining economic benefits, which depend on a wide variety of assumptions, there is always a potential margin of error. In other contexts, the Commission has found that ten percent is an appropriate threshold for accommodating uncertainty.¹⁰

C. Applicability of Competitive Solicitation

The CAISO notes that, consistent with the RTTP Order, section 24.5.2 will apply to reliability projects that provide policy or economic benefits in the same manner as it applies to transmission elements initially designated as policy-driven or economically driven. Under section 24.5.2, if the project involves an upgrade to or addition on an existing facility of a participating transmission owner, the construction of facilities on a participating transmission owner's right-of-way, or the construction or ownership of facilities within a participating transmission owner's substation, then the participating transmission owner will construct and own such upgrade or addition unless the Project Sponsor and the participating transmission owner agree to a different arrangement.

In addition, the proposed tariff revisions are limited to projects that are eligible for cost recovery under the CAISO's high voltage transmission access charge which, under the CAISO tariff, are those of 200 kV and above. Although low

⁹ Indeed, a transmission owner would never propose to build, and the CAISO's TPP would not approve, a facility intended only to provide de minimis line loss or congestion cost reduction.

¹⁰ See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services*, 96 FERC ¶61,120 at 61,519 (2001); *Pub. Serv. Co. of N.M.*, 95 FERC ¶ 61,481 at 62,714 (2001); *Niagara Mohawk Power Corp.*, 86 FERC ¶ 61,009 at 61,025 (1999); *Terra Comfort Corp.*, 52 FERC ¶ 61,241 at 61,841 (1990).

voltage facilities are included in the CAISO planning process, they are not included in the system-wide transmission access charge because they do not provide system-wide benefits. Rather, the costs of such facilities are paid to the relevant participating transmission owner by the users of the facilities through the participating transmission owner-specific low voltage access charge. They are essentially local facilities, intended to serve retail customers within the participating transmission owner's service territory.

The CAISO proposes to exclude low-voltage facilities because they do not provide the type of region-wide policy or economic benefits that the CAISO understands to be the Commission's concern. In that regard, although the filing is not a compliance filing with Order No. 1000, the proposed limitation is consistent with the principles in Order No. 1000 which eliminates Federal rights of first refusal for projects that are eligible for regional cost allocation¹¹ but not for local facilities, which are facilities located solely within a public utility transmission provider's retail distribution service territory or footprint and are not selected in the regional transmission plan for purposes of a region-wide cost allocation.¹² The Commission's rationale for this distinction is well-founded, and is applicable to the RTPP. As indicated above, under the CAISO tariff, low voltage facilities are not subject to regional cost allocation. Retaining a participating transmission owner's right to build such projects is also consistent with retaining that right for projects that are additions or upgrades to existing facilities or are located on the right-of-way or substation of a participating transmission owner.¹³

Further, applying the tariff revisions to low voltage facilities would result in inconsistent application of the provision and inequitable treatment of the CAISO's participating transmission owners. Not all participating transmission owners have turned their low voltage facilities over to the CAISO's operational control.

¹¹ Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 at P 313 (2011)

¹² *Id.* at P 63, 330.

¹³ The Commission has also recognized previously that, because transmission owners bear the risk and responsibility of reliably operating their transmission facilities and maintaining the reliability of their transmission system, they should be the ones responsible for building and owning the necessary reliability upgrades to their system. See *Cambridge Elec. Light Co.*, 96 FERC ¶ 61,205 at 61,874 (2001); *Va. Elec. Power Co.*, 93 FERC ¶ 61,307 at 62,054 (2000), *order on re'hg*, 94 FERC ¶ 61,164 at 61,589 (2001); *Carolina Power & Light Co.*, 93 FERC ¶ 61,032 at 61,072-73 (2000). The Commission has also recognized that where the interconnection of a third-party transmission provider's facilities to the facilities of an existing transmission owner requires system upgrades to maintain reliability, avoid overloads, and for other reasons, such facilities are the responsibility of the existing transmission owner. *PJM Interconnection LLC*, 102 FERC ¶ 61.277 at PP 21, 44 (2003).

The CAISO recognizes that aspects of its tariff will change further as a result of compliance with Order No. 1000. The Commission should confirm that any actions the Commission takes with respect to the instant compliance filing do not constrain, and are without prejudice to, the CAISO's ability under Order No. 1000 to differentiate between "local" facilities and regional facilities subject to regional cost allocation.

III. Effective Date

The CAISO requests that the Commission make the modifications to Tariff Sections 24.4.6.2 and 24.4.6.4 effective on December 2, 2011, the date of this filing, so they can apply to the 2011/2012 planning cycle. The CAISO also requests that the Commission rule on the CAISO's compliance filing by February 1, 2012, so that the CAISO will know with certainty the specific rules that will apply to reliability projects in this planning cycle, thereby enabling the CAISO to ensure that reliability needs identified in this planning cycle can be addressed in a certain and timely manner. Under the established schedule for the 2011-2012 planning process, the CAISO will issue a draft transmission plan in January 2012 and a final transmission plan in March 2012. The CAISO needs to know the specific rules that will apply to reliability projects that may also provide economic or public policy benefits so its assessment of such benefits can be reflected in the final transmission plan. Any delays in the approval of needed reliability projects could prevent such projects from being built in a timely manner, thereby threatening grid reliability and potentially leading to reliability standards violations.

The CAISO notes that it completed the 2010/2011 transmission plan and assigned construction responsibility for reliability projects in May 2011. In its October 20 Order, the Commission rejected the compliance filing tariff language applicable to reliability projects that also provide economic or public policy benefits. Requiring the CAISO to revisit the decisions included in the 2010/2011 transmission plan would not only entail a significant delay of the projects approved in the plan and ignore the fact that millions of dollars already have been spent doing the necessary work to obtain regulatory approvals and pursue construction of the projects, but would also have a detrimental impact on the reliability of the CAISO balancing authority area.

The CAISO submits that a December 2, 2011 effective date not only is within the Commission's discretion, but is also the date most consistent with the Federal Power Act and precedent regarding the filed rate doctrine and the rule against retroactive ratemaking.¹⁴

¹⁴ The filed rate doctrine "forbids a regulated entity to charge rates for its services other than those properly filed with the appropriate federal regulatory authority." *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 (1981). The rule against retroactive ratemaking, which derives from the

Under Section 205 of the Federal Power Act, if the Commission cannot conclude without a hearing that a rate is just and reasonable (and not unduly discriminatory), it may accept that rate “subject to refund.” In such cases, if the Commission later finds the rate to be unjust, unreasonable, or unduly discriminatory, it may direct refunds retroactively to the effective date of the rate without violating the filed rate doctrine or the rule against retroactive ratemaking. Whether to do so is within the Commission’s discretion.¹⁵

Although section 205 explicitly addresses only refunds,¹⁶ there are also exceptions to the filed rate doctrine and the rule against retroactive ratemaking “when parties have notice that a rate is tentative and may be later adjusted with retroactive effect, or where they have agreed to make a rate effective retroactively. . . . Notice to affected parties . . . changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.”¹⁷ The standard for notice in proceedings under section 206 of the Federal Power Act is whether the Commission can be said to have “fixed” the rates. Although courts have not clearly defined the required specificity of the notice in section 205 proceedings, the Commission has applied the “fixed” standard in the context of section 205 proceedings.¹⁸

Although the RTPP compliance filing involves neither a rate refund nor a rate increase, it is still subject to the filed rate doctrine and the rule against retroactive rate making. The question, then, is whether market participants had sufficient notice of the nature of the compliance tariff provisions to permit their retroactive application. The CAISO submits that they did not. In neither the RTPP Order nor the October 20 Order did the Commission “fix” the rate or otherwise provide enough specificity on the new terms and conditions to be included in the RTPP compliance filing. Instead, the Commission merely affirmed the principle that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, then the participating transmission owner would not have an exclusive right to construct the project. The Commission instructed the CAISO to provide the criteria it would use for determining incidental economic or policy benefits; the Commission did not in any way specify or prescribe those standards

filed rate doctrine, “prevents utilities from collecting revenues to compensate for [prior over- or] under-recoveries.” *So. Cal. Edison v. FERC*, 805 F.2d 1068, 1070 (D.C. Cir. 1986).

¹⁵ See *Towns of Concord v. FERC*, 955 F.2d 67 (D.C. Cir. 1992).

¹⁶ Section 205, for example, does not authorize surcharges. *FPCComm. v. Tenn. Gas Transmission Co.*, 371 U.S. 145, (1962); see also *Columbia Gas Transmission Corp. v. FERC*, 831 F.2d 1135 (D.C. Cir. 1987).

¹⁷ *NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 801 (D.C., Cir. 2007) (internal citations omitted).

¹⁸ *Entergy Services, Inc.*, 125 FERC ¶ 61128 at P 10 (2008).

or criteria, or the methodology used to assess them. Rather, the Commission left it to the CAISO to propose specific tariff language and an approach to assessing such benefits. A mere statement of general policy is not sufficient notice for retroactive application of compliance filings consistent with that policy.¹⁹

Even if the Commission were to determine that notice was sufficient to permit retroactive effectiveness, the Commission would still retain the discretion to apply the new tariff provisions prospectively. For example, the Commission made such a decision in a proceeding involving PJM's transmission planning process with a procedural history not unlike that in this proceeding. In 2006, PJM proposed to revise the manner in which it would select economic projects to include in its regional transmission expansion plan. It proposed to replace its existing approach, which addressed only unhedgeable congestion, with an approach that considered a variety of congestion metrics. The Commission initially approved the proposal, effective September 9, 2006 - the effective date requested by PJM (which was one day after the compliance filing) - subject to a further compliance filing explaining how PJM will determine the net social economic benefits of a project.²⁰ After additional compliance filings and orders, PJM made a third compliance filing on June 16, 2008 for which it requested prospective application, *i.e.*, a June 17, 2008 effective date. The Commission accepted the compliance filing as submitted.²¹

The circumstances presented here are also similar to proceedings in which the Commission has directed a rate design modification. It is the Commission's general policy to make rate design changes effective prospectively, because market participants cannot revisit economic decisions made in reliance on the existing rate design.²² In this instance, relying on the authorizations issued in the transmission plan, transmission owners have already taken necessary steps and incurred significant costs toward the construction of the reliability projects found to be needed to address identified reliability concerns. Further, no stakeholder filed a dispute or complaint regarding the reliability project findings and authorizations reflected in the 2010/2011 transmission plan. In addition, requiring the CAISO to revisit the assignment of construction responsibility in the 2010/2011 transmission plan could jeopardize grid reliability. Reliability projects are included in the plan based upon the projected occurrence of reliability criteria violations. The inclusion of a project in the plan for a particular cycle is intended

¹⁹ *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 580 (D.C. Cir. 1990).

²⁰ *PJM Interconnection, L.L.C.*, 117 FERC ¶ 61,218 at P 24 (2006).

²¹ *PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,152 (2009). *See also PJM Interconnection, LLC*, 105 FERC ¶61,123 at P 67 (2003)(directing that certain provisions pertaining to the thresholds and criteria used to determine economic expansions under its Regional Transmission Expansion Plan would not be effective until the date of the Commission's order on rehearing and compliance filing).

²² *See Union Elec. Co.*, 58 FERC ¶ 61247 at 61,818 (1992).

to ensure that the project is completed prior to the occurrence of the violation. Revisiting the assignment of construction responsibility at this time could entail a full year's delay (or longer) of these needed projects, erasing or severely reducing any margin in the schedules for the construction of these needed projects, thereby potentially causing critical in-service dates to be missed and jeopardizing grid reliability.

For these reasons, the CAISO urges the Commission to make these tariff revisions effective as of December 2, 2011, the date of this filing.

IV. Attachments

Attached hereto as Attachment A are blackline tariff sheets containing the changes described in this transmittal letter. Attachment B contains the requisite clean tariff sheets.

V. Conclusion

For the reasons set forth above, the CAISO respectfully requests that the Commission approve the tariff modifications as proposed herein.

Respectfully submitted,

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Dated: December 2, 2011

CERTIFICATE OF SERVICE

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

Dated at Folsom, California this 2nd day of December, 2011.

Anna Pascuzzo
Anna Pascuzzo

California Independent System Operator Corporation

Fifth Replacement FERC Electric Tariff

Attachment A - Clean Tariff

Revised Transmission Planning Process Compliance Filing

December 2, 2011

24.4.6.2

Reliability Driven Projects

The CAISO, in coordination with each Participating TO with a PTO Service Territory will, as part of the Transmission Planning Process and consistent with the procedures set forth in the Business Practice Manual, identify the need for any transmission additions or upgrades required to ensure System Reliability consistent with all Applicable Reliability Criteria and CAISO Planning Standards. In making this determination, the CAISO, in coordination with each Participating TO with a PTO Service Territory and other Market Participants, shall consider lower cost alternatives to the construction of transmission additions or upgrades, such as acceleration or expansion of existing projects, Demand-side management, Remedial Action Schemes, appropriate Generation, interruptible Loads, storage facilities or reactive support. The CAISO shall direct each Participating TO with a PTO Service Area, as a registered Transmission Planner with NERC, to perform the necessary studies, based on the Unified Planning Assumptions and Study Plan and any applicable Interconnection Study, and in accordance with the Business Practice Manual, to determine the facilities needed to meet all Applicable Reliability Criteria and CAISO Planning Standards. The Participating TO with a PTO Service Area shall provide the CAISO and other Market Participants with all information relating to the studies performed under this Section, subject to any limitation provided in Section 20.2 or the applicable LGIP. The Participating TO with a PTO Service Territory in which the transmission upgrade or addition deemed needed under this Section 24 will have the responsibility to construct, own and finance, and maintain such transmission upgrade or addition. A reliability-driven upgrade or addition found to be needed pursuant to this section which is eligible for cost recovery under the CAISO's High Voltage Transmission Access Charge shall be subject to the provisions of Section 24.5 if such addition or upgrade also provides demonstrable economic or public policy benefits as described below. The CAISO will find that a needed reliability-driven transmission upgrade or addition also provides economic benefits if its economic benefits exceed ten (10) percent of its costs, consistent with the determination of costs and benefits for economically-driven projects under Section 24.4.6.7 and in accordance with the procedures set forth in the Business Practice Manual. The CAISO will assess whether a needed reliability-driven upgrade or addition also serves to meet state or federal policy requirements or directives as specified in the Study Plan for the current

planning cycle, in accordance with the procedures and criteria set forth in Section 24.4.6.6 and the Business Practice Manual. If the CAISO finds that a needed reliability upgrade or addition also is needed under Section 24.4.6.6, or eliminates or partially fills the need for a policy-driven transmission element found to be needed under Section 24.4.6.6, such addition or upgrade shall be subject to the provisions of Section 24.5.

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24.4.6.4 Projects to Maintain the Feasibility of Long Term CRRs

The CAISO is obligated to ensure the continuing feasibility of Long Term CRRs that are allocated by the CAISO over the length of their terms. In furtherance of this requirement the CAISO shall, as part of its annual Transmission Planning Process cycle, test and evaluate the simultaneous feasibility of allocated Long Term CRRs, including, but not limited to, when acting on the following types of projects: (a) planned or proposed transmission projects; (b) Generating Unit or transmission retirements; (c) Generating Unit interconnections; and (d) the interconnection of new Load. Pursuant to such evaluations, the CAISO shall identify the need for any transmission additions or upgrades required to ensure the continuing feasibility of allocated Long Term CRRs over the length of their terms and shall publish Congestion Data Summary along with the results of the CAISO technical studies. In assessing the need for transmission additions or upgrades to maintain the feasibility of allocated Long Term CRRs, the CAISO, in coordination with the Participating TOs and other Market Participants, shall consider lower cost alternatives to the construction of transmission additions or upgrades, such as acceleration or expansion of existing projects; Demand-side management; Remedial Action Schemes; constrained-on Generation; interruptible Loads; reactive support; or in cases where the infeasible Long Term CRRs involve a small magnitude of megawatts, ensuring against the risk of any potential revenue shortfall using the CRR Balancing Account and uplift mechanism in Section 11.2.4. As part of the CAISO's Transmission Planning Process, the Participating TOs and Market Participants shall provide the necessary assistance and information to the CAISO to allow it to assess and identify transmission additions or upgrades that may be necessary under Section 24.4.6.4. To the extent a transmission upgrade or addition is deemed needed to maintain the feasibility of allocated Long Term CRRs in accordance with this Section and included in the CAISO's annual Transmission Plan, the CAISO will designate the Participating TO(s) with a PTO Service Territory

in which the transmission upgrade or addition is to be located as the Project Sponsor(s), responsible to construct, own and finance, and maintain such transmission upgrade or addition. An upgrade or addition found to be needed pursuant to this section which is eligible for cost recovery under the CAISO's High Voltage Transmission Access Charge shall be subject to the provisions of Section 24.5 if such addition or upgrade also provides demonstrable economic or public policy benefits as described below. The CAISO will find that a transmission upgrade or addition needed to maintain the feasibility of allocated Long Term CRRs also provides economic benefits if its economic benefits exceed ten (10) percent of its costs, consistent with the determination of costs and benefits for economically-driven projects under Section 24.4.6.7 and in accordance with the procedures set forth in the Business Practice Manual. The CAISO will assess whether an upgrade or addition needed to maintain the feasibility of allocated Long Term CRRs also serves to meet state or federal policy requirements or directives as specified in the Study Plan for the current planning cycle, in accordance with the procedures and criteria set forth in Section 24.4.6.6 and the Business Practice Manual. If the CAISO finds that an upgrade or addition needed to maintain the feasibility of allocated Long Term CRRs also is needed under Section 24.4.6.6, or eliminates or partially fills the need for a policy-driven transmission element found to be needed under Section 24.4.6.6, such addition or upgrade shall be subject to the provisions of Section 24.5.

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24.5.2.3

Multiple Project Sponsors

- (a) If two (2) or more Project Sponsors submit proposals to own and construct the same transmission element or elements under section 24.5.1 and the CAISO determines that the two (2) or more Project Sponsors are qualified to own and construct the project under the criteria set forth in section 24.5.2.1, the CAISO will, upon request, facilitate an opportunity for the Project Sponsors to collaborate with each other to propose a single project to meet such need. If joint projects are proposed following the collaboration period, the CAISO will revise the list of potential renewable transmission upgrades or additions eligible for selection.
- (b) If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to the same authorized governmental body to approve the project

siting, the qualified Project Sponsors must seek siting approval within one hundred and twenty (120) days and the CAISO will accept the Project Sponsor determination by that authorized governmental authority.

- (c) If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to different authorized governmental bodies for project siting approval, the CAISO will select one approved Project Sponsor based on a comparative analysis of the degree to which each Project Sponsor meets the criteria set forth in sections 24.5.2.1 and a consideration of the factors set forth in 24.5.2.4. The CAISO will engage an expert consultant to assist with the selection of the approved Project Sponsor. Thereafter, the approved Project Sponsor must seek siting approval, and any other necessary approvals, from the appropriate authority or authorities within one-hundred twenty (120) days of CAISO approval.

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California Independent System Operator Corporation

Fifth Replacement FERC Electric Tariff

Attachment B - Marked Tariff

Revised Transmission Planning Process Compliance Filing

December 2, 2011

24.4.6.2

Reliability Driven Projects

The CAISO, in coordination with each Participating TO with a PTO Service Territory will, as part of the Transmission Planning Process and consistent with the procedures set forth in the Business Practice Manual, identify the need for any transmission additions or upgrades required to ensure System Reliability consistent with all Applicable Reliability Criteria and CAISO Planning Standards. In making this determination, the CAISO, in coordination with each Participating TO with a PTO Service Territory and other Market Participants, shall consider lower cost alternatives to the construction of transmission additions or upgrades, such as acceleration or expansion of existing projects, Demand-side management, Remedial Action Schemes, appropriate Generation, interruptible Loads, storage facilities or reactive support. The CAISO shall direct each Participating TO with a PTO Service Area, as a registered Transmission Planner with NERC, to perform the necessary studies, based on the Unified Planning Assumptions and Study Plan and any applicable Interconnection Study, and in accordance with the Business Practice Manual, to determine the facilities needed to meet all Applicable Reliability Criteria and CAISO Planning Standards. The Participating TO with a PTO Service Area shall provide the CAISO and other Market Participants with all information relating to the studies performed under this Section, subject to any limitation provided in Section 20.2 or the applicable LGIP. The Participating TO with a PTO Service Territory in which the transmission upgrade or addition deemed needed under this Section 24 will have the responsibility to construct, own and finance, and maintain such transmission upgrade or

addition. A reliability-driven upgrade or addition found to be needed pursuant to this section which is eligible for cost recovery under the CAISO's High Voltage Transmission Access Charge shall be subject to the provisions of Section 24.5 if such addition or upgrade also provides demonstrable economic or public policy benefits as described below. The CAISO will find that a needed reliability-driven transmission upgrade or addition also provides economic benefits if its economic benefits exceed ten (10) percent of its costs, consistent with the determination of costs and benefits for economically-driven projects under Section 24.4.6.7 and in accordance with the procedures set forth in the Business Practice Manual. The CAISO will assess whether a needed reliability-driven upgrade or addition also serves to meet state or federal policy requirements or directives as specified in the Study Plan for the current

~~planning cycle, in accordance with the procedures and criteria set forth in Section 24.4.6.6 and the Business Practice Manual. If the CAISO finds that a needed reliability upgrade or addition also is needed under Section 24.4.6.6, or eliminates or partially fills the need for a policy-driven transmission element found to be needed under Section 24.4.6.6, such addition or upgrade shall be subject to the provisions of Section 24.5If, as part of the Transmission Planning Process, the CAISO identifies a Category 1 policy-driven element or an economically driven element as being needed under Sections 24.4.6.6 and 24.4.6.7 that eliminates an identified reliability concern under Applicable Reliability and CAISO Planning Standards, such element will retain its categorization as Category 1 policy-driven or economic element, respectively. If a transmission addition or upgrade required to ensure System Reliability provides other benefits without any expansion of its scope to explicitly include such benefits, such transmission addition or upgrade will retain its categorization as a reliability project.~~

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24.4.6.4 Projects to Maintain the Feasibility of Long Term CRRs

The CAISO is obligated to ensure the continuing feasibility of Long Term CRRs that are allocated by the CAISO over the length of their terms. In furtherance of this requirement the CAISO shall, as part of its annual Transmission Planning Process cycle, test and evaluate the simultaneous feasibility of allocated Long Term CRRs, including, but not limited to, when acting on the following types of projects: (a) planned or proposed transmission projects; (b) Generating Unit or transmission retirements; (c) Generating Unit interconnections; and (d) the interconnection of new Load. Pursuant to such evaluations, the CAISO shall identify the need for any transmission additions or upgrades required to ensure the continuing feasibility of allocated Long Term CRRs over the length of their terms and shall publish Congestion Data Summary along with the results of the CAISO technical studies. In assessing the need for transmission additions or upgrades to maintain the feasibility of allocated Long Term CRRs, the CAISO, in coordination with the Participating TOs and other Market Participants, shall consider lower cost alternatives to the construction of transmission additions or upgrades, such as acceleration or expansion of existing projects; Demand-side management; Remedial Action Schemes; constrained-on Generation; interruptible Loads; reactive support; or in cases where the infeasible Long Term CRRs involve a small magnitude of megawatts, ensuring against the risk of any potential revenue shortfall using the CRR Balancing Account

and uplift mechanism in Section 11.2.4. As part of the CAISO's Transmission Planning Process, the Participating TOs and Market Participants shall provide the necessary assistance and information to the CAISO to allow it to assess and identify transmission additions or upgrades that may be necessary under

~~Section 24.4.6.4. If, as part of the Transmission Planning Process, the CAISO identifies a Category 1 policy-driven element or an economically-driven element as being needed under Sections 24.4.6.6 and 24.4.6.7 that eliminates an identified need for a project to maintain the feasibility of allocated long-term CRRs, such element will retain its categorization as Category 1 policy-driven or economic element, respectively. If a transmission addition or upgrade required to ensure System Reliability provides other benefits without any expansion of its scope to explicitly include such benefits, such transmission addition or upgrade will retain its categorization as a project needed to maintain the feasibility of long-term CRRs.~~

To the extent a transmission upgrade or addition is deemed needed to maintain the feasibility of allocated Long Term CRRs in accordance with this Section and included in the CAISO's annual Transmission Plan, the CAISO will designate the Participating TO(s) with a PTO Service Territory in which the transmission upgrade or addition is to be located as the Project Sponsor(s), responsible to construct, own and finance,

and maintain such transmission upgrade or addition. An upgrade or addition found to be needed pursuant to this section which is eligible for cost recovery under the CAISO's High Voltage Transmission Access Charge shall be subject to the provisions of Section 24.5 if such addition or upgrade also provides demonstrable economic or public policy benefits as described below. The CAISO will find that a transmission upgrade or addition needed to maintain the feasibility of allocated Long Term CRRs also provides economic benefits if its economic benefits exceed ten (10) percent of its costs, consistent with the determination of costs and benefits for economically-driven projects under Section 24.4.6.7 and in accordance with the procedures set forth in the Business Practice Manual. The CAISO will assess whether an upgrade or addition needed to maintain the feasibility of allocated Long Term CRRs also serves to meet state or federal policy requirements or directives as specified in the Study Plan for the current planning cycle, in accordance with the procedures and criteria set forth in Section 24.4.6.6 and the Business Practice Manual. If the CAISO finds that an upgrade or addition needed to maintain the feasibility of allocated Long Term CRRs also is needed under Section 24.4.6.6, or eliminates or partially

fills the need for a policy-driven transmission element found to be needed under Section 24.4.6.6, such addition or upgrade shall be subject to the provisions of Section 24.5.

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24.5.2.3 Multiple Project Sponsors

- (a) If two (2) or more Project Sponsors submit proposals to own and construct the same transmission element or elements under section 24.5.1 and the CAISO determines that the two (2) or more Project Sponsors are qualified to own and construct the project under the criteria set forth in section 24.5.2.1, the CAISO will, upon request, facilitate an opportunity for the Project Sponsors to collaborate with each other to propose a single project to meet such need. If joint projects are proposed following the collaboration period, the CAISO will revise the list of potential renewable transmission upgrades or additions eligible for selection.
- (b) If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to the same authorized governmental body to approve the project siting, the qualified Project Sponsors must seek siting approval within one hundred and twenty (120)~~sixty (60)~~ days and the CAISO will accept the Project Sponsor determination by that authorized governmental authority.
- (c) If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to different authorized governmental bodies for project siting approval, the CAISO will select one approved Project Sponsor based on a comparative analysis of the degree to which each Project Sponsor meets the criteria set forth in sections 24.5.2.1 and a consideration of the factors set forth in 24.5.2.4. The CAISO will engage an expert consultant to assist with the selection of the approved Project Sponsor. Thereafter, the approved Project Sponsor must seek siting approval, and any other necessary approvals, from the appropriate authority or authorities within one-hundred twenty (120) days of CAISO approval.

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