

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

**California Independent System)
Operator Corporation) Docket No. ER10-**

PETITION FOR WAIVER OF TARIFF PROVISION

Pursuant to Rule 205 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.205, the California Independent System Operator Corporation ("ISO") respectfully requests a one-time suspension of the effectiveness, or “waiver,” of paragraph (a) of section 24.2.3 of the ISO Tariff. Section 24.2.3(a) of the ISO Tariff provides for the submittal of economic transmission upgrades or additions during the transmission planning request window. The waiver would be effective only for the 2010/2011 planning cycle. To the extent necessary, the ISO also requests a waiver of section 35.17(e) of the Commission’s regulations.

Good cause exists for the waiver because of the uncertainty regarding the continued use of a request window for economic projects. In the event the Commission were to approve the ISO’s pending revised transmission planning process tariff provisions, which have been suspended to subject to a further Commission order, a request window for economic projects during the current 2010/2011 planning cycle would be rendered moot. The revised transmission planning process does not provide for the submission of economic transmission project proposals during a request window. Rather, under the revised transmission planning process, the ISO would work with stakeholders during

Phase 2 to identify any needed economically driven transmission elements, and such elements will be subject to an open solicitation whereby any interested Project Sponsor, including independent transmission developers and existing participating transmission owners, will have an opportunity to submit proposals to build and own the transmission element. Stated differently, the ISO's proposed tariff changes do not contemplate a 2010 request window for economic projects and do not accord any rights to sponsors that submit economic projects through any such request window to build and own those projects. The request for a waiver is consistent with the ISO's conclusion that eliminating the request window for economic projects would avoid inefficiencies in the existing planning process, support a more comprehensive planning approach, and be consistent with the open solicitation framework that the ISO is proposing for public policy-driven and economically driven transmission projects.

The pendency of the revised transmission planning process, including tariff provisions that would replace the request window for economic projects with an open solicitation, creates uncertainty regarding the need for a 2010 request window for economic projects and the treatment of any projects submitted during such a window, and thus supports granting the instant waiver request. If the Commission approves the ISO's proposal, the expenditure of resources in the development and submission of economic transmission project proposals by potential project sponsors during the interim period before the revised transmission planning process goes into effect, and in the ISO's processing of those proposals, would be rendered needless. Such resources are better

directed toward other pressing matters, including, *inter alia*, evaluating the needs of the ISO system, performing numerous studies that need to be conducted, and assessing a significant number of planning assumptions regarding the need for infrastructure improvements, including those necessary to meet California's 33 percent renewable portfolio standard ("RPS"). The ISO must also devote considerable resources during this period toward its consideration of the projects submitted during the 2008 and 2009 request windows. The waiver proposed herein will produce no undesirable consequences, will not prejudice project developers, and will benefit stakeholders by eliminating inefficiencies in the ISO transmission planning process. Furthermore, the ISO has amended the transmission planning Business Practice Manual ("BPM") to delay the opening of the 2010 request window which was set to open on August 15. That will provide time for the Commission to rule on this waiver request. As discussed below, if the Commission denies the waiver, parties will still have an opportunity to submit economic projects during the postponed request window.

I. BACKGROUND

California has launched an ambitious effort to increase the role of renewable energy resources in meeting the electricity needs of the state. This effort began eight years ago and has become even more ambitious in recent years. In November 2008, Governor Arnold Schwarzenegger issued Executive Order S-14-08, which directed that California utilities with retail customers serve 33 percent of their load with renewable energy by 2020, the most aggressive RPS in the nation. In September 2009, Governor Schwarzenegger issued

Executive Order S-21-09 directing the California Air Resources Board to adopt a regulation consistent with the 33 percent renewable energy target. The State legislature is currently considering an increase in its RPS to 33 percent by 2020. Both the California Public Utilities Commission (“CPUC”) and the California Energy Commission (“CEC”) have endorsed a 33 percent RPS by 2020 standard.¹

As the transmission provider for all of California’s investor-owned utilities and the system planner of the ISO controlled grid, the ISO must play a major role in achieving these goals. Based on experience over the last two years with its existing transmission planning process, which the ISO developed in compliance with Order No. 890,² the ISO concluded that the infrastructure improvements needed to allow the state to reach the 33 percent target by 2020 will not occur if the state’s transmission system is assessed and built in a piecemeal fashion, project by project, as could occur under the current transmission planning process. In addition to addressing the significant new challenges of planning the system to achieve the policy-driven infrastructure needs of the 33 percent policy in a condensed time frame, the ISO has concluded that a more comprehensive, integrated and efficient approach is needed to facilitate timely planning decisions

¹ 33 percent RPS Implementation Analysis Preliminary Results at 1, CPUC (June 2009).

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009). The Commission approved the ISO’s transmission planning tariff revisions as in compliance with Order No. 890, subject to certain conditions. *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008). The Commission has also accepted the ISO’s compliance filings. *Cal. Indep. Sys. Operator Corp.*, 127 FERC ¶ 61,172 (2009); *Cal. Indep. Sys. Operator Corp.*, 130 FERC ¶ 61,048 (2010).

in order to meet established deadlines. The ISO also believes that a revised planning process is necessary to allow the ISO to address certain other inefficiencies in the transmission planning process that it has experienced in recent years.

The ISO filed its revised transmission planning process proposal with the Commission on June 4, 2010. Among the reforms included in the proposal is a revision of the request window process. Under existing Section 24.2.3, the ISO annually establishes a request window, during which it will accept proposals for economic projects, proposals for reliability-driven projects, LCRI facility project proposals, demand response or generation proposals, economic planning study proposals, and proposals for Merchant Transmission Facilities. However, in developing a revised planning process, the ISO realized that the existing request window process for economic projects³ was not fully compatible with the key planning objectives that the ISO was seeking to implement, namely a more efficient planning process, adoption of a policy-driven planning criterion, the performance of comprehensive planning for the ISO footprint, and an open solicitation for proposals to build economically driven (as well as policy-driven) transmission upgrades and additions. Under the revised planning process, the ISO proposed to address these items in a different manner and at different points in the planning process. The ISO explained that this approach is consistent with the more efficient and comprehensive planning approach that the ISO is

³ The ISO reached a similar conclusion and proposed similar reforms for economic planning studies, demand response programs for inclusion in the base case, and generation projects for inclusion in the long-term planning studies as alternatives to transmission additions and upgrades.

implementing and with the process followed by some other ISOs and Regional Transmission Organizations (“RTOs”), as well as the implementation of an open solicitation process for needed policy-driven and economically driven transmission elements.

On July 26, 2010, the Commission issued an order on the ISO’s proposed revised transmission planning process. The Commission concluded that it needed additional information before it could resolve the complex issues that are in dispute among the parties. It therefore suspended the proposed tariff revisions subject to a further Commission order, and directed a technical conference.⁴

II. REQUEST FOR WAIVER OF CAISO TARIFF PROVISIONS

As noted above, the ISO requests a waiver of paragraph (a) of Section 24.2.3 of the ISO Tariff, which provides for submission of economic projects during the request window. Although the Commission has granted waiver requests where an emergency situation or an unintentional error was involved,⁵ the Commission does not limit waivers to such circumstances. It has also granted waivers when good cause for a waiver of limited scope exists, there are

⁴ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,067 at PP 28-30 (2010).

⁵ *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 at P 24 (2007) (granting waiver to generator interconnection procedures to facilitate efficient and cost-effective treatment of 4,350 MW of wind-related interconnection requests), *citing ISO New England*, 117 FERC ¶ 61,171 at P 21(2006) (allowing a limited and temporary suspension of tariff provision to correct an error); *Great Lakes Gas Transmission Ltd. Partnership*, 102 FERC ¶ 61,331 at P 16 (2003) (granting emergency waiver involving force majeure event granted for good cause shown); and *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

no undesirable consequences, and the resultant benefits to customers are evident.⁶

In this case, good cause exists because of the pending revision of the transmission planning process. If the Commission accepts the proposed treatment of the request window without modification, the ISO will no longer evaluate individual economic projects submitted through a request window. Instead, the ISO will work with stakeholders to assess the need for economic projects in Phase 2 of its planning process and any economic transmission elements identified as needed by the ISO will be subject to the proposed open solicitation tariff provisions. In other words, the proposed tariff provisions that have been suspended, if eventually accepted, will moot the need for a 2010 request window for economic projects.

In light of the uncertainty regarding the future use of the request window, potential Project Sponsors should not be called upon to expend resources to develop and submit economic projects in the 2010 request window. Submission of such proposals would not provide any advantage to the project sponsor if the ISO's proposal is accepted. Under the ISO's proposed revised transmission plan, if the ISO identifies a needed economic or public policy transmission element that corresponds to a project submitted in the 2008 or 2009 request window, the sponsor of such request window project shall be selected to build and own the transmission element. Similar treatment is not accorded to any 2010 request window project because, in light of the proposed revisions, such

⁶ *Southern Cal. Edison Co.*, 125 FERC ¶ 61,009, at P 17 (2008) (citing *Cal. Ind. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008), and *Cal. Ind. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007)).

potential Project Sponsors would not have any legitimate expectations that they would be automatically entitled to build and own economic projects submitted through the 2010 request window, even if the project meets a transmission need identified by the ISO during the transmission planning process. The suspended tariff provisions do not give them that right, and the ISO was clear in the revised transmission planning process stakeholder process and in its June 4, 2010, tariff filing that (1) it was eliminating the request window for economic projects, and (2) only projects submitted in the 2008 and 2009 request windows carried a right to be built and owned by their Project Sponsor in the event the ISO finds that they correspond to needed public policy or economic transmission elements.

Submitting economic projects into the 2010 request window would serve no purpose if the Commission approves the revised transmission planning process because, under the current tariff provisions, the ISO's evaluation of these projects would not be completed during the current planning cycle. If the current tariff were to remain in effect, any projects submitted in a 2010 request window would be evaluated at the earliest during calendar year 2011 for consideration in the transmission plan issued in 2012, and the timeline could be longer than that.⁷ However, if relevant proposed tariff provisions are approved without modification by the Commission, these submissions will be "mooted" because the ISO will identify needed economic elements and conduct its solicitation process for Project Sponsors as part of the 2010/2011 cycle. Thus, both the ISO and potential Project Sponsors would have wasted time and

⁷ Large projects with a capital cost of more than \$200 million have a separate track that could span multiple planning cycles.

resources developing projects and processing submissions that have no role in the revised transmission planning process.

Such resources can more productively be directed toward identification of needed reliability projects, performing necessary studies, evaluating the 2008 and 2009 request window projects, and testing resource and other modeling assumptions that can be used to identify needed infrastructure improvements, including in particular those necessary to meet California's 33 percent renewable standards portfolio.

The ISO recognizes that the Commission has sixty days in which to act on this request. The current request window is scheduled to open on August 15. If the ISO were to open the request window while awaiting Commission action, this request could not achieve its intended purpose of conserving resources.

Therefore, simultaneously with this request, the ISO is amending the transmission planning BPM to postpone the opening of the 2010 request window until 30 days after the ISO posts the results of its technical studies.⁸ The request window will remain open for 60 days. If the Commission denies the waiver request, parties will still have at least 60 days to submit proposals. Thus, anyone interested in submitting an economic project in this planning cycle would have the opportunity to do so and will not be harmed by the postponement. If the Commission approves the request, they will have benefitted from the postponement by the conservation of resources.

⁸ Although a precise date upon which the technical study results will be posted is not provided in the BPM revisions, the ISO intends to advise interested parties, via market notice, the availability of the study results and the dates of the request window. This process is described in the BPM changes.

Further, if the Commission grants the waiver request, but subsequently requires the ISO to retain the request window for economic projects, the ISO could – after the order and with Commission approval – institute a separate request window specifically for economic projects.

The ISO notes that because of tariff milestones and the need to evaluate reliability projects to satisfy the TPL Reliability Standards, it cannot simply postpone the start of the request window until the Commission issues an order on the ISO's revised transmission planning process, which may not be until January 2011. Nor does the ISO believe that it has the authority to bifurcate the request window and treat economic projects in a separate, further postponed request window. Accordingly, the ISO needs the requested waiver.

The ISO submits that under these circumstances no party will be prejudiced by its proposed waiver if granted. No potential Project Sponsor of an economic project has a legitimate expectation that it will be entitled under the revised transmission planning process to build and own a project that is submitted in any 2010 request window. Nonetheless, time is of the essence. If the Commission does not approve this request within the 60-day time period during which the opening of the request window has been delayed, the waiver will not fully serve its purpose of conserving resources and providing certainty to the ISO and stakeholders.

Finally, market participants will benefit from the waiver. The ISO will avoid potentially unnecessary expenses, which would ultimately be borne by customers. Potential transmission developers will avoid unnecessary costs

associated with developing economic projects submitted into the request window that will not be evaluated by the ISO as part of the revised transmission planning process. Most importantly, if the ISO's proposed tariff provisions are approved, the ISO will be better able to focus its efforts on working with stakeholders, regulatory agencies, and regional organizations to develop the most efficient and cost-effective means of identifying and evaluating the needs of the ISO system and assessing the myriad assumptions raised by a 33 percent RPS goal.

III. REQUEST FOR ADDITIONAL WAIVERS

To the extent that the Commission deems that section 35.17(e) of its regulations applies to this waiver request, the ISO respectfully requests waiver of such section 35.17(e).⁹ The ISO further requests that the Commission grant any additional waivers of its regulations as may be necessary to grant this request. The ISO submits that good cause exists for granting a waiver of its regulations for the reasons stated above.

IV. SERVICE

The ISO has served copies of this filing upon the California Public Utilities Commission and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO has posted this filing on its website and has served a copy of this filing on all parties in Docket No. ER10-1401 via e-mail.

⁹ *Id.*

IV. CORRESPONDENCE

The ISO requests that all correspondence, pleadings and other communications concerning this filing be served upon the following:

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V. CONCLUSION

For the reasons discussed above, the ISO respectfully requests that the Commission grant the waiver.

Respectfully submitted,

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