

# Memorandum

**To:** ISO Board of Governors

**From:** Keith Casey, Vice President, Market and Infrastructure Development

**Date:** December 11, 2013

**Re:** **Decision on competitive transmission improvements proposal**

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***This memorandum requires Board action.***

## EXECUTIVE SUMMARY

The ISO has made a number of significant tariff revisions in recent years to promote competition in the transmission planning process. As a direct result, the ISO now administers a competitive solicitation process that provides opportunities for project sponsors, both incumbents and non-incumbents alike, to submit proposals to finance, own, and construct facilities subject to competitive solicitation identified in the comprehensive transmission plan. For example, in 2010, the ISO reformed its transmission planning process to explicitly consider public policy requirements as a potential driver for transmission facilities and afford both incumbent and non-incumbent transmission developers nondiscriminatory opportunities to compete to build transmission facilities that the ISO finds are needed for public policy or economic efficiency reasons. More recently in its Order No. 1000 compliance filing, the ISO expanded on these changes and proposed tariff revisions to eliminate the remaining provisions that grant a federal “right of first refusal” for incumbent participating transmission owners to build and own certain transmission facilities whose costs will be allocated regionally. These changes reflect a significant scaling-back of participating transmission owners’ existing incumbent rights and obligations to build all transmission facilities needed for reliability or to maintain the simultaneous feasibility of allocated long-term congestion revenue rights. On April 18, 2013, the Federal Energy Regulatory Commission approved these changes.

Management recommends four additional changes to further promote competition through the transmission planning process. First, Management proposes to permit approved project sponsors to recover all Federal Energy Regulatory Commission-approved, pre-participating transmission owner costs associated with the project it was selected to build. Under the current tariff, this is permitted only for approved project

sponsors who are participating transmission owners.<sup>1</sup> Expanding this mechanism to approved project sponsors beyond participating transmission owners would promote competition in the transmission planning process by further leveling the playing field between incumbents and non-incumbents.

Second, Management proposes to clarify in the tariff that approved project sponsors who are not participating transmission owners, but who have existing transmission assets, are only required to turn over to ISO operational control the project they are selected to build. This change would promote competition in the transmission planning process by maximizing participation in the competitive solicitation process.

Third, Management proposes to impose a project sponsor application deposit as a means to mitigate costs incurred by the ISO to perform and administer the competitive solicitation process. Management expects that this workload is likely to increase with each successive annual transmission planning process cycle because more transmission solutions will be subject to competitive solicitation under the ISO's transmission planning framework.

Finally, Management proposes to clarify current tariff provisions requiring approved project sponsors to take the necessary steps to initiate the process of seeking siting approval from the appropriate authorities within 120 days of being selected as the approved project sponsor.

Management recommends the following motion:

***Moved, that the ISO Board of Governors approves the proposal for competitive transmission improvements, as described in the memorandum dated December 11, 2013; and***

***Moved, that the ISO Board of Governors authorizes Management to make all necessary and appropriate filings with the Federal Energy Regulatory Commission to implement the proposed tariff change.***

## **DISCUSSION AND ANALYSIS**

Management recommends changes in the following four areas to further promote competition through the transmission planning process.

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<sup>1</sup> Under the ISO tariff, a participating transmission owner is defined as a party to the Transmission Control Agreement whose application to become a participating transmission owner has been accepted and who has placed its transmission assets and entitlements under the ISO's operational control.

### ***Recovery of FERC-authorized transmission revenue requirement prior to becoming a participating transmission owner***

In phase 3 of the annual transmission planning process, the ISO administers a competitive solicitation process providing an opportunity for project sponsors to submit proposals to construct, own, operate, and maintain eligible transmission facilities identified in the comprehensive transmission plan. This opportunity is open to participating transmission owners and non-participating transmission owners alike as both may submit proposals, be selected as the approved project sponsor, and have Federal Energy Regulatory Commission-approved costs. However, under current tariff rules, only participating transmission owners may recover FERC-approved costs through the transmission access charge prior to the facility being placed into service. This is because the transmission access charge is currently designed to recover each participating transmission owner's transmission revenue requirement. The ISO tariff contains no such provisions for non-participating transmission owner approved project sponsors. Thus, to address this gap and improve opportunities for non-incumbents, Management proposes to amend the tariff to provide that approved project sponsors be permitted to recover all FERC-approved, pre-participating transmission owner costs associated with the project it was selected to build. Management also proposes to develop a pro forma agreement for approved project sponsors selected through the competitive solicitation process, whether they are a participating transmission owner or a non-participating transmission owner, to (1) acknowledge acceptance of the selection as the approved project sponsor; (2) establish the obligations, roles and responsibilities of the project sponsor, including project-specific milestones; and (3) reflect any binding cost containment measures, including binding cost caps that the approved project sponsor agreed to in its application.

### ***Non-participating transmission owner approved project sponsors with existing transmission assets***

If a non-participating transmission owner with existing transmission assets is selected as the approved project sponsor for a particular transmission solution, the sponsor will only be required to turn over to the ISO's operational control the particular solution it was selected to build. This clarification addresses some potential sponsors' concern that the ISO's current tariff provisions lack clarity with respect to the disposition of the existing transmission assets of a non-participating transmission owner approved project sponsor. Management believes this clarification is important to maximize participation in the competitive solicitation process. Many different transmission developers with existing facilities located throughout the U.S., or elsewhere, may seek to compete in the competitive solicitation process. In addition, once a non-participating transmission owner with existing transmission assets is selected as the approved project sponsor for a particular transmission solution and the Transmission Control Agreement is negotiated for it to become a participating transmission owner, the ISO will amend the Transmission Control Agreement to align with this concept.

### ***Project sponsor application deposit***

In performing and administering the competitive solicitation process, the ISO carries out several significant tasks including (1) determining whether a project sponsor meets certain qualification criteria; (2) determining whether a project sponsor's proposal meets certain proposal qualification criteria; and, (3) selecting an approved project sponsor. These tasks require an extensive commitment of resources and the need to bring in outside consultants to support internal ISO staff, at significant additional cost. Thus far, the ISO has been funding this significant incremental workload and cost without a corresponding increase in its operations budget which raises the question whether it is appropriate for ISO ratepayers to fund the costs of individual applicants competing to build and own specific transmission solutions. Management believes that project sponsors should bear the costs of the competitive solicitation process, and notes that FERC has approved the imposition of application fees on project sponsors under similar circumstances.<sup>2</sup> To accomplish this, Management proposes that project sponsors be required to provide an application deposit in the amount of \$75,000 with each proposal submitted. This amount is based on the internal and external expenditures incurred by the ISO for the Imperial Valley Policy Element competitive solicitation (slightly more than a total of \$200,000 for two project sponsors) and an estimate of the final cost of the Gates-Gregg 230 kV Line competitive solicitation (approximately \$250,000 total for five project sponsors). The deposit will be applied as a pool of funds to pay for costs incurred by the ISO, or third parties at the direction of the ISO, as applicable, to perform and administer the competitive solicitation process, and to communicate with applicants with respect to their proposal applications. If the amount required to pay actual costs is determined to be greater than \$75,000 per application, then each project sponsor would be obligated to provide the additional amount up to a cap of \$150,000. Conversely, if the amount required to pay actual costs was determined to be less than \$75,000, then each project sponsor would be refunded the unused balance of its deposit, plus interest. The ISO would make refunds at two different points in the process as follows: (1) within 75 days following the ISO's qualification decisions, to the extent the ISO finds a project sponsor not to be qualified for the project; and, (2) within 75 days after the approved project sponsor is named for project sponsors found to be qualified for the project.

### ***Clarification of tariff requirement to seek siting approval within 120 days***

Based on feedback received from stakeholders, Management proposes to clarify current tariff provisions requiring approved project sponsors to take the necessary steps to initiate the process of seeking siting approval from the appropriate authorities within 120 days of being selected as the approved project sponsor. Stakeholders have expressed concern that this provision would require a project sponsor to submit a completed siting application within the 120 day window. Management would like to clarify that the tariff merely requires that the approved project sponsor takes the

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<sup>2</sup> These include application fees assessed by Midcontinent Independent System Operator, Tampa Electric Co. and Southwest Power Pool.

necessary steps to initiate the process with regulators, which can be accomplished without developing and filing a complete application.

## **POSITIONS OF THE PARTIES**

First, all stakeholders either fully support, or support with qualification, Management's proposal to permit approved project sponsors to recover all FERC-approved, pre-participating transmission owner costs associated with the project it was selected to build. The qualifications expressed and Management's responses are summarized in the attached stakeholder matrix.

Second, all stakeholders either fully support, or support with qualification, Management's proposal to clarify in the tariff that approved project sponsors who are not a participating transmission owner, but who have existing transmission assets, are only required to turn over to ISO operational control for the project they are selected to build. The qualifications expressed and Management's responses are summarized in the attached stakeholder matrix.

Third, a majority of stakeholders either fully supports, or supports with qualification, Management's proposal to impose a project sponsor application deposit as a means to mitigate costs incurred by the ISO to perform and administer the competitive solicitation process. The qualifications expressed and Management's responses are summarized in the attached stakeholder matrix. Only one stakeholder, LS Power, expressed opposition but clarifies that its position is driven more by its preference that the qualification and selection processes be separate rather than by the reasonableness of the deposit requirements contained in the proposal. Management does not propose separate fees for qualification and selection, but rather proposes one deposit to cover costs incurred to perform and administer all aspects of the competitive solicitation process. Nevertheless, Management proposes a separate refund opportunity after the qualification process is completed.

Finally, Management intends to address stakeholder concerns, through the tariff development process, to clarify that the tariff merely requires that the approved project sponsor takes the necessary steps to initiate the process with regulators, which can be accomplished without developing and filing a complete application.

## **CONCLUSION**

Management recommends that the Board approve the proposal described in this memorandum. Management's proposal is broadly supported by stakeholders and was refined to address their major comments and concerns. Management believes that its proposal will further promote competition in the transmission planning process by maximizing participation in the competitive solicitation process and improving the ISO's ability to perform and administer the process.