

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

NextEra Desert Center Blythe, LLC)	
)	
v.)	Docket No. EL15-47-000
)	
California Independent System Operator Corporation)	
)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO COMPLAINT**

The California Independent System Operator Corporation (“CAISO”)¹ submits this answer to the February 18, 2015 complaint filed by NextEra Desert Center Blythe, LLC (“Desert Center”).² The complaint asks the Commission to direct the CAISO to allocate Merchant Transmission Congestion Revenue Rights (“CRRs”)³ to Desert Center, arguing that the CAISO tariff requires the CAISO to do so based on Desert Center’s investment in the Interim West of Devers (“Interim WOD”) project. In the alternative, Desert Center argues that if the CAISO tariff does not require the CAISO to allocate Merchant Transmission CRRs to Desert Center, the Commission should rule that the tariff is unjust and unreasonable and should be revised under Section 206 of the Federal Power Act.

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, appendix A to the CAISO tariff.

² The CAISO submits this answer pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure (18 C.F.R. §§ 385.206(f), 385.213) and the Notice of Complaint issued in this proceeding on February 19, 2015.

³ The CAISO tariff defines “Merchant Transmission CRRs” as “Incremental CRRs that are created by the addition of a Merchant Transmission Facility.”

The Commission should deny the requested relief by Desert Center because it is not authorized under the CAISO tariff. The CAISO tariff provides for the allocation of Merchant Transmission CRRs under limited circumstances: (1) for Merchant Transmission Facilities proposed and evaluated pursuant to the CAISO's transmission planning process; and (2) for Network Upgrades identified in the CAISO's generator interconnection process, if a generator responsible for funding such upgrades elects to receive Merchant Transmission CRRs in lieu of direct cash reimbursement.⁴ The Interim WOD upgrades did not arise out of either of these circumstances. Rather, they are the outgrowth of extensive discussions among the CAISO, Southern California Edison ("SCE"), and Desert Center. These discussions were aimed at identifying whether a temporary solution could be implemented to allow Desert Center's Genesis McCoy Solar Project to receive full capacity deliverability status pending the completion of the permanent network upgrades, which were identified through the CAISO's generator interconnection process and specified in the Large Generator Interconnection Agreement ("LGIA") between Desert Center, the CAISO, and SCE.

The discussions culminated in a negotiated letter agreement, constituting the complete and final expression of agreement among the parties regarding treatment of the Interim WOD facilities. In the letter agreement, which the Commission approved, SCE agreed to install, on a temporary basis, equipment at certain of its substations in exchange for Desert Center agreeing to fund,

⁴ The CAISO tariff also provides for the allocation of Merchant Transmission CRRs to two specific projects that had transmission usage rights recognized by the CAISO prior to the adoption of the CAISO's current market design and transmission planning process.

without reimbursement, the full costs associated with these temporary facilities. The parties also agreed that the temporary facilities do not constitute “Network Upgrades” as that term is defined in the LGIA. Because these temporary upgrades were not implemented pursuant to the CAISO’s transmission planning process or generator interconnection process, and are not Network Upgrades, the CAISO is not authorized by its tariff to allocate Merchant Transmission CRRs to Desert Center.

In addition, the letter agreement does not provide Desert Center with an entitlement to receive any CRRs resulting from the Interim WOD upgrades. Therefore, neither the letter agreement, nor the Desert Center LGIA, which was amended to include the operative terms of the letter agreement and approved by the Commission, provides an independent basis for the CAISO to provide Desert Center with Merchant Transmission CRRs.

The Commission also should decline to find the CAISO tariff unjust and unreasonable merely because it does not specifically contemplate the unique circumstances surrounding the Interim WOD Project. The Commission has already ruled that the CAISO tariff provisions implementing the CRR allocation process, including the allocation of Merchant Transmission CRRs, is just and reasonable.⁵ In fact, the Commission specifically found that these tariff provisions satisfy Guideline 3 of Order No. 681, which requires that “[l]ong-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or

⁵ *California Independent System Operator Corp.*, 120 FERC ¶ 61,023 (2007) (“CRR Order”).

expansions in accordance with the transmission organization's prevailing cost allocation methods for upgrades or expansions."⁶ The fact that the tariff does not address the unique facts of the Interim WOD project is not a sufficient basis for finding that those tariff provisions have become unjust and unreasonable.

Because the Interim WOD project arose out of direct negotiations between the CAISO, SCE and NextEra, the CAISO believes that the allocation of any congestion revenues⁷ resulting from the implementation of the Interim WOD upgrades should be resolved between the parties to these negotiations. In particular, the CAISO believes that the allocation of the financial benefits of any congestion relief provided by the Interim WOD facilities should be determined primarily by SCE and Desert Center, who, as the parties to the letter agreement, have a direct financial stake in the outcome. Therefore, the CAISO does not take a position on the question of whether the Commission's policy on financial transmission rights requires that any congestion revenues be allocated to Desert Center. However, even if the Commission were to conclude that Desert Center is entitled to CRRs, it should direct that the allocation be reflected through amendments to the letter agreement and the amended Desert Center LGIA rather than a modification to the CAISO tariff. This is because the terms governing the construction, operation, and payment of the Interim WOD

⁶ *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226, at P 210, *order on reh'g and clarification*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *order on reh'g and clarification*, Order No. 681-B, 126 FERC ¶ 61,254 (2009) (collectively, "Order No. 681").

⁷ The CAISO has not included the Interim WOD project in its CRR network model per its agreement not to release any CRRs created by the interim WOD project prior to the Commission resolving this complaint. Therefore, it is not clear what, if any, value such CRRs would have during any particular time period.

upgrades derive from the letter agreement and the LGIA, not the CAISO tariff. In addition, even if Desert Center is entitled to receive CRRs, there are a number of implementation issues that the parties would need to resolve that would be far easier and more efficient to address through negotiated amendments to the letter agreement and LGIA.

Finally, the Commission should reject Desert Center's request to receive Merchant Transmission CRRs retroactive to the in-service date of the Interim WOD upgrades. The CAISO tariff provisions stipulating that Merchant Transmission CRRs will be retroactively effective only apply to projects that follow the procedures set forth in the CAISO transmission process, including the advance notice provisions.⁸ The Interim WOD upgrades did not follow this process, and therefore, these provisions are inapplicable to Desert Center. Moreover, providing Desert Center with the congestion revenue rights dating back to the in-service date of the Interim WOD upgrades would require the CAISO to conduct a rerun to re-allocate congestion costs and revenues. Market participants were not on notice that any such re-allocation would occur, and therefore, doing so would violate the filed-rate doctrine and rule against retroactive ratemaking.

⁸ Merchant Transmission CRRs made available through the generator interconnection process as a reimbursement option for Network Upgrades go into effect upon the "Commercial Operation Date of the Generating Facility in accordance with the GIA." CAISO Tariff, Appendix Y, Section 12.3.2. As with the in-service retroactivity provision in Section 36, this provision does not govern the timing of any CRRs created by the Interim WOD project because the Interim WOD project is not a Network Upgrade and was not identified through the generator interconnection process.

I. Background

Desert Center is the interconnection customer under an LGIA among Desert Center, SCE (the participating transmission owner), and the CAISO. The LGIA addresses the interconnection of Desert Center's Genesis McCoy Solar Project to the CAISO controlled grid at SCE's Colorado River Substation.⁹

The original version of the Desert Center LGIA was filed in 2011 and identified transmission upgrades that were necessary to provide the Genesis McCoy Solar Project with full capacity deliverability status as defined in the CAISO tariff.¹⁰ These included upgrades to rebuild existing transmission lines having a terminus at SCE's Devers Substation and extending westward into SCE's service territory ("West of Devers upgrades"). When the interconnection studies for the Genesis McCoy Solar Project identified the need for the West of Devers Upgrades, the studies estimated that they would be completed in 2017.¹¹

Based on this timeframe, Desert Center and other interconnection customers that require the West of Devers upgrades for full capacity deliverability status requested that the CAISO and SCE explore options for potential earlier deliverability. Although there is no process for doing so under the CAISO's pro forma generator interconnection procedures, or other provisions of the CAISO tariff, the CAISO and SCE nevertheless agreed to consider whether an interim

⁹ Desert Center's interconnection request for the Genesis McCoy Solar Project is designated as queue position #193 in the CAISO's generator interconnection queue.

¹⁰ The Commission accepted the original version of the LGIA as a non-conforming Large Generator Interconnection Agreement in *Southern California Edison Company and California Independent System Operator Corporation*, 137 FERC ¶ 61,055 (2011).

¹¹ Due to permitting and siting issues, the estimated completion date of the West of Devers Upgrades has been delayed further.

solution might be feasible so as to alleviate concerns regarding the commercial viability of the affected projects in light of the schedule for completing the permanent West of Devers upgrades. After expending significant time and effort, CAISO and SCE engineers identified interim upgrades, consisting primarily of series reactors that, when installed at existing SCE substations, would temporarily increase the delivery capability of the existing West of Devers transmission path. This increased delivery capability would enable phases of generating facilities that needed the permanent West of Devers Network Upgrades to accelerate the time by which the various phases could be fully deliverable.

The CAISO and SCE discussed the Interim WOD project with all the development companies that owned the generation projects in the CAISO's generator interconnection queue that could potentially benefit from the interim upgrades.¹² Ultimately, only Desert Center was willing to participate in the interim upgrades. Because the interim upgrades would be located at SCE-owned substations, and were not identified through the generator interconnection process or any other existing CAISO tariff process, Desert Center and SCE directly negotiated the terms for constructing the interim upgrades and memorialized them in a two-party letter agreement. The parties expressly

¹² The CAISO and SCE met with three development companies: (1) Desert Center, which was developing the Genesis McCoy Solar Project; (2) Palo Verde Solar II, LLC ("PV Solar"), which was developing the Blythe Solar Energy Center (subsequently purchased in bankruptcy by NextEra); and (3) NRG Solar Desert Center LLC ("NRG"), which was developing the Desert Center Solar 1 Project. The criteria used to determine eligibility to obtain interim deliverability and the allocation thereof were consistent with the CAISO generator interconnection procedures – that is, available capacity would be allocated on a project-by-project basis, and earlier-queued projects would be afforded the first opportunity to participate. PV Solar and NRG declined to participate in the Interim WOD Project.

agreed that, due to its interim nature, the Interim WOD project is not a Network Upgrade as that term is defined in the LGIA, and consequently the payments received from Desert Center for the Interim WOD project are not subject to reimbursement by ratepayers.¹³ The Commission accepted the letter agreement for filing in 2012,¹⁴ and the terms of the letter agreement were later incorporated by amendment into Desert Center's three-party LGIA.¹⁵

Subsequently, Desert Center requested that the CAISO allocate to it Merchant Transmission CRRs created by the Interim WOD project. The CAISO informed Desert Center that it was not eligible for an allocation of Merchant Transmission CRRs under the CAISO tariff. However, because the terms and conditions relating to the Interim WOD upgrades were established outside of the auspices of the CAISO tariff, the CAISO deferred to SCE and Desert Center to determine whether any congestion revenue rights created by the Interim WOD upgrades might be allocated to Desert Center through an appropriate amendment to the letter agreement and Desert Center's LGIA. Pending a resolution of this issue, the CAISO agreed not to create merchant transmission CRRs for the Interim WOD project. The CAISO has therefore deferred including

¹³ Letter Agreement at 6. The Letter Agreement is provided in attachment A to Desert Center's complaint.

¹⁴ See *Southern California Edison Co.*, Letter Order, Docket No. ER12-804-000 (Mar. 7, 2012). The CAISO filed comments in that proceeding to request that the Commission accept the Letter Agreement as filed.

¹⁵ See *California Independent System Operator Corp.*, Letter Order, Docket No. ER14-56-000 (Nov. 20, 2013) (accepting filing of amended LGIA under the CAISO tariff); *Southern California Edison Co.*, Letter Order, Docket No. ER14-101-000 (Nov. 20, 2013) (accepting filing of amended LGIA under SCE's transmission owner tariff). The amended LGIA is also provided in attachment B to Desert Center's complaint.

the Interim WOD project in its CRR network model because any allocation or sale of CRRs through the CAISO's process is irreversible.¹⁶

II. Answer

A. The CAISO Tariff Does Not Authorize the CAISO to Allocate Merchant Transmission CRRs to Desert Center for the Interim WOD Project.

1. The Interim WOD Upgrades Do Not Meet the Definition of a Merchant Transmission Facility under the CAISO Tariff

Desert Center argues that it has a right to receive Merchant Transmission CRRs for the Interim WOD project under section 36.11 of the CAISO tariff.¹⁷ The plain language of section 36.11, however, provides no authority for the CAISO to disburse Merchant Transmission CRRs to Desert Center based on its investment in the Interim WOD project.

Desert Center contends that it is entitled to Merchant Transmission CRRs because the Interim WOD project is a Merchant Transmission Facility and Desert Center is a Project Sponsor for purposes of tariff section 36.11.¹⁸ The tariff defines a Merchant Transmission Facility in relevant part as a facility “whose costs are paid by a Project Sponsor,”¹⁹ and defines a Project Sponsor as an

¹⁶ Tariff section 36.4 specifies that “When the CAISO conducts its CRR Allocation and CRR Auction, the CAISO shall use the most up-to-date DC [full network model] which is based on the AC [full network model] used in the Day-Ahead Market.” Tariff section 36.4.1 goes on to establish that Merchant Transmission CRRs are accounted for in the DC full network model “as fixed injections and withdrawals.”

¹⁷ Complaint at 6 (asserting that Desert Center’s “rights to receive [Merchant Transmission] CRRs derives from the [Interim WOD] Project’s status as a ‘Merchant Transmission Facility’ under Section 36.11 of the Tariff”), 16-20.

¹⁸ Complaint at 16-17.

¹⁹ Tariff appendix A, definition of “Merchant Transmission Facility.” The entire definition is: “[a] transmission facility or upgrade that is part of the CAISO Controlled Grid and whose costs are

entity “that proposes the construction of a transmission addition or upgrade in accordance with Section 24” of the CAISO tariff, which is the CAISO’s transmission planning process.²⁰ Desert Center does not meet the definition of Project Sponsor, because the Interim WOD Project was not proposed or evaluated in accordance with tariff section 24, which sets forth the CAISO’s transmission planning process.

Section 24 includes explicit procedures stipulating when and how proposals for Merchant Transmission Facilities are processed and evaluated by the CAISO.²¹ The Interim WOD project was not identified, evaluated, or approved in accordance with any of these procedures. Rather, it was the result of the direct negotiations among SCE, the CAISO and Desert Center. As explained above, the Interim WOD project arose out of Desert Center and other interconnection customers’ desire for an accelerated in-service date of deliverability upgrades.²² The CAISO and SCE identified the Interim WOD

paid by a Project Sponsor that does not recover the cost of the transmission investment through the CAISO’s Access Charge or WAC [Wheeling Access Charge] or other regulatory cost recovery mechanism.”

²⁰ Tariff appendix A, definition of “Project Sponsor.” The entire definition is: “[a] Market Participant, group of Market Participants, a Participating TO or a project developer who is not a Market Participant or Participating TO that proposes the construction of a transmission addition or upgrade in accordance with Section 24.”

²¹ See Tariff Section 24.1 (“The comprehensive Transmission Plan will identify Merchant Transmission Facilities meeting the requirements for inclusion in the Transmission Plan”); Section 24.4.3 (describing the timing windows during which the CAISO will accept “proposals for Merchant Transmission Facility projects”); Section 24.4.6.1 (setting forth the criteria by which the CAISO evaluates Merchant Transmission Facility proposals).

²² The Large Generator Interconnection Procedures applicable to the Desert Center project are set forth in tariff appendix Y. See CAISO transmittal letter for filing of original version of LGIA, Docket No. ER11-4512-000, at 4 n.3 (Sept. 13, 2011). The Desert Center LGIA is a non-conforming Large Generator Interconnection Agreement based on the *pro forma* Large Generator Interconnection Agreement for cluster study projects set forth in tariff appendix CC. *Id.* at 1, 4.

project as a possible interim solution and after extensive discussion and negotiation, SCE and Desert Center memorialized the terms of the implementation of the Interim WOD project in a stand-alone letter agreement. Because the Interim WOD project was not the product of any existing CAISO tariff process or pro forma agreement, the letter agreement between SCE and Desert Center, as well as the LGIA including the terms from the letter agreement, were separately filed for Commission review and approval. Therefore, the CAISO has no authority under section 24 of the tariff to allocate Merchant Transmission CRRs to Desert Center for the Interim WOD Project.

Desert Center nevertheless argues that the CAISO is reading section 36.11 too narrowly. Desert Center points to tariff section 24.2(e), which states that the transmission planning process will “[a]ccount for any effects on the CAISO Controlled Grid of the interconnection of Generating Units, including an assessment of the deliverability of such Generating Units in a manner consistent with CAISO interconnection procedures.”²³ Desert Center contends that this language must mean that all studies and evaluations to account for the effect generator interconnections have on the CAISO’s system are thus part of the CAISO’s transmission planning process. This argument is flawed in two respects. First, it rests on the unwarranted assumption that the CAISO must rely on the transmission planning process as the *exclusive* means by which the CAISO identifies upgrades necessary to accommodate generator interconnections, including deliverability. When Desert Center was studied, the

²³ Complaint at 17-18.

CAISO's interconnection procedures, rather than the transmission planning process, were the primary means by which generator interconnection-driven upgrades were identified.

Regardless, the undisputed facts demonstrate that the Interim WOD facilities were not identified in order to "account for the effects on the CAISO Controlled Grid" of the interconnection of the Desert Center project, nor to assess the deliverability of the Desert Center project "in a manner consistent with the CAISO interconnection procedures." Those functions were performed pursuant to the CAISO's pro-forma interconnection procedures and the resulting upgrades – the permanent West of Devers Network Upgrades – were identified in the original Desert Center LGIA. In contrast, the Interim WOD project is the result of a special and unique effort to provide Desert Center with interim deliverability pending the deployment of the permanent West of Devers Network Upgrades. This "interim deliverability" service is not addressed in the CAISO tariff, and is reflected solely in the terms of the SCE/Desert Center letter agreement and the amended Desert Center LGIA.

Desert Center also argues that the Interim WOD project should be considered as having been proposed in accordance with the CAISO's transmission planning process because it was listed as part of the CAISO's transmission expansion plan for 2012-13.²⁴ Desert Center overstates the importance of this reference. The table cited by Desert Center merely shows the

²⁴ Complaint at 18 (citing Table 5.5-4 in the 2012-13 transmission expansion plan, which is provided in attachment D to the complaint). Desert Center appears to mean row 2 in the table, which lists "West of Devers 230 kV series reactors."

inclusion of the Interim WOD project among the major assumptions used in the database model for the CAISO's economic planning study.²⁵ The fact that the Interim WOD Project was included in the base case for the 2012-13 transmission plan does not mean that it was proposed and evaluated in accordance with the transmission planning process; it was not. To the contrary, including the Interim WOD project as an *assumption* underlying the 2012-2013 transmission planning model indicates that it was not being studied as part of the transmission plan, but rather had already been developed through a separate process.

Desert Center contends that testimony provided by Dr. Lorenzo Kristov in the CAISO's 2007 tariff amendment to implement the CRR allocation process shows that the term Merchant Transmission Facility in tariff section 36.11 should be interpreted broadly to include the Interim WOD project.²⁶ The Commission should decline to consider the portion of Dr. Kristov's testimony presented by Desert Center because no extrinsic evidence is necessary to discern the unambiguous language of Section 36.11. As the Commission has explained:

when presented with a dispute concerning the interpretation of a tariff or contract, the Commission looks first to the language of the tariff or contract itself and, only if it cannot discern the meaning of the contract or tariff from the language of the contract or tariff, will it look to extrinsic evidence of intent.²⁷

²⁵ See pages 306, 310, and 313 of the 2012-13 transmission expansion plan, available on the CAISO website at <http://www.caiso.com/planning/Pages/TransmissionPlanning/2012-2013TransmissionPlanningProcess.aspx>.

²⁶ Complaint at 20-21.

²⁷ *New York Independent System Operator, Inc.*, 131 FERC ¶ 61,032, at P 30 (2010). See also *Vermont Electric Power Company, Inc.*, 132 FERC ¶ 61,068, at P 15 (2010) (describing same rules of tariff interpretation).

The CAISO tariff is explicit and unambiguous that Merchant Transmission CRRs are limited to projects that were proposed and evaluated through the CAISO's transmission planning process, or Network Upgrades for which an interconnection customer elected to receive CRRs in lieu of direct reimbursement.²⁸ The Interim WOD upgrades did not arise out of the CAISO transmission planning process, and they are not Network Upgrades for which Desert Center is entitled to reimbursement under the CAISO's generator interconnection process. Therefore, there is no way to interpret the language in section 36.11 "broadly" enough to encompass the Interim WOD project without effectively excising it from the tariff.

Even if the Commission believed it needed to look to Dr. Kristov's testimony for extrinsic evidence of the intent of tariff section 36.11, the entirety of that testimony supports a Commission finding that the Interim WOD project is not a Merchant Transmission Facility under section 36.11. Dr. Kristov stated that the tariff language on the methodology for allocating Merchant Transmission CRRs should be read narrowly, not broadly: in response to the question "What is the intended scope of this proposed methodology?", Dr. Kristov responded, "The scope is very narrow. The methodology assumes that: . . . the merchant status and entitlement of the sponsor to be allocated CRRs have been established."²⁹

As discussed above, Desert Center is not a Project Sponsor and the Interim

²⁸ See definition of "Project Sponsor", CAISO Tariff, Appendix A: "A Market Participant, group of Market Participants, a Participating TO or a project developer who is not a Market Participant or Participating TO *that proposes the construction of a transmission addition or upgrade in accordance with Section 24.*" (emphasis added).

²⁹ CAISO Tariff Amendment, Docket No. ER07-869-000, Attachment D (Exhibit ISO-1, Direct Testimony of Dr. Lorenzo Kristov), at 27 (May 7, 2007).

WOD project is not a Merchant Transmission Facility. The Interim WOD project did not go through the CAISO's transmission planning process. Therefore, Desert Center is not entitled to receive Merchant Transmission CRRs under section 36.11, and nothing in Dr. Kristov's testimony undermines this conclusion.

2. Desert Center Does Not Qualify for Merchant Transmission CRRs as a Generator Interconnection Customer

Desert Center also points to section 12.3.2.1 in tariff appendix Y and section 14.3.2.1 in tariff appendix DD, both of which, under certain circumstances, permit a generator interconnection customer to receive Merchant Transmission CRRs in accordance with tariff section 36.11 for Network Upgrades identified through the generator interconnection process.³⁰ Neither of these provisions is relevant to Desert Center. Section 12.3.2.1 in Appendix Y allows interconnection customers the option of receiving Merchant Transmission CRRs in lieu of direct reimbursement for amounts that those customers have advanced to fund Network Upgrades. Similarly, section 14.3.2.1 in Appendix DD states that interconnection customers are eligible to receive Merchant Transmission CRRs for Network Upgrades for which the customer is not eligible for ratepayer reimbursement. Per the terms of the letter agreement and the Desert Center LGIA, the Interim WOD project is not a Network Upgrade and Desert Center is not entitled to reimbursement for the Interim WOD project facilities.³¹ Desert Center cannot request allocation of a benefit in lieu of something it was not

³⁰ Complaint at 18-19.

³¹ Desert Center stipulated in the Letter Agreement and explains in its complaint that the Interim WOD project does not constitute a Network Upgrade as defined in the amended LGIA. See Complaint at 3, 6, 10-11, 28-29; Letter Agreement at 6.

entitled to receive in the first place. The benefit of the bargain received by Desert Center through the letter agreement was accelerated deliverability, for which it will receive the full value, regardless of the allocation of any congestion revenue rights. Indeed, the LGIA explicitly states that Desert Center will be entitled to reimbursement only if the facilities in fact became permanent.³²

These provisions also do not support Desert Center's argument that the CAISO has read the definition of Merchant Transmission Facility too narrowly. There is no language in these provisions that alters the definition of Merchant Transmission Facility. Rather, these provisions provide a separate tariff mechanism, in addition to the transmission planning process, for obtaining Merchant Transmission CRRs -- one for which Desert Center does not qualify.

Desert Center also points to a 2009 Commission order, in which the Commission accepted the CAISO's proposal to add to its tariff a new section 24.14.3.2 to permit the allocation of Merchant Transmission CRRs to FPL Energy, LLC ("FPL") for an existing transmission upgrade in order to replace the outdated firm transmission rights that FPL already held.³³ The rationale behind the tariff amendment was that FPL would not qualify for an allocation of Merchant Transmission CRRs under the newly-implemented CAISO market structure because the tariff limited eligibility to sponsors of new merchant transmission projects. Therefore, the CAISO proposed, and the Commission accepted, the

³² LGIA section 9(c) ("In the event such re-classification occurs within fifteen (15) years of the Interim WOD Project Letter Agreement execution date, then Participating TO will refund to the Interconnection Customer its share of the estimated net book value of those facilities which are re-classified as Network Upgrades.")

³³ Complaint at 19 (citing *California Independent System Operator Corp.*, 125 FERC ¶ 61,328, at P 21 (2008), *reh'g denied*, 128 FERC ¶ 61,072 (2009)).

addition of a new subsection under section 24 specifically stating that FPL was entitled to receive Merchant Transmission CRRs reflecting its existing financial transmission rights.

This tariff language obviously does not directly apply to Desert Center, which is a separate entity from FPL. Desert Center argues, however, that it demonstrates that the Commission has accepted the notion that transmission upgrades made in the generator interconnection context can qualify as Merchant Transmission Facilities. To the contrary, this case cuts against Desert Center's argument because it illustrates the limits of the definition of Merchant Transmission Facility. To wit, even though FPL already held financial transmission rights for a permanent transmission upgrade, an explicit amendment was still needed to ensure that FPL received Merchant Transmission CRRs commensurate with this pre-existing right because it did not meet the definition of a Project Sponsor.

B. Neither the Letter Agreement Nor the Amended LGIA Authorizes the CAISO to Provide Merchant Transmission CRRs to Desert Center.

Desert Center argues that it did not surrender or waive its tariff right to receive Merchant Transmission CRRs for the Interim WOD Project through the letter agreement with SCE or its amended LGIA.³⁴ Desert Center's argument is based on the premise that it has a tariff right to receive Merchant Transmission CRRs for the Interim WOD Project. As discussed above, Desert Center has no such right.

³⁴ Complaint at 27-30.

Desert Center asserts that section 9(b) of appendix A of the amended LGIA precludes Desert Center from receiving refunds in accordance with article 11.4.1 of the LGIA but does not preclude Desert Center from receiving Merchant Transmission CRRs.³⁵ However, the italicized language shown below in article 11.4 of the amended LGIA does make clear that Desert Center has no existing right under the LGIA to receive CRRs:

No later than thirty (30) Calendar Days prior to the Commercial Operation Date, the Interconnection Customer may make a one-time election by written notice to the CAISO and the Participating TO to receive Congestion Revenue Rights *as defined in and as available under the CAISO Tariff at the time of the election in accordance with the CAISO Tariff*, in lieu of a refund of the cost of Network Upgrades in accordance with Article 11.4.1.³⁶

As explained above, Desert Center is not a Project Sponsor and the Interim WOD project is not a Merchant Transmission Facility as defined in the tariff. Nor do the Interim WOD upgrades constitute Network Upgrades for which Desert Center is entitled to reimbursement. Therefore, Desert Center has no right to receive Merchant Transmission CRRs “as defined in and as available under the CAISO Tariff . . . in accordance with the CAISO Tariff.”³⁷

Similarly, Desert Center asserts that section 8 of the letter agreement precludes Desert Center from receiving refunds in accordance with article 11.4.1 of the amended LGIA, but does not preclude Desert Center from receiving

³⁵ Complaint at 28-29

³⁶ (Emphasis added.)

³⁷ Letter agreement at 57. For the same reason, the language in LGIA Section 11.4.3, which states that nothing in the agreement shall be construed to waive any rights, including rights to CRRs, to which an interconnection customer “shall be entitled to” associated with transmission capacity created by Network Upgrades, does not support a grant of Merchant Transmission CRRs to Desert Center.

Merchant Transmission CRRs.³⁸ Indeed, as Desert Center recognizes, the letter agreement does not mention CRRs at all.³⁹ Therefore, any right that Desert Center might have to receive Merchant Transmission CRRs would need to derive from the tariff or the amended LGIA. As explained above, no such rights currently exist and nothing in the letter agreement changes this result.

Desert Center accurately states that “[a]t the time those provisions [of the Letter Agreement and the amended LGIA] were entered into, Desert Center – and, to Desert Center’s knowledge, CAISO and SCE as well – did not anticipate that the IWOD project would create incremental CRRs.”⁴⁰ Therefore, the lack of any reference to CRRs in the Letter Agreement did not prevent Desert Center and SCE from each receiving the full benefit of its contractual bargain. The Letter Agreement expressly “constitutes the complete and final expression of the agreement between [Desert Center and SCE].”⁴¹ Desert Center does not, and cannot, allege that it has failed to receive the benefits of its contractual bargain or that SCE has failed to satisfy the requirements of the Letter Agreement and/or the Desert Center LGIA.

³⁸ Complaint at 28-29.

³⁹ Complaint at 11 (stating that “[t]he Letter Agreement does not mention the availability of CRRs or state that Desert Center surrendered any right to be allocated CRRs created by its investment in the IWOD Project”).

⁴⁰ Complaint at 28.

⁴¹ Letter Agreement at 8. *See also PPL Maine, LLC, PPL Great Works, LLC, and Bangor Pacific Hydro Associates*, 131 FERC ¶ 63,016, at P 86 (2010) (“The fact of the matter is that at the time that the MOU [memorandum of understanding] was executed the parties intended that each get the benefit of their bargain as discussed above.”).

C. The CAISO Tariff is not Unjust or Unreasonable Because it Does Not Provide for the Allocation of Merchant Transmission CRRs to Desert Center.

Desert Center argues that if the Commission determines that the CAISO tariff does not authorize the allocation of Merchant Transmission CRRs to Desert Center, the Commission should find the CAISO tariff to be unjust and unreasonable because Commission policy on financial transmission rights dictates that a party who pays for transmission upgrades should be entitled to receive the transmission congestion rights created by the upgrades.⁴² Consistent with its position that the allocation of congestion revenue rights associated with the Interim WOD upgrades should be determined primarily by SCE and Desert Center, the CAISO does not take any position on the merits of whether Desert Center is entitled to receive the CRRs associated with the Interim WOD project pursuant to the Commission's financial transmission rights policy. Regardless of the outcome of this issue, the Commission should decline to find the CAISO tariff unjust and unreasonable.

As Desert Center states, Guideline 3 of Order No. 681 "enshrine[s]" the policy set forth in the orders cited by Desert Center finding that a party that pays for transmission upgrades should receive the congestion revenue rights created by the upgrades.⁴³ Desert Center also acknowledges that "FERC specifically has found that the CAISO Tariff's process for awarding Merchant Transmission CRRs

⁴² Complaint at 25-27.

⁴³ Complaint at 23, 26 (referencing complaint at 21-25).

complies with Guideline 3.”⁴⁴ In the paragraph of the CRR Order that Desert Center cites, the Commission found that “the CAISO’s proposal to allocate . . . CRRs to merchant transmission *sponsors*, commensurate with the incremental transmission capacity provided by a merchant transmission upgrade, is just and reasonable, and we accept it.”⁴⁵ Thus, the Commission found that the tariff process for allocating Merchant Transmission CRRs only to Project Sponsors satisfies the Guideline 3 requirement that “[l]ong-term firm transmission rights made feasible by transmission upgrades or expansions must be available upon request to any party that pays for such upgrades or expansions in accordance with the transmission organization’s prevailing cost allocation methods for upgrades or expansions.”⁴⁶

Regardless of whether Desert Center is theoretically entitled to the CRRs associated with the Interim WOD project based on the application of the Commission’s general policies, there is no reason to conclude that the tariff provisions regarding the allocation of Merchant Transmission CRRs have become unjust and unreasonable simply because they do not address unique situations like the Interim WOD project involving transmission facilities identified and built through non-tariff processes. The Interim WOD project is the product of an agreement based on the individual facts of Desert Center’s circumstances. It

⁴⁴ Complaint at 23 (citing CRR Order at P 74).

⁴⁵ CRR Order at P 74 (emphasis added) (footnote omitted).

⁴⁶ Order No. 681 at P 210. After the Commission issued the CRR Order, the CAISO filed and the Commission accepted section 12.3.2.1 in tariff appendix Y and section 14.3.2.1 in tariff appendix DD. As discussed above, those tariff provisions permit an interconnection customer to receive Merchant Transmission CRRs in accordance with tariff section 36.11 for Network Upgrades identified through the generator interconnection process.

would be impractical and inefficient for the CAISO to attempt to capture in its tariff every possible circumstance under which CRRs might be created as a result of a CAISO participating transmission owner agreeing to build a facility at a developer's expense. Doing so would also undermine the ability of parties to such arrangements to negotiate these matters among themselves, and would likely result in participating transmission owners being less willing to explore and implement novel solutions to problems facing individual developers. The Commission should permit these matters to be addressed on a case-specific basis through discrete filings with the Commission, such as the letter agreement between SCE and Desert Center. This approach will best allow the Commission to address the individual factual circumstances of each project.

Even if the Commission determines that Desert Center is entitled to receive the benefit of the congestion revenue rights created by for the Interim WOD project, during the period in which the facilities are in service, the Commission could implement such finding without concluding that the CAISO tariff unjust and unreasonable by directing the parties to amend the letter agreement and the Desert Center LGIA.⁴⁷ Doing so would be more appropriate than requiring the CAISO to amend its tariff because it is the terms of the letter agreement, as incorporated into the LGIA, not the CAISO tariff, that govern the construction, operation and payment of the Interim WOD upgrades. In addition, even if Desert Center is allocated congestion revenue rights for the Interim WOD upgrades, there are a number of implementation issues that the parties would

⁴⁷ Any amendment to the terms of the letter agreement would also be incorporated into the Desert Center LGIA.

need to resolve, including the quantity and term of the congestion revenue rights.⁴⁸ It would be far easier and more efficient for the parties to address these issues through a negotiated amendment to the letter agreement and LGIA, rather than attempting to shoehorn this process into the CAISO tariff.

Similarly, the CAISO has not determined the amount of Merchant Transmission CRRs that might be available to Desert Center. The interim WOD project did not go through the CAISO's transmission planning process, and the CAISO has not included the Interim WOD project in its CRR network model pending the resolution of this complaint. Therefore, even if the Commission determines that Desert Center is entitled to any CRRs relating to the Interim WOD project, it is not certain what, if any, incremental system capability has been created by the Interim WOD project that would result in awarding CRRs to Desert Center.⁴⁹

⁴⁸ For example, it is not clear at what point congestion revenue rights associated with the temporary facilities would expire. It would seem logical that this would occur at some point during the construction of the permanent facilities, presumably before transmission flows on the path become heavily impacted by the required outages associated with placing the permanent facilities into service. However, because the Interim WOD upgrades were implemented outside the CAISO tariff, there are no existing tariff provisions that dictate the answer to these questions.

⁴⁹ See CAISO Tariff, Section 36.11.3.2 (setting forth the process for nominating and calculating feasible Merchant Transmission CRRs). There is not necessarily a correlation between the capacity that was made available for accelerated deliverability and the capacity that could be made available as CRRs. For example, the Interim WOD project included modification of some existing special protection schemes, which, due to software modeling limitations, are not included in the CAISO's CRR network model. It is not clear what amount of the capacity made available by the Interim WOD project for accelerated deliverability derives from modifications to existing special protection schemes and what capacity derives from the installation of the series reactors at SCE substations. The range of possible outcomes is considerable and the resulting value of any feasible CRRs would vary greatly.

D. Even If the Commission Concludes that Desert Center Should Be Allocated Merchant Transmission CRRs, the Commission Should Deny Desert Center’s Request for Retroactive Effectiveness.

Desert Center argues that in addition to receiving Merchant Transmission CRRs for the Interim WOD upgrades, such CRRs should be made effective retroactive to the in-service date of the facilities, in accordance with CAISO tariff Section 36.11.2.⁵⁰ Even assuming that the Commission finds that Desert Center is entitled to the congestion revenue rights associated with the Interim WOD upgrades, it should reject Desert Center’s request for retroactive treatment. Section 36.11.2 is inapplicable to Desert Center because, as explained above, the Interim WOD upgrades were not proposed or evaluated as part of the CAISO transmission planning process. Also, it is unclear to the CAISO how it would implement CRRs relating to the Interim WOD upgrades on a retroactive basis. The in-service effectiveness provision in section 36.11.2 was designed to work hand-in-hand with the 45-day notice requirement in that section, which ensures that the CAISO and market participants have the opportunity to understand and evaluate the timing and quantity of rights to be allocated. The only way that the CAISO could provide the benefit of congestion revenues to Desert Center retroactively would be to rerun its market to recover the value of congestion paid to load serving entities. This outcome would run afoul of the filed-rate doctrine and rule against retroactive ratemaking because market participants were not on notice that any such re-allocation might occur, through a stakeholder process

⁵⁰ Complaint at 16.

such as the transmission planning process or even through the filing of the LGIA, which was served on all scheduling coordinators.⁵¹

III. Communications

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

Roger E. Collanton
General Counsel
Sidney L. Mannheim
Assistant General Counsel
John C. Anders
Lead Counsel
William H. Weaver
Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
smannheim@caiso.com
janders@caiso.com
bweaver@caiso.com

Michael Kunselman
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 239-3333
E-mail:
michael.kunselman@alston.com
bradley.miliauskas@alston.com

IV. Conclusion

For the reasons explained above, the CAISO respectfully requests that the Commission deny Desert Center's request to find that the CAISO tariff provides for the allocation of Merchant Transmission CRRs relating to the Interim WOD project. In addition, even if the Commission determines that its general policy on financial transmission rights dictates that Desert Center should receive CRRs for

⁵¹ The filed-rate doctrine and the rule against retroactive rulemaking preclude a rate adjustment taking place prior to a section 205 filing unless the parties are on notice that a past rate may be adjusted. See, e.g., *Consolidated Edison Co. of New York, Inc. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003); *Public Utilities Commission of the State of California v. FERC*, 988 F.2d 154, 164 (D.C. Cir. 1993).

the Interim WOD project, the Commission should decline to find the CAISO tariff unjust and unreasonable, and instead direct an appropriate amendment to the letter agreement and Desert Center LGIA.

Respectfully submitted,

Roger E. Collanton
General Counsel
Sidney L. Mannheim
Assistant General Counsel
John C. Anders
Lead Counsel
William H. Weaver
Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630

Michael Kunselman
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004

Counsel for the California Independent System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the above-referenced proceeding, 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 Washington, D.C this 10th day of March, 2015.

/s/ Michael Kunselman

Michael Kunselman
Alston & Bird LLP