

127 FERC ¶ 61,178  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
and Philip D. Moeller.

California Independent System Operator Corporation      Docket No. ER08-140-001

ORDER DENYING REHEARING

(Issued May 21, 2009)

1. On December 21, 2007, the Commission issued an order<sup>1</sup> conditionally accepting tariff revisions to implement the California Independent System Operator's (CAISO) Location Constrained Resource Interconnection (LCRI) provisions. The LCRI tariff provisions provide a new mechanism to facilitate the financing and development of certain interconnection facilities. On January 18, 2008, the Imperial Irrigation District (Imperial) filed a request for rehearing of the LCRI Order. We deny Imperial's request for rehearing, as discussed below.

**Background**

2. On January 25, 2007, the CAISO sought conceptual approval from the Commission for its proposal by filing a petition for a declaratory order.<sup>2</sup> In the Commission's Declaratory Order,<sup>3</sup> the Commission granted conceptual approval of CAISO's proposal to establish a financing mechanism for the construction of interconnection facilities to connect location-constrained resources<sup>4</sup> to the CAISO grid.

---

<sup>1</sup> *California Independent System Operator Corp.*, 121 FERC ¶ 61,286 (2007) (LCRI Order).

<sup>2</sup> The CAISO filed its Petition for a Declaratory Order on January 25, 2007, in Docket No. EL07-33-000.

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061 (Declaratory Order), *order on reh'g*, 120 FERC ¶ 61,244 (2007) (Rehearing of Declaratory Order).

<sup>4</sup> In the Declaratory Order, the Commission defined location-constrained resources as "generation resources that are typically constrained as a result of their location, relative  
(continuation...)

The Commission found that the CAISO's proposal was necessary because "existing interconnection policies, as articulated in Order No. 2003,<sup>5</sup> did not contemplate the challenges associated with more recent efforts to interconnect location-constrained resources, that the difficulties confronting this type of interconnection are real and that such impediments can thwart the efficient development of needed infrastructure."<sup>6</sup> The Commission also determined that the CAISO's proposed rate treatment of the costs of the LCRI facilities would not be unduly preferential or discriminatory, and would be just and reasonable variation from Order No. 2003's default generator interconnection policies.<sup>7</sup> Further, the Commission held that the CAISO's proposal struck a reasonable balance that addressed barriers to the development of location-constrained resources, while providing ratepayer protections. The Commission concluded that "[t]he CAISO's proposal includes several features that ensure that benefits will accrue to users of the grid and that limit the cost impact on ratepayers, including a rate impact cap and capacity subscription requirements."<sup>8</sup> Finally, the Commission also addressed the central role of the transmission planning process for the integration of LCRI facilities into the CAISO grid by explaining that "the CAISO will evaluate and approve each proposed interconnection facility in the context of [its] transmission planning process, thereby ensuring that the project will result in a cost effective and efficient interconnection of resources to the grid."<sup>9</sup>

---

size and the immobility of their fuel source." Declaratory Order, 119 FERC ¶ 61,061 at n.1.

<sup>5</sup> *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

<sup>6</sup> LCRI Order, 121 FERC ¶ 61,286 at P 3, citing Declaratory Order, 119 FERC ¶ 61,061 at P 2.

<sup>7</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 2-3 and 69.

<sup>8</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 3; Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 4.

<sup>9</sup> *Id.*

3. Specifically, the CAISO proposed to initially roll-in the costs of interconnection facilities through the transmission revenue requirement of the Participating Transmission Owner (PTO) that builds the facility. The costs of a facility would be reflected in the Transmission Access Charge. Each connecting generator would pay its *pro rata* share of the going-forward costs of using the line. Through inclusion in the Transmission Access Charge, all users of the grid would pay the cost of the unsubscribed portion of the line until the line is fully subscribed.<sup>10</sup>

4. The Commission identified in the Declaratory Order several issues that the CAISO would need to clarify when it proposed its LCRI tariff provisions, including: (1) the costs, if any, that would be allocated to wheel-through customers and their corresponding benefits; (2) the required generator commitment levels and the rate impact cap; and (3) the process for identifying the Energy Resource Areas<sup>11</sup> in which LCRI facilities would be constructed.<sup>12</sup> The Commission also directed the CAISO in the Declaratory Order to incorporate several changes in its subsequent LCRI tariff filing. These changes included: (1) expanding eligibility under these tariff provisions to all location-constrained resources subject to meeting the proposal's eligibility criteria;<sup>13</sup> and (2) not limiting the types of resources that may contract for unused capacity on an existing LCRI facility.<sup>14</sup>

5. On May 21, 2007,<sup>15</sup> Imperial filed a request for rehearing, clarification, and expedited consideration of the Declaratory Order. Imperial's rehearing request was denied but the Commission clarified that in its Declaratory Order, it did not intend for the CAISO to become the regional transmission operator or balancing authority for all of

---

<sup>10</sup> *Id.* P 5.

<sup>11</sup> The CAISO defined an Energy Resource Area as a region in California, to be identified by the California Public Utilities Commission (CPUC) and California Energy Commission (CEC), that holds the potential for development of a significant quantity of location-constrained resources and that is not readily accessible to the CAISO transmission grid. Petition for Declaratory Order at 2 and 29.

<sup>12</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 90.

<sup>13</sup> *Id.* P 74 and n.36.

<sup>14</sup> *Id.* P 75.

<sup>15</sup> Imperial filed an errata to its May 21, 2007 filing on June 5, 2007 (Imperial Request for Rehearing).

California or in areas where a transmission operator or balancing authority already exists.<sup>16</sup>

6. On October 31, 2007, the CAISO filed its proposed LCRI tariff revisions (October 31 Filing) to reflect the principles accepted by the Commission in its Declaratory Order. The CAISO proposal also included modifications identified by the Commission in the Declaratory Order and subsequently made by the CAISO through consultation with its stakeholders. The proposed LCRI tariff revisions addressed four broad aspects of the LCRI policy: (1) the criteria under which a project qualifies for consideration as an LCRI facility; (2) the criteria the CAISO will apply during its transmission planning process to determine whether a proposed LCRI facility is needed so as to qualify for inclusion in the CAISO's transmission plan; (3) the mechanism to recover the costs of construction of an LCRI facility; and (4) the allocation of the costs of an LCRI facility.

7. In the LCRI Order, the Commission conditionally accepted the CAISO's LCRI tariff revisions, subject to several modifications to be made in a compliance filing.<sup>17</sup> The Commission found that the LCRI proposal contained multiple mechanisms that worked in concert to promote investment in needed infrastructure, assist the State of California in meeting its renewable portfolio standards, provide an appropriate signal to LCRI developers, and balance the risk of stranded cost and impact to ratepayers.<sup>18</sup> The Commission also found that the LCRI proposal reflected the Commission's findings in its Declaratory Order.

8. On December 21, 2007, the CAISO submitted revisions to its transmission planning process as required by Order No. 890<sup>19</sup> in Docket No. OA08-62-000 (CAISO's

---

<sup>16</sup> Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 28.

<sup>17</sup> The compliance filing was accepted by the Commission by delegated letter order issued on June 12, 2008.

<sup>18</sup> LCRI Order, 121 FERC ¶ 61,286 at P 39.

<sup>19</sup> *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 (2007), *order on reh'g*, Order No. 890-A, 73 Fed. Reg. 2984 (Jan. 16, 2008), FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009). In Order No. 890, the Commission reformed the *pro forma* Open Access Transmission Tariff (OATT) to establish a new and comprehensive transmission planning process providing greater transparency for all entities involved with transmission planning.

Order No. 890 filing).<sup>20</sup> On June 19, 2008, the CAISO's Order No. 890 filing was accepted in that docket, and made subject to a further compliance filing.<sup>21</sup>

9. On January 18, 2008, Imperial timely sought rehearing of the LCRI Order, arguing that the Commission's acceptance of the LCRI tariff revisions may result unintentionally in duplicative transmission facilities being built in a manner that is not cost-effective or efficient for ratepayers, and may result in stranded investment.<sup>22</sup>

## **Discussion**

### **Relationship between CAISO's LCRI Tariff Provisions and CAISO's Order No. 890 Filing**

10. Imperial argues that the Commission erred in approving the LCRI tariff revisions without first reviewing the closely-related transmission planning compliance filing in the CAISO's Order No. 890 Proceeding. Imperial contends that even though the LCRI revisions rely heavily upon the CAISO's transmission planning process, the Commission's decision to consider these proposals, which were submitted approximately two months apart, separately rather than as an integrated proposal was in error and should be reversed.<sup>23</sup> Next, Imperial argues that the LCRI Order addresses arguments related to transmission planning in an inconsistent manner. It asserts that the Commission dismissed some of Imperial's arguments by stating that it would not consider the transmission planning process outside of its consideration of the CAISO's Order No. 890 filing. However, in other parts of the LCRI Order, the Commission relied on the transmission planning process as providing a safeguard to ensure that rolled-in amounts

---

<sup>20</sup> We will refer to the Commission's consideration of CAISO's Order No. 890 filing in Docket No. OA08-62 as the "CAISO's Order No. 890 Proceeding."

<sup>21</sup> *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008) (*Order on CAISO's Order No. 890 Filing*), *order on reh'g and compliance*, 127 FERC ¶ 61,172 (2009) (*Subsequent Order on CAISO's Order No. 890 Filing*).

<sup>22</sup> Imperial Request for Rehearing at 1, 4-6, and 24. Imperial states that it is concerned that the Commission's approval of LCRI provisions may strand its investments in the Salton Sea facilities. According to Imperial, it built these facilities to access the geothermal energy that it planned to transport over its system to the CAISO's system.

<sup>23</sup> *Id.* at 7.

are not more than necessary to facilitate investment.<sup>24</sup> Further, Imperial argues that the Commission's approval of tariff provisions that relied upon other tariff language not yet proposed, or which the Commission knew would be revised substantially, is inappropriate and not in the public interest.<sup>25</sup> As an example, Imperial argues that the LCRI Order cites to the Declaratory Order, which, in turn, cites to section 24.1.1.3.1 of the CAISO's tariff for the proposition that an independent regional planning process is instrumental in justifying the rolled-in rate treatment for the costs of any unsubscribed capacity on the line by determining that the costs associated with meeting future demand requirements are expected to be lower over time with the project than without.<sup>26</sup> According to Imperial, not only did the CAISO propose to remove this section in its Order No. 890 filing, this tariff language applies to economically driven transmission projects, and not LCRI facilities. In another example, Imperial argues that the CAISO added a term to the LCRI tariff provisions in its Order No. 890 filing that Imperial believes provides the CAISO with too much discretion.

### **Determination**

11. We disagree with Imperial that we erred by accepting the LCRI tariff provisions without first considering the CAISO's Order No. 890 filing. The LCRI tariff provisions govern a narrowly-focused, discrete financing mechanism that the Commission determined in the Declaratory Order will eliminate barriers to the development of location-constrained resources while providing protections to ensure that rates remain just and reasonable.<sup>27</sup> The CAISO submitted the LCRI tariff revisions in the instant docket as

---

<sup>24</sup> *Id.* at 8, citing LCRI Order, 121 FERC ¶ 61,286 at P 40; Declaratory Order, 119 FERC ¶ 61,061 at P 63, 71, 74, 76, and 78.

<sup>25</sup> *Id.* at 9, citing *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,310, at P 79 (2005) (It is premature for the FERC to opine or rule on the merits of a filing until the filing is before the Commission); *ISO New England, Inc.*, 109 FERC ¶ 61,383, at P 46 (2004) (It is not appropriate to include or rely on rates that are not yet approved by the Commission); *Midwest Indep. Transmission Sys. Operator, Inc.*, 103 FERC ¶ 61,212, at n.13 (2003) (It is premature to opine in one docket on issues pending before the Commission in another docket).

<sup>26</sup> Imperial Request for Rehearing at 9, citing LCRI Order, 121 FERC ¶ 61,286 at P 40; Declaratory Order, 119 FERC ¶ 61,061 at P 78.

<sup>27</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 3, 62-63; Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 12.

provided for by the Commission in the Declaratory Order.<sup>28</sup> Upon consideration of its proposal, the Commission determined that the CAISO's proposed tariff revisions "represent[ed] a careful balance of process, risks, benefits and cost allocation."<sup>29</sup> Thereafter, the CAISO incorporated these Commission-approved LCRI tariff provisions in their entirety into its Order No. 890 filing at CAISO Tariff, sections 24.1.3 through 24.1.3.4.<sup>30</sup> Contrary to Imperial's assertions that this process was in error, either because it was considered prematurely or "in a vacuum," we find that the CAISO's submission of its LCRI tariff provisions was necessary for the CAISO to comply with the Commission's Declaratory Order. We also find that this approach facilitated consideration of the LCRI tariff provisions in their entirety prior to these provisions being integrated into the CAISO's more comprehensive transmission planning process.

12. With regard to Imperial's assertion that the Commission acted inconsistently by addressing some of Imperial's arguments on the transmission planning process in the LCRI Order while deferring others to the CAISO's Order No. 890 Proceeding, we disagree. Imperial had argued that CAISO's LCRI filing was deficient because the CAISO Tariff failed to incorporate the Order No. 890 regional participation principle, which requires each transmission provider to have a process to coordinate with interconnected systems.<sup>31</sup> In the LCRI Order, the Commission properly found that compliance with the specific Order No. 890 tariff requirements would be reviewed when CAISO's Order No. 890 filing was submitted. Accordingly, it was premature for the Commission to address this broader issue in the narrower LCRI proceeding.<sup>32</sup>

13. Also, the Commission properly relied on a regional transmission planning process, especially an independent one, in the LCRI Order and the Declaratory Order as one of the mechanisms that ensure that any rolled-in amounts would not be more than necessary to facilitate needed investment to develop location-constrained resources.<sup>33</sup> The

---

<sup>28</sup> *Id.* P 92.

<sup>29</sup> LCRI Order, 121 FERC ¶ 61,286 at P 39.

<sup>30</sup> Imperial and the CAISO agreed in the Order No. 890 Proceeding that issues relating to the LCRI Amendments would be considered in the instant docket. *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 198-200.

<sup>31</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 222-227.

<sup>32</sup> LCRI Order, 121 FERC ¶ 61,286 at P 57.

<sup>33</sup> LCRI Order, 121 FERC ¶ 61,286 at 40 citing to Declaratory Order, 119 FERC ¶ 61,061 at P 78 (The other mechanisms that limit the impact of LCRI facilities on  
(continuation...))

Commission explained that, one, such a transmission planning process would define the benefits that a proposed LCRI facility would provide to the grid, and also ensure efficient and cost-effective sizing and siting of multi-user interconnection facilities.<sup>34</sup> Second, the CAISO's status as an independent entity engaged in transmission planning process provided the Commission with assurance that the CAISO would not act in an unduly discriminatory manner because it had no incentive to treat different generation developers differently.<sup>35</sup> Third, the Commission noted that an open and fair transmission planning process was designed to allow for appropriate sizing of multi-user interconnection facilities by matching load serving entities' projected needs against the potential capacity from an Energy Resource Area.<sup>36</sup> Fourth, that the transmission planning process would require the transmission provider to establish the regional need and benefits of a proposed LCRI facility.<sup>37</sup> Under its Tariff, the CAISO has to evaluate and approve each proposed LCRI facility within the context of its transmission planning process.<sup>38</sup> The LCRI

---

ratepayers include, the rate cap and demonstration of interest requirements, the Energy Resource Area designation process, and sharing of costs and risks between LCRI generators and ratepayers.).

<sup>34</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 63 (The Commission explained that any LCRI facility with unsubscribed capacity that received rolled in rate treatment for its costs would be subject to an independent regional transmission planning process.). *Id.* P 76 (In addressing concerns that the CAISO's eligibility criteria should consider the proximity of Energy Resource Areas to transmission facilities owned by entities that are not PTOs, the Commission explained that under Order No. 890, the regional aspect of the transmission planning process will have to ensure proper siting and development of multi-user interconnection facilities.).

<sup>35</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 71, discussing Order No. 2003 at P 701.

<sup>36</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 74 and 76 (This response addressed the concern of whether interconnection facilities for renewable resources that were being developed by other load serving entities could be financed by the CAISO's proposal. Further, the Commission determined that the CAISO's proposal should be equally available to all eligible location-constrained resources and that the Commission's acceptance of the CAISO's proposal should not be seen as precluding any other entity from requesting similar treatment in the future.).

<sup>37</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 76.

<sup>38</sup> CAISO Tariff Appendix EE, Part A, section 24.1.3.1.

provisions were always intended to be integrated into the CAISO's transmission planning process,<sup>39</sup> and this has now occurred. It was logical for the Commission to refer to the broad goals and requirements of the Order No. 890 transmission planning process in the LCRI Order because they underlie the LCRI tariff provisions we accepted.

14. Imperial has failed to persuade us that we should have delayed considering LCRI tariff revisions until after we had considered the CAISO's Order No. 890 filing. The Commission was acting in a timely manner on a pending matter. Here, the Commission reviewed CAISO's LCRI tariff revisions to allow the CAISO to have these tariff provisions implemented sooner rather than later in order to interconnect location-constrained resources in a timely manner. The CAISO explained that "the LCRI [facility] tariff provisions in this amendment are written in a manner such that they are also applicable under the CAISO's current transmission planning process, so that LCRI proposals can be considered prior to the effective date of revisions to the Transmission Planning Process being developed in compliance with Order No. 890."<sup>40</sup> Even though the CAISO anticipated submitting to the Commission its Order No. 890 filing in December 2007, waiting for that filing and the Commission's decision on that filing would have further delayed the implementation of the LCRI tariff revisions. Accordingly, the CAISO anticipated this evolving process and submitted tariff language for its then current Commission-approved tariff and also included such language in its then forthcoming Order No. 890 filing.<sup>41</sup>

15. Moreover, the crafting and revising of tariffs in response to changing circumstances and Commission directives is, by its very nature, an ongoing process for which there may not be an ideal sequencing of review by the Commission. Nonetheless, in this proceeding, we find that the sequence in which the Commission considered the LCRI tariff revisions and the Order No. 890 filing was reasonable. As we previously determined, the LCRI tariff revisions will remove impediments thwarting the efficient development of location-constrained facilities and will advance state, regional and federal initiatives to encourage the development of these facilities.<sup>42</sup>

16. We also do not agree with Imperial that the Commission's LCRI Order is in error because it cites to the Declaratory Order, issued in 2007, which included a footnote citing

---

<sup>39</sup> October 31, 2007 Filing at 8.

<sup>40</sup> October 31 Filing at 8.

<sup>41</sup> *Id.*

<sup>42</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 2.

section 24.1.1.3.1 of the CAISO Tariff. This section of the CAISO Tariff concerned economically driven projects and, following the issuance of the LCRI Order, was revised pursuant to the CAISO's Order No. 890 filing. The Commission referenced this CAISO Tariff language to support the proposition that before transmission facilities may be approved, "the transmission planning process must determine that the costs associated with meeting future demand requirements, including the State of California's [renewable portfolio standards] requirements, are expected to be lower over time with the project than without."<sup>43</sup> Under the current tariff, a similar cost-benefit analysis is included.<sup>44</sup> As explained earlier, the LCRI tariff provisions exist within the broader context of the CAISO's transmission planning process.<sup>45</sup>

17. Imperial also protests that the CAISO "added a newly defined term to its LCRI provisions that [Imperial] believes provides the CAISO too much added discretion and should be rejected."<sup>46</sup> Imperial's assertion contained in this statement is without sufficient identifying information for the Commission to determine the provision Imperial seeks to have rejected and, accordingly, we deny rehearing of this issue.

18. For all these reasons, we are not persuaded that we erred in approving the LCRI tariff revisions without first considering the CAISO's Order No. 890 filing.

### **Wheel-Through Customers**

19. Imperial argues that the Commission erred when it approved the LCRI tariff revisions without addressing Imperial's specific concerns refuting the CAISO's claims

---

<sup>43</sup> *Id.* P 78; LCRI Order, 121 FERC ¶ 61,286 at P 40.

<sup>44</sup> The corresponding provisions in the current CAISO Tariff now appear at section 24.1.1 (b), which states in relevant part: "...the CAISO Governing Board or CAISO management, as applicable, shall consider the degree to which, if any, the benefits of the project outweigh the costs, in accordance with the procedures and using the technical studies set forth in the Business Practice Manual...." CAISO Tariff Appendix EE, Part A, section 24.1.1(b).

<sup>45</sup> The CAISO explained that "to be eligible for the proposed [LCRI] financing treatment, a project must be evaluated and approved by the CAISO in the context of a prudent CAISO transmission planning process, thereby ensuring that the project would result in a cost-effective and efficient interconnection of resources to the grid." October 31 Filing at 5.

<sup>46</sup> Imperial Request for Rehearing at 10.

that wheel-through customers will receive benefits from LCRI facilities.<sup>47</sup> Imperial insists that it presented arguments showing that wheel-through customers will not use LCRI facilities, that LCRI facilities will not increase the transmission capacity that is available to wheel-through customers, and that these customers' available capacity and ability to schedule is likely to be negatively impacted. Imperial also contends that LCRI facilities can hinder reliability and that additional operating reserves may be necessary. Finally, Imperial asserts that the addition of LCRI facilities may not reduce overloading interconnections and, instead, may create local constraints that impact wheeling through the CAISO system.<sup>48</sup> Imperial argues that the Commission must address a problem raised by a party or offer an adequate explanation.<sup>49</sup>

20. More specifically, Imperial contends that cost allocation of the LCRI facilities should be made to classes of customers who actually are responsible for these costs or receive the benefit from these facilities.<sup>50</sup> Imperial argues that the LCRI Order is arbitrary and capricious because it does not substantiate its conclusions that wheel-through customers will actually benefit from these facilities. Moreover, Imperial argues that because, by definition, wheel-through customers have purchased energy outside of the CAISO grid and are wheeling energy through the grid for the limited purpose of transporting energy to customers outside of the CAISO grid, wheel-through customers do not take energy from within the CAISO grid and, therefore, do not benefit from LCRI facilities.<sup>51</sup>

21. Imperial also asserts that as generation ties, the LCRI facilities are not considered "network" upgrades under the CAISO Tariff,<sup>52</sup> and wheel-through customers will not

---

<sup>47</sup> *Id.* at 11.

<sup>48</sup> *Id.* at 12.

<sup>49</sup> *Id.* at 12, citing *Noram Gas Transmission Co. v. FERC*, 148 F.3d 1158, 1165 (D.C. Cir. 1998); *PPL Wallingford Energy LLC v. FERC*, 419 F.3d 1194, 1200 (D.C. Cir. 2001); *Tesoro Alaska Petroleum Co. v. FERC*, 234 F.3d 1286, 1294 (D.C. Cir. 2000); *Home Box Office, Inc. v. FCC*, 567 F.2d 9, 35 n.58 (D.C. Cir. 1977).

<sup>50</sup> *Id.* at 13, citing *Pac. Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1321 (D.C. Cir. 2004) (*PG&E v. FERC*); *K N Energy v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1991) (*K N Energy v. FERC*); *Sys. Energy Res. Inc.*, 41 FERC ¶ 61,238, at 61,616 (1987), *reh'g denied*, 42 FERC ¶ 61,091 (1988).

<sup>51</sup> *Id.* at 13.

<sup>52</sup> *Id.* at 15, citing LCRI Tariff section 24.1.3.1(a)(3).

benefit from these non-network upgrades. Imperial asserts that the LCRI Order protects the interests of the ratepayers in the CAISO over the interests of all ratepayers.<sup>53</sup> Imperial argues that it is unjust and unreasonable to require a customer to subsidize generation tie line facilities when there are existing and planned transmission facilities closer to renewable resources, such as its Salton Sea facilities.<sup>54</sup> Further, Imperial contends that even assuming some indirect benefits from the LCRI facilities accrue to wheel-through customers, indirect benefits do not justify imposing costs on transmission ratepayers.<sup>55</sup> Imperial argues that it is irrational and inconsistent with Commission precedent for the Commission to conclude that all customers benefit from increased generation capacity on the system and, therefore, that all transmission customers should pay for LCRI facilities.<sup>56</sup>

22. Finally, Imperial cites to the Amendment 60 Order as precedent to support its contention that the Commission has chosen not to allocate certain costs to wheel-through customers<sup>57</sup> and that similarly, wheel-through customers in this proceeding should not be allocated costs associated with the LCRI facilities. Imperial also argues that the Commission did not adequately distinguish its determination in the LCRI Order<sup>58</sup> from its holding in the Amendment 60 Order, and argues that the Commission should have concluded that, similar to the Amendment 60 Order, wheel-through customers do not impose reliability costs with respect to LCRI facilities.<sup>59</sup>

---

<sup>53</sup> *Id.* at 13, citing *Appalachian Power Co. v. Pub. Serv. Comm'n of W.Va.*, 812 F.2d 898, 904-05 (4th Cir. 1987).

<sup>54</sup> *Id.* at 5 and 14

<sup>55</sup> *Id.* at 14, citing Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 86-87. (Commission held that indirect benefits from Capacity Benefit Margin set-asides did not justify charging all point-to-point customers for the costs of these set-asides.)

<sup>56</sup> *Id.* at 15, citing *PG&E v. FERC*, 373 F.3d at 1321, *KN Energy v. FERC*, 968 F.2d at 1300.

<sup>57</sup> *Id.* at 15, citing *Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,348 (2006) (Amendment 60 Order) and *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at P 171 (2006).

<sup>58</sup> *Id.* at 15, citing to the LCRI Order, 121 FERC ¶ 61,286 at P 62.

<sup>59</sup> *See id.* at 16. (Imperial proposed tariff revisions to the CAISO Tariff to exempt wheel-through customers from paying the costs of LCRI facilities).

### **Determination**

23. Imperial asserts that wheel-through customers will not benefit from these LCRI facilities and accordingly should not be allocated costs associated with these facilities. They argue that the new facilities may create new local constraints that negatively impact them. We find to the contrary. We agree with the CAISO that the benefits associated with the planning and development of the LCRI facilities accrue to the entire CAISO grid and, therefore, are properly charged to all users of the grid, including wheel-through customers.<sup>60</sup> Wheel-through customers use the CAISO grid to serve their load that is located outside the CAISO control area. The LCRI facilities will allow the CAISO to mitigate congestion costs to the CAISO's wheel-through customers, and all others, because the LCRI facilities will provide the CAISO with more tools for managing and mitigating congestion costs.<sup>61</sup>

24. Further, we disagree with Imperial's arguments that the LCRI facilities may hinder reliability and require the use of additional operating reserves. We find it more plausible that, as the CAISO asserts, the LCRI facilities will actually improve system flexibility and reliability by adding new resource interconnections.<sup>62</sup> Additionally, we find the added system-wide flexibility increases the likelihood that a wheel-through transaction can be accomplished. Moreover, the LCRI facilities will be developed and used to meet the State of California's renewable portfolio standards. Without the development of such facilities within the State, the CAISO will likely be required to use out-of-state sources, which would increase congestion in the interties.<sup>63</sup> Historically, in situations where embedded costs associated with system-wide benefits could not be directly assigned to specific customers, the Commission permitted transmission providers to assess charges to all users of the transmission grid.<sup>64</sup> The Federal Power Act (FPA)<sup>65</sup> and Commission

---

<sup>60</sup> In the Declaratory Order, the Commission encouraged the CAISO to clarify in its tariff filing what costs would be allocated to wheel-through customers and their corresponding benefits. 119 FERC ¶ 61,061 at P 86. The CAISO's response to the Commission's request is in its October 31 Filing at 22.

<sup>61</sup> October 31 Filing at 22-23.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 23.

<sup>64</sup> In Opinion No. 453-A, the Commission allowed a cost adder for Midwest ISO operating costs to be assessed to all loads, finding that all users of the Midwest ISO's grid will benefit from the Midwest ISO's operational and planning responsibilities, as well as increased reliability of the grid. *Midwest Indep. Sys. Operator Corp., et al.*, (Opinion No. (continuation...))

policy only require that rate methodologies be accepted as reasonable. Courts have found that different methodologies can be accepted so long as the end result produces just and reasonable rates.<sup>66</sup> Accordingly, we find the benefits, such as improved system flexibility and reliability, increasing fuel supply diversity, meeting State-imposed renewable portfolio standards, among others, are intangible system-wide benefits of an integrated grid that accrue to all users of the transmission grid, including wheel-through customers. Therefore, we uphold the CAISO's proposal to allocate costs of LCRI facilities to wheel-through customers.

25. Additionally, Imperial argues on rehearing that the proposed allocation of costs to wheel-through customers departs from Commission precedent. This issue was previously raised and addressed in the LCRI Order.<sup>67</sup> In the LCRI Order, the Commission distinguished the findings of Amendment 60 Order<sup>68</sup> from the LCRI provisions. The Commission determined in the Amendment 60 Order that wheel-through customers did not impose the specific reliability costs that were the subject of allocation.<sup>69</sup> In addition, as we explained in the LCRI Order, the Amendment 60 Order also found that it was

---

453-A), 98 FERC ¶ 61,141 at 61,412 (2002), *order on voluntary remand*, 102 FERC ¶ 61,192, *order on reh'g*, 104 FERC ¶ 61,012 (2003), *aff'd sub nom. Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

<sup>65</sup> 16 U.S.C. § 824d (2006).

<sup>66</sup> *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 314 (1989) (the economic judgments required in rate proceedings are often hopelessly complex and do not admit of a single correct result). *See also Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) (the Court found that “allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It has no claim to an exact science.”). *Alabama Electric Cooperative v. FERC*, 684 F.2d 20, 27 (D.C. Cir. 1982) (“Cost itself is an inexact standard and may, in a particular set of circumstances, serve as a basis for several different rates.” Neither statutes nor court decisions “require the Commission utilize a particular formula or a combination of formulae to determine whether rates are just and reasonable.”); *Western Area Power Admin. v. FERC*, 525 F.3d 40, 57-58 (D.C. Cir. 2008).

<sup>67</sup> LCRI Order, 121 FERC ¶ 61,286 at P 61-62.

<sup>68</sup> Amendment 60 Order, 117 FERC ¶ 61,348.

<sup>69</sup> LCRI Order, 121 FERC ¶ 61,286 at P 62 distinguishing Amendment 60 Order, 117 FERC ¶ 61,348 at P 90.

unreasonable for the CAISO to allocate these costs to wheel-through transactions that sank into California control areas but not to wheel-through transactions that sank into control areas outside of California.<sup>70</sup> In contrast, the Commission determined in the LCRI Order that the benefits of the LCRI facilities accrue more broadly and to all users of the CAISO grid and we are not seeking to exempt any transactions.<sup>71</sup> As a result, the Commission found that these costs should be allocated to all users of the grid.<sup>72</sup> LCRI facilities and the associated tariff provisions establish a framework to both minimize barriers to entry while balancing and minimizing cost responsibility for grid users. The Commission determined that all users benefit from the planning and development of these types of facilities for the reasons set forth above. Similar to our direction in Order No. 2003, the interconnecting LCRI developers here are directly assigned the costs of the LCRI facilities. However, the LCRI developers' contribution is proportional to their use of these facilities as they come on line, which may leave additional embedded costs that cannot be assigned to any other specific user. The Commission permitted such costs to be spread among all users because it determined that all users benefit from the LCRI facilities.<sup>73</sup> Accordingly, we conclude that under these circumstances, it is just and reasonable for the Commission to approve the allocation of LCRI facilities to all customers within the CAISO transmission grid, including to wheel-through customers and that such approval is not a departure from our precedent.

26. Imperial argues in its request for rehearing that it is not just and reasonable for customers to incur costs for new transmission through the LCRI tariff provisions when there are existing or planned facilities to serve renewable resources.<sup>74</sup> The Commission explained in the Declaratory Order and LCRI Order that Imperial should raise these concerns with the Commission when it reviewed the merits of CAISO's transmission planning process as part of the Order No. 890 Proceeding.<sup>75</sup> The Commission fully

---

<sup>70</sup> *Id.*

<sup>71</sup> LCRI Order, 121 FERC ¶ 61,286 at P 61-62.

<sup>72</sup> *Id.* P 61-62.

<sup>73</sup> LCRI Order, 121 FERC ¶ 61,286 at P 61-62.

<sup>74</sup> Imperial Request for Rehearing at 14.

<sup>75</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 85 (But, the Commission went on to explain that the certain features of the CAISO's transmission planning process when it complied with Order No. 890 with regard to regional scope and the allowing participation by stakeholders would serve to address Imperial's concerns) and LCRI Order, 121 FERC ¶ 61,286 at P 57.

addressed these same arguments by Imperial in the *Order on CAISO's Order No. 890 Filing* and *Subsequent Order on CAISO's Order No. 890 Filing*.<sup>76</sup> The Commission found that the CAISO's transmission planning process, which provides for an adequate level of coordination with appropriate parties where required, will offer the opportunity for stakeholders<sup>77</sup> to present their concerns about the optimum sizing of new facilities potential stranded investment, and other transmission planning issues.<sup>78</sup> For instance, the CAISO's Order No. 890 filing provides for regional and sub-regional planning for the transmission systems of all the CAISO PTOs, and will take into account transmission facilities that are not part of the CAISO grid but are interconnected to it, including those facilities that are inside its geographic footprint (e.g. generation ties, distribution facilities).<sup>79</sup> Also, with implementation of the regional participation principle of Order No. 890 in revisions to the CAISO Tariff, we found that "the CAISO's [T]ariff and (business practice manual) grants all stakeholders, including adjacent transmission providers, an opportunity to participate in the development of the CAISO's unified planning assumptions and study plan."<sup>80</sup>

---

<sup>76</sup> *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 150-157 (Commission accepted CAISO's Order No. 890 filing that included tariff language to implement the regional participation principle of Order No. 890, with some discrete modifications); and *Subsequent Order on CAISO's Order No. 890 Filing* 127 FERC ¶ 61,172 at P 23-25, 30-31, 98-101.

<sup>77</sup> The CAISO explained in its Order No. 890 compliance filing, submitted on October 31, 2008 in Docket No. OA08-62-003 and amended on November 3, 2008 in Docket No. OA08-62-004, that in its business practice manual, it replaces the term "stakeholder" with "transmission planning participant." See *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at n.22 and *Subsequent Order on CAISO's Order No. 890 Filing*, 127 FERC ¶ 61,172 at P 37.

<sup>78</sup> *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 150-157; and *Subsequent Order on CAISO's Order No. 890 Filing*, 127 FERC ¶ 61,172 at P 23-25, 30-31, 98-101.

<sup>79</sup> *Subsequent Order on CAISO's Order No. 890 Filing*, 127 FERC ¶ 61,172 at P 130-134.

<sup>80</sup> *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 151 (citing, e.g. CAISO business practice manual, section 2.1.2.2, CAISO Tariff, sections 24.2(c), 24.2.1, and 24.8).

27. Imperial's protest of the allocation of LCRI facility costs to wheel-through customers on the basis that generation tie lines are not considered network upgrades overlooks the Commission's determination in the Declaratory Order.<sup>81</sup> In granting the CAISO's Petition for Declaratory Order, the Commission found that the CAISO's proposal was consistent with Commission policies that recognize and accommodate the unique circumstances of renewable resources.<sup>82</sup> The Commission determined that the LCRI tariff provisions, as an appropriate variation from Order No. 2003, strike a reasonable balance that addresses the barriers to development of location-constrained resources, while providing appropriate ratepayer protections to ensure that rates remain just and reasonable. Accordingly, the Commission concluded that the LCRI provisions address unique circumstances in a manner that is just and reasonable and satisfies our responsibilities under the FPA.<sup>83</sup> We are not persuaded by Imperial's arguments on rehearing that we erred in our findings regarding the just and reasonableness of the LCRI tariff provisions.

### **Definition of Location-Constrained Resource Interconnection Generation**

28. Imperial argues that in the LCRI Order the Commission concluded remoteness was not a key criteria of the Energy Resource Areas, contrary to the ruling in the Declaratory Order.<sup>84</sup> Imperial asserts that to avoid the development of excessive, duplicative and inefficient generation tie lines, in order to qualify as an LCRI generator, such a generator must be located remotely from existing or planned transmission to serve load.<sup>85</sup> To illustrate the significance of requiring that an LCRI facility be remote, Imperial comments that the Salton Sea area, which is in Imperial's region, contains transmission that could readily be used without building generation tie lines subsidized by transmission ratepayers.<sup>86</sup>

---

<sup>81</sup> Declaratory Order, 119 FERC ¶ 61,061 at 64-71.

<sup>82</sup> *Id.*

<sup>83</sup> LCRI Order, 121 FERC ¶ 61,286 at P 64.

<sup>84</sup> Imperial Request for Rehearing at 17, citing Declaratory Order, 119 FERC ¶ 61,061 at P 64, 69; Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 9-10; LCRI Order, 121 FERC ¶ 61,286 at P 51.

<sup>85</sup> *Id.*

<sup>86</sup> Imperial argues that remoteness is used by the CAISO's Market Surveillance Committee in its Opinion "Alternative Treatments of New Transmission For  
(continuation...)

29. Moreover, Imperial contests the Commission's comment that the concept of remoteness is "likely to be borne out when Energy Resource Areas are designated" fails to provide guidance or criteria to ensure that this result is achieved. Further, Imperial argues that the Renewable Energy Transmission Initiative, which is developing criteria for designating Energy Resource Areas, does not include the concept of remoteness either.<sup>87</sup> Imperial had also requested that the LCRI tariff provisions be revised to include language that the distance between the Energy Resource Area and the next transmission system be considered when evaluating an LCRI proposal.<sup>88</sup> Imperial comments that the Commission neither considered this proposed tariff revision in the LCRI Order, nor did the CAISO accept it during its stakeholder process.<sup>89</sup>

### **Determination**

30. In the LCRI Order, the Commission accepted the CAISO's tariff definition of an LCRI generator,<sup>90</sup> recognizing that such generators "are often located remotely from loads." Contrary to Imperial's assertion on rehearing, we neither determined in the Declaratory Order that LCRI generators must always be defined as being remote from load or transmission facilities, nor do we find that the LCRI Order conflicts with the Declaratory Order. Rather, the LCRI Order relies upon the Declaratory Order's determination that location-constrained resources "are often remotely located from

---

Interconnection of Renewable Generation" by F. Wolak, J. Bushnell, and B. Hobbs. CAISO Market Surveillance Committee, 2006.

<sup>87</sup> Imperial Request for Rehearing at 19. The Renewable Energy Transmission Initiative is a conglomeration of state agencies and other interested parties, including the CAISO, that is charged with working collaboratively to identify Energy Resource Areas.

<sup>88</sup> An LCRI proposal may be submitted by the CAISO, CPUC, CEC, a PTO, or any other market participant. *See* CAISO Tariff Appendix EE, section 24.1.3.

<sup>89</sup> Imperial Request for Rehearing at 19. Imperial's proposed revisions to the CAISO Tariff section 24.1.3.4 are included as Attachment A to Imperial's Request for Rehearing. The CAISO Tariff citation has been changed as a result of Order No. 890.

<sup>90</sup> CAISO Tariff, Appendix A defines an LCRI generator as: "A Generating Unit that (a) uses a primary fuel source or source of energy that is in a fixed location and cannot practicably be transported from that location; and (b) is located in an Energy Resource Area. Generating Units meeting criterion (a) shall include, but not be limited to, wind, solar, geothermal, hydroelectric, digester gas, landfill gas, ocean wave and ocean thermal tidal current Generating Units."

loads.”<sup>91</sup> Further, in the LCRI Order we specifically denied Imperial’s request to require that LCRI generators must be remote from load and explained that “‘location-constrained’ refers to the geographic constraints of the fuel source, and is not necessarily a measure of remoteness from load or distance from the existing or planned transmission grid.”<sup>92</sup> Accordingly, the Commission found that the LCRI policy did not demand that LCRI generator be remotely located and concluded that remoteness from either load or the transmission grid is not the key distinguishing feature of an LCRI generator.<sup>93</sup>

31. Moreover, although Imperial asserts that including remoteness in the criteria for LCRI facilities is necessary to avoid the development of excessive, duplicative and inefficient generation tie lines, we do not agree. As discussed *supra* at P 26, the Commission has found that the CAISO’s transmission planning process, which provides for an adequate level of coordination with appropriate parties where required, will offer the opportunity for stakeholders to present their concerns about the optimum sizing of new facilities potential stranded investment, and other transmission planning issues.<sup>94</sup>

32. We disagree with Imperial that the LCRI tariff provisions should be revised to include language that the distance between the Energy Resource Area and the next transmission system be considered when evaluating an LCRI proposal. In addressing a similar concern that the CAISO’s eligibility criteria should consider the proximity of Energy Resource Areas to transmission facilities owned by entities that are not PTOs, the Commission explained that under Order No. 890, the regional aspect of the transmission planning process will have to ensure proper siting and development of multi-user interconnection facilities. It went on to state that it would be incumbent on the transmission provider to establish the regional need and benefits of a proposed project.<sup>95</sup>

---

<sup>91</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 64, 69; Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 10.

<sup>92</sup> LCRI Order, 121 FERC ¶ 61,286 at P 51.

<sup>93</sup> *Id.*

<sup>94</sup> *Order on CAISO’s Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 150-157; and *Subsequent Order on CAISO’s Order No. 890 Filing*, 127 FERC ¶ 61,172 at P 23-25, 30-31, 98-101.

<sup>95</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 76.

As discussed earlier, the Commission had determined CAISO's transmission planning process fulfills these Order No. 890 requirements.<sup>96</sup>

33. Imperial asserts that it unsuccessfully sought a change to the definition of an LCRI facility to require it to be remotely located in the CAISO stakeholder process. It complains that "stakeholders' voices are not being heard"<sup>97</sup> without providing any support for this assertion. Imperial fails to provide any examples of abnormality in the stakeholder process to demonstrate why it believes that the stakeholder process is not "meaningful." We decline to address this unsubstantiated argument by Imperial. Finally, as we have stated before, if Imperial or any other interested party concludes that the CAISO transmission planning process is resulting in inefficient or unreasonable outcomes, they may petition the Commission for relief, including rejection of an identified LCRI facility for cost-recovery.<sup>98</sup>

### **Demonstration of Interest**

34. In its October 31 Filing, the CAISO proposed that a sponsoring PTO make several showings to demonstrate that there is sufficient commercial interest to support the LCRI facility. First, the CAISO proposed that a PTO must provide a demonstration of interest by generators in the LCRI facility equal to 60 percent of the proposed facility's capacity. Of that total 60 percent, at least 25 percent must be represented by LCRI generators that have executed Large Generator Interconnection Agreements (LGIAs) or Small Generator Interconnection Agreements (SGIAs). To the extent that the total capacity of the proposed LCRI facility subscribed by generators through executed LGIAs and SGIAs is less than 60 percent, the CAISO proposed that the sponsoring PTO include the following additional demonstrations from potential LCRI generators: (1) executing a power purchase agreement of at least five years duration; (2) being in the CAISO's interconnection queue and submitting a cash deposit equal to the sum of all deposits required for studies under the Large Generator Interconnection Procedures (LGIP) or

---

<sup>96</sup> *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 150-157; and *Subsequent Order on CAISO's Order No. 890 Filing*, 127 FERC ¶ 61,172 at P 23-25, 30-31, 98-101.

<sup>97</sup> Imperial Request for Rehearing at 20.

<sup>98</sup> *See also* Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 23 ("to the extent that Imperial believes that the planning process is unjust and unreasonable, it can file a complaint with the Commission.").

Small Generation Interconnection Procedures (SGIP), whichever applicable;<sup>99</sup> or (3) paying a cash deposit equal to five percent of an LCRI generator's *pro rata* share of the capital costs of a proposed LCRI facility.

35. In the LCRI Order, the Commission accepted the CAISO's proposed demonstrations of interest requirements, with one modification. The Commission agreed with Imperial and other intervenors that a deposit of \$10,000 was insufficient for those developers that do not demonstrate site control. The Commission determined that to qualify as demonstrating additional commercial interest, a generator that did not provide evidence of site control would be required to pay an up-front higher deposit of \$250,000.<sup>100</sup>

36. Imperial argues that when the Commission accepted the CAISO's proposal that the initial subscription should be at least 25 percent and that the overall demonstration of interest should be 60 percent, it did not provide an explanation or support for this determination.<sup>101</sup> Instead, Imperial argues that the CAISO proposed a demonstration of interest that is the midpoint of the range the Commission found acceptable in the Declaratory Order. Imperial argues that the additional interest requirements are not meaningful, cannot justify the development of multi-million dollar generation tie lines and may result in the shifting of costs to ratepayers in violation of the principle of cost-causation.<sup>102</sup> Imperial also asserts that the Commission must base its decision upon record evidence and show the data it relied upon.<sup>103</sup>

37. Imperial also argues that the Commission did not address Imperial's suggestion that the CAISO's proposed showing of an executed five-year power purchase agreement

---

<sup>99</sup> The total deposit amount under the LGIP is \$160,000. Under the SGIP, a potential interconnection customer must pay the following deposits: (1) a deposit of the lesser of 50 percent of the good faith estimated facilities study costs or earnest money of \$1,000; (2) a deposit of the good faith estimated costs for each system impact study; and (3) a deposit of the good faith estimated costs of the facilities study.

<sup>100</sup> LCRI Order, 121 FERC ¶ 61,286 at P 46.

<sup>101</sup> Imperial Request for Rehearing at 21.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*, citing *City of Vernon v. FERC*, 845 F.2d 1042, 1048 (D.C. Cir. 1988); *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578, 593 (D.C. Cir. 1979); *Greater Boston Television Corp. v. FERC*, 444 F.2d 841, 851 (D.C. Cir. 1970).

should be expanded to a 10-year power purchase agreement to correspond to the long-term life of the LCRI facilities. Further, Imperial contends that the Commission did not address its objection to requiring a deposit equal to five percent of the LCRI generator's *pro rata* share of the capital costs of a proposed LCRI facility. Imperial argues that this required deposit does not hold a developer accountable in a meaningful way because the costs of a project are not known until well into the project, and a developer may withdraw before such an amount can be determined or collected.

38. Moreover, Imperial states that, although it appreciates that the Commission in the LCRI Order included an additional requirement for demonstration of interest to show either site control or pay an \$250,000 up-front deposit, Imperial argues that this requirement needs to be modified again to require site control. Imperial asserts that site control is needed to show a meaningful level of additional interest.<sup>104</sup> Imperial refers to the Commission's technical conference held in December 2007,<sup>105</sup> which addressed problems arising from the queue process, to support its contention that the LCRI tariff provisions must include site control as a necessary demonstration of interest.

39. Imperial also argues that without strengthening the additional interest requirements, there remains a risk of stranded investment that will be borne by transmission customers.<sup>106</sup> Imperial offers proposed tariff revisions to address this concern. Imperial acknowledges that it is concerned that the CAISO's proposal would strand Imperial's investments in the Salton Sea area, but argues that the LCRI Order did not address this concern. Imperial explains that it has over 1200 MW of excess capacity available on its transmission system, including excess capacity on collector lines in the Salton Sea area where geothermal resources are located. Consequently, Imperial argues that it would be more cost effective and more efficient for Imperial to interconnect renewable resources in the Salton Sea to its own existing interconnection infrastructure. Overall, Imperial contends that to avoid stranded investment costs, the Commission must require the CAISO to include tariff language to ensure that only those projects that are most likely to be subscribed in the near term will be approved.<sup>107</sup>

---

<sup>104</sup> *Id.* at 22.

<sup>105</sup> *Id.* citing *Interconnection Queuing Practices, et al.*, Supplemental Notice of Technical Conference issued December 6, 2007 in Docket Nos. AD08-2-000, *et al.*

<sup>106</sup> Imperial Request for Rehearing at 23.

<sup>107</sup> *Id.* at 25.

### **Determination**

40. We deny Imperial's request to revise the demonstrations of interest accepted in the LCRI Order. Imperial argues that the Commission should increase specific demonstration of interest requirements, including the initial 25 percent subscription requirement and the overall demonstration of interest of 60 percent, and that the Commission did not justify its acceptance of the CAISO's proposals. Imperial also argues that the demonstration of interest must include site control. We find that the demonstrations of interest, as revised by the Commission in the LCRI Order to include either site control or a deposit of \$250,000, are rigorous and appropriate.<sup>108</sup> Further, given the LCRI Order modification, we find that the initial and additional interest requirements reflect the pattern of development of location-constrained resources and strike an appropriate balance between the risk posed by stranded costs and the barriers that prevent the development of location-constrained resources. And, as we explained in the LCRI Order, we find that the addition of site control or the alternative deposit, now increased to \$250,000, will work, in concert with other safeguards of the CAISO Tariff, to minimize the impact to ratepayers and the risk of stranded costs.<sup>109</sup> When all of the required demonstrations of interest are applied in their totality, we find that they provide necessary safeguards for ratepayers. Accordingly, we conclude that they achieve a reasonable balance of the goals we accepted in the Declaratory Order and the implementing tariff provisions we approved in the LCRI Order.

41. In the LCRI Order, the Commission explained that it would not require an initial capacity subscription higher than 25 percent.<sup>110</sup> The Commission accepted the 25 percent demonstration of interest proposed by the CAISO as in keeping with the Commission's determination in the Declaratory Order that minimum capacity subscription requirements need to strike an appropriate balance between encouraging the development of location-constrained resources on the one hand and protection of ratepayers on the other.<sup>111</sup> We are not persuaded by Imperial that we erred by accepting this initial capacity subscription, especially in view of the other demonstrations of interest required for all LCRI proposals.

42. Additionally, in the LCRI Order, the Commission accepted the CAISO's proposed aggregate demonstration of interest requirement of 60 percent, the midpoint of the range

---

<sup>108</sup> LCRI Order, 121 FERC ¶ 61,286 at P 45-48.

<sup>109</sup> *Id.* P 47.

<sup>110</sup> *Id.* P 46.

<sup>111</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 89.

accepted by the Commission in the Declaratory Order. Initially, the CAISO proposed a range of between 50 percent and 70 percent, and the Commission accepted this range on a preliminary basis. Thereafter, the CAISO, with stakeholder input, proposed 60 percent for the required interest showing.<sup>112</sup> The Commission accepted the 60 percent demonstration of interest as a just and reasonable requirement. We explained in the LCRI Order to Imperial and other intervenors who sought higher aggregate levels of interest requirements that “the fact that full development of location-constrained resources . . . tend to take place over long periods of time, and that setting the bar too high during the initial stage of development would be unreasonable and act as a barrier to the development of these resources and the interconnection facilities needed to connect them to the grid.”<sup>113</sup> Imperial’s arguments on rehearing do not persuade us that we erred in our determination in the LCRI Order.

43. Imperial also protests the Commission’s acceptance of five year contracts and argues that they should be for a minimum of ten years. It also argued that a deposit equal to five percent of the LCRI generator’s *pro rata* share of the capital costs of a proposed LCRI facility failed to hold a developer accountable in a meaningful way because the costs of a project may be unknown until later and a developer may withdraw before such an amount can be determined or collected. As with other demonstrations of interest that the Commission accepted in the LCRI Order, the Commission seeks to remove barriers that have impeded the development of location-constrained facilities.<sup>114</sup> We find that requiring contracts for ten years or increasing the five percent deposit requirement has the potential for creating such barriers and are not necessary given other protections provided in the LCRI Amendment. Further, Imperial has not demonstrated how the longer period of time or a higher deposit requirement is more appropriate than the CAISO’s proposal, which we find is a just and reasonable requirement.<sup>115</sup>

---

<sup>112</sup> October 31 Filing at 15.

<sup>113</sup> LCRI Order, 121 FERC ¶ 61,286 at P 45.

<sup>114</sup> *Id.* P 39-49.

<sup>115</sup> See *ANR Pipeline Co.*, 110 FERC ¶ 61,069, at P 49 (2005), citing *Consolidated Edison Co.*, 165 F.3d 992, 998, 1002-1004 (D.C. Cir. 1999) (“the Commission . . . takes into account the fact that the [Natural Gas Act] delegates to the pipeline the primary initiative to propose the rates, terms, and conditions for services under NGA section 4. If the rates, terms and conditions proposed by the pipeline are just and reasonable, the Commission must accept them, regardless of whether other rates, terms and conditions may be just and reasonable. Therefore, to the extent ANR’s proposed remedy is just and

(continuation...)

44. Moreover, Imperial argues that a developer should also be required to demonstrate site control. We believe that the additional deposit provision required of every developer, which we directed in the LCRI Order, adequately responds to Imperial's concern. Imperial's protest on rehearing overlooks the impact of the Commission's heightened deposit requirement, which we conclude will provide the necessary financial commitment to sufficiently mitigate the possibility of stranded costs to ratepayers.

45. Finally, in response to Imperial's overall concerns about the creation of stranded costs, we note that the demonstration of interest requirements in combination with the CAISO's transmission planning processes provide a full range of protections and procedures to avoid situations that may lead to the creation of stranded costs. In addition to the demonstrations of interest discussed above, every LCRI developer, unlike typical interconnection customers in the CAISO interconnection queue, that wants its capacity to count toward the additional interest showing, must pay a \$160,000 deposit up-front, and will lose the deposit if it leaves the queue prematurely.<sup>116</sup> We, therefore, conclude that the aggregate LCRI demonstrations of interest requirement achieve an appropriate balance between the barriers that prevent the development of location-constrained resources and adequate protection for ratepayers.<sup>117</sup> We also note that pursuant to section 24.1.3.4 of the CAISO Tariff approved in the LCRI Order, LCRI facilities will be fully evaluated for economic and reliability standards in the CAISO transmission planning process.<sup>118</sup> As the Commission explained in the Declaratory Order, "the CAISO's transmission planning process is designed to allow for the appropriate sizing of multi-user interconnection facilities by matching [load serving entities'] projected needs against the potential capacity from an energy resource area. Through this fair and open process, all needs will be considered."<sup>119</sup> We do not find any basis for altering our determinations and, accordingly, we deny Imperial's request for rehearing.

---

reasonable, the Commission will accept ANR's proposal even if other remedial provisions might also be just and reasonable.").

<sup>116</sup> October 31 Filing, citing section 24.1.3.2(b)(ii).

<sup>117</sup> *See also* Declaratory Order, 119 FERC ¶ 61,061 at P 3.

<sup>118</sup> LCRI Order, 121 FERC ¶ 61,286 at P 48.

<sup>119</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 74.

### **Energy Resource Areas**

46. Imperial contends that the Commission erred by approving the CAISO's proposal that initially the CAISO Governing Board would designate Energy Resource Areas and, once the CPUC and CEC develop criteria for these designations, the CPUC and CEC will assume this responsibility.<sup>120</sup> The Commission also approved the CAISO's proposal to authorize the CAISO Governing Board to designate Energy Resource Areas that are located outside of California. Imperial argues that under the FPA the Commission cannot delegate its authority to the CAISO Governing Board. Instead, Imperial asserts that the CAISO is required pursuant to the Declaratory Order to file with the Commission its proposed criteria for Energy Resource Area designation as part of its LCRI Tariff provisions.<sup>121</sup> Further, Imperial explains that the Energy Resource Area designation criteria will directly impact rates because the Energy Resource Area designations will result in the roll-in of the costs of generation tie facilities into the rates of all CAISO customers. Without the Energy Resource Area designation criteria on file with the Commission, Imperial argues that the CAISO's LCRI tariff provisions are incomplete and violate the FPA.<sup>122</sup>

### **Determination**

47. We deny Imperial's rehearing request regarding the definition of Energy Resource Area in Appendix A of the CAISO Tariff. In the LCRI Order, we accepted the CAISO's tariff provisions initially authorizing the CAISO Board of Directors to certify Energy Resource Areas. Although Imperial protested the CAISO's proposed tariff provision, we found that the use of the CAISO Board of Directors "relies upon the expertise of an appointed, independent board, and does not, as Imperial asserts, give the CAISO unfettered discretion to designate Energy Resource Areas."<sup>123</sup> On rehearing, Imperial again protests the authorization of the CAISO Board of Directors to make these designations for an interim period. However, we find that Imperial has not provided any additional information to lead us to conclude that our determination in the LCRI Order was in error. The CAISO Board of Directors is mandated to operate within the structure and requirements of the CAISO Tariff.

---

<sup>120</sup> Imperial Request for Rehearing at 27.

<sup>121</sup> *Id.* citing Declaratory Order, 119 FERC ¶ 61,061 at P 90.

<sup>122</sup> Imperial Request for Rehearing at 26-27.

<sup>123</sup> *Id.* P 53.

48. Further, as we explained in the LCRI Order, the Energy Resource Area designation will operate in concert with the CAISO's transmission planning process, which is open to all market participants and interested parties.<sup>124</sup> We noted that CAISO's transmission planning would have to ensure proper siting and the development of multi-user interconnection facilities.<sup>125</sup> CAISO has complied with this requirement in its Order No. 890 filing.<sup>126</sup>

49. We agree with Imperial that in the Declaratory Order the Commission stated that it expected the CAISO to file proposed tariff provisions establishing how Energy Resource Areas will be selected. In its October 31 Filing, the CAISO submitted its proposed tariff language defining Energy Resource Areas, which was accepted by the Commission in the LCRI Order.<sup>127</sup> This tariff provision states that "for the interim period" before the CPUC and CEC assume the responsibility of certifying Energy Resource Areas, this function shall be performed by the CAISO Governing Board. We also note that in the LCRI Order the Commission directed the CAISO to file with the Commission, on an informational basis, notice of the date that the CPUC and CEC will assume responsibility for the Energy Resource Area designations.<sup>128</sup> Although this informational filing has not been submitted to the Commission, we continue to expect the CAISO to submit this informational filing when the CPUC and CEC assume this responsibility.

50. Imperial argues that the CAISO should file its proposed criteria for designation of Energy Resource Areas as part of its LCRI Tariff provisions because these criteria will directly impact CAISO's rates. We find that the designation criteria do not need to be included in the CAISO Tariff. We disagree with Imperial that the designation criteria significantly affects rates, terms or conditions.<sup>129</sup> Imperial can challenge any such

---

<sup>124</sup> *Id.*

<sup>125</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 76.

<sup>126</sup> *Order on CAISO's Order No. 890 Filing*, 123 FERC ¶ 61,283 at P 150-157 and *Subsequent Order on CAISO's Order No. 890 Filing* 127 FERC ¶ 61,172 at P 23-25, 30-31, 98-101.

<sup>127</sup> CAISO Tariff Appendix A.

<sup>128</sup> LCRI Order, 121 FERC ¶ 61,286 at P 54.

<sup>129</sup> *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,076, at P 656 and n.663 (2007) (The Commission's policy is that all practices that significantly affect rates, terms and conditions fall within the purview of section 205(c) of the FPA, and, therefore, must be included in a tariff filed with the Commission."). *See also ANP Funding I, LLC v.* (continuation...)

designation in the context of the CAISO's transmission planning process. Moreover, we note that, to the extent that Imperial or any entity believes the certification of Energy Resource Areas by the CAISO Board of Governors is unjust and unreasonable, it can seek redress by filing a complaint with the Commission.

### **Interconnection of Non-Location Constrained Resources to LCRI Facilities**

51. Imperial argues that the Commission erred by approving a rate treatment for LCRI generation tie lines that differs from the Commission's traditional approach that does not permit non-renewable resources to interconnect to the LCRI facilities without being directly assigned some of the development costs of the line.<sup>130</sup> Imperial contends that pursuant to the LCRI proposal, as accepted by the Commission, non-renewable resources are permitted to pay only their *pro rata* share, based on depreciated costs, rather than the upgrade costs they would be assigned absent the LCRI tariff provisions. Imperial argues that the result of this approach is that non-renewables will be subsidized by the funding mechanism purportedly established to meet the unique needs of location-constrained resources.

### **Determination**

52. When the Commission accepted the CAISO's proposal, it explained in the Declaratory Order that once minimum capacity subscription and demonstrations of interest requirements are met by location-constrained resources and the LCRI facilities are constructed, other types of resources will be able to interconnect and make use of previously unused/available capacity.<sup>131</sup> Although Imperial asserts on rehearing that the Commission did not offer a reasoned explanation for its acceptance of this rate treatment for LCRI facilities and argues that this rate treatment is not tailored narrowly enough to remedy undue discrimination, we do not agree. In the Declaratory Order, the Commission determined that it would be unduly discriminatory to prevent other types of

---

*ISO-NE*, 110 FERC ¶ 61,040, at P 22 (2005) and *Prior Notice and Filing Requirements under Part II of the FPA*, 64 FERC ¶ 61,986, at 61,986-89 (1993) (explaining Commission jurisdiction with respect to all rates and charges that are "for or connected with" and all agreements that "affect or relate to," jurisdictional activities), *order on reh'g*, 65 FERC ¶ 61,081 (1993).

<sup>130</sup> Imperial Request for Rehearing at 27-28.

<sup>131</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 75.

resources from contracting for unused capacity.<sup>132</sup> The Commission accepted the LCRI tariff provisions in the LCRI Order to implement these non-discriminatory provisions.<sup>133</sup>

53. In the Declaratory Order, the Commission also noted that allowing non-location-constrained resources to contract for unused capacity will provide additional incentives for the developers of location-constrained resources to contract for capacity as early as possible, thereby allowing them the opportunity to begin earning revenue.<sup>134</sup> Further, by permitting other types of resources to interconnect to the LCRI facilities, their participation will limit the potential for stranded costs and the costs of uncommitted capacity that would otherwise be borne by ratepayers paying the Transmission Access Charge.<sup>135</sup> On one hand, we previously determined that the LCRI tariff provisions are an appropriate mechanism to address the barriers that have thwarted the development of location-constrained resources, which have unique characteristics. On the other hand, the Commission has to strike a reasonable balance between addressing the barriers to the development of these resources while providing appropriate ratepayer protections.<sup>136</sup> We believe that our decision to accept the LCRI tariff provisions, which are a variation from Order No. 2003, strikes this balance.<sup>137</sup> For all of these reasons, we deny Imperial's rehearing request on this issue.

---

<sup>132</sup> *Id.*

<sup>133</sup> LCRI Order, 121 FERC ¶ 61,286.

<sup>134</sup> Declaratory Order, 119 FERC ¶ 61,061 at P 81.

<sup>135</sup> *Id.* P 75 n.37.

<sup>136</sup> *Id.* at P 2-3; Rehearing of Declaratory Order, 120 FERC ¶ 61,244 at P 4.

<sup>137</sup> *See* LCRI Order 121 FERC ¶ 61,286 at P 64 and Declaratory Order, 119 FERC ¶ 61,061 at P 2-3 and 62-68.

Docket No. ER08-140-001

30

The Commission orders:

The Commission hereby denies Imperial's request for rehearing, as described in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

Document Content(s)

ER08-140-001.DOC.....1-30