

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	Docket Nos. ER10-1401-000 ER10-2191-000
Green Energy Express LLC 21st Century Transmission Holdings, LLC	Docket No. EL10-76-000
Southern California Edison Company	Docket Nos. ER10-732-000 ER10-732-001
Southern California Edison Company	Docket Nos. EL10-1-000 EL10-1-001 EL10-1-002
Southern California Edison Company	Docket Nos. ER10-796-000 ER10-796-001
Southern California Edison Company	Docket No. EL10-81-000

**POST TECHNICAL CONFERENCE REPLY COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

On August 24, 2010, the Commission held a technical conference to discuss issues related to the California Independent Transmission System Operator Corporation's ("ISO") revised transmission planning process ("RTPP") tariff amendment filed in Docket No. ER10-1401. Pursuant to the Supplemental Notice of Agenda and Procedures for Staff Technical Conference issued on August 19, 2010, the ISO hereby submits its post technical conference reply comments.

In these reply comments, the ISO will reply to comments filed by other parties on the issues that were discussed at the technical conference. Although Staff requested that parties limit their comments to 15 pages, the ISO was not able to provide all the requested information within 15 pages. Because the ISO

is uniquely situated to address issues raised in the initial post-technical conference comments, the ISO believes it is appropriate to submit reply comments that exceed the 15 pages requested by Staff.

I. REPLY COMMENTS

A. Phase 1 Issues

1. The Role of CTPG

Parties continue to raise the same objections regarding the role of California Transmission Planning Group (“CTPG”) in the ISO’s transmission planning process. The ISO has thoroughly addressed these arguments in its previous filings.¹ There is no need to repeat those arguments here. The ISO will, however, address certain specific points raised in parties’ initial comments.

City and County of San Francisco (“CCSF”) expressed concern about ISO officers coordinating with CTPG and ISO staff participating in CTPG studies, suggesting that the ISO might be biased in accepting CTPG’s results and assumptions. The ISO notes that it is not a voting member of CTPG and will not have participated in the voting on any recommendations that CTPG submits to the ISO. ISO staff has assisted with the conduct of CTPG studies, but this is consistent with the Commission-imposed requirement to engage in regional coordination. At a minimum, the Commission required transmission providers to coordinate with interconnected systems to (1) share system plans to ensure they are simultaneously feasible and otherwise use consistent assumptions and data, and (2) identify system enhancements that could relieve congestion or integrate

¹ June 4, 2020 Transmittal Letter at 30-34; (“Transmittal Letter”); July 15, 2010 Answer to Protests at 20-23 (“Answer”); and its September 8, 2010 Post Technical Conference Technical Comments at 2-5 (“Initial Comments”).

new resources.² Sections 24.3.4 and 24.8.1 of the existing ISO tariff contain robust regional coordination provisions that require the ISO to obtain relevant data from interconnected Balancing Authority Areas or sub-regional planning groups and actively coordinate with these entities. Section 5.1 of the ISO's transmission planning Business Practice Manual ("BPM") expressly recognizes that "regional coordination through a robust planning process is an important objective of the ISO's Transmission Planning Process." The BPM expressly contemplates that the ISO will participate in the planning activities of sub-regional planning groups, including a California sub-regional planning group, participate in regional planning studies, and provide information to facilitate these activities.

The ISO cannot effectively engage in regional coordination (and comply with Order No. 890, the ISO tariff, and the transmission planning BPM) by simply standing by and passively exchanging information with its neighbors and updating its transmission planning website. Meeting the 33 percent Renewable Portfolio Standard requires a proactive effort, and the ISO is doing just that. The ISO's actions are consistent with the regional planning requirements of Order No. 890 and the Commission's goals in the recently issued Notice of Proposed Rulemaking, Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities ("NOPR").³

Green Energy Express and 21st Century Transmission Holdings ("Green Energy Express") state that the ISO must identify its independent analysis and

² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009) ("Transmission Planning NOPR").

³ 75 Fed. Reg. 37,884 (June 30, 2010).

transmission planning process inputs.⁴ The proposed transmission planning process already contemplates the actions requested by Green Energy Express. The ISO will conduct its own open and transparent Order No. 890-compliant planning process.

The California Wind Energy Association (“CalWEA”) suggests that if CTPG were reconstituted to include a broader member base, then it would be appropriate for the ISO to rely on CTPG’s recommendations.⁵ CalWEA misses the point. The ISO is the planning authority for the ISO footprint and is the entity that conducts an Order No. 890 planning process, not CTPG. The ISO, not CTPG, is responsible for all transmission planning decisions in its footprint, including developing the planning assumptions, determining needs, identifying the transmission projects that should be build, and allocating costs. CTPG is not a decision maker in that process. Even if generators and independent transmission providers were part of CTPG, there would still be numerous other inputs that the ISO must take into account in its planning process that would not come from CTPG (e.g., the California Public Utilities Commission (“CPUC”), California Energy Commission (“CEC”), consumer interests, municipal utilities that are not members of CTPG, and transmission providers in other states). CalWEA and others in this proceeding continue to ignore the basic fact that the ISO is the entity ultimately responsible for planning the ISO grid and making transmission planning decisions. CTPG and others only provide inputs into the

⁴ Green Energy Express at 18-19.

⁵ CALWEA at 5.

ISO's open and transparent process; the ISO determines the appropriate assumptions and needs.

Independent Energy Producers Association ("IEP") mistakenly claims that the ISO's "private collaboration" with CTPG violates Order No. 890.⁶ As an initial matter, the ISO's participation is not "private. CTPG has made all of its studies and assumptions public. **[confirm]** More importantly, as the ISO indicated in its June 4, 2010 Transmittal Letter, Order No. 890 stated.

The Commission adopts the NOPR proposal and will require that transmission planning meetings be open to all affected parties, including but not limited to, all transmission and interconnection customers, state commissions, and other stakeholders. We recognize that it may be appropriate in certain circumstances, such as a particular meeting of a sub-regional group, to limit participation to a relevant sub-set of these entities.⁷

Thus, the Commission itself has recognized that not every input into the planning process will come from Order No. 890-compliant entities. Indeed, if that were a requirement, the ISO would not be able to receive input from individual stakeholders because their inputs would not have been developed in an open and transparent Order no. 890 process. In any event, the ISO is the entity solely responsible for developing and justifying the assumptions to be adopted in the planning process and the resulting needs determinations. Those will be completely transparent under the ISO's process. Also, CTPG has made studies and assumptions publicly available to the public.

B. Phase II Issues

1. Least Regrets

⁶ IEP at 8.

⁷ Order No. 890 at P 460.

In response to questions from the Staff, the ISO set forth a detailed description of the least regrets methodology and how it will be used to identify policy-driven elements.⁸ ISO believes that some additional clarification would be beneficial with respect to certain issues.

- a. **The ISO is willing to modify proposed Section 24.4.6.6 to further clarify the methodology for selecting policy-driven elements.**

CALWEA, Desert Southwest Project (“Desert Southwest”) and Pacific Gas and Electric Company (“PG&E”) have urged the ISO to include additional tariff language in proposed Section 24.4.6.6 that would provide more clarity as to the precise methodology used to select policy-driven elements.⁹ As the ISO has pointed out previously, the tariff description of the policy-driven category of transmission elements must, of necessity, be flexible enough to permit the ISO to conduct its evaluation under conditions of greater uncertainty (e.g., regarding the timing and location of future generation resources) than normally exists in transmission planning. How the ISO will “weigh, combine or exclude” the criteria set forth in Section 24.4.6.6 will depend on the evolving nature of the particular policy goal that is driving the analysis and the quality of information available. Certain criteria used to identify policy-driven elements needed to achieve the 33 percent RPS, for example, may not be applicable to another policy goal, or may be weighted less heavily if the relevant information has greater uncertainty. If too

⁸⁸ Initial Comments at 19-22.

⁹ CALWEA at 1-3; PG&E at 8-9; Desert Southwest at 3-4. LS Power Associates (“LS Power”) also requests that out of state projects be included in the description of policy or economically-driven elements, but there is no need for further clarification of this issue (LS Power at 2-3). Out of state proposals are specifically addressed in Section 24.4.4. Desert Southwest submits that policy-driven projects should be evaluated early in Phase 2 (*id.* at 2); the ISO has previously addressed the Phase 2 study timing in the June 4, 2010 Transmittal Letter (p. 49) and the July 15, 2010 Answer to Protests (pp. 41-44).

much formulaic specificity is included in the tariff, the ISO will be forced to seek tariff revisions each and every time public policy goals are changed or expanded. Accordingly, the ISO proposes to provide greater methodological details in its business practice manual and will address the policy goals to be evaluated in each cycle, as well as the process for identifying policy-driven elements, during Phase 1 of the planning cycle when it works with stakeholders to develop the study plan and planning assumptions.

In general, the ISO agrees with CALWEA that the least regrets analytical process is a series of engineering sensitivity studies used to identify a common set of transmission elements that are needed under the renewable scenarios most likely to occur.¹⁰ The ISO also agrees with PG&E that this process will be used during each planning cycle. In order to address the issues raised by these parties, the ISO proposes to modify Section 24.4.6.6 as follows to reflect this common understanding and agreement as to its least regrets study approach:

. . . The CAISO will determine the need for, and identify such policy-driven transmission upgrade or addition elements that efficiently and effectively meet applicable policies under alternative resource location and integration assumptions and scenarios, while mitigating the risk of stranded investment. The CAISO will create a baseline scenario reflecting the assumptions about resource locations that are most likely to occur and one or more reasonable stress scenarios that will be compared to the baseline scenario. Any transmission upgrade or addition elements that are included in the baseline scenario and at least a significant percentage of the stress scenarios may be Category 1 elements. Transmission upgrades or additions that are included in the base case, but which are not included in any of the stress scenarios or are included in an insignificant percentage of the stress scenarios, generally will be Category 2 elements, unless the CAISO finds that sufficient analytic justification exists to designate them as Category 1. In such cases, the ISO will make public the analysis upon which it based its justification for designating such facilities as Category 1 rather than Category 2.

¹⁰ CALWEA at 2.

In this process, the CAISO may consider, but is not limited to, the following criteria: ...

b. The ISO’s approach to identifying public policy elements provides expanded opportunities to non-incumbents.

Pattern Transmission (“Pattern”) continues to argue that the interplay between the ISO’s proposed least regrets methodology for policy-driven elements and expanded Large Generator Interconnection Procedure (“LGIP”) Network Upgrades will result in fewer projects being categorized as policy-driven and will skew the process in favor of the participating transmission owners.¹¹ This argument is ironic in that the key purposes of the ISO’s revised transmission planning process included better coordination of the LGIP and the transmission planning process through comprehensive planning and the creation of a new category of transmission that might obviate the need for some future LGIP upgrades and increase the opportunities for other transmission developers to build needed transmission elements. Pattern’s argument that the revised process will “facilitate an increase in LGIP network upgrades at the expense of public policy projects” simply makes no sense. Under the current planning process, there are no policy-driven elements at all.

Further, Pattern’s view is inconsistent with the Commission’s view of the impact of a public policy category of transmission. In the NOPR, the Commission expressly states that the benefit of a proposed requirement to consider public policy requirements is that it “may eventually increase the proportion of transmission network investment that is constructed pursuant to proactive transmission planning processes, thereby reducing the proportion of network

¹¹¹ Pattern, 7-8.

upgrades that would otherwise be triggered by individual generator interconnection requests.”¹²

The ISO has carefully mapped out a process by which potential large network upgrades necessitated by clustered generation in likely renewable resource scenarios may be identified through holistic transmission planning before the LGIP study process for the next LGIP cluster advances to LGIP Phase II and the necessary network upgrades for that cluster are included, or would be included, in LGIAs. The ISO’s proposal coordinates the two processes by providing a method by which the ISO can proactively anticipate potential generation resource build-out when such resources are rapidly developing and approve the necessary transmission to deliver those resources to load in order to meet public policy goals, thereby reducing the amount of transmission built pursuant to the LGIP. This is just how the Commission’s NOPR envisions it.

As the ISO explained in its initial comments and has captured above in proposed tariff refinements to further clarify the “least regrets” analysis, the “core” set of renewable resource assumptions for developing the Category 1 elements will be informed by the interconnection queue and the procurement information from the CPUC. Elements will then be categorized as Category 1 if they are needed in this core or baseline scenario and a significant percentage of sensitivity scenarios. Thus, it is likely that Category 1 elements will reflect the transmission needs for many resources in the ISO queue that have not proceeded through the LGIP to Phase II and hence are not yet required as LGIP network upgrades. For all these reasons, Pattern’s concerns are unfounded.

¹² Transmission Planning NOPR at P 68.

2. Coordination of the LGIP and the transmission planning process.

California Municipal Utilities Association (“CMUA”) (joined by Sacramento Municipal Utility District (“SMUD”)) and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside (“Six Cities”) argue that the ISO’s proposal will allow the LGIP “to serve as an end run around the RTPP.”¹³ The Six Cities criticize the ISO for “exempting” LGIP network upgrades from the transmission planning process, stating that the Commission “should not countenance such purposeful disregard of the Order 890 requirements.” Both parties refer to the recent SCE filings regarding the Eldorado-Ivanpah Transmission Project (EITP) and the Pisgah-Lugo/Red Bluff network upgrades as examples of projects that have not been reviewed “through a process that meets the requirements of the Commission’s Order No. 890 series.”¹⁴

These arguments are unfounded and based upon the misconception that LGIP network upgrades such as these must be “approved” through the transmission planning process. First, CMUA and Six Cities fundamentally misunderstand the requirements of Order No. 890. Order No. 890 did not apply to the LGIP process and did not promulgate any changes to Order No. 2003, the *pro forma* LGIP tariff provisions, or the ISO’s LGIP tariff provisions. In particular, Order No. 890 did not require that LGIP transmission upgrades be approved through the transmission planning process. Simply put, Order No. 890 does not pertain to the LGIP process. CMUA and Six Cities do not cite any evidence to the

¹³ CMUA comments at 5-6; Six Cities comments at 1-5.

¹⁴ *So. Cal. Edison Co.* Docket ER10-1-000 (EITP); *So. Cal. Edison Co.* Docket ER10-81-000 (Pisgah-Lugo/Red Bluff); Six Cities comments at 5.

contrary, nor can they.¹⁵ CMUA and Six Cities are inappropriately trying to blur – or erase – the well-acknowledged distinction between the generator interconnection process and the transmission planning process.

As discussed above, the ISO’s LGIP is a Commission-approved Order 2003 process through which generation resources are interconnected to the ISO grid.¹⁶ LGIP Network Upgrades that are needed by specific generation facilities for delivery of energy to the grid are determined through *this* process and included in an LGIA between the ISO, the interconnection customer and the relevant participating transmission owner; .LGIP Network Upgrades are *not* approved through the transmission planning process, LGIP network upgrades are not “approved” by ISO management or the Board of Governors. Current tariff Section 24, which contains the Order 890 transmission planning process framework, contains no reference to ISO *approval* of LGIP network upgrades as part of that process. CMUA and Six Cities cannot cite any tariff provisions to the contrary because there are none.

Six Cities point to prior BPM language stating that network upgrades should be submitted through the request window as evidence that the ISO intended to *approve* such projects in the planning process.¹⁷ This conclusion is not warranted, as shown by the relevant transmission planning tariff provisions, a

¹⁵ Indeed, the quote from the Transmission Planning NOPR cited above clearly shows that the Commission still recognizes that there are two discrete processes for identifying network upgrades – the generator interconnection process and the transmission planning process.

¹⁶ See Section 25, Appendices U, V, Y and Z (pertaining to the LGIP) and Appendices S and T (pertaining to the SGIP)

¹⁷ The Six Cities referred to BPM Version 2.0 submitted in *California Independent System Operator Corporation*, Docket No. OA08-62-003 (filed Oct. 31, 2008).

technical bulletin that the ISO issued to clarify the BPM language, and subsequent modifications to this language in the BPM.

The language regarding LGIP network upgrades being submitted through the request window was added to the BPM when revisions were made to the tariff and the BPM to comply with the June 19, 2008 Order on Compliance filing.¹⁸ In that Order, the Commission directed the ISO to amend the tariff to clarify which projects were *required* to be submitted through the request window, and which projects could be submitted, at the *option* of the project proponent, through the request window for consideration through the transmission planning process.¹⁹

In response, the ISO amended Section 24.2.3 of the tariff to include reliability projects in the list of projects that must be submitted through the request window, but did not add LGIP network upgrades to these requirements because they are handled and implemented through the LGIP process, not the transmission planning process.²⁰ However, Section 2.1.4.2 of BPM Version 2.0, submitted with the October 31, 2008 compliance filing, recognized that there might be certain circumstances under which transmission owners would *choose* to have an LGIP network upgrade evaluated in the transmission planning process in order to facilitate coordination between the LGIP Network Upgrade and the transmission planning process. For example, if the transmission owner desired to “up-size” LGIP Network Upgrades above and beyond what was necessary to interconnect the generation identified in the Phase 2 LGIP studies,

¹⁸ *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶61,283 (“June 19 Compliance Order”).

¹⁹ June 19 Compliance Order at P 58.

²⁰ October 31, 2008 Compliance Filing, Attachment C, Docket No. OA08-62.

that could not be accomplished through the LGIP process; rather, the “up-sized” portion of the upgrade (or some additional transmission element not identified in the LGIP Phase 2 study) could only be approved through the transmission planning process. Based on requests for clarification from stakeholders, the ISO again modified the BPM language to specifically describe the types of LGIP network upgrades that could be submitted through the request window at the option of the participating transmission owner.²¹ The ISO also provided additional details on November 20, 2009 when the ISO issued a Technical Bulletin describing the business practice regarding the implementation of the BPM section 2.1.2.1 for the purposes of the 2009 request window:

Reliability and delivery Network Upgrades that are developed through the LGIP and are identified in a signed Large Generator Interconnection Agreement (LGIA) will be constructed on the time schedule in the agreement and do not require the approval by ISO management or the ISO Board of Governors that is required by transmission upgrades or additions evaluated in the [transmission planning process]. These Network Upgrades, therefore, are not required to be submitted in the request window.

....

[T]he BPM language was intended to provide a process by which the [participating transmission owner]-proposed Network Upgrades developed in the LGIP, sized beyond the minimum network upgrades that are reflected in executed LGIA(s), could be considered in the TPP [fn: It is also possible that Network Upgrades that are sized for generation beyond the needs of one LGIA could be triggered by the execution of multiple LGIAs, in which case the Network Upgrades would be constructed through (sic) according to the schedules in the LGIA(s) and need not be considered for approval in the [transmission planning process]...

By making the submission of “over sized” network elements optional in the transmission planning process, the ISO envisioned that LGIP network upgrades

²¹ BPM Version 5.0, Section 2.1.2.1(effective October 14, 2009)

sized beyond the minimum network upgrades that are reflected in executed LGIA(s) would most likely be policy-driven proposals under the revised transmission planning process that the ISO was developing at that time.²² Without this new category of transmission or a tariff provision to evaluate and potentially approve supersized LGIP upgrades in its transmission planning tariff, however, the ISO did not have a clear process by which such “supersized” LGIP upgrades could be approved in the transmission planning process. In RTPP, the ISO has proposed to assess certain LGIP Network Upgrades that have gone through the LGIP study process. As the ISO indicated at the technical conference, the only category of transmission applicable to generator interconnection under the existing ISO tariff is LGIP Network Upgrades under the LGIP tariff. The ISO does not have the authority to approve LGIP Network Upgrades under the transmission planning process, and that is consistent with Order No. 2003.²³

²² The ISO notes that it initiated the stakeholder process to consider the creation of a policy-driven category of transmission in September 2009, at which time the 2009 request window was still open as part of the 2009/2010 planning cycle. At that time the ISO anticipated that it could accomplish this revision through relatively narrow and minor tariff changes and thereby approve some of these request window proposals as policy-driven projects. Indeed, many of the submissions the ISO received were clearly aimed at delivering renewable generation resources. The ISO soon recognized, however, that the issues were more complex and would require a more extensive revision of the transmission planning process. Thus the ISO’s stakeholder process for the revised transmission planning process proceeded well into 2010, overlapping the start of the 2010/2011 planning cycle as required by the current tariff. To reconcile these multiple parallel strands of activity, the ISO therefore proposed in its RTPP filing to consider the prior 2008 and 2009 request window submissions both as potential policy-driven elements and as economic elements, and to honor the expectation that a sponsor who submitted a proposal that is included in the 2010/2011 comprehensive plan would have the right to build and own it.

²³ The ISO notes that, in an order on Southwest Power Pool’s proposed revised transmission planning process, the Commission recently rejected a request to mandate that SPP combine its LGIP and transmission planning processes as beyond the scope of the proceeding. *Southwest Power Pool*, 132 FERC ¶ 61,042 at P 107 (2010).

Contrary to the arguments of the Six Cities and CMUA, the revised transmission planning process does not “exempt” LGIP network upgrades from review. Rather, the ISO’s proposal presents a means by which, for the first time, optimally-sized upgrades needed for generation at different stages of the interconnection queue can be considered and *approved* in the revised transmission planning process as policy-driven elements, and then be subject to a competitive solicitation for qualified sponsors to build and own them.

3. Transmission Owner Rights and Obligations to Build.

As the ISO has previously explained, the ISO’s RTPP tariff amendments retain existing tariff provisions that establish participating transmission owners as the entities that will build LCRI facilities, and participating transmission owners with a PTO Service Territory in which the upgrade will be located as the entities that will build reliability projects and long-term CRR feasibility projects. The RTPP filing also recognizes that participating transmission owners are the entities that build LGIP Network Upgrades and provide participating transmission owners with the right to build certain LGIP Network Upgrades that may be expanded after review in the RTPP. A number of post-technical conference comments object to these provisions. These arguments are misplaced, as discussed below.

CMUA and SMUD argue that the “right of first refusal” should be eliminated for all categories of transmission except for upgrades to existing facilities or upgrades developed pursuant to joint ownership agreements.²⁴ Western Independent Transmission Group (“WITG”), Pattern, and Green Energy

²⁴ CMUA at 10; Sacramento at 2.

Express contend that the Commission should reject any RTPP tariff provisions that establish “rights of first refusal” favoring participating transmission owners.²⁵

Although the ISO has occasionally used the term “right of first refusal” as a shorthand, it is a misnomer when used in connection with the ISO Tariff. The ISO has already explained that neither the current tariff nor the RTPP filing includes a “right of first refusal”; rather, the ISO Tariff gives existing transmission owners the right *and obligation* to build certain projects.²⁶ Under current tariff Section 24.1.1 (c), a participating transmission owner may decline to build an economic project that the ISO assigns it to build. The RTPP maintains the current rights and obligations, except that it eliminate the aforementioned right build economic projects proposed by the ISO.

The ISO has also explained the legal and policy basis for the rights and obligations to build²⁷ and will not repeat them here. The ISO would only note, in addition, that there is no precedent for concluding that a limited right to build for existing transmission owners is unjust and unreasonable. Indeed, Southwest Power Pool has a right of first refusal in its transmission planning process,²⁸ and the Commission has very recently approved significant changes to that transmission planning process without requiring the elimination of the right of first refusal.²⁹ If the Commission did not require SPP to eliminate its right-of-first-refusal (which applies to all categories of transmission) in connection with SPP’s

²⁵ WITG at 4-6, Pattern at 2-6, Green Energy Express at 4-8.

²⁶ See July 15, 2010, Answer to Comments, Motion for Leave to Answer, and Answer to Protests of the ISO in Docket No. ER10-1401 at 55, n.93 (“ISO July 15 Answer”).

²⁷ *Id.* at 55-93; July 23, 2010 Motion for Leave to Intervene and Protest at 4-31.

²⁸ *Southwest Power Pool*, 124 FERC ¶ 61,028 at PP 40-41 (2008).

²⁹ *Southwest Power Pool*, 132 FERC ¶ 61,042 (2010).

recent revisions to its planning process, there certainly is no basis for the Commission to require the ISO to eliminate its existing right-of-first refusal provisions which apply to a more limited subset of facilities.

Parties offer only conclusory statements and bald assertions that these existing tariff provisions are inappropriate, and offer no specific factual, legal or policy reasons why these particular projects should not be built by participating transmission owners or participating transmission owners with a participating transmission owner service territory, whichever is applicable. Green Energy Express, in particular, seems to believe that the burden is on the ISO to justify existing tariff provisions that it has not proposed to change,³⁰ That is incorrect, because the ISO has not proposed to change these limited rights and obligation to build that continue from the existing tariff. These existing tariff provisions can therefore only be changed pursuant to Section 206 of the Federal Power Act, and the burden is on the party seeking to change the tariff provisions. Conclusory claims are insufficient to carry that burden. In any event, as the ISO has discussed previously, the right of participating transmission owners to build this limited sub-set of facilities is just and reasonable and not unduly discriminatory. Green Energy Express is not similarly situated to existing transmission owners with respect to these types of projects.³¹

Green Energy Express contends that because reliability projects, LCRI facilities, long-term CRR feasibility projects, and expanded LGIP Network

³⁰ Green Energy Express at 8.

³¹ July 15, 2010 Answer to Protests at 58-76 (LGIP, LCRI and Reliability projects); July 23, 2010 Motion for Leave to Intervene and Protest at 4-31, Docket No. EL10-76 (LGIP and LCRI projects).

Upgrades are considered under the RTPP before policy-driven elements and, according to Green Energy Express, are largely indistinguishable from the policy-driven elements considered later in Phase 2, few, if any, facilities will be subject to a competitive solicitation as policy-driven facilities in Phase 3.³² Pattern makes a similar argument.³³ As the ISO noted earlier, the ISO notes that these arguments are contrary to the Commission's own preliminary conclusions in the NOPR, where the Commission identified a need to develop policy-driven transmission expansions *in addition to* those categories of transmission expansions developed as necessary to address reliability and economic concerns. It proposed that:

[E]xisting transmission planning processes generally were not designed to account for, and do not explicitly consider, these types of public policy requirements established by state or federal laws or regulations. Indeed, some comments submitted in response to the October 2009 Notice indicate that current transmission planning processes may not permit consideration of public policy requirements within regional transmission plans

[A] public utility transmission provider may include in the transmission planning process additional public policy objectives not specifically required by state or federal laws or regulations. This proposed requirement would be a supplement to, and would not replace, any existing requirements with respect to consideration of reliability needs and application of the economic studies principle in the transmission planning process.³⁴

The ISO's proposal is consistent with this recognition that it is appropriate to consider different categories of transmission projects to address different needs. The ISO has explained at length at the technical conference and in its initial comments both how the categories of projects considered earlier in Phase

³² Green Energy Express at 5-6.

³³ Pattern at 2-6.

³⁴ 75 Fed. Reg. 37,884. at PP 37, 64.

2 differ from policy-driven elements (and cannot be expanded to --- and do not otherwise -- supplant public policy projects) and the reasons for the sequential consideration of the categories, and the ISO will not repeat that explanation here..³⁵ The ISO also noted in its post technical conference initial comments (p. 16), that any LGIP Network Upgrades which the ISO assesses in the transmission planning process will be evaluated simultaneously as policy projects. With no basis, Green Energy Express simply refuses to accept the ISO's explanation. If, as Green Energy Express contends, the ISO can address policy-driven needs with only the existing categories of transmission projects, then the tariff changes proposed in the RTPP filing are superfluous. Green Energy Express does not offer a reason why the ISO – unprompted by the Commission – would undertake a complicated and lengthy tariff amendment process to provide for the construction of policy-driven upgrades if it did not need to do so. [added above]

Green Energy Express cites, as a specific example of its concerns, expanded LGIP Network Upgrades.³⁶ Green Energy Express continues to claim that the Commission should not interpret the existing ISO Tariff to provide that existing participating transmission owners build LGIP Network Upgrades and argues that there is no policy basis for this. The ISO has already responded to these arguments,³⁷ and the ISO will not repeat those arguments here.³⁸ Despite

³⁵ Initial Comments at 7-32.

³⁶ Green Energy Express at 8-13.

³⁷ See ISO July 15 Answer at 64-67 and July 23, 2010, Motion to Intervene and Protest of the ISO in Docket No. EL10-76 (“ISO July 23 Protest”).

³⁸ The ISO does additionally note, however, that the Commission has reaffirmed that the LGIP contemplates interconnection to existing transmission owner facilities not to non-existent lines. *Southwest Power Pool, Inc* 132 FERC ¶61,137 (2010).

the ISO's repeated efforts to explain the pre-existing ISO tariff provisions concerning LGIP Network Upgrades, Green Energy Express has neither responded to the ISO's specific explanation and arguments, nor attempted to rebut them.

Green Energy Express concedes that if the ISO approves expansions of Network Upgrades that would not have been included in an LGIA as part of Phase II studies, "then supposedly such an expansion facility is not automatically subject to a right of first refusal" (which term, as noted above, does not actually describes the rights and obligations that the tariff provides). Green Energy misleadingly describes the tariff in this regard. Green Energy Express implies that the ISO might otherwise determine that the expansion is subject to those rights and obligations. This is incorrect because under the express terms of the RTPP, those rights are not discretionary. Transmission projects based on economic or policy needs (that do not involve upgrades to existing facilities or use of a participating transmission owner's right-of-way) will always be the subject of an open solicitation of process.

Green Energy Express attempts to get around its concession by contending that there are no clear, objective guidelines as to how the ISO will distinguish between expanded LGIP Network Upgrades that should be deemed subject to the rights and obligations of existing participating transmission owners and those that will not. The tariff criterion, however, is whether the expansion facility would have been included in an LGIA. The facilities that would have been included in an LGIA are determined in the Phase II studies. Those are

completed before the LGIP Network Upgrade is even considered for expansion. It is hard to conceive of a more objective criterion.³⁹ In prior filings, the ISO provided examples of how this would work in practice. .⁴⁰

Green Energy Express further argues that assigning LGIP Network Upgrades “provides an incentive for incumbent [participating transmission owners] to game the system to direct planned new renewable generation resources to their planned transmission additions, sign power purchase agreements and LGIAs with the generation developers, and then expand the transmission system under the right to construct LGIP Network Upgrades.”⁴¹ Pattern makes a similar argument about existing participating transmission owners using a “two step process” to expand their facilities through the large generator interconnection procedures.⁴² These arguments ignore the fact that it is generators, not transmission owners, that initiate the generator interconnection process. Transmission owners with service territories cannot manipulate that process by selectively signing power purchase agreements with generators that will engender expansions of their systems; their power purchase decision are subject to review by the California Public Utilities Commission (“CPUC”) for prudence and the CPUC – like the Commission – would not look favorably on decisions that increased transmission profits at the cost of higher retail energy rates. Indeed, as WITG has noted, the CPUC has an independent evaluator

³⁹ Green Energy Express’s contention that the studies will identify more expansive facilities than would be included in the LGIAs ignores the large generator interconnection procedures and Green Energy Express provides no support for its assertion that many projects included as baseline projects in the CTPG study process would be built as LGIP Network Upgrades.

⁴⁰ See, e.g., Initial Comments at 28-29.

⁴¹ Green Energy Express at 11.

⁴² Pattern at 9-10.

monitoring the utilities' energy resource solicitations to ensure that they do not act in this manner.⁴³

Both Green Energy Express and Pattern cite as an example of their concerns related to LGIP Network Upgrades the projects for which SCE has requested incentive rate treatment in Docket No. EL10-81.⁴⁴ As discussed above, those projects had their genesis in generator interconnection requests in the ISO's LGIP. Under those procedures, SCE has the obligation (and right) to build necessary transmission upgrades.⁴⁵ As indicated above, the existing transmission provider to whose existing facilities the generator(s) will interconnect is responsible for building the associated network upgrades. This is a fundamental component of Order No, 2003 and applies to every Commission-regulated utility. Green Energy Express and Pattern provide no basis to overhaul this nationwide program in this limited tariff amendment proceeding. Assigning to an independent transmission developer responsibility for any capacity, on the same lines, above that identified in the large generator interconnection process would create all the problems and inefficiencies as allowing independent transmission developers to build on existing facilities of a participating transmission owner, as the ISO has previously described.⁴⁶

WITG argues that the Commission should require the ISO to specify cost limitations to LGIP Network Upgrades and limitations on the number of upstream generators being connected in an LGIP Network Upgrade. It contends that such

⁴³ WITG at 9.

⁴⁴ Green Energy Express at 10, Pattern at 10-11.

⁴⁵ See ISO July 15 Answer at 64-67.

⁴⁶ See *id.* at 76-79.

boundaries will ensure that the LGIP process cannot be used to bypass centralized transmission planning.⁴⁷ Pattern agrees.⁴⁸ These proposals are contrary to the LGIP established by the Commission in Order No. 2003. Order No. 2003 does not distinguish among generator interconnection requests based on number or size. Neither WITG nor Pattern identifies any changed circumstances that would render Order No. 2003 unjust and unreasonable. Moreover, such limitations or boundaries could not be implemented without restricting or preventing some generation developers from obtaining generation interconnection service under the ISO Tariff. There is no reason for the Commission to revisit the decisions made in approving Order No. 2003 or accepting the ISO's procedures filed to comply with that Rule.

Green Energy Express also argues that if non-incumbents cannot build and own LCRI facilities, then it is likely that they will not be able to build and own the associated upgrades and additions beyond the point of interconnection, especially if existing participating transmission owners have the right to build LGIP Network Upgrades.⁴⁹ Green Energy Express cites no basis for this assertion, and there is none. LCRI facilities are considered during the transmission planning process, not under the LGIP.

Green Energy Express is essentially claiming that gen ties and associated Network Upgrades are “bundled facilities” and that if they are unable to build the gen-ties, they will be unable to build any network upgrades needed to deliver the energy. To the extent Green Energy Express is arguing that Network Upgrades

⁴⁷ WITG at 5.
⁴⁸ Pattern at 12.
⁴⁹ Green Energy Express at 13.

must be built and owned by the same entity as gen-ties, there is no basis for that assertion under the LGIP. Under the LGIP, gen-ties are the responsibility of the generator who bears the cost, and the Network Upgrades are the responsibility of the interconnected transmission owner. In other words, They are clearly treated as two different types of facilities and are no way bundled.

The cost allocation provisions of the LGIP, however, are simply not applicable to transmission additions or upgrades that may be made in connection with LCRI facilities. If, following approval of an LCRI facility in the planning process, the ISO determines that transmission additions or upgrades are necessary to upgrade the transmission network to accommodate deliveries from the radial LCRI facility, such transmission additions or upgrades would be policy-driven elements. In such a case, the ISO will solicit proposals unless the transmission addition or upgrade is an upgrade to the existing facilities of a participating transmission owner, in which case the participating transmission owner will build it.⁵⁰

Indeed, the common industry practice is that the generator owns the gen-tie and the transmission owner owns the network upgrades and recovers the costs through transmission rates. Further, Green Energy Express cannot cite to any tariff provision – because none exists -- which states that LCRI facilities must be constructed by the transmission owner that builds the Network Upgrades. As the ISO has indicated in prior pleadings, which Green Express chooses to ignore, any participating transmission owner is eligible to build and own an LCRI facility; it is not limited to participating transmission owners with a participating

⁵⁰ See Transmittal Letter at 56, 68-71.

transmission owner service Territory in which the facility will be built.⁵¹ Thus, the tariff expressly contemplates that different entities can own the LCRI facility and the network facilities to deliver the energy.

Green Energy Express contends that the ISO failed to provide policy justifications to support its position that participating transmission owners should build LCRI facilities. Green Energy Express further argues the ISO's interpretation of its current tariff is new and flawed.⁵² The ISO explained the authority for its position in its July 15, 2010 Answer to Protests (pp. 58-63), its July 23 Protest to the petition of Green Energy Express (pp. 12-22, 26-31) and again in its initial post-technical conference comments,⁵³ and there is nothing new about this position. Although GEET filed initial post technical conference comments and an answer to protests in its declaratory order proceeding, GEET has not even attempted to rebut a single argument that the ISO made in its prior pleadings. In particular, GEET ignores the requirement that has been in the ISO's Transmission Control Agreement since start-up that transmission providers, including the existing participating transmission owners, cannot become participating transmission owners by turning over only gen-tie facilities to the ISO.

WITG contends that the rights to build of existing transmission owners are inconsistent with the "Texas grid build-out," which the ISO has cited as a model for some elements of the RTPP tariff amendments. WITG claims that, under the

⁵¹ July 15, 2010 Answer to Protests at 60; July 23, 2010 Motion for Leave to Intervene and Protest at 12-13, Docket No. EL10-76.

⁵² Green Energy Express at 14.

⁵³ See Initial Post-Technical Conference Comments of the ISO at 11-14.

Texas model, the transmission plan was established first, without any special categories of projects or set asides for incumbent transmission owners. What WITG fails to acknowledge is that the transmission plan for the “Texas grid build out” of which it speaks – the Competitive Renewable Energy Zones (“CREZ”) Transmission Plan⁵⁴ – is intended only to “construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the CREZ.”⁵⁵ In other words, the Texas CREZ Transmission Plan only addresses projects that, under the RTPP, would be policy-driven projects. Under the RTPP as proposed by the ISO, these policy-driven projects are subject to competitive solicitation. Other proposed Texas transmission projects are processed under the ERCOT transmission planning process, which differs from the CREZ Transmission Plan and which the ISO is not using as a model for the RTPP. As the Public Utility Commission of Texas (“Texas PUC”) expressly recognized, the ERCOT processes do not accommodate selecting entities to build transmission that are not already existing transmission service providers, and ERCOT does not have a process that allows entities to compete to build a transmission project.⁵⁶ Moreover as Green Energy Express recognizes in its comments⁵⁷ in cases involving an upgrade to an existing line, the incumbent transmission service provider will generally be designated to build the

⁵⁴ Tex. Admin. Code, Title 16, Part II, Chapter 25, § 25.216(c)(1)

⁵⁵ Tex. Admin. Code, Title 16, Part II, Chapter 25, § 25.274(c)(2).

⁵⁶ *Rulemaking Proceeding to Amend PUC Substantive Rules relating To Selection Of Transmission Service Providers Related To Competitive Renewable Energy Zones And Other Special Projects*, Order Adopting New Section 25.216 As Approved at the May 22, 2008 Open Meeting. At 4-5 Project No. 34560(June 19, 2008) (Texas Rulemaking”).

⁵⁷ Green Energy Express at 7.

upgrade.⁵⁸ The Texas PUC also found that priority projects” should be assigned only to incumbent TSPs that currently hold a [Certificate of Public Convenience and Necessity].”⁵⁹

Thus, Contrary to WITG’s claims, the ISO is giving more opportunities to independent transmission providers than either the Texas PUC or ERCOT do. The Texas PUC process applies only to public policy type projects; whereas, the ISO’s open solicitation process applies to both public policy and economic projects, and the ISO is not according a right to existing transmission owners to build higher priority projects.

Finally, Pattern points out that all transmission providers have an obligation to expand their facilities in response to interconnection requests, as would Pattern if it became a participating transmission owner. Pattern argues that the obligation to build cannot therefore be used as a justification for a right to build.⁶⁰ Pattern fails to recognize the difference between the obligation to expand facilities under Order No. 2003 and the service obligations of participating transmission owners with service territories. As the ISO has previously explained, the right and obligation to build reliability projects applies to participating transmission owners with service territories. Such transmission owners have native loads. State law obligates them to expand their all their facilities as necessary to reliably and adequately serve that load.⁶¹ Regardless of

⁵⁸ Texas Rulemaking at 6.

⁵⁹ *Commission Staff Petition for Selection of Entities Responsible for Transmisison Improvement Necessary to Deliver Renewable Energy from Competitive Renewable Energy Zones,,* Order on Rehearing, at9, Docket No. 35665 (2009)

⁶⁰ Pattern at 21.

⁶¹ See Cal. Pub. Util. Code § 451 (2010).Where they do not, the CPUC has the authority to direct them to extend or upgrade their facilities. Cal. Pub. Util. Code § 761, 762 (2010).

the ISO Tariff, if additional transmission is necessary to serve load, participating transmission owners must meet it to satisfy state law requirements. The obligation far exceeds the obligation to accommodate interconnection requests, and is what differentiates the circumstances of participating transmission owners with service territories from those of independent transmission developers.

4. 2008 and 2009 Request Window Proposals

Under the proposed RTPP, during the 2010/2011, planning cycle, if the ISO identifies an economically driven or policy-driven element that can be met by a project submitted during the 2008 or 2009 request window, the project sponsor that proposed the project in the 2008 or 2009 request window will be approved to build the element. Green Energy Express seeks even more favorable treatment for these request window projects without any basis in the ISO Tariff.

Green Energy Express argues that project sponsors of 2008/2009 projects should retain the right to build their respective projects for at least five transmission planning cycles, beginning with the 2010/2011 transmission planning cycle.⁶² Such a priority would be unjustified. The ISO has already proposed special treatment of 2008 and 2009 request window projects in the RTPP tariff amendments. Even though there is no public policy category of transmission in the existing tariff, the ISO has provided that if a request window project aligns with a transmission element identified by the ISO as needed to meet a public policy requirement, the ISO will award the transmission element to the sponsor of the request window project. Project sponsors should not expect further preferences beyond those that exist under the approved ISO Tariff or

⁶² Green Energy Express at 15-17.

those proposed in the RTPP as part of the transition to the new planning process. The existing planning process set forth in the ISO Tariff does not provide for repeated review of proposals once the ISO has determined that a project is not necessary. Nor does the ISO Tariff provide any “first in time” priority or entitlement to the first project sponsor to propose a particular project, for a five-year period or any period beyond the time in which the project is reviewed.

Pattern and LS Power challenge the ISO’s position that project sponsors have no legitimate expectation that they will receive a first-in-time priority for their proposals. Pattern argues that, under version 2.0 of the BPM, section 2.1.2.4 called for approval of the 2008 request window proposals between November 2009 and March 2010, at which time consideration of 2009 request window proposals would only have been in the initial stages. Section 2.1.2.4, however, merely provided an overview of the process. It provided only that the development of the plan and project approvals would occur between November and February. It did not provide that *all* projects submitted in that cycle would be rejected or approved in that cycle. Section 4.3.1, which is the detailed discussion, provides:

- A project with capital costs that are less than \$50 Million *may be approved* by CAISO management during TPP Stage 3. Such projects will be presented for approval to the CAISO Executive Leadership Team (ELT) at the first meeting scheduled after the stakeholders have had an opportunity to review and comment on the draft Transmission Plan and prior to the presentation of the Transmission Plan to the CAISO Governing Board According to the TPP timeframe set forth at Section *** above, this will be the February ELT meeting.
- A project with capital costs greater than \$50 Million that has been identified during TPP Stage 2 but has not been designated as a Large

Project *may be presented to the CAISO Board of Governors for approval.* Once the CAISO management has received sufficient information to certify that the project is justifiable and ready to be submitted to the board, the tentative schedule of the CAISO Board of Governor's meetings that each project will be presented to the board will be documented in the Transmission Plan.

>A project that qualifies as a Large Project (transmission upgrade or addition, or substation and related facilities, of 200 kV and above with capital costs greater than \$200 Million) will require comprehensive studies and may be evaluated through a separate public process that would qualify the CAISO economic evaluations for a rebuttable presumption of reasonableness if submitted to the CPUC as evidence of electrical need for the project during the CPCN approval process.

Moreover, the tariff, which is more authoritative than the BPM, specifically provides the ISO with discretion in whether to include projects in the Study Plan: also Section 24.2.3.1 provides: "Following the submittal of a proposal for a transmission addition or upgrade, . . . during the Request Window . . . , the [ISO] will determine whether the proposal will be included in the Unified Planning Assumptions or Study Plan *as appropriate.*" (Emphasis added.)

Particularly relevant to Pattern's and LS Power's comments, the third paragraph above reflects the express tariff provision stating that the evaluation process for Large Projects may span more than one planning cycle.⁶³ Pattern's and LS Power's projects are Large Projects. The ISO's treatment of 2008 and 2009 request window projects has been the same for both participating transmission owner and non-participating transmission owner projects; so, any claim that the ISO is discriminating against non-incumbent transmission providers has no basis in fact. Indeed, PG&E's C3ETP economic project from

⁶³ Section 24.2.4©.

2007, pre-dates any of the 2008 and 2009 request window projects and is still pending ISO evaluation.

LS Power argues that projects submitted in the 2008 request window should be given priority over projects submitted in 2009 because the ISO's BPM in effect at the time provided that projects would be given queue numbers.⁶⁴ This is incorrect. LS Power refers to a *draft* of the BPM dated November 12, 2007 (that never became effective) and a presentation made at a technical conference before the final tariff amendments and BPM were submitted in the ISO's Order 890 compliance filing on December 21, 2007.⁶⁵ In PM Version 1.0, effective December 21, 2007, which was submitted with the ISO's Order No. 890 compliance filing, the references to queue assignments for request window projects had been removed.⁶⁶

Under the current process, the ISO will determine the need for economically driven and policy-driven projects during the 2010/2011 process. That determination will provide 2008/2009 request window project sponsors with the equivalent opportunity to that provided under the existing tariff. There is no basis to provide them with additional preferences over proposals by other project sponsors.

Such a preference would also be inconsistent with the fundamental design of RTPP. Under the RTPP, the relevant jurisdictional authority, or the ISO if there are multiple such authorities, will identify the project sponsor that can fulfill

⁶⁴ LS Power at 2.

⁶⁵ CAISO Order No. 890 Compliance Filing, Docket No. oa08-62, December 21, 2007)*

⁶⁶ Version 1.0 was included in the ISO's December 21, 2007, Order No. 890 compliance filing in Docket No. OA08-62 and the elimination of a transmission queue, based on ambiguity as to its intended use, was described in the Board Memorandum included in at filing at 7.

identified needs in the most efficient and cost-effective manner. For the same reasons that the ISO opposes a “first-in-time” priority for project sponsors,⁶⁷ providing a preference in subsequent years would be counterproductive to identifying the most qualified project sponsor.

5. ISO Determination of Approved Project Sponsors

Nevada Hydro contends that the proposed process for approving project sponsors for economically driven and policy-driven projects is impermissible because the scope of the ISO’s authority is limited to grid planning functions and the ISO does not have the authority to “approve” transmission projects.⁶⁸ Nevada Hydro’s argument is without merit. The ISO does not assert the authority to determine who can build transmission facilities connected to the ISO controlled grid, and the RTPP does not provide that authority. That authority lies with the CPUC or other relevant jurisdictional agency. Rather, the RTPP provides the ISO the authority to determine which projects are included in the ISO’s transmission plan and are accordingly eligible for cost recovery through the ISO’s transmission access charge. That is a fundamental role of a transmission provider and is a role fulfilled in one manner or another by every RTO and ISO. Nevada Hydro is free to build any project that is approved by relevant siting authorities and, if necessary, to seek interconnection to the ISO-controlled grid. Nevada Hydro is free to file a tariff with the Commission for the recovery of those costs from transmission users. Nevada Hydro is not free, however, to recover

⁶⁷ See Answer at 27-28.

⁶⁸ Nevada Hydro at 2-8.

those costs from ISO ratepayers except as provided in the ISO Tariff, including the transmission planning process, and the Transmission Control Agreement.

6. Current Tariff Issues

Nevada Hydro asserts that the ISO actions under the existing transmission planning process are discriminatory and that such discrimination must be “rectified” before the Commission can approve the RTPP.⁶⁹ Daystar Farms states that the ISO has “suspended” its current transmission planning process and should be required to study the 2008 and 2009 request window projects before developing the comprehensive transmission plan.⁷⁰ These arguments reflect a fundamental misunderstanding of the Federal Power Act and asks for Commission action that is beyond the Commission’s authority. Under section 205, a utility must file its rates, terms, and conditions of jurisdictional service with the Commission. Upon such a filing, the rates will go into effect unless the Commission determines that *the new rates* are unjust, unreasonable, or unduly discriminatory or preferential. That determination is unrelated to existing rates. Even if the Commission had reason to believe that the ISO’s existing practices are discriminatory – and it does not – such a belief would not provide a basis for rejecting the RTPP. The ISO is unaware of any instance in which the Commission has asserted the authority to reject a section 205 filing because of a conclusion that existing practices to be modified by that filing were unjust or unreasonable.

⁶⁹ Nevada Hydro at 8-12.

⁷⁰ Daystar Farms at 5.

WITG argues that the Commission should direct the ISO to evaluate and select immediately proposed transmission projects submitted in the 2008/2009 request windows. It asserts that under version 6.0 of the transmission planning Business Practice Manual (“BPM”), projects submitted in the 2009 request window should have been submitted to the ISO Board by March 2010.⁷¹ WITG’s argument is outside the scope of this proceeding for the same reasons as for Nevada Hydro’s argument about the ISO’s current practices. It is also erroneous. As discussed above, under the current tariff, the ISO has discretion in deciding when to study a request window proposal. Likewise, under the tariff, the evaluation of Large Projects spans multiple planning cycles. In light of, among other things, the pending implementation of California’s 33 percent renewable portfolio standard and significant uncertainty regarding the location of generation to meet this goal, the ISO has exercised its discretion appropriately so that it does not approve billions of dollars of transmission that turns out not to be needed.. Because this issue is outside the scope of the proceeding, however, the ISO will not now provide a full discussion of those decisions. As the ISO has previously noted, however, it will review projects submitted in the 2008/2009 request windows in the 2010/2011 RTPP cycle.

C. Phase III Issues

1. Selection Process When Competing Project Sponsors Choose Different Siting Agencies To Obtain the Requisite Authorizations

CCSF reiterates its arguments that the ISO should not select a project sponsor until after the appropriate regulatory agency has reviewed and

⁷¹ WITG at 6-7.

approved the project.⁷² No other party to this proceeding supported CCSF's position in their motions to intervene and/or protests, and the ISO discussed in its Answer why CCSF's proposal is inappropriate.⁷³

CCSF raises some new arguments in support of its position, but CCSF's new arguments provide no greater support for modification of the ISO's proposal. CCSF states that its approach will facilitate cost containment efforts because state regulatory agencies will be able to impose binding cost caps and other cost containment measures when they review projects under the California Environmental Quality Act ("CEQA"). The ISO's proposal already addresses CCSF's issue to the extent that all of the potential project sponsors elect to seek their authorizations from the CPUC, which has statutory authority to impose cost caps in certificate of public and convenience and necessity proceedings on projects whose capital costs exceed \$50 million.⁷⁴ In those instances, the ISO will not make the selection decision; the CPUC will. The flaw in CCSF's proposal stems from the fact that other siting authorities' CEQA review of projects is concerned solely with choosing the most environmentally preferable project. CEQA does not look at the costs of a project unless the costs of a particular alternative make it infeasible. CEQA does not give siting agencies the authority to impose cost caps on transmission lines, regulate the costs of such lines, or impose cost containment measures. CCSF cites to no statutory authority that would allow these state siting authorities to impose cost caps or other cost containment measures on independent transmission developers.

⁷² CCSF at 4.

⁷³ Answer at 80-82.

⁷⁴ Cal. Pub. Util. Code § 1005.5,

CCSF also notes that the Governor's Office of Planning and Research has the ability to approve a lead agency in the siting process and that will lessen any duplication of effort concerns parties may have. The ISO and stakeholders were well aware of this fact when the instant proposal was developed, and no stakeholder supported CCSF's position. The selection of a lead agency for CEQA purposes does not solve the fundamental problem – that lead agency will not have the authority to award a project to a particular project sponsor in instances where there are competing project sponsors that go to different *siting* authorities for their approvals. Once the route is selected by the lead agency, each project sponsor could go back to its selected siting authority and obtain (separate) authorization to build the project. Each of those siting authorities would still be able to authorize the project sponsor that applied to them to build the project. Thus, the basic problem that the ISO and stakeholders identified would still exist. The ISO's proposal addresses that problem. The ISO's proposal addresses this issue up front before multiple parties needlessly spend millions of dollars on a prolonged CEQA process when only one sponsor can ultimately be selected. CCSF's proposal could also cause siting authorities to expend significant time and resources evaluating the applications of project sponsors who ultimately will not be able to build the project. On the other hand, the ISO's proposal conserves agency resources at a time when budgets are tight and resources are limited.

Finally, CCSF suggests that, under the ISO's approach, the losing project sponsor can intervene in the CEQA process and sue to challenge any adverse

CEQA decision. CCSF argues that this could delay or derail any proposal. CCSF ignores that this litigation risk exists whether the ISO makes an up front determination of which project sponsor should be approved or waits until after the siting authorities make their determinations. CCSF's proposal does not eliminate or mitigate this risk.

2. Cost Containment Criteria

a. Return On Equity Incentives

Six Cities urges the Commission to consider cost containment measures, including adherence to a cost cap, as among the applicable criteria in the project sponsor selection process.⁷⁵ Proposed tariff section 24.5.2.4 (j) contains such a criteria, and Six Cities does not offer any specific objections or additions to that language.

The Six Cities and CMUA also argue that rate incentives should be linked to cost containment. Six Cities argues that in granting incentive rates, including adders to a company's return on equity, the Commission should limit the application of the incentives to amounts originally proposed by the incentive applicant, and then ISO could use the estimate to determine if a particular project is the most economical means of accomplishing the particular need.⁷⁶ TANC goes a step further and suggests that the ISO should select the project with the lowest cost cap or give a preference to a project sponsor that elects to forego rate incentives.⁷⁷

⁷⁵ Six Cities at 6, CMUA at ___.

⁷⁶ Six Cities. at 6-7.

⁷⁷ TANC at 9. TANC also suggests that the ISO can demand more rigorous cost estimates from project sponsors by requiring them to stand by their projected costs. TANC at 9. The ISO

As an initial matter, it is up to the Commission to decide how its rate incentives program should function, consistent with the goals of Order No. 673 and EAct 2005. It is not for the ISO to undermine those goals.

The ISO's proposed tariff Section 24.5.2.4(j) permits Project Sponsors to demonstrate *any and all* advantages they may have, or benefits they provide, in building a project, including any binding cost containment measures that they voluntarily agree to accept. Such measures include can include, *inter alia*, capping the costs of the project that they can recover in transmission rates or foregoing a relevant rate incentive. Six Cities, CMUA, and TANC ignore the fact that return on equity is only one component of the overall cost of a project. Thus, a project sponsor's agreement to forgo rate incentives or accept reduced rate incentives does not automatically make that project the most cost effective alternative as they seem to assume. Indeed, in many instances it will not be.

The ISO does not believe that it is appropriate to single out or place undue weight on a Project Sponsor's willingness to forego available rate incentives. Placing inordinate weight on this one cost advantage (or any other individual cost component) could be counterproductive. For example, a company with an equity-rich capital structure may forego an incentive return on equity but still have a higher overall cost of capital than a company with less equity that receives an incentive rate adjustment. Or, a company might have existing rights-of-way on which large portions of the transmission element could be built,

does not have the authority to limit a project sponsor's recovery to its projected costs. It is FERC's role to determine what costs the project sponsor has prudently incurred, not the ISO's. However, the ISO can provide project sponsors the opportunity to voluntarily agree to a binding and enforceable cost cap and has done just that.

thereby enabling it to build a more cost-effective project than a company that agreed to reduced rate incentives. There are numerous other examples. However, under TANC's proposal, the higher-cost competitors would be awarded the projects because they forwent rate incentives. This is a perverse outcome, yet is a potential outcome if the ISO is required to give preference to a single cost factor, to the detriment of other cost factors that can produce even greater rate reductions.

This same concern arises whenever any single cost component is examined or given credit in a vacuum without regard to a total binding cost cap. As the ISO indicated at the technical conference and in its prior pleadings, agreement to a binding total cost cap on the project is the only meaningful measure of cost containment because it would be enforceable.⁷⁸ Other specific cost containment measures can be considered under the ISO's proposal, but they need to be considered in the context of the other criteria of Section 24.5.2.4 and should not be given undue weight or any tariff-based advantage.

Six Cities suggestion that the ISO can rely on the project cost estimates identified in incentive rate applications is flawed for the reasons discussed herein and in previous pleadings. The estimates would still not be binding on the project sponsor. Further, even if the Commission were to limit rate incentives to the capital costs specified in the application, the fractional amount of rate incentives a project sponsor might forego if it exceeds the estimate is still only a single cost factor that the ISO must consider.

⁷⁸ See Answer at 95-98; June 4, 2010 Tariff filing at 66-67.

TANC also suggests that the ISO should ensure that is approving the most cost-effective alternative for all categories of transmission.⁷⁹ The ISO' already does this in its transmission planning process for all categories of transmission when it evaluates possible alternative solutions to meet an identified need.⁸⁰

b. General Applicability Of Cost Containment Provisions

WITG seeks to ensure that the independent transmission providers will be subject to the same cost containment rules as the incumbent participating transmission owners.⁸¹ WITG acknowledges the ISO's statement that cost estimates are unenforceable and often later revised. WITG argues that any cost caps adopted by the ISO must be fairly and equally applied to both independent and incumbent transmission developers alike. The cost containment criterion specified in proposed section 24.5.2.4 (j), however, already applies to all potential project sponsors, including incumbent transmission providers. WITG does not show otherwise, nor can it.

It is unclear what WITG means by "cost caps adopted by the ISO." The ISO is not adopting or imposing cost caps under the tariff on each and every project proposal. Under Section 24.5.2.4 (j), project sponsors must voluntarily agree to be bound by any cost containment measures or cost caps they propose.

⁷⁹ TANC at 10.

⁸⁰ See, e.g., Final California ISO Transmission Plan 2010 at 112-13, 174-75 (April 7, 2010) (Reliability Projects); Memorandum re Decision for Conditional Approval of the Highwind Location Constrained Resource Interconnection Facility (LCRIF) Project, (May 8, 2009) (LCRIF Project); Memorandum Re Decision on Fresno Reliability Transmission Projects (March 17, 2010)(Reliability Projects); Memorandum re Decision on the Bayfront Substation Transmisison Project (February 3, 2010) (Reliability Project); See also July 15 Answer to Protests at 90-92.

⁸¹ WITG at 10.

The ISO does not have the authority to involuntarily impose cost caps on project sponsors.

WITG focuses on the importance of independent transmission providers and existing participating owners being treated equally and fairly but seems to ignore that the ISO's selection criteria only apply if different project sponsors desire to submit their proposals to build the same needed transmission element to different siting authorities. Where both project sponsors go to the same siting authority, the ISO does not select the approved project sponsor; the siting authority does. Thus, if independent transmission developers want to compete on the exact same playing field as incumbent utilities, they voluntarily can elect to seek their siting authorizations from the CPUC, and the ISO will not select the project sponsor. As indicated above, the CPUC is required by law to impose cost caps on transmission projects that it evaluates in CPCN proceedings, and the CPUC regularly evaluates costs and alternatives- in the course of those proceedings. It seems disingenuous to claim that one wants to compete on the same footing as another competitor, but then voluntarily elect to pursue siting authorizations in a different forum where they may not be subject to similar cost scrutiny. In any event, as the ISO indicated in its June 4, 2010 transmittal letter – and regarding which no party expressed any opposition in their interventions or protests – no project sponsor should gain an advantage (or placed at an undue disadvantage) based on the regulatory requirements of the siting authority that it has selected to authorize the project.

3. Request For Independent Evaluator

WITG continues to argue that the Commission should direct the ISO to employ an independent evaluator who will follow the process at every stage and certify in a public report whether the ISO followed its tariff and applied the tariff in a non-discriminatory manner.⁸² In a footnote, WITG claims that this is similar to the process used by the CPUC in connection with its jurisdictional utilities' annual solicitation for renewable energy.

The rationale that supports the independent evaluator for the RPS procurement process does not apply to the ISO. There is a more discernable need for an independent evaluator in the context of investor-owned utilities' RPS procurement solicitations because such utilities have shareholder interests to protect. In that regard, the RPS solicitations may involve bids submitted by affiliated companies, proposals by the utility itself to build a project, or situations where a bidder proposes to sell a project or build a project under a turnkey contract that would ultimately be owned by a utility. The ISO understands that one role of the independent evaluator in these circumstances is to ensure that no affiliate has an undue advantage over non-affiliates in the solicitation process. That is not the case here. The ISO is an independent entity. It has no financial interest in any of the projects that will be proposed or any of the sponsors that will be proposing them and it has no shareholder interests which could be affected by the ISO's selection of a proposed project. Thus, the circumstances that support an independent evaluator in the utility procurement solicitation process are unlike the circumstances here. In addition there are other differences such as the confidential treatment of certain information.

⁸² WITG at 9.

It is not clear what the rationale for or benefit of WITG's proposal is. To the extent WITG is seeking to have a third-party certify that the ISO has followed its tariff and not applied it in an unduly discriminatory manner, that is the Commission's role, not the role of some third party. The ISO's dispute resolution procedures applicable to transmission planning permit, *inter alia*, a party to directly file a complaint with the Commission if they believe that the ISO has not followed its tariff or acted in a discriminatory manner. Under these circumstances, an independent evaluator's opinion that the ISO violated its tariff or otherwise acted in a discriminatory manner is not – and should not be – entitled to any more deference than the opinion of any other expert or regulatory attorney who might be opining on this subject. Further, an independent evaluator is not necessary to ensure that the ISO follows its tariff and applies the selection criteria in a non-discriminatory manner. To the extent the ISO violates its tariff, it potentially is subject to a Commission enforcement action and significant penalties.

In its initial post-technical conference comments, the ISO indicated its willingness to retain an expert consultant to assist the ISO in the Phase III process of assessing project sponsor's qualifications, evaluating project sponsors' proposals to build and own needed transmission, and selecting the approved project sponsors when more than one proposal is received to build the same transmission element. In addition, the ISO has retained an expert consultant to assist it in this planning cycle to assess transmission needs for purposes of meeting a 33 percent RPS requirement. In addition, the

transmission planning BPM that the ISO will implement in connection with the revised transmission planning process will specify that the ISO will post a detailed public report regarding its selection of project sponsors for each of the needed economic and public policy transmission elements that is the subject of the open solicitation. That report will set forth the bases for the ISO's decisions in a transparent manner. Moreover, all of the ISO's assumptions and studies underlying its transmission needs determinations will be publicly available. To the extent parties disagree with the ISO's assumptions, reasoning, or decisions, or believe that the ISO has not followed its tariff, they will have all the information they need to support a complaint with the Commission or seek recourse through other dispute resolution options. It is not clear what an independent evaluator would add under these circumstances except layering on additional process, delay, and costs to be borne by ratepayers – on top of the costs that the ISO will already be incurring to retain two additional expert consultants to assist the ISO in connection with the planning process.

Finally, in Order No. 890, the Commission expressly declined to impose a requirement for an “independent third party coordinator” in the planning process.⁸³ The Commission noted that transmission planners could comply with the Order No. 890 principles without use of an independent third party. The Commission concluded that an open, transparent planning process, with meaningful dispute resolution would provide a sufficient basis for customers to identify and raise meaningful concerns if a plan does not treat similarly situated customers in a comparable manner, where planning appears to be conducted in

⁸³ Order No. 890 at P 567.

a discriminatory manner, or in other instances where the independence of planning may be in question. *Id.* at P 568. The Commission wanted to make sure that disputes could be resolved through a Dispute Resolution Service or by filing a complaint with the Commission. The ISO complies with these requirements. WITG has not provided any specific evidence why the Commission should abandon the decision it made in Order No. 890, especially given that the ISO already is an independent entity.

4. Adoption of Credit Requirements for Project Sponsors

PG&E and Southern California Edison Company (“SCE”) submitted comments in response to Commission Staff’s question regarding the feasibility of using demonstrations of creditworthiness or sufficient security to ensure that a project sponsor will not back out of a project. SCE argues that the protection would need to ensure that reliability can be maintained and costs controlled if some other project sponsor has to step in to complete the project in a compressed timeline.⁸⁴ PG&E suggests that project sponsor be required to post high quality, liquid collateral sufficient to ensure prompt and proper completion and operation and maintenance of the project for at least two years to account for the time required to resolve a bankruptcy proceeding and/or find a successor owner, if required.⁸⁵

The ISO notes that Section 24.1.1(a) of its existing tariff already imposes credit requirements on Project Sponsors proposing to construct Merchant Transmission Facilities. Specifically, the ISO may

⁸⁴ SCE at 3-4.

⁸⁵ PG&E at 8.

require (1) a demonstration of creditworthiness (e.g., an appropriate credit rating), or (2) sufficient security in the form of an unconditional and irrevocable letter of credit or other similar security sufficient to meet its responsibilities and obligations for the full costs of the transmission addition or upgrade.

The Commission could approve similar tariff language for project sponsors selected through the revised transmission planning process. Alternatively, the Commission could require the ISO to adapt the credit requirements applicable to market participants or Interconnection Customers to apply to transmission project sponsors. The ISO is agreeable to making such tariff changes in a compliance filing on its revised transmission planning proposal.

II. PREVIOUSLY ADDRESSED TOPICS

In their initial post-technical conference comments, parties raise a number of issues that were not topics for the technical conference and/or or which the ISO thoroughly addressed in its July 15, 2010 Answer to Protests. The ISO will not reply to those arguments in this filing. The ISO has identified some such arguments above. Below is a list of other such issues and references to where the ISO previously addressed the issue.

- Pattern argues that, in evaluating economic projects that provide comparable benefits the ISO should be able to take the distance of two competing projects into account because it is reasonable to conclude that transmission line that follows a shorter route will cost less than a line that follows a longer route.⁸⁶ In its July 15, 2010 Answer to Protests (pp. 90-93), the ISO demonstrated how it takes distance into account in evaluating alternative projects.
- CCSF has again argued that policy-driven elements should be subject to a different cost allocation methodology, and this argument was addressed in the ISO answer.⁸⁷

⁸⁶ Pattern at 19-20

⁸⁷ Answer at ***

- California Department of Water Resources (“CDWR”) has raised the same arguments in its comments that were set forth in its protest.⁸⁸ These arguments are outside the scope of the technical conference issues and were addressed in the ISO’s answer.⁸⁹
- CALWEA’s assertions that the LGIP and the transmission planning process should be further coordinated, that financial security postings should be revisited, and whether non-incumbent should be permitted to upfront fund LGIP network upgrades where the participating transmission owner declines to do so are all issues outside the scope of the ISO’s proposed revisions and would require significant changes to its Order 2003 interconnection procedures.⁹⁰

III. CONCLUSION

The ISO requests that the Commission approve its proposed revised transmission planning process consistent with the clarifications provided herein and the discussion in the June 4, 2010 Transmittal Letter and the July 15, 2010 Answer to Protests.

Sean A. Atkins
 Michael E. Ward
 Alston & Bird LLP
 The Atlantic Building
 950 F Street, NW
 Washington, DC 20004
 Tel: (202) 756-3300
 Fax: (202) 654-4875
sean.atkins@alston.com

Counsel for the California Independent System Operator Corporation

Respectfully submitted,
By: /s/ Anthony Ivancovich
 Nancy Saracino
 General Counsel
 Anthony J. Ivancovich
 Assistant General Counsel
 Judith Sanders
 Senior Counsel
 California Independent System Operator Corporation
 151 Blue Ravine Road
 Folsom, CA 95630
 Tel: (916) 351-4400
 Fax: (916) 608-7296
aivancovich@caiso.com

Dated: September 17, 2010

⁸⁸ CDWR at ***
⁸⁹ Answer at ***
⁹⁰ CALWEA at 7-8.

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 captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 17th day of September, 2010.

Anna Pascuzzo
Anna Pascuzzo