

154 FERC ¶ 61,243  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

California Independent System Operator Corporation      Docket No. ER16-767-000

ORDER ON PROPOSED TARIFF REVISIONS

(Issued March 25, 2016)

1. On January 27, 2016, the California Independent System Operator Corporation (CAISO) submitted, pursuant to section 205 of the Federal Power Act (FPA),<sup>1</sup> proposed revisions to sections 4 and 24 and Appendix X of its tariff addressing the procedures for the competitive solicitation process through which CAISO selects Approved Project Sponsors<sup>2</sup> to construct regional transmission solutions included in CAISO's annual transmission plan. In this order, we accept CAISO's filing, subject to condition, effective March 28, 2016.

**I. Background**

2. On December 16, 2010, the Commission approved CAISO's annual transmission planning process, which established three transmission planning phases and introduced a competitive solicitation process to select the transmission developer to build and own certain regional transmission solutions identified in the annual transmission plan.<sup>3</sup>

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> The person or entity *designated* under the CAISO Tariff to construct, finance and own transmission additions or upgrades. *See* CAISO tariff section Appendix A Definitions.

<sup>3</sup> *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 (2010).

CAISO later submitted revisions to the transmission planning process in compliance with Order No. 1000,<sup>4</sup> which the Commission accepted.<sup>5</sup>

3. In its filing here, CAISO states that during phase 1 of the transmission planning process, CAISO identifies study assumptions and develops a study plan. During phase 2, CAISO develops transmission solutions, which are approved by CAISO's Board of Governors (CAISO Board), to meet CAISO's reliability, policy, and economic needs. CAISO states that during phase 3, it conducts a competitive solicitation for Project Sponsors<sup>6</sup> seeking to finance, own, design, construct, operate, and maintain the regional transmission facilities included in the transmission plan.<sup>7</sup> Finally, CAISO selects an Approved Project Sponsor that must then enter into an Approved Project Sponsor Agreement (APSA) with CAISO which governs the relationship between CAISO and the Approved Project Sponsor prior to the facilities being turned over to CAISO operational control.

4. In March 2014, CAISO initiated a new stakeholder process to consider enhancements to the competitive solicitation process. As a result of this process, CAISO proposes to revise its tariff and its *pro forma* APSA to: (1) modify the collaboration period to coincide with opening of the application bid window, extend the bid window an additional two weeks, and eliminate the opportunity for collaboration after the close of the bid window; (2) establish an obligation for an Approved Project Sponsor to transfer assets to an alternative Project Sponsor if the Approved Project Sponsor fails to satisfy its obligations under the APSA; (3) require project sponsors to provide copies of project-related initial filings submitted to the Commission to CAISO, existing participating

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<sup>4</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

<sup>5</sup> *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013); *Cal. Indep. Sys. Operator Corp.*, 146 FERC ¶ 61,237 (2014); *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,178 (2014).

<sup>6</sup> A Market Participant, group of Market Participants, a Participating TO or a project developer who is not a Market Participant or Participating TO that *proposes* the construction of a transmission addition or upgrade in accordance with CAISO tariff section 24. See CAISO tariff section Appendix A Definitions.

<sup>7</sup> CAISO Transmittal Letter at 3.

transmission owners, and other Approved Project Sponsors; and (4) exempt Approved Project Sponsors selected through the competitive solicitation process from the procedures applicable to new participating transmission owners.

## **II. Notice of Filings and Responsive Pleadings**

5. Notice of CAISO's filing was published in the Federal Register, 81 Fed. Reg. 5730 (2016) with interventions and protests due on or before February 17, 2016. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside (Six Cities), Northern California Power Agency, the Transmission Agency of Northern California, California Department of Water Resources State Water Project, the City of Santa Clara, M-S-R Public Power Agency, and Modesto Irrigation District filed motions to intervene. Pacific Gas & Electric Company (PG&E) and Southern California Edison Company (SoCal Edison) filed motions to intervene and comments in support. LSP Transmission Holdings (LS Power) filed a timely motion to intervene and an out-of-time protest, in which it states that it generally supports CAISO's proposed tariff changes, except for the new language proposed in APSA section 5.8, as further discussed below. CAISO and Six Cities filed answers.

## **III. Discussion**

### **A. Procedural Issues**

6. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

7. We will accept LS Power's late protest because LS Power has already intervened in this proceeding and its late filing will neither prejudice the parties nor delay the proceeding.

8. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We accept Six Cities and CAISO's answers because they provided information that assisted us in our decision-making process.

**B. Substantive Issues**

9. We accept CAISO's proposed revisions, subject to condition, as discussed below.<sup>8</sup>

**1. Proposed Tariff Changes****a. Revisions to the Competitive Solicitation Collaboration Process****i. CAISO Proposal**

10. CAISO proposes to modify tariff sections 24.5.2.1 and 24.5.2.2 to revise the process for voluntary collaboration among Project Sponsors. Currently, in phase 3 of the competitive solicitation process, after Project Sponsors submit their respective applications to construct and own a regional transmission facility and CAISO validates the submitted applications,<sup>9</sup> CAISO will, upon request, provide a 30 day opportunity for Project Sponsors who submitted validated applications to collaborate with other validated Project Sponsors to submit a new joint application. CAISO explains that this opportunity to "re-bid" (i.e., submit a new joint application) is only available to those Project Sponsors that choose to collaborate during the collaboration period and is not available to other Project Sponsors that choose not to collaborate. Under the current process, if two or more Project Sponsors who submitted validated applications collaborate and submit a new joint application, CAISO will proceed to validate the new joint application. Next, CAISO will proceed to qualify all of the Project Sponsors and undertake the comparative analysis to select an Approved Project Sponsor.<sup>10</sup>

11. CAISO states that the current collaboration process does not provide benefits and unnecessarily extends the review period by up to 13 weeks, delaying selection decisions

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<sup>8</sup> The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

<sup>9</sup> CAISO reviews applications for completeness and verifies whether they contain sufficient information to allow CAISO to determine whether a Project Sponsor is qualified to be selected as an Approved Project Sponsor. *See* CAISO tariff section 24.5.2.2.

<sup>10</sup> Once Approved Project Sponsors collaborate and submit a joint application, their individual applications are no longer considered. *See* CAISO tariff section 24.5.2.3.

and potentially interfering with the ability of an Approved Project Sponsor to complete seasonal environmental surveys in a timely manner.<sup>11</sup> In addition, CAISO explains that the existing collaboration framework could afford an unfair advantage to Project Sponsors who submitted validated applications that collaborate during the collaboration period by allowing them, and not others, to revise their application and take advantage of market changes that occur or new information that becomes available after the original application window closes and revise their bids accordingly.<sup>12</sup>

12. To address these concerns, CAISO proposes to (1) modify the existing process to provide an opportunity for collaboration prior to the deadline for submitting Project Sponsor applications and (2) eliminate the existing collaboration opportunity under section 24.5.2.3, which occurs after Project Sponsors have submitted their applications. CAISO also proposes to revise section 24.5.1 to extend the window for Project Sponsors to submit applications by two additional weeks. Under new section 24.5.2.1, CAISO will provide entities that are interested in collaborating with other Project Sponsors, two weeks (from the time CAISO opens an application submission window for a competitive solicitation) to notify CAISO that they are willing to collaborate. CAISO will then post a list of interested entities on its website.<sup>13</sup> Entities that decide to collaborate will submit their joint applications during the same time frame as those entities that choose not to collaborate. CAISO states that even with the extension of the minimum application submission window, this revision will shorten the overall competitive solicitation process by up to 11 weeks because it eliminates 13 weeks of the existing process during which collaboration and validation of joint proposals took place.<sup>14</sup>

## ii. Comments

13. SoCal Edison states that, although it has previously utilized the collaboration period and found it to be beneficial, it does not oppose CAISO's proposal because it understands CAISO and other stakeholders' position that the changes will continue to promote collaboration while eliminating undue delays. Similarly, PG&E supports

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<sup>11</sup> CAISO Transmittal Letter at 8.

<sup>12</sup> *Id.* at 9, 15.

<sup>13</sup> CAISO notes that entities can also collaborate without notifying CAISO or having CAISO post their identity on the list of entities potentially interested in collaboration. *See* CAISO tariff section 24.5.2.1.

<sup>14</sup> CAISO Transmittal Letter at 11.

CAISO's proposal. However, it states that in the future, CAISO might need to revisit a need to require parties to post collateral as part of their project applications.

**iii. Commission Determination**

14. We find that the proposed tariff revisions regarding collaboration are just and reasonable because they will provide a more level playing field for transmission developers. The proposed tariff revisions place all Project Sponsors on the same timeline and remove the potential for an unfair advantage to Project Sponsors that collaborate by allowing them, not others, to revise their proposals and potentially take advantage of market changes or new information that becomes available after the original application window closes. Moreover, we find that the proposed revisions will expedite the competitive solicitation process and help eliminate unnecessary delay. We accept CAISO's proposed changes to sections 24.5.2.1 and 24.5.2.2, and the deletion of section 24.5.2.3, of its tariff.

**b. Notification of Commission Filings**

**i. CAISO Proposal**

15. CAISO proposes to add section 24.5.2.2 to its tariff and section 12.6 to the APSA to require Project Sponsors and Approved Project Sponsors to provide CAISO, participating transmission owners, and other Approved Project Sponsors with copies of all initial Commission filings that affect the rates, terms, or conditions of service for a project. CAISO explains that there has been an instance where a Project Sponsor that had not yet been selected as an Approved Project Sponsor submitted a filing to the Commission proposing a formula rate for recovery of its transmission revenue requirement in advance of being selected. CAISO states that many interested parties were not aware of the rate filing and thus did not intervene in the proceeding.

16. CAISO notes that participating transmission owners and Approved Project Sponsors have a similar obligation under the tariff to provide such copies with respect to transmission revenue requirement filings. CAISO maintains that it is reasonable for this obligation to apply to the period during which facilities are being financed, designed, and constructed so that it applies to all initial filings pertaining to a project.<sup>15</sup>

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<sup>15</sup> *Id.* at 24.

**ii. Commission Determination**

17. We find that, with modification, the proposed changes requiring entities to provide notification of Commission filings are just and reasonable, and provide transparency for transmission developers and other interested entities as to what relevant filings have been submitted to the Commission. Thus, we accept, subject to condition, CAISO's proposed changes to section 24.5.2.2 of its tariff, and section 12.6 of the APSA.

18. Proposed section 12.6 of the APSA and proposed section 24.5.2.2 of the tariff specifies that Project Sponsors and Approved Project Sponsors will provide the regulatory filings to CAISO, "participating t[ransmission] o[wner]s (as listed on Appendix F to the Transmission Control Agreement), and other Approved Project Sponsors." While Appendix F to the Transmission Control Agreement provides contact information for participating transmission owners, it is unclear if the contact information for all Approved Project Sponsors is likewise available in one easily accessible location. Accordingly, we direct CAISO to submit, within 30 days of the date of issuance of this order, a compliance filing to further revise the APSA and proposed section 24.5.2.2 to indicate where such information can be found or, in the alternative, an explanation of why and how Approved Project Sponsors would already have access to it.

**c. Participating Transmission Owner Application Process for Approved Project Sponsors**

**i. CAISO Proposal**

19. CAISO proposes to revise section 4 of its tariff to exempt Approved Project Sponsors from the application process for new participating transmission owners.<sup>16</sup> Under CAISO's tariff, if an entity desires to become a participating transmission owner and turn over operational control of its transmission facilities to CAISO, the tariff and transmission control agreement specify an application process, stakeholder review of the application, and a decision by CAISO's Board. However, Approved Project Sponsors will have already undergone the competitive solicitation process, which requires Project Sponsors to submit a detailed application to CAISO that provides a significant amount of information including, *inter alia*, their qualifications to construct, own, operate, and maintain the project facilities and their ability to function as a participating transmission owner. CAISO states that requiring an Approved Project Sponsor to undergo another

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<sup>16</sup> CAISO notes that Approved Project Sponsors are still required to sign CAISO's Transmission Control Agreement. *See* CAISO tariff section 4.3.1.

application and stakeholder process after CAISO has already determined it to be qualified to build, operate, and maintain the facilities is both duplicative and burdensome.<sup>17</sup>

**ii. Commission Determination**

20. We find that the proposed changes regarding the participating transmission owner application process are just and reasonable because they remove duplicative requirements applicable to Approved Project Sponsors. Thus, we accept CAISO's proposed changes to section 4 of its tariff.

**d. Transfer of Project Assets**

**i. CAISO Proposal**

21. CAISO proposes to add the following italicized language to its existing APSA section 5.8: "If either Party determines that an alternative Project Sponsor should be selected in accordance with Section 24.6.4 of CAISO's tariff, the Approved Project Sponsor agrees to work *in good faith* with CAISO, the alternative Project Sponsor, and, if applicable, the interconnecting participating transmission owner to transfer responsibility for the Project to the alternative Project Sponsor."<sup>18</sup>

22. CAISO states that under section 24.6.4 of its tariff, if an Approved Project Sponsor is unable to fulfill its responsibilities or otherwise abandons the project, CAISO may select a new, or alternative, Approved Project Sponsor,<sup>19</sup> and the previous Project Sponsor is obligated to work cooperatively with CAISO, any alternative Project Sponsor CAISO selects, and the affected participating transmission owners.<sup>20</sup> CAISO proposes to revise section 5.8 of the APSA to provide that if an alternative Project Sponsor desires to use any of the assets that the Approved Project Sponsor acquired for the project, the Approved Project Sponsor must, subject to applicable law, transfer such assets to the alternative Project Sponsor at book value, determined in accordance with the Commission's Uniform System of Accounts. CAISO indicates that the requirement applies to asset transfers that occur after the Approved Project Sponsor has executed the APSA. CAISO explains that under the proposed tariff language, a Project Sponsor would

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<sup>17</sup> CAISO Transmittal Letter at 25.

<sup>18</sup> APSA section 5.8.

<sup>19</sup> CAISO Transmittal Letter at 18.

<sup>20</sup> *Id.*



not be precluded from filing with the Commission a proposal to recover any abandoned plant costs, but any amount the Project Sponsor proposes to recover must be reduced by the amount the alternative Project Sponsor pays the Approved Project Sponsor to acquire any assets.<sup>21</sup> Under CAISO's proposal, the provisions under section 5.8 of the APSA will survive termination of the Agreement.

23. CAISO states that its proposal is necessary to protect CAISO and ratepayers in situations where an Approved Project Sponsor fails to carry out its responsibilities. CAISO contends that absent any protections, CAISO and ratepayers could face undue cost increases or duplicative charges for similar assets, or be "held hostage" by Approved Project Sponsors that demand premiums in instances where the project is needed by a date-certain to meet reliability or other needs. CAISO explains that it has already faced one instance where an Approved Project Sponsor has terminated the APSA and another instance where the parent company of a co-Approved Project Sponsor has declared bankruptcy.<sup>22</sup> CAISO states that the use of the Commission's Uniform System of Accounts will prevent an Approved Project Sponsor from demanding a premium for the transfer of assets, while providing fair compensation for the costs incurred to develop the project.<sup>23</sup>

24. CAISO contends that the requirement to offset recovery of abandoned plant costs by amounts received for the asset is necessary to prevent a Project Sponsor from receiving double compensation for transferred assets, once in the form of abandoned plant recovery and again for the monies it receives from the alternative Project Sponsor for the transferred assets or from demanding an unduly high price for those assets. CAISO explains that its proposal also would prevent ratepayers from paying twice for the similar assets needed for a project.<sup>24</sup>

25. CAISO further states that requiring the alternative Project Sponsor to buy 100 percent of the project-related assets is unfair and may increase costs to CAISO ratepayers. CAISO explains that the alternative Project Sponsor may not need all of the assets. For example, CAISO states that the alternative Project Sponsor may already have existing rights-of-way or facilities or equipment that it can use for the project. CAISO

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<sup>21</sup> *Id.* at 18-19.

<sup>22</sup> *Id.* at 20.

<sup>23</sup> *Id.* at 21.

<sup>24</sup> *Id.* at 22.

maintains that the Approved Project Sponsor is fully protected because it can seek abandoned plant recovery for the assets it does not sell.<sup>25</sup>

26. Finally, CAISO notes that its proposal places reasonable limitations on the asset transfer requirement because (1) it only applies to assets that the Approved Project Sponsor has acquired for the project, (2) it only applies to asset transfers that occur after the APSA is executed, (3) it will not encroach on the Commission's jurisdiction or any jurisdiction another government authority or court may have because the transfer of assets under section 5.8 is "subject to applicable law." CAISO also states that participating in the competitive solicitation process is voluntary. CAISO maintains that the transfer of assets provision is simply a condition of participating in and winning a competitive solicitation, and that Project Sponsors will know their obligations in advance of participating and can plan accordingly.<sup>26</sup>

## ii. Comments and Protests

27. LS Power opposes CAISO's proposed revision to section 5.8 of the APSA, which would mandate asset transfer with specific valuation terms and conditions. LS Power states that there may be situations when the proposed provision could be unfair to the original Approved Project Sponsor, such as when failure to complete the project is due to circumstances outside of the original sponsor's control or if the alternate Project Sponsor decides to "cherry-pick" the project's most valuable assets. LS Power believes that, while there may be situations where transfer of assets is appropriate, commercial incentives, combined with the contractual duty to cooperate in good faith and Commission prudence review, will achieve the desired result without the need for the proposed contractual provision and forced asset transfer.<sup>27</sup>

28. Additionally, LS Power argues that the Commission rejected a similar transfer provision proposed by the Midcontinent Independent System Operator (MISO) in its Selected Developer Agreement. According to LS Power, MISO could have required the termination or assignment of third party contracts in the event of project reassignment.

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

<sup>26</sup> *Id.* at 23.

<sup>27</sup> LS Power Comments at 2-3.

LS Power notes that CAISO's proposal refers to assets rather than contracts, but suggests that the practical implications would be the same.<sup>28</sup>

**iii. Answers**

29. In its answer, CAISO states that its proposed tariff revisions are the result of a stakeholder process held after its initial filing of the *pro forma* APSA. CAISO states that LS Power underestimates the financial and reliability impacts on ratepayers. CAISO disagrees with LS Power that a Commission prudence review is sufficient to protect ratepayers from project abandonment. CAISO argues that the Commission's review is designed to facilitate a Project Sponsor's cost recovery rather than ensure timely and cost-effective completion of the project. CAISO maintains that the proposed revisions to section 5.8 do not penalize Approved Project Sponsors because the proposal preserves their ability to seek abandoned plant cost recovery.<sup>29</sup>

30. CAISO challenges what it claims is LS Power's preference to allow Approved Project Sponsors to sell abandoned assets at a price higher than cost. CAISO states that since the approved projects are not merchant facilities, but rather projects designated through CAISO's Board-approved competitive solicitation process, Approved Project Sponsors would be aware of CAISO's specific terms and conditions in advance.<sup>30</sup>

31. Finally, CAISO argues that LS Power's reference to the Commission's decision regarding MISO's Selected Developer Agreement is inapposite. First, CAISO states, as LS Power's protest acknowledges, the proposed APSA revisions in the instant filing pertain to acquired assets, not pending contracts, as in MISO's agreement. Second, CAISO states that its proposal, unlike MISO's, does not stipulate the assignment or cancellation of vendor contracts. Third, CAISO states that although many transmission developers participated in its stakeholder process, only LS Power objected to the proposed APSA section 5.8 revisions. CAISO notes, in contrast, many stakeholders objected to proposed revisions during MISO's process. CAISO argues that some of the objections raised during the MISO process informed its decision not to include contracts

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<sup>28</sup> *Id.* at 4. See *Midcontinent Indep. Sys. Operator*, 153 FERC ¶ 61,168, at P 100 (2015) (*MISO*).

<sup>29</sup> CAISO Answer at 4-6.

<sup>30</sup> *Id.* at 9.

in its proposal. Accordingly, CAISO maintains that its proposal balances competing concerns and mitigates project development risks.<sup>31</sup>

32. Six Cities agree with CAISO that the proposed addition to section 5.8 of the APSA helps to ensure just and reasonable rates by providing ratepayer protection against over recovery or double recovery of project costs.<sup>32</sup> Six Cities state that the transfer requirement is not intended to be a punitive measure, but instead protects ratepayers from paying twice for an asset, once through an abandoned plant filing and again through the CAISO's access charge rates when the alternative Project Sponsor places the completed project, with the cost of replacing the assets, into service. Finally, Six Cities contend that Project Sponsors who abandon or terminate their obligations under the CAISO transmission planning process and the APSA should not profit by demanding a premium from the alternative Project Sponsor for any transferred assets.<sup>33</sup>

#### iv. Commission Determination

33. We accept, subject to condition, CAISO's proposed revision to section 5.8 that requires Approved Project Sponsors to work "*in good faith*" with CAISO, the alternative Project Sponsor, and, if applicable, the interconnecting participating transmission owner to transfer responsibility for a project to the alternative Project Sponsor.

34. We will direct CAISO to submit a compliance filing to remove the balance of the revisions to this section. Specifically, we will require CAISO to delete the new language in Section 5.8 of the APSA, which states:

If the alternative Project Sponsor desires to use any of the assets acquired by the Approved Project Sponsor for the Project, the Approved Project Sponsor will, subject to applicable law, transfer such assets to the alternative Project Sponsor at their book value determined in accordance with FERC's Uniform System of Accounts; provided that this requirement applies only to asset transfers that occur after the Approved Project Sponsor has executed this Agreement; and provided further, that this requirement does not preclude the Approved Project Sponsor from filing with FERC a proposal

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<sup>31</sup> *Id.* at 9-13.

<sup>32</sup> Six Cities Answer at 5.

<sup>33</sup> *Id.* at 6.

to recover abandoned plant costs consistent with applicable FERC orders and policy in the event the Project is abandoned, but such amounts the Approved Project Sponsor proposes to recover shall be reduced by the amount the alternative Project Sponsor pays the Approved Project Sponsor to acquire the assets. The provisions under this Section 5.8 will survive termination of this Agreement.<sup>34</sup>

35. We acknowledge Six Cities' and CAISO's concern that CAISO and ratepayers may face risks in situations in which an Approved Project Sponsor fails to carry out its responsibilities.<sup>35</sup> We also recognize that this is a particular concern in instances where CAISO needs a project to be in service by a date certain to meet an identified reliability need, to ensure that a project will provide net economic benefits, or to interconnect new generation that is expected to be in service by a specified date.<sup>36</sup> Indeed, MISO has expressed similar concerns.<sup>37</sup>

36. However, we agree with LS Power that such provisions may not be commercially practical and could have unanticipated cost impacts related to a particular transmission project. We also find that while CAISO's filing mentions "one instance where an Approved Project Sponsor has terminated the APSA" and another instance in which "the parent company of a co-Approved Project Sponsor has declared bankruptcy,"<sup>38</sup> there is no corresponding discussion that either instance resulted in increased costs to ratepayers because of a lack of asset transfer or that asset transfer was necessary or prudent.<sup>39</sup>

37. We find that the existing and proposed language in the preceding sentence of section 5.8 of the APSA provides the protection CAISO seeks which provides that "[i]f either Party determines that an alternative Project Sponsor should be selected consistent with Section 24.6.4 of the CAISO Tariff, the Approved Project Sponsor agrees to work *in good faith* (emphasis added) with CAISO, the alternative Project Sponsor, and, if

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<sup>34</sup> APSA, proposed Section 5.8.

<sup>35</sup> CAISO Transmittal Letter at 20.

<sup>36</sup> *Id.*

<sup>37</sup> *See MISO*, 153 FERC ¶ 61,168 at P 87.

<sup>38</sup> CAISO Transmittal Letter at 20.

<sup>39</sup> LS Power Comments at 4.

applicable, the Interconnecting [Participating Transmission Owner] to transfer responsibility for the Project to the alternative Project Sponsor.” It is worth noting that similar language was recently proposed by MISO and accepted by the Commission.<sup>40</sup> The good faith negotiation requirement is intended to protect CAISO and ratepayers from bad faith dealings, such as the Approved Project Sponsor demanding unjust and unreasonable premiums on the assets of a failed project, especially in instances where the project is needed by a date certain to meet reliability or other needs. As noted above, we accept this proposed revision to section 5.8.

38. CAISO contends that the proposed additional language in P 34 is necessary to prevent an Approved Project Sponsor from receiving double compensation for transferred assets, once in the form of abandoned plant recovery and again for the monies it receives from the alternative Project Sponsor for the transferred assets. CAISO explains that this prevents ratepayers from paying twice for the similar assets needed for a project.<sup>41</sup> While we recognize CAISO’s concern, we note that an Approved Project Sponsor must make a FPA section 205 filing for recovery of abandoned plant costs in rates at the time the project is abandoned, at which time the Commission will review the proposed rates to ensure that they are just and reasonable.<sup>42</sup> We find that this requirement, along with the requirement of the Approved Project Sponsor to negotiate with CAISO and others in good faith, as discussed above, addresses CAISO’s concern, as the Commission will review any proposal on the part of an Approved Project Sponsor that has abandoned its project to recover abandoned plant costs in addition to any revenues it has received from transferring the assets associated with the project. Parties will also have an opportunity to file comments as part of the FPA section 205 proceeding.

39. Accordingly, we direct CAISO to submit, within 30 days of the date of issuance of this order, a compliance filing to remove the new language block-quoted in P 34.<sup>43</sup> We note that CAISO may submit a new filing under FPA section 205 to revise the *pro forma* APSA if it still has concerns, such as proposing that the parties are obligated to work in good faith concerning any necessary transfer of assets as part of the parties’

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<sup>40</sup> See *MISO*, 153 FERC ¶ 61,168 at P 98, 100.

<sup>41</sup> CAISO Transmittal Letter at 22.

<sup>42</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 166 (2006), *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 at P 38, *order on reh’g*, 119 FERC ¶ 61,062 (2007).

<sup>43</sup> See *supra* note 8.

obligation to work in good faith to transfer responsibility for the Project to the alternative Project Sponsor, similar to what the Commission accepted in *MISO*.

The Commission orders:

(A) CAISO's revisions to its tariff and the Approved Project Sponsor Agreement are hereby accepted, subject to condition, effective March 28, 2016, as discussed in the body of this order.

(B) CAISO is hereby directed to submit a compliance filing within 30 days of the date of issuance of this order, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.