

193 FERC ¶ 61,117
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: David Rosner, Lindsay S. See,
and Judy W. Chang.

California Independent System Operator Corporation Docket No. ER24-2671-001

ORDER ADDRESSING ARGUMENTS RAISED ON REHEARING

(Issued November 7, 2025)

1. On September 30, 2024, pursuant to section 205 of the Federal Power Act (FPA),¹ the Commission accepted California Independent System Operator Corporation's (CAISO) proposed revisions to its Open Access Transmission Tariff (Tariff) to amend its generator interconnection procedures (GIP) to enable CAISO to identify the most viable and needed proposed generating facilities that address both reliability and public policy objectives, and enable those proposed facilities to advance through CAISO's generator interconnection study process.² On October 30, 2024, Calpine Corporation (Calpine), Clean Energy Associations (CEA),³ and Vistra Corp. and Dynegy Marketing and Trade, LLC (Vistra) (together, Rehearing Parties) filed requests for rehearing.

2. Pursuant to *Allegheny Defense Project v. FERC*,⁴ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, as permitted by

¹ 16 U.S.C. § 824d.

² *Cal. Indep. Sys. Op. Corp.*, 188 FERC ¶ 61,225 (2024) (Queue Reform Order). CAISO proposed the Tariff revisions in accordance with its Track 2 Interconnection Process Enhancements (IPE) Stakeholder Initiative, which was part of a larger set of foundational framework improvements that California Public Utilities Commission (CPUC), California Energy Commission (CEC), and CAISO are coordinating to help meet California's energy policy objectives in a timely and efficient manner. Transmittal at 16.

³ CEAs are: The American Clean Power Association, the California Energy Storage Alliance, the Large-Scale Solar Association, and the Solar Energy Industries Association.

⁴ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

section 313(a) of the FPA,⁵ we are modifying the discussion in the Queue Reform Order and continue to reach the same result in this proceeding, as discussed below.⁶

I. Background

A. CAISO's Proposal

3. On August 1, 2024, CAISO proposed Tariff revisions to address “unprecedented numbers of interconnection requests” resulting from California state regulatory requirements and policies.⁷ CAISO explained that when the level of cluster request capacity is multiple times the existing or planned transmission capacity for an area, study results lose accuracy, meaning, and utility.⁸ CAISO asserted that it is impossible to allocate deliverability⁹—transmission capacity to deliver a generator’s energy to load during different system conditions—to all the interconnection requests currently in the queue.¹⁰ CAISO stated that its proposed revisions will identify the most viable and needed projects, and enable them to advance through CAISO’s interconnection study

⁵ 16 U.S.C. § 825l(a) (“Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.”).

⁶ *Allegheny Def. Project*, 964 F.3d at 16-17. The Commission is not changing the outcome of the Queue Reform Order. *See Smith Lake Improvement & Stakeholders Ass’n v. FERC*, 809 F.3d 55, 56-57 (D.C. Cir. 2015).

⁷ Transmittal at 1, 13-14. For a complete description of CAISO’s proposal, *see* Transmittal; *see also* Queue Reform Order, 188 FERC ¶ 61,225 at PP 15-19 (overview), 40-49 (zonal approach), 71-74 (cap on interconnection request studies), 99-101 (scoring criteria generally), 107-108 (project viability scoring), 119-120 (system need scoring), 124-133 (commercial interest point scoring), 187-189 (tiebreakers), 197-200 (Cluster Study 2 Criteria), 202-207 (Cluster Study 3 Criteria), 215-216 (Cluster Study 4 Criteria), 219 (timing of selecting definitive point of interconnection), 224-226 (partially deliverable resources), 233-234 (Application to Cluster 15).

⁸ Transmittal at 3.

⁹ *Id.* at 11 & nn.14-15 (citing CAISO, CAISO eTariff, app. A (Deliverability) (0.0.0)).

¹⁰ *Id.* at 1, 3, 14-15.

process in those zones where transmission capacity will be available, providing sufficient resource availability and diversity in the interconnection queue.¹¹

4. CAISO proposed a zonal approach that prioritizes the interconnection of projects in areas with existing or planned transmission capacity additions. The proposal allows an interconnection customer to proceed with its interconnection request to the cluster study, with the potential to interconnect, under any one of the following four cluster study criteria: (1) Cluster Study Criteria 1: Deliverability in a Deliverable Zone (subject to the 150% total available transmission capacity cap and a three-part scoring system); (2) Cluster Study Criteria 2: Deliverability in a Merchant Zone; (3) Cluster Study Criteria 3: Energy-only deliverability status in a Transmission Zone with an energy-only procurement target and therefore eligible for cash reimbursement for reliability network upgrades in a Transmission Zone (subject to the 150% cap on energy-only resources eligible for cash reimbursement and three-part scoring system); or (4) Cluster Study Criteria 4: Energy-only deliverability status in a Transmission Zone without an energy-only procurement target and therefore ineligible for cash reimbursement for needed network upgrades.¹²

a. Scoring Criteria

5. CAISO proposed a points-based system to prioritize the interconnection requests under Cluster Study Criteria 1 and Cluster Study Criteria 3, for which cash reimbursement for network upgrades is available. CAISO stated that the scoring criteria “will emphasize project readiness,”¹³ and the highest scoring projects (up to the 150% cap) will advance to the cluster study process.

6. CAISO proposed that project scores would be weighted based on indicators related to (1) project viability (max 35% of the overall scoring weight); (2) system need (max 35% of the overall scoring weight); and (3) commercial interest (max 30% of the

¹¹ *Id.* at 1. CAISO explained that its proposal is part of a broader effort to tighten linkages among resource and transmission planning activities, interconnection processes, and resource procurement, as CAISO works with stakeholders and local, state, and federal authorities to accelerate development and deployment of critical resources. *Id.* at 2, 4.

¹² *Id.* at 28-29. All energy-only interconnection requests under Cluster Study Criteria 4 will proceed to the cluster study process. The rehearing requests focus on Cluster Study Criteria 1 and Cluster Study Criteria 3.

¹³ *Id.* at 6.

overall scoring weight). The interconnection customer's score will be the sum of its points in all three categories, for a total maximum score of 100 points.¹⁴

7. Project viability scoring considers two factors: (1) progress toward completed engineering design plans; and (2) expansion of existing projects. System need scoring considers whether an interconnection request is (1) for a local capacity area resource in a local capacity area with a deficiency or is (2) designated by the relevant local regulatory authority (LRA) as a long lead-time resource, meets the requirements of the LRA resource portfolio, and either corresponds to approved network upgrades or does not require additional transmission capacity.¹⁵

8. As for commercial interest scoring, an interconnection customer may receive up to 30 commercial interest points, and it can achieve the full 30 commercial interest points if it earns 100 sub-points. CAISO stated that it will provide two opportunities for an interconnection customer to obtain commercial interest sub-points: (1) an LSE allocation process; and (2) an opportunity to demonstrate commercial interest by a non-LSE off-taker (e.g., corporate or industrial commercial customer).¹⁶ An interconnection customer's sub-points may consist of (a) LSE point allocations (up to 100 sub-points) or an LSE "full allocation" (100 sub-points); and (b) non-LSE point allocations (up to 25 sub-points). LSEs may allocate commercial interest points "to the greater of three interconnection requests from affiliates, or no more than twenty-five (25%) of its points to Interconnection Requests from Affiliates based on their requested Interconnection Service Capacity" (the affiliate limitation).¹⁷ CAISO stated that this provision is intended to avoid preferential treatment of LSE-owned resources in the LSE allocation process, to ensure continued healthy levels of competition, and maintain historical trends regarding LSE-owned and independently developed projects in the queue.¹⁸ Non-LSEs may not allocate any points to affiliates.

¹⁴ *Id.* at 6, 36; *see also* CAISO, CAISO eTariff, app. KK, § 4 (Cluster Study Criteria) (1.0.0), § 4.1.1 (Scoring Criteria).

¹⁵ Transmittal at 41.

¹⁶ *Id.* at 37.

¹⁷ *Id.* at 42; CAISO, CAISO eTariff, app. KK, § 4 (Cluster Study Criteria) (1.0.0), § 4.1.1(1).

¹⁸ Transmittal at 42 & n.133 (citation omitted) ("For each cluster application window, an LSE may allocate points to the greater of three interconnection requests from affiliates, or no more than 25 percent of its points to interconnection requests from affiliates based on their requested interconnection service capacity.").

9. CAISO stated that points from multiple LSEs may be combined for an interconnection customer to achieve up to 100 sub-points.¹⁹ Non-LSEs can allocate points to a single interconnection request in a cluster application window. To award points, non-LSEs must provide an affidavit averring that the interconnection request furthers the non-LSE's corporate sustainability goals.²⁰ Interconnection customers may combine point allocations from LSEs with points from one non-LSE.²¹ LSEs are not required to allocate all their available points, and CAISO will not redistribute unused points to other LSEs.²²

b. Process

10. CAISO explained that at least two months before the cluster application window opens, LSEs electing to participate in the commercial interest points allocation process must notify CAISO in writing of their intent to participate. Participating LSEs must also publish on their websites their selection criteria for awarding points, as well as relevant contact information. CAISO then publishes on its website the contact information and number of points that each participating LSE has available to allocate.²³

11. Interconnection customers seeking to be studied under Cluster Study Criteria 1 or 3 are required to submit a self-assessment score sheet and supporting documentation to enable CAISO to validate their project viability and system need scores.²⁴ LSEs report their commercial interest point allocations for interconnection requests directly to CAISO

¹⁹ *Id.* at 38. CAISO explained that to determine available Deliverable Option commercial interest points for allocation to LSEs, CAISO will take the aggregate available MW of deliverability in each Transmission Zone and multiply it by a scaling factor of 0.5 to ensure that LSEs are selective in point allocation. CAISO will then allocate shares of points to each LSE based upon its load ratio share of the CAISO system resource adequacy obligation for the coming year provided by the California Energy Commission (CEC), based on its most recent coincident peak demand forecast. *Id.* at 42.

²⁰ *Id.* at 38 & n.114 (citing CAISO, CAISO eTariff, app. KK, § 4, § 4.1.(1)).

²¹ *Id.* at 38 & n.116.

²² *Id.* at 42.

²³ *d.* at 41; CAISO, CAISO eTariff, app. KK, § 4, § 4.1.1.1 (Load Serving Entity Points). For the list that CAISO published on its website on November 27, 2024, for commercial interest points allocation for Cluster Study 15, see <https://www.caiso.com/documents/c15-commercial-interest-information.pdf>.

²⁴ Transmittal at 31 & n.90.

during the cluster application window,²⁵ and CAISO calculates the total score for each interconnection request.²⁶ The Tariff provides that all scoresheets, documentation, and bids will be confidential, although CAISO may confirm any information as necessary.²⁷ CAISO stated that it would notify individual customers which scoring criterion was decisive to its interconnection request but would not publish such information, except on an aggregate basis.²⁸

c. Severability

12. CAISO stated that its commercial interest points and affiliate limitation proposals are severable from the rest of its proposal. CAISO stated that, while it could evaluate interconnection requests under Cluster Study Criteria 1 and 3 based only on the project viability and system need criteria, rejecting commercial interest points would “significantly diminish the value of its proposal and result in more ties.”²⁹ CAISO stated that severing the affiliate limitation would remove all restrictions on LSEs awarding points to their affiliates.³⁰

II. Queue Reform Order

13. The Commission accepted CAISO’s filing under the independent entity variation standard, effective October 1, 2024, as requested.³¹ Relevant on rehearing, the Commission addressed claims that the commercial interest criterion creates opportunities

²⁵ *Id.* at 31.

²⁶ CAISO proposed tiebreakers for when interconnection customers with the same scores exceed the 150% cap. Cluster Study 1: (1) a distribution factor analysis; and, if a tie persists (2) a sealed bid auction. Cluster Study Criteria 3: (1) a distribution factor analysis; and (2) remaining tied interconnection requests with the least interconnection service capacity are included in the study up to the cap. *Id.* at 34-35.

²⁷ CAISO, CAISO eTariff, § 4.

²⁸ Transmittal at 32.

²⁹ *Id.* at 55.

³⁰ *Id.* at 55-56.

³¹ Queue Reform Order, 188 FERC ¶ 61,225 at P 39 & n.60 (citing *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054, at P 1, *order on reh’g*, 185 FERC ¶ 61,063 (2023), *order on reh’g*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024)).

for potential undue discrimination or preference with respect to: (1) LSEs' allocation of commercial interest points to affiliates; (2) disparate treatment of LSEs vs. non-LSEs; and (3) the proposal's impact on small LSEs.³²

14. In finding these claims unpersuasive, the Commission determined that CAISO's proposal: (1) balances LSEs' role in resource procurement with appropriate Tariff limitations on LSEs' ability to award points, including limitations on points that may be awarded to affiliates;³³ (2) provides sufficient transparency and oversight measures;³⁴ and (3) recognizes LSEs' need to comply with state-established resource adequacy requirements to avoid penalties.³⁵ The Commission also determined that CAISO's proposal "strikes a reasonable balance" between (a) providing LSEs, who must comply with resource adequacy mandates,³⁶ the ability to allocate commercial interest points to affiliate projects; and (b) limiting those allocations to ensure that LSEs' affiliated projects do not dominate the commercial interest points scoring.³⁷ The Commission also found persuasive CAISO's observation that interconnection "requests from LSEs and their affiliates have been rare in the CAISO region."³⁸

15. The Commission highlighted several provisions in the Tariff that would help to mitigate the potential for undue preference by LSEs. First, the Commission singled out CAISO's limitation on LSEs' allocation of points to affiliates, reasoning that it will help ensure that the remaining 75% of an LSE's commercial interest points may be made available to non-affiliates, thereby curtailing any ability of LSEs to exercise undue preference.³⁹ Second, the Commission noted that only one-third of available megawatt (MW) capacity identified in the cluster study will be eligible to receive LSE commercial

³² *Id.* P 175.

³³ *Id.* P 176.

³⁴ *Id.*

³⁵ *Id.* P 179 & n.332 (citation omitted).

³⁶ *Id.* P 176 & n.323 (citing CAISO Answer at 42 ("Complying with resource adequacy requirements requires that resources relied upon by [an LSE] must be studied for sufficient deliverability in the CAISO's study process.")).

³⁷ *Id.* P 176.

³⁸ *Id.* P 176 & n.324 (citing CAISO Answer at 38).

³⁹ *Id.* P 176.

interest points, while CAISO will study up to 150% of available capacity for each zone.⁴⁰ Thus, the Commission concluded that “LSEs will have no input on the majority of projects that proceed to the cluster study (i.e., the remaining two-thirds of the cumulative capacity that will be studied for Transmission Plan deliverability).”⁴¹ Third, the Commission relied on the fact that commercial interest points are only 30% of an interconnection customer’s total score, which “ensures that other measures of the interconnection request’s viability and necessity are robustly captured in the remaining 70% of CAISO’s scoring.”⁴²

16. The Commission disagreed that LSEs would be able to control access to the grid by using subjective and discriminatory criteria to assign commercial interest points in an anticompetitive manner.⁴³ In addition to noting that two-thirds of capacity under the cap will move forward without commercial interest points⁴⁴ and that factors outside of the LSEs’ control account for 70% of the customer’s score, the Commission pointed out that the interconnection customer’s commercial interest score can also include points allocated from non-LSEs.⁴⁵ The Commission reasoned that, “even assuming *arguendo* that LSEs could restrict access to the grid in an anticompetitive manner, despite these countervailing factors, the argument that LSEs are competitors who control access to the grid in this context does not recognize (1) that LSEs are also motivated by drivers other than competitive advantage, as they are obligated to satisfy resource adequacy

⁴⁰ *Id.* P 176 & n.326 (citing CAISO Second Answer at 8-9 (citing PG&E Comments at 3)).

⁴¹ *Id.* P 176. “Transmission Plan deliverability” (or “TP deliverability”) means the capability, measured in MW, of the CAISO-controlled grid as modified by transmission upgrades and additions modeled or identified in the annual CAISO transmission plan to support the interconnection with full capacity deliverability status or partial capacity deliverability status of additional generating facilities in a specified geographic or electrical area of the CAISO-controlled grid. Transmittal at 11, n.14 (citing CAISO, CAISO eTariff, app. A (TP Deliverability)).

⁴² Queue Reform Order, 188 FERC ¶ 61,225 at P 177.

⁴³ *Id.* P 179 & n.339 (citing Calpine Answer and Supplemental Protest at 3-4; Electric Power Supply Association (EPSA) Limited Protest and Comments at 5-7; Aypa Power Answer at 6-7); *see also id.* PP 176-180.

⁴⁴ *Id.* PP 176 & n.326 (citing CAISO Second Answer at 8-9 (citing PG&E Comments at 3)), 177.

⁴⁵ *Id.* P 176.

requirements^[46] and must meet these obligations or will be subject to penalties;^[47] and (2) that CAISO has imposed limitations on the amount of commercial interest points an LSE may assign to its affiliates.”⁴⁸ Thus, the Commission determined that, “on balance, CAISO’s filing reasonably reflects LSEs’ role in resource procurement in CAISO while ensuring that projects without LSE interest still have a defined opportunity to be considered.”⁴⁹

17. The Commission determined it was not unduly discriminatory to score commercial interest from LSE and non-LSE off-takers differently because, unlike LSEs, non-LSEs are not subject to resource adequacy obligations and have no obligation to serve end-use customers.⁵⁰ Regarding Vistra’s concern that it is unduly discriminatory to allow non-LSE off-takers to allocate commercial interest points to interconnection customers only if the resources support corporate policy goals on sustainability, the Commission found that CAISO’s proposal “appropriately parallels the reason that LSEs are allocated points in order to prioritize interconnection requests that will help them meet their resource procurement needs and resource adequacy obligations, including those established under California state law.”⁵¹

18. Additionally, consistent with its discussion of scoring criteria for Cluster Study Criteria 1,⁵² the Commission accepted CAISO’s proposal to apply the same scoring criteria that it applies to Cluster Study Criteria 1 to interconnection requests under Cluster Study Criteria 3 (Energy-Only Deliverability Eligible for Cash Reimbursement) because doing so would enable CAISO to prioritize the most viable and needed interconnection requests within the cap under Cluster Study Criteria 3.⁵³ The Commission also accepted

⁴⁶ *Id.* P 179 & n.331 (citing CAISO Answer at 42 (“[LSEs] in the CAISO footprint have service obligations as well as an obligation to provide resource adequacy.”)).

⁴⁷ *Id.* P 179 & n.332 (citing California Community Choice Association Answer at 5 (“Without new resources, LSEs including [community choice aggregators] face penalties for regulatory non-compliance...”)).

⁴⁸ *Id.* P 179 & n.333 (citing CAISO, CAISO eTariff, app. KK, § 4, § 4.1.1.1).

⁴⁹ *Id.* P 179.

⁵⁰ *Id.* PP 181-182.

⁵¹ *Id.* P 182; *see also id.* P 18.

⁵² *Id.* P 212 & n.386 (citing *id.* PP 106, 114-118, 123, 174-186).

⁵³ *Id.* P 212.

CAISO's proposal to cap interconnection requests under Cluster Study 3 to 150% of the LRA's MW procurement target for capacity with energy-only deliverability status in a Transmission Zone.⁵⁴ The Commission found it reasonable to provide similar financing and cash reimbursement options to interconnection customers under Cluster Study Criteria 3 (as it does under Cluster Study Criteria 1) because "these requests are also intended to satisfy the local regulatory authorities' procurement targets and benefit ratepayers."⁵⁵ The Commission further found CAISO's proposal to provide interconnection customers who do not satisfy the Cluster Study 3 Criteria an opportunity to proceed under Cluster Study Criteria 4 will help ensure that these customers have a pathway to be studied for energy-only status.⁵⁶

III. Rehearing Requests

19. Rehearing Parties seek rehearing of the commercial interest points feature of the scoring criteria applicable to Cluster Study Criteria 1 and 3. Rehearing Parties primarily argue that allowing LSEs to award commercial interest points violates the FPA section 205 prohibition on undue discrimination and erodes two longstanding Commission policies: (1) providing non-discriminatory and comparable access to all wholesale users (Order No. 888⁵⁷) and (2) ensuring interconnection rules are not unduly discriminatory or

⁵⁴ *Id.* P 211. The Commission explained that, as with the cap under Cluster Study Criteria 1, CAISO's 150% cap will provide interconnection customers the comparable ability to submit an interconnection request and compete to be studied under CAISO's proposed scoring criteria; it will keep the number of energy-only projects studied at a level commensurate with planned energy-only procurement, with a margin for competition. *Id.*

⁵⁵ *Id.* P 212.

⁵⁶ *Id.*

⁵⁷ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Servs. by Pub. Utils.; Recovery of Stranded Costs by Pub. Utils. & Transmitting Utils.*, Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,745 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Pol'y Study Grp. v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. N.Y. v. FERC*, 535 U.S. 1 (2002)).

preferential (Order No. 2003⁵⁸).⁵⁹ Rehearing Parties further contend that, contrary to the Administrative Procedure Act (APA),⁶⁰ the Commission's determinations are conclusory, not the product of reasoned decision-making, and lack substantial evidence.⁶¹ Calpine and Vistra ask the Commission to grant rehearing and sever the commercial interest points feature from the package of Tariff revisions, noting that CAISO had stated this feature is severable.⁶² If the Commission does not reject all of the commercial interest points provisions, Vistra asks the Commission to sever and reject those that allow LSEs to award commercial interest points to affiliates.⁶³ CEAs ask the Commission to grant rehearing, reject the filing in its entirety, and require CAISO to resubmit a revised proposal that addresses the undue discrimination concerns.⁶⁴

IV. Discussion

20. Contrary to Rehearing Parties' contentions,⁶⁵ we continue to find, based on substantial record evidence,⁶⁶ that the commercial interest points feature of the revised

⁵⁸ See *Standardization of Generator Interconnection Agreements & Procs.*, Order No. 2003, 104 FERC ¶ 61,103, at P 122 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom. Nat'l Ass'n of Regul. Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

⁵⁹ CEAs Rehearing Request at 3 & nn.8-9 (citations omitted); *see also* Calpine Rehearing Request at 7, 15; Vistra Rehearing Request at 3 (stating that Order No. 888 required standardized tariffs and open-access transmission service because transmission owners "had the incentive and ability to favor their own generators over those of rivals").

⁶⁰ 5 U.S.C. § 706(2).

⁶¹ Calpine Rehearing Request at 4; CEAs Rehearing Request at 9; Vistra Rehearing Request at 40.

⁶² Calpine Rehearing Request at 18; Vistra Rehearing Request at 6, 43.

⁶³ Vistra Rehearing Request at 43. As noted above, CAISO agreed the Commission could sever the affiliate limitation to allow unlimited allocation of commercial interest points to affiliates, which is the opposite of Vistra's request.

⁶⁴ CEAs Rehearing Request at 3, 16.

⁶⁵ See Calpine Rehearing Request at 4, 14; CEAs Rehearing Request at 4, 10, 11-12; Vistra Rehearing Request at 2, 6, 10, 14, 18, 27, 29, 36, 38, 40.

⁶⁶ Substantial evidence, though less than a preponderance, is "such relevant

Tariff is just and reasonable and not unduly discriminatory or preferential.⁶⁷ CAISO explained that California state law and policies have sparked unprecedented numbers of interconnection requests, which have overwhelmed not only CAISO's current interconnection procedures, but also critical planning and engineering resources across the industry.⁶⁸ CAISO stated that interconnection requests for projects that are viable and needed to address reliability and public policy objectives cannot be processed in a timely manner.⁶⁹ Moreover, as CAISO explained, interconnection study results lose accuracy, meaning, and usefulness when the level of cluster interconnection request capacity is multiple times the existing or planned transmission capacity for an area.⁷⁰ Significantly, as the Commission has recognized, ensuring interconnection to the transmission system in a reliable, efficient, transparent, and timely manner is necessary to ensure that rates, terms, and conditions for Commission-jurisdictional services are just and reasonable and not unduly discriminatory or preferential.⁷¹

evidence as a reasonable mind might accept as adequate to support a conclusion.” *La. Pub. Serv. Comm’n v. FERC*, 20 F.4th 1, 7 (D.C. Cir. 2021) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 217, (1938)). Here, substantial evidence in the form of numerous pleadings and the 106-page Track 2 Final Proposal that CAISO presented to its Board of Governors and attached to its Transmittal, support Commission acceptance of CAISO's revised Tariff. Transmittal, attach. C (Track 2 of the 2023 Interconnection Process Enhancements Initiative Final Proposal) (filed Mar. 28, 2024) (Track 2 Final Proposal). The Track 2 Final Proposal is the product of CAISO's stakeholder process, and it explains CAISO's recommended generation interconnection revisions, which are reflected in the Tariff filing here. *See also id.* attach. D (Track 2 Final Addendum) (filed June 5, 2025); *id.* attach. E (Memorandum to ISO Board of Governors re Decision on Track 2 Final Proposal) (filed June 6, 2024).

⁶⁷ Queue Reform Order, 188 FERC ¶ 61,225 at PP 176-203.

⁶⁸ Transmittal at 2-3, 14.

⁶⁹ *Id.* at 3; *see also id.* at 8 (“CAISO believes it has developed a process that will provide greater transparency, certainty, and competition early in the interconnection process, while aligning with state reliability and policy needs.”).

⁷⁰ *Id.* at 3.

⁷¹ *Id.* at 3 & n.3 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 3; *see also* Transmittal at 3 & n.3 (citation omitted)).

21. To ameliorate its queue congestion concerns, CAISO proposed a balanced package of reforms, including complementary tri-part scoring criteria, that together identify the most commercially viable and needed proposed generating facilities to address both reliability and state public policy objectives and enable such projects to advance through CAISO's generator interconnection study process in a timely manner.⁷² For instance, the project viability criterion, which focuses on the engineering plan and expansion of existing projects, will help identify the projects that are further along in their technical planning and design, i.e., the most "shovel-ready" projects.⁷³ The system need criterion will identify those projects that provide local capacity reliability or address long-lead time resource adequacy needs.⁷⁴ The commercial interest points criterion will enable LSEs to give weight to those projects whose physical attributes are aligned with their state and/or local regulatory authority-designated procurement requirements, and non-LSEs will be able to show support for projects that meet their corporate sustainability goals.⁷⁵ Together these criteria will help streamline the cost-effective interconnection of projects that are shovel-ready, support reliability, and fulfill state-mandated public policy objectives.

22. As discussed below, we continue to find that the limited, transparent use of commercial interest points to assist CAISO in prioritizing the study of interconnection requests in a manner that takes state resource planning and policy objectives into consideration is a reasonable approach for allocating finite Transmission Plan deliverability⁷⁶ and identifying needed energy-only projects.⁷⁷ Specifically, we continue to find the revised Tariff is consistent with the FPA, open access precedent, and generator

⁷² Queue Reform Order, 188 FERC ¶ 61,225 at PP 39, 174-182, 195-196; *see also* Transmittal at 30. Because we continue to find that CAISO justified its proposal and the Commission reasonably accepted it, we need not direct CAISO to sever and withdraw any of its revised Tariff provisions.

⁷³ Transmittal at 39-40; *see also* Queue Reform Order, 188 FERC ¶ 61,225 at PP 107-118.

⁷⁴ Transmittal at 40-41; *see also* Queue Reform Order, 188 FERC ¶ 61,225 at PP 119-123.

⁷⁵ Transmittal at 37-39; *see also* Queue Reform Order, 188 FERC ¶ 61,225 at PP 124-186.

⁷⁶ Queue Reform Order, 188 FERC ¶ 61,225 at PP 179, 182. *See supra* note 41 for the definition of Transmission Plan deliverability.

⁷⁷ *Id.* P 212; *see also infra* Section IV.H.

interconnection precedent.⁷⁸ We continue to find the revised Tariff achieves two important goals: (a) allowing LSEs to identify commercially viable and needed projects to meet their resource adequacy and state or local-established energy-only procurement needs; and (b) providing interconnection customers the opportunity to access the CAISO transmission system. We also continue to find that CAISO's revised Tariff includes appropriate measures to ensure that LSEs' allocation of commercial interest points is not unduly discriminatory or preferential, such as the following: (1) commercial interest points are only 30% of an interconnection customer's total score; 70% of an interconnection customer's total readiness score is based on factors beyond LSEs' control; (2) one-third of total capacity within a deliverable zone may proceed with commercial interest points; and two-thirds of capacity under the 150% cap in Deliverable Zones (up to 100% of Transmission Plan deliverability) will advance to cluster study without any commercial interest points from LSEs; (3) an LSE may not award more than 25% of its commercial interest points to an affiliated interconnection customer; and (4) transparency measures, such as the posting of commercial interest point selection criteria, and posting of participating LSEs and their available points, and CAISO oversight throughout the process, will help to discipline the commercial interest scoring process.⁷⁹

23. As discussed in greater detail below, we also continue to find that CAISO has justified not prescribing standardized commercial interest points criteria in the Tariff.⁸⁰ CAISO attests that it lacks jurisdiction over and expertise with procurement matters.⁸¹ CAISO therefore reasonably afforded LSEs the flexibility to use criteria that reflect their specific resource adequacy needs to enable LSEs to identify the most commercially viable and needed resources and to assign commercial interest points to those projects.

⁷⁸ Queue Reform Order, 188 FERC ¶ 61,225 at PP 39, 174-186.

⁷⁹ *Id.* PP 176-180. For description of CAISO's various oversight activities required by the revised Tariff, *see, e.g.*, CAISO, CAISO eTariff, app. KK, § 3 (Interconnection Requests) (1.0.0), § 3.5.2 (Customer Engagement Window); § 3.5.4. (Scoring Process); § 3.6.4 (Study Criteria Data); *id.* § 4 (Cluster Study Criteria); § 4.1.2 (Auction Process).

⁸⁰ Queue Reform Order, 188 FERC ¶ 61,225 at P 179 (disagreeing with protestors' claims that LSEs will be able to control the grid using subjective and discriminatory criteria and finding that, "on balance . . . CAISO's filing reasonably reflects LSEs' role in resource procurement in CAISO while ensuring that projects without LSE interest still have a defined opportunity to be considered."); *see also* Transmittal at 43 (stating that "CAISO's intent was to avoid dictating how and why LSEs should prefer one project over the other, an area in which the CAISO lacks both expertise or jurisdiction").

⁸¹ Transmittal at 43.

Confining the weight of these points to 30% of an interconnection customer's total score, combined with the transparency and oversight measures discussed below,⁸² will limit the opportunity for LSEs to unduly discriminate against or unduly preference their affiliates or any other developer. We continue to find the affiliate limitation strikes the appropriate balance between LSE-affiliated and non-affiliated generation interests. This limitation (a) provides LSE-affiliated generation planned by the LSE to meet its own specific needs with the opportunity to proceed to study and interconnect in a deliverable zone, while (b) reducing the potential for preferential treatment of LSE-owned resources in the interconnection process, to ensure continued levels of competition and protect customer interests in reliable energy service at just and reasonable rates.

24. CAISO's revised Tariff also provides non-LSEs the opportunity to score projects that meet their corporate sustainability goals, paralleling the reason that LSEs are allocated points in order to prioritize interconnection requests that will help them meet their resource procurement needs and resource adequacy obligations, including those established under California state law, while reasonably limiting non-LSEs' point allocations. Unlike LSEs, non-LSEs are not obligated to comply with LRA-designated procurement requirements, and the projects non-LSEs select may compete for scarce deliverability (or energy-only resource designations) with the projects to which LSEs have allocated points. Accordingly, we continue to find that CAISO's distinctions between LSE and non-LSE off-takers in the commercial interest point allocation process are just and reasonable and not unduly discriminatory or preferential.⁸³

25. In addition, state jurisdictional resource adequacy and procurement programs compel LSEs to differentiate among projects based on certain attributes that are only captured by the commercial interest points component of the tri-part scoring criteria.⁸⁴ Given these circumstances, we continue to find it reasonable to allow LSEs to use the commercial interest point allocation process to inform CAISO of which projects best meet their resource adequacy and procurement needs.⁸⁵ We therefore, for the reasons expressed in the Queue Reform Order and further elaborated here, continue to find the

⁸² Queue Reform Order, 188 FERC ¶ 61,225 at P 179; *see also infra* Section IV.C.

⁸³ Queue Reform Order, 188 FERC ¶ 61,225 at PP 181-183.

⁸⁴ *See* CAISO Answer at 26 & n.66 (citing Pacific Gas & Electric Company (PG&E) Comments at 3); Clearway Energy Group LLC (Clearway) Comments at 6 (stating that "[i]f the Commission were to reject the commercial interest points, the remaining scoring criteria on their own would advance a skewed portfolio of projects that would not align with state policy or meet resource adequacy needs.").

⁸⁵ Queue Reform Order, 188 FERC ¶ 61,225 at P 182.

commercial interest points feature of the revised Tariff is just and reasonable and not unduly discriminatory or preferential.⁸⁶

26. We also continue to find the revised Tariff meets the independent entity variation standard,⁸⁷ which affords RTOs/ISOs flexibility to craft modifications to the *pro forma* generator interconnection procedures in the Open Access Transmission Tariff (OATT) provided they are just and reasonable, not unduly discriminatory or preferential, and accomplish the purposes of Order Nos. 2003⁸⁸ and 2023.⁸⁹ The revised Tariff will help ensure that interconnection customers are able to interconnect to the transmission system in a reliable, efficient, transparent, and timely manner⁹⁰ by identifying the most viable and needed proposed generating facilities that address both reliability and public policy objectives and enabling them to timely advance through CAISO's generator interconnection process.⁹¹ We underscore that CAISO committed to "monitor the efficacy of its revised Tariff."⁹² We expect CAISO to fulfill its commitment and

⁸⁶ *Id.* PP 176-203.

⁸⁷ *Id.* P 39.

⁸⁸ *See supra* note 58.

⁸⁹ Order No. 2023, 184 FERC ¶ 61,054. We note that in the Queue Reform Order the Commission accepted CAISO's proposed Tariff revisions subject to the outcome of CAISO's Order No. 2023 compliance filing, Queue Reform Order, 188 FERC ¶ 61,225 at P 39, and on May 15, 2025, the Commission accepted CAISO's Order No. 2023 compliance filing, in part, effective May 17, 2024, as requested, subject to further compliance. *Cal. Indep. Sys. Operator Corp.*, 191 FERC ¶ 61,119, at P 1 & ordering para. (A) (2025).

⁹⁰ Queue Reform Order, 188 FERC ¶ 61,225 at P 39 & n.60 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 1); *see also* Order No. 2023, 184 FERC ¶ 61,054 at P 37.

⁹¹ We further note that Order No. 2023 "encourage[d] transmission providers to continue to innovate to remedy their interconnection queue management issues," Order No. 2023, 184 FERC ¶ 61,054 at P 10, and CAISO's revised Tariff reflects such regional innovation.

⁹² CAISO Answer at 5-6. Indeed, we note that CAISO already filed, on July 29, 2025, an Informational Report on Cluster 15 in Docket No. ER24-2671-000 (Informational Report). CAISO stated in the Informational Report that it also published on its website a comprehensive analysis of the scoring criteria in Cluster 15 (California ISO, Summary of Cluster 15 Intake Scoring Results (June 12, 2025) (Cluster 15 Report)), and determined that the scoring criteria were successful in identifying first-ready projects. Informational Report at 2 & n.5 (citing Cluster 15 Report,

continue to discuss further enhancements to improve the interconnection process with stakeholders, as needed.⁹³ We address the specific arguments raised on rehearing below.

A. Undue Discrimination or Preference

1. Statutory Standards

a. Rehearing Requests

27. Rehearing Parties argue the Queue Reform Order violates the FPA section 205 requirement to ensure that the terms of interconnection service are not unduly discriminatory or preferential.⁹⁴ Vistra asserts that one of the FPA's primary purposes is to curtail public utilities' abusive activities⁹⁵ and exercise of market power.⁹⁶ Vistra states that the statute's prohibition on undue discrimination promotes competition by

<https://www.caiso.com/documents/summary-of-cluster-15-intake-scoring-results.pdf>). While we would reach the same result in this proceeding even absent consideration of this report, the results in the Cluster 15 Report are consistent with the Commission's conclusions in the Queue Reform Order and herein. We also note that CAISO actively maintains data on the composition of each queue cluster on the CAISO website. *Id.* at 2 & n.6 (citation omitted).

⁹³ Queue Reform Order, 188 FERC ¶ 61,225 at P 39 & n.62 (citing CAISO Answer at 5-6).

⁹⁴ Calpine Rehearing Request at 15 & n.51 ("No public utility shall, with respect to any transmission ... subject to the jurisdiction of the Commission (1) ... subject any person to any undue prejudice or disadvantage, or (2) maintain any unreasonable difference in ... service ... or in any other respect ... as between classes of service." (quoting 16 U.S.C. § 824d(b)); CEAs Rehearing Request at 4 & n.14 (same); Vistra Rehearing Request at 2 & n.5 (same).

⁹⁵ Vistra Rehearing Request at 2 & n.9 (quoting *Fla. Power & Light Co. v. FERC*, 617 F.2d 809, 817 (D.C. Cir. 1980)); *see also id.* at 2 & n.9 (quoting *Otter Tail Power Co. v. United States*, 410 U.S. 366, 374 (1972) ("[T]he history of part II of the Federal Power Act indicates an overriding policy of maintaining competition to the maximum extent possible consistent with the public interest.")).

⁹⁶ *Id.* at 2 & n.10 (quoting *Xcel Energy Servs., Inc. v. FERC*, 41 F.4th 548, at 552 (D.C. Cir. 2022)).

prohibiting utilities from favoring their own and affiliated resources and ensuring consistent treatment of similarly situated customers.⁹⁷

28. Vistra contends the commercial interest points criterion gives LSEs an “unfettered and determinative role” in the allocation of interconnection access and deliverability.⁹⁸ Vistra emphasizes that LSEs are authorized to allocate commercial interest points, including to affiliated resources, without the guidelines, requirements, transparency, or jurisdictional oversight that ensure they are allocated in a non-discriminatory manner.⁹⁹ Vistra adds that affiliation is not a permissible basis for discrimination,¹⁰⁰ and affording an incumbent utility’s affiliated generation interconnection access on more favorable terms and hindering competitors’ market entrance is not allowed.¹⁰¹

29. Vistra argues the Commission erred in concluding that CAISO’s proposal was not unduly discriminatory.¹⁰² Vistra points out that courts have held that undue discrimination or preference occurs when similarly situated customers are treated differently “for no good reason.”¹⁰³ Vistra states that to treat customers differently, there must be “specific factual differences” between the customers that justify the specific rates, terms, and conditions of service.¹⁰⁴ Vistra states that instead of focusing on

⁹⁷ *Id.* at 2.

⁹⁸ *Id.* at 1-2; *see also* Calpine Rehearing Request at 6 (LSEs are granted “outsized influence in awarding commercial points” and there is “next to no meaningful constraint” on LSEs’ discretion to award commercial interest points); CEAs Rehearing Request at 10 (noting “wide discretion” granted LSEs would likely result in undue discrimination against unaffiliated generators).

⁹⁹ Vistra Rehearing Request at 5.

¹⁰⁰ *Id.* at 8.

¹⁰¹ *Id.* at 9 & n.28 (citing *Pub. Serv. Co. of Col.*, 171 FERC ¶ 61,115, at P 35 (2020)).

¹⁰² *Id.* at 24-26.

¹⁰³ *Id.* at 2 & n.6 (citing *Consol. Edison Co. of N.Y., Inc.*, 45 F.4th 265, 282 (D.C. Cir. 2022); *State Corp. Comm’n of Kan. v. FERC*, 876 F.3d 322, 335 (D.C. Cir. 2017)).

¹⁰⁴ Vistra Rehearing Request at 5-6 & n.19 (citing *Ala. Elec. Co-op., Inc. v. FERC*, 684 F.2d 20 (D.C. Cir. 1982) (“In the typical case, where the section 205(b) challenge is raised against a rate design calling for different rates to customer classes which are similarly situated, the utility has the burden of satisfying FERC that such differences exist between the classes as to justify the separate rates.”); *Entergy Servs., Inc.*, 93 FERC

whether *interconnection customers* would be subject to undue discrimination, the Commission unreasonably focused on whether the proposal would allow *LSEs* to meet their resource adequacy requirements.¹⁰⁵ CEAs argue the Commission abdicated its independent duty to ensure FPA section 205 filings do not “subject any person to any undue prejudice or disadvantage.”¹⁰⁶

30. Vistra contends commercial interest points create new opportunities for transmission owners to favor their own generation in the interconnection process. Vistra states that, previously, transmission-owning LSEs in CAISO that sought to interconnect a project were subject to the same standard terms and conditions as all other interconnection customers. Vistra argues commercial interest points change this equation because the terms and conditions of interconnection service will vary based on the score assigned to a customer’s project. According to Vistra, projects receiving the highest scores will be studied and be able to seek deliverability or energy-only service on more favorable terms and conditions than other customers.¹⁰⁷

31. Vistra argues the Commission “summarily” concluded that CAISO’s proposal strikes a balance between providing LSEs with the ability to allocate commercial interest points to affiliates while ensuring that LSE projects “do not dominate the commercial interest points scoring.”¹⁰⁸ Vistra asserts that the Commission essentially found that CAISO may provide LSEs opportunities to engage in undue discrimination as long as the magnitude of undue discrimination and preference is limited.¹⁰⁹ Vistra states that if Congress intended to allow limited undue discrimination, it would have included qualifying language, such as thresholds or exceptions, as it did for particular circumstances under the Natural Gas Act.¹¹⁰ Vistra argues the Commission’s reliance on

¶ 61,156 (2000) (citing *Cities of Bethany v. FERC*, 727 F.2d 1131, 1138-39 (D.C. Cir. 1984) (“It is not undue discrimination to treat categories of customers with dissimilar characteristics differently.”)).

¹⁰⁵ Vistra Rehearing Request at 26, 41.

¹⁰⁶ CEAs Rehearing Request at 2 & n.7 (quoting 16 U.S.C. § 824d(b)).

¹⁰⁷ Vistra Rehearing Request at 5, 7.

¹⁰⁸ *Id.* at 8 & n.22 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

¹⁰⁹ *Id.* at 8.

¹¹⁰ *Id.* at 11 & n.36 (citing *Dominion Cove Point LNG, LP*, 164 FERC ¶ 61,107, at P 22 (2018) (finding that Natural Gas Act section 4 grants broad authority to regulate undue discrimination by natural gas companies, while section 3(e)(4) applies only to discrimination in terms of service at liquefied natural gas terminals); *see also id.* at 10-11

the safeguard of limiting LSEs' allocation to affiliates to the greater of three projects or 25% of points fails because the FPA does not permit discrimination provided the discrimination does not result in the "domination" of the interconnection process.¹¹¹ Rather, Vistra argues, the FPA prohibits even limited undue discrimination.¹¹²

b. Commission Determination

32. We continue to find that allowing LSEs to award commercial interest points to those projects that help meet their resource adequacy and procurement needs, including awarding a limited amount of points to affiliates, as 30% of a set of balanced, tri-part scoring criteria designed to identify the most commercially viable and needed projects, does not constitute undue discrimination or preference.¹¹³ As CAISO explained, the overwhelming number of interconnection requests has made CAISO unable to timely interconnect needed reliability and public policy resources.¹¹⁴ We therefore continue to find it reasonable for CAISO to limit the number of interconnection requests that are able to move forward to the cluster study and to use the set of criteria that CAISO has developed to determine which interconnection requests move forward, including the commercial interest points. In particular, the LSE commercial interest points reflect that LSEs must meet state and local procurement and resource adequacy requirements, which makes it reasonable for CAISO to allow LSEs to have some limited input into which generation interconnection requests merit proceeding to cluster study under Cluster Study Criteria 1 and 3. Additionally, the Tariff limits the total commercial interest points available for LSEs to award to one-third of the MW of capacity within a Deliverable Zone, and each LSE's award of commercial interest points to affiliated projects is confined to 25% of its allocable points. These limitations help ensure that interconnection customers have meaningful opportunities to move forward to the cluster study without being awarded commercial interest points. Moreover, CAISO provided

& n.35.

¹¹¹ *Id.* at 11. Vistra reiterates that LSEs can manipulate the limits CAISO imposed to dominate the commercial interest scoring within a zone through withholding. *Id.*; see also discussion *infra* Section IV.D.3.a.

¹¹² *Id.* at 10 (asserting the FPA's prohibition on undue discrimination is "absolute").

¹¹³ Queue Reform Order, 188 FERC ¶ 61,225 at PP 174-186.

¹¹⁴ See Transmittal at 2-3.

four sets of Cluster Study Criteria from which interconnection customers can choose to proceed to the cluster study and interconnection.¹¹⁵

33. We agree with Rehearing Parties that the FPA prohibits undue discrimination or preference.¹¹⁶ However, the FPA does not prohibit all discrimination, only “undue discrimination.”¹¹⁷ Discrimination is undue when similarly situated customers are treated differently.¹¹⁸ Here, no party on rehearing has provided any persuasive explanation that similarly situated interconnection customers will be treated differently under the revised Tariff. Specifically, under the revised Tariff, only the highest-scoring interconnection customers—as determined by balanced, transparent, tri-part scoring criteria,¹¹⁹ of which commercial interest points are only 30%—will proceed to the cluster study under Cluster Study Criteria 1 and 3. The tri-part criteria in CAISO’s Tariff identify the projects that are the most commercially viable and aligned with resource adequacy needs and state public policy objectives. Accordingly, CAISO’s application of these criteria ensures that the interconnection customers whose projects proceed to the cluster study are not similarly situated to other interconnection customers in that their projects are more commercially viable and aligned with resource adequacy needs and state public policy objectives than other interconnection customers’ projects. Indeed, the record reflects that CAISO reasonably crafted and balanced its tri-part scoring criteria to harmonize

¹¹⁵ CAISO, CAISO eTariff, app. KK, § 4; *id.* app. 2 (Cluster Study Criteria).

¹¹⁶ See Calpine Rehearing Request at 15 & n.51 (citing 16 U.S.C. § 824d(b)); CEAs Rehearing Request at 4 & n.14 (citation omitted); Vistra Rehearing Request at 2 & n.5 (citation omitted).

¹¹⁷ 16 U.S.C. § 824d(b); 16 U.S.C. § 824e; *see also, e.g., Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035, at P 318 (2020) (“As the Commission has previously explained, the FPA forbids ‘undue’ preferences, advantages, and prejudices.”). *See supra* note 94 for the relevant text of the FPA.

¹¹⁸ *E.g., Calpine Corp. v. PJM Interconnection, L.L.C.*, 171 FERC ¶ 61,035, at P 318 (2020) (“Whether a rate or practice is unduly discriminatory depends on whether it provides different treatment to different classes of entities and turns on whether those classes of entities are similarly situated.”) (citations omitted); *Town of Norwood v. FERC*, 202 F.3d 392, 402 (1st Cir. 2000) (“[D]ifferential treatment does not necessarily amount to *undue* preference where the difference in treatment can be explained by some factor deemed acceptable to regulators (and the courts).”) (emphasis in original); *Cities of Newark v. FERC*, 763 F.2d 533, 546 (3d Cir. 1985) (“[D]ifferences in rates are justified where they are predicated upon factual differences between customers.”).

¹¹⁹ CAISO, CAISO eTariff, app. KK, § 4.

competing developer interests and system resource needs.¹²⁰ CAISO created system need points for long lead-time resources to counterbalance the points allotted for commercial interest and other indicators of near-term project viability.¹²¹ The record shows that without commercial interest points as part of the scoring criteria, CAISO would have to resort to more tiebreakers and LSEs would be less able to meet their near to mid-term resource adequacy needs.¹²² Thus, we remain unpersuaded by CEAs' and Vistra's arguments that commercial interest points are unduly discriminatory because they enable LSEs to "choose winners and losers,"¹²³ or "result in arbitrary differences among customers."¹²⁴

34. Allowing LSEs to differentiate among interconnection customers through the commercial interest points allocation process is not undue discrimination; rather, it reflects the practical reality that LSEs are subject to requirements to procure resources with specific characteristics and must meet their obligations by established deadlines.¹²⁵

¹²⁰ See Transmittal, attach. C (Track 2 Final Proposal) at 52 (explaining that it is important to prioritize local resource adequacy "to ensure near-term and mid-term reliability through near-term deployment;" and that "long lead-time resources [such as offshore wind and geothermal energy] align with resource and transmission plans but are unlikely to score well with other indicators because they have different development considerations"); Clearway Comments 6-8 (explaining that without commercial interest points, local resource adequacy projects and long lead-time resources would receive priority access to capacity in the study process and this set of projects is "extremely unlikely" to match the resource portfolio identified in the Integrated Resource Plan, which primarily relies on commercially available technologies such as solar, battery storage, and onshore wind, with long-lead time resources comprising the minority of the portfolio).

¹²¹ See Transmittal, attach. C (Track 2 Final Proposal) at 52; Clearway Comments 6-8.

¹²² See, e.g., Clearway Comments at 7. ("If commercial interest points were removed from the scoring criteria, the points for long lead-time resources would provide undue preference for projects that are, by their nature, unavailable to meet the CAISO system's near to mid-term resource adequacy needs.").

¹²³ CEAs Rehearing Request at 15; *see also* CEAs Rehearing Request at 4; Vistra Rehearing Request at 2.

¹²⁴ Vistra Rehearing Request at 5.

¹²⁵ CAISO Answer at 42 ("[LSEs] in the CAISO footprint have service obligations as well as an obligation to provide resource adequacy."). CAISO emphasized in its filing that "[t]imely reimplementation of cluster 15 is essential to maintain progress on

The fact that some resources have attributes that render them the most commercially viable and aligned with resource adequacy needs and state public policy objectives while other resources do not possess such attributes does not constitute “arbitrary differences.” And LSEs are not choosing winners and losers—they are simply indicating (up to the Tariff limits) which resources they need to meet their procurement and resource adequacy requirements.

35. We are unpersuaded by Vistra’s contention that the Commission violated the FPA’s prohibition on undue discrimination when it determined that “CAISO’s proposal strikes a reasonable balance of providing LSEs, who must comply with resource adequacy mandates, the ability to allocate commercial interest points to affiliate projects, while limiting those allocations to ensure that LSEs’ affiliated projects do not dominate the commercial interest scoring.”¹²⁶ Rather, in the context of an FPA section 205 evaluation, the Commission reasonably balanced the interests of LSEs (and their affiliated projects) with non-affiliated interconnection customers¹²⁷ to ensure that any potential discrimination is reasonable, limited, and not undue. Balancing competing interests¹²⁸ and considering whether opportunities to unduly discriminate have been

interconnection and to onboard the resources necessary to meet near-time reliability and longer-term policy needs.” Transmittal at 54. Additionally, CAISO explained that it also needed to re-engage with Cluster 15 to re-align the timeline for the interconnection studies with the transmission planning process to avoid cascading delays to both processes, *id.* at 55 & n.166 (citation omitted), which would further hamper LSEs’ ability to meet their resource adequacy and procurement obligations. We note that LSEs are required to make annual (filed on or around October 31st) and monthly filings (filed 45 calendar days prior to the compliance month) with the CPUC. For the annual filings, each LSE is required to demonstrate that it has procured 90% of its System RA obligation for the five summer months of the coming compliance year; each LSE must demonstrate that it meets 90% of its Flexible RA obligation for all twelve months. For LSEs in the San Diego local distribution area, each LSE has a three-year forward local obligation and must meet 100% of its local requirement for the years one and two and 50% of its local requirement for year three. For the monthly filings, LSEs must demonstrate they have procured 100% of their monthly System and Flexible RA obligation. *See* <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource-adequacy-homepage>.

¹²⁶ Vistra Rehearing Request at 8 & n.22 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 176 (citation omitted)).

¹²⁷ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

¹²⁸ The court has previously found (in the generator interconnection context) that “a reasonable balancing of divergent considerations on a matter within the Commission’s

appropriately mitigated is consistent with how the Commission typically evaluates the overall just and reasonableness of a rate proposal.¹²⁹ For example, the Commission has previously accepted interim tariff revisions designed to enable CAISO to maintain reliability when they strike a reasonable balance between “the transmission provider’s need to meet its native load obligations and the need of other entities to obtain service to meet their own obligations.”¹³⁰ Additionally, in evaluating other recent interconnection proposals under FPA section 205—even in the non-independent transmission provider context, where the Commission holds transmission providers to the stricter “consistent with or superior to” standard for deviating from the *pro forma* generator interconnection procedures in the OATT—the Commission has balanced interconnection queue efficiency and barriers to independent power producers’ access to the grid.¹³¹ The

expertise merits deference.” *Xcel Energy Servs., Inc. v. FERC*, 41 F.4th at 562 (citing *New England Power Generators Ass’n, Inc. v. FERC*, 881 F.3d 202, 210 (D.C. Cir. 2018) (“Due to practical challenges and myriad divergent interests, FERC must be given the latitude to balance the competing considerations and decide on the best resolution in its regulation of electricity markets.”) (internal quotation marks and citation omitted)).

¹²⁹ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 185 FERC ¶ 61,210, at P 307 (2023) (finding that CAISO’s proposal strikes an appropriate balance between preserving a transmission customer’s rights under an [Extended Day-Ahead Market] transmission service provider’s Open Access Transmission Tariff and ensuring that there is confidence that EDAM transfers will be delivered); *Sw. Power Pool, Inc.*, 179 FERC ¶ 61,083, at P 40 (2022) (finding that “SPP’s proposed minimum capitalization requirements appropriately balance the management of credit risk and protection of market participants with sufficient participation and competition in the [Transmission Congestion Rights] market.”); *Cal. Indep. Sys. Operator Corp.*, 145 FERC ¶ 61,082, at P 23 (2013) (finding that CAISO tariff revisions strike “a reasonable balance between preventing the exercise of market power and enabling the recovery of costs”).

¹³⁰ *Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,245, at P 141 & n.226 (2021) (quotation omitted); see also *Cal. Indep. Sys. Operator Corp.*, 178 FERC ¶ 61,180, at P 21 (2022) (extending interim Tariff provisions).

¹³¹ *Ariz. Pub. Serv. Co.*, 184 FERC ¶ 61,188, at PP 37-39 (2023) (*APS*) (accepting proposed commercial readiness demonstration requirements—both the non-financial commercial readiness options and the \$7.5 million deposit in lieu of commercial readiness option—and finding that proposal is not unduly discriminatory because, given these options, independent power producers would not be precluded from entering and moving through the interconnection queue); *Pub. Serv. Co. of Colo.*, 183 FERC ¶ 61,166 (2023) (*PSCo*); *Pub. Serv. Co. of Colo.*, 169 FERC ¶ 61,119, at PP 49, 51 (2019) (finding “proposed financial security requirement strikes a reasonable balance by increasing the demonstration to get and keep a queue position, while at the same time, not being so high

Commission also accepted Midcontinent Independent System Operator, Inc.’s (MISO) revised queue cap that balances queue efficiency with avoiding unnecessary barriers to entry.¹³² These proposals differ in details and approach and each is unique and distinct from CAISO’s revised Tariff, although they similarly include criteria to streamline and prioritize generation interconnection. As these cases illustrate, the Commission assesses undue discrimination as part of its broader review of a proposal and its merits.

36. While LSEs with affiliated generation can be competitors to prospective interconnecting generators,¹³³ we disagree with Calpine’s argument that this renders the commercial interest points feature of the revised Tariff unduly discriminatory or preferential.¹³⁴ Vistra’s assertion that LSEs can exercise market power¹³⁵ is similarly unpersuasive. CAISO demonstrated that it thoroughly considered, and vetted through the stakeholder process, the role that commercial interest points play as part of a balanced package of reforms.¹³⁶ The Commission also scrutinized CAISO’s proposal and

as to deter interested projects from initiating interconnection requests;” and “withdrawal penalty proposal strikes a reasonable balance between increasing the requirements for keeping a queue position and minimizing barriers to entry”). We note that subsequently on compliance with Order No. 2023, APS adopted most of Order No. 2023’s *pro forma* Large Generator Interconnection Process (LGIP) commercial readiness provisions, justified some deviations as “consistent with or superior” to the *pro forma* Tariff, and was required to submit a further compliance either justifying certain other deviations or adopting the *pro forma* LGIP provisions. *Ariz. Pub. Serv. Co.*, 191 FERC ¶ 61,151, at PP 76-77 (2025). Also, the Commission directed PSCo to comply with the financial commercial readiness framework provisions of the Commission’s *pro forma* LGIP (modified to accommodate the non-financial readiness criteria that the Commission accepted). *Pub. Serv. Co. of Colo.*, 191 FERC ¶ 61,121, at P 100 (2025).

¹³² *MISO Queue Cap II*, 190 FERC ¶ 61,057, at P 60 (2025) (among other things, finding the revised cap “strikes a reasonable balance between limiting the volume of requests to a level that can be processed efficiently and avoiding unnecessary barriers to entry that will delay the development of the generation capacity needed to meet growing supply shortages within the MISO region”).

¹³³ See Calpine Rehearing Request at 1.

¹³⁴ Queue Reform Order, 188 FERC ¶ 61,225 at P 179.

¹³⁵ Vistra Rehearing Request at 2.

¹³⁶ Transmittal at 28-57; *id.* attach C (Track 2 Final Proposal); CAISO Answer at 24-47.

determined that, contrary to challengers' contentions,¹³⁷ CAISO provided reasonable limits, transparency, and oversight measures to protect against LSEs' exercise of undue preference.¹³⁸ First, commercial interest points, which constitute only 30% of an interconnection customer's total score, are limited to one-third of available MW capacity for each zone, while CAISO will study up to 150% of available capacity for each zone.¹³⁹ Far from having an "outsized influence,"¹⁴⁰ or giving LSEs an "unfettered and determinative role"¹⁴¹ in the allocation of interconnection access and deliverability,¹⁴² LSEs have no input on 70% of an interconnection customer's total score or the remaining two-thirds of the cumulative capacity that will be studied for Transmission Plan deliverability—the majority of capacity that proceeds to the cluster study.¹⁴³ Additionally, although there are relatively fewer points, non-LSEs are able to award points, further diluting the influence of the LSE point allocation.¹⁴⁴

37. Second, the affiliate limitation restricts LSEs' allocation of points to their affiliates to the greater of three interconnection requests or 25% of their commercial interest points.¹⁴⁵ As CAISO explained, this percentage is based on historical trends in the CAISO region of few interconnection requests from LSEs or their affiliates.¹⁴⁶

¹³⁷ *E.g.*, *Vistra Rehearing Request* at 5.

¹³⁸ *Queue Reform Order*, 188 FERC ¶ 61,225 at PP 176-203.

¹³⁹ *Id.* P 176 & n.326 (citing CAISO Second Answer at 8-9 (citing PG&E Comments at 3)).

¹⁴⁰ *See Calpine Rehearing Request* at 6.

¹⁴¹ *Vistra Rehearing Request* at 1-2.

¹⁴² *Id.*; *see also Calpine Rehearing Request* at 6 (LSEs are granted "outsized influence in awarding commercial points" and there is "next to no meaningful constraint" on LSEs discretion to award commercial interest points); *CEAs Rehearing Request* at 10 (noting "wide discretion" granted LSEs would likely result in undue discrimination against unaffiliated generators).

¹⁴³ *Queue Reform Order*, 188 FERC ¶ 61,225 at PP 176, 179. For explanation why *Vistra's* speculative challenges to the two-thirds capacity limitation lack merit, see section IV.G5 below.

¹⁴⁴ CAISO, CAISO eTariff, app. KK, § 4, § 4.1.1(1).

¹⁴⁵ *Id.* § 4.1.1.1.

¹⁴⁶ CAISO Transmittal at 42-43 ("Unlike other regions, the CAISO sees very few

We continue to find the affiliate limitation is a balanced approach that prevents LSEs from unduly favoring their affiliates and ensures that interconnection requests from independent power producers are afforded a fair and reasonable opportunity to obtain commercial interest points.¹⁴⁷

38. Third, the transparency measures the Commission accepted will help mitigate any potential for LSEs to exercise undue preference: LSEs are required to publicly post their selection criteria or consideration factors for awarding points; CAISO posts on its website the list of participating LSEs and the points they have to allocate in each cluster;¹⁴⁸ and CAISO informs each interconnection customer of the criterion (or criteria) that was decisive in its request to be included in the cluster study.¹⁴⁹ These transparency measures help facilitate interconnection customers' ability to select from whom to seek points based on whether their project's characteristics match the type of resources that an LSE is seeking to procure for resource adequacy purposes.¹⁵⁰ Additionally, the revised Tariff authorizes CAISO to publish aggregate scoring results.¹⁵¹ To provide additional transparency, the Commission directed CAISO to submit an informational report detailing certain information for Clusters 15 and 16.¹⁵² Fourth, LSEs' procurement

interconnection requests from utilities"); *see also id.*, attach. C, Track 2 Final Proposal at 51 (noting that CAISO has seen a maximum of three projects proposed by a single CPUC-jurisdictional LSE in Clusters 10-14 (constituting more than 15% of the estimated capacity allocation for that LSE for Cluster 15)); CAISO Answer at 38.

¹⁴⁷ Queue Reform Order, 188 FERC ¶ 61,225 at P 176. For further discussion of the affiliate limitation, see section IV.D.2 below. We note that prior to the revised Tariff, publicly-owned utilities were not subject to any restrictions on their ability to develop and support the interconnection of their own resources. Joint POU's Answer at 14-15 (asserting the affiliate limitation is a "significant concession" that they accepted during the stakeholder process in the interest of achieving "a balanced proposal" for interconnection reform). Joint POU's consist of Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside (Six Cities), Northern California Power Agency, and the City of Santa Clara, d/b/a Silicon Valley Power.

¹⁴⁸ CAISO, CAISO eTariff, app. KK, § 4.

¹⁴⁹ *Id.* We note that the Tariff also authorizes CAISO to post composite data and requires CAISO to post the number of bids and the clearing price of all winning bids for each Transmission Zone in auction tiebreakers, but not auction participants' names. *Id.*

¹⁵⁰ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

¹⁵¹ CAISO, CAISO eTariff, app. KK, § 4.

¹⁵² Queue Reform Order, 188 FERC ¶ 61,225 at P 232 (directing CAISO to

activities are subject to CPUC and LRA oversight, which, in turn, are governed by state and local laws, regulations, and policies.¹⁵³ And, contrary to contentions,¹⁵⁴ as discussed in detail below,¹⁵⁵ CAISO will continue to fulfill its duty as the independent entity responsible for generator interconnection in CAISO. CAISO will continue to exercise independent oversight over this revised process, from determining which Zones have available delivery through evaluating the results of applying the revised process to each cluster. Thus, contrary to Rehearing Parties' arguments, the Commission considered the potential for LSEs to unduly discriminate or preference affiliates or certain developers and ensured that CAISO's proposal appropriately mitigated such opportunities.

2. Open Access Rulemaking Precedent

a. Rehearing Requests

39. Rehearing Parties argue that CAISO's commercial interest points proposal constitutes an unprecedented and unexplained departure from the Commission's long-standing principles of open access and non-discrimination.¹⁵⁶ Calpine states that while the Commission was once convinced that "[t]he inherent characteristics of monopolists make it inevitable that they will act in their own self-interest to the detriment of others" and that it had a "duty to eradicate unduly discriminatory practices," the Queue Reform

submit, for Cluster 15 and 16, within 60 days of determining which interconnection request proceed to the cluster study, an Informational Report that details for each criterion (1-4): (1) the MW of interconnection capacity that has qualified for the cluster study; (2) the number of proposed generating facilities that have qualified for the cluster study; and (3) the number of interconnection request and MW of interconnection capacity that have qualified for the cluster study by fuel type, including identifying partially deliverable resources). As noted above, *see supra* note 92, in accordance with its authority under the revised Tariff, CAISO also published a detailed report on its website further analyzing the aggregate scoring results for Cluster 15. Cluster 15 Report at 9, Fig. 5, <https://www.caiso.com/documents/summary-of-cluster-af-intake-scoring-results.pdf>. That report transparently reveals how the process is working overall and will inform developers' efforts to proceed to cluster study in subsequent clusters.

¹⁵³ Transmittal at 50; Joint POU's Answer at 10-13.

¹⁵⁴ *E.g.*, Vistra Rehearing Request at 40; CEAs Rehearing Request at 2 & n.7.

¹⁵⁵ *See infra* Section IV.C.2 and IV.C.3.

¹⁵⁶ Calpine Rehearing Request at 4 (citing 5 U.S.C. § 706(2)(A)); *see also id.* at 7-11, 15 & n.50, 15-18; CEAs Rehearing Request at 3-4; Vistra Rehearing Request at 22.

Order goes in the opposite direction.¹⁵⁷ Highlighting the Commission’s assertion that LSEs can be trusted to act on “drivers other than competitive advantage,” Calpine argues it is fundamentally inconsistent with the Commission’s prior conclusion that it is “inevitable that they will act in their own self-interest to the detriment of others.”¹⁵⁸ CEAs and Vistra argue the Commission failed to explain its departure from precedent holding utilities can be expected to act in their own self-interest.¹⁵⁹ Calpine states that, instead of eliminating “both the incentive and the ability” for LSEs to control access to the grid, the Queue Reform Order turns the clock back to the “bad old days” before Order No. 888.¹⁶⁰

40. Vistra and CEAs state that the Commission has historically carried out its statutory FPA obligations by seeking to eliminate opportunities for undue discrimination.¹⁶¹ Vistra states that in Order No. 888, the Commission found that transmission owners “had the incentive and ability to favor their own generators over those of rivals” and so required transmission providers to adopt standardized tariffs and offer nondiscriminatory open-access transmission services to all customers on the same terms and conditions as they offer to their affiliates.¹⁶² CEAs state that the Commission found that it is *required*

¹⁵⁷ Calpine Rehearing Request at 16-17 & n.59 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682).

¹⁵⁸ *Id.* at 15 & n.49 (*compare* Queue Reform Order, 188 FERC ¶ 61,225 at P 179 *with* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682); *see also id.* at 17 (asserting that it is hard to reconcile the Commission’s former position—that LSEs *must not* be given monopoly power because they will *inevitably* abuse it—and its new position—that LSEs *must be* given monopoly power because they will not abuse it).

¹⁵⁹ CEAs Rehearing Request at 8 & n.28 (citing *Xcel Energy Servs., Inc. v. FERC*, 41 F.4th at 561) (quoting *Transmission Access Pol’y Study Grp. v. FERC*, 225 F.3d 667, 684 (D.C. Cir. 2000) (per curiam), *aff’d sub nom. New York v. FERC*, 535 U.S. 1 (2002), which cites *Morgan Stanley Capital Grp. Inc. v. Pub. Util. Dist. No. 1 of Snohomish Cnty.*, 554 U.S. 527, 536 (2008) (“Utilities that . . . control transmission facilities naturally wish to maximize profit” and “can be expected to act in their own interest to maintain their monopoly.”)); *see also* CEAs Rehearing Request at 7 & n.25; Vistra Rehearing Request at 16 & n.51 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682; *Xcel Energy Servs., Inc.*, 41 F.4th at 552; *PacifiCorp.*, 171 FERC ¶ 61,112, at P 101 (2020)).

¹⁶⁰ Calpine Rehearing Request at 17 & n.61 (citing Calpine Protest at 4).

¹⁶¹ Vistra Rehearing Request at 3, 7 & n.21 (citations omitted); CEAs Rehearing Request at 12.

¹⁶² Vistra Rehearing Request at 3 & n.12 (citing *Xcel Energy Servs., Inc. v. FERC*,

to act when it identifies “[d]enials of access (whether they are blatant or subtle), and the *potential* for future denial of access.”¹⁶³ Calpine adds that Order No. 888 recognized that utilities’ market power did not arise solely from their “natural gatekeeping powers over the grid,” but was also attributable to their contractual relationships, which “can confer the same rights of control.”¹⁶⁴ Calpine states that the Commission supplemented Order No. 888’s non-discrimination mandate with further rulemaking in Order Nos. 890¹⁶⁵ and 2003: (1) Order No. 890 sought to eliminate “both the incentive and the ability” for LSEs to exercise discretion over access to the grid “to discriminate against third parties;”¹⁶⁶ and (2) Order No. 2003 standardized non-discriminatory policies and procedures that transmission owners were required to follow when interconnecting generators to the grid.¹⁶⁷ Vistra adds that Order No. 2003 required this standard set of procedures to limit incumbent utilities’ ability to favor their affiliates and erect barriers to the entry of competing resources.¹⁶⁸ Vistra emphasizes the Commission’s determination in Order No. 2003 that it “would find any policy that creates *opportunities* for such discriminatory behavior [in the interconnection process] to be unreasonable.”¹⁶⁹

41 F.4th at 552) (citation omitted).

¹⁶³ CEAs Rehearing Request at 13 & n.53 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,652) (emphasis added by CEAs); *see also id.* at 13 & n.51.

¹⁶⁴ *Id.* at 15-16 & n.55 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,643) (“Entities with contractual control over transmission facilities can withhold supply and extract monopoly prices just as effectively as those who control facilities through ownership.”).

¹⁶⁵ *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 118 FERC ¶ 61,119, at P 26, *order on reh’g*, Order No. 890-A, 121 FERC ¶ 61,297 (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, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

¹⁶⁶ Calpine Rehearing Request at 16 & n.56 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 26) (citations omitted).

¹⁶⁷ *Id.* at 16 & n.57 (quoting Order No. 2003, 104 FERC ¶ 61,103 at PP 9-11).

¹⁶⁸ Vistra Rehearing Request at 4 & n.15 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 122).

¹⁶⁹ *Id.* at 6 & n.20 (quoting Order No. 2003, 104 FERC ¶ 61,103 at P 696)

41. Vistra states that in Order No. 2000, the Commission encouraged utilities to create RTOs to help eliminate remaining opportunities for discrimination by transferring control over the transmission grid to entities that are independent of market participants.¹⁷⁰ The Commission further declared that an RTO must be the “sole authority making decisions on the provision of transmission service including decisions related to new interconnections.”¹⁷¹ Vistra states that the Commission found this would ensure “nondiscriminatory and uniform access,” which could not be “assured if customers are required to deal with several transmission owners with differing tariff conditions.”¹⁷² CEAs assert that LSEs now have the means and incentive to control which proposed generating projects—including LSE-affiliated projects—get access to the grid, with virtually no oversight from CAISO.¹⁷³

42. Vistra asserts that by accepting the commercial interest points proposal, the Commission has opened the door for LSEs to discriminate in favor of their affiliates, departing from Order No. 2003 precedent without responding to arguments that this is inconsistent with the purpose of Order No. 2003.¹⁷⁴

b. Commission Determination

43. We continue to find that the safeguards in the revised Tariff—such as: (1) limiting the amount of commercial interest points that LSEs may allocate to a single interconnection customer to 30% of the customer’s total score; (2) restricting the amount of points that an LSE may allocate to an affiliate to the greater of three affiliated projects or 25% of the LSEs total allocable points; (3) making only one-third of available MW

(emphasis added).

¹⁷⁰ *Id.* at 4 & n.16 (citing *Reg’l Transmission Orgs.*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 30,993, (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish Cnty., Wash. v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

¹⁷¹ *Id.* at 4 & n.17 (quoting Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,107).

¹⁷² Vistra Rehearing Request at 4 & n.17 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,108).

¹⁷³ CEAs Rehearing Request at 12 & n.49 (citing CEAs Protest at 2; EPSA Limited Protest and Comments at 2; Joint Interconnection Customers Protest at 4).

¹⁷⁴ Vistra Rehearing Request at 22.

capacity identified in the cluster study eligible to receive LSE commercial interest points, while CAISO will study up to 150% of available capacity for each zone;¹⁷⁵ and (4) the transparency and oversight measures in the Tariff—are consistent with open access. Thus, allowing LSEs to allocate a limited amount of commercial interest points to inform CAISO of which projects best suit LSEs’ resource adequacy and state of California-designated public policy procurement needs (Cluster Study Criteria 1) or local capacity area-designated energy-only procurement needs (Cluster Study Criteria 3) is consistent with open, non-discriminatory access to the CAISO transmission system. Contrary to Rehearing Parties’ arguments,¹⁷⁶ commercial interest points do not constitute an unexplained departure from the open access principles that the Commission articulated in Order No. 888 and extended to the generator interconnection context in Order Nos. 2003 and 2023. Open access guarantees the opportunity for customers (here, interconnection customers) to access the transmission system;¹⁷⁷ and, having accessed the grid, receive comparable rates, terms, and conditions of transmission service as the owners of the transmission facilities.¹⁷⁸ The generator interconnection procedures in the revised Tariff continue to adhere to these open access principles while addressing the exigencies of CAISO’s current interconnection queue backlog described in the record in this proceeding. As the Commission explained in the Queue Reform Order, CAISO’s revised Tariff gives all interconnection customers the comparable opportunity to access the CAISO transmission system.¹⁷⁹

¹⁷⁵ Queue Reform Order, 188 FERC ¶ 61,225 at P 176 & n.326 (citing CAISO Second Answer at 8-9 (citing PG&E Comments at 3)).

¹⁷⁶ Calpine Rehearing Request at 4, 15-18; CEAs Rehearing Request at 4-6; Vistra Rehearing Request at 3-6, 38.

¹⁷⁷ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,635-37 (describing open access); *id.* at 31,365 (discussing balancing goal of competitively-priced generation with ensuring (1) utilities’ have a fair opportunity for cost recovery; (2) power supply reliability; and (3) that the benefits of competition should not come at other customers’ expense); *Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,132, at P 67 (2012) (where interconnection customer’s choice determines whether it will receive customer-funded network upgrades, interconnection process “affords all generators open access to CAISO’s transmission grid and the opportunity to seek deliverability status through ratepayer-funded network upgrades[.]”).

¹⁷⁸ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,654-55 (imposing requirements to ensure public utilities will be subject to the same rates, terms and conditions as their transmission customers).

¹⁷⁹ Queue Reform Order, 188 FERC ¶ 61,225 at PP 94, 186 & n.345 (citing *id.*

44. Vistra asserts that commercial interest points are inconsistent with open access because “[i]nterconnection processes that provide more favorable terms and conditions for an incumbent utility’s own generation and make it more difficult for its generation competitors to enter the market are impermissible.”¹⁸⁰ We disagree that allowing LSEs to allocate a limited amount of commercial interest points based on historical, pre-Tariff revision levels of affiliate interconnection is inconsistent with open access. The revised Tariff does not provide more favorable terms and conditions to LSE-affiliated generation. Under the revised Tariff, all interconnection customers, including LSE-affiliated projects, must satisfy the same Cluster Study Criteria for one of the four distinct paths to advance to the cluster study.¹⁸¹ To the extent Vistra argues open access is violated because LSEs’ allocation of a limited number of points (to affiliated projects and others) may result in some interconnection customers proceeding to the cluster study in a Deliverable Zone while others do not, we do not find this to be a violation of open access. For Cluster Study Criteria 1, CAISO stated that its revised Tariff scales the interconnection queue to the actual needed and planned amount of deliverability. As CAISO explained, while transmission capacity beyond this deliverable amount is possible, under the CAISO Tariff, it should not be presumed to benefit customers.¹⁸² LSE-affiliated and non-LSE affiliated projects must meet the same Cluster Study Criteria under each distinct pathway to proceed to the cluster study and receive the same treatment (reimbursement or not), depending on the chosen pathway. Additionally, an interconnection customer that does not proceed to the cluster study may try again to garner sufficient points to enter the next cluster study.

45. As Rehearing Parties point out, the Commission’s open access precedent focuses on limiting the opportunity for transmission providers to unduly discriminate against competitors, which is not the case here.¹⁸³ The Commission explained in the Queue Reform Order how CAISO’s revised Tariff contains safeguards that prevent LSEs from using commercial interest points to control access to the grid.¹⁸⁴ First, CAISO’s proposal

PP 92-95), 218.

¹⁸⁰ Vistra Rehearing Request at 9 & n.28 (citation omitted). We further note that CAISO is unique among RTOs/ISOs in that it reimburses interconnection customers for the costs of network upgrades that have been shown to benefit customers. CAISO Transmittal at 49; CAISO, CAISO eTariff, app. KK, § 3, § 3.1.

¹⁸¹ CAISO, CAISO eTariff, app. KK, § 4, §§ 4.1-4.4.

¹⁸² Transmittal at 26.

¹⁸³ See, e.g., Vistra Rehearing Request at 3, 7 & n.21 (citations omitted).

¹⁸⁴ Queue Reform Order, 188 FERC ¶ 61,225 at P 179.

intentionally limits LSEs' commercial interest points to 50% of Transmission Plan deliverability.¹⁸⁵ As a result, only one-third of capacity (max) under the 150% cap will proceed to study with commercial interest points from LSEs. Second, non-LSEs may also allocate commercial interest points, so projects proceeding to the cluster study may reflect non-LSE input as well.¹⁸⁶ Third, CAISO's project viability and system need scoring criteria are factors beyond LSE control and together make up 70% of an interconnection customer's readiness score.¹⁸⁷ Fourth, because LSEs must comply with resource adequacy requirements or be penalized,¹⁸⁸ LSEs have the incentive to design selection criteria, which are transparently posted, to meet those objectives. And last, CAISO's affiliate limitation¹⁸⁹ is designed to prevent LSEs from allocating more than 25% of their commercial interest points to affiliated resources, in accordance with historical, pre-Tariff revision levels of affiliate interconnection. We continue to find that allowing LSEs to allocate a limited amount of commercial interest points to inform CAISO of which projects best suit LSEs' resource adequacy and state of California-designated public policy procurement needs (Cluster Study Criteria 1) or local capacity area-designated energy-only procurement needs (Cluster Study Criteria 3) does not violate open access principles. In addition to the above-enumerated reasons, we reiterate that commercial interest points are only one of three complementary scoring criteria that are applied to all interconnection customers seeking to be studied under Cluster Study Criteria 1 or 3.¹⁹⁰ Thus, we continue to find, contrary to Calpine's contention,¹⁹¹ that LSEs are not "controlling" access to the transmission grid in a manner that contravenes open access. On the contrary, allowing LSEs to use commercial interest points to identify the projects they need to meet resource adequacy and procurement requirements is a practical way to facilitate achieving CAISO's aims of efficiently interconnecting resources needed to meet reliability and public policy goals and reducing untenable queue congestion. Given that LSEs are subject to resource adequacy and procurement requirements while CAISO is not, it is reasonable and practical for CAISO to draw on LSEs' experience in fulfilling these requirements. And, as the CPUC pointed out, "all

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ We address Vistra's arguments on the affiliate limitation below. *See infra* Section IV.D.2.

¹⁹¹ Calpine Rehearing Request at 17.

Investor-Owned Utilities' projects will undergo CPUC review and approval, providing an additional layer of oversight to justify and ensure utility-owned resources are only permitted as needed.”¹⁹² Finally, as discussed above, the record reflects that eliminating the commercial interest point criterion would result in the need for more tiebreakers and likely fail to include in the cluster study those projects that are needed to meet resource adequacy and procurement requirements.¹⁹³

46. The trajectory of the Commission's open-access precedent over time reinforces our determination that commercial interest points do not violate our open access principles. When the Commission issued Order No. 888 nearly 30 years ago, the Commission's main goal was to ensure that transmission providers with affiliated generation, who owned and controlled the transmission system at that time, allowed their competitors to access the transmission system on comparable terms and conditions as those that transmission providers used to serve their own load.¹⁹⁴ Three decades later, the Commission is now wrestling with the different and pressing nationwide problem¹⁹⁵ of interconnection queue congestion caused by an “unprecedented number” of generator interconnection requests.¹⁹⁶ As the Commission explained in Order No. 2023, the electricity sector has transformed significantly since the issuance of Order No. 2003. The Commission stated that the growth of new resources with differing characteristics (e.g., variable generation resources) seeking to interconnect to a transmission system with limited capacity has created large interconnection queue backlogs.¹⁹⁷ This is increasing costs for consumers,¹⁹⁸ and creating reliability issues, as needed new generating facilities are unable to come online in an efficient and timely manner.¹⁹⁹ In justifying its proposal

¹⁹² CPUC Comments at 5.

¹⁹³ See *supra* P 33.

¹⁹⁴ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,793-94.

¹⁹⁵ Order No. 2023, 184 FERC ¶ 61,054 at P 38 & n.102 (finding the existing *pro forma* generator interconnection procedures are unjust and unreasonable because the “dramatic increase in the number of interconnection requests and limited transmission capacity are increasing interconnection queue backlogs across all regions of the country”) (citations omitted).

¹⁹⁶ See *id.*; see also Transmittal at 2-3.

¹⁹⁷ Order No. 2023, 184 FERC ¶ 61,054 at P 3.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

here, CAISO explained that “unsustainable increases in interconnection requests have overwhelmed not only the CAISO’s current interconnection procedures, but also critical planning and engineering resources across the industry.”²⁰⁰ CAISO stated that interconnection requests for projects that are viable and needed to address reliability and public policy objectives cannot be timely processed.²⁰¹ Given the untenable situation with CAISO’s queue, the Commission assessed the need for an interconnection process that serves customers reliably and cost-effectively while reviewing CAISO’s proposal to ensure it does not result in undue discrimination or preference. We therefore evaluate how CAISO’s revised Tariff maintains our “bedrock” open access principles based on the current interconnection landscape.²⁰² While the Commission was concerned about preventing undue discrimination in generator interconnection when it issued Order No. 2003, the Commission did not state in Order No. 2003, as Vistra asserts, that it “would find any policy that creates opportunities for such discriminatory behavior [in the interconnection process] to be unacceptable.”²⁰³ The bracketed language Vistra adds to this quotation from paragraph 696 of the Commission’s order is presented out of context, and the original context is irrelevant to the matter before us. In paragraph 696, the Commission discussed its concerns that non-independent transmission providers could exploit subjective aspects of “but for” pricing to their advantage.²⁰⁴ The Commission

²⁰⁰ Transmittal at 2-3.

²⁰¹ *Id.* at 3.

²⁰² *Cities of Newark v. FERC*, 763 F.2d at 546 (undue discrimination determinations are fact-based). In Order No. 2003, the Commission standardized interconnection agreements and procedures in part to remedy delay, *see* Order No. 2003, 104 FERC ¶ 61,103 at P 11. Order No. 2023 similarly addresses delay, but today’s delay is attributable to the spike in interconnection requests from new resources seeking to satisfy state-driven policy goals, and the vast number of speculative interconnection requests that result in the withdrawal of commercially unviable projects from the queue, triggering expensive restudies, not the actions of monopoly transmission owners. Order No. 2023, 184 FERC ¶ 61,054 at PP 3, 47-48.

²⁰³ Vistra Rehearing Request at 6 & n.20 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 12, 696) (emphasis added by Vistra).

²⁰⁴ Order No. 2003, 104 FERC ¶ 61,103 at P 696. The “but for” pricing policy refers to the Commission’s reasoning, as expressed in Order No. 2003, that “[i]t is appropriate for the Interconnection Customer to pay the initial full cost for Interconnection Facilities and Network Upgrades that would not be needed but for the interconnection.” Order No. 2023, 184 FERC ¶ 61,057 at P 474 & n.916 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 694).

explained that, for example, a non-independent transmission provider “has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers.”²⁰⁵ The Commission then went on to say that it “would find any policy that creates opportunities for such discriminatory behavior to be unacceptable.”²⁰⁶ Read in context, “opportunities for such discriminatory behavior” refers specifically to a non-independent transmission provider requiring interconnection customers that are its competitors to pay “a disproportionate share of the costs of expansions [i.e., network upgrades] needed to serve” the non-independent transmission provider’s customers.²⁰⁷ It does not, as Vistra asserts, broadly refer to “any policy that creates opportunities for such discriminatory behavior [in the interconnection process].”²⁰⁸ In any event, we find here that CAISO’s proposal does not present such concerns, as discussed above.

47. In Order No. 2003, the Commission extended open access to the interconnection context, expanding the use of standardized *pro forma* OATT processes and agreements to “limit”²⁰⁹ and “minimize”²¹⁰ opportunities for transmission providers to unduly favor their own generation. In practice, over time, the Commission has implemented this policy by evaluating opportunities for hindering open access and mitigation measures on a pragmatic, case-by-case basis. For example, the Commission has recognized the impact that state resource adequacy and procurement needs have on generator interconnection;²¹¹ accepted a transmission provider’s proposal to allow interconnection customers to demonstrate commercial readiness by means of inclusion in an LSE’s resource plan;²¹² and allowed CAISO to differentiate between LSEs serving their own load and other interconnection customers in the transmission provider’s deliverability

²⁰⁵ Order No. 2003, 104 FERC ¶ 61,103 at P 696.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ Vistra Rehearing Request at 6.

²⁰⁹ Order No. 2003, 104 FERC ¶ 61,103 at P 696 at P 12.

²¹⁰ *Id.* P 11.

²¹¹ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 186 FERC ¶ 61,054, at P 182 (2024) (MISO Queue Cap I) (stating that the proponent of a reasonable study cap needs to ensure that the RTO “can study new generation seeking to interconnect in a manner that appropriately accounts for its future resource adequacy needs”).

²¹² *APS*, 184 FERC ¶ 61,188 at PP 38-39.

allocation process.²¹³ These RTO/ISO proposals similarly include criteria to prioritize the interconnection of generation needed to address state and/or LSEs' resource needs.

48. Additionally, we are not persuaded by Vistra's assertion that the revised Tariff violates Order No. 2000's requirement that RTOs/ISOs must be the "sole authority making decisions related to new interconnections."²¹⁴ Although LSEs may award commercial interest points to one-third of the MW capacity eligible for study in a Deliverable Zone (or one-third of the MW of energy-only capacity eligible for study in a Transmission Zone), and commercial interest points are limited to 30% of an interconnection customer's total score, CAISO has the overarching, independent responsibility to oversee the scoring and generator interconnection procedures, including calculating each prospective interconnecting generators' points. Thus, CAISO is the sole decision-making authority regarding access to the transmission system under its interconnection rules.²¹⁵

49. The Rehearing Parties emphasize that the Commission standardized transmission service and generator interconnection procedures to ensure open access and comparable service.²¹⁶ But from the inception of open access, the Commission has recognized there may be valid reasons for individual and regional departures from the *pro forma* LGIP, and these deviations may also be consistent with the FPA.²¹⁷ Because RTOs/ISOs have

²¹³ See *Cal. Indep. Sys. Operator Corp.*, 166 FERC ¶ 61,113, at PP 1, 3, 10 (2019); see also CAISO Answer at 26 n.67; see also Transmittal, Docket No. ER18-2498-000, at 26 & n.89 (filed Sept. 28, 2018); see also Queue Reform Order, 188 FERC ¶ 61,225 at P 175 (citing CAISO, CAISO eTariff, app. DD § 8 (Phase II Interconnection Study & [Transmission Plan] Deliverability Allocation Processes) (20.0.0), *id.* § 8.9.2 (providing that the deliverability allocation process first awards available deliverability to those interconnection customers with power purchase agreements (PPA) and LSEs serving their own load, then to those negotiating or shortlisted for PPAs, then to other projects)).

²¹⁴ Vistra Rehearing Request at 4 & n.17 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,108).

²¹⁵ *Id.* at 22 & n.73 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,108).

²¹⁶ Calpine Rehearing Request at 16; Vistra Rehearing Request at 3.

²¹⁷ Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,770 (allowing deviations from the *pro forma* Tariff that the proponent of such modifications could show are "consistent with or superior to" the *pro forma* OATT); Order No. 2003, 104 FERC ¶ 61,103 at P 26 (permitting non-independent transmission providers to seek variations from the *pro forma* LGIP if those variations were "consistent with or superior to" the terms of the *pro forma* LGIP and *pro forma* Large Generator Interconnection Agreements

different operating characteristics due to their size and locations and an RTO/ISO is less likely to act in an unduly discriminatory manner than a transmission provider that is also a market participant,²¹⁸ the Commission afforded RTOs/ISOs “greater flexibility to customize [their] interconnection procedures and agreements to fit regional needs,”²¹⁹ as reflected in the independent entity variation standard used to evaluate their proposed deviations from the *pro forma* LGIP and *pro forma* LGIA.²²⁰ Given that state and local jurisdictional resource adequacy and procurement programs compel LSEs to differentiate among projects based on certain attributes that only the commercial interest points criteria capture under CAISO’s proposal, plus the exigencies of CAISO’s clearly-identified interconnection queue congestion, we continue to find CAISO has justified its revised Tariff under the independent entity variation standard.²²¹

3. Other Precedent

a. Rehearing Requests

50. Vistra states that since announcing its core principle in Order No. 2003, the Commission has routinely sought to limit opportunities for undue discrimination in generation interconnection.²²² Vistra highlights the Commission’s effort in the Queue Reform Order to distinguish its precedent rejecting interconnection reform proposals that create opportunities for undue discrimination on the basis that those proposals were from

(LGIA)).

²¹⁸ Order No. 2003, 104 FERC ¶ 61,103 at P 827.

²¹⁹ *Id.*

²²⁰ See, e.g., *Midcontinent Indep. Sys. Operator, Inc.*, 185 FERC ¶ 61,084, at P 11 (2023) (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 26, 827); *Improvements to Generator Interconnection Procs. & Agreements*, Order No. 2023, 184 FERC ¶ 61,054 at P 9 & n.11 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 9 (citing *Tenn. Power Co.*, 90 FERC ¶ 61,238 (2000), *order on reh’g*, 185 FERC ¶ 61,063 (2023), *order on reh’g*, Order No. 2023-A, 186 FERC ¶ 61,199 (2024))).

²²¹ See *supra* P 26.

²²² See Vistra Rehearing Request at 7 & n.21 (citing *Cal. Pub. Utils. Comm’n v. FERC*, 29 F.4th 454, 458 (9th Cir. 2022); *Xcel Energy Servs. v. FERC*, 41 F.4th 548, 561 (D.C. Cir. 2022); *E.ON Climate & Renewables North Am. v. Midwest Indep. Transmission Sys. Op., Inc.*, 137 FERC ¶ 61,076, at P 38 (2011) (*E.On*), *order on reh’g*, 142 FERC ¶ 61,048 (2013), *order on reh’g*, 151 FERC ¶ 61,264 (2015); *PacifiCorp*, 171 FERC ¶ 61,112, at P 101 (2020)).

non-independent transmission providers.²²³ Vistra argues the Commission’s suggestion that this precedent does not apply to the commercial interest points proposal—because CAISO is “an independent transmission provider who does not own generation and to which the Commission’s concerns regarding undue preference toward affiliates do not apply”—is flawed.²²⁴ First, Vistra argues the Commission’s precedent rejecting proposals creating opportunity to discriminate is not limited to “non-independent providers.”²²⁵ Vistra states that, for example, the Commission recently initiated show cause proceedings involving multiple RTOs out of concern that the ability of transmission-owning utilities in those RTOs to unilaterally elect to initially fund the capital costs of network upgrades (and subsequently be reimbursed by the interconnection customer for the return of and on those capital costs (TO Initial Funding)) increases interconnection customers’ network upgrade costs and creates opportunities for undue discrimination.²²⁶ Vistra states that in that proceeding, the Commission recognized that a vertically integrated transmission owner or a transmission owner that is affiliated with a company that owns generation could potentially choose this option solely for network upgrades assigned to non-affiliate interconnection customers in order to raise interconnection costs to competitors.²²⁷ Vistra argues the Commission made no effort to distinguish this precedent or explain why the discretion that is being afforded here to transmission-owning LSEs in CAISO does not raise the same concerns.

51. Second, Vistra argues that distinguishing the revised Tariff from non-independent transmission provider precedent on the basis that CAISO is an RTO/ISO fails to recognize that CAISO plays no role in awarding commercial interest points; rather, it “outsources” the process and standards upon which commercial interest points are awarded to LSEs, including vertically integrated LSEs.²²⁸

²²³ *Id.* at 20 & n.66 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 180).

²²⁴ *Id.*

²²⁵ *Id.* at 20 & n.67 (citing *E.ON*, 137 FERC ¶ 61,076 at P 38).

²²⁶ *Id.* at 20 & n.68 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,170 (2024) (Show Cause Order).

²²⁷ *Id.* at 20 & n.69 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 187 FERC ¶ 61,170 at P 52).

²²⁸ *Id.* at 20-21.

b. Commission Determination

52. We disagree with Vistra's suggestion that the Commission improperly distinguished certain precedent rejecting interconnection reform proposals that create opportunities for undue discrimination on the basis that those proposals were from non-independent transmission providers.²²⁹ Non-independent transmission providers must satisfy a more rigorous standard to justify deviations from the *pro forma* LGIP and *pro forma* LGIA (i.e., that such deviations are consistent with or superior to the *pro forma* LGIP and *pro forma* LGIA), out of concern that they have the incentive and opportunity to discriminate against competitors. By contrast, as noted above, RTOs/ISOs are subject to a more flexible standard (i.e., the independent entity variation standard) because they are independent transmission providers who do not own generation or transmission and provide independent oversight for their regions.²³⁰ Undue discrimination is a fact-based determination, and the cases Vistra cites²³¹ are distinguishable on their facts.²³²

²²⁹ *Id.* at 20 & n.66 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 180).

²³⁰ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

²³¹ See Vistra Rehearing Request at 7 & n.21 (citing *Cal. Pub. Util. Comm'n v. FERC*, 29 F.4th at 458; *Xcel Energy Servs. v. FERC*, 41 F.4th 548 at 561); *E.ON Climate & Renewables North Am.*, 137 FERC ¶ 61,076 at P 38; *PacifiCorp*, 171 FERC ¶ 61,112, at P 101).

²³² See *PacifiCorp*, 171 FERC ¶ 61,112 at PP 100-101 (rejecting a non-independent transmission owner's proposed commercial interest readiness demonstration because it was only available to LSEs and not to all interconnecting generators); *Xcel Energy Servs., Inc. v. FERC*, 41 F.4th at 522 (holding the Commission reasonably rejected a non-independent transmission provider's proposal that would have given priority to existing generators because the non-independent transmission provider owned most of the existing generation on its transmission system); *Cal. Pub. Util. Comm'n v. FERC*, 29 F.4th at 458 (affirming on remand Commission determination that participating in CAISO is voluntary for purposes of RTO-incentive adders). *Xcel*, *PacifiCorp*, and *E.On* are distinguishable because they involve non-independent transmission providers and CAISO, as an independent transmission provider that is independent of its market participants, is subject to a more flexible standard. *PacifiCorp* is further distinguishable from CAISO's revised Tariff because the revised Tariff does not provide a unique way of demonstrating commercial interest that is only available to LSE-affiliated projects. Only the highest scoring interconnection requests under the tripart scoring criteria in Cluster Study Criteria 1 and 3 proceed to the cluster study and all interconnection requests must meet the same Cluster Study Criteria (1 or 3) to advance to the cluster study. *Xcel* is further distinguishable from CAISO's revised Tariff because

53. Next, the show cause proceeding that Vistra raises is also distinguishable from this proceeding. The show cause proceeding focuses on, among other things, whether it is unduly discriminatory to allow transmission owners in RTOs/ISOs to unilaterally elect the TO Initial Funding option for network upgrades, which may increase the costs of interconnection service, resulting in barriers to interconnection and undue discrimination among interconnection customers.²³³ As such, the show cause order pertains to whether a transmission owner may elect a single financing mechanism in an unduly discriminatory or preferential fashion, which occurs after the interconnection customer has entered the generator interconnection study process. In contrast, LSEs in CAISO lack the ultimate authority to determine which projects are studied or how network upgrades are financed, and their limited role in allocating commercial interest points is subject to CAISO oversight.²³⁴ Interconnection customers proceed to study based on a three-part scoring system, of which commercial interest scoring constitutes 30% of total scoring, and the financing of network upgrades is based on the zonal location in which the interconnection customer chooses to interconnect.

54. Finally, we address below Vistra's contention that the Commission could not reasonably rely on CAISO's independent oversight because CAISO has "outsourced" to LSEs the process and standards by which commercial interest points (and by extension, interconnection access) are awarded.²³⁵

the affiliate limitation restricts the amount of LSE-affiliated generation that can receive commercial interest points, and commercial interest points are only 30% of an interconnection request's total score. Unlike the non-independent transmission provider in *Xcel*, the revised Tariff prevents LSE-affiliated projects from usurping an independent power provider's opportunity to proceed to the cluster study. *E.On* is distinguished *infra* P 70. *CPUC* involved transmission incentives and not generation interconnection or undue discrimination.

²³³ Show Cause Order, 187 FERC ¶ 61,170 at PP 44, 46.

²³⁴ See, e.g., CAISO, CAISO eTariff, app. KK, §§ 3.5.2.1, 3.5.4 (Scoring Process); *id.* § 4, §§ 4.1.1.1 (Load Serving Entity Points) 4.1.2 (Auction Process) 4.3 (Criteria for Energy Only Requests Eligible for Cash Reimbursement) 4.3.1 (Load Serving Entity Points); see also *infra* Section IV.C.3.

²³⁵ Vistra Rehearing Request at 21. See *infra* Section IV.C.

B. Proxy for Commercial Viability

1. Rehearing Request

55. CEAs and Vistra challenge the Commission’s finding that commercial interest points are a reasonable proxy for commercial viability.²³⁶ Vistra argues the Commission summarily dismissed arguments and record evidence showing that commercial interest points are not an indicator of commercial viability, and it is unreasonable to use them to distinguish among interconnection customers.²³⁷ CEAs argue that the Commission’s finding that commercial interest is a proxy for project viability is contrary to Commission precedent.²³⁸

56. Vistra states that, to support its finding that commercial viability is a valid basis for distinguishing between interconnection customers, the Commission cited CAISO’s prior approach of evaluating projects’ commercial viability based on whether projects had been able to obtain a PPA with an off-taker.²³⁹ Vistra states that, based on this, the Commission summarily concluded that commercial interest points are “an acceptable proxy for commercial viability.”²⁴⁰ Vistra argues, unlike commercial interest points, a PPA is “a real-world indicator” that both parties committed to ensuring the project will

²³⁶ CEAs Rehearing Request at 4; Vistra Rehearing Request at 27-29, 41-42.

²³⁷ Vistra Rehearing Request at 41-42 (citations omitted).

²³⁸ CEAs Rehearing Request at 4 & n.12 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 695 (“We are also persuaded by commenters who express concerns that the non-financial commercial readiness demonstrations in the NOPR proposal may not necessarily serve as appropriate indicators of a proposed generating facility’s commercial viability on a national basis.”); *PSCo*, 183 FERC ¶ 61,166 at P 64 (“We find that PSCo’s proposal to require interconnection customers to either meet the requirements under the proposed generation deployment option or one of PSCo’s three existing, unchanged, commercial readiness demonstration options alone is likely too stringent for independent power producers to meet.”)); *see also id.* at 6 & n.21 (quoting *Cal. Indep. Sys. Op. Corp.*, 166 FERC ¶ 61,113, at P 24 (2019) (accepting under the independent entity variation standard CAISO’s proposal to expand the applicability of commercial viability criteria to ensure that only viable projects remain in the queue process)); *see also* Vistra Rehearing Request at 23-30.

²³⁹ Vistra Rehearing Request at 27 & n.87; *see also* CEAs Rehearing Request at 6 & n.21 (citing *Cal. Indep. Sys. Op. Corp.*, 166 FERC ¶ 61,113, at P 24 (2019)).

²⁴⁰ Vistra Rehearing Request at 27 & n.88 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 174).

achieve commercial operation.²⁴¹ Vistra reiterates its argument that commercial interest points have no objective criteria or guidelines that LSEs must use to allocate their commercial interest points, and therefore there is no basis for CAISO to claim they will serve as a reliable proxy for projects' relative commercial viability.²⁴²

57. Vistra argues the closest the Commission came to addressing whether commercial interest is an accurate measure of commercial viability is its finding that "on balance, we find that CAISO's filing reasonably reflects LSEs' role in resource procurement in CAISO."²⁴³ Vistra contends LSEs' role in resource procurement is not a rational basis for finding the allocation of commercial interest points is a reasonable proxy for projects' commercial viability.²⁴⁴ Vistra argues nothing in CAISO's proposal requires LSEs to allocate points based on any specific commercial viability-related criteria, such as the relative commercial viability of projects or interest in entering into a PPA. Instead, Vistra contends that commercial interest points may be awarded for any reason the LSE chooses, including requiring prospective interconnecting generators to pay non-refundable deposits (ostensibly in connection with exclusivity agreements).²⁴⁵

2. Commission Determination

58. We continue to find commercial interest points are a reasonable proxy for commercial viability that will enable CAISO to prioritize the study of the most viable and needed interconnection requests.²⁴⁶ This, in turn, will help ensure that LSEs meet their resource adequacy requirements and support reliability in CAISO.

59. No party disputes that LSEs have an essential role in resource procurement under California state law²⁴⁷ and no party contests the fact that resource adequacy requirements obligate LSEs to procure resources with specific operating characteristics.²⁴⁸ As a result,

²⁴¹ *Id.* at 27.

²⁴² *Id.* at 27, 29.

²⁴³ *Id.* at 28 & n.94 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 179).

²⁴⁴ *Id.* at 28.

²⁴⁵ *Id.* at 29.

²⁴⁶ Queue Reform Order, 188 FERC ¶ 61,225 at P 174.

²⁴⁷ Transmittal at 49.

²⁴⁸ *See, e.g.*, PG&E Comments at 3.

we continue to find that, as CAISO explained, LSE assessments of the resources needed to meet these directives “is the best indicator of which resources are likely to obtain long-term contractual support.”²⁴⁹ Indeed, CAISO’s existing Tariff Transmission Plan deliverability allocation rules allocate deliverability to interconnection customers based on procurement (i.e., PPAs), similarly reflecting that the role LSEs play in resource adequacy procurement appropriately informs the interconnection process.²⁵⁰ For example, section 8.9.2 of CAISO’s existing Generator Interconnection and Deliverability Allocation Procedures, or GIDAP, in Appendix DD to the CAISO Tariff, as well as the Resource Interconnection Standards, first awards available Transmission Plan deliverability to those interconnection customers with PPAs, then to those negotiating or shortlisted for PPAs, then to other projects.²⁵¹ CAISO’s use of commercial interest points effectively accelerates the timing of the commercial interest determination, so that it occurs earlier in the process, which helps CAISO to prioritize among the plethora of interconnection requests seeking scarce deliverability on the CAISO transmission system.²⁵² In the near term, deliverability on CAISO’s transmission system can be viewed as a finite resource and CAISO appropriately sought to prioritize interconnection requests based on their viability and usefulness to LSEs on its system. Using commercial interest points as a proxy for commercial viability will assist CAISO in distinguishing between viable and speculative projects.²⁵³ Viewed through this lens, CAISO’s use of commercial interest points to identify commercially viable and needed projects is consistent with the type of commercial interest demonstration and prioritization principles that the Commission has already accepted as part of CAISO’s interconnection process. It is also consistent with CAISO’s objective to revise its Tariff to “tighten

²⁴⁹ CAISO Answer at 26

²⁵⁰ *Cal. Indep. Sys. Op. Corp.*, 166 FERC ¶ 61,113, at PP 1, 4, 10 (accepting Tariff revisions requiring interconnection customers to provide copies of their power purchase agreements when demonstrating commercial viability).

²⁵¹ CAISO Answer at 26 & n.67 (citing *Cal. Indep. Sys. Operator Corp.*, 166 FERC ¶ 61,113, at P 1).

²⁵² Transmittal at 49; CAISO Answer at 26.

²⁵³ Transmittal at 49. CAISO stated that without sufficient differentiation based on commercial interest, it would have to rely on either locational or financial mechanisms to reach more reasonable queue volumes, which it deems “less than ideal proxies to determine which projects are likely to get commercial interest in the end.” *Id.*

linkages” among resource and transmission planning, generator interconnection, and procurement processes.²⁵⁴

60. Thus, we disagree with the contention that the Commission unreasonably relied on its previous acceptance of CAISO’s proposals to evaluate commercial viability through the requirement to submit PPAs, including PPAs with affiliates, to support commercial interest points as a viable proxy for commercial viability.²⁵⁵ Rather, relying on PPAs and authorizing LSEs to award commercial interest points prior to entering into PPAs both reflect LSEs’ active role in the procurement process, albeit at different points in the time continuum. We therefore also disagree with Vistra’s argument that resource adequacy is not a valid basis for finding that commercial interest points are a reasonable indicator of project viability.²⁵⁶

61. Vistra contends commercial interest points are not a reliable proxy for projects’ relative commercial viability because there are no objective criteria or guidelines that LSEs must use to allocate their commercial interest points.²⁵⁷ While we discuss this argument further in the section below,²⁵⁸ CAISO reasonably explained that it did not establish uniform criteria defining commercial interest points “to avoid dictating how and why LSEs should prefer one project over another, an area in which the CAISO lacks both expertise and jurisdiction.”²⁵⁹ We further note that resource adequacy requirements may vary from LSE to LSE and change over time, from cluster to cluster. We find the lack of standardized criteria in the Tariff defining commercial interest points does not make commercial interest points an unreliable proxy for commercial viability. Rather, authorizing LSEs to craft their own commercial interest points selection criteria to reflect their specific procurement needs (and allowing non-LSEs to identify which projects support their corporate sustainability goals) provides flexibility to enable LSEs and non-LSEs to identify the most commercially viable and needed projects over time. It allows LSEs to establish and modify the way they allocate commercial interest points from cluster to cluster to reflect their ongoing needs, as requirements change over time.

²⁵⁴ *Id.* at 1, 4.

²⁵⁵ See Vistra Rehearing Request at 27 & n.88 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 174).

²⁵⁶ *Id.* at 28.

²⁵⁷ *Id.* at 27-28.

²⁵⁸ See *infra* Section IV.C.1.

²⁵⁹ Transmittal at 43.

62. We disagree with CEAs' and Vistra's contention that the use of commercial interest points as a proxy for commercial viability is inconsistent with precedent.²⁶⁰ First, as explained above in response to Vistra's arguments, commercial interest points are consistent with the Commission's previous acceptance of PPAs as a proxy for commercial viability.²⁶¹ Second, while CEAs cite to *PSCo*, where the Commission rejected the use of non-financial methods to indicate commercial interest, that case is distinguishable. CEAs ignore the Commission's key determination in *PSCo*, which is that non-financial readiness criteria *in conjunction with* financial readiness criteria under the particular facts of the PSCo tariff are consistent with or superior to the *pro forma* Large Generator Interconnection Procedures.²⁶² Because *PSCo* did not involve an RTO/ISO, the Commission used the stricter "consistent with or superior to" standard rather than the independent entity variation standard applicable to CAISO.²⁶³ Moreover,

²⁶⁰ Vistra Rehearing Request at 28; CEAs Rehearing Request at 4 & n.12 (citing Order No. 2023, 184 FERC ¶ 61,054 at P 695; *PSCo*, 183 FERC ¶ 61,166, 61,892).

²⁶¹ We note that Vistra and CEAs argue, on the one hand, that commercial interest points are not an appropriate proxy for commercial need because they are not like PPAs, yet, on the other hand, they object that some LSEs are requiring the use of exclusivity agreements, which require the interconnecting generator to agree to provide power to the LSE in the future (i.e., enter into a PPA) in exchange for commercial interest point consideration and allocation. For further discussion of exclusivity agreements, *see infra* Section IV.F.

²⁶² The Commission originally rejected PSCo's non-financial readiness criteria without a companion option to use a financial readiness demonstration because without a financial readiness demonstration option, the non-financial readiness criteria may be unduly discriminatory and therefore not consistent with or superior to the *pro forma* Large Generator Interconnection Procedures. *PSCo*, 183 FERC ¶ 61,166, at PP 65-67 (2023). Subsequently acting on PSCo's Order No. 2023 compliance filing, the Commission rejected PSCo's then-existing \$7.5 million financial commercial readiness demonstration because it was 15 times the interconnection customer's maximum study cost of \$500,000. However, and significantly, the Commission found PSCo's proposal to retain its non-financial readiness criteria consistent with or superior to the revised *pro forma* Large Generator Interconnection Procedures. *Pub. Serv. Co. of Col.*, 191 FERC ¶ 61,121 at PP 98-101.

²⁶³ Order No. 2003, 104 FERC ¶ 61,103 at P 826 ("[w]ith respect to an RTO or ISO . . . we will allow it to seek 'independent entity variations' from the Final Rule . . . This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant"); *Standardization of Small Generator Interconnection Agreements &*

PSCo did not involve scoring criteria to prioritize interconnection requests. Additionally, CAISO's proposal is distinguishable from the rejected proposal in *PSCo* because, under CAISO's proposal, all interconnection customers may solicit commercial interest points from LSEs and non-LSEs, and it is not unreasonably difficult for independent power producers to compete for these points. Independent power producers must satisfy their chosen LSE's selection criteria and the affiliate limitation is capped at 25% of an LSE's total points, leaving 75% of points available to independent power producers. The three-part scoring criteria provide interconnection customers with a reasonable opportunity to demonstrate the viability and need for their projects through a competitive process, as opposed to imposing an unreasonably difficult or impossible barrier to entry for a category of participants, such as the non-financial criteria that *PSCo* had proposed without an alternative financial commercial readiness demonstration. Also, as discussed above, commercial interest points are not determinative, insofar as at least two-thirds of the MW capacity that proceeds to the cluster study will not have commercial interest points.²⁶⁴ Moreover, CAISO, unlike the rejected proposal in *PSCo*, provides four pathways from which interconnection customers may choose to proceed to the cluster study and interconnect to the CAISO transmission system.²⁶⁵

63. Finally, with regard to Order No. 2023, the fact that the Commission declined to accept the non-financial commercial readiness demonstrations it proposed in its Notice of Proposed Rulemaking in light of concerns that they “may not necessarily serve as appropriate indicators of a proposed generating facility’s commercial viability on a *national* basis”²⁶⁶ does not preclude CAISO from justifying the use of other non-financial commercial readiness criteria, i.e., commercial interest points, under the independent entity variation standard in its FPA section 205 proposal. Indeed, the Commission in Order No. 2023 acknowledged its previous acceptance of proposals that include

Procs., Order No. 2006, 111 FERC ¶ 61,220, at PP 447, 549, *order on reh'g*, Order No. 2006-A, 113 FERC ¶ 61,195 (2005), *order granting clarification*, Order No. 2006-B, 116 FERC ¶ 61,046 (2006); *Reform of Generator Interconnection Procs. & Agreements*, Order No. 845, 163 FERC ¶ 61,043, at P 556 (2018), *order on reh'g*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

²⁶⁴ See *supra* PP 15-16, 22, 32; see also *infra* Section IV.D.3.b.

²⁶⁵ CAISO, CAISO eTariff §§ 4.1-4.4.

²⁶⁶ See Order No. 2023, 184 FERC ¶ 61,054 at P 695 (emphasis added). We further note that the Commission found it unnecessary to adopt its proposed non-financial readiness criteria, given the significant, increasing commercial readiness deposits it adopted instead. *Id.* P 694.

commercial readiness demonstration requirements, expressly concluding: “Although we find that commercial readiness deposits are sufficient to address the need for reform in this proceeding, this finding does not preclude transmission providers from adopting non-financial commercial readiness demonstrations, provided they meet the relevant standards when requesting a variation, as discussed above.”²⁶⁷

C. Guidelines, Transparency, and Oversight

64. Rehearing Parties emphasize that LSEs are authorized to allocate commercial interest points, including to affiliated resources, without guidelines, transparency, or jurisdictional oversight to ensure that they are allocated in a non-discriminatory manner.²⁶⁸ As discussed below, we continue to find the Commission reasonably found that authorizing LSEs to design their individual commercial interest selection criteria, in conjunction with the revised Tariff’s transparency, oversight, and other mitigation measures, will ensure the revised generator interconnection process is just and reasonable and not unduly discriminatory or preferential.²⁶⁹

1. Guidelines

a. Rehearing Requests

65. Vistra and Calpine assert that a critical shortcoming of CAISO’s revised Tariff is that it gives LSEs complete discretion over the criteria they use to allocate commercial interest points.²⁷⁰ Calpine argues the commercial interest scoring criterion delegates an imprudent and unlawful amount of discretion to LSEs because there is no specific guidance on how LSEs are supposed to award commercial interest points.²⁷¹ Calpine contends that the criteria LSEs craft can be “wholly untethered from the purpose of the criteria.”²⁷² Vistra argues giving LSEs the discretion to allocate commercial interest points without governing standards is a complete departure from the Commission’s open

²⁶⁷ *Id.* P 701.

²⁶⁸ *E.g.*, Vistra Rehearing Request at 5.

²⁶⁹ Queue Reform Order, 188 FERC ¶ 61,225 at PP 176, 179.

²⁷⁰ Vistra Rehearing Request at 18; Calpine Rehearing Request at 5 (stating that the commercial interest criterion provides “no specific guidance—and therefore no restraint—on how LSEs are supposed to award commercial interest points”).

²⁷¹ Calpine Rehearing Request at 5.

²⁷² *Id.* at 5.

access requirements, which constrain utilities' discretion by requiring the filing of standardized interconnection procedures.²⁷³ Vistra adds that the Commission has repeatedly rejected requests to give transmission-owning utilities discretion over aspects of the interconnection process—even when coupled with explicit tariff language prohibiting the utility from exercising its discretion in an unduly discriminatory or preferential way.²⁷⁴ Calpine argues the “purported limitations have no teeth: Although CAISO requires LSEs to publicly post their criteria, it puts no limitations on what those criteria might be.”²⁷⁵ CEAs reiterate their objection that LSEs have undue control over project selection before key interconnection study data, like costs, is available.²⁷⁶

b. Commission Determination

66. We disagree that the Queue Reform Order “delegates an imprudent and unlawful amount of discretion to LSEs” in designing their commercial interest criteria.²⁷⁷ On the contrary, we find CAISO reasonably did not prescribe standardized criteria in the Tariff that LSEs must use to award points. As CAISO explained, given its lack of expertise and jurisdiction over procurement, “it carefully designed the LSEs’ requirements to reflect the LSEs’ and their LRAs’ role in procurement to avoid ‘dictating’ why LSEs should choose one project over another.”²⁷⁸ CAISO’s decision not to standardize criteria in the revised Tariff serves a practical function. It enables each of the roughly 70 participating LSEs to design the specific criteria that will address its unique local regulatory authority-established resource adequacy needs, and to adjust those criteria over time, as needed, from cluster to cluster. California is a large and diverse state, and the resource adequacy and procurement needs in San Diego, for example, differ from those in the rural areas

²⁷³ Vistra Rehearing Request at 19 & n.64 (citing Order No. 2003, 104 FERC ¶ 61,103 at PP 11-12).

²⁷⁴ *Id.* at 19 (citing *E.ON*, 137 FERC ¶ 61,076 at P 39 (“While MISO and the MISO Transmission Owners argue that the fact that the Tariff requires that each election by a transmission owner must be made on a ‘non-discriminatory and consistent basis’ eliminates any concerns about undue discrimination, we believe the presence of this language alone in this context is insufficient to protect against the possibility of undue discrimination.”)).

²⁷⁵ Calpine Rehearing Request at 10.

²⁷⁶ CEAs Rehearing Request at 10 & n.35 (citing CEAs Protest at 6).

²⁷⁷ Calpine Rehearing Request at 5.

²⁷⁸ Transmittal at 43.

north of San Francisco.²⁷⁹ Not standardizing commercial interest criteria eliminates the potential for including overly restrictive criteria in the Tariff that would prevent certain LSEs from allocating points to projects that meet their resource adequacy needs, hindering the purpose of the revised Tariff and potentially jeopardizing reliability.

67. We find Vistra’s concern that LSEs’ selection criteria could be “wholly untethered from the purpose of the criteria,”²⁸⁰ even if theoretically possible, highly unlikely in practice. As the Commission pointed out in the Queue Reform Order, LSEs must comply with resource adequacy requirements to avoid penalties.²⁸¹ LSEs therefore have an incentive to design selection criteria that will help them identify the projects they need to fulfill their resource adequacy requirements. Furthermore, as Joint POUs pointed out, “local government requirements generally prohibit utilities from engaging in financial speculation, such as procurement of energy products in excess of quantities needed to meet load serving obligations, or transacting in energy products in a way that is untethered to the utilities’ operational and load service needs.”²⁸² Although we have

²⁷⁹ For example, CAISO conducts an annual Local Capacity Technical Study to determine the amount of Local Capacity Area Resources needed. *See* CAISO, CAISO eTariff, § 40.3 (Local Capacity Area Resource Requirements for Scheduling Coordinators for LSEs) (0.0.0). Similarly, CAISO conducts an annual study to determine the Flexible Capacity Need of the CAISO Balancing Authority Area for each month of the next calendar year. CAISO, CAISO eTariff, § 40.10 (Flexible Resource Adequacy Capacity) (0.0.0). In doing so, CAISO will inevitably determine that the amount of annual and monthly Flexible Resource Adequacy and Local Capacity Area Resources needed in San Diego, for example, is different from those needed in other parts of the Balancing Authority Area.

²⁸⁰ Calpine Rehearing Request at 5.

²⁸¹ Queue Reform Order, 188 FERC ¶ 61,225 at P 19 & n.332 (citing California Community Choice Association Answer at 5); *see also* Joint POUs Answer at 2 (“LSEs face stiff penalties for failure to meet these procurement and reliability goals.”).

²⁸² Joint POUs Answer at 16-17; *see also, e.g.*, Cal. Pub. Util. Code § 399.14 (Application by electrical corporation for approval to construct, own, and operate an eligible renewable energy resource) (authorizing the CPUC to apply traditional cost-of-service ratemaking to applications for new renewable energy resources and construction projects; specifying that construction certificates must define the maximum reasonable and prudent costs for construction and initial operation) (West 2025); *id.* § 399.15 (West 2024) (Annual renewables portfolio standard procurement requirements; implementation; penalties; cost limitation) (in deciding whether to waive penalties, CPUC will consider, among other things, whether it was beyond the retail seller’s control to have taken “all reasonable operational measures to maximize cost-effective deliveries of electricity from

previously recognized that, as a general matter, transmission-owning LSEs may be motivated to hinder competition,²⁸³ the record here lacks any persuasive reason why, in light of these incentives, LSEs would design and post selection criteria that would undermine the purpose of identifying the most commercially viable and needed resources.

68. We disagree with Vistra's contention that giving LSEs the discretion to allocate commercial interest points without governing Tariff standards is "a complete departure from FERC's open access requirements, which constrained utilities' discretion by requiring the filing of standardized interconnection procedures."²⁸⁴ LSEs, even those who own transmission, are not preventing interconnection customers from interconnecting to the transmission system or accessing transmission, which were the animating reasons behind requiring the *pro forma* LGIP and *pro forma* LGIA to ensure open access. Rather, LSEs are allocating a limited number of points to projects that meet their criteria for discerning commercial viability to help CAISO winnow the unprecedented volume of interconnection requests. Moreover, we reiterate that because CAISO limited commercial interest points to 30% of the interconnection customer's total score, and two-thirds of interconnection customers' capacity will proceed to the cluster study without commercial interest points, the weight of LSE influence is limited.²⁸⁵

69. Further, as discussed above, undue discrimination analysis under FPA section 205 is fact specific. Accordingly, the fact that the Commission (in *E.On*) previously rejected requests to give transmission-owning utilities discretion over aspects of the interconnection process—even when coupled with explicit tariff language prohibiting the utility from exercising its discretion in an unduly discriminatory or preferential way²⁸⁶—does not preclude allowing LSEs the discretion here to design commercial interest point

eligible renewable energy resources in advance of transmission availability;" and "[p]rudently managed portfolio risks, including relying on a sufficient number of viable projects").

²⁸³ *E.g.*, Order No. 2003, 104 FERC ¶ 61,103 at P 19.

²⁸⁴ Vistra Rehearing Request at 19 & n.64 (citing Order No. 2003, 104 FERC ¶ 61,103, at PP 11-12).

²⁸⁵ Indeed, the Cluster 15 Report shows that the majority of projects in Cluster Study 1 proceeded to study without commercial interest points. Cluster 15 Report at 9, Fig. 5, <https://www.caiso.com/documents/summary-of-cluster-15-intake-scoring-results.pdf>.

²⁸⁶ Vistra Rehearing Request at 19 (citing *E.ON*, 137 FERC ¶ 61,076 at P 39).

criteria.²⁸⁷ *E.On* involved a funding option in the MISO tariff, which gave the individual transmission owner the broad unilateral discretion to elect a network upgrade funding option that created an opportunity for discrimination because it was more expensive for interconnection customers.²⁸⁸ Because the transmission owner had the sole discretion to elect the interconnection customer's funding option, the fact that the transmission owner was acting within an RTO did not mitigate its opportunity to unduly discriminate. As in the show cause proceeding discussed above,²⁸⁹ *E.On* is distinguishable from the present case because LSEs in CAISO lack the ultimate authority to determine which interconnection requests are studied or how network upgrades are financed,²⁹⁰ and their limited role in allocating commercial interest points is subject to CAISO oversight, as discussed below.²⁹¹

70. Finally, we are not persuaded by CEAs' argument that commercial interest points give LSEs "undue control" over project selection early in the interconnection process, before key interconnection study data, like costs, is available.²⁹² As the Commission pointed out in the Queue Reform Order, "only one-third of available MW capacity identified in the cluster study will be eligible to receive LSE commercial interest points, while CAISO will study up to 150% of available capacity for each zone."²⁹³ Additionally, all interconnection customers are privy to the same public information when selecting from which LSE/non-LSE to seek points. Therefore, LSEs do not have "undue control."

²⁸⁷ See, e.g., *Cities of Newark v. FERC*, 763 F.2d 533, 546 (3d Cir. 1985) (stating that "differences in rates are justified where they are predicated upon factual differences between customers and that these differences may arise from differing costs of service or otherwise").

²⁸⁸ *E.On*, 137 FERC ¶ 61,076 at P 38. The Commission also objected to the fact that MISO's tariff enabled transmission owners to avoid many of the risks and costs associated with financing a new construction project, while retaining benefits as if they did incur some of those risks and costs.

²⁸⁹ See *supra* P 53.

²⁹⁰ *E.On*, 137 FERC ¶ 61,076 at PP 37-40.

²⁹¹ See *infra* Section IV.C.2 and IV.C.3.

²⁹² CEAs Rehearing Request at 10 & n.35 (citing CEAs Protest at 6).

²⁹³ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

2. Transparency

a. Rehearing Requests

71. Rehearing Parties contend the transparency measures that CAISO proposed, such as requiring LSEs to post their selection criteria or consideration factors, are insufficient to ensure that LSEs do not exercise undue discrimination or preference.²⁹⁴ CEAs argue the transparency requirements provide little protection for unaffiliated or non-preferred independent power producers' generators.²⁹⁵ Vistra states that, rejecting pleas to establish guidelines and address "questionable practices" such as exclusivity agreements, the Commission found the requirement that LSEs must publicly post their selection criteria will mitigate any risks of undue discrimination.²⁹⁶ Vistra argues the Commission failed to explain why requiring LSEs to post their criteria is sufficient to mitigate undue discrimination concerns.²⁹⁷ Calpine states that although CAISO requires LSEs to publicly list their criteria, there are no substantive checks on those criteria.²⁹⁸ Vistra emphasizes that there is nothing in the Tariff that would require LSEs to consistently *apply* their posted criteria to affiliated and unaffiliated resources.²⁹⁹ Additionally, Vistra points out that even if an LSE applies the same criteria to all customers, LSEs will still have an economic incentive to *design* criteria that favor their own or affiliated resources.³⁰⁰ Vistra asserts that it is precisely for this reason that the Commission requires utilities relying on a competitive solicitation process to justify a sale with an affiliate by showing that the process has been "designed and implemented without undue preference for an affiliate."³⁰¹

²⁹⁴ See Calpine Rehearing Request at 6 & n.17 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176); CEAs Rehearing Request at 13; Vistra Rehearing Request at 21-22, 40.

²⁹⁵ CEAs Rehearing Request at 13.

²⁹⁶ Vistra Rehearing Request at 18-19 & n.62 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 178).

²⁹⁷ Vistra Rehearing Request at 21.

²⁹⁸ Calpine Rehearing Request at 10.

²⁹⁹ Vistra Rehearing Request at 21.

³⁰⁰ *Id.*

³⁰¹ *Id.* at 21 & n.72 (citing *Black Hills Colo. IPP, LLC*, 135 FERC ¶ 61,197, at P 18 (2011)); see also CEAs Rehearing Request at 15 (stating that the Commission's

72. Vistra further contends that the Commission failed to consider how difficult it will be for customers and regulators to detect and remedy undue discrimination under the revised Tariff.³⁰² Vistra states that the Commission has recognized “it is often hard to determine, on an after-the-fact basis, whether an action was motivated by intent to favor affiliates or simply reflects the application of technical requirements.”³⁰³ Thus, Vistra argues that requiring LSEs to post their criteria is not enough to ensure that commercial interest points are allocated in a manner free of undue discrimination or preference.

73. CEAs assert that CAISO identified Integrated Resource Plan (IRP) best practices as the model for how LSEs will participate in the LSE allocation process.³⁰⁴ CEAs assert that neither CAISO nor the Commission have jurisdiction over the IRP Process or whether an LSE complies with any applicable safeguards against undue discrimination or preference.³⁰⁵

b. Commission Determination

74. We continue to find the transparency measures in the revised Tariff will work in tandem with the LSEs’ selection criteria to discipline the commercial interest scoring process, mitigating the potential for undue discrimination.³⁰⁶ CAISO proposed, and the Commission accepted, the following transparency measures in the Queue Reform Order:

request for proposal process relies on a third party to administer it to protect against the potential for undue discrimination).

³⁰² Vistra Rehearing Request at 22.

³⁰³ *Id.* at 22 & n.73 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,005).

³⁰⁴ CEAs Rehearing Request at 13 & n.57 (citing Transmittal, attach. D, 2023 Track 2 Final Addendum at 12) (“LSEs should seek projects that best align with procurement and resource needs, as indicated by integrated resource plans or other relevant planning documents.”).

³⁰⁵ *Id.* at 14 & n.58 (citing Transmittal, attach. D, 2023 Track 2 Final Addendum at 9) (stating that CAISO “does not intend to dictate procurement rules. To the extent LSEs consider the LSE allocation process as part of procurement, LSEs naturally will comply with their own procurement requirements;” CAISO is not in a position to establish additional procurement requirements beyond those established by the CPUC or LRAs).

³⁰⁶ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

(1) requiring LSEs to opt-in to the commercial interest point program;³⁰⁷ (2) requiring LSEs to post their selection criteria and program contact on their websites;³⁰⁸ and (3) CAISO's posting of a list of participating LSEs, their program contact, and the number of points each LSEs is authorized to allocate in each cluster.³⁰⁹ Also, as noted above, CAISO informs each interconnection customer of the criterion/criteria that determined whether it advanced to the cluster study, and it is authorized to post aggregate results.³¹⁰ The Commission directed CAISO to submit informational reports for Clusters 15 and 16,³¹¹ and CAISO also posted the aggregate results of Cluster 15 on its website. We find these transparency measures, in conjunction with limiting the amount of points an LSE can allocate to any interconnection customer and its affiliates, reduce the opportunity for undue discrimination.

75. Requiring LSEs to opt into the program provides transparency as to which LSEs are participating in the process and enables CAISO to determine and publicly share the amount of commercial interest points each participating LSE has available to allocate to interconnection requests. In addition, requiring each LSE to publicly post its criteria on its own website helps interconnection customers "comparison shop" among potential LSEs from whom to seek points. And, if LSEs' criteria prompt concern, the interconnection customers or other industry members could bring that to CAISO's and/or the Commission's attention.³¹² CAISO's posting of the participating LSEs and their point allocation amount and contact information further facilitates interconnection customers' "comparison shopping" for the LSE(s) from whom they are most likely to garner points. Together these transparency measures will enable the interconnection customer to select the LSE whose criteria are most aligned with the characteristics of their project, increasing the likelihood of advancing to the cluster study and having the opportunity to interconnect to the CAISO system through Cluster Study Criteria 1 or 3.

³⁰⁷ CAISO, CAISO eTariff, app. KK, § 4.1.1.1(1).

³⁰⁸ *Id.*

³⁰⁹ *Id.* § 4.

³¹⁰ *Id.*

³¹¹ Queue Reform Order, 188 FERC ¶ 61,225 at P 232.

³¹² Although the Tariff lacks a mechanism for immediate redress, the posting of criteria greatly reduces the potential for irregular criteria, and nothing prevents CAISO or an industry participant, for example, from informally persuading an LSE to publicly revise or withdraw a specific criterion.

76. We disagree with Vistra's contention³¹³ that more transparency measures are needed, such as those used in the competitive solicitation context. The affiliate limitation³¹⁴ restricts the number of points LSEs may allocate to their affiliates. CAISO stated that historically, there has been almost no generation development from LSEs or incumbent utilities in CAISO.³¹⁵ Given the historically low levels of LSE-affiliated generation development, the LSEs will have to procure resources beyond what their affiliates offer to meet their procurement needs. Consequently, we are not persuaded that LSEs will be motivated to design criteria that only favor their resources.³¹⁶ We continue to find the affiliate limitation, combined with transparent posting of selection criteria and CPUC and LRA oversight of procurement and resource adequacy combined with CAISO oversight of the commercial interest point scoring, will sufficiently preclude LSEs from designing criteria that will unduly discriminate and preference their affiliated resources. Contrary to Rehearing Parties' suggestion, therefore, we find no need for LSEs to make a further transparency showing akin to what utilities relying on a competitive solicitation process must do to justify a sale with an affiliate. The *Edgar-Allegheny* standards³¹⁷ are used to ensure sales to affiliates in a competitive solicitation are not unduly discriminatory or preferential. The Commission has never applied the *Edgar-Allegheny* standards in the generator interconnection context and parties present no persuasive reason to do so here.

77. For similar reasons, contrary to Vistra's contention, we conclude the revised Tariff already includes sufficient measures to mitigate the potential for undue discrimination or preference, i.e., limiting commercial interest points to one-third of a balanced, tri-part score, the affiliate limitation, and the transparency and oversight measures. We continue to find these Tariff measures, when combined with LSEs' need to meet resource adequacy, public policy requirements, and load-serving obligations, are sufficient.³¹⁸

³¹³ Vistra Rehearing Request at 21.

³¹⁴ See *infra* Section IV.D.2.

³¹⁵ See Queue Reform Order, 188 FERC ¶ 61,225 at P 134 n.224; *id.* P 180.

³¹⁶ As discussed below in section IV.D.4, we disagree that a prudent LSE would withhold points from competitors with the expectation that it could rely on other resources selected in the process. There is no guarantee such resources would meet the characteristics the LSE needed to procure or that they would be available and not under exclusive contract to another LSE.

³¹⁷ *Boston Edison Co. Re: Edgar Elec. Energy Co.*, 55 FERC ¶ 61,382 (1991); *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Edgar-Allegheny*).

³¹⁸ Queue Reform Order, 188 FERC ¶ 61,225 at P 179.

Therefore, we conclude it is not necessary for the Tariff to require LSEs to demonstrate how they have applied their selection criteria. Given that LSEs' selection criteria for commercial interest point allocation hover at the intersection of state-jurisdictional procurement matters and Commission jurisdictional generation interconnection, we find CAISO's revised Tariff strikes a reasonable balance.

78. We disagree with Vistra's contention that the Commission failed to consider the difficulty in detecting and remedying undue discrimination under the revised Tariff.³¹⁹ The Commission "acknowledge[d] CAISO's commitment to work with stakeholders to develop solutions should CAISO identify any favoritism toward LSE affiliates occurring after the Tariff revisions are implemented."³²⁰ Further, the Commission considered and found several factors that would mitigate the potential for undue discrimination, which in turn reduce the need to detect it. Particularly noteworthy here are the CPUC's pledge to monitor its jurisdictional LSEs' compliance with CAISO's revised Tariff;³²¹ CAISO's limitations on LSEs' allocation of points to affiliates; and transparency of the LSEs' point allocation, coupled with CAISO's overarching role in the process.³²² Specifically, CAISO's tallying of the commercial interest points and calculation of the total score for each interconnection request supports early detection of any point allocation irregularities. The Tariff authorizes CAISO to seek further information from interconnection customers, LSEs, and LRAs in connection with scoring.³²³ CAISO also communicates to each interconnection customer which criterion was decisive to its advancing to the cluster study or not,³²⁴ and may publish aggregate results of the tri-part

³¹⁹ Vistra Rehearing Request at 22.

³²⁰ Queue Reform Order, 188 FERC ¶ 61,225 at P 176 & n.327 (citing CAISO Answer at 39). CAISO specifically pledged to monitor various components of the interconnection request intake process and coordinate with the CPUC, local regulatory authorities, and stakeholders to adjust any necessary components for Cluster 16 and future clusters, including: transparency of the LSE allocation process; trends in LSE allocations to LSE-sponsored projects; and opportunities to increase coordination with non-LSEs in the scoring process. CAISO further pledged to coordinate with industry participants to revise the Tariff as needed. Transmittal, attach. E (Track 2 Board Memorandum) at 3.

³²¹ CPUC Notice and Comments at 5.

³²² Queue Reform Order, 188 FERC ¶ 61,225 at P 180; *see also infra* Sections IV.C.3; IV.D.3; *see also supra* PP 75-76.

³²³ *Id.*

³²⁴ Transmittal at 32.

scoring process on its website.³²⁵ Moreover, the projects that are selected for study and proceed to interconnection are not secrets that are difficult to detect; eventually what is selected under the tri-part scoring process is listed in CAISO's public interconnection queue data. Regarding redress, CAISO pledged to monitor and tweak the process as necessary, using the results of Cluster 15 to inform Cluster 16, and CAISO has the FPA section 205 right to propose revisions.³²⁶

3. Oversight

a. Rehearing Requests

79. Vistra argues LSEs are authorized to award commercial interest points without any standards or oversight,³²⁷ and the Commission has recognized that providing transmission-owning utilities discretion over the rates, terms, and conditions of service creates opportunities for undue discrimination.³²⁸ Vistra states that in accepting CAISO's proposal, the Commission ignored precedent in which it rejected as unduly discriminatory proposals to grant utilities discretion over aspects of the interconnection process.³²⁹ Vistra states that in those cases, the Commission recognized LSEs' competitive incentives, required RTOs to be solely responsible for making decisions on requests for service, and acknowledged the difficulty of identifying discriminatory conduct.³³⁰

80. Vistra emphasizes that CAISO plays no role in awarding commercial interest points; rather, it "outsources" the process and standards upon which commercial interest points are awarded to LSEs, including vertically integrated LSEs.³³¹ Vistra asserts there

³²⁵ CAISO, CAISO eTariff, app. KK, § 4.

³²⁶ 16 U.S.C. § 824d.

³²⁷ Vistra Rehearing Request at 40.

³²⁸ *Id.* at 40 (citing Order No. 890, 118 FERC ¶ 61,119 at P 26).

³²⁹ *Id.* at 40-41 (citing *E.ON*, 137 FERC ¶ 61,076 at P 39; Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 30,993; *City of Centralia v. FERC*, 213 F.3d 742, 749 (D.C. Cir. 2000); *Sea Robin Pipeline Co. v. FERC*, 795 F.2d 182, 188 (D.C. Cir. 1986)).

³³⁰ *Id.* at 22 & n.73 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,005).

³³¹ Vistra Rehearing Request at 5, 17-18, 40.

is no evidence³³² and no citation to any authority to support the conclusion that the CPUC or any other California regulatory authority has oversight of LSE awards of commercial interest points.³³³ Vistra reiterates that, even if there were evidence that an LRA was overseeing commercial interest point awards, such oversight would be limited because such points are intended to distinguish among projects for the purpose of allocating interconnection access, over which the Commission has sole jurisdiction.³³⁴

81. CEAs argue that to the extent the Commission “speculated” that other regulatory entities might detect LSEs favoring their affiliates under CAISO’s new rules, the Commission abdicated its responsibility over non-discriminatory rate setting.³³⁵ CEAs state that Congress charged the Commission, not the CPUC, with ensuring that the rates, terms, and conditions of jurisdictional service are not unduly discriminatory or preferential.³³⁶ CEAs argue the Commission’s statement that LSEs are subject to regulation by the CPUC or their LRA and that CAISO is committed to identifying any favoritism to LSE affiliates³³⁷ is an acknowledgment that LSE preference is a “real possibility” and does not square with the Commission’s statement in Order No. 2003 that it “would find any policy that creates opportunities for such discriminatory behavior to be unacceptable.”³³⁸

82. Calpine similarly argues the “purported transparency and oversight restrictions” will not sufficiently constrain LSEs, and thus provide “no real limitation.”³³⁹ And, even

³³² *Id.* at 18 & n.59 (citations omitted).

³³³ *Id.* at 18 & n.58 (citing Vistra Protest at 13) (“Given that neither the CPUC nor other local regulatory authorities have jurisdiction over transmission and the proposal does not contemplate any role of the CAISO in evaluating the allocation of Commercial Interest Points, it would appear that the oversight CAISO references in its Filing is entirely illusory.”); *id.* (noting the limits of CPUC jurisdiction over certain LSEs); Vistra Answer at 6)).

³³⁴ Vistra Rehearing Request at 18.

³³⁵ CEAs Rehearing Request at 7-8 & n.26 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

³³⁶ *Id.* at 9.

³³⁷ *Id.* at 8 & n.27 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

³³⁸ CEAs Rehearing Request at 8 & n.27 (citation omitted).

³³⁹ Calpine Rehearing Request at 10 & n.31 (citing requirement that LSEs “publicly post their selection criteria or consideration factors for awarding points”

though the Commission expects CAISO and the CPUC to play an “independent and overarching role” in supervising the commercial interest scoring process, they provide no objective criteria against which to measure and restrain the LSEs’ conduct.³⁴⁰

83. CEAs argue that CAISO is not in the position to act as an independent third party to administer this process involving LSEs and the Commission has not acted to ensure appropriate safeguards are in place to guard against discrimination in favor of LSEs, their affiliates, or favored independent power producers.³⁴¹ Calpine argues that the Commission mistakenly relies on the fact that the “transmission-owning LSEs have transferred operational control to CAISO.”³⁴²

b. Commission Determination

84. We are not persuaded by Rehearing Parties’ arguments that CAISO’s oversight of the commercial interest point scoring process is insufficient or that the Commission has improperly allowed CAISO to delegate its Commission-jurisdictional generation-interconnection related obligations to non-jurisdictional entities.³⁴³ As the Commission pointed out in the Queue Reform Order, CAISO is an independent transmission provider that does not own generation and to which the Commission’s concerns regarding undue preference toward affiliates do not apply.³⁴⁴ Further, as detailed above,³⁴⁵ CAISO is

provides “transparency [that] will help to mitigate any potential for undue preference by LSEs”).

³⁴⁰ *Id.* at 10 & n.32 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 80) (“[W]e find that CPUC’s support of CAISO’s proposal and CAISO’s limitations on LSEs’ allocation of points to affiliates mitigate potential concerns that LSEs could unduly favor their affiliates in the LSE point allocation process.”).

³⁴¹ CEAs Rehearing Request at 15.

³⁴² Calpine Rehearing Request at 9 & n.28 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

³⁴³ Calpine Rehearing Request at 10; Vistra Rehearing Request at 5,17-18, 40; *see also* Vistra Protest at 7 (“The Commission cannot surrender its jurisdiction over the allocation of interconnection access and simply ‘trust’ that CAISO’s outsourcing of its allocation of interconnection access to LSEs will result in just, reasonable, and not unduly discriminatory or preferential rates.”).

³⁴⁴ Queue Reform Order, 188 FERC ¶ 61,225 at P 180.

³⁴⁵ *See supra* P 75.

closely involved throughout the point allocation process.³⁴⁶ For instance, the Tariff provides that LSEs must inform CAISO whether they choose to opt into the commercial interest points program and CAISO determines and posts a list of the number of points each participating LSE has available to allocate.³⁴⁷ CAISO reviews and validates all scoresheets and the Tariff authorizes CAISO to “confirm any information as necessary with Load Serving Entities, counterparties, or Local Regulatory Authorities.”³⁴⁸ CAISO also informs each interconnection customer which criterion was decisive to its interconnection request.³⁴⁹ In addition to the report on Cluster Studies 15 and 16 that the Commission required, the Tariff also authorizes CAISO to post aggregate results of commercial interest points scoring.³⁵⁰ Thus, we find CAISO maintains an overarching, independent oversight function over commercial interest points and the rest of the scoring process. As the independent entity overseeing the generator interconnection process, as well as the functioning of its electricity markets, including resource adequacy oversight, CAISO has every incentive to monitor the process to ensure it continues to function fairly and effectively.

85. Moreover, the fact that LSEs are authorized to allocate commercial interest points to affiliates and have chosen developers based on transparent, publicly-available criteria, as part of a balanced package of Tariff revisions, does not impugn CAISO’s independence. CAISO has no incentive to discriminate among interconnection requests. CAISO explained that it proposed Tariff requirements to ensure a “transparent, competitive process” that LRAs (and the CPUC) “can easily monitor and regulate.”³⁵¹ The CPUC, which has jurisdiction over investor-owned utilities and community choice aggregators in CAISO, has explained that it intends to monitor its jurisdictional LSEs’ compliance with CAISO’s revised Tariff.³⁵² We reiterate that CAISO also committed to

³⁴⁶ See *supra* PP 75-76 (detailing CAISO’s involvement and oversight); CAISO, CAISO eTariff, app. KK, § 4.

³⁴⁷ CAISO, CAISO eTariff, app. KK, § 4.1.1.1(1); *id.* § 4.

³⁴⁸ CAISO, CAISO eTariff, app. KK, § 3.5.2.1 (Validation Process) (“The CAISO will validate Interconnection Requests that satisfy the Cluster Study Criteria in Section 4 of this [Resource Interconnection Standards]”); *id.* § 4 (Cluster Study Criteria) (authorizing CAISO to confirm any information as needed).

³⁴⁹ CAISO, CAISO eTariff, app. KK, § 4; *see also id.*, app. DD, 17.1(f) (Study Procedures and Timelines).

³⁵⁰ *Id.*; *see also* Queue Reform Order, 188 FERC ¶ 61,225 at P 232.

³⁵¹ Transmittal at 43.

³⁵² See Notice of Intervention and Comments of the CPUC at 5 (Aug. 22, 2024);

monitor the results of the interconnection request intake process and coordinate with the CPUC, other LRAs, and stakeholders to adjust any necessary components for Cluster 16 and future clusters, including the transparency of LSE allocation processes; trends in LSE allocations to LSE-sponsored projects; and opportunities to increase coordination with non-LSEs in the scoring process.³⁵³ We therefore disagree with CEAs' contention that the Commission simply "speculated" that other regulatory entities might detect LSEs favoring their affiliates under CAISO's new rules, or the Commission abdicated its responsibility to prevent undue discrimination.³⁵⁴

86. We note that developments since the Commission issued the Queue Reform Order indicate that CAISO is monitoring the process, as promised, and providing information to help the Commission and stakeholders evaluate its efficacy/ongoing reasonableness. For example, CAISO's informational report submitted to the Commission and, to a greater extent, the Cluster 15 Report cross-referenced in the informational report, detail the aggregate results of applying the revised Tariff rules to interconnection requests.³⁵⁵ CAISO has also publicly renewed its pledge to evaluate with stakeholders the efficacy of the Tariff revisions in August 2025, and file updates, as necessary for Cluster 16,³⁵⁶ further showing that CAISO has not abdicated its oversight responsibilities here.

see also Letter from A. Reynolds, President, CPUC, to J. Schori, Chair, CAISO Board of Governors at 2 (May 23, 2024), <https://www.caiso.com/documents/cpucpubliccommentletterinterconnectionprocessenhancementtrack2proposal-may23-2024.pdf> (noting plans to monitor implementation of limitations related to LSE-developed projects).

³⁵³ Transmittal, attach. D (Track 2 Final Addendum) at 3; Transmittal at 51; CAISO Answer at 57 & n.144 (stating that "CAISO has committed to monitoring the results of various components of the interconnection request intake process and coordinating with the CPUC, local regulatory authorities, and stakeholders to ensure competition and open access for cluster 15 and subsequent clusters.") (citing Transmittal, attach. D (Track 2 Final Addendum) at 7-8).

³⁵⁴ CEA Rehearing Request at 7-8 & n.26 (quoting Queue Reform Order, 188 FERC ¶ 61,255 at P 176).

³⁵⁵ Informational Report on Cluster 15 (July 19, 2025), at 2 & n.5 (stating that it "has published a comprehensive analysis of the scoring criteria in cluster 15 and determined that the scoring criteria were successful in identifying first ready project") (citing Cluster 15 Report, <https://www.caiso.com/documents/summary-of-cluster-15-intake-scoring-results.pdf>).

³⁵⁶ *See* Garret Herring, *The Energy Daily*, "California ISO grid connection backlog

87. We disagree with CEAs and Calpine's assertions that CAISO is not functioning as an independent entity when overseeing the revised generation interconnection process when implementing the commercial interest point process in its Tariff.³⁵⁷ As discussed above, CAISO is closely involved throughout the entire commercial interest point process. Moreover, and significantly, CAISO does not own generation or transmission or affiliates; it is the neutral, independent grid operator, and therefore has no incentive to preference any interconnection request.³⁵⁸ And, above all, CAISO retains its FPA section 205 rights and can propose Tariff revisions as needed to ensure the process remains just and reasonable and not unduly discriminatory or preferential.³⁵⁹

D. Limitations on Discretion

88. Rehearing Parties assert that CAISO's efforts to mitigate the risk of undue discrimination and preference are insufficient.³⁶⁰ We address their arguments against various mitigation measures below.

down to 227 GW as reform shows progress" (July 28, 2025).

³⁵⁷ Queue Reform Order, 188 FERC ¶ 61,225 at P 180.

³⁵⁸ See, e.g., Order No. 2003, 104 FERC ¶ 61,103, at PP 26, 822, 827 (describing RTOs/ISOs as independent transmission providers and allowing them to justify deviations from the *pro forma* LGIA and LGIP because they are less likely to act in an unduly discriminatory manner than a transmission provider that is a market participant); *Pub. Serv. Co. of Colo.*, 172 FERC ¶ 61,297, at P 3 & n.20 (2020) (citations omitted) ("Since promulgating the independent entity variation standard, the Commission has consistently supported Order No. 2003's finding that, based on their operating characteristics, RTOs and ISOs are less likely to employ unduly discriminatory interconnection practices, when compared to non-independent transmission operators . . . which own (themselves or their affiliates) generation, and would have reason to favor their own generation over others."); *Xcel*, 41 F.4th at 563 (noting the Commission's recognition that independent operators do not raise the same anti-competitive concerns as vertically integrated operators and that the agency "has therefore consistently approached tariff modification requests from independent operators differently than those from vertically integrated entities") (citations omitted).

³⁵⁹ 16. U.S.C. § 824d; *Atlantic City Elec. Co. v. FERC*, 295 F.3d 1 (D.C. Cir. 2002).

³⁶⁰ E.g., Calpine Rehearing Request at 6; CEAs Rehearing Request at 15.

1. Resource Adequacy

a. Rehearing Requests

89. Quoting the Commission’s determination that “LSEs are required to ensure generation resource development to comply with resource adequacy requirements,” CEAs argue that the Commission did not explain how the resource adequacy requirement would mitigate against undue discrimination.³⁶¹ CEAs argue that the Commission’s finding that it is “unlikely that LSEs would select inferior interconnection requests solely for the purpose of receiving a higher deposit from a potential interconnection customer” because doing so risks compliance with resource adequacy requirements is a “non-sequitur.”³⁶² They maintain that the fact that an LSE has a resource adequacy requirement does not mean it could not discriminate against unaffiliated generators while meeting the requirement.³⁶³

90. Vistra agrees with the Commission that it “may be true that ‘LSEs are motivated by drivers other than competitive advantage.’”³⁶⁴ Nonetheless, Vistra points out that the Commission has consistently recognized that incumbent utilities have an economic incentive to favor their own generation resources over competitors’ resources.³⁶⁵ Vistra argues that the Commission failed to explain why it can rely on LSEs’ obligation to meet resource adequacy requirements to override their economic self-interest in favoring their own generation resources—particularly when CAISO’s proposal grants LSEs complete discretion regarding how to allocate these points.³⁶⁶ Thus, Vistra argues, the Commission’s conclusion that the presence of resource adequacy obligations will ensure

³⁶¹ CEAs Rehearing Request at 11 & n.40 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 177); *see id.* (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

³⁶² CEAs Rehearing Request at 14 & 63 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 178).

³⁶³ CEAs Rehearing Request at 14.

³⁶⁴ Vistra Rehearing Request at 12 & n.40 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 179).

³⁶⁵ *Id.* at 12 & n.41 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 19 (noting that utilities have an “incentive to engage in . . . unduly discriminatory transmission practices”).

³⁶⁶ *Id.* at 12 (emphasis added).

that LSEs will not favor their own generation “defies basic economic logic and two decades of Commission precedent.”³⁶⁷

91. Vistra states that the Commission incorrectly implied that the revised Tariff is justified because failing to grant LSEs the ability to allocate commercial interest points to their affiliates will prevent these resources from securing the deliverability needed to meet resource adequacy needs.³⁶⁸ Vistra argues that an LSE whose resource does not receive a high enough score to obtain deliverability in a Deliverable Zone would have the option of seeking interconnection service within a Merchant Zone, with the only difference being that it would have to pay for the network upgrades needed to provide deliverability.³⁶⁹ Vistra argues that the commercial interest points framework is not necessary to ensure that LSE affiliates will obtain deliverability, but rather that they will have the ability to receive interconnection service on more favorable terms (i.e., reimbursement for the costs of network upgrades) than if they were required to compete on equal footing with other suppliers for interconnection capacity.

92. Vistra argues that state-imposed resource adequacy requirements are not a valid basis for discriminating among interconnection customers.³⁷⁰ Vistra states that in *Xcel Energy Operating Company*,³⁷¹ the Commission previously found that allowing a public utility to prioritize interconnection customers based on their participation in state resource solicitation processes was unduly discriminatory. Specifically, the Commission rejected Xcel’s proposal to perform interconnection studies out of the order in which they were received to prioritize generation that was being developed in connection with a state resource solicitation process.³⁷² Vistra states that the Commission found that Xcel’s proposal would unduly discriminate against interconnection customers that are not part of the state-sponsored bidding process because it would require them to drop out of the

³⁶⁷ *Id.* at 12 & n.42 (citing *New Eng. Power Generators Ass’n v. FERC*, 188 F.3d 202, 211 (D.C. Cir. 2018); Order No. 2003, 104 FERC ¶ 61,103 at PP 12, 696).

³⁶⁸ *Id.* at 9 & n.31 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176 n.323 (noting that resources relied upon to meet resource adequacy requirements “must be studied for sufficient deliverability in the CAISO’s study process.”)).

³⁶⁹ *Id.* at 9 & n.32 (citing Transmittal at 7).

³⁷⁰ *Id.* at 24-26, 41.

³⁷¹ 106 FERC ¶ 61,260 (2004) (*Xcel*).

³⁷² Vistra Rehearing Request at 25 & n.82 (citing *Xcel*, 106 FERC ¶ 61,260 at PP 12-13)).

queue or compete in the wholesale markets on a less than equal footing.³⁷³ Vistra argues that CAISO's commercial interest points proposal allows LSEs to prioritize interconnection customers based on LSEs' state-imposed resource adequacy requirements. Vistra states that, in contrast to the present case, in *Xcel*, the Commission did not engage in balancing Xcel's ability to meet its state-imposed resource solicitation requirements but rather found, without qualification, that it "cannot endorse this type of discriminatory treatment."³⁷⁴ Vistra argues that the Commission failed to acknowledge or explain its departure from precedent and that the Commission cannot justify accepting a proposal that will result in undue discrimination or preference as a "necessary evil" for LSEs to meet their resource adequacy obligations.³⁷⁵

b. Commission Determination

93. We disagree with Vistra's contention that the Commission accepted the revised Tariff as a "necessary evil" to ensure LSEs meet their resource adequacy needs at the expense of unduly discriminating against competitors.³⁷⁶ As CAISO explained, the revised Tariff aligns CAISO's Commission-jurisdictional interconnection process with state and local jurisdictional resource planning and procurement processes.³⁷⁷ No party disputes the fact that LSEs have resource adequacy requirements to fulfill, or that deliverability in Deliverable Zones is finite and scarce compared with the number of customers who seek to interconnect in Deliverable Zones.³⁷⁸ Because LSEs are subject to state laws mandating compliance with environmental and resource adequacy requirements, LSEs, operating under the oversight of and policies established by their LRAs, engage in robust planning and procurement processes to ensure that they have access to energy and capacity that complies with state and local policy requirements,

³⁷³ *Id.* at 25-26 & n.83 (citing *Xcel*, 106 FERC ¶ 61,260 at PP 22-24), 41.

³⁷⁴ *Id.* at 26 & n.84 (citing *Xcel*, 106 FERC ¶ 61,260 at P 23), 41.

³⁷⁵ *Id.* at 9-10.

³⁷⁶ *Id.* at 9-10.

³⁷⁷ CAISO Transmittal at 30.

³⁷⁸ See, e.g., CAISO Answer at 42. CAISO explained that its LSEs have service obligations as well as an obligation to provide resource adequacy, and the area delivery network upgrades identified in the CAISO transmission plan that provide the deliverability interconnection customers request are public policy upgrades to support those resource adequacy obligations. Complying with resource adequacy requirements requires that resources relied upon by a load-serving entity must be studied for sufficient deliverability in CAISO's study process. *Id.*

including renewable attributes, and assure reliable, efficient, and economic service to their customers.³⁷⁹ As the Commission recently recognized in the SPP region, which, like CAISO, does not have a centralized capacity market, LSEs “are the entities most informed on their near-term resource adequacy needs and how to best address those needs.”³⁸⁰ Given the circumstances—i.e., the resource procurement pressures that LSEs face, the fact that resource adequacy resources must be deliverable, the finite deliverability on the CAISO transmission system, and the need to prioritize the overwhelming number of interconnection requests in CAISO’s queue—we continue to find that CAISO (and the Commission) appropriately addressed the LSEs’ procurement needs and concerns about their competitors’ access to the transmission system.³⁸¹

94. Contrary to Vistra’s contention,³⁸² LSEs do not have complete discretion over the allocation of commercial interest points. As discussed above, CAISO reasonably mitigated the potential that LSEs’ allocation of commercial interest points could result in undue discrimination, i.e., via the affiliate limitation, transparency, and oversight measures. Further, the Commission acknowledged resource planning falls within the purview of state and local authorities when it accepted CAISO’s market redesign and

³⁷⁹ Indeed, LSEs are subject to significant penalties for failing to comply with their resource adequacy requirements. Cal. Pub. Utils. Code § 380 (authorizing the CPUC to penalize the investor-owned utilities for failure to meet resource adequacy requirements). For further information on resource adequacy penalties and citations, *see* <https://www.cpuc.ca.gov/industries-and-topics/electrical-energy/electric-power-procurement/resource-adequacy-homepage/resource-adequacy-penalties-and-citations>.

³⁸⁰ *Sw. Power Pool, Inc.*, 192 FERC ¶ 61,062, at P 104 (2025) (accepting expedited study of interconnection requests to address urgent resource adequacy needs in the near term).

³⁸¹ *See* Queue Reform Order, 188 FERC ¶ 61,225 at P 176; *see also id.* PP 160, 177, 181, 183. *See also Cal. Indep. Sys. Operator Corp.*, 175 FERC ¶ 61,245, at PP 141 & nn. 143-163 (2021) (June 2021 Order), *on reh’g*, 178 FERC ¶ 61,180, at P 25 & n.67 (2022) (finding proposed interim tariff revisions strike a reasonable balance between “the transmission provider’s need to meet its native load obligations and the need of other entities to obtain service to meet their own obligations.” *Id.* P 25 & n.67 (citing June 2021 Order, 175 FERC ¶ 61,245 at P 141 & n.226 (quoting Order No. 890, 118 FERC ¶ 61,119 at P 107)); *ISO New Eng. Inc. & New Eng. Power Pool Participants Comm.*, 155 FERC ¶ 61,023, at P 36 (2016) (finding that tariff revisions “struck an appropriate balance of competing interests”).

³⁸² Vistra Rehearing Request at 12.

technology upgrade, which is also reflected in the current Tariff.³⁸³ In the context of CAISO's revised Tariff, allowing LSEs to allocate commercial interest points appropriately reflects LSEs', as well as state and local planning authorities', roles in resource planning.

95. Vistra argues that the commercial interest points framework is not necessary to ensure that LSE affiliates will obtain deliverability, but rather that it only ensures that their selected interconnection requests will be able to be reimbursed for network upgrades.³⁸⁴ We disagree. Specifically, CAISO designed and calibrated the affiliate limitation to: (1) avoid unduly discriminating against LSE-affiliated projects by not allowing them to receive any commercial interest points at all, on the one hand; and (2) ensure that LSEs cannot give a disproportionate amount of points to their affiliated generation (based on the past track record of affiliated generation interconnection) and crowd out competing independent developers' projects. Vistra fails to explain why the LSEs that are responsible for serving customers reliably should not be able to receive any commercial interest point and thereby be at a disadvantage vis-à-vis independent power producers for competing to be studied in a Deliverable Zone and receive reimbursement. Because LSEs are only allowed to allocate a limited number of commercial interest points to a limited number of affiliates, if LSE-affiliated interconnection requests were to exceed this limit, possibly some LSE-affiliated generation would seek to interconnect in Merchant Zones (under Cluster Study Criteria 4) and forgo reimbursement, as Vistra suggests. However, because LSEs must fulfill their resource adequacy and service obligations, we are not persuaded that it is unduly discriminatory to allow a limited

³⁸³ *Cal. Indep. Sys. Operator Corp.*, 116 FERC ¶ 61,274, at PP 1112, 1117 (2006) (stating that states and local entities retain a "traditional" resource adequacy role and the Commission will defer to state and local involvement in the establishment of Resource Adequacy planning requirements, subject to Commission oversight of markets), *on reh'g*, 119 FERC ¶ 61,076, at PP 540, 558 (2007) (affirming pledge to defer to state and local Resource Adequacy determination), *on reh'g*, 120 FERC ¶ 61,271 (2007). We note that if LSEs do not adopt their own planning reserve margins, the Tariff includes default provisions for a planning reserve margin and resource counting rules. CAISO, CAISO eTariff § 40.2.2 (Non-CPUC Load Serving Entities and Central Procurement Entities) (9.0.0). This makes utilities responsible for identifying and procuring resources that are needed to meet this planning reserve margin on a system level, in addition to the procurement of resources having certain flexible attributes, *see id.* § 40.10 (Flexible Resource Adequacy Capacity) (0.0.0), and resources that are in local areas, *id.* § 40.3.3 (Procurement of Local Capacity Area Resource Requirements by LSEs and Central Procurement Entities) (2.0.0), also as identified by CAISO.

³⁸⁴ Vistra Rehearing Request at 9-10.

number of LSE-affiliated interconnection requests to obtain commercial interest points.³⁸⁵ Additionally compelling is the fact that LSEs develop resources at the behest of the CPUC and LRAs, primarily to serve their native load obligations.³⁸⁶ Similarly, since the CPUC and LRAs have required LSEs to build generation, it is reasonable to allow LSEs to award commercial interest points within the affiliate limitation because they are built to fulfill native load obligations and satisfy resource adequacy and procurement requirements.

96. Moreover, the Commission has acknowledged that state-jurisdictional resource planning and procurement processes can be linked with Commission-jurisdictional interconnection processes in a way that is just and reasonable. For example, the Commission has found that inclusion in a resource plan is an acceptable indication of commercial readiness.³⁸⁷

97. We disagree with Vistra's contention that the Commission's decision in *Xcel* controls here.³⁸⁸ In *Xcel*, the transmission provider proposed to significantly modify Order No. 2003's queuing and clustering provisions to accommodate Colorado's resource planning and least-cost bidding procedures. *Xcel*'s proposal required that interconnection customers bidding for, but not receiving a resource adequacy contract, drop out of the queue, and allowed projects submitted as part of the state process to jump ahead of other projects in the queue whose interconnection requests were filed first.³⁸⁹ The Commission found that, to avoid undue discrimination, an interconnection customer must be able to take part in the state contracting process without danger of losing its queue position if it does not win the contract, and interconnection customers that do not take part in the state-sponsored bidding must be allowed to compete in the wholesale

³⁸⁵ See *infra* Section IV.D.2.

³⁸⁶ See Order No. 890, 118 FERC ¶ 61,119 at P 107 (concluding that "the native load priority established in Order No. 888 continues to strike the appropriate balance between the transmission provider's need to meet its native load obligations and the need of other entities to obtain service from the transmission provider to meet their own obligations").

³⁸⁷ *Id.* P 41 n.75 (citing *Pub. Serv. Co. of Colo.*, 169 FERC ¶ 61,182, at PP 39, 49-50 (2019); *PacifiCorp*, 171 FERC ¶ 61,112 at PP 68, 80, 105; *Avista Corp.*, 179 FERC ¶ 61,183, at PP 19, 54-55 (2022)).

³⁸⁸ *Xcel*, 106 FERC ¶ 61,260 at P 21 (rejecting proposed revision to the generator interconnection process that unduly discriminated against interconnection customers that are not part of the state-sponsored bidding process).

³⁸⁹ *Id.* P 21.

energy market on an equal footing.³⁹⁰ Unlike in *Xcel*, however, the revised Tariff does not make queue position or cluster study contingent on participation in a state resource planning process. There is no restriction on interconnection customers seeking to obtain commercial interest points from an LSE or non-LSE. Moreover, in *Xcel*, the Commission did not rule out resource adequacy as a means of prioritizing interconnection requests and recognized the possibility that an interconnection process could accommodate state resource adequacy concerns without being unduly discriminatory.³⁹¹

2. Affiliate Limitation

a. Rehearing Requests

98. Rehearing Parties challenge the affiliate limitation, i.e., the fact that the revised Tariff allows LSEs to allocate commercial interest points to the greater of three affiliates or 25% of their allocable points.³⁹² Vistra argues affiliation is not a permissible basis for discrimination and interconnection processes that provide more favorable terms and conditions for an incumbent utility's own generation and make it more difficult for generation competitors to enter the market are impermissible.³⁹³ Calpine contends the Commission provided a pathway for LSE affiliate preference over non-affiliates, which is an unexplained departure from the open access policies and structural safeguards Order No. 888 required to eradicate utility preference.³⁹⁴ Rehearing Parties argue the revised Tariff creates new opportunities for LSEs, including transmission-owning LSEs, to give their affiliates preferential interconnection access as part of the interconnection process.³⁹⁵ Calpine and Vistra disagree with the Commission's determination that CAISO's "proposal strikes a reasonable balance of providing LSEs . . . the ability to allocate commercial interest points to affiliate[s]" while ensuring affiliates "do not

³⁹⁰ *Id.*

³⁹¹ Additionally, unlike *Xcel*, which had to show that its proposal was consistent with or superior to the *pro forma* OATT, CAISO, as an RTO/ISO, has greater flexibility and its proposal is subject to the less stringent independent entity variation standard. *See supra* P 26.

³⁹² *See* CAISO, CAISO eTariff, app. KK, § 4.1.1.1.

³⁹³ Vistra Rehearing Request at 8-9 & n.28.

³⁹⁴ Calpine Rehearing Request at 7.

³⁹⁵ *See, e.g., id.* at 2, 6, 7; CEAs Rehearing Request at 6-10; Vistra Rehearing Request at 8-22.

dominate” the scoring process.³⁹⁶ Rehearing Parties argue that the Commission’s reasons for accepting the affiliate limitation reveal its inadequate consideration of their assertion that commercial interest points are a means for undue discrimination. Calpine objects to each of the following reasons that the Commission gave for accepting the affiliate limitation: (1) historical rarity of interconnection requests from LSEs and their affiliates in CAISO;³⁹⁷ (2) LSEs transferred operational control over generator interconnection to CAISO;³⁹⁸ (3) interconnecting generators may pursue points from their preferred LSEs;³⁹⁹ (4) CAISO’s proposed transparency and oversight measures;⁴⁰⁰ and (5) “legitimate commercial needs.”⁴⁰¹ Vistra similarly argues that the Commission’s reliance on the “purported infrequency” of LSE interconnection requests, lack of affiliate abuse, and regulatory oversight to minimize the risk of undue discrimination ignores contrary evidence and arguments in the record.⁴⁰² Vistra contends that the Commission’s determination is unsupported, not the product of reasoned decision-making, departs from prior Commission precedent, and fails to consider the economic incentives of LSEs.⁴⁰³ Calpine contends that the fact that CAISO has operational control over affiliates does not mitigate what it calls “the perverse *financial* incentives” associated with LSEs’ continued ownership of those affiliates.⁴⁰⁴ Calpine asserts that, while CAISO’s control of LSE affiliates might have prevented LSEs from acting on such financial incentives in the past, commercial interest point scoring undercuts rather than reinforces CAISO’s independent

³⁹⁶ Calpine Rehearing Request at 7 & n.22 (quoting Queue Reform Order Order, 188 FERC ¶ 61,225 at P 176); Vistra Rehearing Request at 10 & n.33 (same).

³⁹⁷ Calpine Rehearing Request at 8 & n.25; CEAs Rehearing Request at 6-7 & n.24 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176 (citing CAISO Answer at 38)).

³⁹⁸ Calpine Rehearing Request at 9 & n.28.

³⁹⁹ *Id.* at 10.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² Vistra Rehearing Request at 41.

⁴⁰³ *Id.* at 40 (citing *Pac. Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1319 (D.C. Cir. 2004) (citation omitted)).

⁴⁰⁴ Calpine Rehearing Request at 8 (emphasis in original).

control and gives LSEs “a lever to pull in their affiliates’ favor,” and a sway that Calpine argues CAISO has not meaningfully restricted.⁴⁰⁵

b. Commission Determination

99. Contrary to Rehearing Parties’ contentions,⁴⁰⁶ we continue to find the affiliate limitation does not constitute an undue preference.⁴⁰⁷ Rehearing Parties fail to acknowledge that LSEs may allocate a limited amount of commercial interest points to a limited number of affiliated projects in what is only 30% of the interconnection customer’s total score. An LSE-affiliated project is still subject to scrutiny on the other two criteria, system need and project viability, and must have a sufficiently competitive total score to proceed to the cluster study. Furthermore, the Tariff limits the total MW amount of commercial interest points available for allocation by LSEs—to both affiliated and non-affiliated projects combined—to one-third of the MW of capacity that will proceed to study within Deliverable Zones. As at least two-thirds of the MW of capacity within Deliverable Zones will proceed to the cluster study without commercial interest points, and each LSE is limited to allocate, at most, 25% of its points to affiliated projects, the majority of capacity proceeding to the cluster study will not constitute affiliated projects with commercial interest points. We continue to find the Commission reasonably accepted the affiliate limitation as part of an overall package of generator interconnection reforms because it “strikes a reasonable balance” between providing LSEs the ability to allocate commercial interest points to affiliated projects while limiting those allocations to ensure that non-affiliated projects have a reasonable opportunity to interconnect to the CAISO transmission system.⁴⁰⁸

100. The record indicates that LSEs have not frequently pursued self-build projects in CAISO, largely due to state and LRA authority over generation development and LSE procurement activities, which includes oversight of procurement of affiliated resources.

⁴⁰⁵ *Id.* at 9.

⁴⁰⁶ *E.g., id.* at 7; Vistra Rehearing Request at 10.

⁴⁰⁷ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

⁴⁰⁸ *Id.* We note that CAISO derived the level of its affiliate limitation based, in part, on the typically low number of LSE-affiliated requests that had been submitted before it revised its Tariff. Transmittal at 42; *id.*, attach. C, Track 2 Final Proposal at 50 (stating that “[in reviewing the data, [CAISO] has seen a maximum of three projects proposed by a single CPUC-jurisdictional LSE in Clusters 10-14 (constituting more than 15% of the estimated capacity allocation for that LSE for Cluster 15) and “us[ing] data from Clusters 10-14 to inform the final proposal.”).

⁴⁰⁹ Nevertheless, if an LRA were to determine that there is a specific need for LSE self-built or affiliated projects, we find it reasonable to allow CAISO to consider LSE interest in such projects as one aspect of its overall assessment of project viability.⁴¹⁰ The revised Tariff reasonably balances allowing LSEs to accurately assign value to LSE-owned resources through the commercial interest point allocation process, while preventing any undervaluation that might occur if LSE-owned resources were excluded from commercial interest point allocations altogether.

101. Additionally, as CAISO noted, the largest California LSEs, which own transmission facilities, are Commission- and CPUC-regulated public utilities. They are subject to standards of conduct and other Commission requirements prohibiting undue discrimination. They have (Order No. 890-mandated) firewalls between transmission and generation affiliates. The CPUC, which supports the affiliate limitation, points out that all investor owned utility projects will undergo CPUC review and approval, providing an additional layer of oversight to justify and ensure utility-owned resources

⁴⁰⁹ Joint POU's Comments at 26 & n.84. We acknowledge Vistra raised PG&E's Moss Landing project in its Protest as an example of LSEs building affiliated generation. Vistra Rehearing Request at 14 & n.46 (citing Vistra Protest at 9 & n.26) (citing Creating Our Clean Energy Future: PG&E Commissions its Moss Landing Elkhorn Battery (Apr. 18, 2022), <https://investor.pgecorp.com/news-events/press-releases/press-release-details/2022/Creating-Our-Clean-Energy-Future-PGE-Commissions-its-Moss-Landing-Elkhorn-Battery/default>. The fact that one LSE has one new affiliated project does not rebut the Commission's finding that the affiliate limitation in the revised Tariff will prevent LSE-affiliated projects from dominating commercial interest scoring. (We note there are two facilities at Moss Landing and Vistra owns the other one). Notably, the record reflects that the costs of fulfilling resource adequacy procurement requirements have been increasing in CAISO. Joint POU's Answer at 19 & n.62. LSEs state that they have conducted request for proposal processes and received no responses and/or have observed a substantial decline in responses from third-party developers and suppliers. *Id.* at 19 & n.63. This may help explain the construction of LSE-affiliated projects.

⁴¹⁰ We note that CAISO's tri-part scoring criteria is distinguishable from precedent rejecting proposals pursuant to which state-endorsement of particular projects is the only consideration for receiving priority study. *See, e.g., Midcontinent Independent Sys. Op.*, 190 FERC ¶ 61,131, at P 1 (2025). The Commission has found it is unduly discriminatory and inconsistent with open access principles that state-endorsed projects *must* be given priority access, *id.* P 1, or that *only* state-endorsed projects may receive priority access. *See, e.g., Xcel*, 106 FERC ¶ 61,260 at PP 12-13. CAISO's proposal does not guarantee that affiliated projects will proceed to the cluster study because they must still receive sufficient scores on the other two criteria that compose 70% of the total score.

are only permitted as needed, further limiting the amount of commercial interest points they may garner.⁴¹¹

102. Vistra asks that, if the Commission does not reject all of the commercial interest points provisions,⁴¹² then the Commission sever and reject those that allow LSEs to award commercial interest points to affiliates.⁴¹³ If the Commission were to sever the affiliate limitation from the revised Tariff and LSEs were not allowed to allocate commercial interest points to affiliated projects, as Vistra requests,⁴¹⁴ only independent generators would be able obtain commercial interest points in Cluster Study Criteria 1 and 3. Prohibiting LSEs from allocating commercial interest points to affiliated projects would detract from the purpose of the commercial interest point score, which is to reflect interest from those entities ultimately responsible for serving load, as a direct indicator of commercial viability and need.⁴¹⁵ Because LSE self-built and affiliated projects can help LSEs reliably and affordably serve their customers consistent with their regulatory requirements, we continue to find it reasonable to include LSE interest in such projects as part of CAISO's assessment of project viability. Moreover, while CAISO stated that certain aspects of its proposal were severable,⁴¹⁶ CAISO did not propose the severability that Vistra requests here, and, as noted above, the Commission evaluates the proposals as presented by the utility.⁴¹⁷ Finally, we agree with Calpine's contention that the fact that CAISO has operational control over affiliates does not mitigate what it calls "the perverse *financial* incentives" associated with LSEs' continued ownership of those affiliates.⁴¹⁸

⁴¹¹ CPUC Comments at 5.

⁴¹² Vistra Rehearing Request at 6, 43; *see also* Calpine Rehearing Request at 18. For the reasons explained in our overview (PP 20-26) and determinations, we sustain our acceptance of the commercial interest points feature of CAISO's revised Tariff.

⁴¹³ Vistra Rehearing Request at 43. As noted above, CAISO agreed the Commission could sever the affiliate limitation to allow unlimited allocation of commercial interest points to affiliates, which is the opposite of Vistra's request.

⁴¹⁴ *See supra* P 19 & n.63 (citing Vistra Rehearing Request at 43).

⁴¹⁵ Transmittal at 42; Joint POU's Answer at 27 & n.89.

⁴¹⁶ Transmittal at 55-56 (authorizing the Commission to sever commercial interest points entirely or to eliminate the affiliate limitation, in which case LSEs would not be restricted on how many points they could award affiliated generation).

⁴¹⁷ *See infra* note 482 and cases cited therein.

⁴¹⁸ Calpine Rehearing Request at 9 (citing Queue Reform Order, 188 FERC ¶

CAISO, however, has limited the influence of these financial incentives through the affiliate limitation. Calpine has not persuaded us that the affiliate limitation, in tandem with other mitigation measures such as limiting commercial interest points to 30% of the total score and one-third of MW capacity of interconnection requests, is insufficient to mitigate such financial incentives.⁴¹⁹

3. Alleged Tariff Loopholes

a. Strategic Withholding

1. Rehearing Request

103. Vistra contends that, contrary to the Commission's determination, LSEs can manipulate the limits CAISO imposed "to dominate the commercial interest scoring" within a particular zone. Vistra provides an example of how an LSE can circumvent the affiliate limitation in the Tariff by allocating maximum points (25%) to an affiliate and, because the Tariff does not require the LSE to allocate all its points,⁴²⁰ declining to allocate the rest of its points to competitors.⁴²¹ This would effectively result in the LSE allocating 100% of its points to its affiliate(s).

104. Vistra states that, even though such withholding is permissible under the new rules, the Commission dismissed this as unlikely in the Queue Reform Order because LSEs have resource adequacy requirements that they must meet.⁴²² Vistra argues withholding is not necessarily inconsistent with meeting resource adequacy obligations.

61,225 at P 176 (emphasis in original)).

⁴¹⁹ In making its argument, Calpine cites to P 176 of the Queue Reform Order which stated that: "In evaluating this balance, we find persuasive CAISO's observation that interconnection requests from LSEs and their affiliates have been rare in the CAISO region. *Furthermore, as CAISO notes, transmission-owning LSEs have transferred operational control to CAISO*, and there has been no evidence of LSE abuse of affiliated generation in CAISO." Queue Reform Order, 188 FERC ¶ 61,225 at P 176 (emphasis added). Here the Commission is simply pointing out that CAISO is the independent grid operator. As the independent grid operator, CAISO has no incentive to unduly discriminate or preference affiliates.

⁴²⁰ Vistra Rehearing Request at 11 & n.37 (citing Transmittal, Proposed Tariff § 4.1.1.1).

⁴²¹ See *id.* at 11 & n.37 (citing Transmittal, Proposed Tariff § 4.1.1.1).

⁴²² *Id.* at 11-12 & n.39 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 177).

Vistra asserts that the LSE could allocate maximum points to its affiliate, withhold points from its competitor, and still meet any outstanding resource adequacy procurement needs from the other projects that are selected during the scoring process (i.e., projects that received commercial interest points from other LSEs or were otherwise selected based on their total scores). Vistra adds that an LSE that secures deliverability for its own project may be able to forego procuring third-party resources to meet its resource adequacy requirements.⁴²³

2. Commission Determination

105. We continue to find Vistra's argument—that LSEs could effectively game the point allocation system by withholding points to unduly favor their affiliates and block competitors' access to the transmission system—to be unpersuasive. The Tariff limits the maximum amount of points an LSE may award to an affiliate to the greater of 25% of its points or three affiliate interconnection requests.⁴²⁴ If an LSE were to withhold its remaining points, interconnection requests that obtained points from other LSEs and non-LSEs may obtain higher total scores. Contrary to Vistra's suggestion, LSEs have no guarantee that they will be able to rely on the resources that are allocated the remaining residual deliverability in the Deliverable Zone to meet their resource adequacy requirements. Such resources may not have the specific characteristics that the “risk-taking,” points-withholding LSE is required to procure to meet its resource adequacy needs or could be under contract to sell the full output of their resources to other LSEs or non-LSEs. Vistra provides no support for its speculative assertion that an LSE that secures deliverability for its own project may be able to forego procuring third-party resources to meet resource adequacy requirements. Given the modest size of the affiliate limitation, we find it unlikely that typical LSEs could rely solely on their affiliated resources to fulfill resource adequacy requirements and would therefore potentially endanger their own needs by failing to award points to resources that could.⁴²⁵

b. One-Third of Capacity

1. Rehearing Requests

106. Vistra contends the Commission unreasonably dismissed the unduly preferential and discriminatory effects of CAISO's commercial interest points proposal based on purported limitations that are not included in the plain language of CAISO's revised

⁴²³ *Id.* at 12.

⁴²⁴ Queue Reform Order, 188 FERC ¶ 61,225 at P 177.

⁴²⁵ Vistra Rehearing Request at 12.

Tariff.⁴²⁶ Vistra states that to support its determination that LSEs would not be able to “dominate” the commercial interest points scoring process, the Commission repeatedly relied on its inaccurate finding that “two-thirds of the projects” under the 150% cap in deliverable zones will advance to the interconnection study/obtain interconnection access without any commercial interest points.⁴²⁷ Vistra states that under CAISO’s commercial interest points proposal, the amount of commercial interest points that LSEs may award is the product of the available MWs of deliverability in a Deliverable Zone multiplied by a 0.5 scaling factor.⁴²⁸ Vistra states that this calculation results in commercial interest points being equivalent to one-third of the available capacity in a zone.⁴²⁹

107. But, Vistra argues, the fact that commercial points are equivalent to one-third of the *capacity* in a zone provides no basis to assume that only one-third of *projects* or capacity will receive commercial interest points. Vistra posits that the competition for scarce interconnection capacity is likely to result in many projects receiving some amount of commercial interest points, which will prove decisive when projects have similar system needs and project viability scores.⁴³⁰ Vistra asserts that the Commission’s reasoning fails to acknowledge that LSEs have the flexibility to spread their commercial interest points through partial awards to multiple projects.⁴³¹ Vistra states that, for

⁴²⁶ *Id.* at 39-40 (citations omitted).

⁴²⁷ *Id.* at 14 & n.43 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 177; *id.* P 176 (“We also note that only one-third of available MW capacity identified in the cluster study will be eligible to receive LSE commercial interest points, while CAISO will study up to 150% of available capacity for each zone.”); *id.* P 179 (“[W]e find that these protesters fail to recognize that CAISO’s proposal intentionally limits LSEs’ commercial interest points to 50% of [Transmission Plan] deliverability, such that two-thirds of the capacity under the 150% cap in Deliverable Zones (i.e., up to 100% of [Transmission Plan] deliverability) will advance without any commercial interest points from LSEs.”); *id.* (“[T]here is no basis to claim that LSEs could ‘control access to the grid’ under CAISO’s proposal.”); *id.* P 184 (“We also find that CAISO’s proposal that two-thirds of cumulative capacity that will advance to the cluster study will not have the ability to receive commercial interest points from LSEs should mitigate this concern.”)); *see also id.* at 39-40.

⁴²⁸ *Id.* at 13.

⁴²⁹ *Id.*

⁴³⁰ *Id.*

⁴³¹ *Id.* & n.44 (citing Transmittal, Proposed Tariff § 4.1.1(1); *id.*, attach. D (Track 2 Final Addendum) at 15).

example, in a Deliverable Zone with 150 MWs of capacity, there would be 50 MWs of commercial interest points for LSEs to award. Vistra hypothesizes that if four 50 MW projects compete for this deliverability with multiple LSEs awarding commercial interest points, it is entirely possible that all four 50 MW projects would receive some commercial interest points (e.g., 15 MW, 15 MW, 15 MW, and 5 MW).⁴³² Vistra states that in this scenario, all projects would receive commercial interest points, as opposed to the one-third of projects or capacity that the Commission repeatedly stated CAISO's proposal is limited to allocating. Vistra argues this example shows that commercial interest points are far from being a minor factor in determining which projects proceed to study.⁴³³

108. CEAs assert that the proposed “mitigation” methods the Commission discussed will not protect unaffiliated generators or non-preferred independent power producer generators.⁴³⁴ CEAs argue the Commission's determination is premised on the statement that only one-third of available MW of capacity identified in the cluster study will be

eligible to receive LSE commercial interest points.⁴³⁵ CEAs argue this assumes that LSEs will not employ the option to allocate all of their commercial interest points to a single project. CEAs state that, if they do employ the option, a single LSE can fully allocate points to an interconnection customer so long as the size of the interconnection service capacity does not exceed 150% of the LSE's point allocation.⁴³⁶ CEAs assert the proposed mitigation measures the Commission discussed will not protect unaffiliated generators or non-preferred independent power producer generators.

2. Commission Determination

109. In the Queue Reform Order, the Commission appropriately relied on the fact that under the revised Tariff, only one-third of capacity in the Deliverable Zone will be eligible for commercial interest points and two-thirds of the cumulative capacity will proceed to study without commercial interest points.⁴³⁷ The Tariff helps ensure that the

⁴³² *Id.* at 13-14.

⁴³³ *Id.*

⁴³⁴ *Id.* at 13.

⁴³⁵ CEAs Rehearing Request at 13 & n.54 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

⁴³⁶ CEAs Rehearing Request at 13 & n.55 (citing Transmittal at 39).

⁴³⁷ Queue Reform Order, 188 FERC ¶ 61,225 at PP 176, 179. *See also* CAISO, CAISO eTariff, app. KK, § 4, § 4.1.1(1) (Load Serving Entity) (“To determine available

“vast majority” of interconnection customers’ proposed projects will proceed to study without commercial interest points because commercial interest points are limited to 30% of the total weighted score and because commercial interest points are limited to 50% of the 150% cap on interconnection capacity in the Deliverable Zone.⁴³⁸ We acknowledge, however, that while the Tariff ensures that two-thirds of the cumulative capacity that will be studied for deliverability will proceed to the cluster study without commercial interest points, the Commission inadvertently stated that “at least two-thirds of the *projects* under the 150% cap in Deliverable Zones” will advance to the cluster study without commercial interest points.⁴³⁹ We clarify that the Commission intended to consistently use the phrase “two-thirds of capacity” that it had used elsewhere in the determination.⁴⁴⁰ The revised Tariff’s cap on the capacity to be studied is drafted in terms of capacity, not project number, and the number of projects is dependent on the MW size of each interconnection customer’s project.⁴⁴¹

110. Next, while Vistra’s example pursuant to which all interconnection customers advancing to the cluster study would have commercial interest points is theoretically possible, we find it speculative and highly unlikely to manifest in practice. Each LSE has a finite number of points to allocate. An LSE that divides and spreads its allocable points among projects, reducing the number of commercial interest points that it gives to any one project, lowers its preferred projects’ overall score (the sum of the three categories of scoring criteria, which CAISO calculates). This in turn will reduce the likelihood that the LSE’s chosen projects will advance to the cluster study, since these projects with fewer points will be competing with projects to which other LSEs have allocated relatively higher points. Vistra provides no persuasive explanation why LSEs would dilute the value of their points, allocating them in a manner that is clearly contrary to self-interest.

Deliverable Option commercial interest points for allocation, the CAISO will take the aggregate available MW of Deliverability in each Transmission Zone and multiply it by a scaling factor of 0.5. The CAISO will then allocate shares of points to each Load Serving Entity based upon on their relative load ratio shares in the most recent coincident peak demand forecast from the California Energy Commission). This means the remaining two-thirds of MW capacity will not be eligible for commercial interest points.

⁴³⁸ CAISO, CAISO eTariff, app. KK, § 4, § 4.1.1(1). We note that the results of Cluster Study 15 demonstrate the revised Tariff is working as intended, as 73% of projects proceeded to study without commercial interest points and only 27% of projects proceeded to study with commercial interest points. *See* Cluster 15 Report at 9, fig. 5.

⁴³⁹ Queue Reform Order, 188 FERC ¶ 61,225 at P 177.

⁴⁴⁰ *Id.* PP 176, 179, 184.

⁴⁴¹ *Id.* PP 176, 177, 179, 184.

Even if, as Vistra asserts, LSEs would be motivated to avoid giving points to competitors, LSEs still need to fulfill their resource adequacy requirements within the constraints of the scarcity of deliverability in CAISO. Thus, absent concrete evidence to the contrary, we continue to find it unlikely that an LSE would sacrifice reliability, risk customer dissatisfaction, and incur penalties to foreclose competition.

111. We are not persuaded by CEAs' argument that independent power producers are not protected by the mitigation measures the Commission relied on because it assumed LSEs will not exercise their "full allocation" option to allocate all of their interest points to one interconnection request's project as long as the size of the interconnection service capacity does not exceed 150% of the LSE's point allocation.⁴⁴² This option, designed to level the playing field for small LSEs,⁴⁴³ still only allows an LSE to allocate its commercial interest points to *one* project. Even if several LSEs were to exercise this option, we fail to see how this would foreclose or have more than a minor impact on an independent power producer's ability to compete to obtain commercial interest points and proceed to the cluster study. In any event, as the Commission pointed out in the Queue Reform Order, CAISO committed to monitor the use of the full allocation in Cluster 15.⁴⁴⁴

E. LSEs v. Non-LSE Off-Takers

1. Rehearing Requests

112. Vistra argues that the Queue Reform Order unduly discriminates between LSEs and non-LSEs by (1) giving non-LSEs fewer points (25 subpoints) to allocate than LSEs (100 subpoints);⁴⁴⁵ (2) not allowing more than one non-LSE to allocate points to the same interconnection customer, whereas multiple LSEs may designate points to the same interconnection customer;⁴⁴⁶ (3) conditioning non-LSEs' allocation of points on attestations that an interconnection customer's project supports its corporate

⁴⁴² CEAs Rehearing Request at 13 & n.55 (citing Transmittal at 39).

⁴⁴³ Queue Reform Order, 188 FERC ¶ 61,225 at P 184.

⁴⁴⁴ CAISO Answer at 36.

⁴⁴⁵ Vistra Rehearing Request at 30.

⁴⁴⁶ *Id.*

sustainability goals;⁴⁴⁷ and (4) prohibiting non-LSEs from providing commercial interest points to an affiliate.⁴⁴⁸

113. Vistra argues that these restrictions on non-LSEs' commercial interest point allocation, such as whether a project will support non-LSEs' corporate sustainability goals, bears no relationship to the commercial viability of a project or the purpose of commercial interest points.⁴⁴⁹ Vistra emphasizes that CAISO's stated purpose for commercial interest points is to distinguish between commercially viable and non-viable projects.⁴⁵⁰ Vistra argues that non-LSEs have a number of reasons to enter into an offtake agreement with a project that are unrelated to corporate sustainability goals, and a project that has interest from a non-LSE without corporate sustainability goals will be just as viable as a project with interest from a non-LSE that has such goals. Thus, Vistra contends that there is no reasonable basis to discriminate among interconnection customers based on non-LSEs' corporate sustainability goals.⁴⁵¹

114. Additionally, Vistra asserts that neither CAISO nor the Commission explains why an interconnection customer that has a binding arrangement such as an off-take agreement with a non-LSE should be deemed less commercially viable than interconnection customers that receive points from LSEs.⁴⁵² Vistra emphasizes that interconnection customers with interest from and even offtake agreements with non-LSEs will receive fewer commercial interest points and, in turn, be less likely to obtain interconnection access than interconnection customers with commercial interest points from LSEs.⁴⁵³

115. Vistra disagrees with the Commission's rationale for distinguishing between LSEs and non-LSEs. Vistra claims that the Commission's reliance on "LSEs' role in resource

⁴⁴⁷ *Id.* at 34-36.

⁴⁴⁸ *Id.* at 30-31 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 126). *See also* Calpine Rehearing Request at 5 (stating that LSEs have more points to give and can combine points, which "decisively favor[s] LSEs").

⁴⁴⁹ *Id.* at 35-36 (stating that commercial viability is "the factual basis on which CAISO must justify the discriminatory treatment"); *id.* at 42.

⁴⁵⁰ *Id.* at 31 & n.107 (citing Transmittal at 49).

⁴⁵¹ *Id.* at 36.

⁴⁵² *Id.* at 31.

⁴⁵³ *Id.* at 5, 31.

procurement”⁴⁵⁴ “is a non-answer that is not the product of reasonable decision-making.”⁴⁵⁵ Vistra states that although LSEs have state-imposed resource adequacy requirements, CAISO has not shown that these requirements are a valid basis for discriminating among similarly situated *customers* in the interconnection process.⁴⁵⁶ Vistra argues that the Commission did not consider the implications of CAISO’s proposal for the ability of non-LSEs to compete with LSEs to obtain supply to serve their load.

116. Vistra asserts that, to find that it is not unduly discriminatory or preferential for LSEs’ customers to receive more favorable treatment than non-LSEs’ customers, the Commission must identify factual differences among these *customers* that justify the proposed disparate treatment. Vistra contends that an LSE’s ability to meet its state-imposed resource adequacy requirements has no impact on whether *interconnection customers* that are subject to disparate treatment are similarly situated.⁴⁵⁷ Vistra adds that, even if LSEs’ resource adequacy obligations were relevant to the undue discrimination inquiry, the FPA does not permit a public utility to balance its own needs and public policy goals with its discriminatory treatment toward other customers.⁴⁵⁸ Vistra argues that the Queue Reform Order unreasonably favors one business model over another.⁴⁵⁹

117. Vistra contends that the extent to which non-LSEs’ corporate goals on sustainability parallel LSEs’ ability to meet their state-imposed resource adequacy requirements does not address whether interconnection customers that are treated differently are similarly situated. Vistra argues that the new rules prevent a customer with commercial interest from a non-LSE that is procuring supply to meet its own load during peak periods from earning commercial interest points, even though the purpose of the commitment, maintaining reliability, arguably better aligns with the goals of the

⁴⁵⁴ *Id.* at 23 & n.77 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 179).

⁴⁵⁵ *Id.* at 23-26, 42 (citations omitted).

⁴⁵⁶ *Id.* at 33 & n.116 (citing *Constellation Mystic Power, LLC v. FERC*, 45 F.4th 1028, 1042 (D.C. Cir. 2022)).

⁴⁵⁷ *Id.* at 32-33.

⁴⁵⁸ *Id.* at 26.

⁴⁵⁹ *Id.* at 33 n.114; *see also* Vistra Protest at 15. Vistra argues the Commission favors development supported by long-term sales to an LSE over alternative business models (e.g., development on a merchant basis or under short-term arrangement) without showing that disparate treatment is justified by legitimate differences among the customer classes.

resource adequacy program than a commitment to support corporate sustainability goals.⁴⁶⁰

118. Further, Vistra argues that the Commission mistakenly relied on *MISO Queue Cap I*, in which the Commission rejected MISO's initial proposed queue cap, noting that MISO's failure to account for resource adequacy requirements was only one of four reasons why the Commission rejected MISO's proposal.⁴⁶¹ Vistra contends that *MISO Queue Cap I* does not support the proposition that an LSE's state-imposed resource adequacy requirements provide a valid basis to discriminate among interconnection customers in allocating interconnection access.⁴⁶²

2. Commission Determination

119. We continue to find that CAISO has shown that its proposal to differentiate between LSE and non-LSE off-takers in the point allocation process is just and reasonable and not unduly discriminatory or preferential.⁴⁶³ The revised Tariff reasonably balances LSEs' need to fulfill state/LRA-established resource adequacy requirements and obligation to serve load with non-LSEs' commercial interest in certain projects. The revised Tariff supports LSEs' resource adequacy and procurement requirements while nonetheless recognizing that non-LSEs, which do not have resource adequacy or native load obligations, also have an interest in procuring resources that will compete for the same finite Transmission Plan deliverability.⁴⁶⁴ As CAISO explained:

The difference in permissible sub-points between LSEs and non-LSEs reflects the fact that LSEs carry an obligation to provide resource adequacy and must therefore be studied for sufficient deliverability in the study process; in contrast, non-LSEs are not required to provide resource adequacy but nevertheless are actively procuring resources that

⁴⁶⁰ *Id.* at 35 & n.119 (citing *Dynegy Midwest Generation, Inc. v. FERC*, 633 F.3d 1122, 1127 (D.C. Cir. 2010); 16 U.S.C. § 824d).

⁴⁶¹ *Id.* at 32 & n.108 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 181 (citing *MISO Queue Cap I*, 186 FERC ¶ 61,054)).

⁴⁶² *Id.* at 32 & n.112 (quoting *Xcel Energy Operating Co.*, 106 FERC ¶ 61,260, at P 23 (2004) ("Interconnection customers that do not take part in the state-sponsored bidding must be allowed to compete in the wholesale energy market on an equal footing.")).

⁴⁶³ Queue Reform Order, 188 FERC ¶ 61,225 at PP 181-183.

⁴⁶⁴ Transmittal at 38.

seek to utilize the available [Transmission Plan] deliverability needed for resource adequacy. Non-LSE interest will improve the scores of certain projects, increasing the likelihood of those projects advancing to the study process and ultimately competing for [Transmission Plan] deliverability and off-taker agreements.⁴⁶⁵

120. We find Vistra's contentions—that the Commission failed to analyze the issue correctly because (1) an LSE's ability to meet its state-imposed resource adequacy requirements has no bearing on whether interconnection customers that are subject to disparate treatment are similarly situated; and (2) the Commission did not consider whether factual distinctions between the interconnection customers of LSEs, on the one hand, and the interconnection customers of non-LSEs, on the other hand, justify differences in the point allocation between LSEs and non-LSEs—are a red herring.⁴⁶⁶ Vistra conflates the undue discrimination analysis for evaluating (a) whether and how interconnection customers to whom LSEs award commercial interest points are similarly situated or distinguishable from interconnection customers that do not receive commercial interest points; with (b) whether LSEs and non-LSEs, as customers of CAISO, are similarly situated for purposes of allocating commercial interest points to interconnection customers. Because LSEs have resource adequacy, procurement, and native load obligations and non-LSEs do not, LSEs and non-LSEs are not similarly situated with respect to their need to fulfill state resource adequacy and procurement requirements. Accordingly, we continue to find the Commission reasonably determined that CAISO has shown that its proposal to differentiate between LSEs and non-LSE off-takers in the point allocation process is just and reasonable and not unduly discriminatory or preferential.⁴⁶⁷

121. The Tariff revisions and process (i.e., CAISO posting on its website the number of commercial interest points that participating LSEs may allocate) give interconnection customers sufficient notice of the differences in allocable points between specific LSEs and non-LSEs. Interconnection customers may voluntarily choose to solicit and receive points from either LSEs or non-LSEs or both LSEs *and* non-LSEs. As a result, the customer classes are fluid and flexible; not only is there no definable class of LSE interconnection customers and non-LSE interconnection customers, but interconnection customers voluntarily elect from whom to solicit points. Further, even if an interconnection customer already has an offtake agreement from a non-LSE, it may

⁴⁶⁵ *Id.*

⁴⁶⁶ Queue Reform Order, 188 FERC ¶ 61,225 at P 181; *see also id.* PP 182-183; Transmittal at 37.

⁴⁶⁷ *Id.* PP 182-183.

solicit points from that non-LSE with whom it has contracted, as well as one or more LSEs. Thus, we find CAISO's new rules do not unduly discriminate or prefer the interconnection customers of LSEs versus non-LSEs because interconnection customers are not restricted and may freely choose from whom to seek points.

122. Next, contrary to Vistra's contention,⁴⁶⁸ the limitations on non-LSE commercial interest point allocations do bear a relationship to the commercial viability of a project and the purpose of commercial interest points. CAISO designed the Tariff modifications to triage the "massive and unsustainable" increase in interconnection requests in its queue.⁴⁶⁹ As CAISO explained, the revised Tariff modifies CAISO's Commission-jurisdictional interconnection process to align transmission, generation, and procurement.⁴⁷⁰ The revised Tariff reflects the state and LRA-jurisdictional procurement processes earlier in the interconnection process, to ensure that the resources LSEs need to meet their state/LRA-established resource adequacy requirements are more likely to be studied and interconnected. The purpose of having LSEs allocate commercial interest points is to help discern which projects are the most viable and commercially needed by the LSEs to fulfill their resource adequacy obligations and serve customers.⁴⁷¹ Non-LSEs have no state/LRA-mandated resource adequacy requirements or statutory obligation to serve customers.⁴⁷² However, as discussed below, CAISO's provision of a limited number of commercial interest points to non-LSE off-takers for interconnection requests that will address corporate sustainability goals reasonably reflects that these interconnection requests can also support California's public policy goals. Accordingly, contrary to Vistra's contention, the Commission's rationale for distinguishing between

⁴⁶⁸ Vistra Rehearing Request at 42.

⁴⁶⁹ CAISO Answer at 3; Transmittal at 12-16.

⁴⁷⁰ CAISO Answer at 5.

⁴⁷¹ Transmittal at 3. We note that CAISO's allocation of differing amounts of commercial interest points to LSEs and non-LSEs is also consistent with its rationale for providing cash reimbursement for the costs of network upgrades to interconnection customers that advance under Cluster Study Criteria 1. Interconnection requests that advance under Cluster Study Criteria 1 are presumed to meet ratepayers' needs in a Deliverability Zone and therefore benefit ratepayers; likewise, an interconnection request that receives a commercial interest point allocation from an LSE is presumed to better meet ratepayers' needs than an interconnection request that does not receive such points.

⁴⁷² Queue Reform Order, 188 FERC ¶ 61,225 at P 182.

LSEs and non-LSEs—that it reasonably reflects LSEs’ role in resource procurement—is responsive to Rehearing Parties’ challenges and reflects reasoned decision-making.⁴⁷³

123. For similar reasons, we also disagree that the revised Tariff unreasonably favors one business model over another. Giving LSEs more points to allocate, allowing them to aggregate points, and allowing them to allocate a limited number of points to affiliates, reflects the practical need to align the interconnection process with resource procurement and transmission planning processes in California.⁴⁷⁴ The distinctions between LSEs and non-LSEs incorporate into the interconnection process recognition of the important responsibility that the state and LRAs have placed on LSEs to contract for sufficient resources to ensure reliability, and the resources that LSEs contract with to provide resource adequacy must be studied for sufficient deliverability in the interconnection study process. Moreover, interconnection customers are competing to be studied in Deliverable Zones, in which load repays the cost of network upgrades. In distinguishing among interconnection customers for purposes of granting rights to be studied to access scarce transmission capacity, it is reasonable to prioritize the projects that LSEs have identified as commercially viable and necessary, because LSEs’ customers paid for the existing transmission capacity and LSEs’ customers will be repaying the costs of the network upgrades.⁴⁷⁵ Thus, we continue to find the restrictions on non-LSEs’ commercial interest point allocation reasonably balance the fact that, on the one hand, non-LSEs have no load-serving or resource adequacy obligations and concomitant penalties for not meeting resource adequacy requirements and, on the other hand, non-LSEs are actively procuring resources that would use the available Transmission Plan deliverability LSEs need for resource adequacy.⁴⁷⁶

124. We further find it reasonable that, to receive commercial interest points from a non-LSE, the interconnection customer must submit an affidavit from the non-LSE attesting that, among other things, the counterparty is supporting the interconnection request because it helps satisfy its corporate sustainability goals.⁴⁷⁷ As CAISO has explained, California has ambitious de-carbonization/sustainability goals.⁴⁷⁸ CAISO

⁴⁷³ *Id.* PP 182-183.

⁴⁷⁴ Transmittal at 2, 4.

⁴⁷⁵ *Id.* at 37 (stating that LSEs’ customers have paid for the transmission system).

⁴⁷⁶ Queue Reform Order, 188 FERC ¶ 61,225 at PP 128, 182. *See supra* note 41 for definition of Transmission Plan deliverability.

⁴⁷⁷ *Id.* P 18 & n.217 (citations omitted).

⁴⁷⁸ *See supra* P 3; Queue Reform Order, 188 FERC ¶ 61,225 at P 8.

stated that the non-LSE's required corporate sustainability attestation is directly related to the fact that additional deliverability is being developed through CAISO's transmission planning process to address California's clean energy goals.⁴⁷⁹ As CAISO maintained, it is reasonable to condition a non-LSE's award of commercial interest points on a demonstration that the non-LSE off-taker is seeking deliverability to serve a policy objective that is comparable to such clean energy goals, since these interconnection requests are competing (with the projects identified as needed to meet LSEs' resource adequacy/procurement targets) for scarce deliverability.

125. While the Commission does not endorse any specific state policy or generation resource,⁴⁸⁰ it also does not interfere in state policy matters that are beyond its jurisdiction.⁴⁸¹ Insofar as CAISO has proposed such attestation to help ensure that the interconnection requests receiving commercial interest points from non-LSEs will meet corporate sustainability goals, which also in turn will help meet state-wide policy goals, this strikes us as reasonable. As Vistra maintains, there may be other legitimate reasons (related to commercial viability and need) why non-LSEs might choose to contract with off-takers. Nevertheless, CAISO reasonably chose to restrict non-LSEs' commercial interest point allocation under Cluster Study Criteria 1 to interconnection requests that further corporate sustainability goals. We expect that LSEs will allocate commercial interest points to interconnection requests for projects that will meet their resource adequacy and procurement needs, and non-LSEs will allocate points to projects that meet

⁴⁷⁹ CAISO Answer at 43.

⁴⁸⁰ *Cf. Bldg. for the Future Through Elec. Reg'l Transmission Planning & Cost Allocation*, Order No. 1920, 187 FERC ¶ 61,068, at P 130 & n.326 (2024) ("Indeed, this final rule does not aim to affect—either facilitate or hinder—any changes or decisions that occur outside of the Commission's jurisdiction.") (citing New Jersey Commission Initial Comments at 3) ("The Commission is not proposing to unduly favor, mandate, or subsidize forms of generation but is rather seeking to ensure that the bulk electricity system maintains reliability and satisfies evolving consumer demand . . .").

⁴⁸¹ *Cf. id.* P 130 & n.328 ("This final rule is focused on ensuring that regional transmission planning processes are adequately accounting for the changes occurring outside of the Commission's jurisdiction, including the resource decisions that are the exclusive jurisdiction of states) (citing *PJM Power Providers Grp. v. FERC*, 88 F.4th 250, 275 (3d Cir. 2023) (holding that the Commission is "unambiguously authorize[d] . . . to take state policies into account to the extent that such policies affect [the Commission's] statutorily prescribed area of focus"); *Elec. Power Supply Ass'n v. Star*, 904 F.3d 518, 524 (7th Cir. 2018) (approving of the Commission's decision to take state zero-emissions credit systems like that in Illinois "as givens and set out to make the best of the situation [these systems] produce"))).

their corporate sustainability needs, and in this way, both state-established resource adequacy requirements and policy goals can be fulfilled. Under FPA section 205, CAISO's proposal need not be the best proposal; a reasonable one will suffice.⁴⁸²

126. We disagree with Vistra's contention that *MISO Queue Cap I* does not support the determination that an LSE's state-imposed resource adequacy requirements provide a valid basis to differentiate among interconnection customers in allocating interconnection access.⁴⁸³ Vistra argues that the (first proposed) MISO queue cap's failure to account for resource adequacy requirements was only one of four reasons why the Commission rejected MISO's proposal, and such failure to account for resource adequacy was unrelated to the Commission's finding in *MISO Queue Cap I* that MISO had not shown that its queue cap exemptions were not unduly discriminatory.⁴⁸⁴ Vistra states that the Commission questioned the reasonableness of MISO's proposal because it purported to provide an exemption for interconnection requests "attested by a [relevant electric retail regulatory authority (RERRA)] as needed in the queue cycle to fulfill a state reliability or policy need."⁴⁸⁵

127. We continue to find that the MISO queue cap orders support the Commission's decision here. Vistra's arguments erroneously downplay the importance of the fact that, when the Commission rejected MISO's original queue cap proposal, the Commission found, among other things, that MISO's proposal did not account for the region's resource adequacy needs in determining how the cap will be calculated.⁴⁸⁶ While the

⁴⁸² *Cities of Bethany v. FERC*, 727 F.2d at 1136 (the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs" and an applicant under the FPA need not show that its proposal is "superior to alternative[s]"); *City of Lincoln v. FERC*, 89 F.4th 926, 931 (D.C. Cir. 2024) (explaining that the court "need not find 'whether a regulatory decision is the best one possible or even whether it is better than the alternatives'" (quoting *Elec. Power Supply Ass'n*, 577 U.S. at 292)).

⁴⁸³ Vistra Rehearing Request at 32 & n.12 (quoting *Xcel Energy Operating Co.*, 106 FERC ¶ 61,260, at P 23 (2004) ("Interconnection customers that do not take part in the state-sponsored bidding must be allowed to compete in the wholesale energy market on an equal footing.")). We note that *Xcel* is distinguished from the present case *supra* P_97.

⁴⁸⁴ *Id.* at 32 & n.110 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176) (emphasis added).

⁴⁸⁵ *Id.* at 32 & n.111 (citing *MISO Queue Cap I*, 186 FERC ¶ 61,054 at P 174).

⁴⁸⁶ 186 FERC ¶ 61,054 at P 181.

Commission found several faults with the proposed cap, the Commission also found it “*critically important* that any cap be calculated in a way that strikes an appropriate balance between limiting the volume of requests to a level that can be processed efficiently and avoiding unnecessary barriers to entry that will delay the development of the generation capacity needed to meet growing supply shortages within the MISO region.”⁴⁸⁷ The Commission determined that “in light of this consideration, any future section 205 filing to propose a study cycle cap must demonstrate how the cap ensures that MISO can study new generation seeking to interconnect in a manner that appropriately accounts for its future resource needs.”⁴⁸⁸ Indeed, when the Commission accepted MISO’s second queue cap proposal, it found that “MISO has explained in this filing how its proposed queue cap formula considers its resource adequacy needs.”⁴⁸⁹ And the Commission agreed that the proposed cap formula “strikes a reasonable balance between limiting the volume of requests to a level that can be processed efficiently and avoiding unnecessary barriers to entry that will delay the development of the generation capacity needed to meet growing supply shortages within the MISO region.”⁴⁹⁰ We continue to find that CAISO’s proposal to account for the resource adequacy needs of LSEs in its scoring criteria will help ensure that LSEs are able to meet their resource adequacy requirements, consistent with the MISO queue cap orders.⁴⁹¹ We also continue to find that, as these orders support, resource adequacy is a reasonable basis for treating LSE and non-LSE off-takers differently in the commercial interest point allocation process.⁴⁹²

F. Exclusivity Agreements

1. Rehearing Requests

128. Rehearing Parties argue the Commission failed to consider and minimized uncontroverted evidence that LSEs are already discriminating among customers through the imposition of exclusivity agreements associated with seeking commercial interest

⁴⁸⁷ *Id.* (emphasis added).

⁴⁸⁸ *Id.* P 182.

⁴⁸⁹ *MISO Queue Cap II*, 190 FERC ¶ 61,057 at P 60 (2025).

⁴⁹⁰ *Id.*

⁴⁹¹ Queue Reform Order, 188 FERC ¶ 61,225 at P 181 & n.337 (citing *MISO Queue Cap I*, 196 FERC ¶ 62,054 at P 182); *see also MISO Queue Cap II*, 190 FERC ¶ 61,057 at P 60.

⁴⁹² Queue Reform Order, 188 FERC ¶ 61,225 at P 181.

points.⁴⁹³ CEAs and Calpine state that exclusivity agreements require interconnecting customers to (1) limit themselves to dealing with only one LSE, despite CAISO's proposal allowing generator interconnection customers to receive points from multiple LSEs and a non-LSE, and without the LSE's promise to reciprocate by allocating points; and (2) make deposits—some sizable, with no assurance the deposits will be returned if the depositor is not awarded points.⁴⁹⁴

129. Calpine argues that requiring executed exclusivity agreements prior to the interconnection study prevents developers from knowing the interconnection costs and, ultimately, the price at which they will sell the power from their proposed projects. Calpine adds that these exclusivity agreements have no term limit or end date, so they are “permanent for all intents and purposes,” allowing the LSE to name the price it will pay for the project's power and the terms that the developer must accept unless it is willing to forfeit the commercial interest points. Calpine highlights PG&E's answer where it explains that the reasonableness of exclusivity agreements is “a state jurisdictional matter” that is “outside the scope of this proceeding.”⁴⁹⁵ Calpine counters that the FPA and regulations obligate the Commission to prevent “undue preference or advantage to any person.”⁴⁹⁶ Calpine contends that the Commission arbitrarily failed to consider this evidence of exclusivity agreement-related undue discrimination and that it should reconsider the Queue Reform Order on that basis alone.⁴⁹⁷ Calpine argues that the Commission's determination on exclusivity agreements was conclusory and a non-

⁴⁹³ Calpine Rehearing Request at 3; 11-14; CEAs Rehearing Request at 4 & n.13 (citations omitted), 10 & n.37 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 145 (citing Calpine Answer and Supplemental Protest at 1; EPSA Answer at 5-6; Queue Reform Order, 188 FERC ¶ 61,225 at P 166 (citing Clearway Answer at 6))); Vistra Rehearing Request at 17 & n.56 (citing Calpine Answer and Supplemental Protest at 1).

⁴⁹⁴ CEAs Rehearing Request at 14. Calpine states that entering into agreements eliminates non-affiliated developers' ability to communicate with other LSEs. Vistra states that one party to the proceeding (Clearway) cited an LSE award process that required “interconnection customers to make sizable and entirely nonrefundable ‘deposits’—that is, payments—in exchange for the allocation of points, with no provision to return deposits if projects are not selected to advance to the study process.” Vistra Rehearing Request at 28-29 & n.96.

⁴⁹⁵ Calpine Rehearing Request at 13 & n.43 (citing PG&E Motion for Leave to file Answer and Answer, Docket No. ER24-2671-000 (filed Aug. 20, 2024)).

⁴⁹⁶ *Id.* at 13 & n.43 (citing 16 U.S.C. § 824d(b)).

⁴⁹⁷ *Id.* at 13 & n.44 (citation omitted).

sequitur.⁴⁹⁸ Calpine also argues that, contrary to the Commission’s assertions,⁴⁹⁹ interconnection customers cannot seek commercial interest points from an LSE by offering more favorable conditions when there is already evidence that LSEs are employing anti-competitive tactics, especially in a commercial environment where just three LSEs control a significant portion of the CAISO grid.⁵⁰⁰ In addition, Calpine emphasizes that exclusivity agreements preclude an interconnection customer from collecting points from multiple LSEs, contrary to the revised Tariff, which would allow it to receive points from multiple LSEs.

130. Vistra states that the Commission dismissed claims that exclusivity requirements are resulting in undue discrimination as “unsupported” because “exclusivity agreements may serve a variety of legitimate commercial needs.”⁵⁰¹ Calpine asserts that the Commission’s reference to “a variety of legitimate commercial needs” ostensibly refers to: “(1) the risk that LSEs will not be able to comply with state and community regulatory requirements and goals, and (2) LSEs’ own failure to hedge.”⁵⁰² Calpine argues that these reasons do not justify granting LSEs wide discretion to unduly discriminate against competitors’ projects. Vistra asserts that the Commission does not address why it is appropriate to condition commercial interest points—and by extension, interconnection access—on exclusivity agreements.

⁴⁹⁸ *Id.* at 3 & nn.7-8 (“[W]e find protestors’ concern that LSEs’ point allocation processes could lead to undue discrimination through the use of exclusivity agreements to be unsupported,” and “deposits and exclusivity agreements may serve a variety of legitimate commercial needs.”) (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 178 & n.329 (citing Motion for Leave to File Answer and Answer of California Community Choice Association in Response to Certain Protests and Answers, Docket No. ER24-2671-000, at 5 (filed Sept. 20, 2024) (referencing LSE penalty risk for “regulatory non-compliance, unhedged positions in their portfolio . . . and the inability to meet state and [community] goals for new clean resources.”))).

⁴⁹⁹ *Id.* at 9 & n.29 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 178).

⁵⁰⁰ *Id.* at 10 & n.30. For sample exclusivity agreements, *see id.* at 13 & n.42 (citations omitted); *see also* Vistra Protest at 21 & nn.53, 55 (discussing same)).

⁵⁰¹ Vistra Rehearing Request at 17 & n.56 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 178).

⁵⁰² Calpine Rehearing Request at 2 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 178 n.329 (citations omitted)).

131. Calpine contends that the Commission’s reasoning that “LSEs are [] motivated by drivers other than competitive advantage”⁵⁰³ overlooked evidence that an LSE has already imposed a “pay-to-play” deposit for developers who are interested in seeking to connect to the grid.⁵⁰⁴ Calpine asserts that higher deposits can influence scoring, because they are payments to an LSE “gatekeeper” to the RTO-administered interconnection study process, rather than a deposit to a transmission owner or transmission provider directly associated with the interconnection study process.⁵⁰⁵ Vistra argues that LSEs requiring “pay-to-play” is contrary to guidelines that CAISO provided during the stakeholder process indicating that there should be no exchange of value for points.⁵⁰⁶ CEAs state that while the Commission found such deposits were acceptable because they would be credited against actual costs, that is only if the project were selected to be studied.⁵⁰⁷ CEAs highlight that there is no provision in the exclusivity agreements to return deposits if projects are not selected to advance to the study process.⁵⁰⁸

132. Calpine states that the Commission found certain discriminatory behavior might serve “a variety of legitimate commercial needs” for LSEs who “are motivated by drivers other than competitive advantage,” “obligated to satisfy resource adequacy requirements,” “subject to penalties” if they do not, and possibly unhedged in the market place.⁵⁰⁹ Calpine contends that this reasoning is too conclusory to satisfy the reasoned decision-making requirement and too difficult to square with the Commission’s longstanding commitment to open access principles.

⁵⁰³ *Id.* at 14 & n.47 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 179; Clearway Answer at 3 (citing San Diego Community Power, Exclusivity Agreement Template, <https://www.Attachment-B-SDCP-2024-IPE-Exclusivity-Agreement-Template-1>)); Vistra Protest at 21 (citing Clean Power Alliance, 2024 Clean Energy and Reliability Request for Offers at 7) (June 11, 2024), <https://www.ascendanalstics.com/cpa/clean-energy-and-reliability-rfo-2024>)).

⁵⁰⁴ Calpine Rehearing Request at 14 & n.48 (citations omitted).

⁵⁰⁵ *Id.* at 14.

⁵⁰⁶ Vistra Rehearing Request at 29 & n.97 (citing Clearway Answer at 2).

⁵⁰⁷ CEAs Rehearing Request at 14 & n.61 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 178).

⁵⁰⁸ *Id.* at 14 & n.60 (citing Clearway Answer at 3).

⁵⁰⁹ Calpine Rehearing Request at 11 & n.34 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at PP 178-79).

2. Commission Determination

133. We continue to find that the commercial interest points feature of the revised Tariff is not rendered unduly discriminatory by some LSEs' decision to require exclusivity agreements as a prerequisite to evaluating whether to allocate commercial interest points to a prospective interconnection customer.⁵¹⁰ At the outset, we emphasize that CAISO's Tariff revisions do not include or mention exclusivity agreements. Consequently, the terms and conditions of exclusivity agreements, in general, or of those specifically mentioned in the record,⁵¹¹ are not before the Commission for review in this proceeding.

134. Additionally, as parties have pointed out, the use of exclusivity agreements as part of the request for offer process predates the introduction of the commercial interest criterion⁵¹² and helps ensure that parties are moving forward in good faith toward executing a PPA.⁵¹³ Parties persuasively explained that exclusivity agreements have become increasingly important, given load growth, regulatory requirements, supply chain difficulties, and interconnection delays.⁵¹⁴ Thus, the Commission reasonably determined that exclusivity agreements and associated deposits may serve a variety of legitimate commercial needs.⁵¹⁵ For example, an exclusivity agreement secures exclusivity and a

⁵¹⁰ Queue Reform Order, 188 FERC ¶ 61,225 at P 178.

⁵¹¹ See, e.g., Calpine Rehearing Request at 13 & n.42 (citing Silicon Valley Clean Energy, *2024 Carbon Free Energy & Standalone Storage Projects, Request for Offers* 11 (Aug. 12, 2024), <https://svcleanenergy.org/wp-content/uploads/Carbon-Free-Energy-and-Standalone-Storage-Projects-RFO-August-2024.pdf>; San Diego Community Power, *Cluster 15 Interconnection Process Enhancements Commercial Interest Allocation ("IPE") Request for Proposals ("RFP")* attach. B (Exclusivity Agreement Template) (Sept. 11, 2024), <https://sdcommunitypower.org/resources/solicitations/>).

⁵¹² See, e.g., California Community Choice Association Motion for Leave to Answer and Answer at 3-4; see also *id.*, App. A (providing links to a number of exclusivity agreements that predate this proceeding).

⁵¹³ *Id.* at 3-5.

⁵¹⁴ See, e.g., *id.* at 3, 5 & n.9.

⁵¹⁵ Queue Reform Order, 188 FERC ¶ 61,225 at P 178.

Right of First Offer, giving that LSE the first opportunity to procure the resource to which it allocated commercial interest points.⁵¹⁶

135. We reiterate that CAISO's revised Tariff affords LSEs—under only one of the three complementary scoring criteria—a limited ability to allocate points to interconnection requests (based on publicly posted selection criteria) that are necessary to satisfy their resource adequacy obligations and procurement needs.⁵¹⁷ Because, as discussed above, lack of commercial interest points is not an insurmountable impediment to an interconnection request proceeding to the cluster study, we are not persuaded that LSEs will be in a position to extract unreasonable exclusivity agreements. Further, and significantly, we reiterate that each interconnection customer may pursue commercial interest points from the LSE (or LSEs) and non-LSE (or non-LSEs) whose terms are acceptable to it.⁵¹⁸ Indeed, there are more than 70 LSEs in CAISO, which run the gamut from investor-owned utilities, publicly-owned utilities, community choice aggregators, to electric service providers, plus non-LSEs.⁵¹⁹ As CAISO's website posting indicates, 38 LSEs participated in the commercial interest point allocation process for Cluster 15.⁵²⁰ While we acknowledge the concern that exclusivity agreements could restrict the interconnection customer from receiving points from multiple LSEs and one non-LSE, as the Tariff permits, we reiterate that interconnection customers are not obligated to enter into these agreements and they may choose to solicit points from competing LSE(s) or a non-LSE instead. Thus, we disagree with Calpine's contention that the Commission's "appeal to a free market solution rings hollow"⁵²¹ because, contrary to Calpine's assertions, the revised Tariff empowers interconnection customers to seek commercial interest points from their preferred LSE(s) or non-LSE.

⁵¹⁶ California Community Choice Association Answer at 5 & n.11.

⁵¹⁷ Queue Reform Order, 188 FERC ¶ 61,225 at P 178.

⁵¹⁸ *Id.* P 178. Indeed, we note that the Cluster 15 Report shows that seven out of 50 projects received commercial interest points from both an LSE and a non-LSE under Cluster Study Criteria 1. Cluster 15 Report at 9, Fig. 5, <https://www.caiso.com/documents/summary-of-cluster-af-intake-scoring-results.pdf>.

⁵¹⁹ California Community Choice Association Answer at 6.

⁵²⁰ See LSEs Procurement Contact Information, posted on CAISO's website November 27, 2024, <https://www.caiso.com/documents/c15-commercial-interest-information.pdf>.

⁵²¹ Calpine Rehearing Request at 10.

136. We also continue to find unsupported protesters' concern that LSEs' commercial interest point allocation processes could lead to interconnection customers exchanging payment for LSE points.⁵²² We reiterate that it is a common industry practice for LSEs to seek higher deposits in connection with PPA negotiations and, in most cases, these deposits are credited against actual costs.⁵²³ We continue to find it unlikely that LSEs would select inferior interconnection requests solely for the purpose of receiving a higher deposit from a potential interconnection customer, and, thereby, risk noncompliance with resource adequacy obligations.⁵²⁴ Rehearing Parties have not presented any evidence that LSEs are not using deposits as an indicator of the interconnection customer's commercial viability and sincere intent to interconnect to the CAISO transmission system. Among other things, the time and resources spent designing the criteria to identify needed projects, reviewing whether the interconnection customer's project meets the posted criteria, determining how many points to award, and negotiating a PPA potentially could support requests for deposits. Finally, we note that, in the generator interconnection context and other contexts, the Commission has found investments, deposits, and bids to be a reasonable indicator of commitment to a project.⁵²⁵

⁵²² *Id.* at 14; Vistra Rehearing Request at 28-29.

⁵²³ Queue Reform Order, 188 FERC ¶ 61,255 at P 178; *see also* CAISO Answer at 28. We note that, contrary to CEAs' assertion, *see* CEAs Rehearing Request at 11 & n.41 (citing Queue Reform Order, 188 FERC ¶ 61,255 at P 178), the Commission stated that "most" deposits not "any" deposits would be credited against actual costs.

⁵²⁴ *See, e.g.*, California Community Choice Association Answer at 5 ("Without new resources, LSEs including [community choice aggregators] face penalties for regulatory non-compliance, unhedged positions in their portfolio placing customer rates at risk, and the inability to meet state and [community choice aggregator] goals for new clean resources. Exclusivity agreements have been a response to these conditions and have been utilized prior to the [s]coring [c]riterion.").

⁵²⁵ *See, e.g.*, Order No. 2023, 184 FERC ¶ 61,054 at P 699 (finding that requiring deposits in amounts substantial enough to demonstrate commitment to reaching commercial operation at progressive milestones throughout the interconnection process will be a sufficient deterrent to speculative behavior); *see also* Queue Reform Order, 188 FERC ¶ 61,225 at P 196 (finding the interconnection customer's at-risk auction bid in the sealed bid tiebreaker for commercial interest points "is an additional indicator of its commitment to its project that will further distinguish viable interconnection requests").

G. Past Record on Discrimination

1. Rehearing Requests

137. Rehearing Parties assert that in accepting CAISO's limitations on how LSEs would allocate points to their affiliates, the Commission unreasonably relied on "CAISO's observation that interconnection requests from LSEs and their affiliates have been rare in the CAISO region."⁵²⁶ First, Vistra argues that neither CAISO nor any other party provided evidence that interconnection requests from LSEs and their affiliates have been rare in CAISO. Vistra states that it provided the only record evidence on this point, and the examples it provided showed LSEs developing large generation projects within the CAISO footprint in recent years.⁵²⁷ Second, Vistra argues that the Commission failed to explain why the lack of discrimination under CAISO's prior interconnection process, which did not allow LSEs to favor their affiliates, is relevant to its consideration of CAISO's revised interconnection process, which expressly provides LSEs with discretion to favor their affiliated generation going forward.⁵²⁸ Calpine states that, while past results could be a good indicator of future performance if the old and new approaches are not that different, CAISO's proposal constitutes a major shift from past practice—one that Calpine contends vests LSEs with "a powerful new contractual bargaining chip" against interconnection customers seeking commercial interest points.⁵²⁹

138. CEAs argue that the relative historical infrequency of interconnection requests from LSEs and their affiliates under the old rules does not counteract the concern that

⁵²⁶ Calpine Rehearing Request at 8 & n.25 (citing Queue Reform Order, 188 FERC ¶ 61,225 at PP 176, 180); CEAs Rehearing Request at 7 & n.24 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176 (citing CAISO Answer at 38)); Vistra Rehearing Request at 45 & n.45 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 176).

⁵²⁷ Vistra Rehearing Request at 14 & n.46 (citing Vistra Protest at 9 & n.26 (citing *Creating Our Clean Energy Future: PG&E Commissions its Moss Landing Elkhorn Battery* (Apr. 18, 2022), <https://investor.pgecorp.com/news-events/press-releases/press-release-details/2022/Creating-Our-Clean-Energy-Future-PGE-Commissions-its-Moss-Landing-Elkhorn-Battery/default>)).

⁵²⁸ *Id.* at 17 & n.54 (citing *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 13 (D.C. Cir. 2015)); *see also id.* at 17 (asserting that while past performance "is not generally indicative of future results, it is particularly not instructive when the rules of the game are being fundamentally rewritten in a manner that facilitates discrimination and undue preference").

⁵²⁹ Calpine Rehearing Request at 8.

“without more robust structural safeguards, CAISO’s new rules could lead to unjust and unreasonable, unduly discriminatory and preferential generator interconnection practices and rates.”⁵³⁰ CEAs and Vistra assert that, regardless of the frequency with which LSEs request interconnection service, they continue to own, operate, and control substantial portfolios of generation resources. They argue that LSEs therefore have an economic incentive to benefit their own generation portfolios by limiting competing suppliers’ ability to obtain interconnection service or by ensuring that they obtain access on less favorable terms.⁵³¹

139. Vistra emphasizes that the Commission has recognized that it has a statutory obligation to eliminate opportunities for undue discrimination even without any evidence that discrimination has already occurred.⁵³² Vistra and CEAs assert that the Commission’s reliance on lack of evidence of discrimination under the prior paradigm is an unexplained departure from Commission precedent recognizing that incumbent utilities will discriminate against competitors when given the opportunity⁵³³ and an abdication of its responsibility to prevent undue discrimination.⁵³⁴

⁵³⁰ CEAs Rehearing Request at 7.

⁵³¹ Vistra Rehearing Request at 15 & n.48 (citing *Pac. Gas & Elec. Co.*, Updated Market Power Analysis, Docket No. ER10-1107-010, attach. C (filed Dec. 23, 2021) (stating that PG&E accounts for approximately 11.7% to 15% of the uncommitted generation capacity depending on season); *S. Cal Edison Co.*, Docket No. ER10-1355-011 (filed Dec. 6, 2021) (indicating that Southern California Edison Company accounts for approximately 13.7% to 16.2% of uncommitted generation capacity, depending on season)); *see also* CEAs Rehearing Request at 7 (arguing that even if LSEs awarding of commercial interest points to affiliates “would be expected to occur infrequently based upon the lower volume of LSE and affiliate interconnection requests, this belies the concern that LSEs could still allocate commercial interest points to their affiliates in a discriminatory and preferential manner”).

⁵³² Vistra Rehearing Request at 16 & n.52 (citing Order No. 890-A, 121 FERC ¶ 61,297 at P 14 (“As it did in Order No. 888, the Commission properly acted to limit continuing opportunities for undue discrimination, not to remedy actual instances of undue discrimination.”)).

⁵³³ *Id.* at 16 & n.51 (quoting Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,682; *Xcel Energy Servs. v. FERC*, 41 F.4th at 552; *PacifiCorp*, 171 FERC ¶ 61,112 at P 101).

⁵³⁴ *Id.* at 16 & n.53 (citations omitted); CEAs Rehearing Request at 7 & n.25 (citing *W. Deptford Energy, LLC v. FERC*, 766 F.3d 10, 17 (D.C. Cir. 2014)).

2. Commission Determination

140. We remain unpersuaded by Vistra’s and CEA’s contentions that, compared to the past, more rigorous safeguards – beyond those already reflected in CAISO’s Tariff revisions – are needed to prevent LSEs from exercising undue discrimination or preference in the allocation of commercial interest points.⁵³⁵ Rehearing Parties overstate the degree to which the Commission relied on CAISO’s past track record of “no evidence of affiliate abuse in CAISO” to accept CAISO’s filing.⁵³⁶ While the Commission found the past track record “persuasive,” that was in conjunction with the other factors that the Commission discussed along with CAISO’s history, i.e., (1) the affiliate limitation, which ensures that LSEs may award commercial interest points to no more than three requests from affiliates, not to exceed 25% of an LSE’s total points; (2) the capacity limitation, whereby only one-third of available MW of capacity identified in the cluster study will be eligible to receive LSE commercial interest points, although CAISO will study up to 150% of available capacity for each zone, resulting in the remaining two-thirds of the cumulative capacity proceeding to the cluster study without commercial interest points;⁵³⁷ (3) transparency, achieved in part via the revised Tariff requiring LSEs to publicly post their selection criteria or consideration for awarding points; (4) the aforementioned CPUC and LRA oversight; and (5) CAISO’s “commitment to work with stakeholders to develop solutions should CAISO identify any favoritism toward LSE affiliates occurring after the Tariff revisions are implemented.”⁵³⁸

141. Moreover, in addition to the Tariff limitations, transparency, and oversight measures discussed above, no one disputes the existence of a robust community of independent developers, such as Vistra and Calpine, who are and will continue to be active CAISO participants. We are confident any sign of irregularity or abuse will be conveyed to the relevant state or federal regulator and CAISO. Moreover, and significantly, California law requires the CPUC to maintain resource adequacy (in consultation with CAISO),⁵³⁹ ensuring that only necessary investor-owned utility-

⁵³⁵ CEAs Rehearing Request at 7; Vistra Rehearing Request at 17.

⁵³⁶ Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

⁵³⁷ *Id.* P 176 & n.326 (citing CAISO Second Answer at 8-9 (citing PG&E Comments at 3)).

⁵³⁸ *Id.* P 176 & n.327 (citing CAISO Answer at 39).

⁵³⁹ Cal. Pub. Util. Code § 380(a) (West 2025) (“The commission, in consultation with [CAISO], shall establish resource adequacy requirements for all load-serving entities.”); *see also id.* (b) (“In establishing resource adequacy requirements, the commission shall ensure the reliability of electrical service in California while advancing, to the extent possible, the state’s goals for clean energy, reducing air pollution, and

affiliated generation is developed.⁵⁴⁰ California law also requires public utilities to file annual and quarterly reports with the CPUC that detail actual fuel supply costs and procurement plans for the upcoming year to protect California ratepayers.⁵⁴¹ As the Commission pointed out in the Queue Reform Order, LSEs are subject to regulatory oversight from the CPUC or their respective LRAs,⁵⁴² and there is no evidence that the CPUC, other LRA, or CEC oversight will diminish or abate going forward. CAISO also pledged to monitor the LSEs' role in the enhanced interconnection procedures and address any discrimination concerns that may emerge by providing further tariff enhancements or taking other appropriate action with the CPUC, LRAs, or the Commission.⁵⁴³ We reiterate that CAISO also committed to monitor the overall efficacy of its proposed revisions.⁵⁴⁴

142. Finally, Calpine's contention that the revised Tariff vests LSEs with "a powerful new contractual bargaining chip against interconnection customers seeking commercial interest points"⁵⁴⁵ lacks merit. As discussed above regarding exclusivity agreements, commercial interest points are only 30% of the interconnection customer's total score and the revised Tariff does not give LSEs expanded contracting authority or anti-competitive leverage over competitors.

reducing emissions of greenhouse gases.").

⁵⁴⁰ CPUC Comments at 5 ("Additionally, all Investor-Owned Utilities' projects will undergo CPUC review and approval, providing an additional layer of oversight to justify and ensure utility-owned resources are only permitted as needed.").

⁵⁴¹ Cal. Pub. Util. Code §§ 454.51; 454.52 (West 2025).

⁵⁴² Queue Reform Order, 188 FERC ¶ 61,225 at P 176.

⁵⁴³ Transmittal at 51.

⁵⁴⁴ Queue Reform Order, 188 FERC ¶ 61,225 at P 39 & n.62 (citing CAISO Answer at 5-6).

⁵⁴⁵ Calpine Rehearing Request at 7-8 & n.27 (citation omitted). Calpine does not explain how commercial interest points "give LSEs even greater contractual control of the grid" than they had when Order No. 888 issued. *Id.* Presumably Calpine is referring to exclusivity agreements, which are not part of the revised Tariff, or the fact that commercial interest points can lead to PPAs, which the revised Tariff also does not address. In any event, we fail to see how the revised Tariff's commercial interest point provisions give LSEs any contractual authority, let alone enhanced contractual authority.

H. Energy-Only Service (Cluster Study Criteria 3)

1. Rehearing Request

143. Vistra states that the Commission accepted CAISO's proposal to apply the same scoring criteria that it applies to interconnection customers seeking deliverability status in a Deliverable Zone to interconnection customers seeking energy-only status in zones where the LRA has indicated a procurement target for energy-only projects.⁵⁴⁶ Vistra argues that the Commission summarily concluded that "the scoring criteria will enable CAISO to prioritize the most viable and needed interconnection requests within the cap under Cluster Study Criteria 3."⁵⁴⁷ Vistra contends that the Commission failed to articulate a rational basis for accepting CAISO's proposal to extend the commercial interest points framework to energy-only service.⁵⁴⁸ Emphasizing that interconnection customers seeking energy-only interconnection service are not eligible to meet LSEs' resource adequacy requirements, Vistra argues, therefore, that LSEs' role in meeting resource adequacy requirements cannot justify customers receiving a competitive advantage in securing energy-only service.⁵⁴⁹ Vistra states that neither CAISO nor the Commission provided any response to this argument.⁵⁵⁰

2. Commission Determination

144. We agree with Vistra that energy-only projects are not eligible to meet LSEs' resource adequacy requirements in CAISO.⁵⁵¹ Insofar as the Queue Reform Order implied that LSEs' resource adequacy obligations support the allocation of commercial

⁵⁴⁶ Vistra Rehearing Request at 36 & n.124 (citing Queue Reform Order, 188 FERC ¶ 61,225 at P 212).

⁵⁴⁷ *Id.* at 37 & n.126 (quoting Queue Reform Order, 188 FERC ¶ 61,225 at P 212).

⁵⁴⁸ *Id.* at 43 (citing 16 U.S.C. § 824d).

⁵⁴⁹ *Id.* at 37 & n.124 (citing Vistra Protest at 11).

⁵⁵⁰ *Id.* at 43 (citations omitted).

⁵⁵¹ See Transmittal at 11 & n.16 ("E]nergy-only deliverability status means a generator's full output does not count toward meeting an LSE's California resource adequacy requirements.") (citing *Cal. Indep. Sys. Operator Corp.*, 182 FERC ¶ 61,196, at P 2 (2023)).

interest points to LSEs under Cluster Study Criteria 3,⁵⁵² we clarify that this was not the Commission's intent.

145. Although LSEs' resource adequacy requirements justify LSEs' allocation of commercial interest points to interconnection requests under Cluster Study Criteria 1, that reasoning is inapplicable to Cluster Study Criteria 3.⁵⁵³ Instead, as to Cluster Study Criteria 3, CAISO explained that some LRAs have begun contemplating procurement of energy-only generation.⁵⁵⁴ The only zones where interconnection requests may be submitted under Cluster Study Criteria 3 are those where the LRA has designated the procurement of a specific MW quantity of capacity with energy-only deliverability status.⁵⁵⁵ CAISO stated that it is "reasonable to presume" that LRA-directed procurement benefits ratepayers, and therefore the associated reliability network upgrades should appropriately be eligible for cash reimbursement, similar to the deliverable projects that are assumed to benefit ratepayers under Cluster Study Criteria 1 and are eligible for cash reimbursement.⁵⁵⁶ Therefore, we find it is reasonable to give LSEs—the entities that are securing capacity from the energy-only projects to meet LRA procurement targets to benefit ratepayers—an active role in helping prioritize the most viable and needed energy-only projects eligible to meet those procurement targets. This is akin to providing LSEs an upfront role in assigning commercial interest points under Cluster Study Criteria 1, albeit for a different objective.

The Commission orders:

⁵⁵² See Queue Reform Order, 188 FERC ¶ 61,225 at P 212 & n.386 (citing *id.* PP 106, 114-118, 123, 174-186 (discussing LSE involvement in resource adequacy, among other things)).

⁵⁵³ See, e.g., Transmittal at 41 ("In order for the scoring criteria to work properly, [CAISO] needs to determine LSE procurement interest early on to assess project viability and ensure alignment with resource adequacy and transmission planning."); *id.* at 43 (stating that "CAISO has designed the LSE requirements carefully to reflect the LSE—and their local regulatory authority's roles—in procurement").

⁵⁵⁴ *Id.* at 47-48.

⁵⁵⁵ *Id.* at 47.

⁵⁵⁶ *Id.* at 48; see also *id.* at 56 (pointing out that the CPUC noted that the new rules "incentivize resources with energy-only deliverability status in areas where the CPUC or local regulatory authorities have indicated a need for such resources."). In contrast, in Cluster Study Criteria 4, i.e., energy-only requests that are presumed not to benefit ratepayers—"as they meet no procurement or public policy goals"—do not receive cash reimbursement or account for LSE input via commercial interest points. *Id.*

In response to the rehearing requests, the Queue Reform Order is hereby modified and the result sustained, as discussed in the body of this order.

By the Commission. Chairman Swett is not participating.
Commissioner LaCerte is not participating.

(S E A L)

Carlos D. Clay,
Deputy Secretary.