

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

California Independent System) Docket No. ER14-____-000
Operator Corporation)

JOINT PETITION FOR WAIVER OF TARIFF PROVISIONS

By this filing, the California Independent System Operator Corporation (“ISO”) and the California Public Utilities Commission (“CPUC”) jointly and respectfully request a limited, one-time suspension of the effectiveness, or a “waiver,” of the requirement in former ISO Tariff section 24.5.2.3(b), which continues to be applicable to projects approved in the 2012/2013 ISO planning cycle. Under that former tariff requirement, the choice of an approved project sponsor rests with the siting approval agency, not the ISO, when all qualified project sponsors intend to seek siting approval from the same siting agency. As discussed below, in the case of the particular transmission element for which this waiver is being sought -- the Sycamore-Penasquitos Line -- all four proposed project sponsors indicated that they would apply to the CPUC for siting approval. The ISO and the CPUC seek a waiver so that the ISO, not the CPUC, can determine the approved project sponsor for the Sycamore-Penasquitos Line according to the terms of former ISO Tariff section 24.5.2.3(c). The four project sponsors that submitted applications to compete to construct and own the Sycamore-Penasquitos Line -- Trans Bay Cable LLC, Abengoa, Elecnor, and San Diego Gas & Electric Company -- have authorized the ISO and CPUC to state that they each either support or do not oppose this waiver request. The Commission should grant this request

because there is good cause for the waiver consistent with Commission precedent, as discussed below.

I. Background

The ISO employs a three phase transmission planning process. In Phase 1, with the assistance of stakeholders, the ISO determines the unified planning assumptions and study plan. In Phase 2, the ISO performs the technical studies and, again with the assistance of stakeholders, identifies transmission needs and the solutions for those needs. In Phase 3, the ISO identifies an approved project sponsor to construct the transmission mitigation solutions that are subject to the competitive solicitation process. All other solutions, or projects submitted through the request window in Phase 2, proceed to permitting and construction once the ISO Board of Governors has approved the transmission plan at the end of Phase 2.

Prior to October 1, 2013, the tariff provided that ISO's participating transmission owners have responsibility for the construction of reliability projects and all transmission developers had the opportunity to participate in a competitive solicitation to construct and own economic and public policy projects. Also, under former ISO Tariff section 24.4.6.2, a reliability project became subject to a competitive solicitation if it also provided economic or policy-driven benefits.

These tariff revisions were revised effective October 1, 2013, in compliance with Order No. 1000.¹ Notably, among the revisions that the Commission directed to

¹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012). The former tariff provisions were approved by the Commission in December 2010 as part of the ISO's revised transmission planning process (RTPP). *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 (2010).

become effective on that date was elimination of the Phase 3 competitive solicitation process requirement that the siting agency select the project sponsor in the event that all sponsors selected the same siting agency.² The Commission determined, however, that the former tariff provisions would continue to apply to projects approved in the 2012/2013 planning cycle (such as the Sycamore-Penasquitos Line).³

In the 2012/2013 Transmission Plan, the ISO identified the need for two transmission elements that were subject to the Phase 3 competition solicitation under the former tariff provisions. One was a 230 kV transmission line between the PG&E owned Gates and Gregg 230 kV substations (the “Gates-Gregg line”), a transmission mitigation solution for a reliability need that also provided additional policy and economic benefits.⁴ The selection process for that element began on April 1, 2013, with the opening of the bid window, and is nearing conclusion. In accordance with former tariff section 24.5.2.3(c), the ISO is conducting a comparative analysis of the application materials submitted by the project sponsors and will issue its selection results in accordance with the timeframe set forth in the business practice manual for transmission planning (BPM).⁵

The ISO also identified the reliability need for a 230 kV line between the Sycamore and Penasquitos 230 kV substations owned by San Diego Gas & Electric Company in response to potential overloads at the Miguel substation and on the 69 KV system (the “Sycamore-Penasquitos line”). The ISO determined that the proposed

² *California Indep. Sys. Operator Corp.*, 143 FERC ¶61,057 (2013) at P 224.

³ *Id.*, at P 28 (2013).

⁴ See project description and other materials at: <http://www.caiso.com/Documents/Gates-Gregg%20230%20kV%20line%20element>

⁵ <http://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Transmission Planning Process>

transmission configuration would provide a means by which renewable generation in the ISO interconnection queue could quickly and efficiently be delivered to the existing ISO grid, while minimizing environmental impacts in the Imperial Irrigation District service territory.⁶ Because of these additional policy benefits, the project was eligible for a competitive solicitation.

During the competitive solicitation process, the ISO found the four project sponsors to be qualified. Each of these project sponsors stated its intention to seek siting approval from the CPUC. Accordingly, under ISO Tariff section 24.5.2.3(b), the CPUC is responsible for selecting an approved project sponsor.

II. Need for the Waiver

Although the ISO's transmission planning framework allows for projects identified in the annual transmission plan and requiring additional study to be brought to the Board for approval after the transmission plan is approved in March,⁷ the 2013/2014 transmission planning process is now well underway. The additional studies for certain transmission elements that were identified in the 2012/2013 transmission plan are still ongoing, and the ISO has now carried⁸ them over to the 2013/2014 cycle.⁸ Thus, because the revised tariff language became effective on October 1, 2013 and is applicable to the 2013/2014 planning cycle, the Sycamore-Penasquitos line will be the only project for which the CPUC ever will have the responsibility to select the project sponsor. As noted above, starting with the 2013/2014 cycle, the ISO will make the

⁶ The project description is available at <http://www.caiso.com/Documents/Description-FunctionalSpecificationsSycamore-Penasquitos230kVLine.pdf>.

⁷ See Tariff section 24.4.8

⁸ See 2012/2013 Board Approved Transmission Plan at <http://www.caiso.com/planning/Pages/TransmissionPlanning/2012-2013TransmissionPlanningProcess.aspx> Pages 7, 8

project sponsor selection, regardless of the siting agency chosen by each project sponsor. Therefore, as discussed in detail below, the ISO's former tariff provision places a substantial burden on the CPUC -- as the siting agency designated by the proposed project sponsors -- to develop a selection process that will never be used again.

ISO Tariff section 24.5.2.3(b) contemplated that the CPUC's (or other siting agency's) siting authority and proceedings would serve more as a default to the ISO selection of a project sponsor, rather than as a parallel alternative process, where multiple sponsors qualify.⁹ However, the CPUC's existing siting process is not designed to select a sponsor among competing developers, but rather to review, site, and permit a specific project proposed by a single applicant through an application for a certificate of public convenience and necessity ("CPCN"), although the process does consider alternatives to the applicant's proposed project. The application of former section 24.5.2.3(b) of the ISO Tariff simply requires that the CPUC's siting process be applied in a manner and for a purpose for which it was not intended or designed. Section 24.5.2.3(b) would require multiple project sponsors to seek siting authority simultaneously before the CPUC, and require the ISO to accept the sponsor whose project emerges from the CPUC. This is evident by the fact that the one-hundred-twenty days the approved project sponsor has to seek siting approval under Section 24.5.2.3(b) also applies in Section 24.5.2.3(c) when only a single project sponsor is involved and the ISO makes the selection independent of the CPUC. If multiple sponsors were to seek siting approval before the CPUC, the project the CPUC would

⁹ For reference purposes, ISO Tariff section 24.5.2.3 is set forth in its entirety in the attachment to this waiver request.

ultimately approve could be a combination of alternative routes that were not identified with any particular sponsor. This would further complicate the CPUC's selection of a project sponsor.

Thus, while the CPUC staff had been aware of ISO's Tariff section 24.5.2.3(b), the CPUC staff did not fully appreciate the implications of the provision for the ISO transmission planning process timeline, which would require the CPUC "siting approval" that the tariff considered to be a "default" selection process, to be completed within the transmission planning process annual schedule or at least before the completion of the next annual transmission planning process. The CPUC staff considered alternatives to implementing ISO Tariff Section 24.5.2.3(b) in the required timeframe, including developing a new process that would preliminarily focus on project sponsors before the CPUC's traditional siting process, but none of the options considered were efficient, timely or completely separable from the siting process itself, or consistent with its requisite statutory mandates. This was exacerbated by the fact that having four project sponsors advance through an application or siting process would be extremely complex, not easily manageable, and likely to be bitterly disputed. Consequently, the CPUC staff discussed the matter with the ISO and requested the ISO to instead assume responsibility for the project selection process in accordance with its tariff. The ISO agreed, and the ISO and CPUC staff determined that a waiver of the 24.5.2.3(b) and (c) tariff provisions discussed below would be the best approach for a timely, efficient and effective resolution to selection of the Sycamore-Penasquitos project sponsor.

A waiver of this provision would allow the ISO to assume responsibility for selecting the approved project sponsor for the Sycamore-Penasquitos project. The

CPUC does not currently have a process in place for selection of an approved project sponsor in the context of a competitive solicitation. The CPUC's current processes and rules are designed around a single project sponsor. Developing a brand new process designed around multiple-sponsors in a manner that would ensure full compliance with all statutory requirements, including environmental review under the California Environmental Quality Act (CEQA) would be extremely difficult, time and resource intensive, and could ultimately delay approval and construction of the project by the required in-service date. In addition, it would not be an efficient use of the CPUC staff's and the project sponsors' time, effort, resources, and monies to develop a new process that would only be used for one project.

III. Request for Waiver of ISO Tariff Provisions

The ISO and the CPUC request waiver of the requirement in former ISO Tariff section 24.5.2.3(b), as otherwise applicable to the Sycamore-Penasquitos project, so that the ISO may determine the approved project sponsor for the project. Although the Commission has typically granted waiver requests where an emergency situation or an unintentional error was involved,¹⁰ the Commission does not limit waivers to such circumstances. It has also granted waivers when good cause for a waiver of limited

¹⁰ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 at P 24 (2007) (granting waiver to generator interconnection procedures to facilitate efficient and cost-effective treatment of 4,350 MW of wind-related interconnection requests), *citing ISO New England Inc.*, 117 FERC ¶ 61,171 at P 21(2006) (allowing a limited and temporary suspension of tariff provision to correct an error); *Great Lakes Gas Transmission Ltd. Partnership*, 102 FERC ¶ 61,331 at P 16 (2003) (granting emergency waiver involving force majeure event granted for good cause shown); and *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330 at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident.¹¹ This request meets those criteria.

First, there is good cause for this waiver. Except for the limited circumstances identified in tariff section 24.5.2.3 (b), the ISO has the responsibility for determining the approved project sponsor. Moreover, under the Order No. 1000 planning framework adopted by the Commission, the ISO will be required to make all project sponsor selections going forward. By comparison, the CPUC has never had to select a project sponsor in ISO's transmission planning process. Other than the Sycamore-Penasquitos project, the ISO has determined the approved project sponsor in all previous transmission planning process. Therefore, the CPUC staff would need to develop a brand new process for evaluating project sponsors that would be used only for this instance. The ISO, on the other hand, already has this process in place. The waiver is thus necessary to avoid delay in construction of this needed transmission addition. In addition, the development of the process and the evaluation of the applications would divert CPUC resources from other pressing projects. There is no compelling reason at this point to potentially delay the project, and require the CPUC and the project sponsors to spend valuable time, resources, and effort developing and participating in a new process that will never be used again.

Second, there are no undesirable consequences. The fact that the ISO, rather than the CPUC, will select the approved project sponsor will not prejudice any of the applicants. The approved project sponsor must still present the Sycamore-Penasquitos

¹¹ *Southern Cal. Edison Co.*, 125 FERC ¶ 61,009, at P 17 (2008) (citing *Cal. Ind. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008), and *Cal. Ind. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007)).

project to the CPUC for siting approval. As required by the Commission, the ISO is independent. The ISO also uses a consultant to assist in the evaluation of potential sponsors. Indeed, as discussed above, and the Commission has eliminated the tariff provision authorizing the ISO to defer to siting authorities the determination of the approved project sponsor when all project sponsors select the same siting authority. Finally, benefits to customers are evident. The waiver will allow the Sycamore-Penasquitos project to proceed without delay and will allow the CPUC to continue to devote its resources to its other important responsibilities without distractions. Furthermore, both the CPUC staff and the ISO have spoken with each applicant seeking to construct, own and operate the Sycamore-Penasquitos line regarding the instant waiver filing to shift the project sponsor selection process back to the ISO, and all of them either support this change in the entity making the selection, or do not oppose it. Granting this waiver will allow these project sponsors to avoid the significant costs, resources, litigation, and effort that would be expended to process their applications and/or siting proposals and otherwise become embroiled in what would be a complex and likely bitterly disputed process.

Another very important consideration is the fact that subsequent to development of the 2013 transmission plan, Southern California Edison indicated that it was shutting down the San Onofre Nuclear Generating Station (“SONGS”). The absence of SONGS exacerbates certain local transmission overloads in the northern region of San Diego Gas & Electric Company’s system, and ISO studies show that the Sycamore-Penasquitos Line will improve power flows from east-to-west, thereby helping to

mitigate these reliability concerns.¹² To meet the required 2017 in-service date for the Sycamore-Penasquitos Line, the selected project sponsor must be determined in early 2014 and a CPCN application filed in mid-2014.¹³ It is unlikely that any CPUC process - which has yet to even be established – could meet these deadlines, and therefore would delay the in-service date of a transmission facility needed, among other things, to mitigate reliability problems resulting from closure of SONGS. Granting the ISO the authority to determine the project sponsor should address these concerns.

Therefore, good cause exists to grant the ISO's and CPUC's requested waiver of ISO Tariff section 24.5.2.3(b). Specifically, this waiver request seeks a waiver of ISO Tariff section 24.5.2.3(b) and the language of 24.5.2.3(c) that requires the qualified project sponsors to be applying to different governmental bodies for siting approval in order for the ISO to select the project sponsor. It should be noted that because the ISO seeks a waiver of all of 24.5.2.3(b), the qualified project sponsors for the Sycamore-Penasquitos line are under no obligation to seek siting approval from the CPUC within 120 days of the qualification date. In essence, as a result of this waiver, the tariff language would be applied as follows:

24.5.2.3 Multiple Project Sponsors

* * *

~~(b) — If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to the same authorized governmental authority to approve the project siting, the qualified Project Sponsors must seek siting approval within one hundred twenty (120) days and the CAISO will accept the Project Sponsor determined by that authorized governmental agency.~~

¹² *Preliminary Reliability Plan for the LA Basin and San Diego*, prepared by staffs of the ISO, CPUC, and California Energy Commission (Aug.30, 2013).

¹³ *Id.*

- (c) If the qualified Project Sponsors are unable to collaborate on a joint project ~~and are applying to different authorized governmental bodies for project siting approval,~~ the CAISO will select one approved Project Sponsor based on a comparative analysis of the degree to which each Project Sponsor meets the criteria set forth in sections 24.5.2.1 and a consideration of the factors set forth in 24.5.2.4. The CAISO will engage an expert consultant to assist with the selection of the approved Project Sponsor. Thereafter, the approved Project Sponsor must seek siting approval, and any other necessary approvals, from the appropriate authority or authorities within one-hundred twenty (120) days of CAISO approval.

IV. Timeframe and Request for Additional Waivers

With the exception of the two month window for accepting applications (ISO Tariff section 24.5.1), most of the procedural dates for the Phase 3 competitive solicitation are set forth in the BPM.¹⁴ In addition to a waiver of the tariff language requiring the CPUC to select the Sycamore-Penasquitos line project sponsor, and should the Commission grant the CPUC and ISO's joint request, the ISO seeks a waiver of the BPM approved project sponsor selection date that will pass before the ISO can conduct its comparative analysis and issue the report detailing its findings. The ISO has met all other procedural dates for both projects up until the point that the Sycamore-Penasquitos line project sponsors were directed to seek siting approval from the CPUC.

Specifically, for both the Gates-Gregg line and the Sycamore-Penasquitos line, the application window closed on June 6, 2013 and the list of interested project sponsors was posted on June 10, 2013. After verifying that the applications included all necessary information and followed the other application validation steps set forth in the

¹⁴ See BPM, Section 5 at <http://bpmcm.caiso.com/Pages/BPMDetails.aspx?BPM=Transmission Planning Process>

BPM, the ISO posted the list of qualified project sponsors on August 13, 2013.

Qualified project sponsors were then notified that they had 10 business days, until August 27, 2013, to enter into collaboration discussions and advise the ISO as to whether there would be a new joint proposal submitted, reflecting collaboration.

There were no joint proposals submitted by August 27, 2013. At that point the Sycamore-Penasquitos selection process moved to the CPUC. The ISO has moved forward with the Gates-Gregg line evaluation and, according to the BPM timeline, will post the report and selection results on November 6, 2013, which is 60 business days after the date the ISO posted the list of qualified applicants. Clearly that date cannot be met for the Sycamore-Penasquitos line. Therefore, if the Commission grants the instant waiver request, the ISO will modify its BPM through the BPM change management process to provide for a period of no less than 60 business days from the date the Commission approves the waiver request to complete the Sycamore-Penasquitos line analysis and post the selection report. In addition, to the extent that the Commission deems that Section 35.17(e) of its regulations applies to this waiver request, the ISO and the CPUC respectfully request waiver of that Section 35.17(e). The ISO and the CPUC further request that the Commission grant any additional waivers of its regulations as may be necessary to grant this request. The ISO and the CPUC submit that good cause exists for granting a waiver of its regulations for the reasons stated above.

V. Service

The ISO has served copies of this filing upon all parties with effective scheduling coordinator service agreements under the ISO Tariff. In addition, the ISO has posted

this filing on its website.

VI. Correspondence

The ISO and the CPUC request that all correspondence, pleadings and other communications concerning this filing be served upon the following:

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VII. Conclusion

For the reasons discussed above, the ISO and the CPUC respectfully request that the Commission grant a one-time waiver of the former ISO Tariff provisions

regarding selection of an approved project sponsor in connection with the Sycamore-Penasquitos project.

Respectfully submitted,

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Dated: November 1, 2013

ATTACHMENT

Attachment

24.5.2.3 Multiple Project Sponsors

(a) If two (2) or more Project Sponsors submit proposals to own and construct the same transmission element or elements under section 24.5.1 and the CAISO determines that the two (2) or more Project Sponsors are qualified to own and construct the project under the criteria set forth in section 24.5.2.1, the CAISO will, upon request, facilitate an opportunity for the Project Sponsors to collaborate with each other to propose a single project to meet such need. If joint projects are proposed following the collaboration period, the CAISO will revise the list of potential renewable transmission upgrades or additions eligible for selection.

(b) If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to the same authorized governmental body to approve the project siting, the qualified Project Sponsors must seek siting approval within one hundred and twenty (120) days and the CAISO will accept the Project Sponsor determination by that authorized governmental authority.

(c) If the qualified Project Sponsors are unable to collaborate on a joint project and are applying to different authorized governmental bodies for project siting approval, the CAISO will select one approved Project Sponsor based on a comparative analysis of the degree to which each Project Sponsor meets the criteria set forth in sections 24.5.2.1 and a consideration of the factors set forth in 24.5.2.4. The CAISO will engage an expert consultant to assist with the selection of the approved Project Sponsor. Thereafter, the approved Project Sponsor must seek siting approval, and any other necessary approvals, from the appropriate authority or authorities within one-hundred twenty (120) days of CAISO approval.