UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities	**Docket No. RM10-23-000**

REPLY COMMENTS OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

On June 17, 2010, the Federal Energy Regulatory Commission ("Commission") issued a Notice of Proposed Rulemaking[1] in which it proposed to amend the transmission planning and cost allocation requirements established in Order No. 890.[2] On September 29, 2010, the Commission issued a Notice Establishing Reply Comment Period in this proceeding. The California Independent System Operator Corporation ("ISO") hereby submits its reply comments in response to initial comments filed on the NOPR.

I. EXECUTIVE SUMMARY

As discussed in the ISO's initial comments submitted in this proceeding on September 29, 2010, although the ISO supports many of the Commission's objectives in the NOPR – and in particular supports the goal of enhancing regional planning processes to address public policy considerations such as renewable energy policies – the ISO has serious reservations about a number of the requirements proposed in the NOPR.

[1] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* 131 FERC ¶ 61,253 ("NOPR").
[2] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 418-602, *order on reh'g,* Order No. 890-A, FERC Stats & Regs. ¶ 31,261 (2007), *order on reh'g* , Order No. 890-B, 123 FERC ¶ 61,299, (2008) *order on reh'g,* Order No. 890-C, 126 FERC ¶ 61,228 (2009).

The initial comments on the NOPR submitted by the other parties to the proceeding only serve to highlight and reinforce the ISO's concerns with these aspects of the NOPR. For example, there is a broad consensus by regional transmission organizations ("RTOs") and independent system operators ("ISOs") – the entities responsible for regional transmission planning across much of the nation – that the Commission should not implement the NOPR's proposal to require a system planner to evaluate an unlimited number of transmission project proposals that are unrelated to previously identified system needs. These independent entities also explain how this proposal, coupled with the NOPR's proposal to provide developers with a "first-come, first-served" priority right to build and own the facilities comprising a project proposal, will discourage input and participation by stakeholders seeking to develop superior solutions, encourage a flood of potentially questionable projects simply so sponsors can stake a claim to a project, raise significant implementation problems, and work against the goals of efficient and effective transmission infrastructure development. The commenters that support the NOPR's proposed approach do not provide any evidence that existing processes have interfered with transmission development or a rational basis or demonstrate any benefits for adopting such fundamentally flawed concepts.

As the ISO explained in its initial comments, there is a superior approach for achieving the benefits of competition from independent developers as exemplified by the ISO's revised transmission planning process proposed in Docket No. ER10-1401, which combines a comprehensive needs-driven planning

framework with an open solicitation process to select sponsors to build public policy and economically driven transmission projects. That open solicitation process is modeled after the open solicitation process implemented by the Public Utilities Commission of Texas for new transmission projects to access Competitive Renewable Energy Zones.

In addition, while some commenters support the NOPR's proposal to require system planners to abandon long-standing arrangements that establish existing transmission owners as the entities responsible for building certain transmission projects, these commenters fail to identify a valid basis on which to conclude that the Commission has the legal authority to dictate which entities will build transmission facilities. Moreover, neither the NOPR itself nor the comments supporting this proposal provide evidence that the proposed elimination of what the NOPR calls "rights of first refusal" will result in benefits to ratepayers or solve any identified problem. Because this proposed requirement would disproportionately harm transmission owners that are members of RTOs and ISOs, the proposed elimination of "rights of first refusal" will provide a disincentive for utilities to continue their membership in ISOs and RTOs. If the Commission nonetheless elects to require the elimination of "rights of first refusal" for regional projects in the final rule, the Commission should allow system planners to establish clear principles, appropriate for their own systems and circumstances, for distinguishing between regional projects that would provide opportunities for non-incumbent developers to build and own the

facilities, versus local projects for which existing transmission owner construction rights and responsibilities would remain in effect.

A number of commenters raise issues related to the criteria that should be used by a system planner to select among competing project proposals to address a particular system need. In particular, many commenters suggest that there should be an increased emphasis on cost containment. While the ISO agrees that is appropriate for a system planner to seek to identify the most cost-effective project to address system needs, the Commission should also recognize that other selection criteria may be at least as important and that the system planners themselves have little or no ability to ensure that the ultimate cost of a transmission project does not exceed its estimated cost at the time it is approved. As the ISO has explained in the context of its own revised transmission planning process, the only truly effective cost containment measure is likely to be a voluntary and binding agreement to cap costs on a proposed project.

A couple of commenters suggest that the Commission should require an "independent evaluator" to ensure that system planners are selecting among competing project proposals in a fair and non-discriminatory manner. The ISO supports the comments being filed by the ISO/RTO Council in opposition to this concept. The Commission expressly declined to impose a requirement for an "independent third party coordinator" in Order No. 890, and no commenter has provided specific evidence why the Commission should abandon that decision. An independent evaluator is not needed – particularly when the system planner

is an independent entity like an RTO or ISO (and already has an independent market monitor)– and will only add unnecessary layering, confusion, delay and additional cost to the planning process.

A number of commenters raise issues pertaining to the application of Large Generator Interconnection Procedures ("LGIP"), the ISO's particular planning activities, or to specific elements of the revised transmission planning process that the ISO has proposed in Docket No. ER10-1401. Although these issues are beyond the scope of this general rulemaking proceeding, the ISO will briefly respond to certain of the arguments that mischaracterize the ISO's planning efforts or features of its proposed revised planning process. For example, and as explained in greater detail in the ISO's filings in Docket No, ER10-1401, the ISO's involvement in the California Transmission Planning Group ("CTPG") is consistent with Order No. 890 and Commission policy, represents a beneficial step in furtherance of inter-regional planning coordination, and does not in any way result in the ISO ceding any of its planning authority. The ISO has also demonstrated how the timing and process for its evaluation of project proposals previously submitted in the ISO's transmission planning request window does not discriminate against independent transmission developers, ensures that previously submitted proposals can be considered as part of a comprehensive review of the region's transmission needs, and will mitigate concerns about the potential for significant stranded investment costs that would otherwise be borne by ratepayers.

The Commission also should recognize that those comments proposing changes to the Commission's interconnection policies and pro forma LGIP are not only beyond the scope of this proceeding, but also represent a collateral attack on Order No. 2003. The NOPR did not propose (or even suggest) making changes to the LGIP, which the Commission has recognized is a process separate and apart from the transmission planning process. The Commission should not in this proceeding – and without proper notice – change the fundamental process for the evaluation and construction of network upgrades needed to accommodate a generator interconnection request.

In its initial comments, the ISO anticipated and addressed many of the arguments raised in other parties' initial comments. Accordingly, the ISO will not herein repeat the arguments set forth in its initial comments. Rather, the ISO's reply comments focus on responding to arguments that were not previously addressed in its initial comments and, where appropriate, elaborating upon its initial comments. The ISO submits that commenters have not provided any factual, legal, or policy arguments that would support approval of the NOPR remedies that the ISO opposes.

For all the reasons set forth in these reply comments and the ISO's initial comments, the Commission should issue a final rule which eliminates those proposals that undercut effective transmission planning and exceed the Commission's authority. Specifically, the final rule should not include the following provisions proposed in the NOPR: (1) the proposal to allow developers to propose an unlimited number of transmission project proposals that are

unrelated to previously identified system needs; (2) the proposal to provide a "first-come, first-served" priority or property right to the first entity that proposes a particular project; (3) the proposal to require system planners to abandon long-standing arrangements that establish existing transmission owners as the sole entities responsible for building transmission projects needed to address reliability issues or to address other specified needs on the systems of those existing transmission owners; (4) the proposal to mandate prescriptive and unduly burdensome requirements for interregional coordination agreements; and (5) the proposal to require regions to develop *ex ante* rules for the allocation of the costs of all potential categories of interregional transmission projects. The Commission should provide regions with sufficient flexibility in complying with those requirements retained in the final rule to rely on processes, like the ISO's revised transmission planning process filed in Docket No. ER10-1401, that achieve the objectives described in the NOPR, but do not necessarily follow all the specific approaches and requirements proposed in the NOPR.

II. REPLY COMMENTS

A. Role of Nonincumbents in the Planning Process

1. Commenters Provide No Basis for Adopting the NOPR Proposal to Grant a First-Come, First-Served, Priority Right to Developers that Submit Projects in a Regional Planning Process

As part of its proposal to encourage participation of nonincumbent transmission developers, the Commission proposes a regional planning framework in which potential project developers submit project proposals that need not meet any need previously identified by the transmission providers

responsible for system planning. As part of this proposed framework, developers would receive a first-come, first-served priority right to build and own any approved projects that are equivalent to or resemble proposals they submitted in a regional planning process.

In its initial comments, the ISO explained that this framework is not only unnecessary to achieve the goals enunciated in the NOPR, but will actually interfere with that achievement.[3] The NOPR's proposed framework would (1) add unnecessary cost, complexity and delay to the planning process, unduly taxing the limited resources of independent system operators and regional transmission organizations ("ISOs/RTOs") and stakeholders, (2) divert planners from performing their primary tasks of identifying transmission needs and determining the most cost effective projects to meet those needs, (3) fail to optimize participation in the planning process and to elicit the best projects to meet identified needs, and (4) actually reduce the benefits of competition, while offering little or no offsetting benefits to ratepayers. In particular, the first-come, first-served priority would impede identification of project modifications that could improve upon a submitted proposal and preclude any determination of which entity could build and operate a proposed project in a most cost effective manner. Project sponsors would have no incentive to propose cost containment measures or rate caps or forgo rate incentives. Rather, the NOPR's proposed framework for submitting proposed projects would create incentives for developers to flood the regional planner with as many projects (and variations

[3] *See* September 29, 2010, initial comments of the California ISO ("ISO Initial Comments") at 52-66.

thereof) as possible to improve their chances of selection and to tie up rights to build proposed projects in the regional plan for a period of at least five years. ISO Initial Comments at 52-66.

Numerous parties found to be problematic and objected to both the NOPR's reliance on project proposals that may be unrelated to system needs identified by regional planners and its first-come, first served priority right proposal. The Midwest Independent System Operator, Inc. ("MISO") objected to the NOPR's "queue process" for transmission, explaining that transmission planning should be driven solely by a regional plan and that planning should be undertaken from a holistic viewpoint that evaluates all possible alternatives to find the most cost-effective approach and should not focus on the evaluation of specific projects. MISO at 13-14. ISO New England ("ISO-NE") and the ISO New England Transmission Owners ("NE TOs") objected to the priority right proposal and noted how their needs-based planning process "works" by allowing ISO-NE and stakeholders to focus on efficiently and effectively satisfying regional needs; whereas, the NOPR process would undermine productive and collaborative planning and encourage a flood of projects to be "lobbed" into the planning process. ISO NE at 32-33; NE TOs at 3, 10-12. Other RTOs/ISOs and their transmission owners agreed, noting that such a process will hinder the planning process and encourage a flood of speculative project proposals designed solely to stake a claim but which nonetheless require time-consuming evaluation. *See* New York Independent System Operator ("NYISO") at 20, PJM Transmission Owners at 11-12, Southwest Power Pool ("SPP") at 26-27. Certain

independent transmission developers also expressed support for planning processes whereby sponsors submit project proposals only to meet specific identified needs. *See, e.g.,* Primary Power at 31, 34, 43, Anbaric Holdings at 27-28, ITC at 16-17.[4] International Transmission Company ("ITC") stated that the Commission's priority right planning process is "not workable" and will "turn transmission planning into a homestead land rush where all that counts is staking a claim." ITC at 16-17. Finally, the ISO/RTO Council demonstrated how the NOPR's property right proposal would "(1) discourage input and participation by market participants seeking to develop superior solutions, (2) encourage gaming and create a new barrier to entry, (3) suppress the submission of innovative transmission proposals, (4) encourage a flood of potentially questionable projects simply so sponsors can claim a stake in a project, (5) raise significant implementation problems, and (6) work against the goals of efficient and effective transmission infrastructure development." ISO/RTO Council at 2-6.

The ISO urges the Commission to recognize the broad consensus on these issues by the independent entities that are responsible for regional transmission planning across much of the nation. The ISO strongly agrees with the comments regarding the highly problematic nature of the NOPR's priority right planning framework that allows parties to submit projects that do not meet specific system needs previously identified by the regional planner.

[4] Primary Power in particular, referring to the ISO's revised transmission planning process filing, noted that the ISO has "advocated a structured, phased, and unified planning process that systematically evaluates different transmission purposes and projects" and that the ISO's proposed three-phase approach which contemplates that sponsors will submit projects only in response to ISO-identified needs is clear and transparent. Primary Power at 33-34.

In contrast, as noted in the ISO's Initial Comments, the ISO's proposed planning evaluation framework proposed in Docket No. ER10-1401 provides a model that more effectively and efficiently achieves the Commission's articulated goals. Under the ISO's proposal, the ISO and stakeholders will first work together to determine specific needs for public policy and economic transmission projects and will then assess which solutions best meet those identified needs. Such a process avoids the multitude of problems and inefficiencies associated with the NOPR's proposal. Once the ISO identifies the needed economic and public policy transmission elements, the ISO will then conduct an open solicitation. This solicitation would allow all interested project sponsors, incumbents and non-incumbents alike, to compete to build needed public policy and economic transmission projects. Unlike the NOPR framework, this approach allows project sponsors to demonstrate the particular advantages and benefits to ratepayers they bring to a specific project, including any cost containment measures or binding agreements to cost caps.

Support for the NOPR's proposal to allow unlimited project proposals unrelated to identified system needs explicitly or implicitly underlies many of the arguments in favor of elimination of "rights of first refusal," discussed below. None of those arguments provides reason to believe that that the NOPR's first-come, first-served priority right proposal would achieve the NOPR's desired benefits and would not result in a flood of projects that will clog the transmission planning process. Indeed, certain commenters supporting the NOPR's framework acknowledge that that the problems identified by the ISO and other

commenters are likely to occur, and they suggest some minor alterations to the proposal in a failed attempt to salvage it.

LS Power acknowledges that the incentives for a "flood of new projects are much like the incentives that have caused generation interconnection queues to be clogged and that additional procedures may be needed to avoid this result.. LS Power at 24-25.[5] LS Power suggests that this problem could be mitigated by requiring a deposit and fee for study costs associated with analyzing the project, as is done for projects submitted through the LGIP. *Id.* at 25. Anbaric Holdings also suggests that to ensure that transmission developers only submit serious projects, there should be a $50,000 deposit per project that would be refunded if the project proposal is not accepted. Anbaric Holdings at 29.

The ISO's experience under the LGIP provides ample evidence that requiring project sponsors to provide study deposits will not eliminate or substantially reduce that risk that a flood of projects will clog the transmission planning process. Under Section 3.5.1 of the ISO's LGIP for Interconnection Projects in a Queue Cluster Window, interconnection customers are required to submit a $250,000 Interconnection Study Deposit. Despite the study fee requirement, a significant percentage of generation projects drop out of the

[5] LS Power's support for the NOPR's first-come, first-served framework appears inconsistent with its comments filed on November 23, 2009 in Docket No. AD09-8-000 (pp. 20-21), in which LS Power argued that competition for transmission is in the public interest and noted how the Public Utility Commission of Texas ("PUCT") Competitive Renewable Energy Zone ("CREZ") model allowed significant benefits to be realized as the result of competition. LS Power stated the open solicitation approach enabled the PUCT to approve transmission projects to deliver over 18,000 MW of renewable energy from CREZs "in a manner that is most beneficial and cost-effective to customers." LS Power noted that this process allowed the "Texas PUC to ensure implementation of the plan was completed in the most beneficial and cost effective manner. LS Power November 23, 2009 comments in Docket No. AD09-8 at pp.20-21. LS Power now supports a framework in which projects are automatically awarded to the first sponsor submitting a project that most closely resembles the transmission solution the regional planner deems needed, without consideration of any ratepayer benefits. That is not efficient competition.

queue and do not go on to execute Large Generator Interconnection Agreements ("LGIAs"). Thus, requiring such a fee cannot be expected to reduce significantly the volume of projects submitted to the transmission planning process, nor would it limit project submissions to ones that are "serious," *i.e*., sufficiently developed to have a high probability that they will be viable and needed. To the contrary, there will still be an incentive to flood the transmission planning process with speculative projects because the potential earnings from a transmission project would exponentially exceed any study fee deposit. Moreover, to the extent a study fee deposit is returned to the project sponsor if its project is not accepted, as Anbaric Holdings suggests, such deposit requirement will not have any deterrent effect whatsoever and, to make matters worse, would subject the system planner to resource-intensive study requirements for proposals that do not respond to identified needs and whose study costs would have to be borne by other ISO participants. The only certain means to ensure that regional planners are not flooded with projects that are not needed is to impose a requirement that projects can only be submitted to meet a need previously identified by the regional planner. Merely imposing a deposit requirement for submitted projects does not cure the other deficiencies with the NOPR's proposed priority right framework that the ISO and other commenters identified in their initial comments.

LS Power's suggestion that requiring projects to be submitted by a specific due date will eliminate gamesmanship and ensure that competing developers will not submit projects with slight variations to the original project ignores the

problems that the ISO, ISO/RTO Council and numerous other commenter's have identified. Namely, project sponsors will clog the "queue" in the first instance with project proposals that are as broad as possible in order to stake as large a claim as possible for a given project.[6] Further, unlike the competitive solicitation process proposed by the ISO in Docket No. ER10-1401, this approach will not provide any benefits to ratepayers because there is no competition to build the transmission solution that the regional planner deems needed and no incentive for a project sponsor to propose cost containment measures or cost caps because costs are not a consideration in determining which project sponsor should be awarded the project. Rather, the regional planner would be required to award the needed transmission solution to the entity whose submitted project most closely resembles the transmission solution approved by the regional planner.

[6] This incentive is rooted in another aspect of the NOPR's proposal which the ISO identified as problematic in its initial comments, namely, the requirement to preserve a project sponsor's first-come, first-served priority right if its proposal comes closest to the project the system planner adopts in its plan. NOPR at P 94. LS Power would aggravate this potential by arguing that, because it is likely that modifications will be made to a proposed project or projects may be merged during the planning process, a project sponsor should retain priority if the modified project resembles or is functionally equivalent to the initially sponsored project (*i.e.,* it addresses the same constraint or need). LS Power at 27. This proposal raises more issues than it answers. It will aggravate the incentive to submit as many projects as possible and to define them as broadly as possible. It is also not clear how the regional planner would be able to make a finding that the merged project with elements from various proposals is the proprietary right of any single project sponsor. Similar problems would arise if the regional planner adopts a project that is different than all submitted projects, but several of the submitted projects are located in the same general area as the regional planner's preferred solution. There would be significant uncertainty and practical implementation issues in determining which submitted project most closely resembles the project adopted by the regional planner. Disputes and litigation would be inevitable. In contrast, an open solicitation process to submit proposals for transmission elements that resolve needs identified by the system planner, such as that proposed by the ISO, avoids these implementation problems by allowing all interested transmission developers to compete to build need economic and public policy projects.

LS Power and other commenters support the Commission's proposal to grant a developer that submits a project a priority right to have its project considered in future regional plans for a minimum of five years. *See, e.g.,* LS Power at 28. The ISO, ISO/RTO Council and numerous other commenters have shown why according a right to a project sponsor to resubmit a project proposal for up to a five year period is inappropriate, problematic and does not optimize achievement of the Commission's stated goals. *See, e.g.,* Edison Electric Institute ("EEI") at 18-19, 21-22; ISO Initial Comments at 53-60; ISO-NE at 32-33; ISO/RTO Council at 3-8; PJM at 24.[7] The proposal will significantly increase workload for regional planners because they could be required to continue to study a project that does not meet an identified need, even one previously rejected. Further, a five year priority right does not create any incentive for project sponsors to propose cost containment measures or otherwise provide benefits to ratepayers and will chill participation in the planning process because competitors will have no incentive to propose improvements to the project or similar, but more cost-effective, projects because they will not have the right to build them. No commenter provides evidence or arguments that effectively respond to these concerns.

The ISO urges the Commission to reject the first-come, first-served priority right framework proposed in the NOPR. Instead, the ISO urges the Commission

[7] The California Municipal Utilities Association ("CMUA") recommends limiting the priority rights of nonincumbent project sponsors to two years. CMUA at 18. However, CMUA itself acknowledges that granting a project development priority right may cause a rush on the front end to develop any conceivable project in order to achieve this valuable development right. *Id.* Limiting the priority to two years will not eliminate this drawback and does not address any of the other concerns with the NOPR proposal raised by the ISO, ISO/RTO Council, and other commenters.

to adopt a framework in the final rule that would allow the ISO and other ISOs/RTOs to retain a needs-based transmission planning process. The final rule should also permit the ISO to implement its proposed open solicitation framework for public policy and economic projects. That approach will best meet the Commission's articulated goals, while ensuring opportunities for independent transmission developers and maximizing benefits for ratepayers.

2. Commenters Provide No Basis for the Proposed Requirement to Eliminate "Rights of First Refusal"

a. Commenters Provide No Legal Basis for Elimination of "Right of First Refusal" from Public Utilities' Transmission Tariffs

A number of commenters contend that the existing construction rights[8] of transmission owners are unduly discriminatory. *See, e.g.,* LS Power at 11 *et seq.*; NextEra Energy Resources, LLC ("NextEra") at 15-19; Primary Power at 15.[9] These contentions share a fundamental shortcoming. None of these commenters deals with the fact that the Commission's authority to address perceived discrimination is limited by the Federal Power Act. LS Power, for example, simply cites the Commission's own observation that the Federal Power Act "fairly bristles" with the concern over undue discrimination and points to the breadth of the Commission's discretion when fashioning remedies. LS Power at

[8] The NOPR proposes to require the elimination of "rights of first refusal" In Commission-jurisdictional tariffs and agreements. The NOPR defines "right of first refusal" broadly to include any right of an incumbent transmission owner to construct, own and propose cost recovery for any new transmission facility located within its service territory and approved for recovery in a transmission plan. NOPR at P 20 n.21. As the ISO explained in its Initial Comments, "right of first refusal" is not an apt characterization of such rights. This is particularly true in the case of the ISO. *See* ISO Initial Comments at 24. In these comments, the ISO will therefore continue to use the term "construction responsibility" rather than "right of first refusal."

[9] NextEra supports elimination of transmission owners' construction responsibilities only in connection with projects sponsored by nonincumbents.

11. While the Commission may indeed have broad discretion to fashion remedies, that discretion is limited by statute to remedies to preferences in limited contexts. The reality is that the Commission does not have carte blanche to remedy each and every type of preference; as explained in the ISO's initial comments, the Commission can only remedy undue discrimination in rates or practice and contracts affecting rates. ISO Initial Comments at 24-36. The Commission cannot, for example, remedy what it deemed a discriminatory governance structure of an independent system operator.[10] Similarly, courts have held that the Commission does not have the authority to remedy racial discrimination in a utility's hiring practices.[11] The ISO and various other commenters demonstrated in their initial comments that the regulation of preferences in the assignment of construction responsibility is beyond the Commission's statutory jurisdiction. *See, e.g.,* EEI at 18-19 – 21-22; ISO Initial Comments at 53-60; ISO-NE at 32-33; ISO/RTO Council at 3-7; PJM at 8; ISO at 24, 55-60. Invocations of the Commission's broad authority to address discrimination cannot substitute for statutory jurisdiction.

Pattern Transmission LP ("Pattern") takes an even more extreme position, arguing that a tariff provision recognizing a state-imposed right of first refusal would ignore and infringe upon the Commission's exclusive jurisdiction over interstate transmission of electricity. Pattern at 18. The Commission's jurisdiction over transmission, however, does not extend to the determination of construction responsibility, the approval of transmission projects, or the siting of

[10] *Cal. Indep. Sys. Operator Corp.*, 372 F.3d 395, 400 (D.C. Cir. 2004).
[11] *NAACP v. FPC*, 425 U.S. 662 (1976).

transmission. As explained above and in the ISO's initial comments, the Federal Power Act neither expressly nor by implication bestows such jurisdiction. That responsibility rests with the states, except for the Commission's limited backstop authority under the Energy Policy Act of 2005. ISO Initial Comments at 26-34. Indeed, in the context of the transfer of transmission facilities to a different owner, the Commission has explicitly rejected the idea that it has jurisdiction over transmission facilities before they are energized.[12] It would be anomalous for the Commission to assert jurisdiction over potential transmission facilities even earlier – before the facilities have even been built. This is not a matter of what rates will be charged for transmission service, in which case section 205 might apply,[13] but of who will build or own an as of yet un-built transmission line and charge transmission rates for use of the line – as in the case of pre-energization transfers.

b. Commenters Provide No Evidence of Ratepayer Benefits from Elimination of "Right of First Refusal" from Public Utilities' Transmission Tariffs

Many commenters tout the supposed advantages of a complete elimination of transmission owners' construction responsibilities. These arguments miss the point. Even if the described advantages were real, they would not justify a Commission order directing the elimination of "rights of first

[12] *See, e.g., Pacificorp*, 132 FERC ¶ 61,018 at P 20 (2010). The American Wind Energy Association ("AWEA") argues that transmission plans should be filed with the Commission. The ISO does not oppose filing transmission plans for informational purposes. To require them to be filed under section 205, however, would constitute an unprecedented expansion of the Commission's jurisdiction and, for many of the reasons that the ISO has set forth in its discussion of the construction responsibilities of transmission owners and the Commission's lack of general authority to site and approve transmission projects, mostly likely beyond the Commission's statutory authority. *See* ISO Initial Comments at 26-34.

[13] *See, e.g., W. Mass. Elec. Co.*, 61 FERC ¶ 61,182 (1992).

refusal" from public utilities' OATTs.[14] Before the Commission can direct the elimination of transmission owners' construction responsibilities, it must find that the existing tariff provisions have produced unjust or unreasonable rates or practices affecting rates.[15] Although the burden thus is on those proposing a change to existing tariff provisions, commenters act as if the Commission had a blank slate on which to write a regulation without acknowledging that existing transmission owner construction responsibilities have been found to be just and reasonable and have been in place for many years. These commenters do not even attempt to meet the burden of demonstrating that these existing provisions have been rendered unjust and unreasonable or unduly discriminatory as a result of a change in circumstances. No party has offered any evidence that current tariff provisions have produced unjust or unreasonable rates or practices. In particular, no party has presented evidence, and the Commission has shown no evidence, that under existing tariff provisions necessary transmission has not been built or has been built at imprudent costs. Moreover, even if the costs of such projects were imprudent, the Commission's sole remedy – indeed, its responsibility – would be to deny the recovery of any imprudently incurred costs; it could not adopt a remedy requiring someone else to build the transmission project and directing that the costs of such transmission project be allocated involuntarily to the public utility that otherwise would have built the project. Nor

[14] Primary Power goes as far as to argue that incumbents should have the right only to repair and maintain their own facilities and that all other transmission upgrades should be open to competition. This would go even further than the Commission proposes and, for reasons previously explained by the ISO would unfairly confiscate property and raise constitutional taking issues. *See* ISO Initial Comments at 80.

[15] 18 U.S.C. § 206(b). As explained above and in the ISO's Initial Comments, there is no legal basis to find that the "rights of first refusal" are unduly discriminatory or preferential practices forbidden by the Federal Power Act.

could it use instances of imprudent costs to justify implementing a policy that cannot be shown even theoretically to prevent future imprudent costs.

Even assuming for the sake of argument that the Commission can rely solely on evidence of other advantages of eliminating transmission owners' construction responsibilities, such evidence is lacking. Commenters' efforts to provide the missing evidence are unavailing. Pattern, for example, cites the experiences with railroad and telecommunications industries as examples of the benefits of competition. Pattern at 10-11. These experiences are simply not valid analogies. In the first place, both these industries involve carriers that are competing for customers. There is an incentive to improve service and deliver services at the lowest price in order to attract customers. The Commission's deregulation of wholesale energy sales is consistent with this model, in the sense that wholesale energy suppliers compete for wholesale customers either bilaterally or through organized markets. In contrast, the construction and ownership of transmission facilities included in the regional transmission plans of RTOs/ISOs are not subject to competition for customers. The customers of these facilities under all circumstances are customers of the RTO/ISO. For those public utilities that are not members of an ISO/RTO, the customers are customers of the public utility, not the third-party transmission developer (unless a customer specifically contracts with the merchant developer for transmission service on the new line).

Second, the deregulation of the railroad and telecommunications industries is not similar to the elimination of PTO construction responsibilities,

and the results of those deregulations provide no guidance. The deregulation of the railroad industry simply allowed existing carriers to determine the rates and services to be provided. Deregulation of these industries involved no regulations requiring existing carriers to allow new entrants to build planned rail expansions or to eliminate existing contractual or tariff provisions governing which carriers would construct rail expansions in certain regions. There was no effort to encourage new entrants, and none have appeared. To the contrary, the railroad industry has experienced consolidation.[16]

As Pattern notes, the idea behind telecommunications deregulation was to make available the elements of unbundled networks as a transitional arrangement until new entrants could develop a customer base and construct their own networks.[17] No one suggests that the transmission industry would benefit from the construction of alternative (and potentially duplicative) transmission networks and, as noted, the Commission's proposal does not call for the development of separate customer bases. Indeed, such an approach would result in significant stranded capacity, which would have adverse and unnecessary environmental and ratepayer impacts. Further, many of the expected results of the deregulation of the telecommunications industry did not ensue. After a brief flurry of competition, the landline telephone industry has reconsolidated in a handful of companies. The real competition in

[16] *Lessons from the U.S. Transport Deregulation Experience for Privatization*, Clifford Winston, Joint Transport Research Center Discussion Paper No. 2009-20, December 2009 at 8, cited by Pattern at 10.)

[17] The ISO notes that, under such a scenario, the costs of the new network would be borne by the customers the new entrant attracts, not by captive ratepayers that have not contracted for transmission service on the new transmission line.

telecommunications has come from the development of alternative communications modes: wireless and internet. The electric transmission industry, in contrast, is likely to be confined to wired facilities for the foreseeable future. Requiring that independent transmission companies have the opportunity to build any electric transmission project that is included in a regional transmission plan will not change that prospect.

Western Independent Transmission Group ("WITG") cites the successful experience of the Public Utilities Commission of Texas in allowing independents to construct transmission additions. WITG at 7-8. WITG neglects to note that the PUCT limited its process to solicit and evaluate competitive transmission construction proposals solely to projects intended to implement the CREZ initiative. This process is intended only to "construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the CREZ."[18] Other proposed Texas transmission projects are processed under the ERCOT transmission planning process, which differs from the CREZ transmission plan. As the PUCT expressly recognized, the ERCOT processes do not accommodate selecting entities to build transmission that are not already existing transmission service providers, and ERCOT does not have a process that allows entities to compete to build a transmission project.[19]

[18] Tex. Admin. Code, Title 16, Part II, Chapter 25, § 25.216(c)(2).
[19] *Rulemaking Proceeding to Amend PUC Substantive Rules relating To Selection Of Transmission Service Providers Related To Competitive Renewable Energy Zones And Other Special Projects,* Order Adopting New Section 25.216 as Approved at the May 22, 2008 Open Meeting, at 4-5, Project No. 34560 (June 19, 2008).

The ISO agrees that there is value in the *voluntary* implementation of a competitive process for the construction of non-reliability, public policy-driven projects when there may be a need for unprecedented expansion of the transmission system. Indeed, the ISO's revised transmission planning process includes such a process for policy-driven and economically driven projects. The value of such a process in those circumstances, however, provides no support for the Commission's proposed imposition of a competitive process for all transmission upgrades and additions.

Indeed, a competitive solicitation process is not appropriate for reliability projects for a number of reasons. First the effectiveness in maintaining reliability on a transmission owner's system should be the primary focus of any reliability assessment. As the ISO discussed in its initial comments, transmission owners should be responsible for building and owning projects necessary to maintain reliability on their facilities. Giving such responsibility to "all-comers" could result in a proliferation of entities owning distinct transmission facilities which serve a single purpose – to maintain reliability on some other transmission owner's system. This would unnecessarily fragment a transmission owner's system, thereby creating potential reliability and coordination problems. ISO Comments at 75-80. The ISO's concerns are grounded in the recognition that unlike economic projects, reliability projects may require numerous targeted upgrades throughout the transmission network and thus, there is a significantly increased risk for compartmentalization, fragmentation, and coordination problems if reliability projects are built by a proliferation of third-party transmission providers.

Second, transmission projects needed to address reliability performance concerns on an existing transmission owner's facilities often involve the need to coordinate such projects with distribution system improvements. Reliability projects tend to be driven by load growth and most of the infrastructure improvements for load growth are on the distribution system. Transmission owners with native loads are responsible for distribution reliability upgrades and are in the best situation to coordinate distribution and transmission reliability upgrade identification and construction.

Third, in its planning process for reliability projects, the ISO already evaluates all feasible alternatives to address the identified reliability performance concern on a transmission owner's system and approves the most cost-effective option to address that concern. Under the ISO's tariff provisions establishing construction responsibility, the applicable transmission owner must build the solution that the ISO finds to be most cost-effective, which may not be the solution that the transmission owner proposed. Layering a competitive solicitation on top of this framework will not add benefits sufficient to offset the reliability, coordination, fragmentation/compartmentalization, and project processing/evaluation concerns that the ISO has identified herein and in its Initial Comments.

Fourth, adding a competitive solicitation for reliability projects will unnecessarily complicate and delay the construction of projects necessary to address clearly identified reliability needs and comply with mandatory standards. *See* ISO Initial Comments at 76-78. Many reliability projects need to be

constructed in a short-time frame in order to address identified reliability performance requirements. Holding a competitive solicitation for such projects will add significant time and expense to the evaluation process, thereby delaying the construction of needed projects. To the extent there are disputes over who should build a specific project, that could lead to litigation and further delay the construction of the needed project. Given the significant number of reliability needs that the ISO must assess each year, opening up reliability projects to a competitive solicitation will unduly complicate, bog down and delay the evaluation process, and potentially prevent needed projects from being built in a timely manner.

Contrary to Pattern's contention, the fact that the ISO and others are voluntarily willing to introduce a competitive process for non-reliability projects does not discredit reliability concerns. Pattern at 12. The potential adverse consequences if a nonincumbent fails to build a reliability project in a timely manner are much more severe than for other projects because of the core need to maintain the reliability of the system. In addition, assigning responsibility for constructing reliability projects to nonincumbents could limit the ability of incumbent utilities to take the measures needed to comply with reliability standards and state legal obligations to native load customers. Competitive processes for economic and public policy projects do not raise the concerns that the ISO has identified herein and in its initial comments regarding imposition of a competitive process for reliability projects.

WITG points to the Path 15, TransBay Cable, Neptune, and Cross Sound Cable projects as evidence of the value of construction by independents and evidence that independents can successfully build projects consistent with reliability standards. WITG at 7. . None of these projects are evidence of a need for, or advantages of, a competitive transmission construction process for reliability projects. Indeed, each of these projects was approved and constructed pursuant to existing planning processes. Thus, these projects show that existing processes are not flawed or unduly discriminatory and readily accommodate innovative solutions.

Moreover, these projects provide no evidence that the concerns expressed by the ISO and other commenters regarding third-party construction and ownership of projects designed to maintain reliability on some other transmission provider's system are unfounded. As an initial matter, it is important to note that the concerns expressed by the ISO about eliminating existing construction rights for reliability projects did not involve the ability of the project sponsor to build a project in a manner consistent with reliability standards. Rather, a primary concern of the ISO is the ability to effectively integrate and coordinate reliability projects, the sole purpose of which is to ensure the reliable operation of a transmission owner's transmission facilities. The ISO's ability to do so will be impeded if such projects are owned, operated, and maintained by a proliferation of other companies, ISO Initial Comments at 75-76. Thus, the ability of transmission owners with native load responsibilities to fulfill their service obligations and comply with reliability standards would be dependent

upon another entity's performance, while the transmission owner retained liability. The Commission itself has previously recognized these concerns on several occasions in ruling that, because transmission owners bear the risk and responsibility of reliably operating their transmission facilities and maintaining the reliability of their transmission system, they should be the ones responsible for building and owning the necessary upgrades to their systems. *See* ISO Initial Comments at 76. As the ISO noted in its initial comments, the Commission has also recognized that fragmentation of the grid in this manner would undermine reliability. *Id.* Neither Pattern, NextERA, nor WITG provide one iota of evidence why these ISO and Commission-expressed concerns (and Commission precedent) no longer apply or offer any legitimate justification for permitting third-party transmission developers build reliability projects the sole purpose of which is to maintain reliability on specific transmission facilities owned by a different transmission owner.[20]

The transmission facilities referred to by commenters simply do not provide the evidence that reliability concerns are unfounded. The Path 15 Upgrade was an economic project not a reliability project. Moreover, although the Path 15 Upgrade was constructed by a federal power authority and had investment from an independent transmission developer, the line is operated by Pacific Gas and Electric Co., an ISO participating transmission owner. Both Neptune and Cross Sound Cable were merchant projects, not reliability projects. Thus, these facilities were not approved by an ISO or RTO in a planning process

[20] The ISO recognizes that there may be unique circumstances where the existing transmission owner may not be in a position to build a particular reliability project, and the system planner may need to approve some other entity to build the project.

for the purpose of maintaining reliability on some other transmission owner's system**.** As such, they do not raise the concerns previously identified by both the ISO and the Commission.[21] Finally, the TransBay Cable example does not support WITG's claim. There have been three changes in ownership of the project. The costs of the project have escalated significantly. The project has experienced significant delays. Because of these delays, the ISO has had to maintain the reliability must run agreement with Portrero. System planners simply cannot afford to have these types of problems, and the other problems the ISO has identified herein and in its initial comments, with reliability projects.

c. Elimination of Rights of First Refusal Will Create Disincentives for Public Utility Transmission Owners to Be Members in ISOs and RTOs

Commenters attempt to rebut arguments that eliminating transmission owner construction responsibilities would create a disincentive for membership in RTOs/ISOs. Primary Power contends that incumbents joined RTOs/ISOs knowing that FERC could modify construction responsibilities, and can have no legitimate expectation that they would construct facilities. This argument ignores

[21] The ISO also notes that these projects are controllable direct current ("DC") projects which are quite different from a standard reliability project. DC lines are typically built to address unique circumstances (in particular to deliver power over longer distances directly to a "sink;"); so, concerns about fragmentation and compartmentalization of an individual transmission owner's system and the proliferation of transmission developers owning distinct facilities to maintain reliability on one transmission owner's system are somewhat mitigated. The operation of DC lines is largely segregated from that of the broader transmission grid. DC transmission lines operate very much like a controllable load at the sending end and a controllable generator at the receiving end. This controllable source can be physically operated very much like a generator. Because DC lines have characteristics similar to generators at the receiving end, they could be considered similar to must run generators, which can and must be scheduled before the contingency in order to provide reliability. The need for unified operational control is therefore much less. The construction of such projects thus cannot be extrapolated to provide evidence of the appropriateness of subjecting reliability projects to a competitive solicitation process.

the fact that membership in RTOs/ISOs is voluntary.[22] If the Commission exercises its authority to materially modify terms and conditions under which a transmission owner joined an ISO/RTO, an incumbent remains free to depart from an RTO/ISO.

Pattern argues that elimination of a right of first refusal will not create a disincentive to ISO and RTO membership because the Commission is proposing to eliminate rights of first refusal from all Commission-jurisdictional tariffs and agreements and, as such, a transmission owner cannot retain a right-of-first refusal by exiting an ISO or RTO. Pattern's argument is based on the assumption that the Commission has the authority to impose a regional planning requirement – and subject transmission providers to the decisions of a regional planning entity – even if they do not voluntarily agree to participate in a regional planning effort. As the ISO explained in its Initial Comments, the Commission lacks the authority under the Federal Power Act to mandate regional transmission planning that is not voluntary. ISO Initial Comments at 20-23.[23] The NOPR's proposal to eliminate the transmission owner construction responsibilities for regional transmission projects would thus apply only to those transmission owners that voluntarily join an ISO, RTO or some other regional

[22] *See Atlantic City Elec. Co. v. FERC*, 295 F.3d 1, 8 (D.C. Cir. 2002) ("*Atlantic City*").

[23] ITC suggests that the Commission should require the development of independent planning authorities, and that the funding of and membership in such planning authorities would be mandatory. ITC at 7. The independent planning authority would then report directly to the Commission. This concept is comparable to requiring a transmission owner to join an ISO or RTO. As the Court of Appeals for the D.C. Circuit made clear in *Atlantic City*, the Commission does not have that type of authority. The courts and the Commission have acknowledged that joining a regional organization such as an ISO or RTO is purely voluntary. Thus, many of the NOPR's mandates will have little if any impact on transmission owners that have not joined ISOs and RTOs. The end result is inequitable, and unjust and unreasonable treatment for transmission owners that voluntarily join ISOs and RTOs *vis-à-vis* their counterparts that do not. There is no legitimate basis to disadvantage transmission owners that join an ISO or RTO.

planning entity and, despite Pattern's contrary assertion, would serve as a disincentive for public utility transmission owners to join or remain in ISOs and RTOs.

Moreover, Pattern's argument fails to recognize that the NOPR's proposal to eliminate rights of first refusal applies only to facilities included in a regional transmission plan. NOPR at P 97. However, many projects planned by RTOs/ISOs constitute "local" transmission facilities as that term is used in the NOPR, *i.e.,* facilities within a transmission service provider's service territory intended to serve its native load and transmission customers. The NOPR contemplates that transmission providers will continue to undertake "local" planning processes for their individual service territories and footprints, and that rights of first refusal would not be eliminated for such local projects. NOPR at PP 64, 66.

With this distinction, the NOPR potentially creates severe adverse impacts on transmission providers that join an ISO or RTO due to the fact that in an RTO or ISO, many of these local projects could also be construed as regional projects, because they are generally included in the RTO/ISO transmission plan, and the ISO or RTO is recognized as a regional planning entity. Thus, for example, the ISO's regional transmission plan includes transmission facilities that (1) are "local" transmission facilities under the NOPR, and (2) would not be subject to the NOPR's requirement to eliminate rights of first refusal if the transmission owner/provider were not a member of an ISO or RTO. Those owners thus potentially could face competition from independent transmission developers to

build and own “local” transmission facilities. In contrast, if these transmission owners were not members of the ISO, they would have the uncontested responsibility to build such facilities. If the ISO’s participating transmission owners are not permitted to build and own “local” transmission projects within their service territories necessary to maintain reliability on their system and serve their native load consistent with state law requirements, it will present a strong a disincentive for them to remain members of the ISO.

Therefore, if despite the widespread opposition and overwhelming legal precedent and operational and practical reasons to the contrary, the Commission directs the elimination of transmission owner construction responsibilities (particularly for reliability projects), the Commission must permit ISOs and RTOs to (1) bifurcate their regional transmission plans into a “local” planning component (for which uncontested construction responsibilities would be maintained) and a regional component, and (2) adopt a workable delineation between local and regional projects. This is necessary to ensure that, at least with respect to “local” transmission planning, the ISO’s participating transmission owners are treated in a similar manner to transmission owners that are not members of an ISO and RTO and eliminate this particular disincentive to ISO/RTO membership (although the disincentive will still remain with respect to regional transmission projects).

Any delineation between local and regional projects must also address the ISO’s concerns about inappropriate fragmentation of the grid and the integration and coordination problems that will arise if third parties are permitted to build

projects which are intended solely to maintain reliability on another transmission provider's system. ISOs/RTOs should be able to develop a single transmission plan and process that includes both regional and local transmission projects, each with its own separate attributes and applicable rules. Also, the Commission should allow regional flexibility for each ISO and RTO to develop the rules for delineating local transmission and regional transmission. Accordingly, if the Commission elects in the final rule to retain the proposed elimination of transmission owner construction rights, the Commission should give ISOs and RTOs sufficient flexibility to determine the appropriate demarcation between local projects and regional projects.[24]

3. Commenters Misrepresent the Relationship of Construction Responsibility and Project Categories Under the ISO's Revised Transmission Planning Process

A number of comments use the occasion of the NOPR to repeat their criticisms of the ISO's proposed revised transmission planning process. The ISO described its proposal as background to its initial comments. ISO Initial Comments at 4-8. Although the ISO's proposal is not the subject matter of this rulemaking proceeding, and the issues concerning that proposal are being addressed in Docket No. ER10-1401, the ISO believes it appropriate to briefly respond to these criticisms.

Relevant for the purposes of this discussion, under the revised transmission planning process, the ISO will first identify reliability needs,

[24] The ISO notes that its revised transmission planning process proposal, filed in Docket No. ER10-1401 and currently under consideration by the Commission, effectively accomplishes this with its distinction between the economic and policy-driven categories for which a competitive solicitation would be held, versus the other transmission categories for which uncontested transmission owner construction rights would be retained, and which are enumerated in the ISO's technical conference comments and summarized above.

solutions to meet those needs, location-constrained resource interconnection projects, and appropriate enhancements of network upgrades identified through the LGIP process. The ISO will then study economic and policy-driven needs and will identify transmission elements to meet those needs. After development of a system plan, participating transmission owners will be responsible for construction of reliability-driven projects, projects to maintain the feasibility of long-term Congestion Revenue Rights ("CRRs"), location-constrained resources interconnection projects, and other projects that constitute upgrades or expansions of the participating transmission owners' existing facilities or use the participating transmission owners' rights of way. The ISO will then solicit proposals for economically driven elements of the plan and policy-driven elements of the plan that are not upgrades or expansions of the participating transmission owners' existing facilities and do not use the participating transmission owners' rights of way. In the event that more than one proposal is submitted to the ISO to address a particular economically driven or policy-driven element of the plan, the relevant jurisdictional authority (or the ISO in cases where there is not a common jurisdictional authority) will determine the entity most qualified to finance, build, and own the facility.

Pattern argues that keeping a "right of first refusal" for certain categories of transmission will lead to game playing and discrimination in the approval process because incumbents will try to define projects to meet the criteria in which they have a "right of first refusal." Pattern at 15. Green Energy Express LLC and 21st Century Transmission Holdings, LLC ("GEE/21st Century") contend

that the assignment of construction responsibilities to certain categories will leave only limited opportunities for nonincumbents. GEE/21st Century at 5.

The ISO addressed such arguments in its Post Technical Conference Comments in Docket No. ER10-1401 by explaining that the project categories are not fungible.[25] Among other things, the ISO explained that:

- Reliability projects are limited solely to projects that meet identified reliability needs on existing transmission owner facilities. Under the tariff, the scope of reliability projects cannot be expanded to cover public policy needs or projects to provide economic benefits. Stated differently, economic and public policy projects cannot be approved under the guise of a reliability project.

- Projects to maintain the feasibility of long-term CRRs are limited to transmission upgrades or additions needed to maintain financial transmission rights. Under the unchanged existing provisions of the ISO tariff, the scope of these projects cannot be expanded to cover public policy needs or projects to provide economic benefits.

- Location constrained resource interconnection facilities, unlike the other three categories, are radial generation-ties. They are not network facilities and are not interchangeable with the other categories.

- Economically driven and policy-driven transmission elements are identified after reliability projects and location constrained resource interconnection facilities. There is no opportunity to trade back and forth between categories.

Although parties have reiterated their claims that the categories are subject to manipulation, no party has provided – nor can they – any examples to support their claim or even attempted to respond to the ISO's explanation in Docket No. ER10-1401 that the definitions of the categories ensure that they remain distinct and cannot be manipulated. The Commission should therefore give no credence

[25] Post Technical Conference Comments of the California Independent System Operator Corporation. Docket No. ER10-1401, filed September 8, 2010, at 8-32.

to these unsupported assertions that the categories are susceptible to gaming or severely limit nonincumbent opportunities.

B. Issues Related to the Selection of Competing Project Proposals

1. The Commission Should Allow Transmission Providers to Consider Cost Containment Measures, but Should Recognize that Other Selection Criteria Are Also Important

a. Transmission Providers Should Consider but Should Not Place Undue Weight on Proposals to Forego Rate Incentives

Northern California Power Agency ("NCPA") notes that, as part of its revised transmission planning proposal in Docket No. ER10-1401, the ISO rejected proposals to include in the ISO tariff a project selection criterion that explicitly references a willingness to forego rate incentives.[26] NCPA states that, at the very least, no tariff should preclude the possibility that a project sponsor might willingly offer to forego a request for regulatory rate incentives. *Id.* at 11.

Although this issue arguably relates more to the specific planning process proposed by the ISO in Docket No. ER10-1401 than the general requirements proposed in this proceeding, the ISO believes it is appropriate to address NCPA's concerns insofar as the Commission could rely on these comments in crafting its final rule. Contrary to NCPA's inference, the ISO's project sponsor selection criteria proposed in Docket No. ER10-1401 do not preclude a project sponsor from voluntarily offering to forego a request for regulatory rate incentives

[26] NCPA at 10. NCPA selectively references only one of the many arguments the ISO raised regarding the inappropriateness of including such an explicit provision in the tariff.

(or to agree to other cost containment measures such as cost caps).[27] However, the ISO does not believe that it is appropriate to explicitly single out in the tariff, or place undue weight on, a project sponsor's willingness to forego available rate incentives, to the neglect of all other cost components of a transmission project. NCPA ignores the fact that return on equity is only one cost component of the overall cost of a project. A project sponsor's agreement to forego rate incentives or accept reduced rate incentives does not automatically make that project the most cost effective alternative as NCPA assumes. Indeed, in many instances it will not be.

Including a project sponsor's willingness to forego rate incentives as an explicit selection criterion in the tariff, without explicitly recognizing in the tariff the cost impacts of every other individual component of the cost of service, would place inordinate weight on this one cost advantage. That would be inappropriate and could be counterproductive. For example, a company with an equity-rich capital structure may forego an incentive return on equity but still have a higher overall cost of capital than a company with less equity that receives an incentive rate adjustment. Or, a company might have existing rights-of-way on which large portions of the transmission element could be built, thereby enabling it to build a more cost-effective project than a company that agreed to forego rate incentives. If NCPA's proposal were taken to its logical conclusion, a system planner might be compelled to select a proposed project that is not the most cost-effective

[27] The ISO's proposed tariff Section 24.5.2.4(j) permits project sponsors to demonstrate *any and all* advantages they may have, or benefits they provide, in building a project, including any binding cost containment measures that they voluntarily agree to accept. Such measures can include, *inter alia,* offering to cap the costs of the project that they can recover in transmission rates or forego a relevant rate incentive.

means of addressing a regional need simply because there is a tariff provision that places undue importance on foregoing rate incentives. This would lead to a perverse outcome.

This same concern arises whenever any single cost component is emphasized or given credit in a vacuum without regard to a total binding cost cap. As the ISO has staunchly argued in Docket No, ER10-1401, agreement to a binding total cost cap on the project is the only truly meaningful measure of cost containment because it could be enforced.[28] Although offers to contain a specific individual cost element can be considered under the ISO's proposal, they cannot be evaluated in a vacuum. Rather, any cost-related data for a project proposal should be considered in the context of all the other selection criteria and individual cost elements and should not be given undue weight or any tariff-based advantage.

b. The Only Reliable Cost Containment Measure Is a Voluntary Agreement to Cap Costs

NCPA, City of Santa Clara, and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside ("Six Cities") urge the Commission to consider cost containment measures, including cost caps, as among the applicable criteria in the project sponsor selection process. City of Santa Clara at 4, NCPA at 8-9, Six Cities at 6. *See also* CMUA at 10. As indicated above, and in the comments of CMUA, the ISO's proposed tariff section 24.5.2.4(j) provides for the ISO to

[28] *See* Answer to Comments, Motion for Leave To Answer and Answer to Protests of the California Independent System Operator Corporation, Docket No. ER10-1401, filed July 15, 2010, at 95-98**;** June 4, 2010 Tariff filing in Docket No. ER10-1401at 66-67.

consider cost containment measures (and any other benefits or advantages a project sponsor provides), including agreed-to cost caps as a selection criterion.

It is important, however, that any cost comparison or cost containment measures be based on a binding agreement to cap costs and not on mere cost estimates. As the ISO has explained in Docket No. ER10-1401[29], cost estimates are not reliable, can be manipulated or "low-balled" to enable a project sponsor to be the lowest cost bidder, and are not enforceable or binding absent some additional commitment from a project developer. That is why it is imperative that if a project sponsor believes it can build a project at lower cost than a competitor and wishes to have its cost advantage considered in a competitive solicitation process, the developer should back up that belief by agreeing to some form of binding cost cap. This can be an important factor in a project selection process, although it must be recognized that, even with such a binding commitment, costs are not the only relevant factors that must be considered in the selection process. Finally, because transmission planners, including ISOs and RTOs, are not regulatory bodies and do oversee the rates of transmission service providers, it will be up to the Commission to enforce any agreed-to cost cap or cost containment measure in the course of a project sponsor's Section 205 transmission revenue requirement proceeding.

The Transmission Agency of Northern California ("TANC") suggests that cost has been largely ignored as a criterion for determining appropriate transmission development. TANC at 23. TANC's claim is misplaced. As the ISO indicated in its Initial Comments in this proceeding, under its existing

[29] See June 4, 2010, transmittal latter in Docket No. ER10-1401 at 66 n.74.

planning process, for all categories of transmission, the ISO identifies and evaluates all identified feasible alternatives to determine which project is the most cost-effective solution to meet a given need. ISO Initial Comments at 15-16. The ISO listed several examples demonstrating how the ISO approves the most cost-effective solution to meet an identified need. Further, as discussed above and in its Initial Comments, the ISO has proposed new tariff provisions that call for an open solicitation for economic and public policy projects. The proposed criteria for evaluating competing project proposals will provide incentives for potential project sponsors to submit cost caps and other cost containment measures in support of their proposals.

C. Various Commenters Raise Issues beyond the Scope of the NOPR.

1. The ISO's Coordination With the California Transmission Planning Group Is Consistent with Commission Policy.

In response to the NOPR proposal to mandate regional transmission planning between neighboring planning regions, NOPR at P 114, the ISO noted that parties in the West have successfully and voluntarily coordinated in the past and that there is no evidence in the NOPR that this collaboration will not continue into the future. ISO Initial Comments at 86-91. Both the ISO's current tariff, which the Commission has found to be Order No. 890-compliant, and proposed tariff sections that incorporate the same concepts affirmatively provide for coordination with interregional, regional, and sub-regional transmission plans and planning entities, including interconnected balancing authority areas.[30] The ISO

[30] Specifically, the following sections of the ISO tariff filing in Docket No. ER10-1401 address these issues. Proposed section 24.3.2 (l) provides that the ISO will consider as an input into the

explained that the NOPR proposal is unnecessary, unwieldy and could be counter-productive to the voluntary collaboration in place in the West.

In particular, the ISO pointed to its coordination efforts with the California Transmission Planning Group ("CTPG") which is comprised of the planning authorities and load-serving transmission providers in California. The CTPG has been running a number of planning scenarios and testing a multitude of planning assumptions. The CTPG also serves as a forum for exploring potential joint inter-regional transmission projects. Parties have dedicated significant time and resources to these planning efforts, which have been purely voluntary.

Nonetheless, the ISO's coordination with CTPG has engendered a significant level of often conflicting criticism regarding regional planning in the West, asserting either that the ISO either has not done enough or that it has done too much. For example, the Western Grid Group ("WGG") argues that "the ISO has made little or no effort over the last several years to coordinate with neighboring SPGs [sub-regional planning groups]." WGG at 11. Without offering any evidence whatsoever, WGG claims, *inter alia*, that "without participation by

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Unified Planning Assumptions and Study Plan the planned facilities in interconnected balancing authority areas. Section 24.4.3 contemplates that any request window projects that affect other interconnected balancing area authorities will have been reviewed by the applicable regional or sub-regional planning authority. Section 24.4.4 contemplates ISO coordination with interconnected balancing area authorities and regional or sub-regional planning authorities to develop a conceptual statewide plan that, among other things, will identify transmission upgrades and additions necessary to achieve state and federal policy requirements and directives. Section 24.8.4 provides that the ISO will obtain from interconnected balancing authority areas and regional and sub-regional planning groups within the WECC information that is anticipated to be useful to the ISO in the transmission planning process. Section 24.13 provides that the ISO will be a member of WECC and other applicable regional and sub-regional organizations and participate in applicable coordinated planning processes. Section 24.13.1, Scope of Regional or Sub-Regional Planning Participation, is an entire tariff section dedicated to the scope of the ISO's collaboration with adjacent balancing authority areas and planning organizations. It contemplates that the ISO will exchange planning information, coordinate on assumptions and economic planning studies, maintain a website that contains relevant planning information, and facilitate the participation of these entities in the ISO's planning process.

the CAISO, neighboring SPGs lack the information needed to . . . develop any sort of coordinated evaluation of regional needs." *Id.* at 11. Others argue, in essence, that the ISO will rely too much on statewide study results produced by through regional efforts when analyzing transmission needs in its own process. The Independent Energy Producers Association ("IEP") takes specific issue with the ISO's revisions to its planning process, particularly the development of a conceptual statewide plan that will be developed through collaboration with neighboring balancing authority areas through the CTPG.[31] IEP at 7. While acknowledging the role of neighboring transmission owners in developing a transmission plan for California, the IEP insists that "it is clear" that the ISO is "according special treatment to CTPG members." *Id.* at 9. GEE/21st Century, as well as WITG, contend that ISOs/RTOs must be directed to undertake "independent modeling separate and apart from planning process inputs prepared by third-parties," again citing the ISO's collaborative work with CTPG. GEE/21st Century at 7; WITG at 9. Pattern states that the CTPG's exclusion of independent transmission providers from the development of the baseline planning assumptions "casts doubts on the openness and transparency of the entire process." Pattern at 19.

Although the ISO has already addressed many of the specific concerns regarding CTPG in its filings in Docket No. ER10-1401, in order to clear-up the record in this Docket the ISO will summarize CTPG's role and the extent of the ISO's coordination with CTPG. CTPG was never intended to replace the

[31] For the first cycle of the revised transmission planning process, the ISO has proposed to develop its conceptual statewide plan with CTPG. *See* June 4 Transmittal Letter in Docket No. ER10-1401 at 28.

planning processes of its members and non-member participants, including the ISO.[32] The studies conducted by CTPG do not in any way pick "winners and losers." CTPG at 4-6, 10. Rather, members and non-member participants are free to use the CTPG study results in making their own planning decisions (consistent with the ISO's own revised transmission planning process) but are not bound to do so. Nonetheless, for the first time a broad spectrum of transmission owners and transmission providers – public and investor owned – in California has come together to share planning information and collaborate on identifying potential infrastructure that might be needed to meet state policy goals. *Id.* at 8. *See also* CMUA at 7.

Furthermore, the CTPG has coordinated its studies with the efforts of California's Renewable Energy Transmission Initiative ("RETI"), a statewide initiative organized to help indentify transmission needed to achieve California's renewable energy goals, and CTPG members have actively participated in this effort as well. See, *e.g.* Sacramento Municipal Utility District Comments at 7. In support of the voluntary regional planning initiatives underway in California, the California Public Utilities Commission ("CPUC") and California Energy Commission ("CEC") point out that RETI includes a public participation process that has benefitted from the input provided by, *inter alia*, utility and independent transmission providers, load-serving entities and renewable and conventional generation developers, producing information that "is continuing to play an important role in multiple resource and transmission planning venues in California." CPUC/CEC at 9.

[32] The ISO is a non-member participant in CTPG activities.

Although the ISO values the work of the CTPG, it is important to keep in mind that ISO proposed tariff section 24.4.4 clearly states that the conceptual statewide plan, to be produced in coordination with inter-regional groups such as the CTPG, is merely an input into the ISO's Phase 2 transmission planning process. Indeed, it will only be one of many inputs into the planning process. Other inputs will be provided by, *inter alia,* the CPUC, municipal utilities, the CEC, the RETI, interconnected balancing authority areas, other regional and sub-regional planning groups with which the ISO collaborates, the ISO's interconnection queue, Western Electricity Coordinating Council data, economic planning studies, transmission developers, and other stakeholders participating in the ISO's open planning process. Further, CTPG is not a decision making body. It will not determine which projects should be built, who will build them, and how the costs of such projects will be allocated. For the ISO footprint, those decisions will be made solely by the ISO based on its assumptions and studies adopted during its open and transparent, Order-No. 890 compliant planning process. The ISO's assumptions and rationales for its planning decisions will be fully transparent to all stakeholders. Under these circumstances, the objections to the ISO's collaboration with CTPG amount to nothing more than the classic "red herring."

The Commission should not allow unfounded criticism aimed at the ISO's efforts (or alleged lack of effort) to engage in inter-regional coordination and the ISO's collaboration with the CTPG to cloud its focus on the positive steps and accomplishments of voluntary groups in the Western interconnection that are

successfully and expeditiously meeting the challenges of incorporating large amounts of renewable resources into the transmission grid. The Commission's final rule in this proceeding should allow the ISO to continue such voluntary inter-regional coordination efforts, especially given that the ISO will undertake "independent modeling separate and apart from planning process inputs prepared by third-parties.

Finally, with respect to WGG's claims, the ISO set forth in its initial comments the tariff and business practice manual requirements with which it must comply – and with which it has in fact complied – regarding coordination with interconnected balancing authority areas and sub-regional planning groups. Indeed, Section 5.1 of the ISO's transmission planning business practice manual identifies the specific sub-regional planning groups with which the ISO coordinates and the required scope of that coordination.[33] The Commission has approved the regional coordination requirements with which the ISO must comply. WGG offers no evidence whatsoever – nor can it – that the ISO has failed to comply with these requirements.

2. This Proceeding Is Not the Proper Forum to Address Issues Involving Project Proposals Previously Submitted in the ISO's Request Window

In another instance in which a party has used their comments on the NOPR to raise issues about the ISO's planning process, WGG asks the Commission to direct the ISO to evaluate nonincumbent transmission proposals. WGG at 11. WGG claims that the ISO "discriminates against merchant

[33] This business practice manual can be found at https://bpm.caiso.com/bpm/bpm/version/000000000000105

projects," making it impossible to create a plan upon which "just and reasonable rates can be based." WGG also contends that the ISO is "refusing to evaluate the many merchant projects proposed in its planning area since 2009," without reference to any particular projects or apparent knowledge of the ISO's planning process.

WGG's request has no place in a generic rulemaking proceeding. WGG does not offer one iota of evidence to support its claim that the ISO is discriminating against independent transmission developers, nor does such evidence exist. Even assuming for the sake of argument that WGG had evidence that the ISO is violating its tariff, the proper recourse would be for WGG to file a complaint rather than make baseless assertions in rulemaking comments. However, even though WGG's arguments are beyond the scope of this rulemaking, the ISO feels it must respond to correct the record in this proceeding. The ISO's treatment of non-reliability projects submitted through the 2008-2009 request windows has been addressed in detail as part of the ISO's revised transmission planning process as described in Docket No. ER10-1401. In the 2008 and 2009 planning cycles, both independent transmission providers and incumbents submitted more than 30 transmission upgrade and addition projects proposals through the request window, and the ISO exercised its discretion under applicable tariff provisions to defer its evaluation of these proposals so that it could obtain a more comprehensive and realistic understanding of the key drivers for transmission planning in California for the

next ten years.[34] WGG fails to recognize the implications of the fundamental and monumental changes that the electricity industry in California is undergoing as the result of the 33 percent RPS initiative and other environmental initiatives. These regulatory initiatives create significant uncertainty regarding numerous key input assumptions that will drive the transmission planning process as California attempts to meet a 33 percent RPS standard, including (1) where and on what timetable the renewable resources to meet a 33 percent RPS standard will be built, (2) which resources in the existing fleet are likely to be displaced by renewable or other resources or retire as the result of once-through-cooling and other environmental initiatives, (3) how new intermittent resources will reliably be integrated into grid operations, (4) what the new congestion patterns will be as a result of changes in the resource fleet, (5) what renewable energy areas show sufficient commercial interest for generation necessary to ensure achievement of the 33 percent RPS goal while minimizing the risk of stranded investment, (6) what specific transmission facilities will be needed to ensure that these goals are achieved in a cost-effective and reliable manner, and (7) what generation and transmission interconnected balancing authority areas are interested in building. These factors create significant uncertainties for the planning process that need to be resolved in a comprehensive manner to some degree of certainty before the ISO can develop a cost effective transmission plan for the future. Otherwise

[34] Because the ISO has deferred the consideration of all pending non-reliability projects, including projects submitted by incumbent utilities, WGG has no basis to claim that the ISO has discriminated against non-incumbent transmission providers. Indeed, the economic project that has been pending ISO review the longest -- before the 2008 and 2009 request window projects were ever submitted -- is PG&E's C3ETP project. WGG cannot reasonably claim that the ISO's actions constitute undue discrimination against non-incumbent transmission providers under these circumstances.

the ISO could end up approving billions of dollars of transmission projects that turn out not to be needed given future conditions. It simply would not be prudent for the ISO to study and approve proposed projects in a piecemeal fashion. The ISO's prudent approach to transmission planning will minimize the risk of billions of dollars of stranded investment being heaped on the backs of ratepayers.

WGG also ignores the fact that the ISO has committed to study the 2008 and 2009 request window projects in this planning cycle. Further, the ISO has proposed to "grandfather" the evaluation of these projects in the revised transmission planning process. Specifically, the ISO proposed tariff language providing that the 2008/2009 request window submissions would be analyzed as part of its comprehensive planning studies and that, should any of the projects meet the need for policy-driven or economic elements, the proponents of such projects would have the right to finance, build and own them. *See* June 4 Transmittal Letter in Docket No. ER10-1401, at 54-55. In subsequent cycles, project sponsors for policy-driven elements and economic elements will be subject to the ISO's proposed competitive solicitation process. *Id.* at 57-71.

Contrary to WGG's insinuations about "discrimination against non-incumbent transmission providers," neither the ISO's current tariff nor the current business practice manual provide that non-reliability projects will be approved by ISO management or the Board during the planning cycle in which they were submitted. Under the current transmission planning process, projects with capital costs of $50 million require separate Board approval and are presented for Board

approval in accordance with the study schedule established for each project.[35] Moreover, because the costs of many 2008/2009 request window projects exceed $200 million, they would have been subject to the "Large Project" requirements under the current ISO Tariff. Large Projects are subject to a separate study and public participation process which in practice normally encompasses more than one planning cycle.[36] Even if a proposed project is not a Large Project, under the current planning provisions the ISO may defer for consideration in a subsequent planning cycle those transmission project proposals that are "at a conceptual stage or require additional study."

Although the ISO's tariff proposals implementing its revised transmission planning process have been suspended until no later than January 3, 2011, the ISO nonetheless intends to study the 2008/2009 non-reliability request window submissions during the 2010/2011 transmission planning cycle, currently under way.

3. Comments about Infrastructure Planning in California Are Misplaced

Citing to a white paper that apparently has not yet been published, the Solar Energy Industries Association and the Large-scale Solar Association ("SEIA/LSA") states that a "lack of transmission capacity serving the areas of quality solar resource is one of the primary barriers to the development of solar generation in the United States." SEIA/LSA at 1-2. These associations then go on to urge the Commission to harmonize timeframes for transmission planning across regions because, for example, California may "fall short" of meeting its

[35] *See* current ISO Tariff Section 24.2.4(d).
[36] *See* current ISO Tariff Section 24.2.4(c).

RPS goals due a lack of transmission infrastructure to "bring these resources to market." *Id.* at 8. According to SEIA/LSA, this shortfall is because transmission planning in California is "time-consuming and expensive," subject to the "overlapping and sometimes conflicting jurisdictions among the California ISO, the [CEC], the [CPUC] and other entities," resulting in "few substantive projects getting approved." *Id* at 9-10. The proposed solution to this situation is to develop infrastructure upgrades "on a coordinated, binding and enforceable schedule that is not disrupted by individual transmission provider study processes that are out of sequence with each other." *Id.*

Beyond SEIA/LSA's flawed argument that the Commission has the authority to mandate such "binding and enforceable" transmission planning across jurisdictions, these unfounded and incorrect statements about transmission planning in California should be dismissed. For one thing, SEIA/LSA cite information from the ISO's public interconnection queue about the MWs of generation projects seeking grid interconnection, but conveniently ignore the ISO's LGIP through which generators, transmission owners and the ISO engineers have been diligently working to bring massive amounts of renewable generation into the system in a very short period of time. Indeed, SEIA/LSA overlook the significant infrastructure upgrades now contained in LGIAs that have been submitted to the Commission for approval and are in various stages of state environmental permitting. Additionally, the ISO has made several modifications to its LGIP to expedite its study process in order to accommodate the needs of wind and solar generators seeking to meet American Recovery and

Reinvestment Act ("ARRA") funding deadlines and other financial commitments. These recent changes are in addition to the innovative cluster study approach and location constrained resource interconnection financing mechanisms that the ISO developed with the support of the CPUC and CEC and previously approved by the Commission. Two years ago the ISO had pending 361 interconnection requests totaling more than 105,000 MW. As a result of the improvements to the LGIP process implemented by the ISO, the ISO was able to expedite the processing of projects in the interconnection queue, such that the amount of generation remaining in the queue has decreased by nearly 60 percent.[37]

SEIA/LSA dismiss the ISO's planning activities through RETI and CTPG as simply an "added layer to the process" without any recognition that these organizations have provided – and continue to provide – valuable information about resource build-outs that help to expedite infrastructure planning for renewable resources, not stall it. Finally, SEIA/LSA state that "only" Tehachapi, Sunrise Powerlink and Palo Verde- Devers #2 (California-only portion) have "emerged from the planning process and are into permitting."[38] Ironically, these major 500 kV transmission projects will provide access for thousands of MWs of renewable resources to reach load centers in California and have been found by the ISO to be more than sufficient for the state to reach its 20% RPS goal.[39]

SEAI/LSA also attempt to use the Palo Verde-Devers #2 project, originally proposed to be located both in California and Arizona, as an example of a project

[37] ISO Annual Report at 15, available at http://www.caiso.com/2804/28047d71b4e0.pdf.
[38] SEIA/LSA at 10. Contrary to the SEIA/LSA statements, these projects have received environmental siting approval from the CPUC.
[39] ISO 2009 Annual Report at 13.

"stymied over cost allocation disputes." While it is true that Arizona officials did not approve the environmental siting of the Arizona portion of the project due to concerns about the flow of energy deliveries into California, cost-allocation was not a factor. The capital costs of the entire project (both the California and Arizona portions) would have been paid for by ISO ratepayers, not by ratepayers in Arizona.[40] The NOPR cost allocation issues addressed multi-jurisdictional projects proposed for cost recovery from multiple jurisdictions that supposedly "benefit" from the project. The Palo Verde-Devers #2 project is not an example of such cost allocation issues and the Commission should not rely on the SEIA/LSA description of transmission planning in California to adopt regional planning and cost allocation rules.

4. Comments Seeking Changes to Order No. 2003 or the Application of Large Generator Interconnection Procedures Are Beyond the Scope of This Proceeding

A number of commenters, in the guise of proposing "coordination" between regional transmission planning processes and large generator interconnection procedures, propose fundamental changes to the Commission's generator interconnection policies and LGIPs submitted in compliance with Order No. 2003.[41] CMUA requests that the Commission expressly require that, if the costs of network upgrades identified through large generator interconnection studies are ultimately borne by load within a region, those upgrades identified

[40] The entire Palo Verde-Devers #2 projects would have been owned and operated by Southern California Edison Company, an ISO participating transmission owner.

[41] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), order on reh'g, Order No. 2003-A, 69 Fed. Reg. 15932 (Mar. 26, 2004), FERC Stats. & Regs. ¶ 31,160 (2004), order on reh'g, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171(2005), order on reh'g, Order No. 2003-C, 70 Fed. Reg. 37661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,646 (2005).

through the LGIP studies be examined in the regional transmission planning process "as a necessary precondition to approval" by the relevant transmission provider. CMUA at 15-16; *see also* Silicon Valley Power at 8. Similarly, Six Cities states that the Commission should require that all significant network upgrades identified through LGIP studies (*i.e.*, with estimated costs in excess of $50 million) be considered through the regional planning process. Six Cities at 5-10.

In essence, these commenters are suggesting that network upgrades needed to accommodate a valid generator interconnection request should not be constructed without some additional process or approval through the transmission planning process. The Commission should recognize that these comments are not only beyond the scope of this proceeding, but are also a collateral attack on Order No. 2003. Many of the comments leave little doubt that Order No. 2003 must be substantially modified in order to implement the changes they propose. For example, NCPA refers to the Order No. 2003 LGIP as a "significant loophole" which would undercut the objectives of the NOPR. NCPA at 16. However, the NOPR does not pertain to the LGIP process and does not propose any changes to the LGIP process. The NOPR pertains only to the transmission planning process which the Commission has recognized is separate and apart from the LGIP process.[42] The Commission should not permit this proceeding to "spill over" into the wholly separate and distinct LGIP sections of the *pro forma* OATT that were not identified in the NOPR as being the subject of this rulemaking.

[42] *See, e.g., So. Cal. Edison Co.,* 133 FERC ¶ 61.107 at PP 44-46 (2010).

The ISO believes some level of coordination between the generator interconnection process and the regional transmission planning process is appropriate. At a minimum, a regional plan must take into account network upgrades associated with large generator interconnection requests that have passed certain milestones. Moreover, in the ISO's transmission planning amendment pending before the Commission, the ISO has proposed enhancements whereby the ISO will evaluate network upgrades that are identified as needed through LGIP studies and that might have a significant impact on the system within the context of the revised transmission planning process. This will allow a comprehensive approach for identifying the most efficient and effective network upgrades to address interconnection requests and other regional needs. Comments on LGIP issues in this proceeding, however, propose changes to the LGIP process that go beyond voluntary coordination with the planning process.

Commenters suggest that network upgrades identified through LGIP studies as needed to accommodate generator interconnection requests should not be constructed without some level of stakeholder review not contemplated by Order No. 2003. These comments fail to recognize that transmission providers like the ISO have an obligation to interconnect generators provided an interconnection customer complies with the requirements of the LGIP. Nothing in Order No. 2003 or the Commission's generator interconnection policies would allow the ISO to decline to require the construction of an LGIP network upgrade because the upgrades needed for an interconnection request have not been

reviewed through a stakeholder process or are not viewed as optimal in the regional transmission planning process.[43]

In support of their claims that the Commission should revisit its generator interconnection policies, a number of commenters cite to recent filings by Southern California Edison related to significant network upgrades with high estimated costs identified through the ISO's Commission-approved cluster study process. The ISO acknowledges that the large number of interconnection requests by renewable generators in California have led to significant network upgrade costs identified through the LGIP study process. The ISO does not believe that the costs associated with a large number of generator interconnections justify fundamental changes to Order No. 2003 in this proceeding. Rather, if the Commission desires to overhaul the basic provisions of Order No. 2003, it should do so in a separate rulemaking that pertains to the LGIP and which provides adequate notice to all potentially interested parties that the Commission is proposing to modify its *pro forma* LGIP. That has not happened here, and the Commission does not have a full and adequate record on this matter.

It is clear that many of the comments in this proceeding concerning LGIP issues are actually objections to the allocation to network customers of the costs of network upgrades to accommodate a generator interconnection. For example, the Bay Area Municipal Transmission group ("BAMx") argues that the

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

Commission should revisit the inclusion of LGIP network upgrade costs in regional transmission rates because many load-serving entities object to the involuntary allocation of such costs and contend that they receive no benefits from these upgrades. BAMx at 6-7. As the Commission has recognized, all network customers receive certain reliability benefits from network upgrades even if those upgrades would not have been constructed but for a generator interconnection.[44] Any proposals to consider sweeping changes to generator interconnection cost allocation principles are well beyond the scope of issues raised in the NOPR and should only be considered, if at all, in a separate rulemaking.

For similar reasons, the Commission should reject comments suggesting that nonincumbents should be afforded a right to construct LGIP network upgrades if the transmission owner to whose system a generator seeks to interconnect exercises its discretion to agree not to upfront finance the development of those network upgrades. AWEA at 29. Order No. 2003 addressed at great length both the circumstances where entities other than the interconnecting transmission owner could construct interconnection facilities and the conditions under which an interconnection customer might be required to make payments related to their interconnection request.[45] There is no basis for revisiting these determinations in this proceeding.

[44] *See, e.g.,* Order No. 2003 at PP 336-365.

[45] Presumably if an interconnection customer does not upfront finance LGIP network upgrades, any nonincumbent transmission developer willing to construct these network upgrades would seek to recover its costs from the customers of the incumbent transmission owner.

Finally, Six Cities raise an issue in their initial comments that the ISO has addressed in other proceedings but nonetheless merits a response in this proceeding as well. Specifically, Six Cities claim that the ISO "represented" to the Commission in an Order No. 890 compliance filing that all LGIP network upgrades would be submitted through the request window open in each planning cycle and evaluated in the Order 890 transmission planning process. According to Six Cities, although the Commission "relied" on this representation in approving the current transmission planning process, the ISO subsequently changed its position on this issue and "presumes," in the transmission planning process, that needed LGIP network upgrades will be constructed. Six Cities at 8.

As the ISO explained in reply comments following the technical conference held in Docket ER10-1401, these arguments are unfounded and based upon the misconception that LGIP network upgrades, such as those submitted for incentive rate treatment by Southern California Edison Company, must be "approved" through the transmission planning process. Six Cities fundamentally misunderstand the requirements of Order No. 890, which did not apply to the LGIP process and did not promulgate any changes to Order No. 2003, the *pro forma* LGIP tariff provisions, or the ISO's LGIP tariff provisions. Six Cities mistakenly blurs the well-acknowledged distinction between the generator interconnection process and the transmission planning process.

LGIP network upgrades that are needed by specific generation facilities for delivery of energy to the grid are not "approved" by ISO management or the Board of Governors, but rather are included in an LGIA between the ISO, the

interconnection customer and the relevant participating transmission owner. Accordingly, the ISO's current tariff Section 24, which contains the Order No. 890 transmission planning process framework, contains no reference to ISO *approval* of LGIP network upgrades as part of that process. LGIP network upgrades simply are not approved through the transmission planning process.

Indeed, the tariff, a technical bulletin the ISO issued to clarify the language of its transmission planning business practice manual ("BPM"), and subsequent modifications to the BPM make it clear that LGIP network upgrades are not evaluated and approved in the planning process. BPM language addressing this issue was added when revisions were made to the tariff and the BPM to comply with the Commission's June 19, 2008 order on the ISO's compliance with Order No. 890.[46] In that order, the Commission directed the ISO to amend the tariff to clarify which projects were *required* to be submitted through the request window, and which projects could be submitted, at the *option* of the project proponent, through the request window for consideration through the transmission planning process.[47]

In response, the ISO amended Section 24.2.3 of the tariff to include reliability projects in the list of projects that must be submitted through the request window, but did not add LGIP/SGIP network upgrades to these requirements because they are handled and "approved" through the LGIP process, not the transmission planning process.[48] However, Section 2.1.4.2 of BPM Version 2.0, submitted with the October 31, 2008 compliance filing,

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46 *Cal. Indep. Sys. Operator Corp.,* 123 FERC ¶61,283 (2008).

47 *Id.* at P 58.

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

recognized that there might be certain circumstances under which transmission owners would *choose* to have an LGIP network upgrade evaluated in the transmission planning process in order to facilitate coordination between the LGIP Network Upgrade and the transmission planning process. Importantly, in its recent orders on Southern California Edison's incentive rate filings, the Commission declined to accept arguments similar to those raised by the Six Cities herein when it noted that under the ISO tariff LGIP projects are not studied in the ISO's transmission planning process.[49]

Furthermore, the ISO's revised transmission planning process does not "exclude" LGIP network upgrades from review. Rather, the ISO's proposal presents a means by which optimally-sized upgrades needed for generation at different stages of the interconnection queue can be considered and *approved* in the revised transmission planning process as policy-driven or economically driven elements, and then be subject to a competitive solicitation for qualified sponsors to build and own them. As explained above and in the ISO's Initial Comments, the Commission's final rule in this proceeding should provide regions with sufficient flexibility to implement such innovative enhancements to their transmission planning processes.

III. CONCLUSION

For the foregoing reasons, the ISO urges the Commission to issue a final rule consistent with the discussion herein and in the ISO's Initial Comments. In particular, the Commission should eliminate those proposals that undercut

[49] *So. Cal. Edison Co.,* 133 FERC ¶ 61.107 at PP 44-46 (2010), *So. Cal. Edison Co.,* 133 FERC ¶ 61.108 at PP 65-67 (2010).

effective transmission planning and exceed the Commission's authority. Further the Commission should provide regions with sufficient flexibility to comply and implement processes, like the ISO's revised transmission planning process in Docket No. ER10-1401, that achieve the objectives described in the NOPR, but do not necessarily follow all the specific requirements proposed in the NOPR.

Respectfully submitted,

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Dated: November 12, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 12th day of November, 2010.

Anna Pascuzzo

Anna Pascuzzo