

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Investigation into Implementation of
Assembly Bill 970 Regarding the Identification of Electric
Transmission and Distribution Constraints, Actions to
Resolve Those Constraints, and Related Matters Affecting
the Reliability of Electric Supply.

Investigation 00-11-001
(Filed November 2, 2000)

**OPENING COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON THE DRAFT DECISION ON THE
INTERIM OPINION
ADOPTING METHODOLOGY FOR CONSIDERATION OF
TRANSMISSION COSTS IN RPS PROCUREMENT**

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Pursuant to Rules 77.2 and 77.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, the California Wind Energy Association ("CalWEA") submits its comments on the Draft Decision of Administrative Law Judge TerKeurst ("Draft Decision") on the "Interim Opinion Adopting Methodology For Consideration Of Transmission Costs In RPS Procurement," issued on May 10, 2004.

In a rush to meet a June 30 deadline for the issuance of utility RFPs, the Commission is at serious risk of adopting arbitrary rules that can do serious damage to the RPS program and likely participants, and of deferring consideration of issues that simply must be addressed in advance of the RFPs. No better example exists than the instant Draft Decision. CalWEA is extremely concerned that, as a direct result of the Draft Decision's determinations, project bids from California's premier renewable resource area, the Tehachapi wind resource area, will be made to appear far more expensive than they actually are. If the rules result in an exaggeration of the total costs of Tehachapi bids, the result could be the failure to trigger development of California's renewable energy goldmine.

As the Commission's pending proposed and alternate decisions (in this same docket) on Transmission Needs in the Tehachapi Wind Resource Area correctly state,

Improper inflation of transmission costs assigned to projects in the Tehachapi area, or other similarly situated areas, could impede such projects' ability to compete fairly in the RPS process and could skew the least-cost, best-fit ranking, to the detriment of both developers and consumers.

TerKeurst Proposed Decision, p. 30; Peevey Alternate Decision, p. 33 (electronic versions).

We urge the Commission to take several steps to ensure that its haste does not result in unintended and undesirable consequences.

I. The Network Benefits Associated with Transmission Upgrades Must Be Fairly Evaluated and Subtracted from the Transmission Bid Adders

Transmission upgrades benefit transmission customers. Benefits include increased transfer capability, reduced congestion costs, increased voltage stability and reduced line losses. There must be a systematic, unbiased methodology to calculate these benefits, and to net them against out-of-pocket costs. Counting costs without benefits will produce inefficient and discriminatory results.

Rather than follow this logic, the Draft Decision makes two distinct errors. First, it makes benefits consideration optional (by merely “allowing” utilities to consider benefits as described by bidders). Second, it gives the utilities discretion over how to evaluate these benefits. That utility discretion, while not unbridled, would be subject to a Commission review whose timing and criteria remain unstated. With discretion so broad and accountability so uncertain, the utilities could determine winners and losers – including entire resource areas – using criteria that never see the light of day and, worse still, systematically disadvantage some bidders over others. This discretion fails to “[provide] criteria for the rank ordering and selection of least-cost and best-fit renewable resources” as the Commission is required to do under Public Utilities Code Section 399.14 (a)(2)(B).

To comply with the statute, the Commission must modify the Draft Decision to adopt the methodology for quantifying network benefits as proposed by CalWEA (See CalWEA’s Opening Comments, Section I.D and Reply Comments, Section IV). At a minimum, the Commission should modify the Draft Decision to reduce the amount of discretion handed to the utilities, and to subject that discretion to independent review.

A. Consideration of Benefits Must be Mandatory, not Discretionary

The Draft Decision does not conform to the Commission’s June 2003 RPS decision, which states:

As several parties note, it is conceivable that the addition of renewable generation to the grid may result in network benefits, and bidders are encouraged to describe any such potential benefits in their responses. ... The utilities should make it known in their annual plans that such benefits are sought, should apply transparent criteria in evaluating such claims, and should

present the results of these evaluations to their PRGs for consideration.

D. 03-06-071, p. 36 (emphasis added). By contrast, the Draft Decision states (p. 18):

The approach in D.03-06-071 and in the ALJ ruling, in which bidders may describe expected network benefits in their bids and the utility may consider this information in evaluating the bid, is a reasonable approach at this time. While we do not adopt specific instructions regarding the evaluation of network benefits, particular projects may provide clear benefits to the transmission system. We encourage the utilities to consider this prospect in evaluating bids. As specified in Attachment A, the utility's consideration of potential network benefits should be consistent and transparent.

Similar language is used in Finding of Fact 4 in the Draft Decision (p. 41).

The Commission should modify the language in the Draft Decision to direct the utilities to include in their RFPs a statement that encourages bidders to describe the network benefits that would result from the transmission upgrades associated with their projects, to apply transparent criteria in evaluating such claims, and to present the results of these evaluations to their PRGs for consideration.

On this issue, the Commission has no discretion to relieve utilities of their obligations. Transmission benefits are inextricably linked to transmission costs, especially for the purpose at hand: developing a bid adder to evaluate the true cost to ratepayers of a given project. Utilities are obligated to consider costs. Therefore they are obligated to consider potentially offsetting benefits. Otherwise, the utilities will not assess the true cost of a given project. To “encourage” a regulated utility to do something it is required to do is illogical and unlawful. In fact, by “encouraging” the utilities, the Commission disables itself from imposing a penalty if the utility fails to follow through, because “encouragement” signifies voluntarism rather than obligation. The statute requires the opposite.

B. The Commission Should Ensure Sufficient Expertise on the PRG

The Commission cannot escape its statutory obligation to consider benefits. If CalWEA's proposed methodology is not adopted, a procedure is necessary that injects credibility and reduces controversy. There will be times when the utility's assessment of network benefits differs from those of bidders to an extent that the second ranking of bids

would be affected by the difference. In those instances, the Commission should hire an independent consultant to assist the PRG in assessing the utilities' and bidders' claims of transmission benefits. The Commission should pre-qualify these consultants so that they are available when needed.

II. The Methodology Should Require the Utilities, in Allocating Upgrade Costs, to Take Into Account the Entire Cost and Full Development of a Resource Cluster

Two modifications to the Draft Decision are necessary to ensure that the cost of transmission for each resource cluster is properly allocated among all projects in that cluster. As ALJ TerKeurst's pending Proposed Decision on Transmission Needs in the Tehachapi Wind Resource Area stated:

It is reasonable to require that transmission cost adders developed for RPS purposes for Tehachapi wind generation projects be based on logical, cost-effective¹ transmission expansions and be reflected in individual bids on a pro rata basis, because this approach will improve the reasonableness of Tehachapi transmission cost adders, make the RPS results more consistent across resource areas and over time, and avoid "free rider" problems.

President Peevey's Alternate Proposed Decision deletes this statement and the associated finding of fact, noting in a footnote that "We are considering the development of transmission cost adders in another phase of this proceeding" (Alternate Proposed Decision, footnote 19). We agree that the Draft Decision on bid adders is the appropriate forum to consider this issue, and urge the Commission to address it by making the following two changes to the Draft Decision.

A. The Methodology Should Take Into Account the Full Development of a Resource Cluster in Some Circumstances

The Draft Decision leaves unaddressed its express concern that "allocating the entire cost of a large transmission upgrade to the projects that have bid in response to one year's procurement solicitation ... may make it difficult for such projects to ever win the bid or for

¹ Note the reference to "cost-effective." Cost-effective means producing the maximum benefit per unit of cost. Cost-effectiveness cannot be even contemplated, let alone achieved, if one ignores benefits.

the needed transmission upgrade to be built.” Draft Decision, p. 38. CalWEA shares the concern and urges the Commission to address it.

The methodology should explicitly require the utilities to allocate the cost of a transmission upgrade equally over all of the renewable resources associated with the cluster, on a pro-rata basis, regardless of whether the combined capacity of the bids received equals or exceeds the capacity of the upgrade. A utility should be required to spread costs in this way if the Commission has a reasonable basis for finding that the utility and/or other retail sellers will need the renewables in that cluster by 2010 to meet the 20% RPS goal. The assumption would be reasonable if the RFP results show a sufficient number of competitive (but not necessarily winning) bids from the cluster. By “competitive,” we mean that, had the utilities sought to fulfill their 20% obligation in the present RFP, the entire cluster would have been selected due to its competitiveness. If the total capacity of the competitive bids is below the capacity of the upgrade, the Commission still should find that the cluster’s renewables are needed if there is an amount of known resources of equivalent quality – and thus presumably of similar price -- in the area (based on the CEC’s Renewable Resources Report) exceeding the capacity of the upgrade.² All three utilities should share sufficient information about the bids they receive so that they have full knowledge about the total amount of capacity that has been bid from within a particular cluster.

B. The Methodology Should Result in a Comparison of the Entire Cost of Each Cluster to Other Clusters

The objective of the transmission cost bid adder should be to compare the total cost (net of benefits) of transmission for one renewable resource cluster to the total costs of other clusters (allocated pro-rata among all resources in the cluster, as described in the preceding subsection). The approach contained in the April 2, 2004, ALJ Ruling was consistent with this approach: it would require the utilities to start with a revised “base case” that excludes upgrades associated with generators already in the ISO interconnection queue. The result would be that all of the upgrade costs associated with a cluster will be captured, including the

² President Peevey’s APD on Tehachapi Transmission Needs in fact makes this judgment regarding the need for the first phase of Tehachapi transmission.

costs associated with generators in the queue, which are presumably the least-cost network upgrades. The result will be lower cost bid adders.³

Based on PG&E's unexplained assertion that devising this base case "may not be practicable," and without adequately discussing the implications, the Draft Decision eliminated its requirement that the base case exclude upgrades already in the queue, stating "we do not require (but would allow) the utilities to separately identify" such a base case. Draft Decision, p. 30-31.

The Commission should modify the Draft Decision to adopt the procedure as outlined in the ALJ Ruling. Only upon a showing by a utility that the calculation cannot reasonably be performed should the Commission allow the utilities to exclude queue-related upgrades and separately evaluate the bid adder for queued projects.

III. The Commission Must Recognize the Availability of Energy-Only Transmission Service

The PD errs in denying generators a right to interconnect in a manner that avoids upgrade costs. By restoring this right, the Commission will assure consistency among the bid adder process, FERC Orders 2003 and 2003-A, and the California ISO's proposed treatment of transmission service.

At Section III.D.2, the PD states:

CalWEA's assertion that generators have a right to interconnect as an Energy Resource or a Network Resource is not consistent with current practices in California. The distinction in FERC's Standard Large Generator Interconnection Agreement between Network Resource Interconnection Service and Energy Resource Interconnection Service is based on eastern ISOs which have capacity markets and thus two levels of transmission service. These options are not offered in California through the ISO's tariffs.

This issue arises because FERC has put into effect Large Generator Interconnection Procedures (LGIP) pursuant to Order Nos. 2003 and 2003-A, 106 FERC ¶ 61,220, Docket No. RM02-1-001 (March 5, 2004). In the LGIP, FERC authorizes two types of interconnection

³ For further explanation of the benefits of capturing all cluster-related transmission costs in the bid adder, see CalWEA's Reply Comments on the Proposed Interim Methodology, April 19, 2004, p. 2-3.

service: Energy Resource Interconnection Service (ERIS) and Network Resource Interconnection Service (NRIS). The distinction is central to the PD's treatment.

A generator electing to take Energy Resource Interconnection Service is deemed by FERC not to be causing any network upgrades; therefore the generator need not pay for upgrades. As a result of the LGIP, the ISO is bound to offer ERIS or provide a suitable alternative. FERC has made ERIS distinct from Network Resource Integration Service for precisely the reasons at issue here: to allow willing generators a means of saving the transmission provider from incurring upgrade costs. Just as FERC distinguishes ERIS from NRIS, FERC also distinguishes interconnection service from transmission service. An entity that purchases ERIS does not thereby buy, and is not obligated to buy, transmission service. This reasoning is carried through in the LGIP, where ERIS entitles the generator to as-available transmission service only.

As required by FERC, the ISO made a filing with FERC on January 20, 2004, to comply with FERC's LGIP requirement. The ISO's filing is pending before the FERC in Docket No. ER04-445. Contrary to Orders 2003 and 2003-A, the ISO compliance filing fails to offer two types of interconnection service. This failure to provide the requisite two types of interconnection service appears to stem from its similar failure to offer two types of transmission service, such as firm transmission service and non-firm transmission service. As a consequence of these omissions, the ISO's filing provides no means for an interconnecting generator to choose a type of interconnection service and transmission service that avoids causing network upgrades, thereby insulating the generator (and the transmission customers) from the resulting cost. While the ISO asserts that it offers only one type of transmission service, it does provide for congestion management. If a load is willing to pay congestion costs, then transmission service is considered firm. If a load will not pay congestion costs, then transmission service is considered non-firm: service taken only when congestion does not exist. There is, therefore, a way for an interconnecting generator to avoid causing upgrade costs -- selling its product on an as-available basis. Therefore, there is no reason to deny the generator ERIS. Accordingly, neither the ISO nor the Draft Decision has justified a denial of Energy Resource Interconnection Service based on the supposedly unique nature of the ISO's transmission service.

In summary, the above-quoted statement from the PD is incorrect because it denies the generator an ability to obtain a type of interconnection service, mandated by FERC, which allows for interconnection without necessarily causing, or paying for, network upgrades. Although the types of transmission service to be offered by the ISO will depend on the outcome of the pending FERC case, both the FERC-mandated LGIP and the ISO filing have features that do not negate the benefit, and need, for energy-only interconnection service.

IV. Coincident Generation

CalWEA had argued that, in determining the amount of transmission needed to accommodate a cluster of new wind generation, the utility should account for the difference between maximum coincident generation and total nameplate generation. For a large resource area like Tehachapi, the difference can be 15%. The Draft Decision further stated (at p.27, electronic version):

"CalWEA submits that utilities routinely consider load diversity in designing transmission and distribution systems and that diversity of wind generation similarly should be factored into the transmission cost determination. CalWEA maintains that, for example, SCE has not taken this factor into consideration in its conceptual studies for Tehachapi."

SCE disagreed with the 15% figure; and also asserted that, in the Draft Decision's words, "the cost estimates in SCE's conceptual plan for Tehachapi properly reflected the expected costs of facilities needed to interconnect wind generation."

The Draft Decision did not resolve this disagreement. Instead it stated:

CalWEA raised this issue for the first time in its comments on the ALJ ruling. We do not have sufficient information to determine whether or the manner in which the coincidence of wind generation should be taken into account in planning transmission upgrades for wind generation. As a result, we do not require that the utilities modify their conceptual studies in this regard. However, we would be willing to consider this matter as a possible refinement in development of future Transmission Ranking Cost Reports.

As to CalWEA raising the issue for the first time in its comments on the ALJ ruling, there was no other opportunity for comment, except for the pre-hearing conference statements.

In any event, the timing of CalWEA's arguments does not diminish the Commission's obligation to base its decision on facts. Regulation is not a sport, where the referee's job is over if a team does not show. The Commission may not

act as an umpire blandly calling balls and strikes for adversaries appearing before it; the right of the public must receive active and affirmative protection at the hands of the Commission.

Scenic Hudson Preservation Conference v. FPC, 354 F.2d 608 (2d Cir. 1965) (applying Federal Power Act), cert. denied sub nom., Consolidated Edison Co. v. Scenic Hudson Preservation Conference, 384 U.S. 941 (1966).

The Commission cannot, consistent with reasoned decisionmaking, ignore an issue because it does not have the facts. Here the Commission did not merely ignore the issue; it effectively sided with one party -- the party asserting that there was no issue. For present purposes, the Commission effectively and arbitrarily accepted the utility's view, even as the Commission acknowledged it lacked the facts. The result was no more credible, or lawful, than if the Commission had stated: "Because we lack the facts to resolve the disagreement between SCE and CalWEA, we will accept CalWEA's position for now. However, we would be willing to consider SCE's position at some future time." We cannot imagine SCE accepting such a result.

V. Parties Should Have at Least 14 Days To Comment on the Transmission Ranking Costs Reports

The Draft Decision provides a process in which initial comments on the Transmission Ranking Costs Reports (TRCRs) are filed within seven days of the due date for the reports and reply comments are filed seven days thereafter. The Assigned Commissioner then assesses the adequacy of the reports on the basis of the filed comments and determines whether additional steps are warranted before the utilities' results are used in ranking bids for the initial RPS procurement, so that the bid ranking process is not delayed by the time that would be necessary to bring disputes to the full Commission.

Providing a mere seven days for review of the TRCRs is insufficient; the Commission

should change the Draft Decision to allow at least 14 days before initial comments are due. Parties (especially organizations with multiple members) cannot realistically be expected to evaluate these reports and draft comments within a week's time. If necessary, the utilities' RFP issuance dates should be moved ahead to July 31, as PG&E has already requested, in order to resolve disputes before the bid ranking process is conducted.

VI. Treatment of Shared Gen-Tie Facilities

The utilities correctly objected to the ALJ Ruling's proposal to classify shared gen-tie costs as network facilities by pointing out that it could lead to bids that do not reflect the total direct costs that generators may be required to bear. The Draft Decision responded to this objection by proposing that (a) a utility describe in its TRCRs any facilities identified in its conceptual studies that may be shared by more than one renewable project, but which the utility considers to be gen-ties rather than network facilities, and (b) requiring, within seven days after the closing of RPS bids, each utility to post on its website information about all bids it has received in order to allow bidders to collaborate regarding the potential sharing of gen-tie facilities, and to then submit alternative bids to the extent they agree on how to share gen-tie facility costs. This approach is meant to ensure that bidders do not duplicate the costs of shared gen-tie facilities in their bids.

The problem posed by the Draft Decision's new proposal is the opportunity it creates to allow bidders a "second bite at the apple," since the new price could reflect changes other than those resulting from the reconfigured gen-tie costs. It would be preferable if bids were made due at least seven days after any disputes relating to the TRCRs are resolved. This would allow bidders to discuss gen-tie costs before bids are due. As with the previous issue, moving the RFP dates of all utilities to July 31 (or even a few weeks later if necessary) would provide the additional time necessary.

Conclusion

CalWEA respectfully requests that the Commission modify the Proposed Decision consistent with the discussion above.

Respectfully submitted,

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June 1, 2004

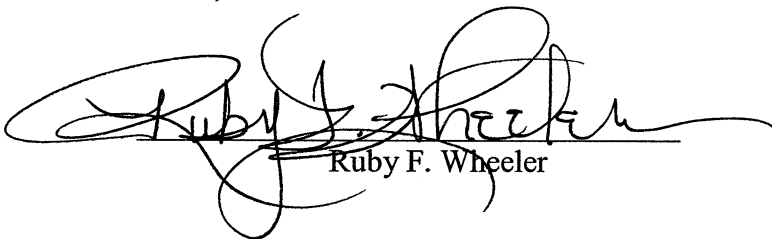
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On all known parties to I.00-11-001 by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list.

Executed on June 1, 2004, at San Francisco, California.



Ruby F. Wheeler