

**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)

**COMMENTS OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
AND
OAK CREEK ENERGY SYSTEMS, INC.
ON
PRESIDENT PEEVEY'S ALTERNATIVE PROPOSED DECISION
RELATING TO TEHACHAPI TRANSMISSION UPGRADES**

Received

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Public Utilities Commission
Mailroom

Scott Hempling
Law Offices of Scott Hempling, P.C.
417 St. Lawrence Drive
Silver Spring, MD 20901
Telephone: (301) 681-4669
shempling@hemplinglaw.com

Attorney for the California Wind Energy
Association

June 1, 2004

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The California Wind Energy Association ("CalWEA") and Oak Creek Energy Systems, Inc. ("Oak Creek") respectfully comment on President Peevey's Alternate Proposed Decision ("APD") issued May 26, 2004, as an alternative to the Proposed Decision of ALJ TerKeurst ("PD"). CalWEA and Oak Creek support the APD, which makes important changes to the PD, but we request a few clarifications.

I. The APD Properly Gives Staff a Coordinating Role

At p.2 and p.31, the APD correctly assigns the coordinating role to Commission staff, with the California Independent System Operator (ISO) assisting. It is better for the coordinating role to be lodged in a single place, directly accountable to the Commission, so that the Commission can guide the process directly. The APD accomplishes this goal.

II. The APD Correctly Deletes Language Pertaining to the Funding of Upgrades

At p.3, the APD correctly deletes this language:

"Consistent with Pub. Util. Code sec. 399.25 and Decision (D.) 03-07-033, the relevant utility would fund all Tehachapi-related network transmission facilities that the Commission finds necessary to facilitate achievement of renewable power goals."

The deleted language is inconsistent with section 399.25 and with the Federal Power Act.

Under Section 399.25, the Commission does not have the power to direct the utility to fund

network upgrades. The Commission does have the power to direct a utility to file with the Federal Energy Regulatory Commission (FERC) a proposal to fund network transmission facilities. Under the Federal Power Act, only FERC has the authority to approve the utility's proposal. As a result of FERC's approval, the utility then would become bound to fund the upgrades. In summary, the utility's legal obligation to fund network upgrades stems directly from a FERC decision, not from a state commission decision. The state commission can direct the utility to make a FERC filing proposing utility funding.¹

III. The APD Correctly Orders SCE to File for a CPCN for Phase I

At p.3 and p.19, the APD correctly requires SCE to file for a Certificate of Public Convenience and Necessity (CPCN) for the first phase of Tehachapi upgrades within six months of the Commission's order. There is no reason to wait longer. The APD arrays the various decisions logically. It decides now that some facilities are "necessary to facilitate" achievement of the statutory renewable power goals. It defines those facilities as the first phase as described in SCE's 2002 conceptual study. Further, rather than engage in detailed decisionmaking now about cost recovery, the APD defers the ratemaking decision until the CPCN proceeding when the precise details as to the type of each facility are known. The utility has no cause for concern, for it will recover its reasonable costs whether the facilities are funded by the generator or the utility.

Central to the APD's treatment is the notion of "foreseeability." Planning has inherent uncertainties. To wait for certainty is to discard planning. A utility plans and commits to

¹ The state commission's power to do so is the subject of SCE's challenge to the Commission's Interim Decision, D.03-07-033, as affirmed by D.03-10-020 (Order Denying Rehearing). That appeal is pending in the Second Appellate District of the Court of Appeal of California, Docket No. B171050.

distribution, generation and transmission well in advance of certainty as to the precise level of demand. The APD makes a reasonable judgment that the need for first-phase facilities is "foreseeable."

Having made this "necessary to facilitate" finding based on foreseeability, the APD (at p.32) takes the next step of requiring SCE to file a formal CPCN application for the first phase upgrades within 6 months of the decision. Waiting for six months following submission of the study group report, as the PD did, creates unnecessary delay and uncertainty. The Commission has enough information to make a judgment based on "foreseeability" without waiting for the report.

Similarly, at p.21 the Commission correctly reasons that upon finding that "transmission facilities are necessary to facilitate achievement of renewable power goals, a separate assessment of whether the project brings reliability or economic benefits would not be required for certification purposes." The reason is that under section 399.25(a), facilities which are "necessary to facilitate" shall be "deemed necessary to the provision of electrical service for purposes of any determination made under Section 1003" (relating to CPCN applications). This reasoning, commanded by the statutory language, will reduce the procedural steps necessary to initiate transmission construction.

IV. The Commission Should Direct SCE to Enable Projects to Join the Clusters

The PD (unaltered by the APD) describes a batch process in which (a) the participants would create phased plans for transmission development and (b) the costs associated with each

phase would be allocated among the wind generators using the transmission capacity created by that phase.

The PD does not indicate which projects would be included in the first batch. It is not clear, for example, whether the batch would be confined to projects presently in the queue or would include projects which, now informed of the opportunities created by this order, might wish to enter the queue.

A decision to open the cluster for 30 days after the Commission's order would be consistent with the APD's emphasis on seeking roll-in of network upgrades while holding the utility harmless from FERC cost disallowances. See APD at p.22. Up to now, the utility's uncertainty about cost recovery has contributed to its insistence that generators fund the upgrades upfront. This utility insistence on generator financing has, in turn, discouraged some generators from participating. Allowing a 30-day window following the clarifications articulated by this APD will allow these formerly discouraged generators to enter the queue. This new entry will increase the possibility that the Commission will achieve the statutory renewables obligation in a least-cost manner.

V. The Commission Should Correct Terminology Concerning "Rolled-In Ratemaking"

At p.16, the PD (unaltered by the APD) states:

"With rolled-in ratemaking, the utility would finance the transmission project and would request that FERC authorize cost recovery through transmission rates. Under this scenario, ratepayers would fund the costs, either in transmission rates authorized by FERC or in retail rates authorized by this Commission pursuant to sec. 399.25(b)(4). It is noteworthy that even if generators pay for transmission upgrades upfront, ultimately, ratepayers will pay back the generators for that investment over a five-year period, as per current FERC policy. Thus, the issue is which entity bears the risk of the investment, not necessarily who pays for it."

The Commission's final decision should clarify its use of terminology. In many FERC decisions issued over several decades, the phrase "rolled-in ratemaking" is used when the cost of a facility is assigned to all ratepayers rather than a subgroup. Even if a subgroup (such as, here, the interconnecting generators) provides the financing initially, if the funding ultimately comes from general ratepayers, the term "rolled-in ratemaking" applies. To avoid confusion, especially with an appeal pending, the Commission should not use the term "rolled-in ratemaking" to refer only to situations in which the general ratepayer provides the funding upfront.

Conclusion

For the foregoing reasons, CalWEA and Oak Creek respectfully request the Commission to adopt the Alternate Proposed Decision, with the clarifications discussed above.

Respectfully submitted,

Scott Hempling
Law Offices of Scott Hempling, P.C.
Attorney for CalWEA and Oak Creek

June 1, 2004

**CALWEA APPENDIX
PROPOSING ALTERNATE LANGUAGE TO THE TEXT,
PROPOSED FINDINGS OF FACT,
AND ORDERING PARAGRAPHS**

PROPOSED CHANGES TO TEXT

Section V.B, pages 14-15 (electronic version):

Section 399.25 requires that a certificate application for new transmission facilities be deemed necessary to the provision of electrical service if the Commission finds that the new transmission facility is necessary to facilitate achievement of renewable power goals. As we explained in D.03-07-033, § 399.25 provides the possibility of ~~rolled-in ratemaking for utility~~ financing of new transmission facilities that the Commission determines are necessary to facilitate achievement of renewable power goals. With this form of rolled-in ratemaking, the utility would finance the transmission project and would request that FERC authorize cost recovery through transmission rates. Under this scenario, ratepayers would fund the costs, either in transmission rates authorized by FERC or in retail rates authorized by this Commission pursuant to § 399.25(b)(4). It is noteworthy that even under the form of rolled-in ratemaking where if generators pay for transmission upgrades upfront, ~~ultimately,~~ ratepayers ultimately will pay back the generators for that investment over a five-year period, as per current FERC policy. Thus, the issue is which entity initially bears the risk of the investment, not ~~necessarily~~ who ultimately pays for it.

PROPOSED CHANGES TO FINDINGS OF FACTS

The Commission should add the following finding of fact:

For a period of 30 days after the Commission's order, SCE should allow any generator to join the cluster that would be associated with the first phase of Tehachapi upgrades.

PROPOSED CHANGES TO ORDERING PARAGRAPHS

The Commission should add the following ordering paragraph:

SCE shall allow any generator to join the cluster that would be associated with the first phase of Tehachapi upgrades during a period of 30 days following the Commission's order.

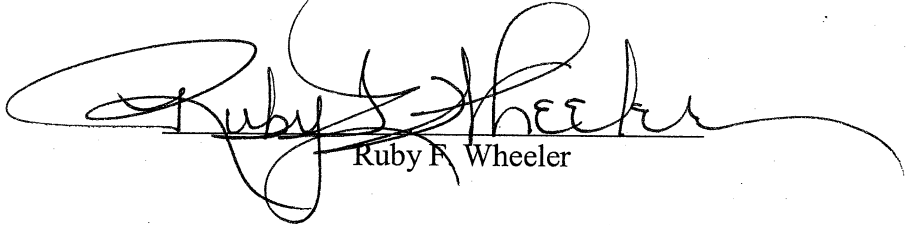
Certificate of Service

I hereby certify that I have this day served a copy of the

**COMMENTS OF THE CALIFORNIA WIND ENERGY ASSOCIATION AND OAK
CREEK ENERGY SYSTEM, INC. ON PRESIDENT PEEVEY'S ALTERNATIVE
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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