

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

Order Instituting Investigation to facilitate proactive development of transmission infrastructure to access renewable energy resources for California.

Investigation 05-09-005
(Filed September 8, 2005)

**REPLY BRIEF OF THE
CALIFORNIA WIND ENERGY ASSOCIATION
ON TRANSMISSION COST RECOVERY ISSUES**

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Pursuant to Rule 75 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, and the Assigned Commissioner's Scoping Memo and Ruling of December 21, 2005, the California Wind Energy Association ("CalWEA") submits its reply brief on transmission cost recovery issues. In this reply brief, CalWEA respectfully responds to the January 27, 2006, opening briefs of the Green Power Institute ("GPI"), the Center for Energy Efficiency and Renewable Technologies ("CEERT"), Pacific Gas & Electric ("PG&E") and Southern California Edison ("SCE"). We make six points:

1. **The Commission should not develop a definition of "network" different from FERC's.**
2. **"Necessary to facilitate" is necessary but not sufficient for backstop benefits; the "prudently incurred" criterion protects ratepayers from traditional generation costs historically borne by the interconnecting generator.**
3. **Non-network upgrades may provide benefits to the grid justifying cost-sharing between generators and ratepayers.**
4. **There should not be unnecessary delays in backstop cost recovery.**
5. **The ISO's treatment of renewable-related facilities must focus on least-cost solutions, not renewables-based solutions.**

6. The independent entity status of the transmission provider cannot convert a facility from non-network to network status.

I. The Commission should not develop a definition of “network” different from FERC's

GPI states (at 4) that the Commission "should be free to adopt its own interpretation of what constitutes a benefit to the transmission network in the sense of sec. 399.25, completely separate from the FERC's interpretation of what constitutes a network facility for purposes of inclusion in the FERC tariff...."

The Commission should not develop a definition of network different from FERC's. Section 399.25 speaks of a "network" analysis for one reason: to support the utility's request for a "network" designation from FERC. The advantage of this tack is that network status will allow recovery of the costs from all the utility's transmission customers ("roll-in") rather than the utility's retail customers only. Section 399.25 does not make "network" status relevant for any purpose other than supporting the roll-in argument at FERC. For the Commission to define "network" differently from FERC would undermine the utility's effort to obtain a network finding from FERC.

Perhaps GPI means that where costs are not deemed "network" by FERC, the Commission remains free to allocate them to retail ratepayers, rather than to generators only, if the Commission can find benefits to retail ratepayers. CalWEA has taken a similar position. But to use the term "network benefits" in this context would cause unnecessary confusion. FERC uses the term "network" to refer to the FERC-jurisdictional transmission network. If and when the Commission finds benefits to the state sufficient to trigger the backstop, the Commission

should label these benefits “benefits which justify allocation of costs to ratepayers under Section 399.25” rather than “network benefits.”

In the next paragraph, where GPI states: "Transmission lines that carry power from several generators located in currently inaccessible or limited-capacity areas should be classified by the Commission as network facilities that are the *funding responsibility of the utilities*, not the generators" (emphasis added). To say that a cost is the "funding responsibility of the utilities" leaves unclear which set of ratepayers is responsible: the ratepayers of FERC-jurisdictional transmission service or the ratepayers of state-jurisdictional retail service. The distinction matters because in the context of these renewable-oriented transmission facilities, (a) the utility is never ultimately responsible for costs unless there is utility imprudence, and (b) this Commission has jurisdiction over only retail costs. Avoiding the term "network" in this context will make clear that we are talking about retail rate recovery.

II. "Necessary to facilitate" is necessary but not sufficient for backstop benefits; the "prudently incurred" criterion protects ratepayers from traditional gen-tie costs historically borne by the interconnecting generator

Some parties asserted that if a facility is "necessary to facilitate" RPS compliance, the backstop is available, without clearly articulating the circumstances under which the backstop should be available. Such a position could erroneously lead to ratepayers paying for typical gen-ties, or at a minimum create uncertainty over when the backstop may be employed.

It is one thing to commit ratepayers to cover gen-tie costs where there is a market breakdown, such as where a gen-tie will serve multiple future generators, among whom

coordinated cost allocation is not possible because their identity is not known yet. It is another thing to have ratepayers subsidize the normal business expenses of profit-seeking companies.

The "prudently incurred" phrase in Section 399.25 should be interpreted as a further criterion for when the backstop should be employed. Even where a generator (and its gen-tie costs) satisfies the statutory "least cost, best fit" standard, it would be imprudent for the utility to allocate to retail ratepayers development costs which are properly borne by the generator. If a utility promised a generator that the utility would pay for its turbines and then sought to recover the turbine cost from retail ratepayers, the Commission would reject the cost as imprudent. The same reasoning applies to gen-tie facilities used by single (or perhaps two) generators, and to related interconnection and feasibility studies, of the type that normally are the generator's responsibility. The Commission will need to define clearly the line between generator responsibility and utility responsibility, to avoid case-by-case uncertainty. At a minimum, the Commission should make clear that "necessary to facilitate" is not, by itself, sufficient grounds for the backstop.

III. Non-network upgrades may provide benefits to the grid justifying cost-sharing between generators and ratepayers

SCE states (at p.13):

"The costs of generation-tie lines that link one generation developer's resources with the grid should be constructed and paid for by the generation developer. The costs of high-voltage, bulk transfer, generation-tie lines serving multiple renewable generators should be paid for by generators pro-rata under FERC-jurisdictional rates and under sec. 399.25(b)(4) to the extent not recovered in the FERC-jurisdictional rates."

SCE's distinctions are useful, but omit one situation: a line that provides transmission benefits

beyond the generation interconnection, but not enough to justify the “network” status that is required for cost recovery from transmission ratepayers. For example, the line could increase local reliability and improve the economics of the transmission network as a whole. Such benefits could justify allocating all or a portion of the line’s costs to ratepayers under Section 399.25.

Our opening brief explained (at p. 4) that viewing each interconnection-related facility as either "generation" or "transmission," is an oversimplification. That approach overlooks special contributions that trunk-lines can make to the grid. Where such contributions exist, it would be prudent for the utility to assign some costs to retail ratepayers. The "prudently incurred" phrase in Section 399.25 empowers the Commission to identify these benefits and allocate costs appropriately to ratepayers. The allocation could be temporary or permanent, full or partial.

SCE has proposed a mechanism for charging generators their pro-rata cost-share of a trunk line.¹ SCE's approach works where there no benefits beyond the generator interconnection.

Where there are benefits, SCE's mechanism can be integrated with ratepayer funding under Section 399.25, as illustrated by the following example. Where a generator's pro-rata cost-share is based on the entire capacity of the line, SCE's approach means that a 100-MW wind farm on a 1,000-MW line would pay only 10% of the line's costs; if less than 1,000 MW of wind capacity is built on the line, the retail ratepayers, not the wind generator, would pick up the difference.

Now assume that this line produces benefits beyond the point of interconnection, and that the

¹ See SCE I.B, n.20, referring to its Amended CPCN Application for Antelope Segments 2 and 3. SCE there proposed that generators pay for the Segment 3 trunk-line on a pro-rata basis under FERC jurisdictional rates (more specifically, as a charge under SCE's standard generation interconnection agreement). Any costs not covered by generators, due to under-subscription of the upgrade, would be recovered from SCE ratepayers under section 399.25.

Commission determines that these benefits equal 25% of the line's cost. CalWEA proposes that the 25% of the generator's 10% cost-share be allocated to retail ratepayers. Thus the 100-MW project should bear 7.5% of the line's cost, with 2.5% recovered from ratepayers.

Because any benefits-beyond-the-interconnection would have been described in the facility interconnection studies, the Commission could make its allocation decision without additional engineering study work. If the Commission is concerned that generators will argue inappropriately for cost-sharing, the Commission can impose a rebuttal presumption that non-network facilities are 100% allocable to generators. That presumption would make the most sense where the facility interconnects only a few projects. The Commission should provide, in the process it sets forth in its decision on cost-recovery issues, a standard procedural opportunity for discussing these cost allocation issues.²

IV. There should not be unnecessary delays in backstop cost recovery

CEERT states (at p. iv): "The Commission should find that no IOU application seeking authority to recover costs through a RATIBA-related rate charge or increase shall be filed until the subject transmission facility has been in place for at least three years, contributions have been received from all renewable generation projects completed at the end of that period, expected contributions from planned projects have been estimated, and the IOU has received a final

² We note that, in the case of the CPCN application for Antelope Segment 3, the Commission's policy on this point was not established at the time of filing the application, and thus presents a unique case that may warrant revisiting at a later time.

determination from FERC regarding the 'rolled in' ratemaking treatment permitted for that facility." *See also id.* at 10-11.

CalWEA agrees with CEERT's implication that the Commission needs to prevent utility double-recovery (i.e., recovery from retail ratepayers through the backstop and recovery from transmission customers through FERC). But there is no need to wait three years or to wait for FERC rejection. Instead, the Commission, where it deems a backstop request meritorious, can prevent double recovery by making any backstop recovery "subject to refund."

The notion of awaiting "final determination from FERC" is not consistent with how FERC decisionmaking works. It implies that the utility must run each facility up the FERC flagpole, obtain rejection of network status, and then apply for backstop. We disagree. FERC already has articulated a boundary between network and non-network facilities. Where the utility knows its proposal will fail FERC's test, it need not and should not try to change FERC's mind. It is possible that reasonable minds can differ over the potential outcomes at FERC. Where the utility seeks backstop treatment for a facility which the Commission believes should receive network treatment at FERC, the Commission can decide at that time whether to defer backstop treatment (for some period of time), or allow it conditioned on the utility's seeking FERC recovery. But there is no need for a stiff prohibition on any backstop recovery for three years or until FERC acts.

V. The ISO's treatment of renewable-related facilities must focus on least-cost solutions, not renewables-based solutions

PG&E (in section I.B. at p. 5) correctly emphasizes the need for coordination among the Commission, the CEC and the CAISO to develop a "comprehensive, regionwide transmission

plan” that accommodates load and renewables. We agree with the benefits of coordination, but caution again on how the parties characterize the facilities.

The Federal Power Act makes no distinction between renewable and non-renewable uses of transmission. (PURPA's preference for renewables is irrelevant under the Federal Power Act.) Regardless of how ardently sitting FERC Commissioners claim to "favor renewables," they lack the authority to make a renewables-based distinction in transmission policy. There remains an effective solution, which requires all participants to take care with terminology. What FERC can do is require transmission planning to be least-cost, taking into account legal limits imposed by other jurisdictions. If, for example, California banned transmission construction in corridors that would otherwise lower transmission cost, the ISO must take that state-imposed constraint into account and move to the next least-cost solution. If load locates in hard-to-reach areas, the ISO must take that fact into account. And if California requires load-serving entities to buy stated amounts of renewables, then the ISO must plan its transmission with that requirement in mind. It is not that the ISO is proposing a "renewables-based" transmission line; the ISO is proposing the least-cost transmission solution to an equation that includes load-serving entities having a renewables purchase obligation.

VI. The independent entity status of the transmission provider cannot convert a facility from non-network to network status

SCE states (I.B. at 12):

California may want to urge the California Independent System Operator (CAISO) to revisit FERC's determination that the costs of high voltage, bulk transfer, generation-tie lines serving multiple renewable generators are 'not eligible for rolled-in rate treatment.' Perhaps such lines could be made the subject of an independent entity variation under Order 2003 as suggested by FERC Commissioner Brownell.

The reference is to Commissioner Brownell's concurring opinion in *Southern California Edison Co.*, 112 FERC ¶ 61,014 (2005).

The Commission should not adopt this idea. Comm. Brownell's concurrence had argued that SCE's trunk line proposal would have greater chance of success if the proposal comes from the CAISO, using Order 2003's "independent entity" variation. This reasoning is incorrect. The FERC majority rejected SCE's submittal not because SCE is a non-independent transmission provider, but because the submittal disclaimed any network benefits.

Recognizing the necessity of network benefits, the concurrence makes this attempt to save Segment 3 (112 FERC ¶ 61,014 at 61,146-47 (Commissioner Brownell, concurring):

Segment 3 facilities would provide benefits to all users of the CAISO Grid by creating the potential to interconnect significant new and diverse supplies of energy. Therefore, I believe that this proposal would have satisfied the independent entity variation standard in Order No. 2003, had it been made by the CAISO....

This passage has two problems. First, it does not distinguish this facility from any non-integrated gen-tie. Any gen-tie interconnects new generation; but an interconnection role alone does not create network benefits. For network benefits to exist, the transmission ratepayer must benefit in his role as a transmission customer, not in his role as a power customer.

Second, the second sentence does not follow from the first. The second sentence implies that the interconnection of new generation somehow interacts with independent entity status to support roll-in. But as discussed above, the ability to roll-in depends on network benefits; roll-in has nothing to do with independent status. FERC created the independent entity variation option because independent entities have no incentive to discriminate. *See* Order 2003 at para. 822

("RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination."). The discrimination of concern to FERC was discrimination by a generation-owning transmission provider against independent generators. SCE's proposal does not involve discrimination against generators. The independent entity standard has nothing to do with this matter (as evidenced by the absence of any mention of the issue in the majority's decision).

In short, only if there are network benefits will FERC allow recovery of the costs in transmission rates. For a network upgrade, roll-in is available whether the upgrade owner or operator is independent or non-independent. And if the upgrade is not a network upgrade, roll-in is unavailable regardless of the status of the owner or operator. Under the Federal Power Act, to assign costs to customers who do not benefit is unjust and unreasonable, regardless of who owns or operates the line. Independent status is irrelevant to network status.

Respectfully submitted,

 (A handwritten signature in cursive script that reads "Scott Hempling". To the right of the signature is a small circular stamp containing the initials "SHW".)

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February 17, 2006

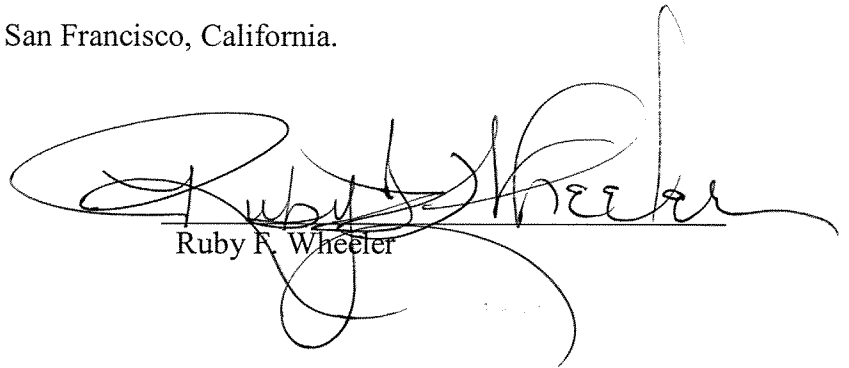
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TRANSMISSION COST RECOVERY ISSUES**

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Ruby R. Wheeler