112 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Southern California Edison Company Docket No. EL05-80-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued July 1, 2005)

1. On March 24, 2005, Southern California Edison Company (SCE) submitted a petition for declaratory order seeking Commission approval for: (1) rolled in rate treatment for costs incurred for the three segments it proposes to construct to interconnect and accommodate energy and capacity from future wind projects (Antelope Project)[1]; (2) full recovery of prudently-incurred costs for the three segments, regardless of whether potential wind generation develops or SCE abandons or cancels one or more of the segments; (3) the creation of a new category of transmission facilities that would encompass SCE's proposed Segment 3 (described below); and (4) placing Segment 3 under the Operational Control[2] of the California Independent System Operator Corporation (CAISO or ISO).

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[1] *See infra* PP 16 - 19.

[2] Operational Control is defined as:

> The rights of the ISO under the Transmission Control Agreement and the ISO Tariff to direct Participating [Transmission Owners (TOs)] how to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities for the purpose of affording comparable non-discriminatory transmission access and meeting Applicable Reliability Criteria.

California Independent System Operator Corporation, FERC Electric Tariff, First Revised Volume No. 1, Appendix A: Master Definitions Supplement.

2. As discussed below, we conditionally grant SCE's request for rolled-in rate treatment for Segments 1 and 2, but defer ruling on SCE's request for an advance prudence determination, without prejudice to SCE's right to seek this recovery when, and if, SCE receives the necessary certificate(s) of public convenience and necessity. We will allow SCE to recover all of its prudent costs, in the case of abandonment or cancellation for Segments 1 and 2. With regard to Segment 3, we deny SCE's request: (1) to create a new category of transmission facilities – trunk facilities; (2) for rolled-in rate treatment; (3) for an advance prudence determination; (4) to recover all of its prudent costs, in the case of abandonment or cancellation; and (5) to place Segment 3 under the Operational Control of the CAISO.

3. This order benefits customers by providing guidance in order to advance transmission infrastructure.

Background

4. The State of California adopted its Renewable Portfolio Standard Program (RPS) in 2002, which requires electric corporations in California to procure 20 percent of energy for retail service from eligible renewable energy resources no later than December 31, 2017.[3] More recently, the California Energy Resources Conservation and Development Commission (CEC), the California Public Utilities Commission (CPUC) and the Governor of California accelerated that statutory goal to require 20 percent of a utility's energy portfolio be from renewable resources by 2010.[4]

5. The CEC and CPUC have determined that the Antelope Valley/Tehachapi region in SCE's service territory is likely to offer a large and concentrated supply of wind generation that, if developed, will significantly contribute to the achievement of the state's renewable energy goals.[5] According to the California legislature and the

[3] Senate Bill 1078 (Stats. 2002, Ch. 516), adding Article 16 (California Renewables Portfolio Standard Program) to the Cal.Pub.Util.Code § 399.11, *et seq.* (2004) (SB 1078).

[4] *See* California Power and Conservation Financing Authority, the California Energy Resources Conservation and Development Commission, and the California Public Utilities Commission, Energy Action Plan, http://www.energy.ca.gov/energy_action_plan/ (adopted May 8, 2003); and Governor Arnold Schwarzenegger, "An Energy Plan for California's Future," San Diego Union Tribune (October 8, 2004).

[5] California Public Utilities Commission, Interim Opinion on the Transmission Needs in the Tehachapi Wind Resource Area, Decision 04-06-010 at 5-6, Finding of Fact No. 3 at 39 (2004) (CPUC Decision 04-06-010).

California state energy agencies, adequate transmission infrastructure is needed to deliver power from remotely-sited renewable resources to California's load centers.[6]

6. In evaluating what transmission facilities are needed to access the large Tehachapi wind resource area, the CPUC concluded that the usual approach to transmission planning and expansion based on generator interconnection requests "is unlikely to achieve the most cost-effective size, configuration, or timing of Tehachapi upgrades."[7] To address these limitations, the CPUC ordered that a collaborative study group be convened to develop a comprehensive transmission development plan for the phased expansion of transmission capabilities in the Tehachapi area.[8] The report prepared by this group, which included SCE, Pacific Gas and Electric Company (PG&E), the CPUC staff, the CEC, the CAISO, and other stakeholders, recommended that "[t]he CPUC should promptly confirm that all necessary costs incurred in the implementation of any component of this plan are eligible for recovery …."[9] This report also noted that because the Commission has exclusive jurisdiction over transmission rate making,[10] "it is critical that the CPUC encourage and support FERC to approve cost recovery and associated

[6] *See* Cal. Pub. Util. Code § 399.25 (providing that new transmission facilities will be "deemed to be necessary" if required "to facilitate achievement of the renewable power goals" of the RPS program); *see also* CPUC Decision D.04-01-050 at 120-21 ("that development of renewables to achieve the goals of the RPS will necessitate transmission upgrades and possible construction"); CPUC Rulemaking R.04-04-026 at 6 ("[F]orward-looking transmission policies are keys to the success of the RPS program …" and such policies require a "planning process for large-scale transmission upgrades needed to transport power from areas with significant renewable resource potential."); and CPUC Decision D.04-06-010 at 1 ("The Tehachapi area contains the largest wind resource … the lack of transmission in the area currently prevents new wind installations.").

[7] CPUC Decision D.04-06-010 at 2-3.

[8] CPUC Decision D.04-06-010, Findings of Fact No. 11 at 41, and 45.

[9] California Public Utilities Commission, Report of the Tehachapi Collaborative Study Group at 9, Docket I.00-11-001 (March 16, 2005) (Report).

[10] *Southern California. Edison Co. v. Public Utilities Com.*, 121 Cal. App. 4th 1303 (Cal. Ct. App., 2004), *modified and reh'g denied*, 2004 Cal. App. LEXIS 1609 (Cal. App. 2d Dist., Sept. 27, 2004), *review denied by S. Cal. Edison Co. v. PUC*, 2005 Cal. LEXIS 592 (Cal., Jan. 19, 2005).

amendments to the CAISO Tariff to allow for approval of transmission facilities for renewable resources in advance of interconnection requests."[11]

7. If the Commission does not allow recovery of the cost of the Antelope Project in general transmission rates, the CPUC is to allow SCE to recover the reasonable transmission costs in retail rates.[12] Even though this backup cost recovery mechanism exists, SCE requests that the Commission allow the inclusion of the costs of these projects in SCE's Transmission Revenue Requirement (TRR) to be recovered through the CAISO Transmission Access Charge (TAC) rate.[13] It claims that it is pursuing the projects in order to implement a state policy deemed to be in the general public interest, and the substantial benefits of the additional access to renewable sources will be received by all ISO-Controlled Grid users, not just SCE's customers. Therefore, SCE contends that it is appropriate to recover the costs from all users of the ISO-Controlled Grid, rather than solely from SCE's local distribution customers.

8. Pursuant to the above-mentioned CPUC order[14] and subsequent report, SCE submitted (in advance of any interconnection requests) two applications to the CPUC for certificates of public convenience and necessity seeking permission to build the Antelope Project. Usually, SCE submits these certificate applications to interconnect and integrate energy from independent energy producers after submitting interconnection agreements to the Commission. However, the CPUC concluded that due to the "magnitude and concentration" of the renewable resources in the Tehachapi area "the first phase of Tehachapi transmission upgrades are necessary to facilitate achievement of the renewable

[11] Report at 9.

[12] Cal.Pub.Util.Code § 399.25(b)(2).

[13] We note that SCE proposes to include the Antelope Project cost in its TRR for existing and new high voltage facilities constructed since its last filing with the Commission. The CAISO would then use SCE's Commission-approved TRR to calculate a blended rate for transmission service across the ISO-Controlled Grid. The CAISO is currently transitioning to a single system rate based on a ten-year transition period which currently is in the fifth year. The blended rate is based on an area rate component plus a CAISO-wide rate component. All new transmission facilities, including the Antelope Project, would be reflected in the CAISO-wide rate component. Therefore, all users of the ISO-Controlled Grid would contribute toward cost recovery of the Antelope Project.

[14] CPUC Decision 04-06-010, Ordering Paragraph No. 8 at 44.

power goals established in the State's renewable portfolio standard, required by Public Utilities Code section 399.14.1."[15]

9. In its petition, SCE states that it already procured approximately 18 percent of its energy for total retail sales from renewable resources, PG&E has approximately 12 percent, while San Diego Gas & Electric Company (SDG&E) has 4.5 percent.[16]

Notice of the Filing and Responsive Pleadings

10. Notice of SCE's filing was published in the *Federal Register*, 70 Fed. Reg. 19,072 (2005), with interventions, comments and protests due on or before April 14, 2005. The CPUC filed a notice of intervention and comments. The CAISO and Sempra Generation (Sempra) each filed a timely motion to intervene. Public Service Electric and Gas Company (PSE&G) and PSEG Energy Resources & Trade LLC (PSEG ER&T) (collectively the PSEG Companies) filed a motion to intervene and comments. The following parties filed a timely motion to intervene and protest: California Department of Water Resources State Water Project (CDWR); California Municipal Utilities Association (CMUA); Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (collectively the Southern Cities); City of Santa Clara, California d/b/a as Silicon Valley Power (SVP) and the M-S-R Public Power Agency (M-S-R) (collectively SVP and M-S-R); Metropolitan Water District of Southern California (Metropolitan); Modesto Irrigation District (Modesto); National Rural Electric Cooperative Association (NRECA); Northern California Power Agency (NCPA) and Transmission Agency of Northern California (TANC).[17] Timely motions to intervene and supportive comments were filed by American Wind Energy Association (AWEA); CEC; California Wind Energy Association (CWEA); Center for Energy Efficiency and Renewable Technologies (CEERT); FPL Energy, LLC (FPL Energy); National Grid USA (National Grid); PG&E; PPM Energy, Inc. (PPM); and Trans-Elect, Inc. (Trans-Elect). Sacramento Municipal Utility District (SMUD) filed an untimely motion to intervene.

11. On April 28, 2005, SCE filed an answer to the protests (SCE's Answer). On April 29, 2005, the CEC also filed an answer in support of the petition for the declaratory order.

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[15] *Id.* at Finding of Fact No. 18 at 41.

[16] SCE's petition at 3.

[17] SVP and M-S-R adopt and incorporate by reference the arguments in TANC's motion to intervene and protest.

Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant SMUD's motion for late intervention, given the early stage of this proceeding, and the absence of any undue delay, prejudice or burden to the parties.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SCE and the CEC's answers because they have provided information that assisted us in our decision-making process.

Filing

14. On March 24, 2005, SCE filed a petition for declaratory order seeking assurances about cost recovery of, and operational control over, various proposed facilities. Specifically, SCE asks the Commission to allow it to roll in costs that it incurs for the three Antelope Project segments that may be needed to interconnect future wind generation projects to be developed by independent generators. SCE states that it is undertaking the development of these three segments to encourage the interconnection of wind generation projects to help SCE and other utilities in California satisfy the state's renewable portfolio standard. In addition, SCE requests the Commission to allow it to recover all of its prudently incurred costs in developing the Antelope Project even if the potential generation does not develop as forecasted and/or SCE has to abandon or cancel one or more of the three segments that comprise the Antelope Project. SCE states that it should not be subject to imprudence arguments that the size of the facilities was not justified by the generation that actually interconnected to the system.[18] Finally, SCE asks the Commission to permit CAISO to exercise Operational Control over the trunk facilities under section 4.5.1 of the CAISO's Transmission Control Agreement (TCA)[19] and in spite of section 4.1.1 (i) of the TCA.[20]

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[18] SCE's Answer at 13.

[19] TCA section 4.5 delineates the procedure for designating ISO controlled grid facilities. Section 4.5.1, in relevant part, provides:

> [i]f the ISO determines that it requires Operational Control over additional transmission lines and associated facilities not then constituting part of the ISO Controlled Grid in order to fulfill its responsibilities in relation to the ISO Controlled Grid then the ISO shall apply to FERC pursuant to section 203 of the Federal Power Act, and shall make all other regulatory filings necessary to obtain approval for such change of control and shall serve a

15. SCE's petition also seeks the creation of a new category of transmission facilities – new high voltage trunk transmission facilities necessary to interconnect large concentrations of potential renewable generation resources located a reasonable distance from the existing grid (trunk facilities). SCE asks the Commission to declare that trunk facilities are facilities that can be turned over to the Operational Control of the CAISO, and the costs of which are eligible to be rolled into SCE's TRR.

Description of the Antelope Project

16. The Antelope Project consists of the three segments approved by the Tehachapi Collaborative Study Group and ordered by the CPUC in its Decision 04-06-010.

Antelope to Pardee 500 kV Transmission Project (Segment 1)

17. The proposed Antelope to Pardee 500 kV Transmission Project (Segment 1) includes a new 25.6 mile 500 kV transmission line between the existing Antelope and Pardee substations, interconnections at the existing Antelope and Pardee Substations and an initial expansion at the Antelope Substation. According to SCE, Segment 1 is necessary to interconnect a potential 201 MW wind generation project with a proposed in-service date of December 2006 and to accommodate generation north of the Antelope Substation. SCE states that although the 220 kV transmission line would be sufficient to interconnect the 201 MW wind generation facility, the CAISO approved the project at 500 kV to eliminate the possibility of repeatedly removing and rebuilding facilities. SCE explains that Segment 1 will replace an existing 66 kV line that runs over the majority of the preferred route between the Antelope and Pardee substations. SCE asserts that designing and building the facilities at 500 kV saves costs and reduces environmental damage that would result from repeated demolition and rebuilding in the future.

Antelope to Vincent Transmission Project (Segment 2)

18. Segment 2 consists of a new, 17.8 mile 500 kV transmission line on new right-of-way between SCE's existing 220 kV Antelope and Vincent substations. It includes upgrades such as transformers, circuit breakers, and disconnect switches at both substations to terminate the new transmission line. The line would parallel an existing transmission line corridor over its entire length between the two substations. Although

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copy of all such applications on the affected Participating TO and the owner of such lines and facilities (if other than the Participating TO).

[20] Under TCA section 4.1.1(i), "directly assignable radial lines and associated facilities interconnecting generation" are "deemed not to form part of a Participating TO's transmission network."

the transmission line would be designed and built for operation at 500 kV, it would initially be operated at 220 kV.

High Voltage Transmission Lines from Antelope Substation to New Substation One and from New Substation One to New Substation Two (Segment 3)

19. The proposed Segment 3 has four elements: (1) Substation One, a new, 500/220/66 kV substation to be located near the existing Cal Cement Substation; (2) Substation Two, a new, 220/66 kV substation to be located approximately 3.5 miles east of the City of Tehachapi; (3) a new, approximately 25-mile long 500 kV transmission line between Antelope Substation and the new Substation One, operated initially at 220 kV; and (4) a new, 9.4-mile-long 220 kV transmission line between the new Substation One and Substation Two.

Discussion

Whether the Commission should establish a new category of transmission facilities and whether SCE should be allowed to roll into its TRR the costs for Segments 1, 2 and 3

20. SCE seeks a determination from the Commission that Segment 3 is eligible to be placed under the CAISO's Operational Control and that SCE is entitled to roll in the costs of all three segments into its TRR and thus the CAISO's TAC rate. SCE is concerned that if it provides up-front funding to build the Antelope Project, the Commission will deny cost recovery after the facilities are constructed by finding that all or some of the projects are not network transmission or are not capable of being "integrated" with the rest of the network and, as a result, should have been paid for by the developers of the generation without credits (direct assignment). SCE believes that such a finding would require SCE to collect the costs of these facilities directly from the interconnecting generator under the Commission's existing rules. However, SCE asserts that collecting the money from generators after the facilities have already been constructed may prove impossible. For example, an interconnecting generator may file for bankruptcy or simply refuse to pay, preferring to go out of business rather than pay for transmission upgrades. SCE is building the Antelope Project based on a forecast of how much wind will develop in this region and the interconnection applications it has received to date, rather than on signed interconnection agreements.

21. SCE asserts that Segments 1 and 2 are network upgrades, *i.e.*, upgrades to existing high-voltage, network transmission facilities or that will operate in parallel with existing high-voltage, network transmission facilities. SCE asserts that Segments 1 and 2 will

benefit transmission ratepayers[21] and that the CAISO has approved the development of Segment 1, including design and construction to 500 kV standards.[22] According to SCE, Segments 1 and 2 will be transmission facilities that can be fully integrated with the transmission network once placed under CAISO Operational Control.

22. SCE characterizes Segment 3 as a generation-tie line, the cost of which is ordinarily paid by interconnecting generators. However, it contends that such a policy is a barrier to entry for wind resources located in remote areas for several reasons: (1) the large capital outlays are not feasible and add unacceptable financial risk; (2) incremental transmission upgrades based on first-in-queue is ineffective for locations where renewable resources tend to locate; and (3) clustering of interconnection applications to have jointly-owned or jointly-funded transmission upgrades is unlikely.[23]

23. The CAISO staff advised SCE that it believes that Segment 3 is also an appropriate and reasonable component of an overall plan to bring anticipated wind resources to the grid.[24] However, the CAISO staff advised SCE that the CAISO's authority is limited by law and therefore it cannot provide "approval" of the plan for Segment 3. SCE suggests creating a new "narrow and specific category of transmission facilities," *i.e.*, trunk facilities that would include projects like Segment 3. SCE argues that the costs of high-voltage (220 kV or higher) trunk facilities to interconnect and integrate large concentrations of potential renewable generation resources located in a limited geographic area, but a reasonable distance from the existing grid, should be eligible for rolled-in rate treatment. SCE suggests that this new policy should apply where it is consistent with a state's requirement to procure energy from renewable resources and where the state has determined, through its state regulatory authority or RTO/ISO, that the upgrades are necessary to meet its policy objectives.

24. In support of its proposal for Segment 3, SCE says that the lines and substations are high voltage (initially operated at 220 kV, with an actual rating of 500 kV), will reach approximately 35 miles from the last point on the existing 220 kV grid to the second new substation, and will extend the grid to a large concentration of potential renewable

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[21] *Citing to* Affidavit of Jorge Chacon at ¶¶ 6-11 and 16-21, attached to SCE's petition.

[22] SCE's petition at 8. Also, SCE notes that CAISO staff supports Segment 2 and intends to submit that segment to its board for approval.

[23] SCE states that it is not a wind resource developer and thus is not in a position on its own to aver that FERC's policies present barriers to the development of wind resources.

[24] CAISO's Letter to SCE at 2 (March 16, 2005), attached to SCE's petition.

resources from the Tehachapi region that the CPUC has found necessary to meet the state's renewable procurement objectives.

25. SCE reasons that allowing it to roll in the cost of the Segment 3 trunk facility will not be unduly discriminatory because the new category of facilities is narrowly crafted to further federal and state policies that encourage the development of renewable energy and to remove a roadblock to the construction of needed transmission. SCE notes that other states have enacted renewable portfolio standards mandating goals for the purchase of renewable energy and providing tax incentives and siting assistance. SCE also claims that the Commission has recently approved exceptions to its existing policies for intermittent renewable resources to "increase diversity in the resource base, [and] thereby improv[e] system reliability as a whole."[25] Moreover, it points to the Commission's recently initiated proceeding in *Assessing the State of Wind Energy in Wholesale Electricity Markets*, Docket No. AD04-13-000, to assess options to reform transmission access for intermittent renewable resources like wind. Additionally, SCE asserts that the Commission has previously held that similar exceptions are not unduly discriminatory.[26]

26. SCE understands that the Commission's policy is designed to encourage efficient siting of generation resources, but renewable energy developers must locate at the site of the resource and do not have the same flexibility as other generators about location.

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[25] *California Independent System Operator Corp.*, 98 FERC ¶ 61,327 at 62,375 (2002).

[26] *California Independent System Operator Corp.*, 109 FERC ¶ 81,153 at 61,120 (2004) (approving a new category of partial participating transmission owners, despite the requirement in the Transmission Control Agreement that participating transmission owners are required to transfer the operational control of all of their transmission facilities, and finding that discrimination was justified when it created because it was a "very narrow circumstance" that would provide "benefits to customers" by financing construction of transmission and relieving severe congestion.) *See also California Independent System Operator Corporation*, 104 FERC ¶ 61,062 at 61,217 (2003) (allowing new participating transmission owners an automatic award of Firm Transmission Rights without the need to participate in an auction as existing participating transmission owners are required to do, and concluding that the CAISO's proposal "[wa]s not unduly discriminatory but a balance of incentives intended to encourage other transmission owners to join the [CAISO].")

Interventions

27. TANC, among others, argues that SCE failed to show that the Commission's generation tie policy[27] is a barrier to development of Segment 3. TANC also argues that SCE's request will shift costs from the generation/load to all users of the transmission grid. TANC argues that allowing the Segment 3 costs to be rolled in will result in distorted generation siting and transmission cost policies, *i.e.*, generators that are served by trunk facilities will be able to locate anywhere regardless of the costs of needed transmission, because such costs will be borne by users of the entire grid, rather than load that is served by the generation.

28. Further, the Cities, TANC and CDWR argue that a transmission owner is entitled to roll in only the costs of integrated transmission facilities transferred to the ISO's Operational Control.[28] CDWR also states that the Commission found that rolled-in rate treatment of transmission facilities would be subject to the CAISO's finding that all of the facilities are necessary and cost-effective.[29] It states that if SCE's request is not rejected outright, then it must be denied because it fails to: (1) make any cost showing; (2) analyze net benefits or rate impacts; or (3) provide other facts which the Commission can rely on to make any economic findings. The Cities do not believe that the proposed Segment 3 could meet any economic test given the uncertainty whether it will interconnect to any generation. Moreover, the Cities argue it is difficult to understand how Segment 3 will benefit the users of the grid other than purchasers of the output from the wind generators. CMUA states the Antelope Project does not enhance system and local reliability or ameliorate market power and, in fact, may degrade the system by adding more power to it. It argues that the proposed facilities will not make the potential power deliverable to much of California's load and that additional facilities that may cost as much as $2 billion may be needed.

29. According to the CPUC, the current transmission planning process for interconnecting generators is inadequate because it impedes identification and timely construction of the most cost-effective Tehachapi upgrades. AWEA and the CEC support SCE's proposal, and argue that the Commission's desire to send a proper signal to encourage a generator to site at an appropriate location has no value for technologies

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[27] Citing to *Kentucky Utilities Co.*, 85 FERC ¶ 61,274 at 62,111 (1998); *Northern States Power Co.*, 64 FERC ¶ 61,324 (1993), *reh'g denied*, 74 FERC ¶ 61,106 (1996); *see also Entergy Mississippi, Inc.*, 102 FERC ¶ 61,105 at P 8 (2003).

[28] *See Pacific Gas & Electric Company*, Opinion No. 466, 104 FERC ¶ 61,226 at P 13 (the facilities should be included in the TRR only if operational control is transferred to the ISO).

[29] *Citing to San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332 at 62,408 (2002).

that have no choice regarding where to locate. The CEC notes that the Commission's policy appears to penalize those that must site near the fuel source.

30. AWEA, FPL Energy and PPM contend that insisting upon generator funding will only create an insurmountable barrier to market entry for individual wind generator projects in the Tehachapi region. AWEA maintains that SCE's proposal also recognizes that wind is typically developed in small increments that cannot individually support such transmission upgrades even though the upgrades are justified by the total resource potential at the location. PPM argues that it would be virtually impossible for 20 wind generators pursuing as many as 50 projects to collectively plan the appropriate transmission investment to interconnect all these projects. AWEA, FPL Energy, the CEC and the CPUC support SCE's solution as an alternative approach for areas like Tehachapi where generation from multiple relatively small projects would be transported most economically over shared transmission upgrades.

31. AWEA states that if the Commission approves SCE's request to provide guidance for the future it should specifically identify the circumstances and conditions: (1) the existence of a significant potential for development of a resource-constrained generation technology; (2) a region that is subject to transmission constraints that require a major transmission upgrade in order to facilitate further development; (3) where the nature of the upgrade, the resource and technology is such that requiring generator funding would impose a significant barrier to developing the resource; and (4) where there is a clearly articulated state policy.

32. In addition to the above criteria, PG&E sets forth these additional qualifying criteria for network upgrades: (1) the anticipated new renewable resource that requires the network upgrade is reasonably likely to become operational within a reasonable time after installation of the upgrade; (2) the applicable ISO/RTO has approved the upgrades as needed to accommodate the expected renewable resource generation; and (3) for transmission upgrades designed to be installed with greater capacity than required initially – (i) the renewable resource potential expected to use the proposed upgrade within a reasonable time horizon is substantially greater than the amount than can be feasibly developed in the near term, and (ii) a more efficient transmission plan requires a more substantial upgrade than that needed to accommodate only expected near-term development. PG&E states that the Commission should authorize these exceptions on a case-by-case basis.

33. National Grid states that if an independent entity determines that the segments will benefit the grid, it would support rolling in the rates to the total revenue requirement as an appropriate application of the "beneficiaries pay" principle. On the other hand, National Grid states that if the facilities are found to operate as sole-use radial interconnection facilities, direct assignment would be appropriate provided that the rates could be structured in a manner that facilitated the construction of the project. National

Grid suggests that SCE could initially fund the project but as the generation develops the generators could "credit back" their share of the interconnection costs over time.

34. The CPUC and the CEC concede that the Commission has jurisdiction over transmission ratemaking. Therefore, they seek Commission action that will affirmatively help California realize the benefits that the development of the Tehachapi wind resources will bring to the state.

Commission's Determination

35. Order No. 2003 allows a transmission provider, such as SCE, to pay for network upgrades initially, rather than requiring the Interconnection Customer to fund the network upgrades and then receive transmission credits for such costs plus interest once transmission service commences.[30]

36. Segments 1 and 2 are upgrades to existing, high-voltage, network transmission facilities or upgrades that will operate in parallel with existing high-voltage, network transmission facilities and these two segments will be transmission facilities that can be fully integrated with the CAISO-Controlled Grid when constructed and placed under CAISO Operational Control.[31]

37. Segment 1 includes a new 25.6 mile 500 kV transmission line between the existing Antelope and Pardee substations, single and double circuit towers that will be energized initially at 220 kV, and an expansion of the Antelope substation to accommodate the new 500 kV rating. Segment 2 includes a new 17.8 mile 500 kV transmission line between the existing Antelope and Vincent substations and upgrades such as transformers, circuit breakers, and disconnect switches necessary at both substations to terminate the new transmission line. These two segments are not radial in nature, and will be part of the looped transmission system where the energy would flow from their substations (from Antelope to Pardee substations for Segment 1 and from Antelope to Vincent substations

[30] "Unless the Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by the Interconnection Customer." Article 11.3 *pro forma* Interconnection Agreement in Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs., Regulations Preambles ¶ 31,146 (2003) (Order No. 2003), *order on reh'g*, 69 Fed. Reg. 15,932 (Mar. 24, 2004), FERC Stats & Regs., Regulations Preambles ¶ 31,160 (2004) (Order No. 2003-A), *order on reh'g*, 70 Fed. Reg. 265 (January 4, 2005), FERC Stats & Regs., Regulations Preambles ¶ 31,171 (2004) (Order No. 2003-B), *order on reh'g*, 111 FERC ¶ 61,401 (2005) (Order No. 2003-C).

[31] Affidavit of Jorge Chacon at ¶¶ 4-23.

for Segment 2), but can be reversed depending on the season and the generation on line. These new facilities will be integrated with the existing Big Creek 220 kV corridor and the available capacity of these facilities will be used for multiple purposes, *e.g.*, serve load and increase transfer capacity for existing generation facilities.

38. According to SCE, Segments 1 and 2 will provide additional benefits to the transmission grid; for example, they will increase the transfer capability, eliminate or mitigate thermal and transient stability problems under certain conditions, and can be relied upon for CAISO scheduling purposes. No other party disputes this assertion. In addition, the CAISO will be able to provide service to Participating Transmission Owners as well as other transmission customers over the two segments. Segments 1 and 2 will provide capability and reliability benefits to the transmission grid and could be relied on for coordinated operation of the grid. Therefore, we find that Segments 1 and 2 are network upgrades, the costs of which are discussed further below, and may be recovered through SCE's TRR.

39. With regard to Segment 3, we deny SCE's request to create a new category of transmission facilities (*i.e.*, trunk facilities).

40. Although the Segment 3 facilities are similar to interconnection facilities as defined in Order No. 2003,[32] we find there are also important differences. Interconnection facilities are sole use facilities that primarily benefit a single customer. However, to take advantage of economies of scale, SCE has designed the Segment 3 facilities to serve the multiple interconnection customers that may develop generation projects in the Tehachapi area. And, although Segment 3 facilities are high voltage facilities, they do not operate in parallel with existing transmission facilities.

41. Several intervenors, *e.g.*, TANC, Cities, CMUA, oppose SCE's proposal to roll in the costs of Segment 3 into its TRR because they believe that these are generation-tie facilities and it would be improper to shift the costs of such facilities from the generation/load to all users of the transmission grid. Also, they do not believe that all users of the grid will receive the benefits of these facilities. Further, they argue that

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[32] Order No. 2003, *pro forma* Interconnection Agreement, Section 1, Definitions, states that "Interconnection Facilities"

> include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Providers' Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

allowing rolled-in rate treatment of Segment 3 facilities will result in distorted generation siting and transmission cost policies. Cities, TANC and CDWR assert that a transmission owner is entitled to roll in only the costs of integrated transmission facilities transferred to the Operational Control of the CAISO.

42. Given the information provided by SCE, we find that Segment 3 is not a network upgrade and therefore, not eligible for rolled-in rate treatment.[33] Further, as noted by various intervenors, these appear to be generation-tie facilities, and our precedent has been that it would be improper to shift the costs of such facilities from the interconnection customers to all users of the transmission grid. In addition, SCE has neither shown that all users of the CAISO-Controlled grid will receive the benefits of these facilities nor how Segment 3 will provide benefits to the grid. We also do not have a determination from CAISO on whether these facilities should be transferred to its Operational Control.

Whether SCE should be assured full recovery of the prudently-incurred costs of Segments 1, 2 and 3

43. SCE seeks a determination from the Commission that it is entitled to reflect all of its prudent costs of the Antelope Project in its TRR, regardless of whether a full increment of forecast generation justifying the upgrades commences commercial operation. SCE states that it is not asking the Commission to guarantee full recovery up front and forgo any later fact finding to determine whether costs are prudent.[34] Instead, SCE states that it should not be subject to imprudence arguments that the size of the facilities was not justified by the generation that actually interconnected to the system.

44. SCE proposes to design and construct the facilities at 500 kV, to be operated initially at 220 kV, in anticipation of approximately 1,100 MW of renewable generation in the Antelope Valley and Tehachapi areas.[35] SCE asserts that designing and constructing towers and conductors for 500 kV avoids repeated demolition and rebuilding, and the accompanying environmental damage, that would likely be necessary

[33] We note that SCE has stated that if the Commission does not allow recovery of the cost of the Antelope Project in general transmission rates, the CPUC is to allow SCE to recover the reasonable transmission costs in retail rates. Cal.Pub.Util.Code § 399.25(b)(2).

[34] SCE's Answer at 12.

[35] The CEC forecasts that approximately 4,000 MW of wind generation potential in the Tehachapi area. *CEC Renewable Resources Development Report*, Appendix C (2003).

if initial construction of towers and conductor were limited to 220 kV standards. SCE states that currently there are no interconnection agreements, other than the one for the 201 MW project, justifying the facilities, but if new generation is realized the proposed new construction to 500 kV may be justified.[36]

45. SCE does not plan on commencing construction before receiving the certificates of public convenience and necessity from the CPUC granting it permission to begin construction. SCE states that the certificate for Segment 1 is not expected before the first quarter of 2006 and the certificates for Segments 2 and 3 are not expected until the third quarter of 2006. SCE suggests that by that time it may have additional certainty about the quantity of generation that will interconnect north of Antelope Substation.

46. SCE states that it does not control whether the amount of generation needed to justify the upgrades will be built. It does not have any interconnection agreements with generators to justify these projects, but it states that it has been ordered to build the facilities by the CPUC based on its determination that enough generation will locate in the Antelope-Tehachapi area. SCE admits that its proposal is based on the magnitude of wind resources identified by the CEC, a conceptual study that was based on information provided by certain generation developers, who voluntarily chose to participate in the study, and the interconnection requests currently being processed.

47. SCE states that it does not anticipate that there will be abandoned plant costs, but nonetheless seeks a modification of the Commission's abandoned plant policy to allow it to recover 100 percent of its prudent investment in the Antelope Project if it is abandoned or cancelled, in whole or in part. SCE states that the Commission's present policy limiting recovery from ratepayers to only 50 percent of the utility's prudently incurred investment in abandoned or cancelled plant (*i.e.*, facilities not completed and placed into operation) presents an obstacle to investment in large-scale transmission projects necessary to interconnect generation projects developed by third parties.

48. SCE offers that the Commission's abandoned plant policy is inapplicable in this case for several reasons. It states that the rationale in Opinion No. 295 for limiting recovery from ratepayers to only 50 percent of the utility's prudently incurred investment in an abandoned and cancelled plant was to ensure that the transmission owner's management weighed the risk of abandonment or cancellation before embarking on a project.[37] According to SCE, Opinion No. 295 does not apply in this case because the actual development of forecast additional renewable generation plants is entirely beyond SCE's control. It states that its management does not control the decision to develop or

[36] *Citing to* Affidavit of Jorge Chacon at ¶ 33, attached to SCE's petition.

[37] *New England Power Company*, Opinion No. 295, 42 FERC ¶ 61,016 at 61,068, *order on reh'g*, 43 FERC ¶ 61,285 (1988) (Opinion No. 295).

abandon the wind generation projects and that its shareholders do not share the earnings associated with these new wind resources. It claims that California's state ratepayers and wind developers are the beneficiaries of removing alleged barriers to wind development rather than SCE, not SCE's shareholders. As noted by SCE, the CPUC has ordered SCE to develop these projects, and the wind developers, not SCE's management, control whether to proceed with or abandon their plants. SCE argues that this contrasts with the Commission decision in Opinion No. 295, where the utility's management had control over the development of the cancelled nuclear power plant. SCE also states that it is currently spending money on these projects based on forecasted generation and the CPUC's orders, rather than on interconnection agreements accompanied by up-front funding from wind developers.

49. As discussed above, the CPUC concluded in its Decision 04-06-010 that the traditional transmission planning and construction process presents a barrier to the further development of wind resources in the Tehachapi area.[38] SCE suggests that to remove this barrier, the Commission allow the cost recovery for transmission facilities built and sized greater in capacity than the generation that actually commences commercial operations even if those facilities are cancelled or abandoned.[39]

Interventions

50. Several protestors argue that SCE is unfairly attempting to shift the risk of cost recovery to its customers and the wholesale customers of the CAISO. TANC argues that the Commission cannot authorize cost recovery until it has examined all costs to identify prudent costs and which expenditures are used and useful in providing service. TANC, the Cities, CMUA and Metropolitan argue the Commission cannot determine if SCE's costs are prudent costs incurred in the development of the Antelope Project because there are no cost or generation studies to support the proposed projects and requires speculation on the magnitude of such cost recovery. The CDWR suggests that SCE is attempting to circumvent section 205 of the Federal Power Act, 16 U.S.C. 824d (2000), by not supplying the Commission with estimates of project costs or impacts on customers.

51. Metropolitan states that the Commission should demand that the CAISO-developed Transmission Economic Assessment Methodology be performed to evaluate the economic viability of these facilities before the Commission grants SCE's request for guaranteed recovery of the Antelope Project's costs.

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[38] CPUC Decision 04-06-010, Conclusion of Law ¶ 5 at 43.

[39] As discussed above, SCE proposes to initially operate the 500 kV facilities at 220 kV. Thus, the full potential capability of the proposed facilities will not be available until SCE revises its operating status.

52. PSEG Companies, FPL Energy, PPM, PG&E, AWEA, National Grid, the CEC, and CEERT support SCE's requests in the petition for assurances on prudence and abandoned plant.

53. PSEG Companies maintains that transmission owners that incur upgrade costs as the result of a regional planning process should be assured full recovery of prudently incurred costs regardless of project cancellation. PSEG agrees with SCE that since the transmission owner in an open access environment does not make the decision to construct facilities or abandon construction in progress, it is no longer equitable for the transmission owner to share in the loss caused by abandoned plant.

54. PG&E acknowledges that granting SCE's prudence request would create an exception to the Commission's policy, but states that the exception would help facilitate the early-stage development of the Tehachapi wind resources.

55. TANC and NRECA argue that SCE has failed to demonstrate that the Commission's abandoned plant policy constitutes a barrier to development of the proposed Antelope Project. TANC and NRECA assert that SCE's argument that it lacks control over generation development does not justify a change in the policy set forth in Opinion No. 295 for sharing canceled plant risks.[40] Moreover, they argue that Commission ruled in *Public Service Company of New Mexico* that lack of requisite approvals is no basis for deviating from canceled plant policy.[41] TANC maintains that transmission developers of non-renewable resources face the same risk as renewable resources that anticipated generation may go undeveloped. CDWR points out that the Commission has stated that it will address requests for full recovery of any infrastructure projects that are ultimately abandoned on a case-specific basis.[42]

56. National Grid believes that the Commission should reconsider its abandoned plant policy in the current environment of newly developed energy markets and the development of merchant generation.

Commission Determination

57. SCE's petition reflects a tension between federal and state policy. The CPUC has directed SCE to construct these facilities because it is the local utility, and SCE is looking for guaranteed recovery of the prudent costs associated with the Antelope Project from this Commission. The CPUC has not completed its review for the certificate(s) of public

[40] Opinion No. 295, 42 FERC at 61,068.

[41] *Public Service Company of New Mexico*, 75 FERC ¶ 61,266 at 61,859 (1996).

[42] *See San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332 at 62,408.

convenience and necessity. Nor has the CAISO, as regional system operator, weighed in on all aspects of this project. Accordingly, we will defer on the issue of advance prudence with regard to the appropriate sizing of Segments 1 and 2 until after the CPUC has granted SCE the necessary certificate(s) of public convenience and necessity.[43] With regard to Segment 3, because we are denying SCE's petition to roll in such costs, we do not need to address SCE's request herein for an advance prudence determination and its request to recover prudently-incurred costs, regardless of whether potential wind generation develops or SCE abandons or cancels one or more of the segments. Therefore, these requests are denied as moot.

58. We will, however, grant SCE's request and allow it to recover 100 percent of the prudent cost (as discussed above) of Segments 1 and 2 even if these facilities are abandoned or cancelled. Once again, given our discussion above, we will not rule on this issue for Segment 3 in this order.

59. In making the above determination, we note that Opinion No. 295 requires that prudently incurred costs for cancelled plants be shared equally among shareholders and ratepayers to balance the interests of shareholders and ratepayers.[44] Further, in *Public Service Company of New Mexico*, the Commission determined that its policy applied to transmission projects, and was not limited to "generation facilities only, or to facilities that had no customer support or involvement or to cancellations that were the result of economics."[45]

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[43] We note that SCE is not seeking an advance prudence call on the actual cost of the Antelope Project.

[44] Opinion No. 295, 42 FERC at 61,068.

[45] *Public Service Company of New Mexico*, 75 FERC at 61,859. The Commission also concluded that Public Service Company of New Mexico's (PSNM) project was not a consequence of an open access transmission obligation to expand transmission facilities, and thus disallowed full recovery of PSNM's costs of the abandoned transmission project. Also, in *California Independent System Operator Corporation and Southern California Edison Co.*, the Commission denied SCE's request to recover all of its costs related to an abandoned transmission project, the Devers-Palo Verde 2 transmission project, on the grounds that "[t]he project was initiated before SCE was offering open access transmission service and *may well have been designed for the sole purpose of importing [an SCE] generation resource*." 82 FERC ¶ 61,174 at 61,623 (1998) (*emphasis added*).

60. Nevertheless, the Commission previously has stated that in certain cases it would allow full recovery of the costs associated with an abandoned transmission project.[46] On rehearing of Opinion No. 295, the Commission stated that

> [u]tility management, acting on behalf of its investors and its ratepayers, is the entity which actually makes the original investment decision as well as the subsequent decision to cancel. Consequently, imposing some of the risk of abandonment on the utility, provides an incentive for utility decisionmakers to more carefully weigh the potential risk of cancellation before embarking on a construction project.[47]

61. In this case, we find that SCE's circumstances are distinguishable from our precedent. SCE explains that its management does not control the decision to develop or abandon the wind generation projects and that its shareholders do not share the earnings associated with these new wind resources. Further, we note that SCE is developing the Antelope Project pursuant to an order from the CPUC to begin the process for constructing the first phase of the Tehachapi upgrades.[48] Since the Tehachapi area is in SCE's service territory, the CPUC made SCE the party responsible for completing the facilities necessary to increase the delivery of supply to the grid. CPUC has control over the determinations regarding the ultimate design of the Antelope Project. In addition, SCE may be at a higher risk in developing the project because of factors that are beyond SCE's control, such as a generator's decision to continue or terminate development of any given wind farm. SCE also is not a wind developer and therefore will not directly benefit from these facilities. For these reasons, SCE should not shoulder the risk of the project. Therefore, we will grant 100 percent recovery of the prudent cost of the Segments 1 and 2 if these facilities are abandoned or cancelled.[49]

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[46] *San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332 at 62,408.

[47] Opinion No. 295-A at 61,780.

[48] CPUC Decision 04-06-010, Conclusion of Law No. 10 at 44.

[49] As such, SCE faces a lower risk with these segments and a lower rate of return on equity may be warranted.

Request for Rulemaking

62. TANC, NCPA, Modesto, NRECA and Metropolitan argue that the Commission should initiate a rulemaking to address SCE's concerns because the rulings will have industry-wide impacts and will provide all the parties an opportunity to participate.

63. SCE argues that it is not seeking a generic modification to Commission policy, but a specific determination that it should be allowed to roll in the costs of trunk facilities. Therefore, it maintains that its petition for declaratory order is the correct approach for Commission action sooner rather than a rulemaking that may take years.

64. PSEG Companies states that the Commission should not alter its interconnection policy based upon generator type and is concerned that an exception to the Commission's interconnection policy would be discriminatory to other forms of generation, however, if the Commission approves SCE's request for rolled-in rate treatment for the Antelope Project, then the finding should be fact-specific and not establish precedent for other regions through a rulemaking process.

Commission Determination

65. We are not convinced that a rulemaking that sets up a standardized approach to address requests such as SCE's, and the issues presented herein, is appropriate. Since we are denying SCE's request with regard to Segment 3, we find that the request to institute a rulemaking is moot.

The Commission orders:

(A) SCE's petition for declaratory order is granted in part, and denied in part, as discussed in the body of this order.

(B) SCE's request for rolled-in rate treatment for Segments 1 and 2 is hereby granted, as discussed in the body of this order.

(C) SCE's request for rolled-in rate treatment for Segment 3 is hereby denied, as discussed in the body of this order.

(D) SCE's request to establish a new category of transmission facilities, the trunk facilities for the Antelope Project, is hereby denied, as discussed in the body of this order.

(E) SCE's request for an advance prudence determination for Segments 1 and 2 is hereby deferred, without prejudice to SCE's right to seek this recovery when, and if, SCE receives the necessary certificate(s) of public convenience and necessity for these segments, as discussed in the body of this order.

(F) SCE's request that it be allowed to recover all of its prudently-incurred costs in the case of abandonment or cancellation of Antelope Project facilities, is hereby granted for Segments 1 and 2, as discussed in the body of this order.

(G) SCE's request for advance prudence determination for, and recovery for prudently-incurred costs in case of abandonment or cancellation of, Segment 3 is hereby denied as moot, as discussed in the body of this order.

(H) SCE's request that Segment 3 should be placed under the Operational Control of the CAISO is hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wood dissenting in part with a separate statement attached.
(S E A L) Commissioner Brownell concurring with a separate statement attached.

Magalie R. Salas,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company Docket No. EL05-80-000

(Issued July 1, 2005)

WOOD, Chairman, *dissenting in part*:

I believe that the Segment 3 "trunk line" facilities proposed in this order fall in a heretofore-undefined category of high voltage facilities which serve as a multi-user extension of the transmission grid. These facilities are distinguishable from the sole-use facilities whose costs are directly assigned to an individual generator under Order No. 2003, because these facilities serve multiple generation developers and their multiple customers. They provide access to significant and diverse supplies of energy that help meet network customers' electricity needs. Such facilities provide benefits to all users of the grid, and the cost treatment of such facilities should reflect this accordingly.

Much of the nation's existing transmission grid has been built to distant generation of various other fuel types (e.g., mine-mouth coal, nuclear, hydroelectric plants). Our Order No. 2003 policies are intended to incent all developers of generation to locate *as close as they feasibly can* to the existing grid. I am disappointed that our order does not distinguish transmission that enables multiple location-dependent generation resources from upgrades associated with single, non-location-dependent resources.

Although I would have granted the request on Segment 3 today, and therefore dissent on our denial of such a ruling, I would have preferred to address this issue in the context of a California ISO Section 205 filing to establish a region-wide cost allocation policy. In that way, the Commission could ensure that the beneficiaries of this and similar future transmission across the region would share equitably in the costs under a consistent policy.

Pat Wood, III
Chairman

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company Docket No. EL05-80-000

(Issued July 1, 2005)

Nora Mead BROWNELL, Commissioner *concurring*:

Today's order rejects SCE's request to roll the costs of the Segment 3 facilities into CAISO's regional rates on the grounds that it is inconsistent with Order No. 2003. I believe a good argument could be made that the Segment 3 facilities are a new category of facilities, unlike any envisioned in Order No. 2003. Specifically, the directly assigned interconnection facilities discussed in Order No. 2003 are sole-use facilities that primarily benefit a single customer. In contrast, to take advantage of economies of scale, SCE has designed the Segment 3 facilities to serve the full complement of interconnection customers that may develop generation projects in the remote Tehachapi area. There may be as many as twenty windpower developers developing as many as fifty wind farms. As explained by SCE and supported by AWEA, the construction of the Segment 3 facilities at the efficient scale is beyond the means of any one developer. Thus, these trunkline facilities would function as a multiple-use on-ramp to the CAISO Grid, rather than as sole-use interconnection facilities.

Furthermore, in Order No. 2003, the Commission stated that it would afford an RTO or ISO greater flexibility in its compliance filing to seek "independent entity variations" from the provisions of this rule, over what is afforded to individual transmission providers. There are estimates that the Tehachapi Valley may eventually result in the generation of as much as 4,000 MW. This is a significant supply of power for a state that is facing a supply deficit situation for the foreseeable future and that has a high renewable portfolio standard. 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, and I am disappointed that today's order does not make that determination.

Nora Mead Brownell