

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System)
Operator Corporation)

Docket No. ER08-1317-000

**MOTION TO INTERVENE, COMMENTS AND LIMITED PROTEST OF
THE CALIFORNIA WIND ENERGY ASSOCIATION,
THE LARGE-SCALE SOLAR ASSOCIATION AND THE
AMERICAN WIND ENERGY ASSOCIATION**

Pursuant to Rules 211, 212 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212 and 385.214 (2008), the California Wind Energy Association ("CalWEA"), the Large-scale Solar Association ("LSA") and the American Wind Energy Association ("AWEA" and, together with CalWEA and LSA, the "Wind and Solar Parties") hereby submit the following motion to intervene, comments and limited protest in response to the California Independent System Operator Corporation's ("CAISO") Generation Interconnection Process Reform ("GIPR") tariff amendments filed with the Commission on July 28, 2008, in the captioned proceeding ("GIPR Petition").

The GIPR Petition is a substantial first step to remedying an interconnection process that the Commission, the CAISO and other stakeholders have all recognized was never intended to handle the Nation's rapidly increasing shift towards renewable energy. The use of cluster studies with up-front certainty concerning generation developers' cost responsibility to finance transmission upgrades, along with closer coordination between the interconnection and transmission planning processes, are much needed fundamental and beneficial reforms, even though they entail more substantial and earlier financial commitments by generators.

Though the GIPR Petition is a major step in the right direction, it does not go as far as it must to truly address the underlying issues and provide a just, reasonable and

comprehensive solution in the best interest of all affected parties. The Commission should require the CAISO to implement additional reforms in the following key respects, to achieve the goals that the Commission identified in the queuing reforms technical conference and establish a robust interconnection process that is fully capable of meeting both today's challenges and the increased challenges certain to arrive in the very near future:

- Eliminate "participant funding" that requires renewable generators to finance network transmission upgrades ("Network Upgrades") that, while preliminarily identified during the interconnection study process, will ultimately be defined, planned and built through the CAISO's regional transmission planning process ("TPP") specifically to reflect region-wide needs to benefit all users of the transmission grid;
- Study results for the "Transition Cluster" and the "Initial GIPR Cluster" must enter into the transmission planning process in 2009 and 2010, respectively, rather than 2010 and 2011, respectively, as the CAISO proposes. Failure to commit to earlier resolution is not a meaningful improvement over the current serial study process, and will not enable resources in these clusters to contribute to steady progress toward higher California Renewables Portfolio Standard ("RPS") program requirements that are expected over the next decade; and
- The site control requirement for projects on Federal lands must be revised to remedy a substantial unjustified and inequitable disparity between private land and public land requirements.

We believe that a number of additional revisions and clarifications are also needed to meet the objectives of the GIPR, and ensure that the CAISO's tariff is just and reasonable and address these below.

I. Description of Intervenors

CalWEA is a non-profit corporation supported by over 20 members of the wind energy industry, including project developers actively involved in developing wind projects for the market created by California's RPS program, existing project owners, component manufacturers, support contractors, and others. CalWEA actively represents the interests of its members in various proceedings before regulatory agencies and the CAISO.

The LSA companies include Abengoa Solar, Inc., Ausra, Inc., Brightsource Energy, Inc., FirstSolar, Inc., OptiSolar, Inc., SunPower Corp. and Solel, Inc. All of these companies are actively involved in developing solar generation projects for the California RPS program.

AWEA is a national trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States. AWEA members include wind turbine manufacturers, component suppliers, project developers, project owners and operators, financiers, researchers, renewable energy supporters, utilities, marketers, customers and their advocates.

II. Contact Information

In addition to the undersigned counsel for the Wind and Solar Parties, persons who should be placed on the Commission's official service list in the captioned proceeding include the following:

Nancy Rader
Executive Director
California Wind Energy Association
2560 Ninth Street, Suite 213A
Berkeley, CA 94710
(510) 845-5077
nrader@calwea.org

Shannon Eddy, Executive Director
Large-scale Solar Association
2501 Portola Way
Sacramento, CA 95818
(916) 731-8371
shannon@consciousventuresgroup.com

Robert E. Gramlich
Eugene Grace
AWEA
1101 14th St., NW,
12th floor
Washington, DC 20005
(202) 383-2521
rgramlich@awea.org
ggrace@awea.org

III. Motion to Intervene

Each of the members of the Wind and Solar Parties is engaged in, or represents the interests of, entities engaged in the development, construction, and/or production of renewable energy generation projects within the CAISO footprint. As such, each of the Wind and Solar Parties and their members may be directly affected by the outcome of this proceeding. The interests of the Wind and Solar Parties and their members are not adequately represented by any other party. Accordingly, granting the Wind and Solar Parties' timely motion to intervene in this proceeding is in the public interest.

IV. Background

The Wind and Solar Parties and many of their members participated in the panel discussion at the Commission's December 11, 2007, technical conference in Docket No. AD02-8-000 on interconnection queuing practices, where they also filed initial and reply comments advocating a number of queuing practices reforms. They provided detailed recommendations for accelerating the generation interconnection process and tying the interconnection of new generating resources more closely to the transmission planning process, to both resolve the substantial, crippling delays that have emerged in the CAISO's generation interconnection queue, and to speed the identification, development and construction of new transmission infrastructure that is necessary to bring renewable energy resources from remote locations to load centers. Many of the Wind and Solar Parties' recommendations helped to craft portions of the CAISO's GIPR Petition.

Following the technical conference, the CAISO convened a stakeholder process in which the Wind and Solar Parties actively participated, along with the California Public Utilities Commission ("CPUC"), California's "Participating Transmission Owners" ("PTOs"), and

numerous other interested participants. While that process was underway, the Commission issued an order on March 20, 2008, in which it offered additional guidance on queuing reforms.¹

The Commission observed that queue backlogs are an unanticipated consequence of the procedures established by Order No. 2003 in two respects.² First, the Commission observed that the first-come-first-served approach to establishing financing responsibility for transmission upgrades under the participant funding approach “can result in great disparities between the costs faced by the customer whose request happens to trigger the need for network upgrades as opposed to those in lower queue positions.” Second, relatively small deposits required to enter the queue coupled with the first-come-first-served approach to allocating capacity provides incentives for developers to request queue positions for projects that may not be commercially viable.³

Queue backlogs not only deprive generation developers of business certainty, the Commission said, they also undermine other important public goals such as state RPS programs, and the Commission urged regional transmission organizations and independent system operators to proceed expeditiously to reform queue management.⁴ The Commission recognized that these backlogs have become particularly problematic in the CAISO footprint.⁵

¹ *Interconnection Queuing Practices*, 122 FERC ¶ 61,252 (2008) (“Queuing Practices Order”).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

³ Queuing Practices Order at P 15.

⁴ *Id.* at PP 5, 9.

⁵ *Id.* at P 5.

The CAISO's stakeholder process led to a number of proposed reforms, which the CAISO seeks to implement through a two-step approach. The first step involved the CAISO's May 15, 2008 filing ("Waiver Petition") asking the Commission for a tariff waiver to permit a temporary suspension of work on the existing interconnection queue, and reorganization of the queue into three groupings: (1) a "Serial Study Group," (2) a "Transition Cluster," and (3) an "Initial GIPR Cluster." The CAISO proposed criteria by which projects with queue requests would be placed into each group, and the study timelines that would apply to each. The Wind and Solar Parties filed comments on the CAISO's Waiver Petition which, among other things, urged the Commission to hold the CAISO to firm deadlines in the processing of the transition and initial GIPR clusters to achieve the overall objectives of queue reform, which is to provide greater business certainty for generation developers, particularly renewable energy developers that seek to bring new resources on line to meet state renewables portfolio requirements.

The Commission granted the CAISO's waiver petition in an order dated July 14, 2008.⁶ In doing so, the Commission found that concerns about processing timelines under the then yet-to-be-filed GIPR tariff were beyond the scope of the Waiver Petition, but cautioned that "one aspect of our consideration of the GIPR tariff proposal will be the extent to which it offers an acceptable and permanent resolution to the longstanding queue backlog problems."⁷

On July 28, 2008, the CAISO filed the GIPR Petition to implement the second step of its queue reform plan, which involves the substantive study criteria and procedures that will apply to current and future interconnection requests. The GIPR Petition is intended to clear the existing interconnection queue expeditiously, ensure that the interconnection process is

⁶ *California Independent System Operator*, 124 FERC ¶ 61,031 (2008) ("Waiver Order").

⁷ *Id.* at P 45.

efficient in the future, provide interconnection customers reasonable assurances concerning timing and cost certainty for interconnections, and integrate fully generation interconnections with regional transmission planning through the TPP. The most fundamental change is a shift from the current serial interconnection study process to a new cluster study approach that is closely tied to the TPP for the Transition Cluster, the Initial GIPR Cluster and subsequent interconnection requests under which electrically-related projects will be studied together.⁸

Among the other major reforms, the CAISO proposes to apply a two-step study approach to the interconnection clusters instead of the present three-study approach, with new or increased milestones and financial commitments to remain in the queue and move to study completion. Phase I would study projects that enter the queue through either of the two study windows to be opened each year, and it would impose greater study costs and financial security requirements.⁹ Phase I studies would be more robust than the Interconnection Feasibility Study under the current LGIP and are intended to identify the need for Reliability Network Upgrades, Delivery Network Upgrades and Interconnection Facilities.¹⁰ The study would determine a generator's financial security deposits and maximum Network Upgrade cost financing responsibility which will have to be posted as an interconnection financial security by that generator if it wishes to enter into Phase II study.¹¹

⁸ The CAISO proposes to retain its existing procedures for the "serial cluster." GIPR Petition at 12.

⁹ The CAISO proposes to require a new \$250,000 interconnection study deposit that becomes progressively non-refundable at certain stages, a deposit in the absence of demonstration of site exclusivity of \$250,000 at the time when the Large Generator Interconnection Agreement is executed, and financial security deposits of the greater of 20% of the cost of network upgrades identified in the Phase I study or \$500,000 to be provided within 90 days of the delivery of the Phase I Study Agreement. Exhibit No. ISO-1 (Rutty) at pp. 10-17.

¹⁰ Exhibit No. ISO-2 (Sparks) at p. 7.

¹¹ For Reliability Network Upgrades, which are basic upgrades needed to ensure the integrity of the grid, the CAISO proposes to assign cost responsibility pro rata to each interconnection customer based on the size of the proposed generating facility. For Delivery Network Upgrade Costs,

Significantly, generator financing responsibility would not change as a result of later assessments or the withdrawal of projects in the cluster.¹² The GIPR Petition also proposes new requirements for site control (called “site exclusivity” in the petition), including those for projects located on Federal land, adds an expedited process for dispute resolution and clarifies that all projects in the Serial Study Group would be deemed to have a higher queue position than all projects in later groups, to avoid restudies if projects drop out of subsequent clusters.

Phase II will refine the Phase I study results to account for the withdrawal of projects after Phase I Study results are issued, finalize the projects’ points of interconnection and interconnection facilities, identify final Network Upgrades, optimize in-service timing requirements and other matters for projects that post the required interconnection financial security after the Phase I study.

Significantly, unlike the current interconnection study process, where transmission upgrades needed for interconnection are identified largely independent from transmission upgrades developed through the CAISO’s Transmission Planning Process,¹³ the GIPR Petition envisions that Phase II studies will be closely integrated with the TPP. The CAISO explains that the purpose of this close link between the Phase II studies and the TPP “is

which are upgrades designed to remove transmission constraints under peak load conditions, the CAISO proposes to assign the costs (for those Delivery Network Upgrades which the interconnecting generator elects to finance) based on the electrical impact that each proposed new generating facility will have on the new transmission upgrade.

¹² Section 12.3.1 of the LGIP provides that any capital costs for Reliability Network Upgrades or Delivery Network Upgrades in excess of those determined during the Phase I studies will be borne by the affected PTO.

¹³ GIPR Petition at p. 14 (“Under the current interconnection process, transmission upgrades needed for interconnection are identified, in large part, independently from transmission upgrades developed through the CAISO’s annual Transmission Planning Process.”).

to meet multiple objectives with the same transmission projects and thereby reduce overall transmission costs.”¹⁴

Given these fundamental reforms, the CAISO evaluated whether to continue the “participant funding” approach under its existing Large Generator Interconnection Procedures (“LGIP”) tariff, which requires generators initially to fund the cost of Network Upgrades, subject to later repayment with interest over a period of five years after the project achieves commercial operation.¹⁵ Under the current LGIP, generators elect either to receive direct repayments by PTOs or allocations of Firm Transmission Rights (Congestion Revenue Rights under MRTU) for the additional transmission capability enabled by the upgrades. The PTOs, however, have the option to fund Network Upgrades themselves.

As Mr. Sparks explains, during the GIPR process “the CAISO supported assigning the PTOs the mandatory responsibility for financing Network Upgrades.”¹⁶ The CAISO did so because the potential loss of significantly increased financial security provides ample incentive for generators to introduce commercially viable projects and proceed to commercial operation, and because the PTOs ultimately recover the full cost of Network Upgrades, plus an allowed rate of return, via the CAISO’s Transmission Access Charge (“TAC”). Mr. Sparks states that the CAISO ultimately chose not to include PTO financing of Network Upgrades as part of its proposal because of PTO concerns relating to their ability to access sufficient capital to meet all potential network upgrade requirements.¹⁷

¹⁴ Exhibit No. ISO-2 (Sparks) at 21.

¹⁵ *Id.* at pp. 16-17.

¹⁶ *Id.* at p. 17.

¹⁷ *Id.*

Finally, the GIPR Petition proposes procedures to study the Serial Study Group, the Transition Cluster and the Initial GIPR Cluster sequentially. The CAISO would begin Phase I studies of the Transition Cluster on the later of 60 days after the GIPR Petition's effective date or December 1, 2008 and take approximately 900 days to achieve execution of an interconnection agreement. Transition cluster projects would then be coordinated with the 2010 TPP, which means that if there are no delays these projects would be introduced into the 2011 CAISO Transmission Plan. The CAISO envisions a similar process for the Initial GIPR Cluster, with a total study period and execution of the interconnection agreement in about 750 days. The first GIPR cluster would be coordinated with the 2011 TPP and the 2012 CAISO Transmission Plan.

The CAISO is requesting an effective date for its GIPR reform plan of September 29, 2008.

V. Comments & Limited Protest

The GIPR Petition provides much-needed reforms to the interconnection process that will provide more coordinated transmission planning for the benefit of all transmission users through greater cost certainty for generation developers, more efficient interconnection request processing, and tighter integration of planning for Network Upgrades initially identified through the LGIP studies with the TPP. The Wind and Solar Parties very much appreciate the potential for improvement that the GIPR Petition represents, as well as the substantial effort by both CAISO staff and all of the stakeholders who participated in this process.

Nevertheless, a number of improvements to the interconnection study process described in the GIPR Petition are necessary to provide a more timely study process, equal treatment to generators on public lands, and fairness in study deposit requirements. A more

fundamental problem is the one the CAISO identified, but chose not to address, and which, if it remains unresolved, will continue to hinder the interconnection process into the future with delays and suboptimal results. That problem is the need to reform the method for assigning cost responsibility to finance network upgrades, which the CAISO concedes are identified and built to meet system needs through the TPP — not as a result of generation interconnection requests alone. Given the fundamental impact the financing question has on the overall interconnection process, we address this issue first, before turning to our additional comments on the GIPR Petition.

A. Continuation of Participant Funding Is No Longer Just and Reasonable, Given That the GIPR Expressly Ties Interconnection Requests to Transmission Planning to Meet All Regional System Needs.

Order 2003 altered the traditional way that network transmission facilities are financed to encourage new transmission construction to accommodate new generating plants and promote wholesale electric competition.¹⁸ The Commission did so based on four assumptions:

- Transmission upgrades to accommodate new generation interconnection requests can be readily attributed to each interconnecting generator as discrete facilities installed for the benefit of that generator.¹⁹
- Upgrades so identified might not obtain state siting approvals if state regulators believe the cost of the upgrades will be borne by ratepayers in the state, while the benefits of new generation are exported to consumers in another state.²⁰

¹⁸ Order No. 2003-A at P 612 (“the Interconnection Customer’s upfront payment, with provisions for the payment of interest, credits and reimbursements, serves not as a rate for interconnection or transmission service, but simply as a financing mechanism that is designed to facilitate the efficient construction of Network Upgrades.”).

¹⁹ Order No. 2003 at P 694; Order No. 2003-A at PP 580-81.

²⁰ *Id.*

- Participant funding would both speed the construction of network upgrades by providing transmission owners with financing, and cause generators to make efficient siting decisions.²¹
- The cost of network upgrades would be relatively small compared to the cost of new generating plants, particularly the large new natural gas-fired plants that dominated the interconnection queues at the time.²²

None of these critical assumptions underpinning Order 2003 apply currently in California, given the fundamental reforms proposed in the GIPR Petition, California's strong endorsement of new transmission to integrate renewable generation to meet RPS targets, the potentially high cost of transmission relative to the cost of individual renewable energy projects, and the limited ability of renewable generation developers to relocate projects in response to Network Upgrade financing costs due to the location-specific nature of many renewable resources. Thus, participant funding of Network Upgrades is no longer just and reasonable, and the appropriate just and reasonable approach is PTO financing with traditional rolled-in cost recovery through the CAISO's TAC.

²¹ Order No. 2003-A at P 613 ("The purpose of the upfront financial payment is twofold. First, by providing the Transmission Provider with a source of funds to construct the Network Upgrades, the upfront payment by the Interconnection Customer alleviates any delay that might result if the Transmission Provider were forced to secure funding elsewhere. Second, by placing the Interconnection Customer initially at risk for the full cost of the Network Upgrades, the upfront payment provides the Interconnection Customer with a strong incentive to make efficient siting decisions and, in general, to make good faith requests for Interconnection Service.").

²² Order No. 2003-B at P 32 ("InterGen and others state that the cost of Network Upgrades is typically small compared to the cost of the Generating Facility and that the Interconnection Customer will often embark on a project even though Network Upgrade costs are unknown. This suggests that placing the risk for the cost of Network Upgrades on the Interconnection Customer does not place a significant burden on the Interconnection Customer and thus is completely appropriate.").

1. ***The GIPR Petition Eliminates the Fiction That Network Upgrades Are Discrete Additions to Meet Identifiable Interconnection Requests.***²³ Assigning up-front financing responsibility to renewable generation developers lacks any foundation given the CAISO’s fundamental analytical shift to link interconnection studies directly with the TPP “to meet multiple objectives with the same transmission projects and thereby reduce overall transmission costs.”²⁴ In this regard, Mr. Sparks explains that “Network Upgrade alternatives needed to ensure the reliability and deliverability of the new generation projects will also be designed, in the Phase II studies, with a consideration of other transmission need objectives such as service to transmission constrained load areas and congestion mitigation.”²⁵ Thus, “[u]nder the GIPR, the Phase II Interconnection Studies will basically be part of the CAISO’s TPP.”²⁶

This tight integration between overall system planning for transmission and generation interconnection requests was not contemplated under Order 2003 which, as noted above, assumes that Network Upgrades can be attributed directly to specific generation interconnection requests, and that financing responsibility for the upgrades can be neatly assigned to the requesting interconnecting generator.

Indeed, the CAISO’s existing LGIP is predicated on the assumption that generators “must be reimbursed for the cost of Network Upgrades needed to interconnect the Generating Facility.”²⁷ Such a “needs” determination is, however, impossible to make in a just

²³ The GIPR Petition proposes to assign the up-front financing cost for transmission upgrades to interconnecting customers through sections 6.3.1, 7.3 and 7.4 of the LGIP.

²⁴ Exhibit No. ISO-2 (Sparks) at p. 21.

²⁵ *Id.* at p. 22.

²⁶ *Id.* at p. 23.

²⁷ *California Independent System Operator Corp.*, 112 FERC ¶ 61,009, at P 99 (emphasis added), *clarifications and extension of time granted, reh’g denied*, 112 FERC ¶ 61,231 (2005).

and reasonable fashion, given that the new or upgraded transmission facilities that will emerge from the TPP are “designed to meet multiple objectives,” as Mr. Sparks testifies. There simply is no, and can no longer be any, foundation for imposing the up-front financing responsibility for Network Upgrades on generation developers in the CAISO’s GIPR tariff.

2. *California Has Adopted Policies to Promote Transmission Investment to Meet RPS Targets.* The Commission’s assumption that participant funding of Network Upgrades is needed to overcome state opposition to siting transmission lines to accommodate new generating resources, regardless of the merits it may have elsewhere, is inapplicable to California, particularly with respect to transmission to meet state RPS requirements.

Indeed, the CPUC has promoted renewable energy zones on the assumption that transmission lines will be built to integrate renewable energy projects located within such zones with the larger transmission grid. The CPUC has supported such projects as the Tehachapi high-voltage transmission line to integrate roughly 4,500 MW of new wind generation with the grid to help meet state RPS targets in the near and long-term. The CPUC and the PTOs have also supported the CAISO’s efforts to reform the interconnection queuing process to speed the interconnection of needed new generation projects to meet the state’s growing demand with renewable energy resources.²⁸

Moreover, under the GIPR plan, transmission projects identified during Phase II studies that require CAISO Board approval or a certificate of public convenience and necessity from the CPUC will go through the TPP stakeholder process.²⁹ Thus, these projects will be

²⁸ See *Interconnection Queuing Practices*, “Post-Technical Conference Comments of the California Parties,” at p. 1, Docket No. AD08-2-000 (filed January 10, 2008) (“there is a commitment in California to interconnect new generating facilities -- in particular, facilities relying on renewable resources -- as quickly as can be achieved . . .”).

²⁹ *Id.*

specifically considered in light of overall system needs to meet multiple uses, as Mr. Sparks testifies, with the opportunity for stakeholder input in the planning process.

Under these circumstances, therefore, the Commission's assumption in Order 2003 that participant funding of network upgrades is needed to overcome state reluctance to site new transmission lines is no longer present in California.

3. *The Commission's Assumption That the Financing Burden for Network Upgrades Would Be Relatively Small Compared to the Cost of Generation Projects and, Therefore, Would Not Be a Barrier to Competitive Entry, Is Not Applicable to Renewable Generation Projects.* New renewable wind and solar generation projects with installed capacity of 100 MW typically cost on the order of \$250 million to \$350 million.³⁰ In contrast, the cost of new transmission lines in California can be approximately \$300,000 to \$500,000 per mile for 138 kV to 345 kV lines, depending on geography and population density, and more than 10 times that much for 500 kV lines.

Total network transmission upgrade financing responsibility for a generation developer can thus run anywhere from a few million dollars to more than \$100 million, depending on the cost of the expansion and whether the developer shares the costs with other interconnecting generators. As renewable generation projects are often highly dependent on the location of the renewable resources, as discussed below, and as those resources are often remote from load centers, Network Upgrades for such resources can be much higher for renewable resources than for conventional resources. Up-front financing of a \$100 million transmission expansion for a \$250 million to \$350 million generation project is economically untenable for

³⁰ Assuming the "all-in" construction costs for wind generation is about \$2,500/kW and the all-in construction costs for concentrating solar generation is \$3,500/kW, excluding the cost of transmission upgrades.

most renewable project developers, or even for a cluster of projects as proposed in the GIPR Petition, particularly given that reimbursement does not begin until the projects achieve commercial operation. Completion of transmission upgrades can take several years, during which time developers must carry a large and burdensome financing cost responsibility. This creates an unhelpful incentive for projects to withdraw from the queue or defer their commercial operation dates in the hope of drawing a more favorable allocation, thereby complicating queue management and transmission planning.

This interconnection merry-go-round is the root cause of the delays in the current queue and is not addressed by the GIPR Petition's proposal to weed-out projects that are not "commercially viable" early in the process by imposing higher costs for entering and remaining in the queue. Commercial viability should not be dictated by such things as interconnection study deposits and participant funding financing obligations; rather, commercial viability should be determined in the energy marketplace.

4. *The Commission's Assumption That Participant Funding Would Lead to Efficient Generator Siting Decisions Does Not Apply to Renewable Generation.* As the Commission has acknowledged, renewable generation is location-constrained, which means the projects must be built where the wind blows or the sun shines the most consistently, and where land is most readily available.³¹ Sites that meet these criteria are most often located far from load centers and major transmission lines. Accordingly, most renewable generation developers have little flexibility in changing their project location in response to participant funding costs — the projects simply cannot be located where upgrade costs would be lowest if resources of sufficient quality are not available there.

³¹ *E.g., ITC Midwest, LLC*, 124 FERC ¶ 61,150 (2008).

5. *The CAISO's Concern With PTO Financing of Network Upgrades Is Not a Compelling Reason to Require Renewable Generators to Bear the Financing Responsibility for Network Upgrades to Serve System Needs.* The CAISO states that it elected not to propose to require PTOs to finance transmission upgrades out of concerns expressed by PTOs about their ability to access sufficient capital to meet all potential financing needs.³² The Commission expressed a similar rationale in Order 2003-A.³³

While financing projects is certainly an important concern, it simply is not a decisive factor for transmission owner financing of transmission projects for two reasons: (1) PTOs have a number of ratemaking tools that the Commission has made available to them to ensure timely recovery of all just and reasonable costs incurred to meet their utility service obligations, and (2) if PTOs are unwilling to undertake the initiative to construct Network Upgrades identified through the TPP, then merchant transmission developers may welcome the opportunity to step up and construct Network Upgrades with appropriate cost recovery under the TAC or other means accepted by the Commission.

With respect to PTO cost recovery concerns, we note the Commission's continuing focus on promoting transmission investment,³⁴ and its receptivity to tariff mechanisms to give transmission owners timely cost recovery, for example, through formula transmission rates that allow transmission owners to recoup forecasted capital expenditures in current rates (subject to a later true-up to actual expenses).³⁵ These ratemaking options include

³² Exhibit No. ISO-2 (Sparks) at p. 17.

³³ Order No. 2003-A at P 613.

³⁴ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

³⁵ *E.g.*, *Xcel Energy Services, Inc.*, 121 FERC ¶ 61,284 (2007) (accepting transmission formula rate using projected test year); *Michigan Electric Transmission Co.*, 117 FERC ¶ 61,314 (2006)

the Commission’s willingness to allow utilities to recover construction work in progress (“CWIP”) expenditures in current rate base, which provides current cash flow that greatly reduces the pressure on utility finances that otherwise arises when they need to finance capital improvements and defer rate recovery (perhaps for years) until they file new applications to adjust stated rates.

California’s PTOs have availed themselves of these ratemaking options to finance major transmission expansions to provide access to large amounts of new renewable generation. For example, as Southern California Edison (“SCE”) explained when it requested CWIP recovery for its investment in the more than \$1.7 billion Tehachapi transmission project:

Including CWIP in rate base will assist SCE with its financings and rating agency coverage ratios by replacing non-cash [Allowance for Funds Used During Construction] earnings with cash earnings. In addition, it enhances debt ratings due to higher coverage ratios and the improved quality of earnings. Investors view reduced variability in the year over year earnings positively which, in the long run, lowers borrowing costs.³⁶

Although SCE’s petition for CWIP recovery was in conjunction with major transmission expansions, including Tehachapi, that met Order No. 679’s criteria for rate incentives,³⁷ formula rates that allow current recovery of forecasted capital additions with a true-up mechanism provide an alternative that likewise reduces the strain on utility credit metrics by enhancing cash flow through more timely recovery of capital improvement costs.³⁸

(same), *order on reh’g*, 118 FERC ¶ 61,139, *order on compliance filing*, 119 FERC ¶ 61,203 (2007); *International Transmission Co.*, 116 FERC ¶ 61,036 (2006) (same).

³⁶ *Southern California Edison Company*, “Petition for Declaratory Order for Incentive Rate Treatment,” at p. 39, Docket No. EL07-62-000 (May 18, 2007).

³⁷ *Southern California Edison Co.*, 121 FERC ¶ 61,168 (2007) (order granting rate incentives).

³⁸ In any event, the Commission’s ratemaking policies are sufficiently flexible to permit PTOs to recover CWIP in current rates for non-incentive projects, and to capitalize pre-construction development costs or provide regulatory asset treatment for such costs to ease the financial burden on transmission owners.

The CAISO’s concern about the PTOs’ financing burden is also unjustified, given the Commission’s willingness to accept fully-forecasted cost-of-service formula transmission rates that provide timely cost recovery for transmission investment. Such cost recovery is linked directly to project in-service dates, which completely eliminates any “regulatory lag” that might otherwise result from the need to file new rate cases to adjust utility revenue requirements.

This ratemaking tool has led independent transmission companies to file rate proposals with the Commission for the full reimbursement to generation developers of all up-front transmission financing costs upon commercial operation of the projects.³⁹ The independent transmission companies in these cases who have no other market interests found the financing and construction of all required network upgrades — and expeditious inclusion of the costs of these upgrades in rate base — to be in their commercial self-interest. These companies were not concerned with access to credit markets to finance these upgrades, or potential credit quality issues, notwithstanding that these transmission owners operate in the Midwest Independent Transmission System Operator region — the only other region of the country that currently has interconnection queue backlogs that are more severe than the CAISO.⁴⁰ It is, therefore, evident that independent transmission developers would be more than willing to step in to fill the transmission construction void if California’s PTOs are unwilling to do so.⁴¹ The Commission should encourage transmission developers to construct Network Upgrades to the full extent of its

³⁹ *ITC Midwest, LLC*, 124 FERC ¶ 61,150 (2008); *American Transmission Company*, 120 FERC ¶ 61,221 (2007), *reh’g denied*, 123 FERC ¶ 61,065 (2008); *International Transmission Company*, 120 FERC ¶ 61,220 (2007), *reh’g denied*, 123 FERC ¶ 61,065 (2008).

⁴⁰ Queuing Practices Order, at P 5.

⁴¹ As the Commission is aware, numerous merchant transmission have emerged in recent years, such as the Path 15 high voltage transmission line and the Trans-Bay Cable projects being just two examples. *See* “Renewable Energy and Transmission: Opportunities and Barriers,” Presentation by FERC Commissioner Jon Wellinghoff to Environmental and Energy Study

Federal Power Act authority, particularly since the GIPR tariff allows California's PTOs to elect which Network Upgrades to finance and which to impose on generation developers.⁴²

Ratemaking options and other vehicles that lessen the cost of financing transmission are completely unavailable to generation developers, who are not in the transmission business, and who do not have tariff authority to recoup these expenditures.⁴³ Rather, generation developers must factor in the cost of up-front transmission financing in the negotiation of their Power Purchase Agreements ("PPAs") by weighing their cost of capital against the expected repayment stream with interest at the rate established by the Commission under 18 C.F.R § 35.19a (2008). Not only is this increased cost of financing paid by consumers, who ultimately bear the cost of the transmission as it is eventually rolled-into the PTO's ratebase at the PTO's allowed rate of return; any expected shortfall that is recoverable under the PPA would represent an added cost to consumers,. Thus, ultimately consumers are likely to pay a higher price for needed Network Upgrades and will be less well-off as a consequence of generator financing than they would be if the costs were directly borne by the PTOs in the first place.

Institute (June 13, 2008) (identifying numerous renewables-related transmission projects, including several proposed by merchant developers).

⁴² See LGIP § 12.3.1. It would, for example, be unduly discriminatory and contrary to the public interest if the PTOs were to elect to finance only major transmission expansions such as Tehachapi with incentive returns on equity and 100% of CWIP in current rate base, and then claim the financing "burden" caused by such expansions precludes the construction of less attractive non-incentive network upgrades. Similar concerns would arise if PTOs chose to fund only those transmission expansions that facilitate energy purchases to meet their own commercial interests while refusing to finance other projects that would provide transmission for renewable projects to serve third parties.

⁴³ Inasmuch as many generators ultimately become "exempt wholesale generators," or "EWGs", under the Public Utility Holding Company Act of 2005, establishing tariff mechanisms to permit developers to recover the cost of transmission investments would violate the "exclusivity" condition that requires EWGs to be "exclusively" in the business of owning or operating facilities used for the sale of electric energy exclusively at wholesale. 18 C.F.R. § 366.1 (2008).

6. *The CAISO's Enhanced Deposit and Financial Commitment Requirements Impose Adequate Risks on Generation Developers Whose Projects Become Uneconomic.* The Commission had limited reimbursement for the cost of generator-funded transmission upgrades to service from the generator's facilities out of concern that doing so was necessary to ensure the generator is at risk of its project becoming commercially infeasible.⁴⁴ As Mr. Sparks explains, this concern is not applicable under the GIPR, because "the potential loss of an Interconnection Customer's Interconnection Financial Security provide[s] sufficient incentive for the interconnecting generator to proceed to Commercial Operation"⁴⁵ The cost of the Network Upgrades is, however, ultimately recovered through the TAC in any event. Thus, the participant funding requirement is not necessary to ensure that transmission is built only for commercially viable generation projects.

7. *Network Transmission Upgrades to Integrate Remote Renewable Energy Resources Provide Several Benefits to Customers Within the CAISO Region.* The Commission recently acknowledged that transmission-provider financing and rate recovery of Network Upgrade costs to accommodate new generation interconnections is just and reasonable because of the many benefits these transmission projects provide to customers in the region.⁴⁶

In particular, the Commission "recognize[d] that benefits can take the form of improved reliability, improved ability to import generation due to counterflows that are created from the exporting generator, and reduced locational marginal prices (LMP). In an energy market with LMP, such as Midwest ISO's, when supply is increased, the load affected by that

⁴⁴ Order No. 2003-A at P 614.

⁴⁵ Exhibit No. ISO-2 (Sparks) at p. 17.

⁴⁶ *ITC-Midwest*, 124 FERC ¶ 61,150, at P 18.

increased supply will benefit from lower energy prices because the new supply will generally displace more expensive generation, which would otherwise have been dispatched.”⁴⁷

These benefits will redound to the benefit of customers in the CAISO region as well as a result of new transmission projects to interconnect renewable generating resources, just as the Commission found in the context of the Midwest ISO. The Commission made essentially the same determination in conditionally approving the CAISO’s proposed Market Redesign and Technology Upgrade tariff, finding that the CAISO’s proposal to adopt LMP pricing will “promote the use of the lowest-cost generation . . .” among other things.⁴⁸

Thus, just as it did in the recent *ITC-Midwest* case, the Commission should find that transmission owner financing of Network Upgrade costs is just and reasonable.

8. Several Policy Reasons Support Elimination of Participant Funding of Transmission Upgrades to Integrate Renewable Generation Projects. Not only is participant funding no longer supportable under the CAISO’s reformed interconnection study process, compelling policy reasons support reform of the participant funding requirement now. These policy reasons rest upon the compelling national interest to promote renewable generation resources to meet state RPS goals.

The Commission recognized in the Queuing Practices Order that two overarching issues affect generation interconnection queue requests and the crippling backlogs in processing them in the CAISO and elsewhere: the cost of transmission upgrades and the ease of entering the queue coupled with the perceived benefits of maintaining queue positions. The Commission further recognized that neither of these circumstances were envisioned at the time of Order 2003,

⁴⁷ *Id.*

⁴⁸ *California Independent System Operator Corporation*, 116 FERC ¶ 61,274, at P 63 (2006), *reh’g and clarification granted in part and denied in part*, 119 FERC ¶ 61,076 (2007).

which, the CAISO points out, was adopted against the backdrop of relatively small numbers of large natural gas-fired generating facilities seeking to interconnect to the transmission grid.⁴⁹

Today, however, most states have renewable portfolio standards and, in California particularly, these standards have led large numbers of relatively small renewable generation projects to request interconnection service from the CAISO.⁵⁰ Typically, these projects are location constrained, which means they must locate their facilities where the wind blows most consistently, or where the sun shines the strongest and most often. These locations are often far from load centers and require significant new transmission investment, and which also means that they are not able to make efficient siting decisions relative to transmission costs.

In short, eliminating participant funding in California will further state policy goals to encourage renewable energy development and thereby promote California's additional goals to alleviate greenhouse gas emissions and reduce dependence on fossil fuel supplies. PTO financing is consistent with the Commission's traditional ratemaking policies for Network Upgrades in any event, because such upgrades provide system-wide benefits and are rolled-into system-wide transmission rates. Here, the compelling state policy underpinnings supporting renewable energy add even more force behind the need to apply traditional ratemaking principles to transmission produced by the CAISO's TPP to serve the need of renewable resource integration.

⁴⁹ GIPR Petition at p. 5.

⁵⁰ *Id.* at p. 6.

B. The CAISO Must Complete Studies for the “Transition Cluster” and the “Initial GIPR Cluster” So That These Groups Enter Into the TPP in 2009 and 2010, Respectively, Rather Than 2010 and 2011 Under the Current GIPR Plan.

In responding to the Queuing Practices Order, the CAISO reported that it projected that if all goes smoothly, the CAISO could clear all projects in the queue at the time in about 40 months (3.35 years).⁵¹ The Wind and Solar Parties raised concerns that the CAISO’s proposed schedule in the Waiver Petition to process interconnection requests in the Transition Cluster was too long. The CAISO argued that these concerns were premature, and the Commission agreed in the Waiver Order.⁵² The Commission cautioned, however, that “one aspect of our consideration of the GIPR tariff proposal will be the extent to which it offers an acceptable and permanent resolution of the longstanding queue backlog problems.”⁵³

The Wind and Solar Parties raised these concerns numerous times throughout the GIPR stakeholder process. We are sympathetic to the time pressures faced by the CAISO, but the GIPR Petition’s projected schedule to process the Transition Cluster remains too long and lacks meaningful commitments by the CAISO to complete interconnection studies within even the lengthy study period the CAISO has granted to itself. The lack of firm commitments to meet deadlines — and the lack of any consequences for study delays to anyone other than developers — does not constitute “an acceptable and permanent resolution” to the problems.

The CAISO’s GIPR tariff proposes to use “reasonable efforts” to process the Transition Cluster on a schedule that allows it to be introduced into the TPP in 2010, which results in projects being introduced into the 2011 transmission plan. Under Section 6.6 of the

⁵¹ *Interconnection Queuing Practices*, “Interconnection Status Report of the California Independent System Operator,” at p. 4, Docket No. AD08-2-000 (filed Apr. 28, 2008).

⁵² Waiver Order at P 45.

⁵³ *Id.*

LGIP, this schedule could easily slip “due to the large number of Interconnection Requests in the Queue Cluster Window, study complexity, or unavailability of contractors on a reasonable basis to perform the study in the required timeframe”

Under the CAISO’s proposed schedule, assuming no delays, the earliest that new generation projects in the Transition Cluster that require major upgrades can realistically expect to be interconnected to the transmission grid is 2016. The reason is that after transmission projects are identified through the TPP, they must complete a one-to-two year review period to obtain certificate authority and then must be built and energized.

This timing is unworkable for projects in the queue with power sales contracts. Moreover, it will be too late to meet existing RPS targets, and may be too late to meet the further-heightened RPS targets that are expected soon to come into play.⁵⁴ This outcome is all the more unreasonable considering that some projects in the “Transition Cluster” have been in the interconnection queue longer than some projects moving forward in the Serial Study group.⁵⁵

These delays “not only deprive generation developers of needed business certainty, they also undermine important public goals,” as the Commission observed in the Queuing Practices Order.⁵⁶ The Wind and Solar Parties believe that these timelines are longer than they should be, and the CAISO has offered no sound planning reasons for affording itself so much time and so many off-ramps to excuse completion of critical interconnection studies in a

⁵⁴ In its draft Scoping Plan, the California Air Resources Board has included a 33%-by-2020 RPS requirement as one of five core measures to meet greenhouse gas reduction goals in the California legislature’s Assembly Bill 32. Available at: <http://www.arb.ca.gov/cc/scopingplan/.htm>.

⁵⁵ Some of the projects in the Transition Cluster submitted interconnection requests as early as 2006, and were actually higher in the queue than projects in the Serial Study Group. Due to various factors, however, their system impact studies were due later than the CAISO’s May 1 cut-off for the Serial Study Group.

⁵⁶ Queuing Practices Order at P 5.

timely fashion. Moreover, the CAISO's failure to manage its resources effectively should not excuse its obligation to complete studies in a timely manner under Section 6.6 of the LGIP.⁵⁷

Instead of moving forward with a schedule that is inadequate at the outset, the Commission should require the CAISO to take specific, targeted steps to speed the Transition Cluster study process. These steps include the following:

- Begin the study process promptly, instead of waiting until the later of December 1, 2008 or 60 days after the Commission accepts the GIPR Tariff for filing.
- Begin developing the Transition Cluster base case in parallel with processing the interconnection requests.
- Start the Phase I studies as soon as the base cases are developed and shared with participants, which we believe could occur as soon as November 1, 2008.
- Complete the Phase I process, including signing the interconnection agreement and posting security deposits, as Phase I studies are completed, instead of waiting to complete the Phase I studies of all interconnection customers in the Transition Cluster. Interconnection customers should have the option to sign a conditional interconnection agreement at the conclusion of Phase I, which will facilitate timely negotiation of power sales contracts and assist developers with obtaining financing for their projects.
- Expand the timeline for the 2009 TPP (for the 2010 Transmission Plan) into May 2010, so that Transition Cluster results can be included. (Doing so need not delay initiation of the 2010 TPP.)

The CAISO's timetable for processing interconnection requests after the Transition Cluster (i.e., in the First GIPR Cluster Window and future cluster windows) is also too long. There are likely to be fewer projects in the Initial GIPR Cluster than in the Transition Cluster, because many projects likely accelerated their interconnection requests to meet the Transition Cluster deadline. Moreover, if the CAISO has firm and timely milestone commitments for the Transition Cluster, and successfully achieves those milestones, generators

⁵⁷ For example, the fact that CAISO transmission engineers may have other projects should not be an excuse for not completing studies on time. Similarly, PTO lack of resources should not delay reasonable in-service dates under reasonable developed commercial operation date requests.

will be less likely to race to be included in the Initial GIPR Cluster for fear of even greater delays should it miss this “window.” Again, if the CAISO is required to meet timely milestones and is successful in achieving them, there will likely be fewer projects in subsequent clusters as well.

Thus, the Commission should require the CAISO to modify its current study timeline for this first new “normal” GIPR cluster so that the associated network upgrades, if any, for the committed generators in this cluster (those that have posted financial security) can be determined via the 2010 TPP cycle (for the 2011 CAISO Transmission Plan).

Finally, under the CAISO’s plan, it will have no incentives for early accomplishment of milestones and no consequences for missing deadlines. The CAISO is simply required to provide notice to the affected interconnection customer of the status and the new projected completion date. During the GIPR stakeholder meetings the CAISO took the position that generation developers can file complaints with FERC when deadlines are missed. This is a poor remedy when the consequence may mean losing a whole year in the interconnection process, with repercussions for power sales contracts, financing, permitting and any number of additional time critical elements in the development process. Given these consequences, the Commission should require the CAISO to commit to firm study deadlines to be excused only for reasons of force majeure.

C. The Commission Should Require the CAISO to Modify the GIPR Tariff Study Process In Several Important Respects.

1. The Commission Should Reject the CAISO’s Proposed New “Off-Peak Deliverability Assessment” As Unsupported. The CAISO proposes to introduce a new concept of “Off-Peak Deliverability Assessments” into the GIPR tariff. According to Mr. Sparks, these

studies are directed at measuring the deliverability of wind generation during off-peak periods, in addition to the on-peak studies that already apply to these resources.⁵⁸

Notwithstanding Mr. Sparks' brief explanation, the CAISO has not adequately explained the purposes of these studies, nor identified the criteria or conditions that will apply to them. Off-peak studies that model the generation of incumbents (including PTO-owned or affiliated generation) and new wind resources during off-peak periods without regard to proper generation commitment and dispatch will simply shift transmission upgrade costs to wind developers, resulting in undue discriminatory transmission cost allocations between generating resources.⁵⁹ This result has the potential to shift transmission upgrade costs that should be borne by existing network customers to generators. The Wind and Solar Parties generally support the notion of studying resources' interaction with the transmission system based on their reasonably projected commitment and dispatch, which could make optimal use of the grid as renewable resources are increasingly integrated into the infrastructure. The CAISO's current proposal, however, is not sufficiently well-grounded or supported.

2. *The Commission Should Require the CAISO to Treat Network Upgrades to Relieve Thermal Overloads As "Delivery Network Upgrades" and Not As "Reliability Network Upgrades."* The GIPR tariff defines Reliability Network Upgrades as those transmission facilities at or beyond the point of interconnection that are necessary safely and reliably to interconnect a generating facility, including those necessary to remedy short circuit or stability problems, or thermal overloads occurring under any system conditions that cannot be

⁵⁸ Exhibit No. ISO-2 (Sparks) at 14.

⁵⁹ Order No. 2003-B at P 40 (the transmission provider must apply the interconnection policies in a non-discriminatory manner and cannot favor the incumbents).

adequately mitigated through congestion management, operating procedures or special protection systems. Section 6.3.1 proposes to use power flow analyses to identify reliability criteria violations that must be relieved through Reliability Network Upgrades, including thermal overloads. Upgrades to address thermal overloads, however, should be treated as Delivery Network Upgrades.

As Mr. Sparks explains, the purpose of the “On-Peak Deliverability Assessment” is to “identify thermal overloads at summer peak conditions that must be mitigated to allow the full capacity of the generator to reach the aggregate of CAISO load.”⁶⁰ Indeed, Mr. Sparks states that “[t]he CAISO and the PTO(s) will also identify necessary Reliability Network Upgrades in performing short circuit and stability studies.” Thus, it is unclear from the CAISO’s presentation what role, if any, thermal overloads should play in determining Reliability Network Upgrades for interconnection requests. Given that the CAISO has not explained this, the Commission should require the CAISO expressly to limit Reliability Network Upgrades to those identified to alleviate short circuit and stability violations. Thermal overload violations should be limited solely to Delivery Network Upgrades.

3. *The Commission Should Require the CAISO Expressly to Allow Projects to Interconnect As Energy-Only Resources If the Commercial Operation Date Is Delayed Due to the Unavailability of Delivery Network Upgrades.* Section 6.7.1 establishes a number of factors to be taken into consideration in determining the commercial operation date for generation projects. One important factor not taken into consideration is the treatment of generation projects whose commercial operation date is delayed in practice or by decree from CAISO or the PTOs due to the unavailability of Delivery Network Upgrades. The Commission

⁶⁰ Exhibit No. ISO-2 (Sparks) at p. 7.

should require the CAISO to specify that when the commercial operation date is deferred solely as a result of the unavailability of Delivery Network Upgrades, the generator can interconnect as an energy-only resource and function under congestion management rules until Delivery Network Upgrades are in place.

4. *The Commission Should Require the CAISO to Accelerate the Interconnection of Generation Projects That Can Lessen or Alleviate the Need for Transmission Upgrades.* Under certain conditions, generators can alleviate, eliminate or defer the need for transmission upgrades because they provide counter-flows to prevailing transmission usage. Generators that will provide such benefits to the transmission system identified through the Phase I study process should be eligible for acceleration through the Phase II studies with early introduction into the TPP. The Commission should require the CAISO to modify Section 7.6 of the GIPR tariff to include generators that mitigate the need for Network Upgrades as an alternative class that qualifies for the accelerated study process.

D. *The Commission Should Require the CAISO to Modify the Site Exclusivity Requirement for Projects Located on Federal Land.*

Under Section 3.5.1 of the existing LGIP, a generation developer seeking to initiate an interconnection request cannot do so until it demonstrates “site control,” which means generally a sufficient ownership interest to allow it to develop the land, an option to acquire such a right, or an exclusivity or other business arrangement with an entity having development rights. The CAISO proposes to add a new “site exclusivity” requirement to initiate interconnection requests for projects located on Federal lands which would require a final, non-appealable permit.⁶¹ This extreme criterion for Federal lands was not discussed during the stakeholder process. This new condition requires the generation developer to hold “a final, non-appealable

⁶¹ See LGIP, “Master Definitions Supplement.”

permit, license or other right to use the property for the purpose of generating electric power . . .

,⁶²

The site control issue was discussed in the stakeholder process, but no proposals were discussed that would impose a permit requirement, and no comments of any Federal agency were posted on the CAISO’s GIPR website. This wholly new provision appeared in the GIPR Petition for the first time. While stakeholders were told that CAISO had discussions with the Bureau of Land Management (“BLM”) on this issue very shortly before the GIPR Petition filing, the CAISO did not comply with a commitment to stakeholders to circulate any changes resulting from those discussions for stakeholder review and comment.

Mr. Rutty explains that the CAISO added this provision to respond to concerns raised by the BLM that it alone must have the authority to determine what will constitute sufficient proof of site exclusivity on land under its jurisdiction.⁶³ BLM apparently has taken the position that only a final, non-appealable use permit is sufficient to constitute site control. There is no basis in the Federal Power Act for such a delegation of authority. The criteria in a FERC-approved tariff must be objectively verifiable, and moreover must be equitable and balanced across the board, without providing special deference to any other authority.

The CAISO’s proposed tariff provision that would require a final, non-appealable use permit for projects on Federal lands is an exceedingly difficult standard for developers to meet, is much more difficult than the standard for projects on non-Federal lands — and is, therefore, unduly discriminatory, and would likely force most developers on public land to post

⁶² *Id.*

⁶³ Exhibit No. ISO-1 (Rutty) at p. 17.

the \$250,000 deposit that is required in lieu of site control.⁶⁴ The mere fact that BLM may have asked the CAISO to adopt a heightened standard does not make it just, reasonable, or in the public interest.

At the outset, it is completely appropriate for BLM to be the sole determinant of what constitutes “site exclusivity” for BLM’s own purposes. This, however, does not mean that BLM needs to determine what constitutes “site exclusivity” for the purpose of CAISO’s interconnection process. Under CAISO’s interconnection process, “site exclusivity” serves as a milestone showing that a proposed project has progressed far enough in development such that CAISO is willing to let the project continue in the interconnection process. Since it is CAISO that needs to be satisfied about the project’s development progress, CAISO is the party that should determine what is needed to constitute “site exclusivity” for purposes of the interconnection process. The criteria that CAISO uses for all lands must be functionally equivalent, to the extent that differences between private and public lands make identical requirements an impossibility. CAISO’s determination of “site exclusivity” for purposes of its interconnection process will in no way impact BLM’s authority over matters within BLM’s jurisdiction.

In addition, the appropriate standard for determining “site exclusivity” on Federal land for purposes of CAISO’s interconnection process should be substantially consistent with the standard for determining “site exclusivity” on non-Federal land. The most significant problem with BLM’s definition is that it would require a developer to have completed all of its environmental analyses and have acquired its land-use permit before “site exclusivity” is

⁶⁴ The Commission was concerned with precisely such delays in Order No. 2003 when it ruled that developers should have the option of posting a \$10,000 deposit in lieu of demonstrating site control. Order No. 2003 at P 100.

established. Permitting a project on Federal (and non-Federal) land can be a costly and time consuming process, and could delay progress towards interconnection service for, literally, years (assuming that developers would even be willing to progress with environmental studies and permit processes in the absence of any information concerning the status of possible interconnection service). For projects on non-Federal land, a project developer need not even have applied for its land-use permit or commenced any environmental analysis to establish “site exclusivity.”

Stepping back to the fundamental purpose of the GIPR and of the site exclusivity provision, it is apparent that what the CAISO is trying to obtain is assurance that the developer has exclusive rights to the project site relative to other project developers or potential users of the site. That is why CAISO will accept ownership of the property, an option to acquire the property or some other exclusivity arrangement as evidence of “site exclusivity” in connection with non-Federal lands. These rights mean that no one else can develop a project on the site that the applicant is relying on for the project underlying its interconnection request. CAISO is not relying on the definition of “site exclusivity” for assurance that the developer has progressed in any way with its environmental analysis or that the project has obtained, or even can obtain, its land use permits. This is clear because CAISO will not have this assurance through establishing that the developer has an ownership interest, an option, or some other exclusivity arrangement in connection with non-Federal land. The same “site exclusivity” principle that applies to non-Federal land is what should govern the meaning of “site exclusivity” for Federal land.

Fortunately, it is not difficult to establish a definition of “site exclusivity” for Federal land that mirrors the “site exclusivity” principle applicable to non-Federal land. BLM’s own requirements provide that wind projects need only have an accepted application for a “Type

II” right-of-way, which provides for a right to install various facilities to measure wind speeds and an option to develop the land. Under the BLM’s policy applicable to wind generation, a Type II right-of-way grants the applicant an exclusive right to use the land to develop wind energy projects for three years.⁶⁵

Right-of-Way Grant for a Wind Energy Site Testing and Monitoring Project Area: A right-of-way grant (Form 2800-14) that includes provisions for renewal beyond the 3-year term (43 CFR 2807.22) will be used to authorize wind energy site testing and monitoring facilities for a project area. The holder of the site testing and monitoring right-of-way grant retains an interest in the site testing and monitoring project area, but will be required to submit a separate right-of-way application (43 CFR 2807.20) and POD to the BLM for review, analysis, and separate approval for any future wind energy development. ***The interest retained by the holder of the site testing and monitoring right-of-way grant is only an interest to preclude other wind energy right-of-way applications during the 3-year term of the grant. The lands within the grant area will not be available for other wind energy right-of-way applications.*** The holder of the site testing and monitoring right-of-way grant for a project area establishes no right to development and is required to submit a separate right-of-way application for wind energy development to the BLM for analysis, review, and decision. The BLM retains the right to authorize other compatible uses of the public lands. The lands involved in the site testing and monitoring right-of-way grant for a project area will be defined by aliquot land descriptions and be configured to involve a reasonable amount of land that may support a possible right-of-way application for a wind energy development project in the future.

For other types of projects, the appropriate concept is that a right-of-way application (e.g., via BLM Form 299) has been accepted, which establishes the same “site exclusivity” as a wind project Type II application.

The Commission, therefore, should reject the CAISO’s proposal to require generation developers to present a final BLM use permit at the time of their interconnection request as a condition to moving forward into the study process. The Commission should instead

⁶⁵http://www.blm.gov/wo/st/en/info/regulations/Instruction_Memos_and_Bulletins/national_instruction/2006/2006-216.html

require the CAISO to modify its site exclusivity provision to allow BLM's acceptance of the interconnection customer's application for a Type II right-of-way, for wind resources, or BLM's acceptance of a right-of-way application for non-wind resources, to satisfy the "site exclusivity" condition. This can be done by using the following language in lieu of the current CAISO proposed language:

For public land, including that controlled or managed by any federal, state or local agency, the Interconnection Customer must have an accepted application for a right-of-way for the proposed Generating Facility site or, in the case of a wind project, an accepted application for a Type II or Type III right-of-way.

E. The Commission Should Require the CAISO to Apply Study Deposits to Studies of Future Interconnection Requests Submitted by the Same Interconnection Customer for the Same Project.

The CAISO proposes that interconnection customers should forfeit their \$250,000 study deposits if their interconnection requests are withdrawn, or deemed to be withdrawn, more than 30 calendar days after the Results Meeting for the Phase I interconnection study.⁶⁶ The CAISO does not specify what it will do with the unused balance of the study deposit. The CAISO's proposal to keep unused study deposits is not just and reasonable. Instead, the Commission should require the CAISO to apply study deposits for withdrawn applications to future applications by the same developer to interconnect the same project at the same site within two years, less verifiable out-of-pocket costs of the CAISO and the affected PTO.

F. The Commission Should Reject the CAISO's Proposal to Apply Forfeited Interconnection Financial Security to the Grid Management Charge As Unsupported.

During the GIPR process the CAISO proposed to credit forfeited interconnection financial security to the TAC on the theory that the security is posted to facilitate the construction of transmission, the TAC recoups the costs of the transmission system and there is,

⁶⁶ LGIP § 3.5.1.2(d).

therefore, a logical linkage between the two. The GIPR Petition, however, proposes to credit forfeited interconnection security deposits to Scheduling Coordinators in proportion to their contributions to the grid management charge.⁶⁷ The CAISO did not support this proposal or explain its change, except to note that it rejected a separate, alternative suggestion to give the affected interconnection customer transmission congestion revenue rights because surrendered security deposits will not be used to build transmission. There is, however, no clear rationale to crediting the surrendered deposits to the Scheduling Coordinators either. Absent a clearly articulated rationale, the Commission should reject the CAISO's proposed treatment of forfeited interconnection financial security deposits.

⁶⁷ GIPR Petition at p. 28.

VI. Conclusion

Wherefore, for the foregoing reasons, the Wind and Solar Parties identified above respectfully (1) move for leave to intervene individually in the captioned proceeding, and (2) protest the CAISO's GIPR Petition for the reasons stated above.

Respectfully submitted,



Raymond B. Wuslich
Winston & Strawn, LLP
1700 K Street, N.W.
Washington, D.C. 20006
(202) 282-5725
rwuslich@winston.com

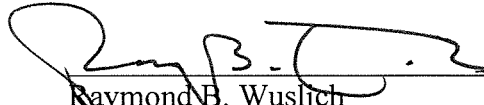
Joseph M. Karp
Winston & Strawn, LLP
101 California Street
Suite 3900
San Francisco, CA 94111
(415) 591-1529
jkarp@winston.com

Dated: August 18, 2008

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on the parties designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C., this 18th day of August, 2008.


Raymond B. Wuslich