

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

Order Instituting Investigation on the Commission's Own Motion to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.

Investigation 08-03-010
Filed March 17, 2008

Order Instituting Rulemaking on the Commission's Own Motion to actively promote the development of transmission infrastructure to provide access to renewable energy resources for California.

Rulemaking 08-03-009
Filed March 17, 2008

REPLY BRIEF OF THE CALIFORNIA WIND ENERGY ASSOCIATION

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I. INTRODUCTION

Pursuant to the *Scoping Memo and Ruling of Assigned Commissioner* issued January 12, 2010 ("Scoping Memo"), the California Wind Energy Association ("CalWEA") respectfully submits this Reply Brief on the issues identified in the Scoping Memo. CalWEA actively participated in all the earlier phases of this proceeding¹ and commends the California Public Utilities Commission ("Commission") for its continuing efforts to streamline development of the transmission assets desperately needed to facilitate renewable development in California.

Based on the issues set forth in the Scoping Memo and the briefs filed by other parties to this proceeding, CalWEA respectfully recommends that the Commission should (1) be pro-active in applying Public Utilities Code Section 399.2.5 ("Section 399.2.5"), and (2) designate each of the

¹ See Comments of the California Wind Energy Association and Concentrated Solar Power Companies (April 16, 2008) ("Opening Comments").

Competitive Renewable Energy Zones (“CREZs”) identified in the Renewable Energy Transmission Initiative (“RETI”) process as “Energy Resource Areas” for purposes of the CAISO tariff.

Each recommendation is described further below.

II. ARGUMENT

A. The Commission Should Be Pro-Active In Applying Public Utilities Code Section 399.2.5

As CalWEA noted in its Opening Comments, the Commission should be more pro-active in its implementation of Section 399.2.5, which permits the Commission to provide cost recovery assurance to utilities that finance transmission projects that facilitate renewables development.² CalWEA has long identified the state's lack of transmission infrastructure as the primary reason why California will achieve its 20%-by-2010 renewable energy goal several years late. The cost recovery assurance offered by Section 399.2.5 is an important tool to be leveraged in the Commission's on-going efforts to facilitate renewable development. To be meaningful, however, this cost recovery assurance must (1) be available on a timely basis and (2) carry a strong degree of certainty of recovery.

- i. To ensure that Section 399.2.5 recovery is available on a timely basis, the Commission should establish a rebuttable presumption of need for transmission projects that are identified through "least regrets" transmission planning or LGIP studies for renewable generators.**

Before responding specifically to briefs filed by other parties to this proceeding, CalWEA offers the following description of the general approach that should be used to determine Section 399.2.5 cost recovery eligibility. The Commission should establish a rebuttable presumption that a given transmission project is necessary for renewable development for purposes of eligibility for

² Opening Comments at 7-8.

Section 399.2.5 cost recovery if the transmission project is identified through either (1) a "least regrets" transmission planning process intended to proactively expand the grid to enable interconnection of renewable resources prior to such resources becoming certain, as described below, or (2) the interconnection studies performed through the CAISO's Large Generator Interconnection Process ("LGIP") and reflected in a renewable project's Large Generator Interconnection Agreement ("LGIA").

CalWEA has consistently advocated that the appropriate approach to identifying priority transmission upgrades needed to support achievement of California's ambitious RPS goals is a proactive "least regrets" transmission plan intended to enable the interconnection of renewable resources prior to such resources achieving certainty. A "least regrets" transmission plan is one that is developed by performing transmission planning studies for multiple renewable development scenarios and then selecting a core set of transmission upgrades common to most of those scenarios. The development of a "least regrets" transmission plan consists of the following broad steps:

Step 1 - development of several renewable resource development scenarios (base cases). Each scenario would correspond to one renewable resource development outcome that could meet the state's "net short" renewable generation figure.

Step 2 – development of a renewable transmission plan for each of the renewable resource development scenarios. This step calls for the CAISO, the PTOs, and ideally the POUs to develop a comprehensive transmission plan for each of the renewable resource development scenarios developed in Step 1.

Step 3 – development of the least regrets renewable transmission plan, which should include all transmission components that are common to at least 80% of the renewable transmission plans

developed in Step 2, and all 230 kV and higher voltage transmission components that are common to at least 50% of renewable transmission plans developed in Step 2.

The "least regrets" approach provides increased assurance that the identified transmission facilities will actually be needed for those renewable projects that ultimately achieve operation. Because this approach identifies facilities that are needed under multiple renewable development scenarios, the need for the transmission facilities is not tied to the ultimate success or failure of a particular project or group of projects. This diversity reduces the risk that the transmission projects will be unused, or under-used, and renders the identified transmission projects more likely to survive challenges by adverse interests. For example, both DRA and the California Farm Bureau argue that the results of RETI are not sufficiently well-defined to justify Section 399.2.5 cost recovery.³ To the extent that RETI reflects the "least regrets" approach describe above, however, the concerns of DRA and the California Farm Bureau would be misplaced because the transmission projects identified through RETI would be necessary irrespective of the uncertainty associated with specific projects, locations, or technology types studied. As such, transmission projects identified through a process using this approach should be entitled to a presumption of need for purposes of determining Section 399.2.5 eligibility.

Likewise, transmission upgrades that are identified in an executed LGIA for a renewable generator have already been determined to be necessary for the development of that renewable generator through the applicable interconnection studies. Accordingly, transmission upgrades identified in the LGIA for a renewable generator should also be entitled to a presumption of need for purposes of determining Section 399.2.5 eligibility.

³ See Brief of the California Farm Bureau Federation (February 17, 2010) at 4-5; Opening Brief of the Division of Ratepayer Advocates (February 17, 2010) at 2-3.

Based on the principles described above and CalWEA's review of the briefs filed by other parties to this proceeding, CalWEA provides the following additional comments on eligibility for Section 399.2.5 cost recovery.

First, as noted in the opening brief of Pacificcorp,⁴ the Commission should be clear that Section 399.2.5 cost recovery is not limited to transmission projects that serve CREZs or are identified through transmission-planning processes such as RETI or RETPP. While CalWEA supports the grant of a rebuttable presumption of need to transmission projects identified through planning processes described above, which may include RETI and RETPP,⁵ this should not limit the universe of transmission projects eligible for Section 399.2.5 cost recovery. A rebuttable presumption of need should facilitate timely access to the benefits of Section 399.2.5; it should not preclude access to the benefits of Section 399.2.5 for other transmission projects that are still capable of meeting the eligibility requirements of Section 399.2.5 and related Commission decisions.

Second, for the same reasons, the Commission should reject the Division of Ratepayer Advocates' ("DRA") proposal to revise the second prong of the three-prong test for determination of the need for a transmission project under Decision 07-03-012 because DRA's proposal would limit the benefits of Section 399.2.5 to only those transmission projects "located in the CREZs identified by RETI or similar stakeholder processes."⁶ DRA's approach to Section 399.2.5 eligibility is unnecessarily narrow and risks the exclusion of transmission projects that could facilitate

⁴ Opening Brief of Pacificcorp (February 17, 2010) at 4.

⁵ As described above, both DRA and the California Farm Bureau argue that the results of RETI are not sufficient to justify Section 399.2.5 cost recovery. *See* Brief of the California Farm Bureau Federation (February 17, 2010) at 4-5; Opening Brief of the Division of Ratepayer Advocates (February 17, 2010) at 2-3. To the extent that RETI, RETPP, or any other renewable energy transmission planning process reflect the "least regrets" approach describe above, the transmission projects identified through such process should be eligible for a presumption of need as set forth in this Reply Brief.

⁶ Opening Brief of the Division of Ratepayer Advocates (February 17, 2010) at 8.

achievement of California's RPS goals simply because they were not identified in a particular process.

Finally, the Commission should heed the warning provided by Pacific Gas and Electric Company ("PG&E") that "[s]ome lines, namely RETI foundation lines that are necessary to facilitate achievement of RPS goals, might not meet the second prong [of the three-prong test for need set forth in D. 07-03-012] if read too strictly."⁷ The second prong of the three-prong test set forth by the Commission in Decision 07-03-012 requires a showing "that the area within the line's reach would play a critical role in meeting the RPS goals."⁸ As PG&E notes, this could be a difficult showing to make in respect of an upgrade to the high voltage transmission backbone system, which may enable additional renewable generation to be integrated into the grid even if the geographic location in which the renewable generation interconnects is not physically "within the line's reach." Indeed, many of the transmission upgrades that would likely be identified through a "least regrets" transmission plan would be on the transmission backbone system because these upgrades would facilitate access to the grid by the largest number of potential renewable generators. The Commission should clarify that it is a transmission project's ability to allow renewable generation to be electrically integrated into the grid, and not the physical location of the transmission project, that the Commission intends to consider in making a determination of need.

- ii. **To provide a strong degree of certainty of recovery of pre-construction development costs for projects found eligible for Section 399.2.5 recovery, the Commission should provide clear guidance that recovery of such costs is guaranteed, subject to a reasonableness review of the amount expended.**

Section 399.2.5 is often described colloquially as providing backstop cost recovery. Public Utilities Code Section 399.2.5(b)(4) instructs the Commission to allow recovery in retail rates of

⁷ Pacific Gas and Electric Company's Opening Brief (February 17, 2010) at 9.

⁸ D. 07-03-012 at 16.

costs incurred to construct a transmission project that is found to be eligible for recovery pursuant to Section 399.2.5(a), provided that (1) such costs are not approved by the Federal Energy Regulatory Commission ("FERC") for recovery in wholesale transmission rates and (2) the Commission determines that the costs of the project were "prudently incurred." DRA argues that 399.2.5 eligibility does not guarantee approval for cost recovery, prudently incurred or not.⁹ Such an interpretation of statute would render it meaningless. If there is any risk that the Commission could find that a given transmission project is eligible for Section 399.2.5 recovery, but subsequently deny any recovery of costs incurred to develop the transmission project, as DRA suggests, then Section 399.2.5 provides no assurance whatsoever and fails to achieve the legislature's goal of promoting renewable energy development.

A more logical reading of the statute is that recovery of the costs incurred for a project determined to be eligible under Section 399.2.5(a) is automatic, subject to a subsequent reasonableness review of the amount expended. As such, CalWEA supports PG&E's statement that "[o]nce determined to be eligible under section 399.2.5, any such prudently-incurred costs would then be recovered in retail rates even if the studies or permit process result in a determination that the project should not be constructed."¹⁰ Likewise, CalWEA also supports the Large-scale Solar Association's ("LSA") statement that the only costs that should be at risk for disallowance are those resulting from "any delta between the price paid for any . . . item and the reasonable cost of that item."¹¹

⁹ Opening Brief of the Division of Ratepayer Advocates (February 17, 2010) at 5.

¹⁰ Pacific Gas and Electric Company's Opening Brief (February 17, 2010) at 8. CalWEA also supports PG&E's statement that the costs to acquire land within a state designated transmission corridor for future transmission development should be recoverable under Section 399.2.5. *See* Pacific Gas and Electric Company's Opening Brief (February 17, 2010) at 6. However, PG&E and the other utilities must not be permitted to hold this land without development for an unreasonable amount of time.

¹¹ Brief of the Large-scale Solar Association (February 17, 2010) at 5.

Accordingly, the Commission should provide clear guidance that recovery of costs incurred to develop a transmission project determined to be eligible for Section 399.2.5 recovery is guaranteed, subject to a reasonableness review of only the amount expended.

B. The Commission Should Designate Each of the CREZs Identified By RETI As Energy Resource Areas For Purposes of the CAISO Tariff

The Scoping Memo notes that the CAISO tariff requires the Commission and the California Energy Commission ("CEC") to designate "Energy Resource Areas" in order to implement the Location Constrained Interconnection Facilities ("LCRIF") provisions of the CAISO tariff.¹² The CAISO tariff defines Energy Resource Areas, in part, as geographic regions certified by the Commission and the CEC as an area in which multiple renewable energy generators could be located.¹³

The Commission should designate each of the CREZs identified by RETI as Energy Resource Areas for purposes of the CAISO tariff. The RETI CREZs were selected with stakeholder input after detailed and expensive analysis by RETI's consultant over a period of two years. This analysis resulted in a substantial paring down of the universe of potential renewable resource development areas in California and in the West based on their environmental and/or economic characteristics. This process systematically excluded resource development areas that were deemed to be less desirable or less probable for development based on known environmental factors as well as the objections of RETI's environmental stakeholders. The process also excluded development areas based on poor economics, high land parcelization, and lack of any showing of commercial interest. While the CREZs were subsequently ranked, those rankings are subject to substantial uncertainties, such that development in any of the identified CREZs may prove to be

¹² Scoping Memo at 6.

¹³ CAISO Tariff Appendix A.

environmentally and economically feasible after detailed, site-specific investigation.¹⁴ As such, the Commission should designate each of the CREZs as an Energy Resource Area.

III. CONCLUSION

For the foregoing reasons, the Commission should adopt the recommendations set forth in these comments.

Respectfully submitted,

A handwritten signature in cursive script that reads "Joe Karp" followed by the initials "MS" in a smaller, more formal script. The signature is written over a horizontal line.

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¹⁴ See, e.g., the RETI Phase 1B Final Report (January 2009), Figure 5-6 on p. 5-21, and text on p. 5-22. (Available at: <http://www.energy.ca.gov/2008publications/RETI-1000-2008-003/RETI-1000-2008-003-F.PDF>.)

Certificate of Service

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

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on all known parties to R.08-03-009 and I.08-03-010 by sending a copy via electronic mail and by mailing a properly addressed copy by first-class mail with postage prepaid to each party named in the official service list without an electronic mail address.

Executed on March 4, 2010, at San Francisco, California.

/s/ Marcus Hidalgo
Marcus Hidalgo