

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

California Independent System Operator Corp.)

Docket No. ER10-1401-000

**MOTION TO INTERVENE AND LIMITED PROTEST OF
CALIFORNIA 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, the California Wind Energy Association (“CalWEA”) respectfully requests leave to intervene and submits this limited protest to the filing by the California Independent System Operator Corp. (“CAISO”) filed in the captioned proceeding on June 4, 2010, to implement CAISO’s proposed Revised Transmission Planning Process (“RTPP”).

Among other things, the aim of the RTPP is to (1) apply a “least-regrets” planning approach to identify and develop a new category of “policy-driven upgrades” to the transmission grid expected to be necessary to meet California’s Renewables Portfolio Standards (“RPS”) requirement to serve 33% of the state’s electricity needs using renewable resources by 2020, (2) revise the obligations to construct and own policy-driven and economic upgrades, (3) harmonize in future planning years the obligations with respect to upgrades that arise through the large generator interconnection process (“LGIP”) and the RTPP, and (4) permit non-incumbent third parties to construct and own RTPP and LGIP upgrades under certain circumstances. CalWEA strongly supports the thrust of CAISO’s revisions to the transmission planning provisions of its tariff, but we protest certain elements to request that the Commission require limited changes or clarifications to make the overall plan just and reasonable, and compliant with applicable law. In further support, CalWEA shows as follows:

I. PERSONS TO BE SERVED

In addition to the undersigned counsel for CalWEA, persons who should receive communications in connection with this limited protest include the following:

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II. BACKGROUND

CAISO's filing is the culmination of many months of stakeholder meetings and public comments on the CAISO's initiative to implement a comprehensive change to the way that transmission is planned and built in California. The key drivers for this reevaluation have been California's progressive 33%-by-2020 RPS policy, and the transmission planning scenarios that emerged from stakeholder discussions under California's Renewable Energy Transmission Initiative ("RETI"). The RETI process sought to identify those regions in California that are the most attractive for renewable energy development, and to begin the evaluation of transmission solutions that will be needed to deliver energy from those regions as generation development progresses. A key economic underpinning for this whole process was the recognition that the massive investment in new transmission infrastructure needed to integrate renewable energy from remote renewable energy zones would likely be beyond the financial capacity of many, if not all, renewable energy developers, and that costs for needed transmission development, which will ultimately be borne by the ratepayers, could be lowered using a regional least-regrets planning approach, instead of piecemeal planning for each generation project or cluster.

The RTPP stakeholder process was a natural and essential progression of RETI because of the CAISO's central role in transmission planning under its open access transmission tariff ("OATT") on file with the Commission. As the CAISO states in its filing, however, transmission planning under the OATT is geared toward modeling the transmission system to identify and provide a vehicle to construct transmission upgrades to preserve reliability, or to alleviate congestion and lower the cost of delivered power. Such a planning focus may not identify the high voltage transmission solutions needed to integrate remote renewable generating resources with load centers that may be hundreds of miles away. While the LGIP tariff is intended to identify the necessary transmission solutions to integrate the specific generation resources that have applied to interconnect to the CAISO controlled grid, the drawback of the LGIP is that it places the financing burden for the new network transmission upgrades on renewable developers who may not be able to bear the financing burden for the hundreds of millions of dollars in new transmission investment required to deliver their generation output to consumers. In addition, separate, stand-alone development of transmission for each LGIP cluster would likely be more costly and less efficient than a larger, regional approach that considers other system needs as well.

These circumstances have created a conundrum. As a matter of state policy, California has required its load serving entities to achieve a minimum 33% renewable portfolio target by 2020. The renewable generators being developed to meet this need require substantial transmission investments, which the developers by and large are not geared to finance. While Participating Transmission Owners ("PTOs") have the option to voluntarily upfront finance high voltage transmission upgrades identified under the LGIP, as a practical matter they are unwilling to do so without assured cost recovery, which is only possible through incentive rate filings with

the Commission under the criteria established in Order No. 679,¹ or rate tariffs where they risk cost disallowance if transmission projects are not fully utilized.²

Against this backdrop, the CAISO's RTPP filing proposes to memorialize in its OATT the planning criteria that are necessary to identify, plan for, and assign the responsibility to construct "policy-driven" transmission upgrades that further California's RPS targets while lifting the burden from renewable and other generation developers to finance those upgrades. The CAISO's plan seeks to harmonize the planning for policy-driven upgrades with the LGIP and traditional reliability- and economic-based planning into a single, Order No. 890-compliant transmission planning process. The elements of that process are explained in detail in the CAISO's filing.

As the CAISO states, the key thread that weaves the evaluation of policy-driven upgrades into the overall planning process is the "least-regrets" planning concept.³ Indeed, CAISO acknowledges that the least-regrets approach is the key analytic tool to minimize the risk of over-building under-utilized transmission capacity.

CalWEA initially proposed, and helped the CAISO to develop, the least-regrets planning principles as a means to identify policy-driven transmission upgrades which might

¹ *Promoting Transmission Investment Through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007). Even if a transmission owner makes such a filing, risks remain because the Commission may determine that the utility has not satisfactorily made its case, and conditionally approve the incentive. *See Southern California Edison*, 129 FERC ¶ 61,246 (2009). Such a result simply leads to further uncertainty and delays.

² PTOs with stated rates must file, after the fact, to recover their costs in Section 205 rate proceedings, thus facing a regulatory lag in cost recovery in addition to the risk that some or all of their investment may be disallowed on prudence grounds, or because the lines are not "used and useful" for utility service. Even if PTOs have formula transmission rates, they may experience a regulatory lag (depending on the type of formula), and still risk challenges to the prudence and used-and-usefulness of their investments.

³ Ltr. of 6/4/2010 from A. Ivancovich and S. Atkins to K. Bose, at p. 5, Docket No. ER10-1401-000 ("Transmittal Letter").

otherwise not be identified using traditional reliability or congestion reduction metrics. Simply put, the least-regrets approach entails an evaluation of multiple possible development scenarios (given an unpredictable renewable resource development picture) to identify a set of transmission upgrades that will facilitate achievement of California’s renewable energy goals, regardless of the actual development pattern that emerges. The purpose of the analysis is to identify the transmission elements that are common to most, if not all, such scenarios, so as to reduce the risk of over-building transmission and ensure that ratepayers are not saddled with excessive transmission costs while at the same time ensuring the construction and ratebase cost recovery of those major transmission elements that are clearly needed to further the state’s renewable energy policy goals. Indeed, as core transmission elements, policy-driven upgrades identified through the multi-scenario planning analysis should serve multiple transmission system needs and, therefore, will unquestionably be “used and useful” for utility service. As discussed below, CalWEA strongly supports using the least-regrets approach to identify transmission upgrades under the RTPP, but protests the filing because CAISO has not incorporated this approach into its tariff, and we request the Commission to require CAISO to do so.

Additionally, the CAISO does not state that the California Transmission Planning Group (“CTPG”)—which CAISO has relied upon to craft the initial statewide conceptual transmission plan—has used an approach consistent with the least-regrets planning principles in developing its recommendations. This is a critical point, because the CAISO has no alternative to the CTPG’s plan for the 2010/2011 planning year—where much, if not all, of the plan will unfold. This also causes us to have considerable concern about the extent to which the CAISO

intends to rely on the CTPG to fulfill the CAISO's tariff planning obligations, which we discuss below.

In addition, among other things, the CAISO's filing revises the obligations to construct and own policy-driven and economic upgrades, seeks to harmonize obligations with respect to upgrades that arise through the LGIP and the RTPP, and permits non-incumbent third parties to own and construct RTPP upgrades under certain circumstances. CalWEA mostly supports these reforms as well, but we believe that these, too, require clarification or revision in certain respects.

In particular, the Commission should require CAISO to specify that entities selected to construct and own policy-driven or economic upgrades must also bear financing responsibility for them, including the up-front financing otherwise required from generators through financial security postings. The Commission should further direct CAISO to clarify the relationship between RTPP and LGIP upgrades by (1) requiring CAISO to harmonize the LGIP tariff with the final RTPP tariff, (2) clarifying incumbent PTO responsibilities to finance, construct and own LGIP upgrades that provide regional benefits to avoid the potential for gaming outcomes between the LGIP and RTPP and to provide certainty for the market, and (3) allowing third parties to finance, construct and own all LGIP upgrades that PTOs choose not to upfront finance. We will discuss these points, and other modifications to the RTPP that we believe are necessary, in more detail below.

III. MOTION TO INTERVENE

CalWEA is a non-profit corporation supported by over 25 members of the wind energy industry, including turbine manufacturers, project developers actively involved in developing wind projects to help meet California's RPS program, existing project owners,

component manufacturers, support contractors, and others. CalWEA seeks to encourage and support the production of electricity through the use of wind generators, and actively represents the interests of its members in various proceedings before regulatory agencies and the CAISO.

The business interests of CalWEA's members are significantly affected by regulatory policies such as California's RPS requirements, the cost of, and access to, transmission facilities, and the requirements for interconnecting new generating facilities to the transmission system. CalWEA was, therefore, an active participant on behalf of its members in the CAISO's stakeholder process that culminated in the filing of its RTPP tariff revisions on June 4, 2010. As such, CalWEA and its members may be directly affected by the outcome of this proceeding. The interests of CalWEA and its members are not adequately represented by any other party. Accordingly, granting CalWEA's timely motion to intervene in this proceeding is in the public interest.

IV. PROTEST

A. The Commission Should Direct CAISO to Explicitly Incorporate the Least-Regrets Planning Principles and Method into the RTPP Tariff.

As discussed above, the lynchpin of the CAISO's RTPP filing is the incorporation of specific planning for "policy-driven" transmission upgrades needed to meet state or federal policy requirements for renewable energy.⁴ As CAISO states, these types of upgrades "will require significant new transmission to be developed that is not covered by the existing transmission categories and approval criteria in the tariff."⁵ However, given "the considerable uncertainty that exists regarding key external conditions that will materially affect a determination of what transmission is needed," CAISO states that it "will identify the Category 1

⁴ Transmittal Letter at p. 4.

⁵ *Id.*

policy-driven elements of the [RTPP] based on a ‘least regrets’ evaluation of alternative generation development scenarios in order to minimize the risk of building under-utilized transmission capacity.”⁶

We are heartened that CAISO embraced this least regrets approach as urged by CalWEA in its comments and during numerous stakeholder conferences and discussions, and we strongly support it. Indeed, the May 13, 2010, Memorandum of Understanding between the CAISO and the California Public Utilities Commission (“CPUC”) attached to CAISO’s filing requires CAISO to use the least-regrets multi-scenario modeling approach in developing the annual statewide conceptual transmission plans, which is intended to be the starting point for the transmission planning process.⁷ We nevertheless protest the filing because the CAISO has not set forth the least-regrets planning criteria and principles in its tariff, as we believe is required under the Commission’s “transparency” principle. The CAISO seems to have adopted the “least regrets” label, but not the methodology.

The CAISO seems to envision that the “least-regrets” method is captured by ten general factors that the CAISO will take into account in its transmission planning.⁸ While the factors the CAISO lists are useful for identifying the scenarios that should be modeled for planning purposes, those factors do not set forth the least-regrets analysis that the CAISO will use to determine what transmission elements are ultimately identified for inclusion in the comprehensive transmission plan. As mentioned above, the least-regrets analysis is

⁶ *Id.* at p. 5.

⁷ *Id.*, Attachment C at 1.

⁸ RTPP Tariff § 24.4.6.6. The CAISO states that “[t]he criteria to be used for this [least regrets] evaluation are identified in Section 24.4.6.6 of the revised tariff.” Transmittal Letter at p. 37.

fundamentally a series of engineering sensitivity analyses to identify which common set of transmission elements are needed in most, if not all, such scenarios.

Simply identifying the potential scenarios is not good enough, because there is no clear methodology in the proposed tariff language to develop potential transmission solutions by integrating the generation development scenarios that emerge from Section 24.4.6.6. This deficiency becomes readily apparent, because nowhere in the CAISO's filing does it explain how the factors it proposes to use to identify the modeling scenarios will actually translate into efficient "least regrets" transmission planning and development. The range of potential generation development scenarios could just as easily result in over-building, perhaps even significant over-building, of transmission facilities as multiple proposals to integrate the various scenarios emerge from the transmission planning process. It can also readily lead to under-building of transmission needed to interconnect and integrate the needed renewable resources.⁹

The CAISO's unified planning assumptions contemplate "appropriate sensitivity analyses," to be used "where applicable,"¹⁰ without explaining when such analyses will be "appropriate" or when they will be "applicable." Given the CAISO's abundant discretion in weighing the factors in Section 24.4.6.6, sensitivity analyses to screen potential solutions is imperative, particularly with respect to "policy-driven" upgrades which may not otherwise be driven by objective reliability or economic benefits criteria.¹¹ This is the whole point of the

⁹ In this regard, least-regrets planning can be thought of as a critical tool for "right sizing" the transmission system by enabling transmission planners to identify both those transmission elements that may be under-utilized, as well as circumstances when the plan is insufficient to meet reasonably foreseeable system needs for reliability, economic and policy-driven upgrades.

¹⁰ RTPP Tariff § 24.3.2(g).

¹¹ Under traditional transmission planning, the utility identifies least-cost transmission solutions to relieve thermal overloads or stability violations of North American Electric Reliability Corporation ("NERC") reliability criteria. Alternatively, when there is insufficient transmission capacity to allow consumers to access the most economic energy supplies, the transmission

least-regrets multi-scenario modeling approach, yet CAISO's filing does not explain how it plans to use least-regrets modeling to place meaningful limits on the scope of new transmission construction. Indeed, the CAISO seems to have confused the process to identify modeling scenarios with the modeling itself.

Finally, while CAISO seems to contemplate using the least-regrets approach to identify transmission upgrades under both Category 1 and Category 2, it discusses application of the least-regrets method only with respect to Category 2 upgrades, although it seems to contemplate applying the method to Category 1 upgrades as well.¹² Ultimately, all policy-driven upgrades must be tested against the least-regrets multi-scenario approach. CAISO recognizes that it must use the least-regrets method to decide which Category 2 upgrades should be moved into Category 1, but does not explain how it will decide that certain upgrades should automatically be classified in Category 1. This ambiguity is another example of how potentially unneeded or excessive transmission projects may slip through the CAISO's RTPP planning criteria, while potentially required transmission upgrades might not be identified.

CAISO must address these ambiguities and provide more clarity in its tariff. Order No. 890's "transparency principle" requires utility tariffs to spell out "the basic methodology, criteria, and processes used to develop transmission plans . . ." and to include "benchmarks and a process that is open and transparent." *California Indep. Sys. Operator Corp.*,

planner can identify transmission solutions and decide whether the benefit in terms of energy and production cost savings outweigh the cost of building the transmission. Such objective tests are not directly applicable to policy-driven upgrades to integrate renewable energy supplies into a transmission grid that already meets NERC reliability criteria, particularly if the cost of the renewable energy exceeds the cost of energy produced using other fuels.

¹² See *supra* n.7 and accompanying text. The Transmittal Letter makes explicit reference to using least-regrets modeling during Phase 2 to test whether policy-driven upgrades should be approved as Category 1 upgrades, Transmittal Letter at p. 35, but nowhere does it offer a rationale for deferring this foundational method to Phase 2, or the 2011/2012 planning cycle. Yet, on the same page, the CAISO seems to recognize that least-regrets planning is part and parcel of the Category 1 analysis.

123 FERC ¶ 61,283, at PP 40, 67 (2008). Performing “appropriate sensitivity analyses” under the unified planning assumptions without providing some indication of when they are appropriate does not meet this standard. Likewise, the CAISO’s ten factors do not in fact rest on the least-regrets multi-scenario evaluation method and do not include a “sufficient level of detail for customers and other stakeholders to understand how the CAISO will perform transmission planning” *Id.* at P 85.

Indeed, the CAISO’s planning criteria give it nearly unbounded discretion to select transmission elements to meet state policy-driven upgrade requests, and could simply be used in after-the-fact rationalizing of pre-selected upgrades, rather than using objective, engineering-based, criteria to identify those elements that are truly needed. Such an outcome is inconsistent with the fundamental objective to guard against over-building, which CAISO agrees must be a core planning principle.

Any other approach risks running afoul of the Commission’s long-settled cost-causation ratemaking principle based on substantial evidence in the record, to which the courts have insisted that the Commission adhere as a pre-condition to permitting the costs of transmission upgrades to be recovered in rates.¹³ The Commission recently recognized this core concern in establishing back-stop cost allocation criteria in its proposed transmission planning and cost allocation notice of proposed rulemaking.¹⁴

The CAISO should explicitly incorporate the least regrets multi-scenario analysis as the governing principle for policy-driven upgrades as its Transmittal Letter seems to intend.

¹³ *Illinois Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009); *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004); *Transcontinental Gas Pipe Line Corp.*, 112 FERC ¶ 61,170, at p. 61,924-25 (2005).

¹⁴ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, 131 FERC ¶ 61,253, at PP 139-47 (2010) (“Transmission Planning NOPR”).

The tariff should state that, in conducting the least-regrets analysis, the CAISO will identify the minimum transmission elements that are common to all or virtually all scenarios identified under Section 24.4.6.6, and apply the method to both Category 1 and Category 2 upgrades. While the ten factors it lists in that section may help the CAISO to determine where to begin its inquiry, those factors do not properly define the final elements of the transmission plan.¹⁵ Therefore, we recommend that the Commission direct the CAISO to explicitly incorporate the least-regrets multi-scenario transmission planning criteria as a core requirement of the CAISO's process to identify policy-driven upgrades and do so in a cooperative stakeholder-driven process.

B. The Commission Should Direct the CAISO to Test the CTPG's Statewide Plan Under the Least-Regrets Planning Method.

The CAISO is apparently worried that its filing may be vulnerable to a challenge that it has excessively delegated its tariff planning responsibility to the CTPG, and so offers a lengthy defense of the decision in its Transmittal Letter.¹⁶ While CAISO emphasizes that it is not bound by the CTPG's plan, argues that CTPG's exclusion of stakeholders should not trouble the Commission, and states that CTPG's failure to follow Order No. 890 compliant procedures is not a fatal flaw, these arguments miss the point: the CAISO has left itself no alternative to the CTPG's plan for the 2010/2011 planning year and so is forced to rely on a plan that on its face does not meet the Commission's requirements, and there is no guarantee that it will not do the same in future years.

We do not quarrel with the CAISO's right to look to the planning recommendations of individual stakeholders or self-selected groups of stakeholders, as such. In fact, we encourage it. It is, however, quite a different matter when the CAISO's only

¹⁵ This is an important concern with the CTPG's conceptual state-wide plan which, it appears, the CAISO has no alternative but to accept for the 2010/2011 planning year.

¹⁶ Transmittal Letter at pp. 30-34.

transmission plan is the one developed by such a group. In fact, the proposed tariff language states that the CAISO is required to develop its own statewide plan,¹⁷ but the filing is clear that it will not do so this planning year—it will simply accept the CTPG’s plan.

Thus, the fact that the CTPG’s plan for the 2010/2011 planning year was developed through a non-transparent process that does not comply with Order No. 890—points the CAISO concedes in its Transmittal Letter when it tries to justify them—should be matters of serious concern to the Commission. Indeed, a matter of paramount concern is the lack of any evidence that the CTPG applied the least-regrets multi-scenario planning approach, which the CAISO acknowledges should form the foundation for the new RTPP model as discussed above. A least-regrets approach to identifying policy-driven transmission upgrades would promote competition whereas the ad-hoc selection of upgrades by members (who may be in a position to promote their preferred projects) is unduly discriminatory and does not encourage competition. Given the CAISO’s failure to explain how it screened initial Category 1 upgrades, at this juncture there appears to be considerable risk that the 2010/2011 conceptual plan has not been tested by any rigorous analysis of the true needs for the identified policy-driven upgrades.

We do not offer this criticism lightly, or for the purpose of undoing the CAISO’s filing, but rather to strengthen it. The hole we perceive in the planning process leaves the current statewide conceptual plan vulnerable to the challenges, discussed above, that the plan does not comply with the tariff, does not provide the Commission with substantial evidence to uphold the plan, and may not satisfy the basic ratemaking requirement that the transmission built under the plan will be used and useful for utility service. It would be the ultimate futile gesture if all of the CAISO’s and stakeholder efforts to craft the new RTPP are undone in a future rate proceeding or

¹⁷ RTPP Tariff § 24.1.

court challenge simply because the CAISO omitted elemental considerations from its planning process.¹⁸

Given the approach the CAISO has chosen to take, at this late date, there is little alternative to using the CTPG's conceptual state-wide plan as the starting point for the CAISO's own plan for the 2010/2011 planning year. Inasmuch as the CAISO recognizes that it ultimately has the sole responsibility for that plan, the Commission must require the CAISO to subject the CTPG's plan to the planning criteria adopted in the revised tariff, and particularly the least-regrets multi-scenario analysis. Doing so will go a long ways to rectifying the flaws we see in the process by ensuring that the CTPG's plan truly reflects statewide needs, and by developing a more robust record to support that conclusion.

C. The Commission Should Direct the CAISO to Revise RTPP Provisions Governing the Obligation to Own and Build Policy-Driven Upgrades in Several Respects.

The CAISO states that PTOs will be obligated to “construct and own” policy-driven upgrades,¹⁹ but does not state that PTOs will also be obligated to finance (up-front or otherwise) these upgrades, although this seems to be implicit because Phase 3 criteria for selecting the entity responsible for constructing these upgrades consider the entity's ability to finance the project.²⁰ Thus, the RTPP tariff creates an ambiguity concerning the critical question of financing responsibility which FERC should require CAISO to clarify. A PTO obligation to

¹⁸ Indeed, this is precisely what happened in *Illinois Commerce Comm'n. v. FERC*, 576 F.3d 470, where there was no evidence in the record to support a region-wide rolled-in cost allocation for new lines rated at 500 kV and above, which led the court to reject it.

¹⁹ Transmittal Letter at p. 7; RTPP Tariff § 24.5.2.

²⁰ Transmittal Letter at p. 8; RTPP Tariff § 24.5.2.1(c).

upfront fund RTPP-identified upgrades is fundamental to the RTPP approach. Absent such an obligation, the benefits of the RTPP will be lost.²¹

It would also be pointless to include a financial capability criteria in the Phase 3 selection process unless the CAISO intends for the selected entity to be financially responsible for the project and relieves generators of the responsibility to post financial security or otherwise fund these costs. Making clear that the selected entity will bear this responsibility will also remove the potential for commercial uncertainty which could lead to complications and delays in negotiations among affected parties and potentially inhibit the benefits of the RTPP reform, at least in some cases.

We support the CAISO's proposal to require PTOs to have the back-stop obligation to construct and own policy-driven upgrades when no third party proposes to do so under Phase 3. Again, however, the Commission should require the CAISO to clarify that the PTO will be responsible for financing such upgrades, and the generators will not be required to post security or otherwise fund those upgrades.

D. The Commission Should Direct the CAISO to Harmonize the RTPP With the LGIP For the Current Planning Year.

The Commission should reject CAISO's argument that its RTPP plan does not require any revisions to its LGIP.

The RTPP is closely enmeshed with the LGIP, as the CAISO recognizes when it concedes that “[u]pgrades can be more efficiently and effectively accomplished if upgrades to the same transmission segment or electrical area of the grid are evaluated together and

²¹ We note here that applying the least-regrets analysis to the transmission plan will place rational limits on the amount of policy-driven transmission that will be needed, thereby mitigating the risk that the financing obligation will be beyond the means of even the PTOs.

coordinated with other planned transmission upgrades”²² Further, the RTPP by its terms encompasses significant network upgrades identified through the LGIP.²³ The CAISO’s unified planning assumptions—which form the essential foundation by establishing a common set of assumptions for the diverse planning studies that must be done—specifically consider network upgrades identified through the LGIP.²⁴

Although we understand the CAISO’s concern that applying the RTPP analysis to LGIP upgrades in the current 2010/2011 planning year could risk delays to generators, the CAISO has not explained how such delays would come about. The CAISO’s transmission plan necessarily must consider Phase II LGIP interconnection studies as part of the transmission planning process under Section 24, as CAISO states.²⁵ Since those LGIP upgrades must be evaluated under Section 24, the CAISO should apply the least-regrets multi-scenario planning analysis when planning for the LGIP upgrades within the overall transmission planning process. If delay is needed for this approach, the CAISO should allow generators to proceed with development of their LGIAs and, if upgrades in those agreements are later incorporated in the RTPP and eventual CAISO plan, allow for amendment of the agreements and release of the associated financial security.

This highlights another significant concern with the CAISO’s filing, which is its failure to harmonize the RTPP and LGIP tariff provisions, particularly with respect to cost responsibility for transmission upgrades and the schedule for executing LGIAs. The failure to harmonize the two tariff sections raises a serious concern that they could produce inconsistent

²² Transmittal Letter at p. 44.

²³ RTPP Tariff § 24.1.

²⁴ *Id.* § 24.3.1; Transmittal Letter at pp. 22-23.

²⁵ Transmittal Letter at p. 44.

outcomes, or lead to outright gaming of the transmission development process. We have several specific concerns.

First, excluding major backbone upgrades identified through the LGIP from the RTPP for the 2010/2011 planning year (and potentially future years) relieves PTOs from the upfront financing obligation that would come into play for projects under the RTPP. Thus, a particular project that would fall under the RTPP rules in the 2011/2012 planning cycle is potentially subject to the generator financing LGIP rules simply because it has been identified in earlier LGIP studies.

Second, the CAISO's criteria for incorporating LGIP network upgrades into the RTPP in the 2011/2012 planning cycle can easily be applied to projects in the 2010/2011 cycle. These criteria are (a) facilities rated 200 kV and above and a cost of \$100 million or more, (b) 500 kV substations with a cost of \$100 million or more, or (c) network upgrades with a cost of \$200 million or more.²⁶ Since these projects must be studied in the LGIP, and the criteria are straight-forward, there is no reason why CAISO cannot apply them in the current planning year, subject to the LGIA timing conditions discussed above. There does not appear to be any reason why this approach would delay consideration of transmission upgrades identified in the current LGIP cycle as part of the 2010/2011 RTPP statewide plan.

Third, incumbent PTOs should not have the sole discretion to choose whether to finance regionally beneficial LGIP upgrades, particularly if these PTOs are not willing to upfront finance such upgrades. The choice to finance the upgrade is driven by, among other factors, the PTO's calculus of whether the upgrade may be eligible for Order No. 679 rate incentives,²⁷ such as abandoned plant cost recovery, which turns on whether the PTO can show broad congestion or

²⁶ RTPP Tariff § 24.4.6.5.

²⁷ See Order No. 679 at PP 84-178.

reliability benefits and meet the nexus test.²⁸ Those tests are different from the “policy driven upgrades” test under the CAISO tariff for future upgrades and introduce numerous elements of uncertainty that can delay the financing choice and potentially derail renewable energy projects (*e.g.*, whether the PTO can present sufficient evidence of benefits to qualify for unconditional approval of the incentives request under Order 679 vs. satisfying the CAISO’s criteria for policy driven upgrades). Cost responsibility for regionally beneficial LGIP upgrades should not turn on a PTO’s assessment of whether it can get favorable rate treatment at FERC.

Fourth, the LGIA scheduling and financial impact on generation developers (*e.g.*, on financial-security postings or commercial operation date delays) whose LGIP-identified transmission upgrades are considered and/or modified (*e.g.*, “right-sized”) in the RTPP should be addressed in the LGIP tariff section. Generators with financing responsibility for major upgrades identified through the LGIP studies continue to bear full financing responsibility, at the PTO’s discretion, for 2010/2011 upgrades, even when a project triggering identical upgrades in the 2011/2012 year would not have to make financial security postings. This unduly discriminates between otherwise similar projects and could force some projects to withdraw, which is contrary to CAISO’s goal to promote renewable development to meet the 33%-by-2020 RPS target.

Similarly, the LGIP does not address the impact on the rights and obligations of generation developers or PTOs if the CAISO uses the RTPP to review transmission upgrades identified in the LGIP, and the review leads to delays or alters financial or commercial obligations. Even the schedule for such reviews, and the impact on the LGIP timing for submitting and executing LGIAs, is not addressed in the proposed tariff language. These matters should be addressed in the LGIP.

²⁸ *Southern California Edison*, 129 FERC ¶ 61,246 at PP 18, 29.

Finally, the filing does not address the impact on generation developer financial-security obligations if elements of its LGIP-identified transmission upgrades are included under the RTPP in a project funded by an incumbent PTO or other project sponsor. Specifically, generators should be relieved of financial-security obligations for transmission elements sponsored (funded) by others through the RTPP.

E. The Commission Must Allow Third Parties to Finance, Own and Construct LGIP Network Upgrades When Incumbent PTOs Refuse to Do So.

Under the LGIP model, if the PTO elects not to upfront finance the upgrade, perhaps because of the uncertainty about Commission incentive rate treatment or any other reason, the developer is forced to shoulder the financial burden or abandon the project because, unlike RTPP upgrades, there is no opportunity for a third party transmission developer to step in and build the project, even if it is willing to do so without FERC rate incentives. This creates an unlevel playing field for grid upgrades identified through the LGIP, but not the RTPP, even if those upgrades provide broad network benefits. While the CAISO contends that the RTPP model is a vast improvement over the current LGIP and TPP tariff because third parties have some options,²⁹ and that Order No. 2003³⁰ puts the financing burden for network upgrades on generators anyway, the CAISO's arguments fail because its proposal creates a new dynamic not present in the precedent it cites.

Order No. 2003 and the prior transmission planning processes simply did not reflect a deliberate planning strategy to include transmission for "policy driven" upgrades to meet renewable energy targets. The Commission's recent transmission planning and cost

²⁹ Transmittal Letter at p. 11.

³⁰ *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 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, *order on reh'g*, Order No. 2003- C, FERC Stats. & Regs. ¶ 31,190 (2005).

allocation NOPR recognizes the new dynamic in the electric transmission industry caused by state renewable energy targets and the growing penetration of location-constrained generation that impact transmission planning and cost allocation issues.³¹

Indeed, that new dynamic is what prompted the CAISO's filing. The Commission's NOPR recognizes the benefits of competition to build network upgrades to meet economic and policy-driven objectives. The Commission should likewise remove one key impediment to new transmission for renewables, which is the current inability of non-incumbent transmission developers to shoulder the burden of financing and building LGIP-driven network upgrades when the incumbent PTO elects not to do so.³²

F. Conditional Transmission Approval.

The CAISO's proposed category of conditionally approved transmission will add to commercial uncertainty and potentially hinder generation development because these upgrades cannot realistically be included in any LGIA (a contractual commitment by the PTO to use best efforts to build the upgrade) or be used as the basis for any generation-project financing.

In addition, the criterion of the "supply cost function of renewable resources in each zone" is not well-explained but appears to include overall supply and/or integration costs of renewable resources that would be accessed by a particular transmission project (*e.g.*, considering the expected generating technologies in those areas). It is inappropriate for the CAISO to consider generation mix or integration costs in determining which areas are more deserving of transmission projects—selection of procurement portfolios (usually via competitive

³¹ Transmission Planning NOPR at P 151.

³² A related concern is the apparent lack of consequences if a PTO misses construction milestones due to circumstances reasonably within its control, such as the sequencing of construction schedules. Under such circumstances, the CAISO tariff should include a process to permit the generation developer or third party to assume responsibility to complete the project.

processes), considering integration costs and other factors, is the jurisdiction of the CPUC, not the CAISO.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, (1) CalWEA respectfully moves for leave to intervene as a full party to this proceeding, (2) protests CAISO's filing in limited respects, and (3) requests the Commission to require the CAISO to revise the RTPP and LGIP tariff sections as discussed above.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by electronic mail or U.S. mail upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 25th day of June, 2010.

/s/ Chimera N. Bowen

Chimera N. Bowen