

project's ability to meet certain milestones and willingness to make certain financial security deposits, CAISO proposes to allocate available transmission capacity first to projects that it deems to be "viable" based almost entirely on whether they have power purchase agreements ("PPAs"), a method that is unduly discriminatory and likely to be ineffective for a number of reasons outlined below. Certain of CAISO's changes will also severely impact projects that are currently in the interconnection queues, destabilize project economics, potentially impede their ability to sign PPAs, and also unduly discriminate among projects at different points in the queue by treating them differently without justification.

Although AWEA and CalWEA are sympathetic to the CAISO's goal to encourage the most viable generation projects and support CAISO's efforts to harmonize the transmission planning process with the generator interconnection process, there are several fundamental problems with the CAISO's plan for allocating available transmission capacity.

First, having a PPA is not necessarily a valid measure of project viability given the high failure rate of PPAs, which have exceeded 50% in recent years for certain resource types. The CAISO's filing is completely silent on PPA failure rates within its footprint, thus leaving the Commission to guess whether the CAISO's plan will achieve its intended objective. The CAISO's failure to present data on PPA failure rates means that its proposal is unsupported in this respect, while the data compiled by an independent firm presented by AWEA and CalWEA herein strongly suggest that CAISO's metric is gravely flawed.

Second, the decision whether to enter into a PPA rests entirely with California's large incumbent utilities (Load Serving Entities), who also act as participating transmission owners or PTOs. The CAISO's allocation plan effectively gives the PTOs control over which projects have access to available transmission capacity, thereby setting up a serious risk of the unduly discriminatory allocation of interstate transmission capacity—the very concern that led the Commission to encourage the formation of independent entities like the CAISO to serve as a fair and balanced gatekeeper to the interstate electric highway.

Moreover, this concern spills into a heightened risk of unduly discriminatory practices that may inhibit new market entry by competitive power suppliers. CAISO's plan will give the PTOs leverage to force generators to accept the thinnest of margins in their PPAs while still giving the PTOs the option to walk away because California's standard power purchase agreements have a clause that allows the PTOs to terminate them if the delivered price of energy exceeds certain benchmarks. By picking which projects to sign contracts with—and thus move to the head of the transmission capacity allocation line—the PTOs will be able to decide which projects are commercially “viable” at the time when the CAISO makes its transmission allocation decisions. This would turn the logic of the CAISO's filing on its head because the whole point is to provide viable projects with transmission access, not to use transmission access to determine which projects are potentially viable. The CAISO's filing is silent on how it will protect against this risk.

Third, the CAISO's filing presumes that when the time comes to allocate available transmission capacity, projects without PPAs are not viable and thus not

deserving of a seat at the transmission table. Once again, the CAISO offers no evidence to support the supposition that projects that have played by the rules to move through the queue are destined to fail if they lack PPAs. Remarkably, the CAISO's plan is to stack the deck to increase the chances that these projects will fail by placing a greater transmission upgrade financing burden on them, thus making it less likely that these projects will be able to close the deal on a PPA given the PTOs' delivered price metric mentioned above.

Fourth, the CAISO proposes to use the PPA metric to decide whether it needs to plan its transmission system to accommodate both projects currently in the interconnection queue, and projects that proceed through the study process after its tariff change becomes effective. The CAISO proposes to keep generators in the legacy clusters whole if they do not end up reserving transmission capacity because the projects lack PPAs, but provides no such assurance to projects in future clusters. The CAISO offers no justification for its proposal to discriminate between generation projects based on vintage, and there is no legal or equitable basis for doing so. Regardless of vintage, generation projects that achieve commercial operation all contribute to the need for deliverability upgrades that are used by the network's transmission customers. Sticking one class of generator with the cost of deliverability upgrades while holding another class harmless is both unduly discriminatory and conflicts with the Commission's policy against direct assignment of network costs.

Fifth, interconnection customers that have endured the gauntlet of CAISO Phase 1 and Phase 2 interconnection studies and posted millions of dollars of financial security deposits (much of it non-refundable) on the expectation that they will have a fair shot at

interconnecting to the CAISO grid at a reasonable cost will have the rug pulled out from under them. It would be unreasonable for the Commission to let the CAISO upset the justified reliance by these generators on the tariff rules that were in place when they entered the CAISO's interconnection queue. Indeed, for this very reason the Commission has been reluctant to allow transmission providers to change the rules in the middle of the game as the CAISO has proposed here.

Sixth, although the CAISO claims its new allocation process will affect only future clusters, it concedes the plan may deprive legacy clusters of valuable capacity rights because they may not be eligible for "net qualifying capacity" if they do not already have PPAs. The CAISO concedes that projects often need to have qualifying resource adequacy attributes to obtain PPAs, which makes the CAISO's proposal circular. Depriving projects of this resource adequacy benefit upsets the settled expectations of the generators, unsettles project economics, and threatens the viability of those projects. The CAISO's filing shows no signs of having given any consideration to these undesirable outcomes, perhaps because it never raised the issue during the stakeholder process.

Seventh, the CAISO's proposed \$60,000/MW refund cap for reliability network upgrades is arbitrary. The CAISO points to historical cost experience and its desire to limit ratepayer cost exposure, but its cost analysis is selective and dated, and the PTOs have far more control over the costs to construct reliability upgrades that benefit network customers than the generators do. The CAISO's statistical sense of "reasonableness" is no substitute for the Commission's just and reasonable standard of review, and is not a reason for the direct assignment of reliability network upgrade costs to generators.

Finally, CAISO's requirement that generators choose between "Option A" and "Option B" for TP Deliverability allocations before Phase II study results are available is unreasonable. At that time, interconnection customers have only the CAISO's Phase I study results to go on, and the CAISO has provided no analysis of the predictive capacity of those initial projections. Interconnection customers should not be required to make binding elections until the Phase II studies are released.

For all of these reasons, the Commission should send the CAISO back to the drawing board before it implements a seriously flawed allocation scheme. As a starting point, AWEA and CalWEA suggest the CAISO allocate available deliverability based on meeting several criteria from a menu of options that are both realistically achievable at the time when the CAISO proposed to make its allocation decision, and that eliminate the risk of unduly discriminatory outcomes inherent in the CAISO's plan. These options are based on approaches the Commission has accepted in other regions, and offer a sounder foundation for the queue reform the CAISO hopes to achieve.

II. Protest

A. The CAISO's filing lacks adequate support to permit the Commission to render a reasoned judgment on its plan.

The Commission has a statutory obligation to issue a reasoned decision based on substantial evidence in the record, and that draws a rational connection between the facts found and the choices made.¹ The CAISO's filing has left the Commission with a difficult task.

¹ *Electricity Consumers Resource Council v. FERC*, 747 F.2d 1151, 1513 (D.C. Cir. 1984) (court will uphold FERC's orders only if "supported by substantial evidence in the record and reached by reasoned decision-making, including an examination of the relevant data and a reasoned explanation supported by a stated connection between the facts found and the choice made.").

The lynchpin of the CAISO's plan is to allocate what it calls "Transmission Plan Deliverability" or "TP Deliverability" to "those generating facilities in each area that are determined to be most viable based on a set of specified project development milestones."² TP Deliverability is additional grid capacity that is made available through the CAISO's transmission planning process ("TPP") as a result of its new method for identifying and planning for transmission upgrades that are needed to meet public policy goals.³ CAISO proposes a new "Generation Interconnection and Deliverability Allocation Process, or GIDAP, to allocate TP Deliverability based on its assessment of whether projects are viable, effectively moving projects deemed to be more viable ahead of those in the queue deemed less virtuous.

The CAISO will apply its new method to "queue cluster 5," which closed on March 31, 2012,⁴ with projects in that cluster receiving TP Deliverability allocations starting in January 2013. However, CAISO says it will also apply the new PPA criteria to earlier queue clusters to assess their viability and the need to reserve TP Deliverability for them, and asserts they are not otherwise impacted.⁵ Part of the CAISO new tariff, however, has a "direct" impact on these earlier queued projects in some circumstances that may lead "to reductions in the annual Net Qualifying Capacity (NQC) values until

² CAISO Tariff at § 8.9.2; Ltr. of 5/25/2012 from M. Kunselman to K. Bose at p. 4 (Docket No. ER12-1855-000) ("Filing Letter").

³ Filing Letter at pp. 7, 14.

⁴ *Id.* at p. 53. The new method will apply to cluster 5 starting in January 2013. Exh. No. ISO-2 at p. 5.

⁵ Exh. No. ISO-2 at p. 7. If the CAISO deems a project from an earlier cluster not to be viable, and does not reserve TP Deliverability for that project, but it later achieves commercial operation, the CAISO will build additional transmission upgrades at ratepayer expense. *Id.* Thus, the CAISO's witness acknowledges that having a PPA is not necessarily an accurate predictor of project viability.

the needed additional transmission is in service.”⁶ CAISO presents no analysis of the impact of this change on generators currently in the CAISO’s queue clusters.

The GIDAP will have a major impact on cluster 5 and future interconnection customers because only projects deemed “viable” by the CAISO will be allocated TP Deliverability, with all others forced to either withdraw from the queue, convert to energy-only deliverability status, or pay for deliverability network upgrades without any reimbursement.⁷ The CAISO’s plan is thus a radical departure from long-settled Commission interconnection policy which has mandated full reimbursement for network upgrade costs because those projects benefit all transmission users.⁸

On the surface, the CAISO’s viability metric purports to examine several factors. It lists these as whether the interconnection customer has applied for a government permit or authorization to construct the project and that either (i) there is a commitment of project financing, and there is a regulator-approved PPA or the customer is proceeding to commercial operation without a PPA, or (ii) the interconnection customer does not have an executed PPA but is included on a short list or other recognized method of preferential ranking of power providers by a load serving entity that is a prospective purchaser.⁹ The CAISO does not defend its choice of metrics, choosing instead to relegate them to a footnote comment that the details of its plan will be revealed in a yet-to-be developed

⁶ *Id.* at p. 10.

⁷ *Id.* at p. 4. The testimony states that projects receiving only partial TP Deliverability will have the opportunity to downsize to align with the allocated amount of TP Deliverability. All projects will be required to fund initially up to \$60,000/MW for reliability network upgrades. Exh. No. ISO-1 at p. 3. Projects that do not receive an allocation of TP Deliverability will be eligible for a refund of up to \$60,000/MW for reliability network upgrades. *Id.* at p. 4.

⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 827 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004).

⁹ CAISO Tariff at § 8.9.2; Filing Letter at p. 34 n.84; Exh. No. ISO-2 at p. 8.

business practice manual.¹⁰ The CAISO's testimony emphasizes the need for projects to obtain PPAs to retain their TP Deliverability allocations.¹¹ The CAISO's matter of fact treatment of this lynchpin to its whole TP Deliverability allocation scheme is strikingly deficient.

Moreover, it is evident that the CAISO has not given careful consideration to its choice of criteria, or thought about how they might apply at the point in time when it renders judgment on which projects are to be the beneficiaries of its munificence. Examining the CAISO's criteria against the likely scenario at the time when the customer receives its Phase II study results makes it clear that the only metric that might realistically exist relates to having a PPA, or being on a PTO short list to enter into a PPA. A project that has just learned its financial exposure for network upgrades is unlikely to have a financing commitment, or have a government-issued construction permit. While the CAISO lists the potential for considering a project that is proceeding to construction without a PPA, the CAISO's filing makes clear it does not consider such projects to be commercially viable.¹² Accordingly, the only metric the CAISO seems willing to pay any attention to is whether the interconnection customer has reasonable prospects for entering into a PPA for its project, which means that as a practical matter there is really just one metric for awarding TP Deliverability.¹³ As explained below, we believe that multiple criteria are a far more effective and non-discriminatory indicator of a project's viability.

¹⁰ Filing Letter at p. 8.

¹¹ Exh. No. ISO-2 at pp. 7-9.

¹² Exh. No. ISO-2 at pp. 7-9.

¹³ Projects that plan to proceed to construction without a PPA must, in all likelihood, be self-financed, which is a very small universe of projects.

One of the CAISO's main justifications for revamping the way it allocates available transmission capacity for projects in the future is the abundance of proposed renewable energy projects in its existing queues. CAISO claims "conventional wisdom" holds that "75 percent or more" of these projects will fail, but then admits "it is impossible to know with high confidence which of the proposed generation projects will succeed and which ones will not."¹⁴ The CAISO offers no evidence of generation failure rates, and does not explain why failure rates—whatever they truly are—support its new queue hopping proposal.

While speculating about the failure rates of proposed generating projects, the CAISO is silent about the failure rates of projects that actually *have* PPAs or have been short-listed for PPAs—which is its key metric for allocating TP Deliverability as just discussed. It would be particularly useful for the Commission to know whether allocating TP Deliverability to projects with PPAs (or that have been short-listed to receive them) will achieve the CAISO's stated goal of allocating available transmission capacity to the most virtuous projects because, if it turns out that projects with PPAs fail at a high rate, the CAISO's plan lacks evidentiary support for its key assumption.

Since CAISO has not prepared its own analysis, the Commission should consider a recent study prepared by IHS Emerging Energy Research, which found that on average 36% of contracted generation in California will fail to come on line, with failure rates as high as 55% for concentrating solar power, 53% for geothermal resources, and 24% for wind and solar photo-voltaic generation.¹⁵ The survey found that failure rates will also

¹⁴ Filing Letter at pp. 6-7.

¹⁵ "Taking Stock of California's New RPS Law," IHS Emerging Energy Research, *North America Renewable Power Advisory* (July 28, 2011). Available at <http://www.ihs.com/products/renewable-energy-research/index.aspx>

vary by utility, with San Diego Gas & Electric Company experiencing the highest failure rate of contracted projects (55%), and Pacific Gas and Electric Company experiencing the lowest (30%). The study attributes contract failures to a variety of factors, ranging from difficulty in obtaining permits and uneconomically low power prices in PPAs. Unless the CAISO is able to produce studies showing materially rosier prospects for projects with PPAs, the metric clearly lacks the predictive value that the CAISO ascribes to it.¹⁶

Moreover, the CAISO presents no analysis of whether interconnection customers that are next in line to receive the benefits of already available network capacity have better success rates than later queued projects that are required to finance expensive network upgrades. Logic suggests the answer must be yes,¹⁷ those projects that benefit from available network deliverability fare better than those that have to finance it. If so, then once again the CAISO's key assumption fails and its allocation plan is not supported. Worse, if the logical answer is borne out by the data (*i.e.*, projects that win the interconnection lottery succeed, those that lose fail), then it means that the CAISO's plan is really just a proposal to pick winners and losers and fundamentally alter the competitive outcomes that would otherwise occur. That is not a proper role for the CAISO.

B. The CAISO's new plan for allocating TP Deliverability poses significant risks of undue discrimination that CAISO has failed to address.

¹⁶ These data illustrate a further flaw with the CAISO's logic; namely, that if the goal is to award TP Deliverability to the most viable projects, then it should go first to the resource *type* with the lowest failure rates.

¹⁷ Note that IHS attributes transmission upgrade costs as one factor contributing to failure rates among projects with PPAs.

No matter how well-intentioned the CAISO's tariff reforms may be, the Commission may not simply defer to them without assurances that they are just and reasonable and will not lead to unduly discriminatory results.¹⁸ On this score, the Commission requires regional transmission organizations like CAISO to provide evidentiary support to show that proposals to deviate from the *pro forma* tariff are just and reasonable and not unduly discriminatory.¹⁹ The Commission's settled policy is that it does not simply take the regional entity's word for it.²⁰ The CAISO's TP Deliverability allocation plan fails to pass muster under these statutory and regulatory standards.

Strict adherence to these principles is especially critical when a regional entity like the CAISO proposes a major departure from the Commission's settled interconnection policy. That policy has long hinged on the principles of first-come-first-served interconnection service and full reimbursement to interconnection customers for the cost of network upgrades that they are required to finance so as not to directly assign the cost of grid facilities to generators because those facilities benefit all users of the transmission network.²¹

¹⁸ *Midwest Independent Transmission System Operator, Inc.*, 139 FERC ¶ 61,219, at P 9 (2012); *see Midwest Independent Transmission System Operator, Inc.*, 135 FERC ¶ 61,065, at P 27 (2011) (when a regional entity proposes changes from the *pro forma* tariff, FERC "review[s] the proposed variations to ensure that they do not provide an unwarranted opportunity for undue discrimination or produce an interconnection process that is unjust and unreasonable.").

¹⁹ *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,025, at PP 7, 16 (2004), *order on reh'g*, 110 FERC ¶ 61,099 (2005).

²⁰ The CAISO's filing letter stakes out a claim that the Commission must defer to the CAISO's plans if it can argue that they are consistent with or superior to the Commission's *pro forma* requirements. Filing Letter at pp. 12-13. As noted above, the Commission has corrected more than one RTO's misunderstanding of the evidentiary burden that they bear when departing from the standard tariff.

²¹ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 827 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004). The Commission has long forbidden the direct assignment of network costs to individual customers. *Public Service Company of Colorado*, 62 FERC ¶ 61,013, at p. 61,061 (1993).

The CAISO's plan is a major departure from both principles. First, the CAISO would allow later-queued projects to move ahead of earlier-queued ones to get the benefits of low-cost network capacity. Second, the CAISO would force earlier-queued projects deemed not to be "viable" to accept the direct assignment of network upgrade costs while more "viable" later queued projects have the cost of their network upgrades socialized to the users of the transmission network.

The Commission allows independent operators of regional transmission networks like the CAISO to depart from the Commission's *pro forma* interconnection rules only when they demonstrate that their plans will not lead to unduly discriminatory outcomes. Here, not only has the CAISO failed to implement procedures to guard against unduly discriminatory allocations of TP Deliverability, its proposal invites this legally impermissible result in a number of ways.

One way is by relying heavily on PPAs that are within the discretion of the PTOs to sign. The CAISO proposes no controls to guard against unduly discriminatory outcomes. The lack of such controls prompted the Commission to reject a prior CAISO attempt to revise its generator interconnection procedures to require generators to forego refunds for grid upgrades that failed an "economic benefits" test.²² The Commission found the CAISO's plan to rely on modeling and simulation inputs to be a recipe for abuse because the test could be applied in an unduly discriminatory manner.

The same is true here. The PTOs have complete discretion to pick the generating projects that they are willing to buy power from, and control the filings that need to be made with the CPUC to secure state approval to flow through the cost of those contracts

²² *California Independent System Operator*, 112 FERC ¶ 61,009, at PP 112-114 (2005), *reh'g denied*, 117 FERC ¶ 61,148 (2006).

to their customers. The CAISO's filing also fails to account for the new leverage the CAISO proposes to give the PTOs in contract negotiations which will enable them to force generators to accept thinner margins. Generators would be forced into potentially uneconomic contracts with PTOs just so that they can receive allocations of TP Deliverability from the CAISO. Thus, the PTOs will have full control over the contracting practice from contract formation through satisfaction of subsequent conditions that trigger their obligations to accept delivery of the power, with numerous off-ramps along the way.²³ This will let the PTOs dictate the terms of wholesale power sales contracts, and decide which projects will have access to the interstate power grid—regardless of the commercial merit of the projects. The CAISO's proposed allocation scheme for TP Deliverability plays directly into the opportunity for undue discriminatory treatment of interconnection customers by giving added transmission benefits to the projects the PTOs choose to contract with. The CAISO has proposed no check on this discretion, and shows no signs of even having thought about the problem. This is particularly troubling since the CAISO knows that “many participating transmission owners are market participants.”²⁴ The lack of checks and oversight raises precisely the same concerns that prompted the Commission to reject the CAISO's economic benefits test.²⁵

²³ The PTOs also run the studies to determine the cost of network upgrades and the construction schedules that will install them, giving the PTOs another means to exercise control over generator access to the interstate power grid.

²⁴ Answer to Motions to Intervene and Comments, Motion to File Answer, and Answer to Protest, of the California Independent System Operator Corporation, at p. 3-4, Docket No. EL12-40-000, Mar. 28, 2012.

²⁵ *California Independent System Operator*, 112 FERC ¶ 61,009, at PP 112-114.

The CAISO's plan suffers from another serious deficiency that is equally fatal to its plan. The implicit premise behind its proposal is that projects that are "viable" are not similarly situated to those that are not which, as discussed above, turns mainly on the distinction between projects with PPAs and those that lack them. The CAISO, however, has failed to document this key claim and relies solely on "conventional wisdom" to support it. Conventional wisdom is not a sound basis to implement a major departure from the Commission's *pro forma* tariff because it is not substantial evidence that two groups of otherwise similarly situated customers face materially different prospects. Given the documented high failure rates of projects with PPAs that we have shown above, the CAISO's key assumption is clearly invalid and the Commission must therefore reject it.

Finally, the CAISO's plan pre-ordains another unduly discriminatory outcome in the way it distinguishes between projects that are required to pay for TP Deliverability and those that are not. Significantly, the CAISO recognizes that it has no crystal ball and its viability assumptions may be wrong. But, there is no mechanism for the CAISO to make whole those projects that beat the odds and refuse to fail as the CAISO expects them to.²⁶ Thus, projects that are required to foot the bill for delivery network upgrades never receive any reimbursement under the CAISO's scheme even if they achieve commercial operation. Conversely, projects that receive an allocation of TP Deliverability to cover their requested level of interconnection service never pay anything for deliverability upgrades even if their projects later fail (contrary to the CAISO's

²⁶ Exh. No. ISO-2 at p. 7.

expectations that projects with PPAs are destined for success).²⁷ The different outcomes are unduly discriminatory and conflict with the CAISO's stated purpose of ensuring the ratepayers are not saddled with the cost of delivery network upgrades for failed generation projects.

Moreover, as noted above, the CAISO has included a make-whole provision for pre-cluster 5 projects erroneously deemed likely to fail due to the lack of PPAs.²⁸ For those projects, the CAISO has promised to direct the construction of additional deliverability upgrades at ratepayer expense.²⁹ There is no justification for the CAISO to keep pre-cluster 5 projects whole if they succeed without having PPAs in place at the time when the CAISO thought they should have them while not doing the same for successful projects in cluster 5 and beyond. The CAISO offers no plausible rationale for these different outcomes, which are unduly discriminatory on their face.

C. Elements of the CAISO's plan will have inappropriate retroactive effects and upset the settled expectations of customers in current interconnection queue clusters, as well as unduly discriminating by unduly imposing different requirements on projects in queue clusters 1-4 versus projects in clusters 5 and higher

The CAISO claims repeatedly that its plan will apply prospectively, yet concedes that it may deprive pre-queue cluster 5 projects of the "net qualifying capacity" or NQC that they would otherwise be entitled to. Applying the new capacity allocation plan to pre-cluster 5 interconnection customers in this fashion would be grossly unfair and upset their settled expectations, as it would materially affect existing projects.³⁰ In addition,

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Retail, Wholesale & Dep't Store Union v. NLRB*, 466 F.2d 380, 390 (D.C. Cir. 1972); *Sagebrush, a Cal. P'ship*, 130 FERC ¶ 61,093, *order on reh'g*, 132 FERC ¶ 61,234 (2010).

CAISO's proposal to impose different requirements on queue projects in clusters 1-4 versus projects in clusters 5 and higher, without providing any justification for the different treatment, is a form of undue discrimination and should be rejected.

To begin with, the proposal is unfairly circular. As the CAISO concedes, generators must have deliverability to be eligible to sell capacity into California's resource adequacy program.³¹ The CAISO also concedes that "many projects need to be designated as resource adequacy resources in order to obtain power purchase agreements that will enable them to obtain project financing."³² It thus concludes that "the resource adequacy program plays a significant role in shaping the public policy requirements that will be addressed in transmission planning, through the vehicle of TP Deliverability."³³ Nonetheless, the CAISO has proposed to deprive some legacy customers of the NQC allocations they may depend on to obtain PPAs if they *do not have* an executed PPA by December 31, 2012.³⁴ The CAISO fails to explain how it will protect legacy queue customers against this patently unfair outcome.

As explained above, the CAISO will apply its new method to "queue cluster 5," which closed on March 31, 2012, with projects in that cluster receiving TP Deliverability

³¹ Filing Letter at p. 14 n.27. The criteria for calculating a resource's qualifying capacity are set by the CPUC, but the CAISO may reduce a resource's eligibility to provide resource adequacy capacity through the NQC assessment. *Id.* at p. 17.

³² *Id.*

³³ *Id.*

³⁴ CAISO's proposed requirement of a PPA applies to those projects in QC1-QC4 that have their delivery network upgrades (DNUs) removed from their LGIAs (e.g., if the DNUs in the LGIAs meet certain criteria then the ISO would remove them since these are now called "problematic network upgrades." This is discussed in a technical bulletin issued in January 2012). The CAISO technical bulletin issued June 8th clarifies that the projects which benefit from this new cost allocation would then be the projects that need to meet the PPA criteria in order to receive a priority on the allocation of deliverability and NQC. "Deliverability Requirements for Queue Clusters 1-4 and Determination of Net Qualifying Capacity," CAISO Technical Bulletin (June 8, 2012). Available at http://www.aiso.com/Documents/RevisedTechnicalBulletin-DeliverabilityRequirements-QueueClusters1-4_Determination-NetQualifyingCapacity.pdf

allocations starting in January 2013. However, CAISO says it will also apply the new PPA criteria to earlier queue clusters to assess their viability and the need to reserve TP Deliverability for them, and asserts they are not otherwise impacted. Part of the CAISO new tariff, however, has a “direct” impact on these earlier queued projects in some circumstances that may lead “to reductions in the annual Net Qualifying Capacity (NQC) values until the needed additional transmission is in service.”³⁵ CAISO presents no analysis of the impact of this change on generators currently in the CAISO’s queue clusters.

Commission policy requires transmission providers to follow the tariff rules that were in place when interconnection customers began the interconnection process.³⁶ The reason is one of simple fairness and efficiency—interconnection customers trying to develop their projects should not be forced to contend with changing ground rules. This is especially true when the transmission provider concedes that the rule it proposes to change can impact a generator’s ability to obtain a PPA that—again according to the transmission provider—is a gateway to commercial operation. The Commission should therefore reject this unfair proposed retroactive rule change.

Another concern with CAISO’s proposal is that it undermines a generator’s ability to determine, at the time a PPA is executed, whether the generator will be able to meet its Resource Adequacy requirements. This occurs because lower queued projects can take NQC away at any time and henceforth leaves the higher queued project

³⁵ Exh. No. ISO-2 at p. 10.

³⁶ The Commission’s policy has been to enforce tariff language that “applied when the interconnection was being considered,” and not the terms of tariff changes that came into force afterwards. *FPL Energy Marcus Hook, L.P.*, 118 FERC ¶ 61,169, at n.9 (2007), *reh’g denied*, 123 FERC ¶ 61,289 (2008) (emphasis added); *see also PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,184, at P 36 (2012) (“the tariff we apply here is the one on file when West Deptford’s interconnection request was being considered”).

vulnerable. This is compounded by the fact that IOUs put the risk of Resource Adequacy shortages on the generators in the form of penalty payments in the off-take agreements if the generator cannot meet its RA requirements. The ISO does indicate that it will make the lower queued projects whole by building new transmission. However, in the interim period where there is a lack of NQC, the generators are at an unreasonable risk that undermines the ability to secure financing.

Separately, CAISO's proposal to impose different requirements on queue projects in clusters 1-4 versus projects in clusters 5 and higher, as explained above, without providing any justification for the different treatment, is a form of undue discrimination and should be rejected. If such a change is needed for pre-QC5 projects, then it should at the very least be consistent with the methodology for post-QC5 projects. The alternative option, outlined below, of providing projects with a variety of options for milestones that can be used to demonstrate project viability would not be discriminatory in this way, as a broader set of criteria would be given to all existing and new projects in order to reserve transmission deliverability and NQC.

D. The Commission should direct the CAISO to go back to the drawing board to reconsider its plan because there are non-discriminatory alternatives (including the one that is already in place).

AWEA and CalWEA are sympathetic to the CAISO's plight and its desire to achieve more integrated TPP and GIP processes while also allocating transmission capacity in a more efficient and equitable manner. We therefore offer alternative metrics that eliminate the two key flaws with the CAISO's plan—the over-reliance on PPAs and PTO control over the process.

Fundamentally, the CAISO should adopt metrics that are realistically achievable under the schedule it proposes, and do not leave interconnection customers at the mercy of the PTOs. Further, the CAISO's plan must treat fairly those projects that succeed even though they are left out of the initial TP Deliverability allocation.

In California and in other regions, a wide range of effective and non-discriminatory interconnection project viability milestones have been proposed and implemented as a means of reforming the interconnection queue process to ensure non-discriminatory access to the transmission grid. Reflecting the experience from other regions, in comments submitted to CAISO on January 31, 2012, during the stakeholder process, CalWEA proposed seven project viability milestones. CalWEA suggested that a project would need to meet at least two of these milestones before being allowed to enter into Phase 2 studies, and would have to meet four of the criteria before being considered for allocation of TP Deliverability. The seven milestones are:

1. Demonstrate completion of conditional use permit or equivalent (note that other permits are typically acquired very close to the start of construction);
2. Demonstrate site control sufficient to allow construction of 75% of requested interconnection capacity;
3. Demonstrate proof of project financing or post a 50% higher financial security deposit;

4. Demonstrate a PPA that is approved by the relevant local regulatory authority (*e.g.*, CPUC);
5. Demonstrate proof of land control sufficient to access the substation at the point of interconnection;
6. Demonstrate an equipment purchase order; and
7. Demonstrate one year of locally recorded meteorological data.³⁷

Project milestones such as these have been successfully used in other regions of the country to reform the interconnection queue process to make it more effective and also ensure that it is non-discriminatory, with all other regions allowing projects to demonstrate viability through a combination of milestones including site control, permit applications, and deposits.³⁸

Despite the interconnection reforms initiated by Order No. 2003, in an order following a 2007 technical conference the Commission observed that “[s]urges in the volume of new generation development are taxing the current queue management approach in some regions.”³⁹ Considering queue backlogs, the Commission directed RTOs and ISOs to identify metrics that could distinguish viable generation projects from those that did not merit interconnection to the grid. The Commission stated that “[t]he basic approach is to replace the current ‘first-come, first-served’ approach with an approach that orders the queue based on whether a generation project is making real progress towards coming on-line.”⁴⁰

³⁷ CalWEA’s January 31, 2012 comments on Integration of Transmission Planning and Generation Interconnection Procedures (TPP-GIP Integration) Second Revised Straw Proposal, which was posted January 12, 2012.

³⁸ See “Generation Interconnection Policies and Wind Power: A Discussion of Issues, Problems, and Potential Solutions,” K. Porter et al., Table 1 on page 11 (2009), available at <http://www.nrel.gov/docs/fy09osti/44508.pdf>

³⁹ Order on Technical Conference, 122 FERC ¶ 61,252 at P 3 (2008).

⁴⁰ *Midwest Independent Transmission System Operator*, 124 FERC ¶ 61,183 at P 4 (2008).

CalWEA's proposed milestones are superior to CAISO's metrics in several respects. First, CAISO would require a project to demonstrate that it has permits needed to start construction. CalWEA, in contrast, would require the project to show that it has a conditional use permit and has sufficient land control to build most of its proposed project and access the substation of the local utility. It is more realistic to expect that the project will have a conditional use permit and land control at this stage, than to have full authority to begin construction.

Second, it is doubtful that many projects will have financing in place before they know what their potential financial exposure is for network upgrades, which makes the CAISO's financing metric impractical. Instead, interconnection customers should have the option to post a higher amount of financial security to remain in the running for allocation of TP Deliverability rather than be shut out altogether.

Third, while CalWEA agreed that having a PPA is one criterion to be considered, we part ways with the CAISO because it is not appropriate to make having a PPA the pivotal element for the reasons given above. Thus, under our approach projects would not be automatically forced out of the queue (unless they are willing to live with uneconomic choices) just because they have been unable to negotiate a PPA with a PTO.

CalWEA's proposal to make use of a menu of several criteria is more in tune with the practices of other regions, and avoids the problem of giving undue weight to PPAs which creates the risk of unduly discriminatory outcomes and simply gives the PTOs greater negotiating lever over power sales contracts. Consistent with the goals of Order

No. 2003, other proposals to reform the queue process have all required interconnection customers to meet two or more milestones out of a list of several.^{41, 42}

E. The Commission should reject the CAISO's \$60,000 per megawatt cap on refunds for reliability network upgrades as unjust and unreasonable.

Claiming that ratepayers should not pay "excessive" reliability network upgrade costs,⁴³ CAISO proposes to cap refunds to generators that finance these upgrades at \$60,000 per MW. CAISO achieves this figure through a comparative historical statistical review of upgrade costs in three past queue clusters, and asserts "the great majority" of projects will get all of their money back. The CAISO's logic finds no support in the law or settled ratemaking policy.

⁴¹ See for example *Southwest Power Pool, Inc.*, 128 FERC ¶ 61,114. SPP's interconnection queue reform that the Commission approved in 2009 requires an interconnection customer to complete the following milestones to enter the Definitive Interconnection System Impact Study queue: (i) demonstrate site control and site adequacy; (ii) submit an additional deposit that varies between \$75,000 and \$150,000 depending on generator size; (iii) provide a definitive point of interconnection and plant size (*i.e.*, neither may be adjusted going forward); and (iv) complete only one of the following "readiness" milestones:

1. Submit a refundable deposit equal to \$2,000/MW;
2. Provide proof of an executed power purchase agreement;
3. Make a showing that the generator is part of a State Resource Plan;
4. Submit evidence that the generator qualifies as a "Designated Resource";
5. Submit a purchase order for generating equipment (either a site-specific or blanket purchase order is sufficient);
6. Submit an air permit application, if applicable; or
7. Show that the IC has filed a Notice of Proposed Construction or Alteration with the Federal Aviation Administration, if applicable.

⁴² See for example *PJM, Inc.*, Docket ER-12-1177-000, wherein PJM requires both a demonstration of site control and deposits as a condition of entering the interconnection queue. Similarly, MISO requires "Projects going to the DPP [Definitive Planning Phase] must submit any two of the following Non-Technical Milestones:

1. Equipment on order
2. Necessary Permits (Applied For)
3. Regulatory approval
4. Board approval
5. Contract for sale of electric energy or capacity or inclusion in an applicable state resource adequacy plan
6. Deposit or letter of credit"

FAQs for Generation Interconnection, available at:

<https://www.midwestiso.org/Planning/GeneratorInterconnection/Pages/GenerationInterconnectionFAQ.asp>

⁴³

Exh. No. ISO-1 at p. 4.

The CAISO's ratemaking theory seems to be that the CAISO's current interconnection framework provides insufficient incentive for generators "to interconnect at grid locations that make the most efficient use of transmission capacity."⁴⁴ The CAISO concedes, however, that the "central principle" of its filing is that "providing deliverability to interconnecting generating facilities is a necessary and appropriate objective of public policy-driven transmission planning in the context of the California RPS mandate."⁴⁵ Thus, by the CAISO's own admission, it is California's policy goals to meet a high percentage of the state's power needs through renewable energy—not the siting decisions of generators—that is the key driver of transmission costs. Yet, CAISO's proposal to cap generator reimbursement for reliability network upgrades fails to acknowledge this.

Moreover, the CAISO's proposed cap is arbitrary and unreasonable. A sampling of network upgrade costs from three queue clusters fails to establish the reasonableness of the CAISO's benchmark. The CAISO fails to present evidence that the cost figures it cites reflect the cost of *completed* projects, or to provide any cost estimates for reliability network upgrades for current queue clusters based on its Phase 2 interconnection studies. There is no rate cap on reliability network upgrades built by PTOs to serve network customers and there is no reason to directly assign any portion of the cost of those reliability network upgrades to generators.

⁴⁴ Filing Letter at p. 7.

⁴⁵ *Id.* at 14.

F. CAISO’s proposed timing requirement for the selection of Option A and Option B is not just and reasonable.

CAISO’s proposal includes the addition of an Option A and Option B for interconnection customers moving towards the Phase II studies when those customers have requested full or partial capacity. In choosing Option A an interconnection customer would be indicating that they require TP Deliverability in order to continue moving towards commercial operation. A party choosing Option A would only have cost responsibility for identified reliability network upgrades (“RNUs”) and local delivery network upgrades (“LDNUs”). By choosing Option B an interconnection customer would be indicating that they are willing and able to fund delivery network upgrades (including area delivery network upgrades (“ADNUs”)) without cash reimbursement if they are not allocated TP Deliverability. However, CAISO has not provided a clear justification for why it is important for customers to make this choice prior to Phase II.

The filing states:

“(T)he allocation of TP Deliverability depends on what deliverability status each generating facility has elected and whether the interconnection customer selects Option (A) or Option (B). Thus, the provision of this required information by interconnection customers will enable the ISO to identify those proposed generating facilities for which the Phase II study must identify any ADNUs needed to increase deliverability in each group study area beyond the TP Deliverability amount reflected in the latest transmission plan.”⁴⁶

AWEA is concerned that interconnection customers are being required to make decisions about what they are willing to pay for prior to having any meaning information regarding what those costs will be. CAISO states: “The Phase I study results will provide customers with cost caps for RNUs and LDNUs, plus cost estimates as described above for ADNUs.” If an interconnection customer does not receive TP Deliverability

⁴⁶ *Id.* at p. 27.

sufficient to allow for the full or partial delivery requested, they may wish to fund upgrades that would allow for the amount of deliver they have requested. But they must have a reasonable level of certainty around the costs of such upgrades before they can make the appropriate business decision. The lack of a cost cap on ADNUs following Phase I does not provide this certainty. It is unjust and unreasonable to require this decision at a point in the interconnection process where customers do not have adequate cost information. It would seem more beneficial for customers to be able to maintain the options included in both Option A and B until after they have received results from Phase II of the interconnection process.

III. Conclusion

WHEREFORE, for the foregoing reasons, AWEA and CalWEA respectfully request that the Commission reject the CAISO's per megawatt cap on refunds for reliability network upgrades as unjust and unreasonable and direct the CAISO to submit a compliance filing that: (1) allocates available transmission capacity to generators in a just and reasonable manner; (2) removes provisions that apply the new capacity allocation plan to pre-cluster 5 interconnection customers; and (3) revises the timing requirement for the selection of Option A and Option B, consistent with our comments herein.

Respectfully submitted,
By: /s/ Raymond B. Wuslich

Dated: June 22, 2012

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing protest of the American Wind Energy Association has been served in accordance with 18 C.F.R. § 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Washington, DC, this June 22, 2012.

Respectfully submitted,

By: /s/ Raymond B. Wuslich

Raymond B. Wuslich

Document Content(s)

AWEA CalWEA Protest.PDF.....1-28