

John Rook Q.C.
Direct Line: 416.777.4885
e-mail: rookj@bennettjones.ca

February 6, 2008

VIA EMAIL AND COURIER

Kirstin Walli, Board Secretary
Ontario Energy Board
PO Box 2319
Suite 2700
2300 Yonge Street
Toronto, Ontario M4P 1E4

Dear Ms. Walli:

RE: Ontario Energy Board File Number: EB-2008-0003
Transmission Connection Cost Responsibility Review

We are counsel to Invenenergy Wind Canada ULC ("Invenenergy Canada"), a stakeholder registered in the above-captioned consultation process.

We write in response to the Board's letter dated January 4, 2008 in which the Board announced its initiative to commence a consultation process to examine the transmission connection cost policies (the "Transmission Cost Responsibility Review") and invited participation by interested parties. We would like to commend the Board for its decision to examine the current cost policies and deal with the challenges faced by renewable power generators. As a renewable energy generator with projects in the United States and across Canada, we are pleased to have the opportunity to assist the Board in its examination of the current cost responsibility policies for the purpose of advancing the Ontario government's renewable energy objectives.

We are also in receipt of and have reviewed the Board's letter dated January 28, 2008. We are particularly interested in addressing the questions related to cost responsibility for generator connections. For the reasons to be detailed below, we respectfully make two submissions:

1. That the current Transmission System Code (the "TSC") be modified to socialize the cost – at least the initial cost – of the transmission facilities required by renewable energy resources; and



2. That the current transmission application process be modified to ensure that transmission facilities are constructed in a timely and cost-effective manner to facilitate the development of renewable energy resources.

Submission One: The TSC be modified to socialize the cost – at least the initial cost – of the transmission facilities required by renewable energy resources.

The TSC is the Board's policy document governing the allocation of transmission cost among various system participants including power generators, consumers, distributors and (licensed and unlicensed) transmitters. In determining who should bear certain transmission costs, the TSC defines transmission facilities in two general categories: (1) network facilities; and (2) connection facilities, which include line connection facilities and transformation connection facilities.

Under section 6.3.5 of the TSC, as a general rule, a transmitter shall not require any customer to make a capital contribution for network construction or modifications. "Customer" is defined as "a generator, consumer, distributor or unlicensed transmitter whose facilities are connected to or are intended to be connected to a transmission system." Thus, costs for network facilities are initially born by the licensed transmitter and then recovered through transmission rates revenue collected from the system.

However, costs for connection facilities are not eligible for recovery through transmission rate orders. For power generators who require line facilities to connect their plants to the transmission grid, under section 6.3.3, 6.3.4 and 6.3.12 of the TSC, they have two options: either incur costs to build their own dedicated connection facilities, or pay for the connection facilities owned by a transmitter. If a transmitter's connection facility is required by more than one generator, each generator would be required to share the costs on a pro-rata basis (section 6.3.14).

As stated in the Board's January 4, 2008 letter, "enabler" lines are radial transmission lines necessary to move the power from renewable energy plants to the transmission grid. Under the existing definitions in the TSC, enabler lines that serve either one renewable energy plant or a cluster of renewable energy plants would be characterized as line connection facilities with their costs to be borne by generators.

This policy is not conducive to the development of renewable energy resources such as wind energy that are located in areas not currently served by the existing transmission facilities, requiring long and costly high-voltage connection facilities. In addition, by nature, renewable energy resources tend to be developed by multiple developers in a cluster and come on-line incrementally over a period of time. The existing cost allocation impedes the renewable energy development in at least two ways: (1) it penalizes the first increment of generation by imposing on it the cost of the enabler lines; and (2) it subjects location-constrained energy generators to disproportionately high connection facilities cost compared to traditional energy generators.



In its Integrated Power System Plan (the "IPSP"), the Ontario Power Authority (the "OPA") proposed that in appropriate cases, certain enabler lines be treated as network assets and that the costs - at least the initial costs - be socialized in order to facilitate the development of location-constrained renewable energy resources. The OPA noted that this proposed policy change is necessary in particular to attract and promote competition among wind resources developers. The OPA referred to a recent declaratory order issued by the Federal Energy Regulatory Commission ("FERC") on an application brought by the California ISO that created renewable-related transmission as a third-category of transmission facilities with its initial costs socialized and the subsequent costs shared by generators on a pro-rata basis. It should be noted that prior to this FERC declaratory order, California characterized transmission facilities into "network assets" and "connection assets", with the latter not eligible for retail recovery. The effect of the declaratory order was to allow transmission lines required by remotely located renewable energy resources to be funded initially by the system before the development of renewable energy resources, which would not have been previously possible as those lines would constitute connection facilities. A copy of the FERC declaratory order is hereby attached as Schedule "A."

We submit that the Board recognize the unique challenges faced by renewable energy generators and modify its existing TSC. Specifically, we propose that the current TSC be modified as follows with respect to enabler lines:

- Introduce a definition of "location-constrained renewable energy";
- Introduce a definition of "enabler lines";
- Revise the definition of "connection facility" to exclude enabler lines;
- Revise section 6.3 to provide a separate cost responsibility policy for enabler lines
 - That the transmitter shall not require any location-constrained renewable energy generators to make a capital contribution for the construction of enabler lines; and
 - That when the energy is connected to the grid, the location-constrained renewable energy generators shall pay for the transmission service in accordance with a defined methodology taking into account the overall social benefits of renewable energy resources and the supply mix directive of the Ontario government.

In addition to enabler lines, there are certain transmission upgrades and reinforcements that should be undertaken in order to facilitate and enable the development of renewable energy. Under sections 6.3.5 and 6.3.10 of the TSC, renewable energy generators could be subject to capital contributions for the modification to the network facilities. For the same reasons mentioned above, we respectfully submit that the TSC be revised to exempt renewable energy generators from such cost responsibility.



Submission Two: The current transmission application process be modified to ensure that transmission facilities are constructed in a timely and cost-effective manner to facilitate the development of renewable energy resources.

In addition to the enabling connection cost challenges, renewable generation developments are also subject to uncertainty as to when the transmission capacity would be available. This concern is pertinent to potential developers even in their early-stage feasibility studies of any given renewable energy project that is remote from the transmission grid. The OPA has properly noted in the IPSP that the staging of the planned renewables is closely linked to the development of enabling transmission reinforcement.

Under the existing system, leave-to-construct applications are brought either by generators for the purpose of constructing connection facilities for their own power plants or by licensed transmitters in seeking the Board's approval for the construction of network or connection facilities. A transmitter-applicant is required to demonstrate the project need. The current transmission application system was not designed to proactively promote clustered renewable energy generations or to facilitate the incremental development of those energy sources. Neither was it designed to contemplate an application by a generator or a consortium of generators to build interconnection lines serving multiple small generators.

The current transmission application process creates a "chicken and egg" scenario with respect to transmission and generation resources development due to the timing difference. In essence, it is difficult for a transmitter to demonstrate the project need when the renewable generation facilities do not yet exist. At the same time, it is difficult for a renewable energy generation developer to determine the feasibility of a project when there is uncertainty as to when the transmission capacity would be available.

To combat similar problems, the Public Utility Commission of Texas (the "Texas Commission") has introduced procedures for the establishment of Competitive Renewable Energy Zones ("CREZs"), which is an innovative process of constructing necessary transmission to facilitate delivering renewable energy in a most beneficial and cost-effective manner. First, there is to be one or more contested-case proceedings initiated by the Texas Commission for the designation of CREZs, based on factors, including but not limited to: sufficiency of renewable energy resources and land areas, the level of financial commitment by generators for each potential CREZ; and the construction of necessary transmission. Once a site has been designated as a CREZ, entities interested in constructing the transmission improvements will submit expressions of interest to the Texas Commission. The Texas Commission will then select the entity or entities responsible for constructing the transmission improvements, establish a schedule by which the improvements shall be completed and specify any reporting requirements necessary to ensure that transmission improvements are completed in a timely manner. A copy of §25.174 of the Electric Rules of the Texas Commission dealing with CREZ is hereby attached as Schedule "B."

The procedures adopted by the Texas Commission alleviate the uncertainty inherent in the development of renewable energy resources. We agree with the OPA's suggestion in the IPSP



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that as a principle, the enabler lines should be developed in advance to enable the subsequent development of clusters of renewable generation resources. We respectfully propose:

- That there be an open and competitive process by which energy developers can promote the enabler lines required by renewable energy resources;
- That, in appropriate cases, renewable energy generators be given opportunities to apply for construction of enabler lines for a particular cluster.

The availability of such open process would ensure that proponents of enabler lines, whether it is a licensed transmitter or a renewable energy developer, can bring a transmission application before the Board for approval. Such process will enable the Board to determine the cost effectiveness of an enabler line project. It will also allow non-integrated renewable energy generators like Invenergy Canada – who have both the ability and the capacity to engage in transmission development – to compete with the more integrated generators on an equal footing for the development of enabler lines.

Should you have any questions with respect to the above submissions, please feel free to contact the undersigned. We look forward to actively participating in this consultation process.

Yours truly,

BENNETT JONES LLP

John Rook

JR/ck

TAB A

119 FERC ¶ 61,061
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation Docket No. EL07-33-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued April 19, 2007)

1. In this order, we address a petition for a declaratory order filed by the California Independent System Operator Corporation (CAISO) seeking conceptual approval of a financing mechanism for the construction of interconnection facilities to connect location-constrained resources¹ to the CAISO grid. Specifically, the CAISO seeks a determination that, upon the satisfaction of criteria proposed by the CAISO or other criteria that the Commission may adopt, the proposed rate treatment of the costs of the interconnection facilities, as further described below, would constitute an appropriate variation from Order No. 2003's default generator interconnection policies² or that the proposed rate treatment would otherwise be just and reasonable.

2. As discussed herein, we find that the proposed rate treatment is not unduly preferential or discriminatory and would be just and reasonable. The difficulties faced by generation developers seeking to interconnect location-constrained resources are real, are distinguishable from the circumstances faced by other generation developers, and such impediments can thwart the efficient development of needed infrastructure. The CAISO's proposal is consistent with our policies that recognize and accommodate the

¹ For purposes of this order, we will define location-constrained resources as generation resources that are typically constrained as a result of their location, relative size and the immobility of their fuel source.

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

unique circumstances of renewable resources, which are often location-constrained, and it advances state, regional and federal initiatives to encourage the development of renewable generation in a manner that satisfies our responsibilities under the Federal Power Act (FPA).

3. We find that the CAISO's proposal strikes a reasonable balance that addresses the barriers to development of location-constrained resources and includes appropriate ratepayer protections to ensure that rates remain just and reasonable. The CAISO's proposal includes several features that ensure that benefits will accrue to users of the CAISO grid and that limit the cost impact on ratepayers, including a rate impact cap and capacity subscription requirements. Further, the CAISO will evaluate and approve each proposed interconnection facility in the context of a CAISO transmission planning process, thereby ensuring that the project will result in a cost effective and efficient interconnection of resources to the grid.

I. The CAISO's Proposal

4. The CAISO proposes to create a new mechanism to facilitate the financing and development of interconnection facilities designed primarily to connect multiple location-constrained resources to the CAISO grid (referred to herein as multi-user interconnection facilities). The proposed financing mechanism is intended to remove existing barriers to the efficient development of facilities needed to connect location-constrained resources to the grid. According to the CAISO, this important and pressing issue requires timely resolution and the adoption of an innovative solution such as that proposed by the CAISO. The CAISO further states that the proposal is a modest variation of the Commission's default interconnection policies that constitutes an appropriate independent entity variation or regional differences variation.

5. The proposed financing mechanism would initially roll-in the costs of these interconnection facilities through the transmission revenue requirement (TRR) of a Participating Transmission Owner (PTO) that constructs the facility. The cost of the facility would be reflected in the CAISO Transmission Access Charge (TAC), which is assessed on a gross load basis. Each generator that interconnects would be responsible for paying its *pro rata* share of the going-forward costs of using the line. Until the line is fully subscribed, all users of the grid would pay the cost of the unsubscribed portion of the line, through its inclusion in the TAC. Once the facilities are constructed, generators of any fuel type would be eligible to interconnect and contract for unsubscribed capacity.

6. The CAISO proposes the following eligibility criteria for the proposed rate treatment for the interconnection facilities:

- (1) The costs of the interconnection facility – which is a non-network facility – would not otherwise be eligible for inclusion in the CAISO’s TAC;
- (2) The project must provide access to an “energy resource area”³ in which the potential exists for the development of a significant amount of location-constrained energy resources;
- (3) The project must be turned over to the CAISO’s operational control;
- (4) The project must be a high-voltage facility designed primarily to serve multiple location-constrained resources that will be developed over a period of time;
- (5) To be eligible for this financing treatment, a project would have to be evaluated and approved by the CAISO in the context of a CAISO transmission planning process, thereby ensuring that the project will result in a cost effective and efficient interconnection of resources to the grid;
- (6) To limit the cost impact of the proposal on ratepayers, there would be an aggregate cap on the total dollars associated with the multi-user interconnection facilities that could be included in TAC rates at any one time (referred to herein as a rate impact cap). Specifically, the total investment in the interconnection facilities that can be included in TRRs and the TAC cannot exceed 15 percent of the sum total of the net high-voltage transmission plant of all PTOs, as reflected in their TRRs and in the TAC; and
- (7) To limit the risk of stranded costs due to abandoned investment, the project must demonstrate adequate commercial interest by satisfying the following two-prong test before actual construction can commence: (a) a minimum percentage of the capacity of the new interconnection facilities – an order of

³ The CAISO defines an energy resource area as a region in California, to be identified by the California Energy Commission (CEC) or other state agency, that holds the potential for development of a significant quantity of location-constrained resources and that is not readily accessible to the CAISO transmission grid.

magnitude of 25 to 30 percent – must be subscribed through executed Large Generator Interconnection Agreements (LGIAs⁴); and (b) there must be a tangible demonstration of additional interest in/support for the project⁵ – an order of magnitude of 25 to 35 percent – above and beyond the capacity covered by LGIAs.⁶

7. The CAISO states that the proposal is motivated by the potential for the development of significant quantities of location-constrained resources (such as wind, geothermal and solar resources) in energy resource areas. According to the CAISO, there is an urgent need to develop these resources because of the combination of the growing demand in California and the exigencies of California's Renewable Energy Portfolio Standard (RPS). The CAISO states because these resources rely upon immobile fuel sources that are remote from the transmission grid, significant barriers exist in their development.

8. According to the CAISO, these obstacles are compounded by the pattern of resource development in energy resource areas, under which (1) multiple individual generation projects will be developed by multiple competing developers, (2) the individual generation resources generally will be smaller than typical fossil fuel projects, and (3) the generation resources will come on-line in relatively small increments over a number of years. The CAISO asserts that current Commission policy, requiring generation developers to pay for the cost of generation tie lines, has impeded the financing and construction of lines to access location-constrained resources. The CAISO notes that such facilities have not been built – and are not being built – even though the potential power supplies that could come from such resource areas are significant.

9. The CAISO asserts that the defining characteristics of location-constrained resources – their location, their relative size compared to the size of line needed to connect all individual location-constrained resources in a region, and the immobility of

⁴ See Standard Large Generator Interconnection Agreement, Appendix V, CAISO FERC Electric Tariff, Third Replacement Vol. 1 (CAISO LGIA).

⁵ This interest could be shown through formal declarations of interest, assessment of the number of megawatts in the CAISO interconnection queue, responses to an open season, or CEC studies showing the potential megawatt development in a region (Petition at 34-35).

⁶ The specific percentages that the CAISO would propose in item (7) would be developed through the stakeholder process that will precede the tariff filing, but the CAISO anticipates that these percentages should be in the range specified above.

their fuel source – sets them apart from other generators. Thus, the CAISO claims, this proposal is consistent with Commission precedent recognizing that modification of transmission policies to address the unique circumstances of particular types of generators does not constitute undue discrimination. Rather, such modification may be necessary to remedy the discriminatory effect of treating dissimilarly situated generators the same.⁷

10. The CAISO seeks a determination that, upon the satisfaction of the proposed criteria or other criteria that the Commission may adopt, the proposed rate treatment of the costs of interconnection facilities would constitute an appropriate variation from the Commission's default generator interconnection policies as authorized by Order No. 2003 or that the proposed rate treatment would otherwise be just and reasonable. The CAISO also requests that the Commission (1) provide general conceptual approval for its proposed financing mechanism for the interconnections of location-constrained resources, and to (2) provide additional guidance regarding the eligibility criteria that should apply to the financing mechanism.

II. Notice of Filings and Responsive Pleadings

11. Notice of the January 25, 2007 filing was published in the *Federal Register*, 72 Fed. Reg. 6548 (2007), with interventions or protests due on or before March 1, 2007. The Commission issued a second notice on February 9, 2007, shortening the time for intervention and protest filings to and including February 22, 2007.

12. The following entities filed timely interventions, protests and/or comments: American Wind Energy Association and Center For Energy Efficiency And Renewable Technologies (AWEA and CEERT); Atlantic Path 15, LLC; Arizona Public Service Company; California Department of Water Resources State Water Project; CEC; California Municipal Utilities Association (CMUA); California Public Utilities Commission (CPUC); City of Santa Clara, California, doing business as Silicon Valley Power (SVP) and the M-S-R Public Power Agency (M-S-R); Golden State Water Company (Golden State); Horizon Wind Energy LLC (Horizon); Imperial Irrigation District (Imperial); Metropolitan Water District of Southern California (Metropolitan); Modesto Irrigation District (Modesto); National Grid USA (National Grid); Northern California Power Agency (NCPA); NRG Companies; Pacific Gas and Electric Company (PG&E); PPM Energy, Inc.(PPM); Sacramento Municipal Utility District (SMUD); Six

⁷ Petition at 20-21.

Cities;⁸ Reliant Energy, Inc.; Southern California Edison Company (SCE); Transmission Agency of Northern California (TANC); Tyr Energy, LLC and CalPeak LLC (CalPeak);⁹ Williams Power Company, Inc.; and the Working Group for Investment in Reliable and Economic Electric Systems (WIRES).

13. The following entities filed untimely motions to intervene, protests and/or comments: Alliance for Retail Energy Markets (AReM); Electric Power Supply Association; Midwest Independent Transmission System Operator, Inc. (Midwest ISO); Nevada Power Company and Sierra Pacific Power Company (jointly, Nevada Companies); Public Interest Organizations;¹⁰ and San Diego Gas & Electric Company.

14. On March 14, 2007, the CAISO filed a motion for leave to file an answer out of time and answer to the motions to intervene, comments and protests. On March 29, 2007, Golden State filed a motion for leave to answer and answer to the CAISO's motion for leave to answer and answer.

III. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Given the lack of undue prejudice or delay and their interest, we find good cause to grant, under Rule 214, the untimely motions to intervene.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers of the CAISO and Golden State because they have provided information that assisted us in our decision-making process.

⁸ Six Cities is composed of the cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California.

⁹ CalPeak intervenes on behalf of its subsidiaries Calpeak Power – Panoche LLC, Calpeak Power – Vaca Dixon LLC, Calpeak Power – El Cajon LLC, Calpeak Power – Enterprise LLC and Calpeak Power – Border LLC.

¹⁰ Citizens for Pennsylvania's Future, Natural Resources Defense Council, Northwest Energy Coalition, Project for Sustainable FERC Energy Policy, and West Wind Wires.

B. Intervenor Protests and Comments

17. Intervenor are, by and large, supportive of the CAISO's proposal. Only TANC, SVP, Imperial and M-S-R protest the proposal. CMUA and Metropolitan offer general support and filed only limited protests to the CAISO's proposal. Specific points of contention are discussed in detail below.

18. SCE supports the CAISO's proposal to reflect in PTOs' TRRs and in the CAISO's TAC the revenue requirements of non-network facilities needed to interconnect location-constrained generation resources. PG&E also states that it generally supports the CAISO's proposed rate treatment of multi-user interconnection facilities. PG&E argues that the state-mandated RPS have created a need for load serving entities (LSEs) to gain access to renewable energy sources. PG&E observes that the RPS requirements have also created the challenge of assuring that transmission access is available to location-constrained resources, for which it is economically infeasible to fund the construction of sufficient interconnection facilities to make their generation available.

19. PG&E explains that, while it neither supported nor objected to SCE's Trunkline Proposal,¹¹ it supports the CAISO's proposal, in part because the CAISO proposes uniform treatment of PTOs. PG&E argues that the CAISO's proposal would remove barriers to interconnecting clustered resources remote from the grid, while not departing from the Commission's existing general policy requiring the allocation of costs of generation-tie facilities to generators rather than to transmission customers. In addition, PG&E asserts that the CAISO's proposal qualifies as an independent-entity variation from the *pro forma* requirements of Order No. 2003. Finally, PG&E contends that, although the CAISO's proposal shifts the financial risk to transmission customers, the CAISO proposal to limit the amount that can be rolled into TRRs and to place threshold requirements of confirmed interest before a project is approved will substantially mitigate these risks.

20. The CPUC supports the CAISO's proposal. In particular, the CPUC strongly supports the proposed eligibility criteria. The CPUC asserts that these eligibility criteria are intended to assure that the costs borne by ratepayers and the CAISO's wholesale customers in connection with the CAISO's proposed financing mechanism will be just and reasonable. Further, the CPUC maintains, the CAISO has been recognized by the Commission as an independent entity, and is seeking to establish a region-wide cost allocation policy. The CAISO's proposal comprises a much smaller departure from

¹¹ See *Southern California Edison Co.*, 112 FERC ¶ 61,014 (2005) (SCE Trunkline Proposal).

existing Commission policy and would have a much smaller impact on the ultimate cost responsibility of transmission ratepayers than the SCE Trunkline Proposal that the Commission denied in 2005. The CPUC further states that the CAISO's proposal supports an efficient and rational process for expanding and operating the grid, provides prudent ratepayer/stakeholder protections, and is necessary to break the logjam surrounding development of interconnection facilities to remote areas. The CAISO's proposal, the CPUC asserts, does so in a prudent and reasonable manner.

21. In its support for the CAISO's proposal, the CEC notes that it has observed that the current interconnection process for new generation is based on single location power plant development, which does not fit the characteristics of renewable resources located in remote areas.¹² The CEC asserts that planning renewable interconnection facilities on a plant-by-plant basis risks developing a sub-optimal system. In addition, it ignores the reality that multiple individual renewable developers will not necessarily bring their facilities on line at the same time. Finally, the CEC notes that the current interconnection process would also put the cost burden for renewable interconnection facilities on the first renewable developer(s), which poses a significant barrier to renewable development in California.

22. PPM also supports the CAISO's proposal. PPM states that the national imperative to build renewable energy resources is stronger than ever for three reasons: (1) electricity generated by renewable resources helps reduce greenhouse gas emissions; (2) renewable resources both enhance national security and promote diversity by limiting electric generators' reliance on natural gas imports; and (3) renewable resources offer rural America a needed source of economic development. PPM argues that California has set ambitious policies by requiring increasing use of renewable resources in utilities' portfolios and decreasing greenhouse gas emissions. PPM contends that the current CAISO proposal is distinguishable from the SCE Trunkline Proposal because it creates a mechanism for financing, rather than for fully funding, multi-user interconnection facilities. PPM argues that the CAISO's proposal would remedy what it sees as discrimination against location-constrained resources which currently cannot access the grid. Finally, PPM urges the Commission to consider the CAISO proposal as a template for other regions of the country to further encourage development of renewable resources nationwide.

23. AWEA and CEERT state that they fully concur with the CAISO's description of the problem, and its assessment of the causes. AWEA and CEERT state that, if anything,

¹² Citing CEC 2004 *Energy Report Update* at 39.

the CAISO has understated the degree to which the current cost allocation framework has operated as a barrier to development of certain categories of resources, including wind, in the United States. AWEA and CEERT argue that, given the state of the markets and the number of potential entrants, the current underdevelopment of wind resources in the Tehachapi and San Geronio mountains, geothermal resources in eastern and northern California, and central station solar energy in the southern California deserts can only rationally be explained by a regulatory barrier inhibiting construction of interconnection facilities. The CAISO proposal, they contend, will remove a significant barrier to implementation of the resource preferences of the state and California utilities. By reducing conflicts between federal transmission policy and state and utility resource procurement efforts, AWEA and CEERT claim, the CAISO policy promotes coherent and efficient planning, to the benefit of ratepayers.

24. The Midwest ISO states that it supports the CAISO in its efforts to seek innovative financing alternatives that may constitute an appropriate variation from the Commission's default generator interconnection policies as authorized by Order No. 2003. The Midwest ISO encourages the Commission to favorably view this proposal, which meets CAISO's current needs, and to be receptive to similar proposals that would achieve the same goals while meeting the needs of other Regional Transmission Organizations (RTOs).

25. WIRES offers its support for the CAISO proposal because it seeks to accomplish important public policy goals of fostering clean, remotely located energy resources and the facilities needed to make such resources available to customers. According to WIRES, transmission owners and developers will not invest in multi-user interconnection facilities that serve multiple remote resources until such generation is foreseeable and proposals are submitted. Conversely, individual developers of renewable resources will not undertake the disproportionate financial risks of paying for multi-user interconnection facilities, which should always be right-sized to serve all proximate potential renewable resources in the interest of efficiency. WIRES argues that this proposal is in the public interest and recommends the Commission grant the CAISO's petition. However, it also points out that facilities designed to serve renewable resources and other clean but remotely located facilities may, in other contexts, be more extensive and provide the kind of network reliability and economic benefits that impact entire regional markets, warranting a broader and less transitional cost allocation than in this case.

26. PIOs assert that the Commission's reexamination of current network upgrade and generation interconnection financing and cost allocation policies, in light of major changes in the electric industry, is absolutely critical. PIOs urge the Commission to modify its approach on these policies to better reflect the impacts of industry changes,

including the broad benefits to transmission customers of regional planning, operation, and resource procurement. According to the PIOs, although the Commission's current cost allocation approach has served the grid well in the past (where large generation facilities have been built relatively close to load centers, making the cost of upgrades assigned to them a relatively minor component of project development costs), this approach does not (and reasonably cannot) work where the generating facilities are smaller in size, developed in phases, and remote from load due to the immobility of their fuel sources. The CAISO's proposal in this docket, as well as many other filings and reports filed at the Commission in recent years, demonstrate this reality, they state. PIOs urge the Commission to eliminate the barriers identified in CAISO's proposal that inhibit efficient development of facilities needed to connect new generation resources constrained by remote location, relative size, and immobile fuel sources.

Undue Discrimination and Open Access Concerns

27. PPM asserts that the most significant barrier to development of renewable resources is the lack of access to transmission capacity. PPM states that because renewable resources are mostly location-constrained and located a significant distance from load centers, they often require new high voltage (and high-cost) interconnection facilities to be built to connect them to the existing grid. Under the Commission's default interconnection policy, generators are required to pay for non-network facilities that enable a generator to connect to the grid. PPM claims that this policy disadvantages renewable resource generation because the costs of interconnecting would be prohibitive.

28. Horizon argues that holding location-constrained resources to the default pricing policy of Order No. 2003 is unduly discriminatory and creates a barrier to entry for these resources. Like the CAISO, Horizon cites Order No. 661 as an example where the Commission recognized the unique needs of a certain type of generation and found it reasonable to treat dissimilarly situated market participants differently.¹³ Horizon argues that the CAISO's proposal is a reasonable independent entity variation under Order No. 2003 because it seeks to facilitate the development of new generation capacity that is needed to meet California's growing energy demand.

¹³ *Interconnection for Wind Energy*, Order No. 661, FERC Stats. & Regs. ¶ 31,186, at P 50 (2005), *order on reh'g*, Order No. 661-A, FERC Stats. & Regs. ¶ 31,198, at P 41 (2005); *Order Granting Extension of Effective Date and Extending Compliance Date*, 112 FERC ¶ 61,173 (2005); *Notice Extending Compliance Date*, issued Oct. 28, 2005; *Notice Extending Compliance Date*, issued Dec. 22, 2005.

29. The CEC states that it recognizes the need for Commission interconnection policies to assure that transmission owners do not give “any undue preference or advantage to any person.”¹⁴ However, it contends that developing a new policy for location-constrained resources will not give renewable generators any undue preference or advantage. Fossil and nuclear generators can locate in many places, the CEC explains, since their fuel can be brought to the generator via pipeline, rail, or truck. But most generators that use renewable resources, such as wind, geothermal and central-station solar, must locate where their fuel is located in sufficient quantities that electricity generation is economically viable.

30. AWEA and CEERT agree that the CAISO’s proposal addresses barriers to transmission access without discriminating between customer groups or technologies, and without establishing any resource preference. AWEA and CEERT cite the creation of separate interconnection protocols and agreements for large and small generators as an example of the Commission’s acknowledgment of the inherent differences between types of generating resources. Having two sets of interconnection rules does not constitute undue discrimination, they assert. Rather, it reflects the Commission’s desire to tailor its rules to the particular needs of each segment of a very diverse industry. In this regard, AWEA and CEERT argue, the CAISO proposal fits squarely within Commission precedent and policy. Finally, these parties assert that if the Commission is to ensure open access, it must address both deliberate abuses by transmission operators and unintentional barriers created by out-of-date policies.

31. AReM expresses concern that LSEs that are also PTOs have the potential to freeze out other LSEs needing to meet their own RPS requirements. No electric service provider (ESP) is a PTO, AReM explains, but all of the investor-owned utilities (IOUs) in California are also PTOs, which puts them in the unique position of being able to decide which line to propose and, consequently, which resource areas will receive the benefit of a project and get access to the market. This dual role, AReM asserts, creates the potential for anticompetitive effects, wherein the IOU could favor its own renewable projects over those of other LSEs. AReM fears that customers of ESPs would be paying to provide preferential access to resources used solely to meet the IOU’s RPS standards. AReM believes that this outcome would be unjust, unreasonable and discriminatory to the non-IOU LSEs. To mitigate such circumstances, AReM proposes an eighth criterion: The project must allow for open access for all resources and be sized larger than the current and planned renewable contracts held by the sponsoring PTO.

¹⁴ CEC Comments at 12 (citing 16 U.S.C. § 824d(b)).

32. CMUA states that there should be a robust “open season” to ensure that all LSEs have an opportunity to compete for resources needed to fulfill the statewide mandate to increase renewable resource investment. CMUA also argues that if the output of the energy resource area is dedicated to a single or a few large LSEs, no obstacle to financing exists. Therefore, an eligibility criterion should be added to exclude facilities that will interconnect an energy resource area in which generators have contracts to provide energy to two or fewer LSEs.

33. The CAISO, in its answer, states that the additional criteria contemplated by AReM and CMUA are unnecessary. First, the CAISO notes because the multi-user interconnection facilities will be under the CAISO’s operational control, the CAISO is under an obligation to provide open access on the facility. Second, the CAISO argues that because the project must go through the CAISO’s transmission planning process and will be sized to accommodate the entire energy resource area, no PTO will be able to tailor a project to fit only its needs.

34. Similarly, SMUD requests that the Commission require the CAISO to provide sufficient detail to ensure that all California ratepayers will not be forced to subsidize those renewable generators that only serve the retail ratepayers of the PTOs. SMUD disagrees with the CAISO’s assertion that the CAISO should receive special status because it is an RTO and is, therefore, “less likely to act in an unduly discriminatory manner than a market participant Transmission Provider.” SMUD contends that the CAISO has an incentive to favor its members, especially the PTOs, and expresses concern that this proposal may allow interconnection facilities to become vehicles for the statewide funding of facilities intended for the limited benefit of the CAISO’s PTOs.

35. SMUD further claims that this interconnection proposal, coupled with the CAISO’s policy of requiring LSEs outside the CAISO control area to prepay access charges in order to qualify for an allocation of long-term firm transmission rights,¹⁵ is unduly discriminatory because it would give PTOs preferential access to renewable resources located on such interconnection facilities. SMUD requests that the Commission waive the access charge prepayment requirement for any California LSE taking CAISO transmission service to access renewable resources on these multi-user interconnection facilities.

¹⁵ See CAISO filing in Docket No. ER07-475-000 in compliance with Order Nos. 681 and 681-A. *Long-Term Firm Transmission Rights in Organized Electricity Markets*, Order No. 681, FERC Stats. & Regs. ¶ 31,226 (2006), *order on reh’g*, Order No. 681-A, 117 FERC ¶ 61,201 (2006), *reh’g pending*.

36. NCPA asserts that LSEs bearing the cost of these interconnection facilities should have equal access to them. Specifically, NCPA argues that approval of this proposal should be conditioned on a requirement that the CAISO will aggressively work to eliminate transmission constraints that impede access to multi-user interconnection facilities. NCPA explains that it is concerned that under locational marginal pricing, the transmission costs of moving power from remote generation resources to load centers will be more expensive for LSEs. Local deliverability requirements for resource adequacy standards are also likely to limit LSEs in load pockets from accessing renewable generation developed through this proposal, NCPA states. Further, NCPA asserts that access to the financing for generation tie lines is not equally available to all renewable resources. Thus, NCPA argues, LSEs financing their own renewable projects could be paying for their own generation tie costs, in addition to shouldering a share of the generation tie costs for resources that will benefit other LSEs.

37. The CAISO, in its answer, states that it does not believe that its proposal raises any significant issues regarding LSE access to renewable generation that will become available. The CAISO agrees with NCPA that there are locational constraints on the transmission grid, but asserts that these transmission constraints do not prevent any LSE from contracting with any generating resource, nor do they prevent an LSE that develops its own generation from interconnecting to a multi-user interconnection facility, even if the LSE's load is located in a transmission-constrained area.

38. The Nevada Companies argue that the Commission should not limit its approval of this proposal to the interconnection of remote generation to facilities under the control of the CAISO. Rather, the Commission should make clear that the same principles should apply to other transmission owners, including the Nevada Companies. The Nevada Companies are concerned that the CAISO's proposal could reward inefficient behavior, with potentially harmful results. Namely, that the application of this rate treatment only to PTOs within the CAISO control area could lead to the inefficient siting of renewable resource projects and could even discourage projects that otherwise should be developed. The Nevada Companies therefore submit two modifications to the CAISO's proposal: (1) the eligibility criteria should consider not only the proximity of the renewable resource site to transmission lines that are part of the CAISO-controlled grid, but also the proximity of the energy resource area to transmission facilities owned by entities that are not PTOs; and (2) if such facilities are constructed to locations outside the CAISO control area, the proposed rate treatment should apply only if transmission owners in the non-CAISO balancing area are also eligible for the proposed rate treatment.

Cost Allocation Issues

39. Horizon contends that multi-user interconnection facilities will provide access to areas rich in renewable energy supplies and will increase generation critically needed to meet California's growing energy demand and enable utilities to meet state mandated RPS requirements. Therefore, Horizon concludes, multi-user interconnection facilities can be expected to create system-wide benefits. Horizon argues that the Commission should allow for full roll-in of the costs associated with building multi-user interconnection facilities where it is demonstrated that such facilities will provide system-wide benefits, notwithstanding the fact that they are not network facilities.

40. National Grid states that the CAISO's proposal is consistent with the "beneficiaries pay" principle, and that it recognizes the benefits to customers of access to renewable resources needed to meet renewable portfolio standards, while gradually shifting costs back to generators. National Grid asserts that funding rules must: (1) be clear as to how and which customers will pay for investments; (2) recognize the broad benefits associated with an upgrade; and (3) possibly incorporate a mix of regionally spread (postage stamp), license plate, and participant funding mechanisms.

41. CMUA expresses concern that requiring that generators only pay going-forward costs of the interconnection facilities will provide developers with incentives to be later in the interconnection queue and/or delay interconnection. CMUA asserts that ratepayer exposure could be ameliorated by making the initial commitment level higher, or by requiring that the interconnecting generator pay its *pro rata* share of the entire cost of the facility.

42. Metropolitan similarly asserts that interconnecting generators should pay their *pro rata* share of the cost of the facilities because such a policy (1) would not provide an advantage to future interconnection customers; (2) will provide a source of funding for new interconnection facilities; and (3) would prevent undue discrimination that could occur when a thermal generator interconnects.

43. CMUA also expresses concern over potential stranded costs. It would be an inappropriate result, CMUA argues, if the CAISO's proposal provided an incentive for PTOs to bypass facilities planned by another transmission owner, thus stranding the costs of those facilities. CMUA requests that the CAISO and the Commission confirm that facilities that would result in such bypass and resulting stranded costs would not be eligible for the proposed multi-user interconnection facility rate treatment.

44. In its answer, the CAISO explains that it has not designated any location as an energy resource area. Further, it submits that the proposal properly promotes the development of location-constrained resources while ensuring prudent transmission planning. Because all proposed projects will be subject to review in a regional transmission planning process, the CAISO argues, the only stranded resources should be those that would have been stranded, even in the absence of multi-user interconnection facilities.

45. Golden State states that it is willing to pay its fair share of the costs to get its fair share of the transmission capacity to reach those resources, but Golden State should not be charged for something it is not getting. The CAISO proposal, according to Golden State, would charge it for the costs of non-network transmission facilities even though Golden State has not requested and may never receive any service over them. As such, Golden State asserts, the CAISO proposal is unjust, unreasonable, and unduly discriminatory and preferential. The Commission has no legal authority under the FPA to approve rates and charges to persons who are not receiving transmission or wholesale electricity service. Accordingly, the Commission should not give conceptual approval to the CAISO proposal as it now stands. Golden State suggests that one way around this dilemma is to guarantee transmission service to all LSEs who are paying for it. If all LSEs using the CAISO grid are to be charged for non-network transmission lines, then they should have the legal right to use them. For example, the CAISO might allocate load-ratio shares of these lines to all LSEs *ab initio*, and then LSEs could release their shares, or buy or sell them from one other, as their interests dictate.

46. TANC argues that the CAISO's proposal shifts costs to transmission customers who will not benefit from the generation facilities, and is thus inconsistent with Commission transmission and interconnection pricing policies. Further, TANC asserts, the CAISO does not adequately support its proposal or explain how it satisfies cost causation principles. TANC fears that allowing the costs of non-network transmission projects to be spread to all CAISO customers may result in market inefficiencies caused by the exploitation of differences. Finally, TANC submits that transmission costs are escalating rapidly; it notes that PG&E's TRR has increased by 113 percent since 1998. Layering generation-tie costs on top of these rates will only exacerbate the burden on transmission customers, TANC contends.

47. Imperial claims the main obstacles to development in remote locations are transmission siting, permitting and environmental challenges. It suggests that the CAISO should first exhaust all merchant opportunities to manage the renewable transmission risk before ratepayers are forced to bear all the risks and associated costs. Imperial also contends that the socialized cost structure is discriminatory against existing generators

who must bear the cost of more expensive interconnection facilities until there are enough generators to even out the cost for constructing a new line. Imperial states that the CAISO's proposal could strand Imperial's investments in generation ties and transmission facilities developed to access renewable resources. It also asserts that the CAISO's classification of the Salton Sea as a location-constrained resource conflicts with Imperial's ongoing development of transmission to the area. Imperial fears that, with this proposal, the CAISO inappropriately serves as an integrated resource planner.

48. Modesto states that the past few years have seen the development of numerous rate escalators or incentives, which are created to achieve certain policy objectives, brought before the Commission. Modesto contends that though the proponents of a particular incentive rate treatment might be able to demonstrate that it provides system benefits, the Commission should consider in this case whether the aggregate cost of providing the incentives might outweigh the benefits provided. In particular, Modesto is concerned that the CAISO has not sufficiently demonstrated how the proposal would benefit customers who pay only the Wheeling Access Charge (WAC) for import from or wheel-through the CAISO control area. Modesto claims that development of such location-constrained resources might create more localized benefits and may only have incidental benefits for import and wheel-through customers. For this reason, Modesto contends that some mitigation of the roll-in to the WAC may be required in this case.

49. In its answer, the CAISO explains that, contrary to TANC's assertion, the cost of the facilities will be collected from the entities that use them, namely the interconnecting generators. The CAISO reiterates that the only costs that are proposed to be charged through the TAC are those for capacity that is not subject to contract by a generator. In response to Golden State's proposal, the CAISO states that it is incompatible with the CAISO service model, which is not based on physical reservations of point-to-point capacity. Rather, network service is available to all transmission customers on a daily basis. The CAISO points out that Imperial's fear that existing generators would be harmed by paying for such interconnection facilities is misplaced. The CAISO states that generation does not pay the TAC, load does.

50. The CAISO asserts in its answer that concerns of gaming by generators are unfounded. It explains that the marginal cost savings to a generator that delays interconnecting are not likely to outweigh the lost profits from not serving demand. The CAISO further contends that generation developers incur significant up-front costs; it

would be illogical to subject oneself to those costs while not earning any revenues. Finally, the CAISO notes that if a generator delays commencing commercial operation for more than three years, that generator loses its position in the interconnection queue.¹⁶

51. In its answer, Golden State argues that the CAISO's argument in favor of rolling in the costs – that every LSE has a right to contract for capacity from the multi-user interconnection facility – would improperly justify allowing any facility placed under the CAISO's control to be rolled into transmission rates. Golden State adds that the transmission users who would pay for the facilities would not be the same transmission users who would benefit when the facilities are subsequently used, in violation of cost causation principles.

Other Issues

52. PG&E requests that, if the CAISO's proposal is accepted, the Commission should make the same determination regarding plant abandonment as it did for the SCE Trunkline Proposal, *i.e.*, 100 percent cost recovery of prudently incurred costs for multi-user interconnection facilities. PG&E contends that, because PTOs (1) will be constructing multi-user interconnection facilities to advance California's RPS mandate, (2) do not have decision-making authority over the construction or abandonment of location-constrained resources, and (3) shareholders do not share the earnings associated with these interconnection facilities, the Commission should grant full recovery of prudently incurred costs.

53. CMUA, Metropolitan, NCPA, and Golden State argue that multi-user interconnection facilities should not be eligible for incentive rates. In its answer, the CAISO asserts that its proposal only addresses the inclusion of the costs of multi-user interconnection facilities in a PTO's TRR on an interim basis. Whether PTOs receive incentive rate treatment for those facilities, the CAISO argues, is beyond the scope of this proceeding.

54. CMUA and NCPA note that a footnote in the CAISO's proposal limits the proposed financing treatment to wires-only facilities, and does not extend to generation facilities. They assert that this restriction should be explicitly incorporated into any Commission approval of the proposal. CMUA opposes any attempt to socialize generation costs through the TAC. NCPA suggests that, if the Commission approves the CAISO's proposal in general terms, it should clarify that the criteria proposed by the CAISO should be implemented narrowly and without exceptions. Finally, NCPA

¹⁶ See CAISO LGIA at Article 4.4.5.

contends, the Commission should make it clear that any declaratory order approving this proposal is subject to the development of just and reasonable tariff provisions governing multi-user interconnection facilities treatment, as well as fair implementation of those provisions. The CAISO responds in its answer that it has only proposed that the cost of multi-user interconnection facilities be included in this proposal.

55. NCPA asserts that the proposed capacity subscription requirement should be strengthened. In particular, it submits that at least half of the capacity should be subscribed before facilities are approved. Metropolitan also recommends a 50 percent capacity subscription requirement and contends that the "showing of additional interest" requirement is too vague. CMUA expresses similar concerns that the requirement of firm contractual commitment for 25 to 30 percent of the capacity of the interconnection facilities is too low and creates a real possibility of stranded costs that will be borne by transmission customers.

56. The CAISO responds in its answer that it is concerned that any threshold greater than 25 to 35 percent would set too high a hurdle for initial capacity subscription. Because location-constrained resources are typically developed in small increments, the CAISO fears that requiring a high percentage of the capacity to be subscribed before construction commences would be unrealistic and essentially result in a continuation of the status quo. Further, the CAISO asserts, the proposal contains a number of provisions to ensure that these multi-user interconnection facilities will be built where they will be used, and in a cost-effective manner. The CAISO notes that any proposed project will be analyzed as part of an integrated transmission planning process, complete with economic tests, reliability evaluations, operational considerations and cost modeling. This process, according to the CAISO, will act as a "gatekeeper" to ensure the proper use of the proposed financing mechanism. Finally, the CAISO says it has committed to undertake a stakeholder process to determine both the minimum percentage of capacity that must have an executed LGIA and the minimum percentage of demonstrated "additional interest." The CAISO observes that the combination of these two requirements could well exceed 50 percent of the capacity of the multi-user interconnection facilities.

57. NCPA supports the proposed 15 percent cap on overall investment. Similarly, CMUA supports the concept of an aggregate cap. However, it asserts that there are many implementation issues surrounding this aggregate cap. CMUA suggests that this issue is ripe for further discussion, so that details can be developed and the rate impact to transmission customers can be ascertained. In its answer, the CAISO explains that this cap was developed following the stakeholder process and is intended to strike a balance

between the need to encourage development of location-constrained resources and the need to limit increases in the TAC. The CAISO notes that no protester has identified an alternative cap level.

58. Metropolitan states that the process for identifying an “energy resource area” is too ambiguous and needs clarification. CMUA agrees, stating that the definition of “energy resource area” requires further development, including the level of potential eligible resource development, and how and by whom the designations of such areas will be made.

59. Golden State asserts that the CAISO’s proposed rate treatment may or may not be reasonable in a particular situation and argues that the Commission should not approve this part of the proposal, even in concept, prior to the CAISO filing actual tariff language.

60. TANC submits that the CAISO’s proposal raises significant policy issues that may not be properly considered in a petition for declaratory relief. TANC notes that the proposal may have significant implications for the industry as a whole. The CAISO, in its answer, disagrees, stating that these are exactly the type of issues that are appropriate for a declaratory order proceeding.

61. CMUA, Metropolitan and Six Cities request that the Commission refrain from providing guidance on disputed eligibility criteria and instead commence Settlement Procedures under Rule 602 of the Commission’s Rules of Practice and Procedure¹⁷ to develop the necessary tariff language. The CAISO, in its answer, states that it does not believe formal settlement discussions are necessary or appropriate. This is a declaratory order proceeding, the CAISO continues, and it is only seeking conceptual guidance on issues which will lead to a section 205 filing, separate and apart from the instant proceeding. Further, the CAISO explains that it will undertake a stakeholder process to finalize details of the proposal.

C. Commission Determination

62. As discussed in detail below, we find that the proposed rate treatment is not unduly preferential or discriminatory and includes protections to customers that are just and reasonable. The difficulties faced by generation developers seeking to interconnect location-constrained resources are real, are distinguishable from those faced by other generation developers, and such impediments can thwart the efficient development of

¹⁷ 18 C.F.R. § 385.602 (2006).

infrastructure. In this regard, we find that the CAISO's proposal is an appropriate mechanism to accommodate the unique characteristics of location-constrained resources and that doing so does not constitute undue discrimination against other generators.

63. There are several factors that distinguish the CAISO's proposal from the SCE Trunkline Proposal. For example, the CAISO's proposal provides that a multi-user interconnection facility will be placed under the operational control of the CAISO. While the costs of the facility's unsubscribed capacity would receive rolled-in rate treatment, the CAISO's proposal would allocate going-forward costs to the interconnecting generators, thus limiting the exposure to TAC ratepayers. Any project financed through this mechanism would be subject to an independent regional transmission planning process that must define the benefits a facility provides to the grid. The planning process will also ensure efficient and cost effective sizing and siting of multi-user interconnection facilities. The CAISO's proposal will allow traditional generators to use the multi-user interconnection facility after the initial subscription levels have been met. Finally, the CAISO's proposal includes several mechanisms that should ensure that benefits of new interconnections can be obtained and that limit the cost impact on ratepayers, including a rate impact cap and capacity subscription requirements. Thus, we find that the CAISO's proposal strikes a reasonable balance that addresses the barriers to development of location-constrained resources and includes appropriate ratepayer protections to ensure that rates remain just and reasonable.

Special Circumstances Facing Location-Constrained Resources

64. Location-constrained resources present unique challenges that are not faced by other resources and that are not adequately addressed in the Commission's current interconnection policies. These resources tend to have an immobile fuel source, are small in size relative to the necessary interconnection facilities, tend to come on line incrementally over time, and are often remotely located from loads. Location constrained resources therefore have a limited ability to minimize their interconnection costs and, moreover, these factors can, in certain circumstances, impede the development of such resources altogether.

65. Our interconnection policy assumes that generators seeking to transmit energy or sell energy at wholesale in interstate commerce can choose where to interconnect and will do so in an economically efficient manner, so as to minimize costs of interconnection.¹⁸ Order No. 2003 provides that non-network or interconnection

¹⁸ See, e.g., Order No. 2003 at P 695, Order No. 2003-A at P 613-614, *PJM Interconnection, LLC*, 87 FERC ¶ 61,299, at 62,204 (1999).

facilities are directly assignable costs that should be paid for by the interconnection customer. The Commission, however, established its policy prior to recent initiatives to develop renewable energy resources on a much larger scale. Such resources are often location-constrained.

66. We find that the barriers to the development of interconnection infrastructure to location-constrained resources highlight the need for flexibility in applying the Commission's interconnection policy to accommodate these resources.¹⁹ The CAISO and several intervenors submit that the costs of multi-user interconnection facilities can be prohibitive due to the generating facility's remote location and immobility of fuel source. They also assert that the development of multi-user interconnection facilities is impeded because of the small size of an individual generator relative to the size of line needed to connect all potential location-constrained generators in an energy resource area, and because the resources will come on line in small increments over an extended period of time. In a recent report, the CEC noted the "'chicken and egg' nature of renewable transmission development" and observed that

renewable projects cannot secure contracts under RPS procurement procedures without knowing whether existing transmission will be able to accommodate them. At the same time, utilities are wary of investing in renewable transmission without assurances of cost recovery, which is premised on the renewable generation being built.²⁰

67. The Tehachapi resource area is an example of a situation where insufficient interconnection capacity may be preventing the development of location-constrained resources. As noted by the CPUC, the amount of wind generation in the CAISO's interconnection queue for the Tehachapi resource area has increased more than fourfold since the CPUC ordered SCE to file for transmission expansion in the area and the first report on transmission options was issued.²¹ Prior to the CPUC's action, market

¹⁹ As elaborated below, this finding is consistent with the Commission's finding in Order No. 661 that differences in certain location-constrained resource technology warrant flexibility in interconnection requirements.

²⁰ CEC 2005 *Integrated Energy Policy Report* at 99 (November 2005).

²¹ CPUC Comments at 8. We note that initiatives similar to the CPUC's actions are being considered elsewhere in the US, including in Colorado, Minnesota and Texas. These states are providing assurance that utilities may seek recovery of investments in facilities to access renewable energy development areas in advance of generation projects.

participants were able to privately finance the construction of just one interconnection facility from the Tehachapi resource area to the CAISO-controlled grid. With respect to the single line that was constructed, the Commission recently issued a series of orders to address competing requests for capacity.²² Implicit in these competing capacity requests is the fact that the interconnection facility is undersized and that insufficient capacity exists to meet all requests for service. The haphazard and inefficient way in which the Tehachapi resource area has been developed highlights the need for addressing the incremental nature of renewable development. The CAISO's proposal is intended to address such inefficiencies.

68. We also find that the CAISO's proposal is consistent with and supports state, federal and regional policies that encourage the types of clean, renewable generation that are often location-constrained. The State of California recently accelerated its existing RPS of 20 percent by 2017 to a 20 percent requirement by 2010.²³ The RPS, together with growing demand in California, will require development of a significant amount of infrastructure. At the federal level, the Energy Policy Act of 2005 included production incentives for renewable electric generation projects,²⁴ and minimum renewable energy purchase requirements for the Federal government.²⁵ Regionally, the Western Governors Association has issued a policy resolution backing the development of clean, diversified energy resources and encouraging policies that eliminate barriers to greater utilization of clean energy resources across the West.

Undue Discrimination and Open Access Concerns

69. As described above, location-constrained resources are not similarly situated to other types of generation resources because they face different siting and development factors. In Order No. 2003, the Commission stated that to ensure fully comparable treatment of all generation facilities, transmission rates should not include the costs of interconnection facilities. Our existing interconnection policy, as articulated in Order No. 2003, did not, however, contemplate the challenges associated with more recent efforts to interconnect location-constrained resources.²⁶ We therefore find it appropriate

²² See *Aero Energy, LLC*, 115 FERC ¶ 61,128; *Aero Energy, LLC*, 116 FERC ¶ 61,149 (2006); *Aero Energy, LLC*, 118 FERC ¶ 61,204 (2007).

²³ See California Public Resource Code § 25740.

²⁴ 42 U.S.C. § 13317(a) (2000).

²⁵ Sec. 203 of the Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 594 (2005).

²⁶ Order No. 2003 at P 743.

to distinguish from our general policy the CAISO's proposal to roll in the costs of any unsubscribed capacity from a multi-user interconnection facility. The Commission has determined that discrimination is undue when there is a difference in rates or services among similarly situated customers that is not justified by some legitimate factor.²⁷ Given that location-constrained resources are not similarly situated to other types of generation resources with respect to interconnection costs, have an immobile fuel source, are small in size relative to the necessary interconnection facilities, tend to come on line incrementally over time, and are often remotely located from loads, we find that the CAISO's proposal does not unduly discriminate against any type of resource.

70. Our finding that the CAISO's proposal is not unduly discriminatory is consistent with prior Commission precedent that recognizes the unique circumstances of particular types of generators and concludes that dissimilar treatment of dissimilar resources does not constitute undue discrimination.²⁸ The Commission in Order No. 2003-A recognized that the Commission's interconnection policy is designed around the needs of large, synchronous generators and acknowledged that many generators relying on newer technologies may find that either a specific technical requirement is inapplicable or that it calls for a slightly different approach.²⁹ Likewise, in Order No. 661, the Commission outlined just and reasonable terms for the interconnection of wind plants that recognize the technical differences of wind generating technology and remove unnecessary obstacles to further development of wind generating resources.³⁰ The Commission has also approved the CAISO's Participating Intermittent Resource Program, which modified the settlement of uninstructed deviations for intermittent resources.³¹ More recently, the Commission highlighted reforms in Order No. 890 that address certain special attributes of clean energy resources. These reforms include: (1) the introduction of conditional firm service, (2) a requirement for open and coordinated transmission planning, and (3) modification of energy and generator imbalance charges.³²

²⁷ See, e.g. *El Paso Natural Gas Co.*, 104 FERC ¶ 61,045, at P 115 (2003); Order No. 436, FERC Stats. & Regs. ¶ 30,655, at 31,541 (1985).

²⁸ See Order No. 661 at P 1; Order No. 2003-A at P 407 n.85; *Entergy Services, Inc.*, 93 FERC ¶ 61,156, at 61,525 n.8 (2000).

²⁹ Order No. 2003-A at P 407 n.85.

³⁰ Order No. 661 at P 1.

³¹ *California Independent System Operator Corp., et al., v. Williams Energy Services Corp., et al.*, 98 FERC ¶ 61,327 (2002).

³² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 5 (2007) (Order No. 890).

71. Finally, we believe that the CAISO's status as an independent entity and its role in the regional transmission planning process provides further assurance that the proposal is not unduly discriminatory. As noted in Order No. 2003, the Commission is much less concerned that all generation owners will not be treated comparably where the transmission provider is independent and therefore has no incentive to treat interconnection customers differently.³³

72. Several commenters are concerned that the CAISO's proposal is unduly discriminatory because it may enable the sponsoring PTO to contract for the entire amount of renewable generation available on a multi-user interconnection facility, or that some LSEs may not have equal access to the renewable generation. We find this concern to be unfounded. As the CAISO notes, it has a general obligation to provide open access on the multi-user interconnection facility since the facility will be under the CAISO's control. Furthermore, any facility will be analyzed and approved through the CAISO's independent transmission planning process. This process will ensure that the facility is sized to accommodate the optimum amount of capacity from an energy resource area and not sized based on the RPS requirements of the sponsoring PTO.³⁴ Finally, we note that this concern is not yet ripe; parties will be able to raise concerns about discrimination by the sponsoring PTO when the PTO files to include the cost of the multi-user interconnection facility in its TRR. Accordingly, we reject as unnecessary the additional requirements suggested by AReM and CMUA.

73. NCPA is concerned that constraints on the CAISO-controlled grid may prevent NCPA from accessing new generation from the multi-user interconnection facility. We disagree. NCPA has not explained why transmission constraints would prevent NCPA from contracting with a generation resource using a multi-user interconnection facility. In addition, we find that transmission constraints are a much broader concern that is not appropriately addressed within the context of this narrow proceeding. Similarly, we find SMUD's suggestion to waive the access charge prepayment, as required by the CAISO's compliance in Order No. 681, to be beyond the scope of the instant proceeding.³⁵

74. NCPA is also concerned that the CAISO's proposal is not equally available to all renewable resources, especially to resources that LSEs are developing by financing their

³³ Order No. 2003 at P 701.

³⁴ We note that if, as commenters fear, capacity on a multi-user interconnection facility is fully contracted, no costs will be rolled in to the TAC.

³⁵ The CAISO's compliance filing is pending before the Commission in Docket No. ER07-475-000.

own interconnection facilities. On a going forward basis, we believe that the CAISO's proposal should be equally available to all location-constrained resources, subject to meeting the proposal's eligibility criteria.³⁶ As noted above, the CAISO's independent transmission planning process is designed to allow for appropriate sizing of the multi-user interconnection facilities by matching LSEs' projected needs against the potential capacity from an energy resource area. Through this fair and open process, all needs will be considered. We urge NCPA to take advantage of and participate in the transmission planning process to develop multi-user interconnection facilities for eligible location-constrained resources it has identified.

75. Metropolitan submits that allowing a non-location constrained generator to interconnect and take advantage of the multi-user interconnection facility is unduly discriminatory. We understand the CAISO's proposal to require that only capacity subscriptions and demonstrations of interest by location-constrained resources would count towards the minimum requirements that must be met before a multi-user interconnection facility can be constructed. Once these minimum capacity subscription and demonstrations of interest requirements are met and the multi-user interconnection facilities are constructed, other types of generators would be able to interconnect and make use of previously unused capacity. We find that these criteria are appropriate to justify the application of the proposed rate treatment that will facilitate the development of location-constrained resources. However, we also find that, once these initial criteria are satisfied and facilities are constructed, it would be unduly discriminatory to prevent other types of resources from contracting for unused capacity.³⁷

76. The Nevada Companies are concerned that the limitation of the proposed rate treatment only to PTOs within the CAISO control area could lead to inefficient siting of renewable resource projects or even discourage the development of some projects. The Commission's acceptance of the CAISO's proposed financing mechanism should not be seen as precluding any other entity from requesting similar treatment in the future. In this case, we have determined the CAISO's proposal to be just and reasonable for the reasons

³⁶ We note that the CAISO is unclear as to whether the proposal would be applied only to a discrete set of renewable resources (*see* Petition at 29). To prevent undue discrimination, we would expect that all resources meeting the definition of location-constrained should be eligible under the CAISO's proposal.

³⁷ Further, we note that this provision should provide additional incentive for developers of location-constrained resources to contract for capacity as early as possible, and full subscription of the line will limit the potential for stranded costs to be borne by TAC ratepayers.

discussed in detail in the body of this order. While the safeguards provided by the CAISO's independent planning process have played a role in the Commission's determination in this case, other factors are also important. We will consider similar proposals by independent and non-independent entities alike on a case-by-case basis based on the facts presented. To address the Nevada Companies concerns that the CAISO's eligibility criteria should consider the proximity of energy resource areas to transmission facilities owned by entities that are not a PTO, we reiterate that, as required by Order No. 890, the regional aspect of the transmission planning process will have to ensure proper siting and development of multi-user interconnection facilities. It will be incumbent on the transmission provider to establish the regional need and benefits of a proposed project.

Cost Allocation Issues

77. A number of commenters take issue with the cost allocation methodology under the CAISO's proposal. Some contend that, given the system benefits that multi-user interconnection facilities provide, the full costs of the facilities should be rolled in. Others argue that the *pro rata* share of the facility's cost should be allocated to generators. In particular, TANC and others are concerned that the CAISO's proposal shifts costs to transmission customers who will not benefit from the generation facilities. We believe that the CAISO's proposal strikes a just and reasonable balance between the two positions in addressing the barriers to development of location-constrained resources and recognizing the system benefits derived from such facilities. In particular, the CAISO's proposal includes several mechanisms that will ensure that any rolled-in amount is no more than is necessary to facilitate the needed investment in location-constrained resources. For example, due to the minimum capacity subscription and demonstration of interest requirements that must be met before construction of a multi-user interconnection facility can begin, the costs borne by ratepayers will be minimized.

78. In addition, we emphasize that the independent regional transmission planning process plays an instrumental role in justifying the rolled-in rate treatment for the costs of any unsubscribed capacity on the line. In order to approve specific projects, the transmission planning process must determine that the costs associated with meeting future demand requirements, including the State of California's RPS requirements, are expected to be lower over time with the project than without.³⁸ The CAISO also anticipates that the multi-user interconnection facilities will provide additional benefits that will be evaluated by the CAISO and stakeholders in the transmission planning process. These benefits include (1) promoting supply diversity and competition in the

³⁸ See section 24.1.1.3.1, CAISO FERC Electric Tariff, Third Replacement Vol. 1.

marketplace, as well as providing access to new sources of supply that will be available to all LSEs; (2) promoting the efficient, cost effective development of infrastructure; and (3) ensuring that multi-user interconnection lines become part of and are effectively integrated into the CAISO grid.

79. As noted above, the independent planning process will also allow for appropriate sizing of the multi-user interconnection facilities by matching LSEs' projected needs against the potential capacity from an energy resource area. The regional aspect of the planning process, as required in Order No. 890,³⁹ will provide a forum to vet stakeholder concerns about the optimum sizing and the potential for stranded investment.

80. We find that the CAISO's proposal is just and reasonable in that generators pay for the service they use in connection with the multi-user interconnection facility, while TAC ratepayers pay for any unsubscribed capacity costs to reflect the system benefits identified in the transmission planning process. The proposal is also consistent with several Commission-approved cost allocations in other regions of the country. PJM's Open Access Transmission Tariff, for example, contains provisions that allow for additional upgrades beyond what is needed for existing interconnection requests; these additional upgrade costs are then initially included in the transmission owners' revenue requirement.⁴⁰ Elsewhere, the Commission has also approved cost sharing of regional transmission upgrades reflecting shared benefits.⁴¹

81. We will not require, as several commenters recommend, that generators pay more than the going-forward costs of their *pro rata* allocation of the multi-user interconnection

³⁹ See Order No. 890 at P 523.

⁴⁰ See section 217.4, PJM FERC Electric Tariff, Sixth Revised Vol. No. 1 ("In the event that...it is determined that, to accommodate a New Service Request, it is more economical or beneficial to the Transmission System to construct upgrades in addition to the minimum necessary to accommodate the New Service Request, a New Service Customer shall be obligated to pay only the costs of the minimum upgrades necessary to accommodate its New Service Request...The remaining costs...may be included in the revenue requirements of the transmission owners...[T]he Transmission Provider may require the subsequent New Service Customer to pay an appropriate portion of the cost of the facilities and upgrades that produced the additional economic capacity.").

⁴¹ See, e.g., *Midwest Independent Transmission System Operator, Inc.*, 117 FERC ¶ 61,241 (2006), *reh'g denied*, 118 FERC ¶ 61,208 (2007); *Southwest Power Pool, Inc.*, 111 FERC ¶ 61,118, *order on reh'g*, 112 FERC ¶ 61,319 (2005).

facility. We agree with the CAISO that a generator that begins taking service several years after the facility has been constructed need not bear the same total facility costs as a generator that started using the facility upon its completion. Furthermore, we believe that concerns over possible gaming are overstated. Any cost savings from delaying interconnection are counterbalanced by both the risk that other developers will serve the incremental demand for renewable generation and the opportunity to begin earning revenue. Generators will have further incentive to contract their output sooner rather than later so as to offset the upfront development costs, such as costs related to acquiring suitable land and performing the necessary technical and interconnection studies.

82. Metropolitan argues that having generators pay their *pro rata* share of the cost of the facilities would provide a source of funding for new facilities, but it fails to explain how such a proposal would be implemented. In the absence of more information, we cannot conclude that Metropolitan's suggestion is appropriate. In addition, because we conclude that the proposed cost allocation would be just and reasonable, our review does not extend to determining whether an alternative proposal is more or less reasonable.⁴²

83. TANC is concerned that the rolled-in treatment for the costs of unsubscribed capacity from multi-user interconnection facilities will serve to increase transmission rates, which TANC asserts are already burdensome. In support, TANC cites substantial increases in the TRRs over the past decade. We find that, on balance, the CAISO's proposal is narrowly tailored to address the unique circumstances faced by location constrained resources, while also providing adequate consumer protections to ensure that rates are just and reasonable. We also reject as vague and unsupported TANC's assertion that the CAISO's proposal will result in "market inefficiencies caused by the exploitation of differences."

84. Imperial argues that all merchant opportunities to manage the financial risk hindering the development of location-constrained resources should be exhausted before requiring ratepayers to bear the risk and cost of multi-user interconnection facilities. Given the barriers that have been identified which prevent interconnection facilities to location-constrained resources from being built, we reject Imperial's recommendation. In

⁴² *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984); *California Independent System Operator Corporation*, 98 FERC ¶ 61,102, at 61,313 (2002) (finding that the determination that cost allocation method was just and reasonable did not necessarily mean that it was the only acceptable method for recovering such costs).

addition, we note that Imperial makes only vague references to the existence of merchant opportunities and their potential to manage financial risk. Accordingly, we also reject Imperial's recommendation as unsupported.

85. Imperial is concerned that the CAISO's proposal will strand Imperial's investment in interconnection and transmission facilities it has already developed to access renewable resources. We find that Imperial should raise these concerns as part of the CAISO's independent transmission planning process. In this regard, we note that Order No. 890 requires that the CAISO provide for regional scope as part of its transmission planning.⁴³ This process will allow Imperial to air its concerns. While Imperial's arguments are somewhat unclear, we note that, as an initial matter, existing generators will not incur the costs of the unsubscribed multi-user interconnection facilities because the TAC is assessed only to load, not generation. We further note that the Commission may make accommodations for new technologies and changes in the industry on a prospective, rather than a retroactive, basis.⁴⁴ We find that prospective application of the proposed rate treatment is appropriate because existing generators have relied upon ratemaking treatment effective before implementation of the CAISO's proposal to make investments and calculate their rates. Imperial's arguments that the CAISO's proposal is discriminatory against existing generators are without merit.

86. Modesto argues that the CAISO has not provided a sufficient demonstration of what the benefits of the proposal would be. Modesto also argues that the CAISO has not demonstrated how the proposal benefits customers who pay the WAC for import from or wheel-through the CAISO control area. We find that the CAISO's proposal will ensure that benefits will broadly accrue to LSEs who take energy, including imports, from the CAISO control area. These benefits will be identified in the transmission planning process in order for a project to be approved; benefits will likely include fuel supply diversity, reduced price volatility and an enhanced ability for LSEs to cost-effectively meet their RPS requirements. We note, however, that it is unclear, whether wheel-through customers receive any specific or identifiable benefit. Recognizing that the

⁴³ See Order No. 890 at P 523 (requiring each transmission provider to coordinate with interconnected systems to identify system enhancements that integrate new resources).

⁴⁴ See Order No. 661 at P 121; Order No. 2003 at P 911; *see also* *Ratemaking Treatment of Investment Tax Credits for Natural Gas Pipeline Companies*, 37 FERC ¶ 61,002 (1986).

CAISO's proposal requires further stakeholder development, we encourage the CAISO to clarify in its eventual tariff filing what if any costs would be allocated to wheel-through customers and their corresponding benefits.

Other Issues

87. We decline to make a determination on stranded cost recovery, as PG&E requests. The CAISO has submitted a generic proposal and we believe such a finding is more appropriately addressed on a case-by-case basis. Accordingly, we defer requests for cost recovery until the sponsoring PTO submits its TRR filing for Commission approval. For the same reasons, we also decline to make a finding on whether multi-user interconnection facilities should be eligible for incentive rates.

88. NCPA has requested several clarifications with respect to the CAISO's proposal. We agree that the rate treatment under the CAISO's proposal should be limited to "wires only," and that the CAISO's proposal is still subject to Commission review under FPA section 205 when the CAISO files tariff provisions to implement the proposal. However, the section 205 proceeding should not be a forum to reargue the threshold findings made in this order; rather, it should focus on implementation issues. Moreover, it is not clear what NCPA seeks when it argues that the proposal should be implemented narrowly and without exception; we therefore reject this request as premature given that the CAISO must file tariff provisions to implement its proposal.

89. We also decline to require higher subscription levels at this time, or to rule on the proposed rate impact cap. Certain intervenors assert that the rate impact cap and the subscription levels should work in concert to balance the overall risk to TAC ratepayers, and thus, the overall requirements should be finalized in the stakeholder process. The CAISO indicates that it has developed the levels of subscription as a starting point for further negotiation among stakeholders once it has conceptual approval from the Commission. While recognizing that the CAISO intends to file specific minimum capacity subscription requirements that result from the appropriate stakeholder process, we preliminarily accept the ranges proposed as they strike an appropriate balance between encouraging the development of location-constrained resources on the one hand and protecting ratepayers on the other.

90. We do not disagree with commenters that the process for identifying an energy resource area under the CAISO's proposal is ambiguous. The CAISO has suggested that state entities such as the CEC or the CPUC could identify and assess areas that provide the best opportunities for practical development. We expect eventual tariff provisions will make clear how these areas will be selected.

91. We disagree with TANC's assertion that the CAISO's petition for declaratory order is an inappropriate vehicle through which to address this policy. Indeed, the Commission recently dismissed a request for clarification, ruling that, because the utility was essentially seeking a generic policy determination, "[t]he more appropriate vehicle to seek such a determination is a petition for declaratory order."⁴⁵

92. Finally, we deny the intervenors' request to initiate Settlement Procedures at this time. Providing general guidance on policy issues is precisely the function of this Commission in ruling on a petition for declaratory order. The CAISO's proposal requests policy approval and guidance; it presented neither specific tariff language for the Commission to review nor issues ripe for hearing. We leave it to the CAISO and its stakeholders to develop such tariff language and submit it in a future section 205 filing.

The Commission orders:

For the foregoing reasons, we grant the CAISO's petition.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

⁴⁵ *Duke Power Company, LLC*, 117 FERC ¶ 61,283 (2006).

TAB B

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter H. ELECTRICAL PLANNING.

DIVISION 1: RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

§25.174. Competitive Renewable Energy Zones.

- (a) **Designation of competitive renewable energy zones.** The designation of Competitive Renewable Energy Zones (CREZs) pursuant to Public Utility Regulatory Act (PURA) §39.904(g) shall be made through one or more contested-case proceedings initiated by commission staff, for which the commission shall establish a procedural schedule. The commission shall consider the need for proceedings to determine CREZs in 2007 and in subsequent years as deemed necessary by the commission.
- (1) Commission staff shall initiate a contested case proceeding upon receiving the information required by paragraph (2) of this subsection. Any interested entity that participates in the contested case may nominate a region for CREZ designation. An entity may submit any evidence it deems appropriate in support of its nomination, but it shall include information prescribed in paragraph (2)(A) - (C) of this subsection.
 - (2) By December 1, 2006, the Electric Reliability Council of Texas (ERCOT) shall provide to the commission a study of the wind energy production potential statewide, and of the transmission constraints that are most likely to limit the deliverability of electricity from wind energy resources. ERCOT shall consult with other regional transmission organizations, independent organizations, independent system operators, or utilities in its analysis of regions of Texas outside the ERCOT power region. At a minimum, the study submitted by ERCOT shall include:
 - (A) a map and geographic descriptions of regions that can reasonably accommodate at least 1,000 megawatts (MW) of new wind-powered generation resources;
 - (B) an estimate of the maximum generating capacity in MW that each zone can reasonably accommodate and an estimate of the zone's annual production potential;
 - (C) a description of the improvements necessary to provide transmission service to the region, a preliminary estimate of the cost, and identification of the transmission service provider (TSP) or TSPs whose existing transmission facilities would be directly affected;
 - (D) an analysis of any potential combinations of zones that, in ERCOT's estimation, would result in significantly greater efficiency if developed together; and
 - (E) the amount of generating capacity already in service in the zone, the amount not in service but for which interconnection agreements (IAs) have been executed, and the amount under study for.
 - (3) The Texas Department of Parks and Wildlife may provide an analysis of wildlife habitat that may be affected by renewable energy development in any candidate zone, and may submit recommendations for mitigating harmful impacts on wildlife and habitat.
 - (4) In determining whether to designate an area as a CREZ and the number of CREZs to designate, the commission shall consider:
 - (A) whether renewable energy resources and suitable land areas are sufficient to develop generating capacity from renewable energy technologies;
 - (B) the level of financial commitment by generators; and
 - (C) any other factors considered appropriate by the commission as provided by PURA, including, but not limited to, the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone, and the estimated benefits of renewable energy produced in the candidate zone.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter H. ELECTRICAL PLANNING.

DIVISION 1: RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

§25.174(a) continued

- (5) The commission shall issue a final order within six months of the initiation by commission staff of a CREZ proceeding, unless it finds good cause to extend the deadline. For each new CREZ it orders, the commission shall specify:
 - (A) the geographic extent of the CREZ;
 - (B) major transmission improvements necessary to deliver to customers the energy generated by renewable resources in the CREZ, in a manner that is most beneficial and cost-effective to the customers, including new and upgraded lines identified by voltage level and a general description of where any new lines will interconnect to the existing grid;
 - (C) an estimate of the maximum generating capacity that the commission expects the transmission ordered for the CREZ to accommodate; and
 - (D) any other requirement considered appropriate by the commission as provided by PURA.
 - (6) The commission may direct a utility outside of ERCOT to file a plan for the development of a CREZ in or adjacent to its service area. The plan shall include the maximum generating capacity that each potential CREZ can reasonably accommodate; identify the transmission improvements needed to provide service to each CREZ; and include the cost of the improvements and a timetable for complying with all applicable federal transmission tariff requirements.
- (b) **Level of financial commitment by generators.**
- (1) A renewable energy developer's existing renewable energy resources, and pending or signed IAs for planned renewable energy resources, leasing agreements with landowners in a proposed CREZ, and letters of credit representing dollars per MW of proposed renewable generation resources, posted with ERCOT, that the developer intends to install and the area of interest are examples of financial commitment by developers to a CREZ. The commission may also consider projects for which a TSP, ERCOT, or another independent system operator is conducting an interconnection study; and any other factors for which parties have provided evidence as indications of financial commitment.
 - (2) A non-utility entity's commitment to build and own transmission facilities dedicated to delivering the output of renewable energy resources in a proposed CREZ to the transmission system of a TSP in Texas or a deposit or payment to secure or fund the construction of such transmission facilities by an electric utility or a transmission utility to deliver the output of a renewable generation project in Texas is an indication of the entity's financial commitment to a CREZ.
- (c) **Plan to develop transmission capacity.**
- (1) After the issuance of a final order in accordance with subsection (a)(5) of this section, entities interested in constructing the transmission improvements shall submit expressions of interest to the commission. The commission shall select the entity or entities responsible for constructing the transmission improvements, establish a schedule by which the improvements shall be completed, and specify any additional reporting requirements or other measures deemed appropriate by the commission to ensure that entities complete the ordered improvements in a timely manner.

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS.

Subchapter H. ELECTRICAL PLANNING.

DIVISION 1: RENEWABLE ENERGY RESOURCES AND USE OF NATURAL GAS

§25.174(c) continued

- (2) The commission shall develop a plan to construct transmission capacity necessary to deliver to electric customers, in a manner that is most beneficial and cost-effective to the customers, the electric output from renewable energy technologies in the CREZ.
 - (3) In developing the transmission capacity plan, the commission may consider:
 - (A) the estimated cost of constructing transmission capacity necessary to deliver to electric customers the electric output from renewable energy resources in the candidate zone;
 - (B) the estimated cost of additional ancillary services; and
 - (C) any other factors considered appropriate by the commission as provided by PURA.
 - (4) No later than one year after an order by the commission designating a CREZ, the TSP or TSPs selected to provide transmission service in or to a CREZ shall file applications for all required certificates of convenience and necessity (CCNs) for transmission facilities identified by the commission in the CREZ order as most beneficial and cost-effective to the customers. The commission may allow additional time for a TSP to file an application upon a showing of good cause by the TSP. The commission may establish a filing schedule if a CREZ order requires numerous CCN applications.
 - (5) A CCN application for a transmission project intended to serve a CREZ need not address the criteria in PURA §37.056(c)(1) and (2).
 - (6) Within 45 days of an application for a CCN for transmission improvements filed pursuant to the order designating the zone a CREZ, each developer for that CREZ shall post a letter of credit or other collateral to an amount equal to 10% of the developer's pro rata share of the estimated capital cost of the transmission improvements covered by the CREZ order, including the TSP's cost of preparing its CCN application. If any developer fails to deposit the required funds, the commission may take appropriate action, including, but not limited to, the following: reconsideration of its CREZ designation; dismissal of the TSP's CCN application; seeking another developer to step into the shoes of a defaulting developer; ordering the return of all deposits to developers who made adequate deposits; ordering the application of the defaulting developer's deposits toward the costs incurred by TSPs pertaining to planning and CCN proceedings for the transmission facilities covered by the order designating the zone a CREZ; and ordering the return of any remaining balance to the defaulting developer.
 - (7) In evaluating the CCN applications, the commission shall consider the level of financial commitment by generators. The TSP may propose modifications to the transmission improvements described in the CREZ order if such improvements would reduce the cost of transmission or increase the amount of generating capacity that transmission improvements for the CREZ can accommodate. The commission may direct ERCOT to review modifications proposed by the TSP.
- (d) **Obligation to take transmission service in a CREZ.**
- (1) A developer that deposited funds in accordance with subsection (b)(1) or (c)(6) of this section shall take transmission service in the CREZ no later than one year after the TSP notifies it that the transmission system is capable of accommodating the developer's renewable energy facility, unless the commission approves an extension of time. If the developer does not take transmission service as required, the developer shall be

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§25.174(d) continued

considered to have forfeited, for the benefit of the TSP, all collateral, letters of credit or funds it has deposited.

- (2) If the developer completes the generation facilities and begins delivering energy from the CREZ within one year of the completion of the transmission improvements, the TSP and ERCOT shall refund to the developer all collateral, letters of credit or funds it has deposited.
- (e) **Disincentives for excess development in a CREZ.** If the aggregate level of renewable energy capacity for which transmission service is requested for a CREZ exceeds the maximum level of renewable capacity specified in the CREZ order, the commission may initiate a proceeding and limit interconnection to and/or establish dispatch priorities regarding the transmission system in the CREZ, and identify the developers whose projects may interconnect to the transmission system in the CREZ under special protection schemes. Priority in interconnecting to the transmission system may be based on a number of factors, including financial commitments of the developers in accordance with subsections (b) and (c) of this section. In determining such priority, the commission may also consider the progress that a developer has made in obtaining the transmission studies required for a new generator interconnection as indications of financial commitment.