



record.<sup>3</sup> All of these factors apply to the discussion of the three issues to which LSA responds below, and LSA member companies are in a unique position to provide the Commission with relevant information that affects that transmission and interconnection process in California. Therefore, LSA respectfully seeks leave to respond to the limited issues set forth herein.

## II. ANSWER

### **A. The Commission Should Clarify That Participating TOs Retain Abandoned Plant Treatment, Even Where a Triggering Project Fails, As Long As a Transmission Project is Modeled in the CAISO's Transmission Plan and Continues to be Relied Upon by Other Generation Projects.**

In its GIP-2 Filing, the CAISO included a proposed Tariff provision reflecting the concept that a Participating Transmission Owner (“Participating TO”) will be presumed to be eligible, subject to prudence or other applicable review, to include in its Transmission Revenue Requirement any network upgrade costs that it is required to fund because the costs of such upgrades exceed the total cost responsibility assigned to interconnection customers.<sup>4</sup> Like Southern California Edison Company (“SCE”), LSA supports this tariff addition because it protects the Participating TO from non-recovery of transmission costs that it is required to fund by virtue of the CAISO Tariff requirements.<sup>5</sup>

In its comments to the GIP-2 Filing, SCE also raises a particularly important issue related to a Participating TO's ability to recover, subject to prudence review, one-hundred percent of its costs associated with abandoned plant where it must abandon a transmission project due to

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<sup>3</sup> See, e.g., *See, e.g., Midwest Indep. Transmission System Operator, Inc.* 131 FERC ¶ 61,285 (2010).

<sup>4</sup> See Filing Letter from N. Saracino and M. Kunselman, et al. to K. Bose, November 30, 2011, pp. 1-5 (Docket No. ER12-502-000) (“CAISO Filing Letter”), at pp. 31-34.

<sup>5</sup> See Southern California Edison Company Motion to Intervene and Comments, December 21, 2011, Docket No. ER12-502-000, at p. 2 (“SCE Comments”).

circumstances outside its control (“Abandoned Plant Treatment”).<sup>6</sup> LSA supports SCE’s comments, and requests that the Commission clarify that where a Participating TO has agreed to upfront fund a transmission project that is (1) modeled in the CAISO’s transmission plan as necessary to meet renewable portfolio standard (“RPS”) goals and (2) relied upon by subsequent projects in the generation queue, any Abandoned Plant Treatment granted by the Commission shall continue to apply even if the project that originally triggered the transmission project suspends or withdraws from the interconnection queue.<sup>7</sup> This clarification is necessary to provide Participating TOs and the generation community with vital certainty that the transmission necessary to meet California’s RPS goals will be constructed in a timely fashion.

As the Commission is aware, SCE has agreed to upfront finance several large “backbone” lines that are necessary for California to meet its aggressive 33 percent RPS target. SCE has recognized, and the Commission has agreed,<sup>8</sup> that it makes sense for certain large, risky and expensive “backbone” projects modeled in the CAISO’s transmission plan and relied upon by numerous generators, to be upfront funded by the relevant Participating TO.

Many of these projects have been initially “triggered” by a particular interconnection request.<sup>9</sup> Often one, or even several, developers do not have the capital resources to finance massive upgrades, some of which cost upwards of one billion dollars. Because developers

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<sup>6</sup> *Id.*

<sup>7</sup> *See id.*, at p. 3.

<sup>8</sup> *See e.g., Southern Cal. Edison Co.*, 133 FERC ¶ 61,107, at PP 60-68 (2010) (granting Abandoned Plant Treatment on public policy grounds for the Pisgah-Lugo Transmission Project and Red Bluff Substation Project); *Southern Cal. Edison Co.*, 134 FERC ¶ 61,181 (2011) (granting Abandoned Plant Treatment on public policy grounds for the Whirlwind Substation project, the Colorado River Substation project, the South of Kramer transmission project and the West of Devers transmission project).

<sup>9</sup> Transmission projects in the CAISO’s 33 percent RPS plan that are triggered by LGIAs include: (1) Eldorado-Ivanpah; (2) Pisgah-Lugo; (3) West of Devers; (4) Coolwater-Lugo, (5) South Contra Costa and (6) Borden-Gregg. The first four are SCE transmission projects.

confront a higher cost of capital than utilities, upfront financing by Participating TOs ultimately results in less expensive transmission upgrades. Additionally, the *pro forma* interconnection agreement requires developers effectively to fund transmission upgrades at a loss because they are reimbursed at the Commission-approved interest rate, which is far below market rates.<sup>10</sup> And because of the lumpy nature of transmission upgrades, disproportionate transmission costs often unfairly fall on a single interconnection customer (in the serial queue) or cluster (in the cluster queue), even though the transmission will benefit the entire transmission grid (including later-queued projects), increase competition, and decrease overall energy costs.<sup>11</sup> Thus, without utility upfront funding for these types of projects, which often have extremely long permitting and construction timelines, it is unlikely that these projects can be constructed in a timely manner in order to meet state RPS goals.

As a condition to upfront funding certain transmission projects, SCE has requested – and received – from the Commission Abandoned Plant Treatment, subject to prudence review.<sup>12</sup> SCE avers that, despite these Commission orders, it is not assured Abandoned Plant Treatment when a “triggering” generation project originally assigned the transmission costs has suspended or withdrawn from the interconnection queue. The CAISO made similar assertions in the GIP-2 stakeholder discussions. Therefore, SCE appears unwilling to continue to fund certain projects without Commission clarification that the Abandoned Plant Treatment still applies.

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<sup>10</sup> See CAISO Tariff, Appendix CC (*pro forma* Large Generator Interconnection Agreement), Article 11.4.1 (“Any repayment shall include interest calculated in accordance with the methodology set forth in FERC’s regulations at 18 C.F.R. §35.19a(a)(2)(iii) . . .”) ([http://www.caiso.com/Documents/21\\_AppendixCC\\_2011-12-01.pdf](http://www.caiso.com/Documents/21_AppendixCC_2011-12-01.pdf)).

<sup>11</sup> For example, in the CAISO’s serial queue, one project has been assigned \$740 million in network upgrades’ costs, even though those upgrades are necessary to support much more than that single project.

<sup>12</sup> See *Southern Cal. Edison Co.*, 133 FERC ¶ 61,107, at PP 60-68; *Southern Cal. Edison Co.*, 134 FERC ¶ 61,181.

This interpretation will lead to an unjust and unreasonable result. Therefore, the Commission should grant SCE’s requested clarification and order the CAISO, on compliance, to include a corresponding provision in its Tariff consistent with the clarification. While these large transmission projects may be triggered by a single developer in the serial queue or multiple developers in a single cluster, the projects have been assumed in the CAISO’s transmission plan for several cycles and modeled in each subsequent serial and cluster study. Thus, many generation projects rely on timely construction of this transmission in order to interconnect and deliver energy to the electric grid.<sup>13</sup> Because generators in the subsequent clusters rely on these major projects – which are critical to the success of California’s RPS goals – the upfront funding commitment should not be contingent on any single generation project moving forward.

For instance, the Pisgah-Lugo Transmission Project (“Pisgah-Lugo”) illustrates the problem. SCE agreed to upfront fund Pisgah-Lugo, an approximately \$740 million “backbone” project, subject to, among other things, Commission approval of Abandoned Plant Treatment. On October 29, 2010, the Commission granted Abandoned Plant Treatment to SCE for the project.<sup>14</sup> The Commission found that it was appropriate for SCE to upfront fund both Pisgah-Lugo and the Red Bluff project because they “represent a significant investment that would deliver significant amounts of otherwise location-constrained renewable energy from the Mojave Desert [and] that access to these proposed renewable resources will contribute towards meeting California’s RPS goals.”<sup>15</sup>

Pisgah-Lugo is included in the base case for all subsequent projects after the

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<sup>13</sup> Timing is a key issue. Even if it were possible to perform a re-study to assign the costs of those same projects to other generators – which is not allowed under the cluster queue approach – it often takes several months to perform such re-studies and then even longer to negotiate new or revised agreements.

<sup>14</sup> See *Southern Cal. Edison Co.*, 133 FERC ¶ 61,107, at PP 60-68.

<sup>15</sup> *Id.* at P 65.

“triggering” project and is part of the 33 percent transmission plan published by the CAISO. SCE never commenced funding the transmission project, however. SCE later filed a letter agreement indicating that the “triggering” project had suspended its interconnection agreement and that SCE would not continue to upfront fund the project until the LGIA was taken out of suspension.

SCE has indicated that the suspension will likely cause a delay to the transmission project’s in-service date beyond the previously-expected 2017 – even though numerous other interconnection customers whose generation projects have earlier operational dates are relying on that transmission project’s existence. It makes no sense to delay construction of such critical transmission as a result of the “triggering” project’s legitimate exercise of its suspension rights under its LGIA, rights which will not expire in this particular case for two more years. The problem is further compounded if the “triggering” project becomes obliged to withdraw from the queue altogether. At that point, the upgrades will be re-assigned to another developer, and that developer would be unlikely to be willing or able to fund a \$740 million transmission upgrade on its own.<sup>16</sup>

Moreover, if the next projects in line are part of a cluster, then the CAISO may not be permitted by its Tariff to assign those costs to those developers because of maximum cost caps. Instead, the Participating TOs will have to upfront fund the project anyway, but with a several year delay. If Pisgah-Lugo does not move forward, it is likely that the CAISO and SCE will have to perform re-studies of over 10,000 MW of generators in the SCE Northern, Eastern, and East-of-Lugo areas that have interconnection requests subsequent to the serial project that triggered Pisgah-Lugo. The CAISO will also have to modify its transmission

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<sup>16</sup> The CAISO has indicated that a later-queued generator may volunteer to fund a transmission project that is stalled due to an earlier-queued generator’s suspension, but that such developer will not get deliverability priority if the first project comes on-line after all. This is a commercially untenable policy, as it essentially requires a later-queued developer to serve as a low-interest financier for an earlier-queued developer.

planning process, which assumes that Pisgah-Lugo will be constructed.<sup>17</sup> This is an untenable result.

It was LSA's understanding that one purpose of granting Abandoned Plant Treatment was to enable Participating TOs to upfront fund development of critical "backbone" transmission projects regardless of the development schedule of an individual triggering project; however, recent events, including SCE's filing in this docket and the CAISO's statements in the GIP-2 stakeholder process, suggest that this purpose will not be achieved without clarification from the Commission.

To that end, the Commission should clarify that where the Commission already has granted Abandoned Plant Treatment for a project – and where the project is both modeled in the CAISO's transmission plan as necessary to meet RPS goals and relied upon by subsequent projects in the generation queue – the Abandoned Plant Treatment granted by the Commission will continue to apply, despite the success or failure of any particular generation project. In order for California to meet its RPS goals of 33 percent by 2020, Participating TOs must have clear assurances that they will continue to receive Abandoned Plant Treatment for those "backbone" transmission projects, **for which they have already gotten Commission approval.**

If the Commission does not provide this clarification, it should order the CAISO and or the Participating TOs to make a filing to include these transmission projects in the transmission planning process as policy upgrades or to otherwise provide assurances that the transmission necessary to meet RPS goals will be constructed in a timely fashion.

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<sup>17</sup> These re-studies would likely trigger Pisgah-Lugo, or an equivalent project, anyway.

**B. The Commission Should Accept the CAISO's Proposal to Allow Phasing of Financial Security for Network Upgrades, Where Appropriate.**

The Six Cities argue that the Commission should reject the CAISO's proposal in Section 9.3.2 of the GIP to permit phasing of financial security for network upgrades that will be constructed in phases.<sup>18</sup> According to the Six Cities, all financial security for the cost of all network upgrades should be due immediately, regardless of when, or even whether, they will actually be constructed. This argument does not reflect current practice or policy, the correct interpretation of the current Tariff, or sound commercial practice; therefore, the Commission should reject it.

In its Filing Letter, the CAISO noted that it already believes that the interconnection customer and Participating TO can negotiate "separate and discrete postings based on certain regularly-defined discrete components of the transmission upgrade construction process, and the timing of the construction of such components."<sup>19</sup> Thus, this Tariff provision was added simply to clarify an already existing policy and practice of the CAISO and the Participating TOs.

Moreover, it is patently unfair to require a developer to post security for a transmission project, or a discrete portion of a transmission project, that may not begin to be constructed for several years. In fact, sometimes transmission projects are phased because it is not certain that a subsequent phase will even be necessary, and the Participating TOs are being appropriately cautious by phasing the transmission projects and reducing abandoned plant risk. It is inappropriate for the Participating TOs to hold financial security for an indefinite period of time for transmission projects, or portions thereof, that are not in active stages of development

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<sup>18</sup> Protest on Behalf of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California, December 21, 2011, Docket No. ER12-502-000 ("Six Cities Protest").

<sup>19</sup> CAISO Filing Letter, at p. 12.

or construction. Such burdensome and indefinite financial security requirements also will ultimately lead to *higher*, not *lower*, ratepayer costs, because the developers must pass the high financial security costs to the ultimate energy consumers. Thus, the Six Cities' concerns are misplaced, and the Commission should accept the CAISO's clarifying addition to GIP Section 9.3.2.

**C. The Commission Should Reject Pacific Gas & Electric Company's ("PG&E") Argument that Refunds for Network Upgrades are Dependent on Transmission Service Taken.**

PG&E erroneously supports the CAISO's proposal that network upgrades must be in-service before refunds commence. As "evidence" for this position, PG&E ambiguously relies on a single statement, taken out of context, in Order No 2003-A, which states that credits should be paid based on transmission service taken.<sup>20</sup> PG&E then concludes, with no explanation, that a customer can only be entitled to repayment based on its actual utilization of the transmission system.<sup>21</sup> Notably, PG&E is the only Participating TO that filed in support of the CAISO's position on the timing of refunds for network upgrades. In its Protest, LSA described at length why the CAISO's position about the timing of refunds for network upgrades is contrary to law, policy and common sense,<sup>22</sup> and LSA will not repeat those arguments here.

Rather, LSA notes that PG&E's position cannot be correct for three separate reasons. First, the CAISO and its stakeholders entered into lengthy and hotly contested revisions to the Commission's *pro forma* LGIA and LGIP in order to ensure that those documents were suitable for interconnections to the CAISO-controlled grid. Because the CAISO-controlled grid charges

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<sup>20</sup> Motion to Intervene and Comments of Pacific Gas and Electric Company. December 21, 2011, Docket No. ER12-502-000 ("PG&E Comments")

<sup>21</sup> *Id.* at pp. 2-3.

<sup>22</sup> Motion to Intervene and Limited Protest of Large-scale Solar Association, filed December 21, 2011, Docket No. ER12-502-000 at pp. 4-16.

transmission service to scheduling coordinators for retail loads rather than directly to interconnection customers or their scheduling coordinators, the CAISO revised Article 11.4.1, and the corresponding GIP sections, to provide *unambiguously* that refunds for network upgrades commence on the Commercial Operation Date<sup>23</sup> of the generation project. No party has pointed to any discussion in any of the CAISO's Order No. 2003 filings linking the completion of all network upgrades to the taking of "transmission service," likely because that was never the intention. The Commission accepted those provisions, and developers have been relying on that language since the inception of the GIP.

Second, even if the CAISO or the Participating TOs tried to make a direct link between completion of network upgrades and provision of "transmission service," they could not credibly do so. PG&E seems to suggest, but does not explicitly state, that the completion of network upgrades is somehow equivalent to use of the transmission grid. However, a project on the CAISO-controlled grid may be selling power, and even fully deliverable from an operational perspective, prior to completion of any or all of its assigned network upgrades. Moreover, an energy-only project can achieve commercial operation and be selling power on the grid, even though all of its reliability upgrades are not complete (e.g., if cancellation of a higher-queued project frees up available transmission capability). Thus, the Commercial Operation Date, not the completion of network upgrades, is the appropriate milestone for the commencement of refunds for network upgrades.

Third, although the CAISO grid charges for transmission service in a different way than contemplated in Order No. 2003, Commission policy that refunds must begin once the generator

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<sup>23</sup> All references to the capitalized term "Commercial Operation Date" refer to that term as defined in the CAISO Tariff, Appendix CC, Article 1, Definitions.

delivers wholesale sales onto the grid is equally applicable here.<sup>24</sup> The Commission has consistently stated, and the CAISO's *pro forma* LGIA provides, that refunds commence upon Commercial Operation of the generating plant – and must be fully repaid within five years of the Commercial Operation Date – without any mention that network upgrades must be complete or placed into rates.<sup>25</sup> Under the CAISO's proposal, refunds for network upgrades may be delayed indefinitely – and far beyond five years from a generator's Commercial Operation Date – for numerous reasons beyond the control of the interconnection customer.

For these reasons, and all the reasons stated in LSA's initial protest, the Commission should reject the CAISO's proposal concerning the timing of refunds of network upgrades.

### **III. Conclusion and Specific Relief Requested**

WHEREFORE, for the foregoing reasons, LSA respectfully moves for leave to provide this limited answer in the above-captioned proceeding and respectfully requests the Commission grant LSA's requested relief as detailed herein.

Respectfully submitted,

*/s/ Ellen A. Berman*

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<sup>24</sup> See, e.g., *Duke Energy Co.*, 95 FERC ¶ 61,279 at 61,980 (2001); see also *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 No. 2003”), at P 694.

<sup>25</sup> See Order No. 2003, at PP 29 and 694.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list in this proceeding in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at San Francisco, CA this 4th day of January 2012.

*/s/ Ellen A. Berman*

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