

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

Order Instituting Investigation on the  
Commission's Own Motion to Actively Promote  
the Development of Transmission Infrastructure to  
Provide Access to Renewable Energy Resources  
for California.

Investigation 08-03-010  
(Filed March 13, 2008)

Order Instituting Rulemaking on the  
Commission's Own Motion to Actively Promote  
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**BRIEF OF THE  
LARGE-SCALE SOLAR ASSOCIATION  
ON THE OII SCOPING RULING QUESTIONS**

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**I. INTRODUCTION**

The Large-scale Solar Association<sup>1</sup> (“LSA”) is pleased to present the following brief, as requested in the “Scoping Memo and Ruling of Assigned Commissioner” (“Scoping Ruling”), filed January 12, 2010 in Investigation 08-03-010. This investigation seeks to “consider how to improve transmission access to renewable energy generation through additional streamlining and coordination of existing regulatory processes, and to serve as a forum for addressing issues identified in the Renewable Energy Transmission Initiative (“RETI”) that may require Commission investigation or

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<sup>1</sup> LSA represents eleven of the nation’s largest developers and providers of utility-scale solar generating resources. Its members develop, own and operate various types of utility-scale solar technologies, including photovoltaic and solar thermal system designs. LSA, and its individual member companies, are leaders in the renewable energy industry, advancing solar generation technologies and advocating competitive market structures that facilitate significant integration of renewable energy throughout the western United States. LSA actively represents the interests of utility-scale solar development in California, Arizona, and Nevada, and also works to shape regional and federal policies that affect solar development.

formal decision.”<sup>2</sup> Transmission, including the transmission planning and approval process as well associated cost recovery certainty, is the most significant hurdle to the timely renewable development California needs to attain its renewable energy and climate objectives. LSA members collectively have six gigawatts of clean, sustainable renewable power under contract with California load serving entities (“LSEs”). Without timely improvements to the transmission planning and approval process, the full benefit of these projects may not be realized. LSA therefore strongly supports the Commission’s efforts to improve the transmission planning, approval and cost-recovery assurance processes.

Resolution of the topics presented in the Scoping Ruling should make significant progress towards providing the certainty in cost recovery needed for more rapid and assured transmission development in California, and should also help in further streamlining the transmission planning and approval process. Specifically, the Commission should promote timely development of transmission that serves renewable needs and reduce both barriers and costs for renewable generation development by enhancing its exercise of Pub. Util. Code Section 399.2.5. The Commission should also find that necessity determinations under Section 399.2.5 supersede any need to study demand side measures (“DSM”), which should be viewed as a necessary complement, rather than alternative, to renewable generation. However, these actions, and others addressed by the Scoping Ruling questions, do not account for one of the most fundamental problems facing the transmission system needed for renewables: the lack of regional coordination of transmission planning and approvals between California and its

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<sup>2</sup> See Scoping Ruling at pp. 1-2.

neighboring states. LSA's comments address these concerns, in addition to responding to the Commission's questions.

## **II. 399.2.5 & COST RECOVERY CERTAINTY**

As the Commission is well aware, the new and upgraded transmission California needs to integrate renewable resources into the grid generally takes no more than a few years to build; it is a combination of uncertainty and regulatory process that causes transmission in California to take seven years to reach completion. Commission staff members have worked diligently to improve transmission approval timelines, and should be commended for their efforts, which are beginning to bear fruit. The most promising of all of the tools within the Commission's authority is to more fully utilize Pub. Util. Code Section 399.2.5. Expanded use of this authority will make great strides to both reduce time to transmission completion and provide certainty for renewable transmission cost recovery. The Commission's further exercise of its authority under 399.2.5 will also remove a significant barrier to financing renewable energy generation, which in this economy remains a very significant threat to timely renewable energy development.

### **A. Recovery of Pre-construction Costs.**

While commencement of construction of transmission facilities requires a Certificate of Public Convenience & Necessity ("CPCN") or, for lesser facilities, a Permit to Construct ("PTC"), substantial time can be saved in completing transmission projects and bringing them on line to serve California's renewables goals if design work can be performed and long-lead time transferrable or cancellable equipment can be ordered in advance of the decision. When a California utility requests Pub. Util. Code Section 399.2.5 cost recovery treatment for pre-construction costs for a new line or upgrade, and

those transmission facilities would reasonably be needed to deliver renewable energy from at least one renewable generation project that is the subject of a Commission-approved Power Purchase Agreement (“PPA”), the Commission should provide clear, unequivocal support under its Section 399.2.5 authority for recovery of those pre-construction costs.

Cost-recovery assurance for pre-construction costs should be subject only to reasonableness review of the amount expended, and explicitly provide that the only costs at the utility’s risk would be any delta between the price paid for any preconstruction item and the reasonable cost of that item, not whether or when to expend pre-construction costs (i.e., assuring that the entirety of any pre-construction cost is not at risk). The cost-recovery assurance determination should further communicate the Commission’s expectation that the utility will promptly begin preconstruction expenditures in accordance with the timeline identified by the utility in its request, or as otherwise determined by the Commission in its resolution.

**B. Allocation of Construction Costs.**

In evaluating its legal authority under Section 399.2.5, the Commission should seek to further attainment of the Renewables Portfolio Standard (“RPS”) by taking an expansive view of the cost recovery provisions and authorities that have been granted to it. The Commission could use these authorities to significantly ease the difficult project financing burden currently borne by renewable energy developers. Financiers must assume that, in the absence of any regulatory determination to the contrary, renewable energy developers will be required to finance new and/or upgraded transmission facilities. This assumption translates into more difficult, and more expensive, project

financing for renewable developers, who are least-well situated to bear those risks and expenses at least cost. This is a needless barrier to renewable energy development, and one that unnecessarily increases the cost of achieving the RPS.

To fully eliminate this risk and cost, all that need be done is to make clear to project financers, at the outset, that renewable developers will not bear the burden of financing transmission facilities if those facilities are ultimately approved. By making an early determination of the potential applicability of Section 399.2.5 to construction costs, subject, and without any prejudice, to the Commission's ultimate decision on whether to approve the facilities through a CPCN or PTC, the Commission can signal to project financers that renewable developers will not be the parties responsible to finance those facilities. The Commission can make this signal without having to issue a premature cost-recovery determination for construction costs. This extremely valuable determination, which would advance the RPS, reduce project risk and decrease overall costs to ratepayers, could be done at the time that the Commission provides pre-construction cost-recovery approval. We know of no reason that the Commission could not or should not take this important and highly beneficial step.

### **III. COORDINATED REGIONAL TRANSMISSION PLANNING**

The lack of regional coordination of planning, approving and implementing transmission has created delays in siting facilities that would advance the California RPS, enhance renewable integration and provide a more cost-effective, robust grid. There is no lack of planning, but without coordination among the multiple transmission planning and approval entities for projects connecting multiple resource and load areas, progress on the major lines will be stymied. LSA recommends that the CPUC convene a

summit, including high-level representatives from FERC, WECC, CAISO, and the public utilities commissions for Nevada and Arizona, to discuss how these planning entities can collectively ensure transmission facilities needed to serve the west's interconnected grid are timely approved and built.<sup>3</sup>

#### IV. RESPONSE TO SCOPING RULING QUESTIONS

(a) Under what circumstances the results of the RETI process may be used under § 399.2.5 to guarantee cost recovery, including but not limited to:

1. the extent to which a RETI-identified Competitive Renewable Energy Zone should impact the ability to obtain cost recovery under § 399.2.5;
2. the extent to which the fact that a line or line segment is identified in the RETI conceptual transmission plan should impact the ability to obtain cost recovery under § 399.2.5

Decision (“D.”) 06-06-034 provides a clear, two-prong test for Section 399.2.5 eligibility; RETI-identified Competitive Renewable Energy Zones (“CREZs”) fit neatly within the first prong. As summarized in the Commission’s recent Resolution E-4305, the two prongs of the test are:

“ (1) ‘high-voltage, bulk-transfer, multi-user transmission facilities, whether classified as network or gen-tie [generator-tie], that are designed to serve multiple RPS-eligible projects where it has been established that the amount of added transmission capacity will likely be utilized by RPS-eligible generation projects within a reasonable period of time, or (2) transmission network upgrades that are required to connect an RPS-eligible resource that is necessary for the achievement of RPS goals and that has an approved RPS-eligible power purchase contract’ (Interim Order, pp. 40). New network transmission facilities needed to interconnect an RPS-eligible resource whose developer has entered into a Commission-approved power purchase agreement are eligible for § 399.2.5 cost recovery (pp. 38, Findings of Fact #4).”<sup>4</sup>

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<sup>3</sup> The CPUC has the authority to establish this type of meeting. See for example the Orders establishing the RETI process and legislative intent supporting Section 399.2.5.

<sup>4</sup> Res. E-4305, pp. 2-3 (Dec. 17, 2009) (Internal citations are to D. 06-06-034; footnotes omitted).

One of the original purposes of RETI was to provide the CPUC with evidence sufficient to support a rebuttable presumption of need. Transmission facilities designed to serve CREZs should be granted a rebuttable presumption of meeting the first prong of the D. 06-06-034 test, i.e., facilities “designed to serve multiple RPS-eligible projects where it has been established that the amount of added transmission capacity will likely be utilized by RPS-eligible generation projects within a reasonable period of time.”<sup>5</sup> Accordingly, the Commission should approve an advice letter seeking assurance of cost recovery for a new transmission line or facility that will serve to deliver electricity generated within a RETI CREZ.

The second prong of the D. 06-06-034 test, however, must be retained if California is to achieve its 20% RPS objectives within a reasonable timeframe. The RETI conceptual transmission plan remains just that, a conceptual roadmap, and does not pretend to identify all of the transmission facilities needed to serve the generation projects actually under contract and needed to attain RPS compliance. It is hoped that the California Transmission Planning Group (“CTPG”) can take this process to the next step of detail, but even so cannot be expected to incorporate all of the transmission facilities eligible for Section 399.2.5 treatment and needed for California’s renewable energy infrastructure.

*(b) Discuss whether the Commission has the authority to issue blanket authorization for automatic recovery of certain types of costs pursuant to § 399.2.5;*

The 399.2.5 cost recovery mechanism is integral to the state meeting its RPS goals, as prompt development of transmission needed to serve renewable generation

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<sup>5</sup> D.06-06-034 at p.37 (Finding of Fact # 3).

depends on the electrical corporations, which need greater certainty that the costs they incur in developing that transmission will be recoverable. We therefore urge the Commission to take an expansive view of the cost recovery provisions in 399.2.5. The Commission should establish a rebuttable presumption allowing for recovery of all prudent costs that are incurred to prepare a CPCN or PTC filing that meets either of the two prongs of the D. 06-06-034 test.

Specifically, cost recovery should be granted for environmental, land use, and routing studies that are conducted to prepare for a CPCN or PTC filing. If the Commission determines that the costs are prudent and the project qualifies under Section 399.2.5, all of the aforementioned costs should be approved. Again, as discussed above, once Section 399.2.5 applicability has been determined, recovery of pre-construction costs should be automatic (subject only to reasonableness review of the price paid, but not whether or when such costs are incurred); recovery of construction costs should then become automatic if and when the CPCN or PTC is issued.

*(d) Discuss the extent to which, going forward, § 399.2.5 supersedes the obligation to study demand side resources established under § 1002.3;*

A necessity determination under Section 399.2.5 should supersede the need to devote a substantial amount of time and staff resources to studying cost-effective demand side management (“DSM”) as an alternative in the CEQA review phase. The language of Section 399.2.5 itself is clear in its relationship to Pub. Util. Code Section 1002. As the Commission has unequivocally stated, “Section 399.2.5 explicitly supersedes §1002 in determinations of need for a CPCN.”<sup>6</sup>

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<sup>6</sup> D. 09-12-044 at p.18 (approving the Tehachapi Renewable Transmission Project).

Furthermore, while DSM is, and will continue to be, a necessary component to California's energy infrastructure, it will remain a complement to the transmission infrastructure needed for reliable renewables integration at scale, rather than a substitute for any of that transmission infrastructure. This will remain the case until transmission and DSM are in equipoise at the margin. Simply put, the need is too great for both DSM and transmission to displace each other; both are desperately needed, and in as great a quantity as can be realistically expected for either element. Spending time and resources pretending that either can substitute for the other threatens to delay the implementation of both by diverting agency attention from urgent needs. The necessity determination under Section 399.2.5 should therefore be equivalent to a finding that DSM is not a feasible alternative to a line that is "necessary" to meet RPS goals. In other words, if DSM cannot not be a feasible *alternative* to serve the needs at issue, it need not be analyzed as such.

Even if contrary to Commission precedent, a party were to argue that a necessity determination under Section 399.2.5 does not supersede Section 1002, the Commission still should not study DSM under CEQA in every case. CEQA does not require formulaic adherence to a predetermined set of alternatives for a particular type of project. Rather, the range of alternatives will depend on the facts and circumstances of a particular project.<sup>7</sup> CEQA Guideline Section 15126.6 requires an EIR to describe a reasonable range of alternatives to a project that could feasibly attain most of the basic objectives of the project while avoiding or substantially lessening the significant effects of the project. The project objectives must drive the range of alternatives considered in

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<sup>7</sup> *Citizens of Goleta Valley vs. Board of Supervisors* (1990) 52 Cal. 3d 553, 566.

an EIR.<sup>8</sup> Where delivering renewable energy needed to attain the RPS and allowing for enhanced, reliable integration of renewables is at issue, as it is for transmission facilities meeting the Section 399.2.5 tests for the foreseeable future, DSM simply cannot meet the objective and need not be considered.

## V. CONCLUSION

LSA again expresses its support for this proceeding and the general goal of expediting the approval of transmission facilities that access renewable generation. As detailed above, the Commission should take an expansive view of its authority under section 399.2.5, providing greater assurance as to recovery of pre-construction costs and early determination of eligibility for cost allocation purposes for construction costs. The Commission should not consider Demand-Side Management (DSM) as an alternative to transmission facilities meeting the Section 399.2.5 tests, as DSM and transmission facilities are not truly alternatives; both are needed to the maximum extent practicable, least for the near- and mid-term while California reaches to attain the 20% RPS and 33% renewables objectives.

Lastly, Section 399.2.5 is an important tool in the effort to improve transmission planning and approval, but it is no silver bullet. The lack of coordination among the multiple transmission planning and approval entities in California and its neighboring states is a serious problem that cannot be ignored. This lack of coordination can be expected to lead to a transmission system that is disjointed and fails to provide for the reliable integration of renewables needed to attain the state's renewable goals. We therefore urge the CPUC convene a summit to discuss coordination, and include high

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<sup>8</sup> CEQA Guideline Section 15124(b).

level representatives from FERC, WECC, CAISO, and representatives from the Nevada and Arizona public utilities.

Respectfully Submitted by,



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of “BRIEF OF THE LARGE-SCALE SOLAR ASSOCIATION ON THE OII SCOPING RULING QUESTIONS,” on all known parties to I.08-03-010 and R.08-03-009 by transmitting an e-mail message with the document attached to each party named in the official service list. Parties without e-mail addresses were mailed a properly addressed copy by first-class mail with postage prepaid.

Executed on February 17, 2010 at Sacramento, California.

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/s/

Deric J. Wittenborn

**I.08-03-010 and R08-03-009**  
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