

Decision 15-05-040 May 21, 2015

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of
SOUTHERN CALIFORNIA EDISON
COMPANY (U338E) for a Certificate of
Public Convenience and Necessity for the
Coolwater-Lugo Transmission Project.

Application 13-08-023
(Filed August 28, 2013)

DECISION DISMISSING APPLICATION WITHOUT PREJUDICE

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DECISION DISMISSING APPLICATION WITHOUT PREJUDICE

Summary

This decision dismisses Application (A.) 13-08-023 without prejudice. The impact of significant material changes in grid conditions on the Southern California Edison Company Application for a Certificate of Convenience and Necessity for the Coolwater-Lugo Transmission Project necessitates this action. Specifically, the permanent retirement of the Coolwater Generating Station has freed a large quantity (636 MW) of electric transmission transfer capability along the south of Kramer route targeted for upgrades. In addition, the California Independent System Operator Corporation (CAISO) has identified additional deliverability capacity that is now available as a result of additional generating resource retirements. This has led to assigning Full Capacity Deliverability Status to Mojave Solar, LLC. All parties agree that several new CAISO studies will be necessary to determine the existence and timing of any residual need for transmission upgrades.

Application 13-08-023 as submitted and amended cannot be evaluated without new electric transmission studies that take these significant changes into account. The magnitude of these changes, the need for comprehensive new analyses to identify any residual need for transmission system upgrades, and the uncertainty surrounding both the timing and content of any new future proposal lead us to conclude that A.13-08-023 should be dismissed without prejudice.

1. Procedural Background

On August 28, 2013, Southern California Edison Company (SCE) filed an Application requesting that the California Public Utilities Commission (Commission) issue a Certificate of Public Convenience and Necessity (CPCN) for the Coolwater-Lugo Transmission Project (CLTP). Subsequently, on

April 14, 2014, SCE filed an Amended Application and Amended Proponent's Environmental Assessment (PEA) in compliance with the March 14, 2014 Joint Assigned Commissioner and Administrative Law Judge Ruling (March 2014 Ruling). SCE's Amended Application and Amended PEA stated that the CLTP will be needed to address the transmission upgrades necessary to interconnect the Mojave Solar Project (MSP) with full deliverability status, to alleviate the 220 kilovolt (kV) transmission bottleneck between the existing Kramer and Lugo Substations, along the Lugo Pisgah corridor and to serve forecasted load growth in the High Desert Region.

The March 2014 Ruling denied motions to hold evidentiary hearings on the need for CLTP prior to issuance of the Draft Environmental Impact Report (DEIR) pursuant to the California Environmental Quality Act (CEQA). It also recognized that the DEIR would examine the purpose, need and project objective questions raised in the motions for early evidentiary hearings to address the need for the CLTP. The DEIR would also identify the significant environmental impacts, potential mitigation for any identified impacts and project alternatives. The CEQA process in this case, including the requisite public meetings, has been underway since the CLTP Application was filed. The DEIR was nearing completion.

1.1. Permanent Retirement of the Coolwater Generating Station (CGS), Units 1-4

By December 3, 2014 Ruling, the Assigned Commissioner and Administrative Law Judge (December 2014 Ruling) directed SCE, CAISO, and Mojave Solar, LLP (Mojave Solar) to address specific questions regarding the impact of the NRG California South LP (NRG) October 23, 2014 Letter advising the Commission that the Coolwater Generating Station (CGS) Units 1, 2, 3 and 4

would no longer operate after January 1, 2015. CGS was a 636 megawatt (MW) gas-fired generation facility, interconnected to the SCE system proximate to the MSP 250 MW generating facility. In response to this notice, we advised the parties that the Commission was initiating its own due diligence review of the impact that CGS's permanent retirement had on the need and related timing of SCE's proposed CLTP. This due diligence inquiry, at a minimum would require SCE, the CAISO and active parties' input on this question. SCE, the CAISO and Mojave Solar were asked specific questions and the other parties were given an opportunity to submit reply comments. On December 23, 2014, NRG confirmed that CGS was permanently retired.

The December 2014 Ruling directed SCE to address whether the components identified as the "minimum," "initial" and "full" build-out were still needed, and specifically, whether CGS retirement obviated the need for CLTP as proposed. If CLTP was still needed, SCE was directed to comment on the impact of the CGS retirement on the timing for the components of the proposed CLTP as described in the amended Application and amended PEA. Specifically, SCE, CAISO and Mojave Solar were directed to address the impact of the CGS retirement on the need for the components identified as necessary to satisfy the terms of the Large Generator Interconnection Agreement (LGIA) to which each entity is a party.

SCE, CAISO and Mojave Solar submitted comments in response to the December 2014 Ruling on January 8, 2015. Reply comments were submitted on January 22, 2015 by the Office of Ratepayer Advocates (ORA), the Bay Area

Municipal Transmission Group (BAMx),¹ the Mojave Communities Conservation Collaborative (MCCC) and the Sloan Parties.²

SCE discussed the CAISO's deliverability allocation policy to highlight a 3-6 year period of uncertainty during which CGS retains its Full Capacity Deliverability Status (FCDS). SCE also pointed out that because CLTP had been assumed in the base cases for the CAISO's Transmission Planning Process (TPP) every year since the 2010-2011 cycle through the current 2014-2015 cycle and the July 29, 2008 CAISO Queue #142 Serial Generation Interconnection System Impact Study, entirely new assessments of the transmission system along the south of Kramer route would be required if CLTP is not built.³ If CLTP is taken out of the base cases, SCE also anticipated that the CAISO Annual Transmission Plan would identify a load-serving need within the 1-in-10 year load forecast from the California Energy Commission (CEC). This would require SCE to perform an assessment to determine what upgrades would be needed to accommodate load growth in the High Desert Region and propose an

¹ The members of BAMx are Alameda Municipal Power, City of Palo Alto Utilities, and City of Santa Clara, Silicon Valley Power. BAMx Reply Comments (January 22, 2015) at 2, footnote 1.

² The Sloan Parties are Cathryn M. Sloan, Richard and Carol Benson, Neil Nadler, Mary Webb, Masoud and Firouzeh Nikravan, Reza Ali' Hadaegh, Bary and Florence Goodman, Ronald J. Barbieri, Gregory L. Bay, Alan and Susan Lobel, Ezra Cohen, Christina Corsello, Robert Earle Howells, Richard A. Klee, Stephan A. Mills, Sharon Nader Sloan, Richard P. Ravana, and John D. Zemanek. They describe themselves as property owners in the Lucerne Valley and other individual SCE ratepayers. Mr. Zemanek is counsel representing the Sloan Parties and MCCC in this proceeding.

³ Further, SCE and the CAISO noted that if CLTP is not needed for Mojave Solar, new additional interconnections studies would be required to identify what impact there will be on the queued generation projects. SCE opined that without CLTP, the next CAISO-queued generation projects will overload the Lugo-Pisgah line. SCE did not discuss either the relationship between the CAISO-queued projects and the most recent Renewables Portfolio Standard (RPS) portfolio or the commercial viability of these projects.

appropriate upgrade. SCE concluded that until NRG definitively states an intention not to repower CGS, it must be assumed to retain its FCDS. On this basis, SCE averred that the status of the Amended Application and Amended PEA remained unaffected. SCE asserted that “there are no new facts that impact the timing or need for CLTP” and that the Commission’s review should continue on the current schedule.⁴

The CAISO comments addressed only the issue of NRG’s retention of FCDS under the CAISO Tariff, Business Practice Manual (BPM) Provisions and related policy. The CAISO stated: “[u]nless NRG notifies the CAISO that it will not seek to repower Coolwater, the Coolwater location will continue to retain its Full Capacity Deliverability Status.”⁵ The CAISO pointed to its BPM for Reliability Requirements, Section 5.1.3.4, discussed in comments before the Federal Energy Regulatory Commission (FERC), and explained that “a generating unit must operate or be capable of operating at the capacity level associated with its rated operating level to retain its Full Capacity Deliverability Status. The generating unit will lose its Full Capacity Deliverability Status in an amount reflecting the loss of generating capability only where the unit becomes incapable of operating for any consecutive three-year period, or if it notifies the CAISO that it will not seek to repower.”⁶ The CAISO stated that unless or until NRG affirmatively declares that it will not repower CGS, the CAISO will continue to honor CGS’s FCDS as if it were actually operational for the full

⁴ SCE Response (January 8, 2015) at 8.

⁵ CAISO Comments (January 8, 2015) at 1.

⁶ *Id.*, at 1-2.

three to six years.⁷ “Until the window closes or NRG notifies the CAISO that it will not seek to repower Coolwater, the CAISO will preserve the interconnection and deliverability status for this location.”⁸

Mojave Solar’s comments responded to the question of whether CLTP is still needed since the permanent retirement of CGS by emphasizing that “Coolwater’s firm capacity rights are not available at this time to another party, let alone Mojave Solar, and may not be available in the future.”⁹ It pointed to the CAISO’s policy to hold NRG’s FCDS for the full rated capacity of CGS for three or more years and concluded that “NRG has many options and several years to determine how to proceed. It can repower the plant, or sell the plant to a buyer that will repower it.”¹⁰ For Mojave Solar, the crucial message was that unless or until CGS’s deliverability capacity is available to other generators as a “firm capacity allocation,” CGS’s permanent retirement of its facility is of no consequence to this proceeding. Without access to CGS’s FCDS capacity or CLTP, Mojave Solar stated that it will be subject to significant detrimental impacts under the terms of at least three contractual agreements covering Mojave

⁷ Furthermore, the CAISO’s comments suggest an assumption that the three years begin with the notice of CGS’s permanent retirement. The CAISO does not address, for example, whether the operational history of CGS suggests that its FCDS qualifies or has qualified for some time for reduction to partial Capacity Deliverability or entirely revoked for a subset of its units during the ten-year period since the 2005 deliverability assessment which assigned it FCDS. It is possible that since CGS has rarely operated at full capacity and some units have been inoperable for extended periods that its FCDS should be modified based on past performance. If CGS’s operational history met the CAISO’s requirements for reallocating deliverability priority, a significant quantity of its deliverability allocation could be made available to other generators and to refine the CAISO’s studies assessing the need for new transmission.

⁸ *Id.*, at 3.

⁹ Mojave Solar Comments (January 8, 2015) at 3.

¹⁰ *Id.*, at 7.

Solar's financing, its interconnection agreement with the CAISO and SCE and its Purchase Power Agreement (PPA) with Pacific Gas and Electric Company (PG&E).

Parties replied to those comments by January 22, 2015 as follows: ORA replied to SCE's specific statements that should NRG's deliverability priority for CGS be relinquished and available for reallocation, the CAISO would have to conduct new transmission planning and generator interconnections studies to evaluate if any upgrades would be needed for RPS and reliability considerations and to provide FCDS deliverability for Mojave Solar.¹¹ ORA argued that SCE and Mojave Solar have failed to present any facts showing that NRG would likely restart, repower, or rebuild generation at the CGS site in the foreseeable future. In absence of PPAs to enable NRG to avoid relinquishing its deliverability priority, permanent retirement of the facility obviates the need for the CLTP and SCE's Application for a CPCN should be dismissed.

ORA stated that the retirement of CGS allowed transfer capability on the transmission path between Kramer and Lugo substations to provide FCDS to Mojave Solar and potentially to other renewable generation projects. Doing so would avoid the need for the costly transmission upgrades proposed in the CLTP and allow Mojave Solar to qualify its full capacity as Resource Adequacy (RA) Capacity. ORA argued that the contracts and agreements cited by Mojave Solar as obligations to support construction of the CLTP transmission upgrades in order to obtain FCDS for its interconnected facility are irrelevant to the Commission's review of SCE's CPCN Application in this proceeding. ORA

¹¹ ORA Reply (January 22, 2015) at 4.

confirmed that the CAISO transmission planning studies since the 2010-2011 TPP, CAISO generator interconnections queue studies, as well as the interconnection study performed in conjunction with the SCE-CAISO-Mojave Solar Large Generator Interconnection Agreement (LGIA), all assumed that CGS was operating. Therefore, none of the transmission and generation planning studies in the record to date provided the Commission with a need assessment for the proposed CLTP without CGS.¹²

Two identical reply filings were made by the MCCC and the Sloan Parties. MCCC/Sloan Parties argued that SCE, Mojave Solar and the CAISO have not addressed the specific questions posed by the December 3, 2014 Ruling. They stated that no evidence or argument was offered by SCE, the CAISO or Mojave Solar to show why the repowering of the CGS is anything more than a theoretical possibility and consequently “shed no light on the practicalities of NRG’s plans or the CGS plant’s situation.”¹³ Based on this dearth of information, they argued that controversy over the need for the CLTP to resolve the south of Kramer bottlenecks was only heightened. MCCC/Sloan Parties pointed to a CEC Decision evaluating options for interconnection of Mojave Solar to underscore the fact that until this proceeding, there has never been any economic or environmental evaluation of the CLTP. They concluded that since SCE has not “responded constructively” to the December 2014 Ruling, an inference can be drawn that the retirement of the CGS has a substantial impact on the purpose and need for CLTP. Accordingly, MCCC/Sloan Parties argued that SCE should

¹² *Id.*, at 5-6.

¹³ MCCC Reply (January 22, 2015) at 3.

be required to amend its Application and PEA again to address the purpose, need and PEA in light of the retirement of the CGS.¹⁴

BAMx disagreed that the CGS retirement had no impact on the timing and need for CLTP. BAMx stated that the permanent retirement of CGS significantly weakened SCE's claim that CLTP is needed to provide full deliverability to Mojave Solar and to alleviate the south of Kramer transmission bottleneck. BAMx's reasons were: 1) NRG may notify the CAISO that it will not seek to repower CGS well before the three-year window; 2) there is nothing that prevents the CAISO from allocating FCDS status on an interim basis to utilize unused capacity, and 3) for various reasons, no other queued new generation projects are more viable and have a higher priority for CGS's deliverability allocation than Mojave Solar.¹⁵ BAMx also noted that CGS retirement potentially frees up significantly higher FCDS capacity than what is needed for Mojave Solar. BAMx concludes that Mojave Solar should address its concerns regarding its financial agreement obligations and possible penalties under its PPA with PG&E through contractual remedies that could provide a satisfactory solution tailored to the needs of the parties to the contracts in question.¹⁶

On this basis, BAMx urged the Commission to "advise the concerned parties to explore alternative mechanisms to provide FCDS to Mojave Solar in order to avoid very expensive and unneeded financial burden [sic] on the ratepayers in the form of CLTP. The transaction costs associated with developing such mechanisms are likely going to be considerably lower than the

¹⁴ *Id.*, at 6.

¹⁵ BAMx Reply (January 22, 2015) at 3-4.

¹⁶ *Id.*, at 1-2.

resource commitments and costs involved in the California Environmental Quality Act (CEQA) review and the remaining activities in this proceeding, let alone the hundreds of millions of dollars associated with the actual construction of the CLTP.”¹⁷

1.2. The CAISO has assigned Mojave Solar Full Capacity Deliverability Status

On March 17, 2015, the CAISO requested leave and filed Supplemental Comments citing subsequent material changes regarding the need for the CLTP. The CAISO informed us that as a result of its annual reassessment of Network Upgrades sufficient capacity is available such that the Mojave Solar project may now achieve FCDS, subject to review and approval by FERC. The change in FCDS for Mojave Solar was attributed to election by several generating facilities other than CGS to permanently retire and forego repowering. The now-released deliverability status and associated capacity was reallocated to Mojave Solar. The CAISO stated, “as a result, the Coolwater-Lugo Transmission Project is no longer necessary in order for Mojave Solar to receive Full Capacity Deliverability, as was set forth in its LGIA.”¹⁸

The CAISO stated that it will conduct additional Phase II Interconnection Studies to determine whether there is any residual need for any elements of the CLTP to interconnect other projects currently in the CAISO Queue. The CAISO said it will finalize these Phase II Interconnection Studies in November 2015 and recommended that the Commission suspend this proceeding and defer a

¹⁷ *Id.*, at 7.

¹⁸ Supplemental Comments of the CAISO (March 17, 2015) at 2.

decision on whether to approve this application until these studies have been completed and all necessary FERC approvals have been obtained.

In response to these developments, the Administrative Law Judge (ALJ) issued a ruling on March 19, 2015 suggesting that rather than suspend these proceedings until an indeterminate date in the future, it would be more appropriate to dismiss without prejudice. The ruling noted that the record in the CEQA review can be preserved and utilized in any future related proceeding, should SCE refile an application with new studies reflecting updated grid conditions. The parties were directed to file comments responding to the CAISO's Supplemental Comments and discussing whether there were any reasons why Application (A.) 13-08-023 should not be dismissed without prejudice.

2. Should this Application be dismissed without prejudice?

2.1. Positions of the Parties

SCE echoed the CAISO's request for suspension of this proceeding rather than dismissal for two reasons: First, SCE believes it is premature to presume that FERC will approve the CAISO's plan to allocate FCDS to Mojave Solar and the related LGIA contract amendments. Therefore, SCE suggested the Commission suspend this proceeding until the FERC process has been completed. Second, SCE would have the Commission await the completion of the Phase II Interconnection Study which will assess what, if any, portion of CLTP is still necessary to safely and reliably interconnect generating projects pending in the CAISO interconnection queue. SCE notes "there are several generating projects now in the CAISO Queue which have been studied with the

assumption that the Coolwater-Lugo Project will be built and available to address their needs.”¹⁹

SCE also pointed to the CAISO’s Cluster 8 Phase I Studies, which will be finalized in December 2015. These studies may indicate whether elements of CLTP will be needed to accommodate new generation that comes into the CAISO queue by the end of April 2015. SCE recommended that the Commission suspend this proceeding pending the results of these CAISO full system studies rather than the “partial information available currently that only looks at FCDS for one generator.”²⁰

Mojave Solar urged the Commission to suspend this proceeding arguing that the parties will be “substantially prejudiced” by dismissing this application at this time. Mojave Solar agreed with SCE that the results of the CAISO Cluster 7 Phase II study, Cluster 8 Phase I study and the draft of its 2016 annual transmission plan in November and December of 2015 are needed to evaluate the need for all or part of the CLTP. Mojave Solar recommended that the Commission require a report on the impact of the studies on the need for the CLTP and that further processes could proceed once that was received.

¹⁹ SCE’s Response to ALJ Ruling (April 1, 2015), at 3-4.

²⁰ *Id.*, at 4.

Mojave Solar argued that it does not have FCDS because FERC has not given its approval to an amended Mojave Solar/SCE/CAISO LGIA. Mojave Solar referenced the terms of its existing, unamended LGIA and its PPA with PG&E to continue to advocate for the possibility of a decision on the CLTP that conforms to the deadlines requiring Mojave Solar to have full deliverability by April 11, 2018.

Mojave Solar stated that if the FERC does not give its approval or if the CAISO studies determine that some portion of the CLTP is still necessary, the parties would be substantially prejudiced by having to file a new application. In this context, Mojave Solar stated that it would be substantially prejudiced by SCE having to file a new application in a new proceeding governed by the “increasingly short timeline of the LGIA.”

Mojave Solar pointed to a number of possible outcomes triggered by the new CAISO studies planned for late in this year. It argued that the uncertainty associated with any residual future need for development of some portion of the CLTP should be addressed by a suspension of the proceeding, rather than a dismissal.²¹ Moreover, Mojave Solar argued that dismissal of the Application would result in “substantial waste of staff and utility resources” urging retention of “extensive evidence and analysis regarding the elements of the CLTP.”²²

²¹ Comments of Mojave Solar in Response to the Ruling of the Presiding Administrative Law Judge of March 19, 2015 at 6.

²² *Id.*, at 7.

ORA supported dismissal without prejudice for the reasons stated in the CAISO's Supplemental Comments and in the March 2015 ALJ Ruling. ORA emphasized the need to fully consider retirements of conventional generators when evaluating supply and demand scenarios for transmission planning studies.

BAMx urged dismissal of the CLTP without prejudice arguing that it is not needed to provide FCDS for Mojave, no "residual need" will be found because none of the projects in the CAISO's queue, except for Mojave Solar, have PPAs and are therefore not sufficiently commercially viable to support need for transmission upgrades and not all projects in the queue are seeking FCDS in any event. BAMx pointed out that while FCDS is required for Resource Adequacy status, not all generators seek RA qualification.²³

BAMx agreed with the March 2015 Ruling where it observed that both the CAISO's and SCE's earlier studies in support of the CLTP included both CGS and several other generating units that are now expected to be retired as fully operational and had base cases that assumed that CLTP would be built. Before

²³ BAMx noted that the unprecedented growth in transmission costs over the last decade in the CAISO balancing area, with a CAISO-wide Transmission Access Charge of \$2.11/MWh in 2005 that increased to \$10.16/MWh in 2015, has given rise to increased recognition by utility industry experts, regulators, and policy makers that building transmission to provide Resource Adequacy credit for intermittent resources is not a cost-effective mechanism to procure renewables. If the owners of the existing and future interconnecting projects in the Kramer and surrounding areas decide to continue to seek a PPA, they would be more competitive if they seek energy-only status and therefore, would not likely require delivery network upgrades such as the CLTP or any elements thereof. BAMx noted that the CAISO has stated, in going beyond a 33% RPS, the special study in the CAISO 2015-16 TPP will explore a new approach and assume the incremental renewable generation to be "energy-only" making the need for FCDS unnecessary and obviating the need for transmission upgrades to interconnect. Comments of the Bay Area Municipal Transmission Group to Administrative Law Judge's Ruling dated March 19, 2015 (March 31, 2015) at 11.

being able to further review the current Application, the Commission would need new studies that remove those assumptions. In particular, BAMx believes the CPUC RPS portfolios for the 2014 LTPP and the CAISO 2014-15 TPP added a certain level of renewable capacity in the Kramer and surrounding areas, but assumed the presence of CLTP, primarily to provide deliverability to Mojave Solar, which was in construction at the time. Based upon the currently available information, those RPS portfolios will need to be updated.

BAMx urged the Commission to dismiss the Application for the following reasons: 1) the CAISO's annual assessment (of Network Upgrades) indicated that the CLTP is no longer needed to interconnect Mojave Solar with FCDS; 2) the foundational analysis and support for the CLTP is in question and new work of uncertain scope and duration must occur before the need for the CLTP can be further evaluated; and, 3) even though SCE identified other projects in the CAISO and SCE interconnection queue that are presumably dependent on the CLTP, Mojave Solar is the only one with a PPA and hence those projects are more aptly regarded as "proposals for projects."²⁴ The lack of certainty surrounding the commercial viability of the projects and the ability to complete construction makes their request for interconnection an insufficient basis for a "need" determination or to approve new projects. BAMx pointed out that the November 2015 Phase II Interconnection study will not provide new information on the status of projects in the CAISO and SCE queues since it only addresses engineering and operational needs.

²⁴ *Id.*, at 9.

BAMx additionally cautioned against reliance upon SCE's statement of need to serve future load growth in the High Desert Region because it had not been weighed by the CAISO and other state agencies and is insufficient by itself to justify the CLTP.

The Sloan Parties and MCCC supported dismissal without prejudice in this case because the CAISO's Supplemental Comments make clear that there is no longer any color of urgency with the attainment of FCDS for Mojave Solar.²⁵ They agreed that the studies supporting the need for CLTP assume that the CGS is fully operational and include a base case that assumes CLTP is built. Simply put, they stated "it is now apparent that no CPCN will be issued based on these studies."²⁶ Any new application would need to include new studies involving different assumptions and base cases. Right now there is no "live and present controversy" before the parties and the Commission should dismiss this case and release the parties from further participation until the specific scope of a proposed project is identified in a later-filed proceeding, should such a filing be made.

SCE filed a Supplemental Response to ALJ's Ruling on April 2, 2015 to inform the Commission that one of the generating projects in the CAISO Queue that was mentioned in SCE's prior submission as possibly triggering a residual need for CLTP, Project #1089, had been withdrawn from the CAISO Queue

²⁵ Comment of Catheryn M. Sloan, Richard and Carol Benson, Neil Nadler, Mary Webb, Masoud and Firouzeh Nikravan, Reza Ali' Hadaegh, Barry and Florence Goodman, Ronald J. Barbieri, Gregory L. Bay, Ezra Cohen, Christine Corsello, Robert Earle Howells, Richard A. Klee, Stephan A. Mills, Richard P. Ravana, and John D. Zemanek Regarding Dismissal of Application Without Prejudice at 1-3; Comment of Mojave Communities Conservation Collaborative Regarding Dismissal of Application Without Prejudice at 1-3.

²⁶ *Id.*, at 2.

effective April 1, 2015. However, SCE noted that this did not change its recommendation that the Commission suspend rather than dismiss the current proceeding. SCE again emphasized that it would be consistent with the fact that the CLTP was located in an area that was viewed as supporting the development of renewable generation beyond Mojave Solar or any other single generating project.²⁷

2.2. Discussion

The question resolved in today's decision is whether to suspend the proceeding and await the resolution of a number of complex planning studies and review processes at this Commission, the CAISO and FERC to allow SCE time to decide whether to update its proposal under the current pending request for a CPCN or dismiss this request for a CPCN without prejudice to any future proposal. We dismiss A.13-08-023 without prejudice.

We dismiss A.13-08-023 without prejudice because there have been significant material changes to the grid conditions that gave rise to the purported need for the CLTP as proposed. Specifically, the permanent retirement of the CGS and other generation has freed sufficient transmission capacity such that Mojave Solar and other proposed generation projects are now fully deliverable. We recognize that these changes may have important ramifications beyond this proceeding, including for example, other resource and transmission planning proceedings before the Commission and the CAISO. In this context, we are particularly appreciative of the CAISO's Supplemental Comments and the timely allocation of FCDS to Mojave Solar. In doing so, the CAISO furthered one of

²⁷ Southern California Edison Company's Supplemental Response to ALJ's Ruling (April 2, 2015) at 1-2.

California's highest priorities, the delivery of renewable energy to consumers in furtherance of meeting (and exceeding) our statewide RPS objectives in a cost effective manner.

We also recognize that the CLTP has been assumed to be built in a number of base cases for planning studies produced both at the Commission and the CAISO. These studies also assumed that CGS was fully operational and now that its 636 MW are no longer operational, studies utilizing this resource assumption must be updated. Although the CAISO's deliverability allocation policy allows CGS's owner NRG to hold its rights to FCDS for three years after its announced permanent retirement should it wish to repower, this policy does not change the need to analyze resource and transmission planning scenarios that acknowledge the likely scenario that this plant will remain permanently retired.

Clearly, the retirement of vintage generation of the size of CGS has had a profound impact on the instant application. All parties acknowledge that the need for any of the transmission system upgrades either proposed as part of the original CLTP or other appropriate projects must be reevaluated after a number of studies of uncertain size and duration are completed in order to determine if any "residual need" still exists. The amount of analysis, the timing of its completion and its implications for any future proposal are of such magnitude and uncertainty that the current proposal is no longer viable. The Commission cannot hold open an "empty" proceeding docket awaiting a clear, complete proposed project. The Commission does not know what the proposal is, how long it will take to study the need for new transmission and when a new proposal if any, would be available for consideration.

SCE, CAISO and Mojave Solar urged the Commission to suspend this proceeding rather than dismiss the CPCN Application. However, these requests fail to acknowledge how fundamentally the status quo has changed with respect to this particular Application. Not only has Mojave Solar been allocated FCDS, but CGS has been permanently retired. Moreover, we have learned that assessments of the interconnection of future renewable generation in the project area assumed that CLTP would actually be built. Clearly, we cannot evaluate the need for a project based on studies that already assume its existence. The Commission will require studies that remove this assumption and demonstrate need for a transmission upgrade solution without CLTP included as a foregone conclusion in any future proceeding.

CGS is now permanently retired and its owner, NRG has notified both the Commission and the CAISO of this fact.²⁸ There is nothing ambiguous about this notification: NRG has given no indication that it has the intention or the means to repower the 636 MW gas-fired facility. NRG explained in its first notice, the October 2014 Letter to the Commission, that this action was taken when it had no RA contracts or PPAs for CGS's output and was not in negotiation with any party, including SCE, for new PPAs.

CGS consisted of four units totaling 636 MW of gas-fired generating capacity. The newest of the four units is over 30 years old and the oldest is approximately 50 years old. As SCE points out, CGS was given FCDS in the CAISO's 2005 deliverability assessment. The Commission sought input from the parties regarding the impact of CGS' permanent retirement, in part, because its

²⁸ There is no dispute that the December 23, 2014 NRG Letter to the Commission was submitted to the Commission and the CAISO, pursuant to General Order 167.

location and size was a significant contributor to the transmission transfer capability limitations, which give rise to the need for transmission upgrades.

CGS's permanent retirement freed up 636 MW on the South of Kramer transmission system and effectively reduced the "bottleneck" far in excess of Mojave Solar's full 250 MW of dispatch capability. As a result, Mojave Solar will not trigger a transmission constraint when operating at full capacity today.

Input from SCE, the CAISO and Mojave Solar was sought to determine if there is any remaining need for the CLTP as proposed or for a subset of its components during the ten-year planning timeframe. That question was not answered with direct reference to the factual basis for SCE's CLTP Application. In part, this is because, as SCE, the CAISO and Mojave point out, it has not been studied yet. All the studies before the Commission assume that CGS is not retired and, in part on that basis, conclude that CLTP is needed and will be built.

Instead, SCE, the CAISO and Mojave Solar described the impact of the CAISO's deliverability allocation policy and procedure on our assessment of the need for CLTP in this proceeding. SCE, the CAISO and Mojave Solar stated that CAISO tariff and BPM provisions require the CAISO to hold CGS's FCDS for an additional three years, and potentially longer, absent an additional affirmative statement (beyond notification of permanent retirement) that CGS will not exercise its rights to its FCDS priority by repowering. Absent an affirmative commitment by NRG that it will never repower the CGS facility, the CAISO and Mojave Solar stated that the CAISO can only reallocate CGS's 636 MW of deliverability to other generators on a temporary basis through its annual deliverability assessment process. Based on this policy, Mojave Solar and other

generators could potentially be allocated temporary capacity deliverability status.²⁹

SCE, the CAISO and Mojave Solar, in essence, asked us to accept the CAISO's commitment to hold FCDS for NRG's retired CGS facility and otherwise ignore the fact that it is not operational. However, no single credible scenario has been presented in which CGS will garner the means to repower. Even if it were to repower, no credible scenario has been presented to support a conclusion that it would ever be repowered close to its former full capacity of 636 MW.

SCE, the CAISO and Mojave Solar's contend that there has been no impact from the CGS retirement. However, if we were to accept that the CAISO must hold NRG's CGS FCDS aside from reallocation for three years or more and proceed as SCE, the CAISO and Mojave Solar have advocated, the NRG CGS repower decision would become a critical factor in determining the need for CLTP. If this is the case, this application should be dismissed without prejudice until there is certainty with respect to NRG's FCDS rights. Otherwise, CLTP could potentially be approved based on assuming CGS is still contributing to the transmission constraints giving rise to CLTP's need, when that need could well be obviated as little as two years, or less after the project approval. Clearly, this would be untenable given our obligations in review of this CPCN application under Pub. Util. Code §§ 1001, *et seq.*, and 451.

²⁹ In Comments submitted prior to the CAISO's Supplemental Comments, Mojave Solar argued that temporary FCDS would not be a firm allocation and will not satisfy the terms of its contractual obligations to operate with FCDS. Mojave Solar Comments (January 8, 2015) at 5.

We respect the CAISO's Tariff provisions and the policy articulated in its Comments. Nonetheless, adherence to the CAISO's Reliability Requirements BPM provision is not binding upon the Commission for purposes of evaluating the need for CLTP and it should not by itself determine the outcome of this proceeding. We note that it is not necessarily binding upon the CAISO either. As BAMx rightly pointed out, the CAISO can change a BPM without any change to the CAISO Tariff and has recently done so when it was found appropriate.³⁰ We raise this point to underscore the importance for the Commission and CAISO to continue to work to harmonize our respective responsibilities in a dynamic transmission and resource planning environment.

Other choices for moving this proceeding forward are limited by the lack of information on the impact of the CGS retirement on the CLTP proposal. In order to proceed with this application, the Commission would require both transmission planning and generation interconnection studies that acknowledge the elimination of the CGS and its related FCDS and remove its 636 MWs from the base cases. Without these studies, the Commission would be left to evaluate the need for CLTP based on studies that already assume its existence and include it in their base cases. Such an approach is unreasonable.

Mojave Solar is physically fully deliverable today. In addition, CAISO has approved FCDS for Mojave Solar based on generation retirements with relinquished repower rights other than CGS. Mojave Solar now awaits a CAISO filing for FERC approval of a proposed LGIA amendment substituting FCDS for the CLTP as a basis of its interconnection to the CAISO-controlled grid.

³⁰ BAMx Reply (January 22, 2015) at 5.

Mojave Solar has claimed that it faces potentially dire financial consequences because its award of FCDS by CAISO and related LGIA amendments are subject to FERC approval, not valid until approved, and dependent upon the outcome of the FERC proceeding. Mojave Solar pointed to the requirement under its LGIA that requires SCE to build “the necessary network upgrades included in the CLTP to provide Mojave Solar with full deliverability by April 11, 2018.”³¹ We understand Mojave Solar’s immediate circumstances. However, holding this proceeding open is not a remedy to Mojave Solar’s transactional and regulatory risks arising out of its need to conform financing and interconnection agreements to changed circumstances. The award of FCDS to Mojave Solar is entirely independent of our resolution of this application. And as we have articulated above, SCE’s current proposal has fundamentally changed due to major changes in grid conditions. Thus, the Amended Application and Amended PEA are not a “default” to which either the Applicant or any other parties can return should the FERC deny approval of Mojave Solar’s needed LGIA amendment. Mojave Solar’s arguments are insufficient to overcome the other reasons for dismissal and do not by themselves provide support for continuing with this proceeding.

Mojave Solar argued that we should suspend the current proceeding and order SCE to file a report on the conclusions of the CAISO studies and explain their impact on the need for CLTP. This proposal might make sense if the only analysis required to go forward were CAISO studies results. While the CAISO’s TPP analysis is a crucial element in evaluating the need for any proposed

³¹ Mojave Solar Comments to the Ruling of the Presiding ALJ of March 19, 2015 at 5.

transmission upgrade, it is not by itself determinative. As BAMx pointed out, the TPP looks exclusively at engineering and operational considerations. Evaluation of future renewable generation resource development potential, environmental and cost considerations are not evaluated as part of the TPP. That occurs at the Commission. A number of Commission studies are implicated by the recent grid condition changes resulting from generation resource retirements. A report on the results of updated CAISO studies is not a sufficient substitute for a complete, definitive proposal that addresses these broader concerns in a full new application.

Mojave Solar argued that the parties have provided “extensive evidence and analysis” that the Commission needs to preserve as the “entire record” in this proceeding, beyond the CEQA review materials completed to date. This argument overstates the status of the current proceeding in that evidentiary proceedings have not yet occurred. Consequently, prepared testimony submitted by the Applicant is not in evidence in the proceeding and no other party has yet served testimony. Evidentiary hearings would not have been scheduled until after issuance of the DEIR which has not yet occurred.³²

³² The status of the current proceeding distinguishes this case from the cases cited by Mojave Solar as demonstrating that “it is established practice to stay proceedings while evaluating new information.” All the relevant cases cited had completed CEQA review and/or a substantial portion of evidentiary hearings. In other words, the Commission in those cases sought to preserve mature and developed records. In this case, we do not even know what the proposal includes and would be awaiting, in essence, an entirely new project proposal. Mojave Solar would have us change the burden of proof to the opponents of the CLTP – by dismissing only if it is clear that the CLTP is “not needed within the foreseeable future.” *Id.*, at 10. However, SCE clearly has the burden to provide a complete Application that meets the requirements of Pub. Util. Code § 1001, *et seq.*, General Order 131, and the Commission’s Rules of Practice and Procedure. In the most basic sense, lacking a clear, coherent proposal given changed circumstances, SCE’s amended Application and amended PEA are now incomplete.

Materials prepared by the Applicant and presented in filings must be reevaluated and resubmitted to present a complete Application and a new proposal. There is no way to know at this juncture what materials of those submitted will be relevant to a future proposal that has yet to be written. Finally, the most developed portion of the record to date has occurred in the CEQA review process which we will order preserved for access and future use to the extent it would apply to a future application.

The Commission's CEQA process for the CLTP included review of the PEA, consultation with SCE; research and analysis on all CEQA - and the National Environmental Protection Act (NEPA) - related resource topics; inter-agency consultation with interested parties; site visits and field work; technical specialist workshops; public scoping; development of project alternatives; and the preparation of an Administrative Draft Environmental Impact Report/Emissions Inventory System (EIR/EIS). Publication of the Draft EIR/EIS was scheduled for the second quarter of 2015. Preparation of the Draft EIR/EIS was suspended pending the outcome of the March 19, 2015 ALJ Ruling. It is unknown whether the results of the new transmission and resource planning studies discussed above will lead to a new SCE project proposal that matches the current CLTP proposed-and-alternate components.

The regional-specific information gathered for the CLTP CEQA review may serve as a useful starting point for other CEQA studies for local projects conducted by other agencies in the future. Moreover, efforts to develop the Draft EIR/EIS for CLTP have yielded comprehensive technical reports on Cultural Resources in the High Desert area, and information related to biology that would have resulted in a Biological Assessment.

In order to retain the benefit of the data gathered to date and the comprehensive technical and scientific analysis generated by the CLTP CEQA process, the Commission will properly preserve all Cultural Reports³³ and prepare a Master Environmental Assessment (MEA) document pursuant to Public Resources Code § 21083, CEQA, Guideline 15169. The MEA will contain scientific and technical reports related to the baseline environmental conditions on the ground in the local area without reference to the CLTP so that they may be used or referenced in any related, future Environmental Impact Report or Negative Declaration, by this Commission or other agencies. The Commission Staff will determine the appropriate format and content of the MEA based on the completion of the draft technical reports and studies undertaken by the Energy Division in this proceeding. The MEA can provide a public basis for any future EIR requiring study of the baseline environment in the High Desert region.

3. Conclusion

Given the many questions that have arisen, as well as the significant resources that have already been devoted to this proceeding, rather than continuing to order further transmission, generation and environmental studies, application amendments and attendant schedule alterations in this proceeding, we dismiss this application without prejudice. The CEQA analysis conducted to date will be preserved and can be accessed if a new, related application is filed at a later time.

³³ Cultural Reports will be submitted to the California Historical Resource Information System (CHRIS) where they will be available to registered archeologists but not the general public, pursuant to California Government Code § 6254.10.

4. Categorization and Need for Hearing

In Resolution ALJ 176-3321 dated September 5, 2013, the Commission preliminary categorized this application as ratesetting, and preliminary determined that hearings were necessary. The preliminary determination that hearings were necessary should be changed because this application is being dismissed without prejudice and therefore no hearings are necessary.

5. Comments on Proposed Decision

The proposed decision of ALJ Moosen in this matter was mailed to the parties in accordance with Section 311 of the Public Utilities Code, and comments were allowed under Rule 14.3 of the Commission's Rules of Practice and Procedure. Comments were filed by SCE, CAISO, Mojave Solar and BAMx on May 11, 2015, and reply comments were filed on May 18, 2015, by BAMx.

SCE's and Mojave's Opening Comments reiterated arguments presented earlier in the proceeding and raise no errors of law or fact that would require changes to the proposed decision. BAMx filed in support of the decision and raise no errors of fact or law requiring changes to the proposed decision.

The CAISO sought modification to Finding of Fact No. 20 to reflect the breadth of analysis that occurs in the CAISO's transmission planning process. However, some of the CAISO's proposed modification language improperly characterizes the Commission's CPCN process under Pub. Util. Code § 1001, et seq. BAMx raised this concern in its reply comments as well. Therefore, Finding of Fact No. 20 is modified to include the CAISO's requested clarification regarding its TPP process and further clarifies the CPUC's independent evaluation in the CPCN process.

6. Assignment of Proceeding

Michel Peter Florio is the assigned Commissioner and Irene K. Moosen is the assigned ALJ in this proceeding.

Findings of Fact

1. SCE's application, as amended, stated that the Coolwater-Lugo Transmission Project (CLTP) will be needed to address the transmission upgrades to interconnect the Mojave Solar Project with full deliverability, to alleviate the 220 kilovolt transmission bottleneck between the existing Kramer and Lugo Substations and along the Lugo Pisgah corridor and to serve forecasted load growth in the High Desert Region.

2. On October 23, 2014, NRG California South LP (NRG) advised the Commission that the Coolwater Generating Station (CGS) Units 1, 2, 3, and 4 would no longer operate after January 1, 2015.

3. CGS was a 636 megawatt gas-fired generation facility, interconnected to the SCE system proximate to the Mojave Solar Project 250 megawatt generating facility.

4. On December 23, 2014, NRG confirmed that CGS was permanently retired.

5. The CAISO's deliverability allocation policy allows CGS's owner, NRG, to hold its rights to Full Capacity Deliverability Status (FCDS) for three years after its announced permanent retirement should it wish to repower.

6. Since CLTP had been assumed in the base cases for the CAISO's Transmission Planning Process (TPP) every year since the 2010-11 cycle through the current 2014-15 cycle and also in the July 29, 2008 CAISO Queue #142 Serial Generation Interconnection System Impact Study, entirely new assessments would be needed if CLTP is not built.

7. If CLTP is taken out of the base cases, SCE would need to perform an

assessment to determine what upgrades would be needed to accommodate load growth in the High Desert Region and propose an appropriate upgrade.

8. Until NRG notifies the CAISO that it will not seek to repower CGS, the CAISO will preserve the interconnection and deliverability status for this location for three years after the permanent retirement of CGS.

9. SCE and Mojave Solar did not present any facts showing that NRG would likely restart, repower, or rebuild generation at the CGS site in the foreseeable future.

10. The CAISO transmission planning studies since the 2010-2011 TPP, the CAISO generator interconnections queue studies as well as the interconnection study performed in conjunction with the SCE-CAISO-Mojave Solar Large Generator Interconnection Agreement (LGIA) all assumed that CGS was operating.

11. None of the transmission and generation planning studies in the record to date provided the Commission with a need assessment for the proposed CLTP without CGS.

12. The CAISO stated that it will conduct additional Phase II Interconnection Studies to determine whether there is any residual need for any elements of the CLTP to interconnect other projects currently in the CAISO Queue.

13. The Phase II Interconnection Studies are anticipated to be finalized in November 2015.

14. The CAISO's Cluster 8 Phase I Studies, which will be finalized in December 2015, may indicate whether elements of Coolwater-Lugo will be needed to accommodate new generation that comes into the CAISO queue by the end of April 2015.

15. The November 2015 Phase II Interconnection study will not provide new

information on the status of projects in the CAISO and SCE queues since it only addresses engineering and operational needs.

16. The permanent retirement of the CGS and other generation have freed sufficient transmission capacity such that Mojave Solar and other proposed generation projects are now fully deliverable.

17. The CLTP has been assumed to be built in a number of base cases for planning studies produced both at the Commission and the CAISO. These studies also assumed that CGS was fully operational.

18. No single credible scenario has been presented in which CGS will garner the means to repower. Even if it were to repower, no credible scenario has been presented to support a conclusion that it would ever be repowered at close to its former full capacity of 636 MW.

19. All parties acknowledge that the need for any of the transmission system upgrades either proposed as part of the original CLTP or other appropriate projects must be reevaluated after a number of studies of uncertain size and duration are completed in order to determine if any “residual need” still exists.

20. The TPP looks primarily at engineering and operational considerations. Evaluation of future renewable generation resource development potential, project need, environmental and cost considerations are not evaluated as part of the TPP in the same manner and to the same extent as required under Pub. Util. Code Sections 1001, et seq. That occurs at the Commission.

21. A report on the results of updated CAISO studies is not a sufficient substitute for a complete, definitive proposal in a full new application.

22. Mojave Solar is physically fully deliverable today.

23. CAISO has approved FCDS for Mojave Solar based on generation retirements with relinquished repower rights other than CGS.

24. Mojave Solar now awaits a CAISO filing for FERC approval of a proposed LGIA amendment substituting FCDS for the CLTP as a basis of its interconnection to CAISO-controlled grid.

25. Preparation of the Draft EIR/EIS has been suspended.

26. The regional-specific information gathered for the CLTP CEQA review may serve as a useful starting point for other CEQA studies for local projects conducted by other agencies in the future.

Conclusions of Law

1. The amount of analysis, the timing of its completion and its implications for any future proposal are of such magnitude and uncertainty that the current proposal is no longer viable.

2. The Commission should not hold open an “empty” proceeding docket awaiting a clear, complete proposed project when it is unknown how long it will take to study the need for any new transmission upgrades and when a new proposal if any, would be available for filing at the Commission.

3. SCE, the CAISO and Mojave Solar’s request that the Commission suspend this proceeding rather than dismiss the application fails to acknowledge how fundamentally the status quo has changed with respect to this particular application.

4. The Commission cannot proceed with evaluating SCE’s application without transmission planning and generation interconnection studies that acknowledge the elimination of the CGS and its related FCDS and remove its 636 MWs from the base cases.

5. It is unreasonable to evaluate the need for CLTP based on studies that already assume its existence and include it in their base cases.

6. Holding open the CLTP proceeding is not a remedy to Mojave Solar’s

transactional and regulatory risks which arise out of its need to conform financing and interconnection agreements to changed circumstances.

7. The current application proposal has fundamentally changed due to major changes in grid conditions.

8. While the CAISO's TPP analysis is a crucial element in evaluating the need for any proposed transmission upgrade, it is not by itself determinative.

9. SCE has the burden to provide a complete Application that meets the requirements of Pub. Util. Code § 1001, *et seq*, General Order 131, and the Commission's Rules of Practice and Procedure.

10. The CEQA review in this proceeding generated comprehensive technical and scientific data and analysis. In order to retain the benefit of this material, the Commission should prepare a Master Environmental Assessment (MEA) document pursuant to Pub. Resources Code § 21083, CEQA Guideline 15169.

11. Since finding that hearings are unnecessary, the preliminary determination regarding the need for hearings should be changed.

12. Application 13-08-023 should be dismissed without prejudice.

13. This proceeding should be closed.

O R D E R

IT IS ORDERED that:

1. Application 13-08-023 is dismissed without prejudice.
2. The hearing determination is changed to no hearings necessary.
3. Commission Staff shall prepare a Master Environmental Assessment.
4. Commission Staff shall submit all Cultural Reports prepared as part of the Coolwater Lugo Transmission Project's California Environmental Protection Act review process to the California Historical Resource Information System.

5. Application 13-08-023 is closed.

This order is effective today.

Dated May 21, 2015, at San Francisco, California.

MICHAEL PICKER

President

MICHEL PETER FLORIO

CATHERINE J.K. SANDOVAL

CARLA J. PETERMAN

LIANE M. RANDOLPH

Commissioners