UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION

Promoting Transmission Investment Through Pricing Reform	Docket No. RM11-26-000

MOTION TO INTERVENE AND COMMENTS OF THE CALIFORNIA ENERGY STORAGE ALLIANCE

The California Energy Storage Alliance ("CESA")[1] appreciates the opportunity to submit comments in response to the Federal Energy Regulatory Commission's ("FERC's") Notice of Inquiry ("NOI").[2]" CESA does not address each of the specific questions posed in the NOI in these comments. Instead, CESA highlights two factors or considerations of general concern that FERC should consider as part of its transmission incentive policies in order to be consistent with the goals of set forth by Congress in Section 219 of the Federal Power Act.[3]

I. BACKGROUND.

CESA is an industry group advocating for the rapid expansion of use of energy storage, in all of its many forms, to promote growth of renewable energy and a clean, affordable, and reliable and secure electric system. CESA is technology-neutral and supportive of all business models for deployment of energy storage resources. CESA's member companies include a diverse range of advanced energy storage technology and manufacturing companies, systems integrators, and renewable energy developers.

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[1] *See*, http://www.storagealliance.org.

[2] *Promoting Transmission Investment Through Pricing Reform*, Docket RM11-26-000, and (Notice of Inquiry) (issued on May 19, 2011.

[3] CESA also generally concurs with the substance of the comments filed by the Electricity Storage Association on this date.

II. COMMUNICATIONS AND CORRESPONDENCE.

Address all communications and correspondence concerning this proceeding to:

Donald C. Liddell
DOUGLASS & LIDDELL
2928 2nd Avenue
San Diego, California 92103
Telephone: (619) 993-9096
Facsimile: (619) 296-4662
Email: liddell@energyattorney.com

III. MOTION TO INTERVENE IN THIS PROCEEDING.

CESA is an unincorporated association, the membership of which consists of A123 Systems, Altairnano, Applied Intellectual Capital/East Penn Manufacturing Co., Inc., Beacon Power Corporation, CALMAC, Chevron Energy Solutions, Debenham Energy, Deeya Energy, Enersys, EnerVault, Exide Technologies, Fluidic Energy, General Compression, Greensmith Energy Management Systems, HDR, Inc., Ice Energy, International Battery, Inc., LightSail Energy, Inc., MEMC/SunEdison, Powergetics, Primus Power, Prudent Energy, RedFlow, RES Americas, Saft America, Inc., Samsung SDI, SANYO, Seeo, Sharp Labs of America, Silent Power, Sumitomo Electric, Suntech, SunPower, Sunverge, SustainX, Xtreme Power, and Younicos. CESA's intervention in this proceeding is in the public interest, and CESA's interests will not be adequately represented by any other party. CESA therefore respectfully requests that this motion to intervene be granted.

IV. COMMENTS.

A. <u>FERC Should Address General Policy Issues Raised, But Not Addressed, in its Order Approving Western Grid Development's Requests For a Finding That its Proposed Energy Storage Device Projects Are Wholesale Transmission Facilities That May Be Entitled to Incentive Rate Treatment.</u>

In a Declaratory Order issued in January 2010,[4] FERC found that, based on the circumstances and characteristics presented, Western Grid Development's ("Western Grid's") proposed battery storage projects will be considered wholesale transmission facilities if they are

[4] *Western Grid Dev., LLC*, 130 FERC ¶ 61,056 (2010) (Declaratory Order).

built and operated in the manner proposed. FERC premised its determination on three key facts, namely that the projects would (i) be operated by Western Grid to perform the duties associated with day-to-day operation and maintenance, including keeping the projects energized, to use the projects to provide voltage support and address thermal overload situations in a way that is similar to the operation of other transmission assets such as capacitors that address voltage issues or alternate transmission circuits that address line overloads or trips, under the direction of the California Independent System Operator ("CAISO"), (ii) the projects would not be bid into the CAISO's markets or be market participants in any way and would pass through any incidental market revenues to customers through a Participating Transmission Owner ("PTO") tariff, and (iii) be called on by the CAISO to enable reliable operation of the grid only if there is no other competitive bid to provide the service through the CAISO's markets. FERC opined that because the projects will function in a manner that is comparable to capacitors, in the sense that they will be operated to provide electricity to the transmission grid to maintain system reliability, rather than to act as an energy or capacity resource, they can be considered transmission assets.

Subject to the foregoing two conditions, and assuming the CAISO's approval of the projects in its transmission planning process, FERC also granted Western Grid's request for the following incentives: (1) inclusion of 100 percent of the Projects' construction work in progress ("CWIP") in rate base; (2) a combined return on equity ("ROE") adder of 195 basis-points for the projects; (3) deferred cost recovery through creation of a regulatory asset for pre-commercial costs that will be amortized over five years; and (4) a hypothetical capital structure of 50 percent equity and 50 percent debt until the projects are placed into service.

FERC subsequently observed on rehearing upholding its Declaratory Order that because energy storage systems do not fit neatly into one of the traditional categories of generation, transmission, or distribution, it intends to continue addressing the classification of these systems on a fact-and-circumstance-sensitive, case-by-case basis.[5] CESA submits that, informed by the public comments considered in this docket and in its open docket examining Third-Party Provision of Ancillary Services, Accounting, and Financial Reporting for New Electric Storage Technologies ("Energy Storage NOI"),[6] the time is right to address general policy issues that

[5] *Order Denying Rehearing* 133 FERC ¶ 61,029 (October 2010).

[6] Notice of Inquiry on Third-Party Provision of Ancillary Services; Accounting and Financial Reporting for New Electric Storage Technologies 135 FERC ¶ 61,240 (June 6, 2011).

were raised but not addressed by FERC. Specifically, at a minimum, FERC should address in either or both of the open dockets (i) the implications, of energy storage performing functions and providing products and services *in addition* to grid reliability, and (ii) cost allocation between multi-function energy storage technology and traditional generation and demand response resources.

B. FERC Should Affirm its Policy That Incentives Initially Granted for Transmission Projects Should Remain in Effect for the Life of the Project in the Absence of a Showing That Continuation of Approved Incentives Would Result in Unjust and Unreasonable Rates.

The concurrence filed in this docket by Commissioner Moeller highlights the importance of a general policy concern that is, unfortunately, present in an open docket that represents a significant threat to FERC's transmission incentive policy: "Because regulatory certainty is critically important to those who invest in our nation's infrastructure, this Commission should ensure that if it decides to make changes to its incentive policies, it does so only prospectively. The law explicitly requires this Commission to "provide a return on equity that attracts new investment in transmission facilities" and to "provide for incentives to each … utility that joins a Transmission Organization." These directives from Congress would be frustrated were this Commission to increase regulatory uncertainty by changing long-held investor expectations." (Concurrence, p. 2).

The caution expressed by Commissioner Moeller is not new, as FERC has previously stated in its order on promoting transmission investment: "With respect to the issue of how long an incentive-based proposal should remain in effect, the Commission recognizes that it may be necessary to authorize incentives that may extend over several years in order to support investment in long-term transmission. *It can be important to investors making long-term investments in long-lived facilities to be assured that a ratemaking proposal adopted prior to construction of those facilities will not later be altered in a manner that undermines the basis for the financing of those facilities."*[7]

[7] *See* Order No. 679 at page 36 [emphasis added].

FERC recently issued an order concerning Atlantic Path 15, LLC that is casting a potentially very long shadow over the future of FERC' transmission incentive policy.[8] In the past, FERC has summarily affirmed an incentive rate of 13.5 percent ROE in Atlantic Path 15, LLC's rate cases.[9] However, in its order issued on April 19, 2011, FERC concludes that its preliminary analysis now indicates that the 13.5 percent ROE may no longer fall within the zone of reasonable returns. Atlantic Path 15, LLC states in its Request for Rehearing[10] "if the Commission intends to abandon its previous commitment to the ratemaking principles underlying the Path 15 Upgrade notwithstanding its prior orders, or if it intends to inconsistently apply its own policy and precedent with regard to AP Path 15, then the Commission must acknowledge that it is abandoning its prior policy and overturning established precedent and clearly articulate an explanation and rationale for doing so." (Request for Rehearing, at page 9). On June 8, 2011, FERC granted Atlantic Path 15's Request for Rehearing.[11] In the meantime, however, a hearing and settlement process is underway.

Regardless of the merits of the particular circumstances of Atlantic Path 15, FERC should use this docket as an opportunity to affirm what had until recently been considered well-settled underpinning of FERC's transmission incentive policy - regulatory certainty is critically important to those who invest in our nation's infrastructure.

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[8] *See, Order Accepting and Suspending Proposed Transmission Revenue Requirement and Establishing Hearing and Settlement Procedures* 135 FERC ¶ 61,037 (2011).

[9] *See, Atlantic Path 15, LLC,* 122 FERC ¶ 61,135 at 16-22 (2008) ("finding it just and reasonable to allow Atlantic to continue the use of its current ROE", recognizing that, as here, AP Path 15 "provide[d] detailed testimony that supports continuation of the 13.5 percent ROE" "we [the Commission] will allow the continued use of a 13.5 percent ROE by Atlantic in calculating its TRR, and thus, ROE will not be an issue in the ordered hearing."); *See also, Trans-Elect NTD Path 15, LLC* 109 FERC ¶ 61,249 at 18 (2004).

[10] *Request for Rehearing and Expedited Action of Atlantic Path 15*, LLC, filed May 11, 2011.

[11] *Order Granting Rehearing for Further Consideration* [Docket Nos. ER11-2009-001, and EL11-29-001], issued June 8, 2011.

V. CONCLUSION.

CESA looks forward to continuing to work with FERC to ensure that appropriate rules are in place to maintain and further advance development of transmission incentive policy.

Respectfully submitted,

Donald C. Liddell
DOUGLASS & LIDDELL

Counsel for the
CALIFORNIA ENERGY STORAGE ALLIANCE

<u>CERTIFICATE OF SERVICE</u>

I hereby certify that I have this day served a copy of ***Motion to Intervene and Comments of the California Energy Storage Alliance*** on all parties of record in proceeding ***RM11*-26-000** by serving an electronic copy on their email addresses of record and by mailing a properly addressed copy by first-class mail with postage prepaid to each party for whom an email address is not available.

Executed on September 12, 2011, at Woodland Hills, California.

Michelle Dangott

Michelle Dangott

SERVICE LIST – RM11-26-000

almahaverty@gmail.com
Andrew.McLain@northwestern.com
bfortin@csc.com
billhowley@hughes.net
colknapp@yahoo.com
daniel.shields@puc.state.oh.us
dicish@comcast.net
djbarrick@copper.net
gmaccoll@aol.com
gregg@wvwc.edu
gvbanks@gmail.com
jetcoop@gmail.com
johlevin@state.pa.us
Katherine.Smith@us.ngrid.com
kdaly@stinson.com
kenneth.jaffe@alston.com
kspolar@utilityrisk.com
lee_dickinson@nps.gov
liddell@energyattorney.com
lisajaro@aol.com
marycochran@psc.state.ar.us
maya.cpa@juno.com
michael.cashell@northwestern.com
monrovia4@comcast.net
pamelart@hughes.net
pappy@ccone.com
path@riversdell.com
peggy.kaplan@sugarloafconservancy.org
peter.flynn@us.ngrid.com
rhightower@psc.state.ar.us
shelley.brueggemann@psc.mo.gov
sheri.may@duke-energy.com
stevensmith1001@comcast.net
stoppath@frontiernet.net
thomas.mcnamee@puc.state.oh.us
twoofakindfarm@frontiernet.net