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Re: Contributions in Support of SB 254 Study

Dear Mr. Welsh and Dr. Johnson:

NextEra Energy Transmission is pleased to submit the following contributing comments to the California Earthquake Authority in support of the Senate Bill 254 Study on New Models and Approaches to Complement or Replace the Wildfire Fund.

Achieving California's ambitious climate goals while maintaining reliability and affordability for Californians will require an extraordinary buildout of new transmission lines by 2045, according to the California Independent System Operator (CAISO). The state will need the capital and support of independent transmission companies (ITC) to finance, construct, and operate a significant percentage of this new infrastructure. Although the CAISO has awarded billions of dollars in transmission projects to ITCs, ITCs face existential obstacles to participation in California transmission development due to increasing wildfire liability risks, despite the fact that much of the new transmission required to meet California's goals will inevitably need to cross regions of severe wildfire risk.

While California has focused on providing a liability backstop for investor-owned utilities (IOUs), there is no liability backstop for ITCs in California. Without support from the state, ITCs will be severely limited in their ability to compete for and participate in new transmission projects in California. This threatens the development of the transmission needed to meet the state's environmental goals, and it limits competition from ITCs for transmission projects in order to keep transmission costs affordable for Californians.

The SB 254 Study report should address wildfire liability barriers to ITC participation in new California transmission development.

1. California's Need for New Transmission

California has set a goal of serving 60 percent of retail electric load with renewable generation by 2030[1] and serving 100 percent of retail load with zero-carbon generating resources by 2045[2]. These targets require an unprecedented buildout of new generation resources. The CPUC forecasts that approximately 60 gigawatts (GW) of new clean generation and storage will need to be brought online by 2035, increasing to 100 GW by 2040, and 127 GW by 2045.[3]

An equally ambitious buildout of new transmission projects will be necessary to support these resources. The CAISO's 2024-2025 Transmission Plan forecasts massive investments in new transmission projects needed to interconnect future resources.[4] Excluding projects approved in the 2024-2025 plan, the CAISO's 20-Year Transmission Outlook calls for an additional $45 to $63 billion in transmission infrastructure, a level of investment requiring participation from ITCs and incumbent IOUs.

Competitive solicitations are part of the CAISO's transmission planning process, which must be compliant with FERC Order No. 1000.[5] The CAISO conducts competitive solicitations each year when new transmission is identified in the TPP to meet economic, policy, or reliability objectives. Over the last several years, ITCs have been awarded the rights to develop several critical California transmission projects.

Because ITCs often include cost controls as part of bids into the CAISO solicitation process, active ITC participation in competitive transmission solicitations is an essential strategy to building cost-effective transmission. Lacking the same rate recovery guarantees as IOUs, ITCs are incentivized to minimize costs and project overruns, which ultimately benefits California's electric customers. Ensuring that ITCs can continue to participate in California transmission development is in the interest of California electric customers.

2. Challenges Faced by Independent Transmission Companies

ITCs face the same compliance obligations, the same exposure to significant wildfire liability, and ultimately the same bankruptcy risks as IOUs, but, unlike the IOUs, ITCs do not have access to the Wildfire Fund or any equivalent wildfire liability backstop in California. There is effectively no private insurance market underwriting catastrophic wildfire liability in California, leaving non-IOU developers with no viable recourse. Unwilling to assume significant liability exposure, ITCs limit the amount and types of investments contributed to meeting California's energy goals.

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[1] Cal. Pub. Util. Code §§ 399.15(b)(2)(B), 399.30(c)(2).
[2] Cal. Pub. Util. Code § 454.53(a).
[3] CPUC Decision 25-02-026 at 19.
[4] CAISO, 2024-2025 Transmission Plan, May 30, 2025.
[5] *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* Order No. 1000, 136 FERC 61,051(2011), petition for review denied sub nom. S. MISO Transmission Owners v. FERC, 723 F.3d 246 (DC Cir. 2013) ("Order No. 1000").

3. Potential SB 254 Study Topics

The CEA should evaluate alternatives and complements to the current Wildfire Fund to address barriers to ITCs and other independent entities participating in California transmission development:

- **Additional Wildfire Funds:** The CEA should evaluate additional wildfire funds and fund structures where ITCs could directly participate. Each alternative fund studied should meet principles of equity and fairness, such that contributions are aligned with liability risk, in order to expand participation, pool risks, support competition, and improve the financial durability of California's transmission buildout. The CEA should study a parallel wildfire fund accessible on a voluntary basis to both public and private entities that own and operate transmission. Elements to evaluate:
    - Placing limits on eligibility, such as only including entities whose costs are recovered through a transmission access charge (TAC) as that charge is administered by the CAISO;
    - Establishing contribution obligations based on a transparent and public risk metric for assets within California, recognizing that new transmission construction poses a far lower risk of wildfire ignition in comparison to other facilities, such as distribution assets in certain areas of the state;
    - Setting limitations on utilizing the fund to pay claims in a way that makes participation rational, including limits based on the proportionate size of the asset in relation to the overall fund;
    - Creating additional sources of revenue to help capitalize the fund, such as through an ITC's FERC-filed rates;
    - Establishing requirements and processes to replenish the fund after a participant withdraws funds to pay claims.

- **Unified State-sponsored Wildfire Backstop:** The CEA should evaluate creating a single, unified statewide wildfire catastrophe fund that all insurers, public agencies, and utilities (including ITCs) are able to utilize. This could be structured similarly to the Florida Hurricane Catastrophe Fund, a reinsurance pool that all insurers must buy into similarly to the CEA's earthquake insurance.

- **State-backed Insurance or Reinsurance Program for Wildfire Liability:** The CEA should evaluate state-backed wildfire insurance that utilities and transmission companies could procure with coverage and premium levels sufficient to support continued investment in California. Alternatively, the state could establish a reinsurance program obligation, such that private insurance companies would be enabled to offer sufficiently attractive insurance products to utilities and transmission owners.

- **State-issued Catastrophe Bonds:** The CEA should evaluate issuing catastrophe bonds on behalf of utilities or transmission projects as a long-term, stable liability solution at lower costs.

4. Liability and Legal Reform

The absence of a wildfire liability backstop makes competitive participation for non-IOUs in California nearly impossible for any project with appreciable wildfire risk. ITC regulated rate base and returns cannot adequately cover the significant downside risk of catastrophic wildfire exposure. With no private insurance market willing to cover this risk and no access to the Wildfire Fund, ITCs cannot reasonably participate in CAISO and FERC Order 1000 solicitations in high-fire-threat areas. This structural imbalance discourages competition and raises costs for electric customers.

The SB 254 Study should evaluate changes to California law to limit liability:

- Limiting damages to direct economic damages associated with loss of the property.
- Modifying standards of liability such that a utility that substantially complies with an approved wildfire mitigation plan and obtains an annual safety certification is presumed to have met the applicable standard of care.
- Limiting upstream exposure to parent companies of utilities and transmission owners.
- Clarifying recoveries for insurers and public entities.

The CEA should ensure that that any liability reforms that it evaluates will continue to strongly promote accountability while enabling investments in transmission, maintaining solvency, and supporting California's clean energy buildout.

Sincerely,

Jaime Hoffman

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