

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Upstream Clean Energy,)	
Complainant)	
)	
v.)	Docket No. EL23-81-000
)	
California Independent System)	
Operator Corporation,)	
Respondent)	

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”)¹ hereby submits this Motion for Leave to Answer and Answer to respond to and correct the mischaracterizations advanced by Upstream Clean Energy (“Upstream”) in its Motion for Leave to Answer and Answer filed in this proceeding on August 2, 2023.²

With this filing, the CAISO addresses Upstream’s erroneous assertions in the interest of ensuring an accurate record to support the Commission’s decision-making in this proceeding. As explained in its July 26, 2023 answer (“CAISO Answer”) to the complaint filed with the Commission by Upstream on July 6, 2023 (“Complaint”), Upstream’s Complaint fails to demonstrate that CAISO has

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff (“Tariff”). References herein to specific tariff sections are references to sections of the Tariff, including the Generator Interconnection and Deliverability Allocation Procedures (“GIDAP”) incorporated as Appendix DD thereto.

² The CAISO submits this answer pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.213 (2022).

administered its Tariff in a manner that is unjust and unreasonable or unduly discriminatory or preferential. Further, Upstream argues in favor of an interpretation that is contrary to the Tariff’s plain language and intent, as well as the policy goals of the CAISO and the Commission. Contrary to Upstream’s assertions, there is no need for further discovery or other procedures, and the Commission should dismiss the Complaint.

I. BACKGROUND

Upstream is an energy storage developer that plans to interconnect a 250 MW stand-alone battery project known as the Ventana Reliability Project (“Ventana”) to the CAISO Controlled Grid. On September 29, 2022, Upstream submitted an interconnection request for Ventana and sought processing through the CAISO’s Independent Study Process (“ISP”). The ISP functions as a supplement to the CAISO’s default cluster study process and enables serial study of qualifying interconnection requests to permit those facilities to achieve commercial operation on an expedited basis.³

To utilize the ISP, interconnection customers must demonstrate that (1) inclusion in a Queue Cluster—under the default cluster study process—will not accommodate the desired commercial operation date for the customer’s facility; (2) the customer has site exclusivity; and (3) as relevant to the instant Complaint proceeding, the facility is electrically independent from all other interconnection

³ See Tariff Amendment to Revise Generator Interconnection Procedures, Docket No. ER11-1830-000, Transmittal Letter at 15 (Oct. 19, 2010).

requests. Because there are other projects in the same study area, Ventana was evaluated to determine its electrical independence from those projects based on the results of the Phase I interconnection study from the CAISO's most recent Queue Cluster (Queue Cluster 14).⁴ Because Ventana did not pass the short circuit analysis, the CAISO informed Upstream that the project was ineligible for the ISP, but could participate in the next Queue Cluster (Queue Cluster 15).⁵

Instead of pursuing this viable alternative course, Upstream filed its Complaint alleging the CAISO had improperly analyzed Ventana's electrical independence. The Complaint contends that rather than basing its analysis on the Phase I interconnection study results from Queue Cluster 14, the CAISO should have created a new baseline to account for projects that withdrew from the CAISO interconnection queue after the Phase I study was completed. Upstream's Answer reiterates this baseless contention.

II. MOTION FOR LEAVE TO ANSWER

Upstream's Answer mischaracterizes the CAISO Answer and further misinterprets the Tariff. The CAISO respectfully submits that good cause exists for the Commission to accept this Answer in order to address and correct certain

⁴ See GIDAP, Section 4.2 (where there are other projects in the same study area, interconnection customers seeking to utilize the ISP must pass four tests to determine their facility's electrical independence: (1) the flow impact test, (2) the short circuit test, (3) the transient stability test, and (4) the reactive support test).

⁵ See CAISO, *Interconnection Process Enhancements: Draft Final Proposal Topics 4, 5, and 13*, at 27 (Mar. 25, 2014), https://www.aiso.com/Documents/DraftFinalProposal-Topics_4-5-13-InterconnectionProcessEnhancements.pdf ("Draft Final Proposal") ("If an ISP project fails any of the tests for electrical independence, the interconnection customer will be notified and given the option to participate in the next cluster as a non-ISP project.").

statements in the Upstream Answer. The Commission permits answers to answers where the Commission's consideration of matters addressed in the answer will facilitate the decisional process or aid in the explication of issues.⁶ This Answer will facilitate the Commission's decision-making process because it corrects the information put forth in the Upstream Answer, ensuring the Commission has a complete and accurate record in this proceeding.

III. ANSWER

As discussed in the CAISO Answer, the Complaint fails to show the CAISO violated its Tariff and business practices or that the relevant provisions thereof are unjust and unreasonable. Upstream asserts that the CAISO and Participating Transmission Owners ("PTOs") should be required to continuously generate updated base cases to account for every new queue withdrawal or modification in the course of their ISP analyses, but this outcome is at odds with the plain language of the Tariff, as well as the intended purpose of the ISP, and would require the CAISO to perform potentially significant additional study work. Performing additional studies in support of the ISP would require the CAISO to divert time and resources away from conducting the Queue Cluster studies, which would be impracticable given the large volume of interconnection requests

⁶ See *N.Y. State Pub. Serv. Comm'n. v. N.Y. Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,137, at P 29 (2017) (accepting an otherwise impermissible answer because it "provided information that assisted us in our decision-making process."); *Duke Energy Oakland, LLC*, 102 FERC ¶ 61,093, at P 10 (2003) (finding good cause to accept an otherwise impermissible answer because the answer assisted the Commission in understanding and resolving the issues involved in the proceeding); *Carolina Power & Light Co.*, 97 FERC ¶ 61,048, at 61,278 (2001) (finding good cause to waive Rule 213 when the pleading helped to ensure a complete and accurate record).

currently pending before the CAISO.⁷ This outcome would impede efforts to bring needed additional capacity, including storage projects like Ventana, online in California. Nothing in Upstream’s Answer changes this, and thus, it fails to remedy the deficiencies in the Complaint.

A. Upstream Misconstrues the Text and Purpose of the Tariff

The Complaint alleges the CAISO violated its Tariff when it determined that Ventana failed the short circuit analysis—and by extension, the electrical independence determination—and subsequently deemed Ventana ineligible for the ISP. Upstream’s mistaken understanding hinges on a cramped reading of the Tariff that emphasizes references in the GIDAP to electrical independence tests being conducted using “active” interconnection requests. The Upstream Answer doubles down on this narrowly-focused interpretation and reiterates the argument in the Complaint that the GIDAP’s use of the term “active Interconnection Requests” should be understood as necessitating the iterative creation of new base studies that include only those interconnection requests effective at the precise instant an individual interconnection request comes up for review under the ISP.⁸

Contrary to Upstream’s contentions,⁹ the CAISO’s interpretation of the Tariff gives full meaning to the inclusion of the word “active”; unlike Upstream, however, the CAISO reads the Tariff’s provisions in their entirety. Specifically,

⁷ See CAISO Answer, Sparks Declaration at P 12.

⁸ See Upstream Answer at 3.

⁹ See *id.* at 2-3.

the CAISO utilizes “*study results for active Interconnection Requests*” (*emphasis added*) in conducting electrical independence tests, and carries out its analyses accordingly. Section 4.2 makes clear that “active” in this context means the study results from the most recent Queue Cluster or those ISP projects still in the queue, but nothing in the Tariff suggests an obligation to create new studies or base case scenarios on an ad hoc basis. It would be unjust and unreasonable to read unwritten obligations into the Tariff.¹⁰ The Upstream Answer ignores this inconvenient reality and instead turns its myopic focus to the use of the word “including” in GIDAP section 4.2,¹¹ suggesting the use of this word somehow broadens the tariff language to allow a limitless range of possible analytical bases for the electrical independence tests. This argument is also unreasonable. Again, Section 4.2 expressly refers to “*study results for active interconnection requests.*” Upstream fails to explain what other study results the CAISO would have conducted for active requests that it might utilize, other than the Phase I Interconnection Study results for projects in Queue Clusters and system impact (or combined system impact and facility) studies for ISP projects. Regardless, this language does not mandate that the CAISO continuously create new ISP base cases.

Upstream additionally asserts that the possibility that a project may satisfy the requirement to show that inclusion in a Queue Cluster will not accommodate

¹⁰ See *Oklahoma Gas & Elec. Co. v. FERC*, 11 F.4th 821 (D.C. Cir. 2021)) (“A tariff provision must be understood according to its plain meaning, which we draw from its text and context.”).

¹¹ See Upstream Answer at 3.

the facility's desired Commercial Operation Date and still fail the electrical independence tests is somehow evidence of a flawed interpretation of the Tariff's intent.¹² Upstream's assertion is a *non sequitur*. The CAISO agrees that "[o]ne of the threshold requirements of the ISP is that the customer must provide 'an objective demonstration that inclusion in a Queue Cluster will not accommodate the desired Commercial Operation Date for the Generating Facility'"¹³ and that the purpose of the ISP is "to expedite the interconnection of commercially advanced, electrically independent projects."¹⁴ However, the satisfaction of one ISP criterion in no way guarantees the satisfaction of any other, and the possibility that a project ultimately may be ineligible to participate in the ISP despite progressing beyond the initial eligibility determination is, in fact, an indication that the GIDAP provisions are working as designed.¹⁵

B. Upstream Misrepresents the Burden of Excluding Withdrawn Projects from the ISP Analysis

The Upstream Answer portrays the CAISO's description of the burden that would result from conducting bespoke base case analyses for every project reviewed to determine whether it qualifies for processing under the ISP as "an

¹² See *id.* at 3-4.

¹³ *Id.* at 3.

¹⁴ *Id.* at 4.

¹⁵ Similarly, the fact that the example from the Draft Final Proposal cited in the CAISO Answer does not address the treatment of withdrawn projects is not an indication that the example is flawed. Rather, this example provides additional support for the CAISO's position that the ISP was never intended to require the creation of new base cases to account for withdrawn Queue Cluster projects.

effort to alarm the Commission.”¹⁶ This mischaracterization disregards the very real concerns shared by the CAISO and its PTOs regarding the viability of the ISP were the CAISO to be required to conduct the process in the way Upstream requests. Upstream’s Answer again points to the analysis prepared by its third-party consultant in support of the Complaint in an attempt to bolster its claims, but ignores the contradictory facts presented in the CAISO Answer.

Upstream’s contention that its preferred tariff interpretation would not create a substantial burden on the CAISO and the PTOs remains unconvincing and conclusory. Upstream continues to undercut its already tenuous argument that any burden associated with its request would be minimal by asserting that its preferred Tariff interpretation would enable more projects to proceed via the ISP, but subsequently conceding “[t]here have also been 25 ISP requests filed to date, and only 11 are currently active.”¹⁷ If Upstream’s assertions regarding the burden—or lack thereof—associated with conducting the ISP were correct, it also would not be the case that relatively few interconnection requests have been processed via the ISP.

As Upstream notes, the CAISO recently amended its Tariff to pause the interconnection study process for Queue Cluster 15 to allow the CAISO and its PTOs to work with stakeholders to develop enhanced interconnection procedures as necessary to accommodate increasingly voluminous cluster studies.¹⁸

¹⁶ Upstream Answer at 5.

¹⁷ *Id.*

¹⁸ See *Cal. Indep. Sys. Operator Corp.*, Tariff Amendment to Establish Interconnection Procedures for Cluster 15, Docket No. ER23-2058 at 1 (filed June 2, 2023); see also *Cal. Indep.*

Additionally, shortly before the Commission's August 1, 2023 acceptance of the CAISO's proposal, the Commission issued a final rule adopting reforms to *its pro forma* interconnection procedures.¹⁹ Order No. 2023 emphasizes the efficient clearing of interconnection queues through cluster studies in lieu of serial processes, finding this change will increase efficiency, provide greater certainty to interconnection customers, and result in fewer withdrawals.²⁰ Given the significant workload the CAISO already faces in processing interconnection requests through its queue cluster study process,²¹ and in light of the Commission's clear signaling that it favors such clustered interconnection reviews, Upstream's repeated attempts to interject additional study obligations into the ancillary, serial ISP review are without basis. Upstream's interpretation of the CAISO Tariff would come at the expense of the queue cluster study process.

C. Discovery is Unnecessary

Further development of the record in this proceeding would be a poor use of the parties' time and resources. Upstream claims that discovery would precipitate support for its meritless position, casting doubt on the asserted sufficiency of its third-party consultant's analysis while also pointing to the

Sys. Operator Corp., 184 FERC ¶ 61,069 (2023) (Commission order accepting the proposed Tariff revisions effective August 2, 2023).

¹⁹ See *Improvements to Generator Interconnection Procedures and Agreements*, 184 FERC ¶ 61,054 (2023) ("Order No. 2023").

²⁰ See *id.* at P 177.

²¹ See CAISO Answer, Sparks Declaration at P 12

CAISO's openly acknowledged collaboration with the PTOs on completion of the ISP electrical independence tests.²² As the CAISO Answer readily explained, the electrical independence tests are carried out and analyzed by the engineering staff of the CAISO and its PTOs, and these individuals already face significant challenges in processing the large number of interconnection requests in the CAISO interconnection queue.²³ This dispute itself has already required the diversion of CAISO and PTO employee efforts away from the processing of queue cluster studies. Additional litigation will only exacerbate this, to the detriment of the very cluster study process that now promises Ventana's best chance of interconnection to the grid.

Moreover, even if Upstream's supposition is correct that an electrical independence analysis incorrectly accounted for withdrawn Queue Cluster projects, it changes nothing. The Tariff language's directive is clear: The CAISO and the PTOs must utilize the most recently available study results for a given study area. They do not create new base cases for every (or any) electrical independence under the ISP.²⁴ Should the Commission nonetheless determine that the GIDAP provisions implementing the ISP are ambiguous, extrinsic evidence—based on the record that preceded the Commission's acceptance of the enhanced GIDAP provisions—supports the CAISO's administration of the

²² See Upstream Answer at 7.

²³ See CAISO Answer, Sparks Declaration at PP 8, 12.

²⁴ See GIDAP, Section 4.2 ("These tests will utilize study results for active Interconnection Requests in the same study area[.]").

ISP, and further discovery will not show that the process was intended to be implemented in the manner Upstream proposes.

IV. CONCLUSION

For the foregoing reasons, as well as those presented in the CAISO Answer, the CAISO requests that the Commission deny the Complaint and Upstream's request for fast-track processing of the same without consideration of the misrepresentations in the Upstream Answer.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 16th day of August, 2023.

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