

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

**California Independent System
Operator Corporation**

Docket No. ER13-103-000

**ANSWER TO MOTION TO LODGE OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) hereby submits this Answer to the Motion to Lodge of LS Power Transmission, LLC and LSP Transmission Holdings, LLC (collectively “LS Power”). LS Power asks the Commission to lodge in this docket the ISO Gates-Gregg Project Sponsor Selection Report (“Selection Report”) produced as part of the ISO’s 2012/2013 transmission planning process. The issues that LS Power, who was not a project sponsor in the Gates-Gregg competitive solicitation, seeks to raise through this motion are beyond the scope of this proceeding, and the Selection Report is not relevant to the issues related to the ISO’s compliance filing that are under consideration by the Commission. LS Power’s motion amounts to nothing more than a collateral attack on the Commission’s prior findings and the Commission should therefore deny it.

The ISO notes that on December 23, 2013, Pattern Transmission LP filed an “answer” in support of the LS Power motion and a similar “answer” was filed by Trans Bay Cable LLC on December 24, 2013. These parties both participated in the Gates-Gregg solicitation process and, like LS Power, are

inappropriately using this compliance proceeding to challenge the ISO's application of the tariff criteria and the Gates-Gregg project award. Because these parties essentially filed additional motions to lodge the Selection Report, the ISO will respond to these pleadings within the fifteen-day time period. The Imperial Irrigation District ("IID") also filed a response to the LS Power motion on December 24, 2013, urging the Commission to deny the motion to lodge.¹

I. INTRODUCTION

On October 11, 2012, the ISO filed revisions to its tariff to comply with the local and regional transmission and cost-allocation requirements of Order No. 1000.² The Commission accepted the ISO's compliance filing on April 18, 2013, effective October 1, 2013, subject to the ISO's submission of a further compliance filing within 120 days of the order.³ In the April 18 Order, the Commission, among other things, approved the ISO's selection factors for choosing an approved project sponsor in a competitive solicitation.⁴ The Commission made only three, very specific, compliance directives regarding the selection factors: it instructed the ISO (1) "to explain how it will determine which are the 'key' selection factors for each transmission facility selected in the transmission plan and how it will ensure the key selection factors for each

¹ LS Power states that the motion to lodge has been filed pursuant to Rule 716, 18 C.F.R. Section 385.716. IID correctly points out that this rule is inapplicable to LS Power's filing. See IID answer at 4-7.

² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

³ *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 (2013) ("April 18 Order")

⁴ April 18 Order at P 230.

transmission facility will result in a regional transmission plan with the more efficient or cost-effective transmission solutions;”⁵ (2) to revise the factors such that a siting authority’s ability to impose cost containment measures and its history of doing so would be relevant only where none of the competing project sponsors has accepted specific binding cost control measures;⁶ and (3) to require that a transmission developer in possession of relevant existing rights-of-way indicate whether it would incur any incremental costs in connection with placing new and additional facilities on such existing rights-of-way.⁷ The ISO made its compliance filing on August 20, 2013, including these revisions and others directed by the Commission.

LS Power submitted the only broad-ranging protest to the compliance filing. Among other things, LS Power’s protest included challenges to the selection factors already approved by the Commission. As the ISO noted in an October 4, 2013, answer to LS Power’s protest, the changes recommended by LS Power and its supporting arguments (1) constituted a collateral attack on the April 18 Order regarding specific findings of which LS Power did not seek rehearing, and (2) addressed issues beyond the scope of the ISO’s compliance obligations under the April 18 Order. The instant filing represents LS Power’s further effort to challenge the Commission’s approval of the ISO’s selection criteria, despite its failure to seek rehearing on those issues.

⁵ *Id.*

⁶ *Id.* at P 235.

⁷ *Id.* at P 238.

II. DISCUSSION

A. The Motion to Lodge Raises Issues Beyond the Scope of the ISO's Compliance Filing.

LS Power states that a “central issue of both of the LSP Transmission protests . . . to the CAISO effort at complying with the requirements of Order No. 1000, was whether the transmission developer selection criteria would result in the more efficient or cost effective transmission solution as required by Order No. 1000.”⁸ It later states that the Selection Report demonstrates that the ISO’s “selection methodology will not meet the requirements of Order No. 1000 to select the more efficient and cost effective project.”⁹ These matters are not at issue in this proceeding. The Commission has already determined that the ISO appropriately considers costs and cost effectiveness in its regional transmission process.¹⁰ The Commission also found that the ISO’s competitive solicitation process is transparent and not unduly discriminatory,¹¹ and that the individual selection factors are not unduly discriminatory.¹² The only issue is whether the August 20 filing complies with the Commission’s specific directives with respect to the tariff modifications described above and set forth in the ISO’s August 20 compliance filing.

LS Power is attempting to use the motion to lodge to collaterally attack the Commission’s conclusions in the April 18 Order. Neither the Selection

⁸ Motion at 3.

⁹ Motion at 4.

¹⁰ April 18 Order at P 233.

¹¹ *Id.*, P. 221

¹² *Id.*, P.230

Report nor revisions to the comparative selection factors are within the scope of this proceeding, and the Commission should not accept this end-run around statutory and regulatory procedures for challenging Commission Orders.

Furthermore, the Selection Report sets forth the ISO's consideration of the selection factors that existed prior to the effective date of the tariff amendments that the ISO submitted in compliance with Order No. 1000. Although these selection factors were largely the same as those approved in the April 18 Order, the ISO proposed additional tariff language following the Gregg-Gates competitive solicitation that clarified some of the existing selection criteria. For example, as pointed out by IID, as part of this compliance filing the ISO agreed to add additional clarification to the rights-of-way selection criteria by adding that the ISO would consider, in the case of project sponsors with existing rights-of-way, the incremental costs that would be incurred in placing new or additional facilities on these rights-of-way.¹³ Such revisions are currently pending Commission review and they further undermine any arguments that the Selection Report is relevant to this proceeding.

B. The Selection Report Does Not Support LS Power's Arguments.

Aside from the fact that the issues that LS Power seeks to raise are not within the scope of this proceeding, the Selection Report does not even support LS Power's arguments and provides no useful information for the Commission's consideration. Although LS Power purports to be offering evidence that the selection methodology in the compliance filing is inadequate for the

¹³ See proposed Section 24.5.4(c); IID answer at 3.

identification of the more efficient and cost-effective solution, its discussion focuses on *how* the ISO applied the selection criteria,¹⁴ not on the selection criteria themselves. For example, LS Power points to considerations allegedly “missing from the [ISO’s] analysis,”¹⁵ an alleged failure to explain how its conclusion regarding a factor “benefits consumers,”¹⁶ and a supposed inconsistency in the treatment of certain factors.¹⁷ An unfounded critique of the ISO’s analysis of selection factors is not evidence that the factors themselves are faulty.

To the extent that an aggrieved party believes that the ISO has failed to comply with the tariff, or has applied the selection factors discriminatorily, there are avenues by which that party can challenge the ISO’s determinations. A compliance proceeding is not one of them.

C. LS Power’s Analysis Rests on Erroneous Premises.

LS Power’s summary statement of its argument is that a “review of the [ISO’s] selection analysis demonstrates that *cost-saving, and thus selection of the more efficient or cost effective project* will not be achieved by extending [ISO’s] existing evaluation methodology into its Order No. 1000 analysis.”¹⁸ In other words, LS Power’s analysis rests on its presumption that the least

¹⁴ Although, as noted above, the selection criteria addressed in the report are those that existed prior to the compliance filing, they are mostly the same as those included in the compliance filing.

¹⁵ See Motion at 8, 9.

¹⁶ See *id.* at 12; see also *id.* at 14, 16

¹⁷ See *id.* at 18.

¹⁸ *Id.* at 4 (emphasis added).

expensive project is necessarily the more efficient or cost effective project. This presumption is wrong.

In the April 18 Order, the Commission specifically recognized that while cost is not an afterthought in the ISO's planning process (as LS Power argued in protest to the ISO's October 11, 2012 compliance filing),¹⁹ cost itself is not the sole determinant of cost effectiveness and the ISO's comparative selection factors require an evaluation of how a project sponsor's ability to construct and maintain a project will impact its cost effectiveness.²⁰ The maintenance costs and reliability impacts of a poorly engineered or constructed project can easily outweigh cost-savings in construction. It is thus critical that the ISO select the most highly qualified project sponsor, even if it is somewhat more expensive. In addition, a project sponsor's expertise and technical capability to construct a major transmission project can significantly affect how effectively the dollars are spent on the project. This is particularly important where—as in the Selection Report—none of the applicants agreed to a binding cost cap

Although LS Power appears determined to ignore the distinction between “cheapest” and “more effective and cost-efficient,” the Commission has repeatedly recognized it. In particular, the Commission has rejected requests that the ISO assign weights to selection criteria, use some formula for selecting an Approved Project Sponsor, and treat cost considerations as the primary factor in project sponsor selection decisions.²¹ Rather, consistent with its

¹⁹ April 18 Order, P.233.

²⁰ *Id.*, P. 234.

²¹ April 18 Order at PP 182-84, 199-201, 218, 229-34,

generally applicable rulings in Order Nos. 1000 and 1000-A, the Commission has stated that the ISO needed to retain flexibility in making these decisions.²²

Moreover, as the ISO explained in its August 20 filing, Phase 2 of the ISO's transmission planning process is designed to identify the more effective and cost-efficient solution to a transmission need. Phase 3 does not repeat that process, but builds upon it by use of a comparative analysis of all competing project sponsors on each and every one of the qualification and selection criteria, the purpose of which is—

to take into account all transmission solutions being proposed by competing Project Sponsors seeking approval of their transmission solution and to select a qualified Project Sponsor which is best able to design, finance, license, construct, maintain, and operate the particular transmission facility in a cost-effective, efficient, prudent, reliable, and capable manner over the lifetime of the facility, while maximizing overall benefits and minimizing the risk of untimely project completion, project abandonment, and future reliability, operational and other relevant problems, consistent with Good Utility Practice, applicable reliability criteria, and CAISO Documents.²³

The Commission has approved this standard as consistent with the requirements of Order No. 1000.²⁴

²² *Id.* at P 230.

²³ Proposed section 24.5.4.

²⁴ April 18 Order at P 221.

III. CONCLUSION

For the reasons explained above, the Commission should deny LS Power's Motion to Lodge.

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Dated: December 26, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2013)).

Dated at Folsom, California. on this 26th day of December, 2013.

Anna Pascuzzo

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