

186 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Willie L. Phillips Jr., Chairman;
Allison Clements and Mark C. Christie.

Upstream Clean Energy

Docket No. EL23-81-000

v.

California Independent System Operator Corporation

ORDER DENYING COMPLAINT

(Issued February 9, 2024)

1. On July 6, 2023, pursuant to sections 206 and 306 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure,² Upstream Clean Energy (Upstream) filed a complaint against the California Independent System Operator Corporation (CAISO) (Complaint). Upstream alleges that CAISO erred in applying the Independent Study Process (ISP) Determination of Electric Independence provisions of its Open Access Transmission Tariff (Tariff) to Upstream's generator interconnection request by including withdrawn interconnection requests in its analysis of Upstream's eligibility for the ISP. Upstream alleges that CAISO consequently concluded incorrectly that Upstream's generator interconnection request was ineligible for the ISP. In this order, we deny the Complaint, as discussed below.

I. Background

2. Upstream's Ventana Reliability Project (Ventana) is a proposed 250 MW stand-alone battery energy storage system to be located in San Bernardino County, California, directly north of the Los Angeles Basin. Upstream states that the location will reduce congestion between renewables and load. Upstream states that Ventana is in an advanced stage of development because Upstream has begun the permitting process, issued a

¹ 16 U.S.C. §§ 824e, 825e.

² 18 C.F.R. § 385.206 (2023).

purchase order for batteries, and invested considerable resources in developing Ventana.³ Upstream seeks to interconnect Ventana with the CAISO-controlled grid through the ISP.⁴ The ISP is an alternative interconnection process to CAISO's primary process for studying interconnection requests under the Tariff – the Queue Cluster study process.⁵

3. In CAISO's Queue Cluster study process, interconnection requests must be submitted during an annual two-week window, with the requests submitted during any given window grouped together as a Queue Cluster. CAISO then studies the interconnection requests in each Queue Cluster in two phases, with projects that electrically affect each other being studied together. Queue Cluster interconnection studies consist of a Phase I Interconnection Study, followed by a reassessment of the Phase I Interconnection Study base case, and then a Phase II Interconnection Study.⁶ According to CAISO, a significant portion of interconnection requests withdraw after receiving the Phase I Interconnection Study results, before commencement of the Phase II Interconnection Study.⁷ The Phase II Interconnection Study includes updates to analyses performed in the Phase I Interconnection Study to account for the withdrawal of interconnection requests from the Queue Cluster.⁸

³ Complaint at 6.

⁴ *Id.* at 4.

⁵ CAISO processes interconnection requests through its Generator Interconnection and Deliverability Allocation Procedures (GIDAP), Appendix DD to the Tariff.

⁶ CAISO, CAISO eTariff, app. DD, § 2 (Scope and Application) (8.8.0), § 2.4.3; *id.* § 3 (Interconnection Requests) (16.0.0), § 3.3.1; *id.* § 7 (Activities in Preparation for Phase II) (16.0.0), § 7.4.1.

⁷ In a previous filing, CAISO explained that, rather than risk more losses, developers generally withdraw when they believe their Phase I Interconnection Study results identified network upgrades, interconnection facilities, and construction timelines that would make them uncompetitive for a power purchase agreement. CAISO estimated that historically, about 60% of interconnection customers withdraw after receiving their Phase I Interconnection Study results and before they must submit their first interconnection financial security posting. CAISO Transmittal, *Tariff Amendment to Establish Interconnection Procedures for Cluster 15*, Docket No. ER23-2058-000, at 6 n.23 (June 2, 2023).

⁸ CAISO, CAISO eTariff, app. DD, § 8 (Phase II Interconnection Study and TP Deliverability Allocation Processes) (18.0.0), § 8.1.1.

4. Alternatively, interconnection requests may be submitted for processing under the ISP at any time of the year.⁹ Every ISP interconnection request must meet the following criteria in order to be processed under the ISP: (1) the project's desired commercial operation date cannot be accommodated if it is included in a Queue Cluster; (2) the project has site exclusivity; and (3) the project is electrically independent of all other interconnection requests.¹⁰ Projects determined eligible for the ISP are then studied serially outside of the Queue Cluster studies, enabling them to achieve commercial operation in an expedited manner. If an interconnection request does not meet all three eligibility criteria, the interconnection customer may direct CAISO to hold the interconnection request for inclusion in the next Queue Cluster window, or the interconnection request will be deemed withdrawn without prejudice to the interconnection customer submitting a request later.¹¹

5. The Determination of Electrical Independence consists of four electrical independence tests (EIT). Specifically, GIDAP section 4.2 provides that projects that are not self-evidently independent must demonstrate electrical independence by passing four EITs: (1) Flow Impact Test, (2) Short Circuit Test, (3) Transient Stability Test, and (4) Reactive Support Test.¹² If an interconnection request does not pass all four EITs, the proposed project is deemed to be not electrically independent, and consequently is ineligible for processing under the ISP.¹³

⁹ CAISO, CAISO eTariff, app. DD, § 3 (Interconnection Requests) (16.0.0), § 3.3.2. In a previous filing, CAISO explained that although it accepts ISP interconnection requests any time of year, "CAISO just holds them and then conducts the independent studies once the cluster has its results." CAISO Transmittal, *Tariff Amendment to Establish Interconnection Procedures for Cluster 15*, Docket No. ER23-2058-000, at 10-11 (June 2, 2023) (citing CAISO, CAISO eTariff, app. DD, § 4 (Independent Study Process) (11.0.0), § 4.1.5).

¹⁰ CAISO, CAISO eTariff, app. DD, § 4 (Independent Study Process) (12.0.0), §§ 4.1.1, 4.1.2, 4.1.3.

¹¹ *Id.* § 4 (Independent Study Process) (12.0.0), § 4.1.6.

¹² Information about the individual tests that is relevant to this proceeding is discussed below.

¹³ CAISO, CAISO eTariff, app. DD, § 4 (Independent Study Process) (12.0.0), § 4.2.

II. Complaint

6. Two weeks after CAISO released the Queue Cluster 14 Phase I Interconnection Study results, on September 29, 2022, Upstream submitted an ISP interconnection request for Ventana. On January 11, 2023, CAISO informed Upstream that “site exclusivity has been deemed valid” and that the engineers would then perform the EITs.¹⁴

7. Upstream asserts that between the release of the Queue Cluster 14 Phase I Interconnection Study results and CAISO’s notice to Upstream that its engineers would begin the EITs, six projects withdrew from the Cluster 14 interconnection queue that were relevant to the determination of Ventana’s electrical independence.¹⁵ According to Upstream, CAISO performed the EITs for Ventana using the Queue Cluster 14 Phase I Interconnection Study results without removing the withdrawn projects. On March 2, 2023, CAISO completed the EITs for Ventana, concluding that Ventana failed the Short Circuit Test, consequently failed the Determination of Electrical Independence and was ineligible for ISP processing. On April 5, 2023, CAISO informed Upstream that Ventana had been withdrawn from the ISP queue due to Upstream’s failure to notify CAISO that it wished to rollover the project to the next Queue Cluster.¹⁶

8. Upstream’s claim that CAISO should not have considered withdrawn interconnection requests is based upon the language of section 4.2 of the GIDAP, which specifies the information that will be used in conducting the four EITs: “These tests will utilize study results for active Interconnection Requests in the same study area, including Phase I Interconnection study results for Generating Facilities in the current Queue Cluster and any [study results] for earlier queued Generating Facilities being studied in the Independent Study Process.”¹⁷ Upstream argues that because the Tariff states that the EITs will be performed using the study results for “active interconnection requests,” CAISO’s performance of Ventana’s EITs using Queue Cluster 14 Phase I Interconnection Study results for all interconnection requests, both active and withdrawn, violated CAISO’s Tariff and Business Practices and the FPA’s prohibition of unjust and

¹⁴ Complaint at 4, 19, & attach. A (Affidavit of Dr. Dariush Shirmohammadi and Exhibits) (Consultant Affidavit), Ex. 1 (validation email).

¹⁵ *Id.* at 4-5, 9, 20-21.

¹⁶ *Id.* at 4-5, 8-10, 19-20, attach. C (E-mail from Julie Balch, Interconnection Specialist, CAISO, to Ryan Hulett, Principal, Upstream Clean Energy (Apr. 5, 2023)). Upstream does not explain why it declined to enter Ventana into Queue Cluster 15.

¹⁷ *Id.* at 4, 8, 12 (citing CAISO, CAISO eTariff, app. DD, § 4 (Independent Study Process) (12.0.0), § 4.2).

unreasonable practices.¹⁸ Upstream contends that Ventana would have passed the Short Circuit Test, and consequently remained in the ISP queue, if CAISO had performed the test after excluding projects that had already withdrawn.¹⁹ Upstream asserts that CAISO's improper application of its Tariff, and the consequent removal of Ventana from the ISP, has resulted in "lost profits . . . well into the tens of millions of dollars."²⁰ Upstream requests that the Commission find that CAISO violated its Tariff and Business Practices, find that Ventana would have passed the EIT had CAISO excluded withdrawn projects before performing the EIT, and reinstate Ventana to the ISP queue, allowing it to proceed to the next stage of the process.²¹

9. Upstream argues the Tariff requires CAISO to account for withdrawn Queue Cluster projects when conducting the ISP EITs, noting the use of the term "active interconnection requests." Upstream points to the dictionary definition of the word "active," and the fact that section 4.2 specifies the use of "active" interconnection requests in the context of determining a project's electrical independence. Upstream argues that the choice to use the word "active" to modify "interconnection requests" throughout section 4.2 was an intentional choice, not a "scrivener's error." As evidence of this, Upstream points to the fact that Tariff section 6, which addresses Phase I of the Queue Cluster study process, refers to "all interconnection requests." Upstream argues that interpreting "active interconnection requests" as interconnection requests that have not been withdrawn is the only interpretation that gives meaning to all words in the Tariff. As a result, according to Upstream, the Tariff's requirement that EITs be conducted against study results for "active interconnection requests" is a requirement to conduct EITs against study results that have been adjusted to remove withdrawn projects.²²

¹⁸ *Id.* at 1, 2, 22, 25.

¹⁹ *Id.* at 5, 19-20, 22. Upstream's assertion that it would have passed the short-circuit test, and thus would have passed the EIT, is based upon the affidavit of its consultant. According to the affidavit, Upstream provided its consultant with the Phase I short circuit cases that CAISO posted to the CAISO Market Participant Portal, and the consultant then performed the EIT short circuit study by removing the projects that had withdrawn from the same study area as of the date of the EIT using the same software that Southern California Edison uses to perform its short circuit studies. *Id.*, attach. A (Consultant Affidavit) at 3.

²⁰ *Id.* at 23.

²¹ *Id.* at 20-22.

²² *Id.* at 11-16.

10. In addition, Upstream asserts that the history and purpose of CAISO's 2014 revisions to the Tariff, which included adding the "active interconnection request" language, support Upstream's interpretation of the Tariff. Upstream notes that prior to these revisions, section 4.2 did not use the term "active interconnection requests" or otherwise indicate that study results for active interconnection requests should be evaluated to determine electrical independence. Rather, as confirmed in CAISO's 2014 filing to revise the Tariff, the previous version of section 4.2 required that CAISO determine electrical independence by evaluating Queue Cluster base cases.²³ Upstream asserts that CAISO's 2014 transmittal letter shows that CAISO's previous process "resulted in issues it sought to eliminate by using active interconnection requests: '[T]he GIDAP has been revised to specify that *the tests will utilize study results for active interconnection requests in the same study area . . .*'"²⁴ Upstream additionally points to the Commission's order accepting the 2014 revisions, which stated that in making the revisions, "CAISO . . . proposes to speed determinations of electrical independence by using study results for *active interconnection requests* in the same study area as the interconnection requests being studied."²⁵ Upstream argues that the revision to the language to add "active interconnection requests" six times and the term "active" seven times in section 4 of the GIDAP reflects a considered, deliberate choice. Upstream concludes that the change in language, combined with the explanations for the change, supports its assertion that the current Tariff language requires CAISO to conduct the EITs using study results that do not include withdrawn projects.²⁶

11. Upstream also asserts that CAISO has previously performed the EIT in accordance with Upstream's interpretation of the Tariff language. Upstream points to a previous Upstream ISP project, wherein CAISO informed Upstream that "[r]ecent withdrawals and modifications were taken into account and with these modifications it was deemed" that the project had failed the Short Circuit Test.²⁷ Upstream indicates that this was an acknowledgement that CAISO performed the EITs after removing withdrawn projects. Upstream notes that absent discovery, Upstream cannot examine EIT studies for other

²³ *Id.* at 14-16 (citing CAISO Transmittal, *Tariff Amendment to Implement Third Set of Interconnection Process Enhancements and to Satisfy Requirements of Order No. 792*, Docket No. ER14-2586-000 (Aug. 4, 2014) (CAISO 2014 Transmittal)).

²⁴ *Id.* at 15 (quoting CAISO 2014 Transmittal).

²⁵ *Id.* at 16 (quoting *Cal. Indep. Sys. Operator Corp.*, 149 FERC ¶ 61,100, at P 66 (2014)).

²⁶ *Id.* at 14-16.

²⁷ *Id.* at 17-18 (citing attach. D (E-mail from Julie Balch, Interconnection Specialist, CAISO, to Ryan Hulett, Principal, Upstream Clean Energy (Apr. 6, 2021))).

customers because CAISO regards the information as confidential and prohibits a participating transmission owner (PTO) from sharing the information with Upstream. Upstream believes that discovery would show that there are other instances in which a PTO performed the EIT studies after removing withdrawn interconnection requests, and that CAISO subsequently adopted the PTO's analysis.²⁸

12. In contrast, Upstream also notes that CAISO has previously informed Upstream that CAISO does not remove withdrawn projects from Phase I Study results prior to conducting EITs. In a January 2023 email, in response to Upstream's inquiry regarding how the EITs will be conducted for Upstream's pending ISP requests, a CAISO representative indicated "we rely on the latest previously completed cluster study results and the associated study models – [the PTOs] do not perform additional work to update the models." The CAISO representative further explained "[i]n order to prevent having to continually adjust for a moving target and ensure consistent practices across the ISO system our practice is to rely on the latest previously completed cluster study results and the associated study models for the ISP EIT."²⁹

13. Finally, Upstream argues that its interpretation of the Tariff supports good public policy. Upstream states that, by identifying electrically independent projects, the ISP optimizes the use of existing interconnection headroom, enabling electrically independent projects to be built more quickly by avoiding the Queue Cluster study process.³⁰ Upstream also argues that removing withdrawn projects from study results before conducting EITs does not impose a significant burden on CAISO. Based upon an analysis performed by its consultant, Upstream asserts that performing the Short Circuit Test without the withdrawn projects takes "up to a few hours."³¹ Furthermore, Upstream notes that because CAISO has historically received very few ISP requests, CAISO would need to perform the additional work infrequently.³²

²⁸ *Id.* at 18.

²⁹ *Id.* at 8, quoting attach. B (E-mail from Robert Sparks, Manager of Regional Transmission (South), CAISO, to Ryan Hulett, Principal, Upstream Clean Energy (January 13, 2023)) (Robert Sparks E-mail).

³⁰ *Id.* at 5, 10-11, 18-19.

³¹ *Id.* at 10 (citing Consultant Aff. at P 12). Upstream does not provide an estimate of the time it would take to perform all four EITs without withdrawn projects, nor does its affiant provide such an estimate.

³² *Id.* at 10, 19. Upstream states that "CAISO has received 25 ISP requests to date," and "[a]t present, 11 ISP requests are active, three have been completed, and 11

III. Notice of Filing and Responsive Pleadings

14. Notice of the Complaint was published in the *Federal Register*, 88 Fed. Reg. 44,796 (July 13, 2023), with interventions and protests due on or before July 26, 2023. Calpine Corporation, Vistra Corp., Southern California Edison Company, and San Diego Gas & Electric Company filed timely motions to intervene. Pacific Gas and Electric Company (PG&E) filed a timely motion to intervene and comments.

15. On July 26, 2023, CAISO filed an answer to the Complaint (CAISO Answer). On August 2, 2023, Upstream submitted a motion for leave to answer and answer to the CAISO Answer (Upstream Answer). On August 16, 2023, CAISO filed an answer to the Upstream Answer (CAISO Second Answer).

A. CAISO Answer

16. CAISO describes Upstream's contention as a selective Tariff interpretation that would require CAISO to "constantly" create new base cases for each ISP interconnection request. CAISO asserts, in contrast to Upstream's arguments, that the Tariff's clear directive is to use the most recently available study results for a given study area, and not to create new base cases every time CAISO conducts the EITs under the ISP.³³

17. CAISO argues that Upstream, in emphasizing the word "active," ignores the remainder of section 4.2. CAISO notes that section 4.2 states that the EITs "will '*utilize study results for active Interconnection Requests*' as the baseline against which the various analyses are performed."³⁴ CAISO argues that, for projects in a Queue Cluster, the "study results" referred to by section 4.2 include the results of the Phase I Interconnection Study for the current Queue Cluster and that nothing in the language refers to conducting additional studies or requires CAISO to create new base case scenarios. CAISO argues that, contrary to Upstream's claim, it is not reading the term "active" out of the Tariff, but merely reading it in context and consistent with the entirety of section 4.2.³⁵

18. CAISO states that this result is consistent with the Tariff's intentions given the relevant differences between studies for Queue Cluster interconnection requests and those

have been withdrawn." *Id.* at 10. Upstream attributes these assertions to its consultant's affidavit, which repeats the assertions, but does not cite to the source of information.

³³ CAISO Answer at 8.

³⁴ *Id.* at 9.

³⁵ *Id.* at 9-10.

conducted for ISP interconnection requests. CAISO explains that for projects in a Queue Cluster, it performs group studies to determine the collective impacts of those projects on the system and any required upgrades to address those impacts. CAISO argues that the purpose of the cluster study process is to account for proposed interconnections and changes in queue simultaneously, not serially. According to CAISO, withdrawals are accounted for by removing the project when CAISO performs its annual reassessment and in the Phase II Interconnection Study, not immediately after each withdrawal or modification. In contrast, CAISO performs ISP studies individually and serially against the baseline cluster study results. Therefore, once an ISP interconnection request withdraws, that ISP study can be ignored for purposes of future ISP interconnection requests without having to create a new baseline.³⁶ In other words, CAISO argues that the error in Upstream's argument is that the electrical independence determination does not focus on which *projects* are included or excluded, but rather, which *study results* CAISO uses.

19. CAISO argues that if the Commission determines that the Tariff is unclear on its face, an evaluation of the extrinsic evidence, including the purpose and design of the ISP as stated in the record for the 2014 revision, supports CAISO's position that the Tariff does not require it to create new base cases for testing individual ISP requests for electrical independence. If extrinsic evidence is considered, CAISO states that the ISP has consistently relied on study results and base cases prepared as part of the cluster study process and for other ISPs to evaluate electrical independence. CAISO maintains that the purpose of the ISP, as stated in the record for the 2014 revision, was to provide a limited serial option that would improve, not detract from, the efficiency of the overall CAISO interconnection process. Therefore, CAISO contends that Upstream's proposed interpretation would allow ISP interconnection requests to effectively "jump the queue" over Queue Cluster interconnection customers that preceded them.³⁷

20. CAISO states that the ISP has never required it to create new base cases for testing individual ISP requests for electrical independence. CAISO declares that its rationale for proposing the 2014 revision was to reduce delays and uncertainties in conducting the EITs. Prior to the 2014 revision, the process for determining electrical independence relied on base cases used for the current Queue Cluster, which meant that CAISO could not commence the electrical independence analysis until the Phase II Interconnection Study results were completed. To expedite conducting this assessment, CAISO states that it proposed to "use the [P]hase I Interconnection study results of the current queue

³⁶ *Id.* at 10-11.

³⁷ *Id.* at 12-13.

cluster to test for electrical independence.”³⁸ Further, CAISO asserts that Upstream’s preferred outcome – requiring CAISO to create new base cases for each ISP to account for after-the-fact withdrawals from Phase I interconnection studies – would increase, not reduce, delays and uncertainty in the EITs. CAISO asserts that Upstream’s proposed interpretation of the GIDAP provisions would lead to the inefficient and unfair result of allocating scarce resources away from the Queue Cluster study process.³⁹

21. CAISO argues that even if the Commission were to find that the language of the GIDAP is unclear, the Commission should conclude that Upstream’s requested result would be unjust and unreasonable. CAISO states, if the ISP had to be conducted as Upstream contends, it would seek to amend its Tariff to remove the ISP altogether because creating individually tailored base cases for every ISP would lead to significant difficulty and painstaking delays, and it would divert much-needed staff and time away from the Queue Cluster study process.⁴⁰

22. CAISO further disputes Upstream’s contention that CAISO has previously conducted the EITs in accordance with Upstream’s preferred reading of the ISP’s electrical independence provisions. CAISO notes Upstream’s sole evidence for this claim is an email from a CAISO interconnection specialist stating that “recent withdrawals and modifications” were taken into account in performing this analysis for a single previous Upstream storage project. CAISO indicates that “[b]ased on the CAISO’s review, this only occurred with respect to a single ISP request.”⁴¹ CAISO argues that “even if a single engineer at a single transmission owner went beyond the process set forth in [s]ection 4.2 in this one instance, it does not establish a pattern of conduct.”⁴² CAISO characterizes Upstream’s contention as “wholesale speculation” and an attempt to shift the burden of proof to CAISO.⁴³

23. CAISO disputes Upstream’s argument that, unless its interpretation is implemented, few interconnection requests will satisfy the ISP by noting that most

³⁸ *Id.* at 14 (quoting CAISO, Interconnection Process Enhancements: Draft Final Proposal Topics 4, 5, and 13 at 26 (Mar. 25, 2014) (IPE Draft Proposal) (filed as Attachment D to the CAISO 2014 Transmittal)).

³⁹ *Id.* at 12-15.

⁴⁰ *Id.* at 16-17.

⁴¹ *Id.* at 17.

⁴² *Id.*

⁴³ *Id.*

battery storage projects are being studied in a Queue Cluster. CAISO notes that Upstream's proposal would lead to substantial delays in CAISO's overall interconnection process, contrary to CAISO's goals and the Commission's policy directives. CAISO asserts that Upstream's interpretation would result in CAISO providing Upstream with unduly preferential treatment. CAISO also notes that, even if Upstream's argument that removing withdrawn interconnection requests to perform EITs would not create an administrative burden were true, it ignores the fact that CAISO has a duty to enforce its Tariff in a non-discriminatory manner, regardless of whether the burden of the unduly preferential treatment Upstream requests is insignificant.⁴⁴

24. Moreover, CAISO disputes Upstream's lack of administrative burden assertion. CAISO states that administering the ISP would quickly become prohibitively time-consuming if CAISO and collaborating PTO engineers were required to account for every new queue withdrawal or modification on an *ad hoc* basis, rather than relying on the latest available cluster study results and resultant base case.⁴⁵ CAISO states that the current process, which does not include updating the study models and study results prior to performing ISP analysis, requires four to eight work hours per project. CAISO asserts that if the engineering staff of CAISO and the PTOs were required to update base cases and study results to account for new queue withdrawals or modifications, the time required to complete the analyses would be 20 to 80 work hours per project, depending on the number of withdrawals and modifications that must be accounted for and the impact of the withdrawals and modifications on each of the ISP independence tests the customer passes.⁴⁶

B. Comments

25. PG&E asserts that Upstream has misinterpreted the intent of the ISP, and Upstream's interpretation would require CAISO (and PG&E) to perform potentially significant additional study work and divert time and resources away from conducting the Queue Cluster studies.⁴⁷

C. Upstream Answer

26. In response to the CAISO Answer, Upstream contends that CAISO's interpretation fails to give meaning to the word "active." Upstream additionally disputes

⁴⁴ *Id.* at 18-21.

⁴⁵ *Id.* at 21.

⁴⁶ *Id.*, Declaration of Robert Sparks.

⁴⁷ PG&E Comments at 3-4.

CAISO's interpretation that the use of "including" in section 4.2 – where it states "including Phase I Interconnection Study results for Generating Facilities in the current Queue Cluster" – means that the EIT is intended to use the Phase I Interconnection Study results without modification. Upstream contends that CAISO ignores the definition of "includes" or "including" in its Tariff, which states that "'includes' or 'including' shall mean 'including without limitation.'"⁴⁸ Therefore, Upstream argues the reference to Phase I Interconnection Study results "is illustrative, not exclusive in nature, and the Phase I [S]tudy results can be used, as long as the interconnection requests being studied for the EIT are active."⁴⁹

27. Upstream argues that the ISP's purpose and structure support its argument. Upstream points to the fact that to be eligible for the ISP, an interconnection customer must establish that the Queue Cluster will not accommodate the project's desired commercial operation date. According to Upstream, CAISO's interpretation would result in a project failing the EIT even though it is technically electrically independent of interconnection requests that are still active. Upstream declares that this defeats the purpose of the ISP to expedite the interconnection of commercially advanced, electrically independent projects. Finally, Upstream continues to object to CAISO's description of the Phase I Study results, as CAISO does not specifically refer to the inclusion of the word "active" in its description of the Tariff amendment process.⁵⁰

28. Upstream disputes CAISO's contention that the burden of performing the EIT would lead to substantial delays if it were required to exclude withdrawn projects, describing the claim as meritless. Upstream states that excluding withdrawn projects in conducting the Short Circuit Test "would only take up to a few hours."⁵¹ Further, Upstream disagrees with the assertions that the process is burdensome, noting that there have only been 25 ISP requests filed to date, and only 11 are currently active. Additionally, Upstream argues that, as CAISO itself notes, the PTO performs the EIT analysis and CAISO would not be burdened.⁵²

⁴⁸ Upstream Answer at 3 (citing CAISO, eTariff, § 1 (Objectives and Applicability) (7.0.0), § 1.3.1).

⁴⁹ *Id.* at 2-3.

⁵⁰ *Id.* at 3-4.

⁵¹ *Id.* at 5 (citing Consultant Aff. at P 12).

⁵² *Id.*

D. CAISO Second Answer

29. In response, CAISO asserts that “[s]ection 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.”⁵³ CAISO states that the Upstream Answer “turn[ed] its myopic focus to the use of the word ‘including’ in GIDAP section 4.2, suggesting the use of this word somehow broadens the Tariff language to allow limitless range of possible analytical bases for the electrical independence tests,” which CAISO asserts is unreasonable.⁵⁴

30. CAISO asserts that Upstream misrepresents the burden of excluding withdrawn projects from the ISP analysis. CAISO indicates that if more projects are processed through the ISP as a result of adopting Upstream’s interpretation, the ISP would be jeopardized. CAISO also references the recently issued Order No. 2023, which emphasizes the efficient clearing of interconnection queues through cluster studies in lieu of serial processes.⁵⁵

IV. Discussion**A. Procedural Matters**

31. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2023), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

32. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 358.213(a)(2) (2023), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept the Upstream Answer and the CAISO Second Answer because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

33. As discussed below, we find that Upstream has not met its burden of proof under section 206 of the FPA, and, therefore, we deny the Complaint. Under section 206, “the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon . . .

⁵³ CAISO Second Answer at 6.

⁵⁴ *Id.*

⁵⁵ *Id.* at 7-9.

the complainant.”⁵⁶ We find that Upstream has not shown that CAISO acted inconsistently with its Tariff in conducting the ISP EITs for Ventana.⁵⁷

1. Tariff Language

34. Both Upstream and CAISO focus on the language within section 4.2 that describes the information that will be used to conduct the four EITs: “These tests will *utilize study results for active Interconnection Requests* in the same study area, *including* Phase I Interconnection study results for Generating Facilities in the current Queue Cluster. . . .” However, neither party acknowledges that this sentence is internally contradictory, or that it is inconsistent with the test-specific subsections within section 4.2.

35. Although “active interconnection request” is not defined in the Tariff, a common canon of construction provides that the meaning of an unclear word or phrase may be determined by its immediate context.⁵⁸ Applying that canon here to infer the meaning of “active interconnection requests” from the remainder of the sentence, “including Phase I Interconnection study results . . .” suggests that “Phase I Interconnection study results” are an example of “study results for active interconnection requests.” The logic underlying both parties’ positions indicates that both parties acknowledge that “study results” are a reflection of the interconnection queue up to the day the results are released, and consequently include interconnection requests that had withdrawn after the publication of the study results.⁵⁹ However, the GIDAP language specifies the use of

⁵⁶ 16 U.S.C. § 824e(b).

⁵⁷ Upstream’s argument that CAISO violates its Business Practices is based upon the fact that the language in the Business Practices pertaining to the ISP is identical to the language in the Tariff. As a result, we reject Upstream’s Business Practices argument for the same reason that we reject Upstream’s Tariff violation argument.

⁵⁸ See, e.g., *Union Power Partners, L.P.*, 123 FERC ¶ 61,191, at P 21 (2008) (“The principle of *noscitur a sociis* (‘it is known from its associates’) is a canon of construction holding that the meaning of an unclear word or phrase should be determined by the words immediately surrounding it.”)

⁵⁹ The parties dispute whether GIDAP section 4.2 requires that the EITs for ISP interconnection requests be conducted using Phase I Interconnection Study results that have not been modified after their release, or whether GIDAP section 4.2 requires that EITs for ISP interconnection requests to be conducted using Phase I Interconnection Study results that have been modified to remove the projects that withdrew from the queue in the time period between the publication of the Phase I Interconnection Study Results and the time the EIT is conducted for a particular interconnection request. See, e.g., Complaint at 4 (“In performing the EIT [for Ventana], however, CAISO relied upon the Queue Cluster Phase I study results, which were released on September 15, 2022,

“study results for active interconnection requests,” rather than more general terms, such as “study results” or “study results for interconnection requests.” This suggests that “study results for active interconnection requests” is a subset of “study results” comprising only “active interconnection requests” – not the reverse as the sentence structure indicates.

36. The language in section 4.2 that describes the information used to conduct EITs is not logical under either party’s interpretation of the language. If we assume that “active interconnection request” means “interconnection request that has not been withdrawn” at the time the EITs are performed, as Upstream contends, the language in section 4.2 is contradictory.⁶⁰ Under this assumption, section 4.2 provides that the EITs will utilize study results for interconnection requests that have not been withdrawn, including Phase I Interconnection Study results for the Generating Facilities in the current queue cluster. However, at the time EITs are performed, Phase I Interconnection Study results, which

without removing projects that had withdrawn from the interconnection queue between September 16, 2022 and January 11, 2023 [the date that CAISO validated Ventana’s interconnection request and indicated the EITs would be performed.]”); CAISO Answer at 10-11 (Section 4.2. requires CAISO to “use the Phase I interconnection study results from the current Queue Cluster as the baseline for performing such [EIT] analyses, even if those results include projects that subsequently withdrew from the queue. . . . If a project withdraws after the Phase I study, the CAISO does not perform a separate individual study to account for any impacts associated with the withdrawal of the project. Rather, it accounts for the withdrawal by removing the project when it conducts subsequent cluster studies.”). These positions indicate a shared understanding that the Phase I Interconnection Study Results reflect the queue on the date they are released, but not necessarily afterwards, if projects that were in the queue were withdrawn or modified after the publication of the Phase I Interconnection Study results.

⁶⁰ There is support in the Tariff outside of section 4 for the conclusion that an “active interconnection request” is an interconnection request that has not been withdrawn. GIDAP section 3.6 requires CAISO to maintain on its website a list of “all Interconnection Requests,” which identifies “the status of the Interconnection Request, including whether it is active or withdrawn.” CAISO, CAISO eTariff, app. DD, § 3 (Interconnection Requests) (16.0.0), § 3.6. GIDAP section 3.6 distinguishes “active” interconnection requests from “withdrawn” interconnection requests and indicates that both are a subset of “all interconnection requests.” This further suggests that “Phase I Interconnection study results” are not a type of “active interconnection request,” contrary to the wording in section 4.2. Although informative for purposes of describing the ambiguity within section 4.2, this language does not override the text of section 4.2 because the introduction to section 4 states that “[i]n the event of a conflict between . . . Section 4 and another provision of this GIDAP, Section 4 shall govern.”

reflects the interconnection queue on the day the results are released, will contain results for interconnection requests that may have already withdrawn. “Phase I Interconnection study results” are not necessarily a type of “study results for active interconnection requests.” Likewise, if we assume that the “study results for active interconnection requests” refers to Phase I Interconnection Study results as CAISO contends, then the sentence in section 4.2 is redundant because it states that the EITs “will utilize Phase I Interconnection Study results for active interconnection requests in the same study area, including Phase I Interconnection Study results.” Adopting CAISO’s interpretation would require the Commission to ignore Tariff language.

37. Neither party acknowledges that the subsections within section 4.2, which provide detailed descriptions of the four EITs, are inconsistent with the language in section 4.2, and if meaning is given to all of the words in the subsections, it would require the creation of more than one new base case for each ISP.

38. The most notable difference in language appears in the descriptions of the Short Circuit Test in subsection 4.2.2, the Reactive Support Test in subsection 4.2.3, and the Transient Stability Test in subsection 4.2.4. The description of the Short Circuit Test in subsection 4.2.2 appears to contradict the statement in section 4.2 that the EITs will “utilize study results for active Interconnection Requests in the same study area.” Subsection 4.2.2 provides that:

The Generating Facility shall pass the short circuit test if (i) the combined short circuit contribution from all the *active Interconnection Requests in the Independent Study Process* in the same study area is less than five (5) percent of the available capacity of the circuit breaker upgrade identified in Section 4.2.1.1 and; (ii) total fault duty on each circuit breaker upgrade identified for the *current Queue Cluster and active Independent Study Process Interconnection Requests* in the same study area is less than eighty (80) percent of the nameplate capacity of the respective circuit breaker upgrade.

39. The first part of the Short Circuit Test (encompassed under subsection (i) in the above language) incorporates “active Interconnection Requests in the Independent Study Process,” but does not include information from interconnection requests in the Queue Cluster. In the second part of the Short Circuit Test (encompassed under subsection (ii) in the above language) – the part that Upstream failed – “active” only modifies “ISP interconnection requests,” and does not modify “Queue Cluster.” Contrary to the direction in section 4.2, the language in subsection 4.2.2 provides that, while the Short Circuit Test requires CAISO to use data from both Queue Cluster and ISP requests, it only requires CAISO to use “active” ISP requests.

40. In contrast, both subsections 4.2.3 and 4.2.4, which address the Transient Stability and Reactive Support Tests, respectively, indicate that these tests use information from “active Interconnection Requests in the current Queue Cluster or Independent Study Process.” Here, “active” modifies both “interconnection requests in the current Queue Cluster,” and “Interconnection Requests in the . . . ISP.” Unlike the Short Circuit Test, these two tests use data from “active” Queue Cluster and ISP interconnection requests, consistent with the language in section 4.2.

41. The language in section 4.2 and subsections 4.2.1,⁶¹ 4.2.2, 4.2.3, and 4.2.4 is incongruent and, if implemented literally, creates an unusual and improbable result, which should be avoided under tariff interpretation principles.⁶²

42. Under the GIDAP, once an ISP analysis starts, the power flow models used in the latest available queue cluster studies will be used for the various analyses – such as the four EITs.⁶³ If taken literally, some of the subsections (4.2.3 and 4.2.4) require analyses to be performed using a model that incorporates active interconnection requests for the current Queue Cluster or Independent Study Process, while another subsection (4.2.2) requires analyses to be performed using a model that incorporates only active Independent Study Process Interconnection Requests. This would require the creation of two models per ISP request.

43. Nothing in the text of the Tariff or the Tariff history (as discussed below) indicates the need for the development of two models or explains why some of the EITs would use information from “active interconnection requests” in both the Queue Cluster and the ISP, while others would use information from “current” Queue Cluster interconnection requests and “active” interconnection requests in the ISP. Additionally, there is no apparent engineering basis to justify using different base cases for the different EITs.

⁶¹ Subsection 4.2.1, which addresses the Flow Impact Test, does not use language similar to the “active” interconnection request” language and variants used in section 4.2 and subsections 4.2.2, 4.2.3 and 4.2.4. Rather, it refers to impacts of “Generating Facilities currently being studied in a Queue Cluster” or “earlier queued Generating Facilities currently being studied through the [ISP].”

⁶² See, e.g., *Monterey MA, LLC v. PJM Interconnection LLC*, 165 FERC ¶ 61,201, at P 45 (2018) (“[T]ariffs must have a reasonable construction and should be interpreted in such a way as to avoid unfair, unusual, absurd or improbable results.” (quoting *Penn Cent. Co. v. General Mills, Inc.*, 439 F.2d 1338, 1341 (8th Cir. 1971)); *AEP Generating Co.*, 39 FERC ¶ 61,158, at 61,126 (1987) (citing *Penn Cent. Co.*, 439 F.2d at 1340-41).

⁶³ See CAISO Answer, Declaration of Robert Sparks at 3. We assume “latest available queue cluster studies” refers to Phase I Interconnection Study results, which appears to be consistent with usage in CAISO’s filing and GIDAP section 4.1.5.

Because there is nothing in the record that addresses or explains the differences in language among section 4.2 and subsections 4.2.1, 4.2.2, 4.2.3, and 4.2.4, it is not clear whether there is a logical reason for the differing language, or if it is the result of a drafting error.

44. Finally, Upstream’s reading of the Tariff requires the conclusion that “CAISO must perform additional studies to remove withdrawn interconnection requests” to be inferred from use of the term “active interconnection requests.” This reading is inconsistent with other provisions of the GIDAP outside of section 4.2 that expressly require performance of reassessments and modifications that account for withdrawn projects.⁶⁴ Presumably, if section 4.2 was meant to require CAISO to perform a reassessment of the Phase I Interconnection Study results prior to conducting the ISP EITs, that would be explicitly stated in the text, as it is explicitly stated in other sections of the GIDAP.

45. Accordingly, we find GIDAP section 4.2 to be ambiguous.⁶⁵

2. Tariff History

46. Given the ambiguity observed in the Tariff text, we turn to the development history of section 4.2 to determine the intent of the phrase “active interconnection requests.”⁶⁶ Both Upstream and CAISO agree that the development history is relevant to

⁶⁴ See, e.g., CAISO, CAISO eTariff, app. DD, § 7 (Activities in Preparation for Phase II) (16.0.0), § 7.4 (specifying that the annual reassessment evaluate certain impacts of “Interconnection Request withdrawals occurring after the completion of Phase II Interconnection Studies for the immediately preceding queue cluster”); *id.* § 8 (Phase II Interconnect Study & TP Deliverability Allocation Process) (17.0.0), § 8.1.1 (providing that the Phase II Interconnection Study shall “update, as necessary, analyses performed in the Phase I Interconnection Studies to account for the withdrawal of Interconnection requests from the current Queue Cluster”).

⁶⁵ See, e.g., *Miss. River Transmission Corp.*, 96 FERC ¶ 61,185, at 61,819 (2001) (“A tariff or contract ‘is ambiguous when it is reasonably susceptible of different constructions or interpretations.’” (quoting *Lee v. Flintkote Co.*, 593 F.2d 1275, 1282 (D.C. Cir. 1979))); *Seville Const., Inc. v. U.S.*, 35 Fed. Cl. 242, 244–45 (1996) (“A contract may also be found ambiguous if no interpretation can eliminate internal contradictions in the contract.” (citing *Newsom v. U.S.*, 676 F.2d 647 (Ct. Cl. 1982))), *aff’d*, 108 F.3d 1395 (Fed. Cir. 1997).

⁶⁶ When the Commission finds tariff language to be ambiguous, the Commission consults extrinsic evidence – evidence outside the tariff – such as documentation of the tariff history. See, e.g., *Sw. Power Pool, Inc.*, 163 FERC ¶ 61,063, at P 26 (2018) (noting that the Commission has rejected the treatment of the canon of *contra proferentem* as a

determining the meaning of section 4.2. However, as further explained below, the Tariff history does not provide a logical explanation for the 2014 addition to the GIDAP of “active interconnection requests” and similar language, and thus does not support Upstream’s interpretation.

47. In 2010, two years after CAISO implemented the Queue Cluster study process, CAISO revised its generation interconnection procedures to add what it described as “two alternative interconnection study processes” to the existing Queue Cluster study process, one of which was the ISP.⁶⁷ In its transmittal letter for that filing, CAISO explained that the ISP benefited certain generators, particularly small generators, by enabling them to achieve a commercial operation date not possible under the cluster study process, and improved the efficiency of the interconnection process overall by exempting projects that can be studied on their own from having to be included in the Queue Cluster interconnection studies, which have a longer timeline. CAISO noted that the ISP “will prove particularly beneficial to small generators that are effectively independent from other generators in the queue by virtue of their electrical remoteness, or because of their minor-to-nonexistent impact on the grid due to their small size”⁶⁸

48. The test for determining electrical independence that was added to the Tariff in 2010 was substantially different from the test that exists now. In relevant part, there were only two EITs – the Flow Impact Test and the Short Circuit Test – and section 4.2 stated that “[t]he available power flow and short circuit *Base Cases* that are being used for the most recent Queue Cluster will be used as the *starting Base Case* for these tests.” The Short Circuit Test did not incorporate information from other interconnection requests, requiring only that the short circuit contribution from the generating facility be less than 100 amperes. The Tariff history shows, and both Upstream and CAISO agree, that this

strict rule, and has instead considered extrinsic evidence of intent as the means for dealing with ambiguous language (citing *Miss. River Transmission Corp.*, 96 FERC ¶ 61,185, at 61,819 (2001); *Cent. NY Oil & Gas Co., LLC*, 152 FERC ¶ 61,097, at PP 23, 29 (2015); *Keyspan-Ravenswood LLC v NY Indep. Sys. Operator, Inc.*, 119 FERC ¶ 61,089, at P 27 (2007)); *Xcel Energy Servs.*, 178 FERC ¶ 61,096, at P 23 (2022) (concluding that it was appropriate for the Commission to consider extrinsic evidence to determine the intent of ambiguous tariff language (citing *Farmland Indus., Inc. v. Grain Bd. Of Iraq*, 904 F.2d 732, 736 (D.C. Cir. 1990))).

⁶⁷ CAISO Transmittal, *Tariff Amendment to Revise Generator Interconnection Procedures* at 15, Docket No. ER11-1830-000 (Oct. 19, 2010) (CAISO 2010 Transmittal).

⁶⁸ *Id.*

version of the ISP required CAISO to conduct the EITs against study results that did not remove withdrawn interconnection requests.

49. In 2013, CAISO initiated an Interconnection Process Enhancements (IPE) stakeholder initiative to identify and implement further improvements to CAISO's generator interconnection process, the findings and proposals of which were memorialized (IPE Draft Proposal).⁶⁹ Among other issues, the IPE Draft Proposal identified a problem with timing of the EIT commencement that it sought to address. The IPE Draft Proposal noted that "[t]he ISP timeline is dependent on the timing of tests for electrical independence."⁷⁰ Because "[t]he existing tariff specifies that electrical independence of a project submitted under the ISP needs to be tested based on the base case that is being used for the most recent queue cluster," and "the ISP will wait to conduct the independence analysis until sufficient information exists" from the current Queue Cluster studies to make a determination necessary to conduct the Flow Impact Test," the IPE Draft Proposal concluded that the "existing process can introduce delays and uncertainties in the *commencement* of tests for electrical independence."⁷¹ As a result of these findings, the IPE Draft Proposal proposed "to use the phase I interconnection study results of the current queue cluster to test for electrical independence."⁷² The IPE Draft Proposal did not reference "active interconnection requests."

50. The IPE Draft Proposal additionally identified an issue with the existing Short Circuit Test, related only to a problem caused by use of an absolute threshold. As a result, the IPE Draft Proposal recommended using a proportional threshold. The new Short Circuit Test recommended in the IPE Draft Proposal was very similar to the current Short Circuit Test, with the exception that the proposed test did not contain any references to "active interconnection requests."⁷³

51. The IPE Draft Proposal also proposed two new EITs: the Transient Stability Test and Reactive Support Tests. Like the proposed Short Circuit Test, the tests suggested by

⁶⁹ The IPE Draft Proposal was filed as Attachment D to the CAISO 2014 Transmittal and was cited by both parties in the instant proceeding.

⁷⁰ IPE Draft Proposal at 26.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at 26-27.

the IPE Draft Proposal were very similar to the current tests, except that neither contained references to “active Interconnection Requests.”⁷⁴

52. Using the IPE Draft Proposal findings and recommendations, CAISO submitted the 2014 filing to the Commission proposing that the ISP be “revised and clarified” to better achieve the goals of the ISP.⁷⁵ In that filing, CAISO repeated the purpose of the ISP as stated in its 2010 filing, and the description of the problems included in the IPE working group document regarding delays in the commencement of the EITs. CAISO again stated that the ISP “can be particularly beneficial to small generating facilities that are effectively independent from other generating facilities in the queue due to their electrical remoteness, or because of their minor-to-nonexistent impact on the CAISO controlled grid due to their size.”⁷⁶ However, to address the issues identified by the IPE Draft Proposal, CAISO proposed Tariff language similar to that which had been proposed in the IPE Draft Proposal, except that CAISO’s proposed language included the references to “active interconnection requests.” The rationale provided by CAISO in its transmittal letter for the proposed language was similar to the rationale provided for the changes proposed in the IPE Draft Proposal. Although CAISO’s explanations referenced “active interconnection requests,” nothing in the 2014 filing explained what the term meant, or why it appeared in the revised Tariff language.⁷⁷

53. Additionally, nothing in the Tariff history explains why the explicit language regarding a “starting Base Case” was removed from the original 2010 ISP language and replaced with language that lacks any reference to a “base case,” or the meaning or purpose of the frequent use of the term “active interconnection request” in the revised language. Moreover, the Tariff history does not indicate that CAISO or the stakeholders had identified a problem that would be solved by requiring EITs to use queue cluster study results for only “active interconnection requests” – there is no mention of “false negatives” (i.e., projects failing the EIT because they were evaluated against withdrawn queue cluster projects). Taken together, we find that the Tariff history supports CAISO’s interpretation that the Tariff provides that CAISO will use existing Phase I Interconnection Study results to perform ISP EITs⁷⁸ and that the 2014 revisions to section 4 of the GIDAP were not intended to require CAISO to remove withdrawn

⁷⁴ *Id.*

⁷⁵ CAISO 2014 Transmittal at 2.

⁷⁶ *Id.* at 6-7.

⁷⁷ *Id.* at 10-13.

⁷⁸ CAISO Answer at 5.

interconnection requests from Phase I Interconnection Study results prior to conducting the ISP EIT.

3. Settlement and Hearing

54. We decline to establish hearing and settlement judge procedures because this case does not concern questions of material fact that cannot be resolved on the existing record.

55. Therefore, because we find that the text of the Tariff is ambiguous and the Tariff history does not show an intent to require CAISO to perform new base cases for each ISP request, we find that Upstream has not satisfied its FPA section 206 burden to demonstrate that CAISO's application of the ISP to Ventana was inconsistent with the requirements of Tariff section 4.2.

56. For the reasons discussed above, we deny the Complaint.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

Debbie-Anne A. Reese,
Acting Secretary.