

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

California Independent System Operator Corporation))))	Docket Nos. ER10-1401-001, ER10-2191-001
Green Energy Express, LLC and Critical Path Transmission Holdings, LLC))))	Docket No. EL10-76-001

**ANSWER TO MOTION FOR CLARIFICATION OF
CRITICAL PATH TRANSMISSION HOLDINGS, LLC**

The California Independent System Operator Corporation (“ISO”) hereby submits its answer to the Motion for Clarification of Critical Path Transmission, LLC (“Critical Path”).¹ Critical Path requests the Commission to clarify “that the ‘first-in-time’ principle for considering the 2008 and 2009 request window proposals” that the Commission set forth in its order approving the ISO’s Revised Transmission Planning Process (“RTPP”)² “applies equally to projects submitted in the 2008 and 2009 request windows, respectively, and that the priority requires that those projects be considered as an input into the planning process and that such projects should not be considered after other

¹ The ISO submits this answer pursuant to Rule 212 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2010). The discussion in this pleading is equally relevant to Critical Path’s alternative request for rehearing. Section 385.213(a)(2) of the Commission’s regulations generally prohibits answers to rehearing requests. The ISO nonetheless requests that the Commission consider the discussion herein regarding the request for rehearing. The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute. See, e.g., *Southwest Power Pool, Inc.*, 89 ¶ 61,284 at 61,888 (2000). Answers have also been accepted where the information assists the Commission in making a decision. See *El Paso Electric Co.*, 72 FERC ¶ 61,292 at 62,256 (1995). The ISO believes that this pleading will clarify Critical Path’s confusion regarding the ISO revised transmission planning process and thus assist the Commission.

² *Cal. Indep. Sys. Operator Corp.* 133 FERC ¶ 61,224 (2010) (“RTPP Order”).

transmission projects, such as reliability projects, merchant projects, Large Generator Interconnection Procedure (“LGIP”) Network Upgrades, and projects to maintain the feasibility of long-term Congestion Revenue Rights (“CRRs”).³ The ISO submits that no such clarification is necessary and that, if the Commission decides to offer a clarification, it should do so in a manner consistent with this answer.

I. BACKGROUND

On June 4, 2010, the ISO filed tariff revisions to implement the RTPP with the Commission. On December 16, 2010, the Commission issued the RTPP Order, accepting the ISO tariff revisions, subject to a compliance filing, with a December 20, 2010, effective date.

Under the RTPP, as part of the comprehensive transmission plan, the ISO identifies in phase 2 of the planning process all needed additions and upgrades (*e.g.*, to meet needs for reliability, to address economic needs, for policy goals, etc.) and defines them as either transmission “projects” or “elements.” “Projects” refer to transmission needs or additions to be built by the applicable participating transmission owner (“Participating TO”): reliability-driven projects; location constrained resource interconnection facilities, projects to maintain the feasibility of long-term Congestion Revenue Rights (“CRRs”); and those LGIP Network Upgrades that are considered as part of the RTPP pursuant to RTPP tariff section 24.4.6.5. On the other hand, transmission “elements” identified in the comprehensive transmission plan will be either policy-driven or economically driven and are subject to the phase 3 RTPP tariff provisions, which include, where applicable, an open solicitation process for project sponsors to build such elements.

³ Motion for Clarification at 8.

The RTPP includes a specific tariff provision, section 24.4.6.8, setting forth specific terms for the treatment of projects that were submitted through the 2008 and 2009 request windows of the previous transmission planning process and which the ISO had not yet evaluated. These projects will be evaluated as part of the ISO's comprehensive plan for achieving California's 33% renewable portfolio targets and, if any of them align with an ISO-identified need in the transmission planning process for policy-driven or economically driven elements, the project sponsor of the 2008 and 2009 request window project proposal will have the right to finance, own and construct the project if qualified.

The Commission generally approved this aspect of the RTPP, but it directed the ISO to provide 2008 projects with a priority if an identical project was submitted in the 2009 request window and both proposals aligned with a policy-driven or economically driven element.⁴ Language to implement this directive has been added to section 24.4.6.8 in the ISO's January 19, 2011, compliance filing.

II. ANSWER

Critical Path first asks the Commission to clarify "that the 'first-in-time' principle for considering the 2008 and 2009 request window proposals" that the Commission set forth in the RTPP Order "applies equally to projects submitted in the 2008 and 2009 Request Windows, respectively." This request reflects a misunderstanding of the RTPP and of the Commission's order.

As noted above, new section 24.4.6.8 of the ISO tariff provides that projects submitted through the 2008 and 2009 request windows of the previous transmission planning process will be evaluated as part of the comprehensive plan and, if any of

⁴ Order at P 268.

them align with an ISO-identified need for policy-driven or economically driven elements, the project sponsor will have the right to finance, own and construct the project if qualified. In other words, after the ISO identifies economic and policy needs in the 2010/2011 Transmission Planning Cycle, and before it determines transmission elements to be included in the comprehensive transmission plan, it will evaluate whether any of the 2008 and 2009 request window projects meet those needs. If so, it will include the 2008 or 2009 request window project in the comprehensive plan in lieu of transmission elements that would be subject to the competitive solicitation for transmission plan elements which the ISO will conduct in phase 3 of the RTPP. Thus, the 2008 and 2009 request window projects will *both* have “first-in-time” priority in the sense that no other developers will have the opportunity to submit proposals to meet these particular policy-driven or economically driven needs in the 2010/2011 Transmission Planning Cycle, and no clarification is necessary.

However, the second part of Critical Path’s requested clarification – that the priority requires that those projects be considered at the same time as all other projects, including LGIP-related transmission projects submitted in a subsequent Request Window – would not clarify the RTPP order, but instead would turn the order, as well as and the RTPP process, on its head.⁵ As an initial matter, Critical Path makes an erroneous factual statement: neither the RTPP tariff nor the tariff that existed prior to RTPP provided that LGIP Network Upgrades must be submitted through the transmission planning process request window. LGIP Network Upgrades are identified through the LGIP process which, as the Commission has recognized on numerous occasions, is a separate and distinct process from the transmission planning process.

⁵ Motion for Clarification at 9.

Second, the Commission’s “first-in-time” directive was not intended to address the priority given to *both* 2008 and 2009 request window projects, but rather the priority *between* projects submitted in the 2008 request window and those submitted in the 2009 request window. As the Commission explained:

Pattern suggests that CAISO should be directed to explicitly incorporate a “first in time” provision in the RTPP so that 2008 request window proposals are evaluated before the 2009 request window submissions, consistent with Version 2.0 of CAISO’s Business Practice Manual.

. . . .

We agree that 2008 project sponsors reasonably expected their proposals to be evaluated on a “first-in-time” basis to the extent their proposals were to compete with projects proposed in a subsequent year. Consequently, we find it reasonable to protect the expectation of originating investors from being displaced by similar, later proposals. Accordingly, we direct CAISO to revise the RTPP proposed tariff language to give priority to 2008 request window proposals before those submitted in 2009, to the extent that a 2008 and a 2009 project proposal both meet the needs of the same transmission element identified in RTPP Phase 2.⁶

There is nothing ambiguous or unclear about this directive. It applies only as to the priority of 2008 proposals over 2009 proposals.

Critical Path’s request is thus not really that the Commission clarify the order, but rather that it provide an exemption from the RTPP tariff provisions for 2008 and 2009 request window projects – an exemption that the Commission explicitly rejected.⁷

Critical Path complains that the RTPP “could be read” to provide for consideration of the 2008 and 2009 request window projects after LGIP Network Upgrades, reliability-driven projects, location-constrained resource interconnection facilities, projects to maintain the

⁶ RTPP Order at PP 58, 68.

⁷ *Id.* at P 267. The ISO notes that Critical Path is seeking the same relief in its complaint pending in Docket No. EL11-11. The ISO has explained that the complaint constitutes a collateral attack on the RTPP Order. See Answer of the California Independent System Operator Corporation, filed January 11, 2011, in Docket No. EL11-11.

feasibility of long-term CRRs, and merchant facilities⁸; in fact, that is exactly what the RTPP tariff provisions approved by the Commission provide and exactly what the Commission ordered. As the ISO demonstrated in its pleadings filed in this proceeding, and as the Commission recognized in its Order, these transmission categories are separate and distinct from economic and public policy transmission projects. Critical Path goes so far as to suggest that 2008 and 2009 request window projects should be considered as inputs to the transmission planning process.⁹ Although Critical Path does not clarify what it means by “input” into the transmission planning process, one possible reading of this request is that 2008 and 2009 request window projects be treated as a “Uniform Planning Assumption” or “Input to the Uniform Planning Assumptions” in the planning process in accordance with Section 24.3.1 of the RTPP Tariff. If that is Critical Path’s intent, there is no basis whatsoever for that position, and it is wholly inconsistent with RTPP as well as the ISO tariff that existed before RTPP. The ISO has not yet identified a need which the 2008 and 2009 request window projects meet and has not previously approved these projects.¹⁰ Thus, these project proposals are wholly unlike other planning assumptions and inputs set forth in the tariff, *i.e.*, transmission upgrades and additions previously approved by the ISO, Category 2 Policy upgrade and addition elements from a prior planning cycle, conditionally approved Location Constrained Resource Interconnection Facilities, and WECC Base Cases. Critical Path’s interpretation is totally at odds with the basic structure of the RTPP, in

⁸ Complaint at 8.

⁹ *Id.*

¹⁰ See section 24.3.1 of the RTPP tariff and section 24.2.1 of the pre-RTPP ISO tariff. These sections provide that inputs into the Unified Planning Assumptions and Study Plan include Transmission Upgrades and additions approved by the ISO in past transmission planning cycles. Critical Path’s project and the other 2008 and 2009 request window projects do not meet this requirement. Thus, Critical Path appears to be seeking to enhance the treatment accorded its project proposal in a manner that is inconsistent both with the RTPP tariff and the pre-existing tariff.

which the ISO identifies needs before examining potential options for meeting those identified needs, and which the Commission endorsed and approved.¹¹

Critical Path's arguments provide no basis for clarification. Moreover, because Critical Path presents absolutely no new evidence or new arguments not already considered by the Commission in support of its requested modifications to the RTPP Order, Critical Path provides no basis for granting rehearing.

Finally, the ISO notes that Critical Path singles out LGIP Network Upgrades as matters over which 2008 and 2009 request window projects should be given priority. It is somewhat unclear whether Critical Path refers to LGIP Network Upgrades generally, or to the consideration of Expanded LGIP Network Upgrades under section 24.4.6.5 of the ISO Tariff.

With regard to the former, Critical Path's project proposal would have had no priority even under the former tariff. Critical Path submitted its proposal during the 2009 request window. At the very earliest, proposed economic projects submitted during that request window would have been considered in the 2010/2011 planning cycle for the 2011 Transmission Plan -- which is the same cycle in which the 2009 request window projects are being considered under the RTPP. LGIP Network Upgrades included in Large Generator Interconnection Agreements, even if executed subsequent to the request window, would have been included in the base case in the Unified Planning Assumptions and Study Plan issued in mid-2010,¹² and Critical Path's proposal would

¹¹ See, e.g., RTPP Order at P 267 (“[Evaluating] 2008/2009 request window proposals under the existing tariff and exempt[ing] those project sponsors from meeting the RTPP requirements. . . . would undermine the goals of RTPP, which include development of a comprehensive transmission plan, rather than a project-by-project analysis.”).

¹² See former ISO tariff section 24.2.1.1. This concept has been carried over into the RTPP Tariff. Thus, the ISO's tariff, both before and under RTPP, expressly contemplates that LGIP and SGIP Network Upgrades that have been identified in the LGIP and SGIP processes will be used for purposes of

have been evaluated in light of these upgrades. Critical Path's proposal would not have been substitute for any LGIP Network Upgrades.

Critical Path contends:

[A]llowing the LGIP process to lead [the] 33 percent RPS effort is not a comprehensive planning process at all; rather, it amounts to a piecemeal approach that will incur unnecessary costs for ratepayers. In short, by relegating independent transmission proposals for *ex post* consideration . . . the [ISO] and the Commission have effectively eliminated all competition for the IOUs for transmission infrastructure.

The logical extension of Critical Path's argument would be that all economic projects submitted in the 2008 and 2009 request windows would have a higher priority than all LGIP Network Upgrades, including those that are already fully supported by executed Large Generator Interconnection Agreements ("LGIAs") and should be evaluated prior to any LGIP upgrades being permitted to move forward. Critical Path ignores the fact that, as the Commission recognized, the LGIP is a separate process from the transmission planning process, which responds to the needs of specific generators that are prepared to proceed with construction of their projects, have posted the necessary financial security, have executed LGIA's and where the transmission necessary to interconnect these generators has been fully studied and identified in Phase 2 LGIP studies. . The Commission specifically rejected arguments that all LGIP Network Upgrades should be submitted in the request window and considered in the RTPP. The Commission concluded:

developing the Uniform Planning Assumptions. In its complaint in Docket No. EL11-11, Critical Path attempts to "cherry-pick" and reinterpret provisions of the ISO's pre-RTPP tariff, but it ignores the clear language of pre- RTPP Tariff Section 24.2.1.1. RTPP includes a similar provision which was approved as part of the Commission's RTPP order. See Tariff Section 24.3.2.

It is appropriate for only substantial LGIP network upgrades to be evaluated in the RTPP process because the smaller generation interconnection upgrades are less likely to overlap with other network upgrades, require additions or expansions, or lead to the identification of additional needed transmission facilities, policy-driven or otherwise. Consequently, we find CAISO's proposal strikes a reasonable balance between the objectives of the LGIP, i.e., accommodating the generators' need to interconnect to the grid in a timely manner, and the benefits that can flow from evaluating the larger projects in the comprehensive transmission planning process.¹³

With regard to Enhanced LGIP Network Upgrades, if those upgrades are policy-driven or economically-driven, 2008 and 2009 request window projects will have the same type of priority as with other policy-driven or economically driven elements. If the enhancement responds to policy or economic needs and the enhancement is not to be constructed by Participating TOs under the tariff provisions approved by the Commission, the ISO will evaluate the 2008 and 2009 projects to see if they meet such needs. If they do, there will not be any open solicitation for those needs, and the applicable project sponsor will be permitted to build and own the identified transmission element, as permitted in the tariff. This is fully consistent with other aspects of the treatment of 2008 and 2009 request window projects as approved by the Commission.

¹³ RTPP Order at P 103. Critical Path ignores the fact that Network Upgrades under the LGIP are not economic projects; they are upgrades (including reliability upgrades) necessary to support the interconnection and delivery of new generation in the interconnection queue, where the interconnection customer has executed an LGIA and agreed to fund construction of certain facilities. The purpose of economically driven projects is not to interconnect generation in the interconnection queue. Requests for generator interconnections are initiated by interconnection customers seeking to build generators and are subject to timelines mandated by the ISO tariff and the Commission pursuant to Order No. 2003. Deferral or rejection of these projects by the ISO where all LGIP preconditions and milestones have been met simply is not within the ISO's authority, and the ISO cannot simply unwind or undo LGIP projects that have satisfied all of the milestones and are moving forward. The Commission has previously recognized that speculative generation projects should not delay facilities associate with legitimate generation projects (e.g., those with executed LGIAs and other stringent demonstrations of commercial interest). *California Independent System Operator Corporation*, 121 FERC ¶ 61,286 at P 46 (2007). A logical extension of Critical Paths' arguments could lead to this inappropriate result.

III. CONCLUSION

For the reasons explained above, the Commission should deny clarification or, if the Commission decides to offer a clarification, it should do so in a manner consistent with this answer.

Sean A. Atkins
Michael E. Ward
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 756-3300
Fax: (202) 654-4875

Respectfully submitted,

By: /s/ Anthony J. Ivancovich

Nancy Saracino
General Counsel
Anthony J. Ivancovich
Assistant General Counsel
Judith Sanders
Senior Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7222
aivancovich@caiso.com

Counsel for the California Independent
System Operator Corporation

Dated: February 2, 2010

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 these proceedings, 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 Folsom, California on this 2nd day of February, 2011.

Is/ Anna Pascuzzo

Anna Pascuzzo
California Independent System
Operator Corporation