

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

California Independent System Operator Corporation))))	Docket Nos. ER11-2705-000 and ER11-2705-001
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**MOTION FOR LEAVE TO ANSWER AND ANSWER TO PROTESTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) hereby submits a Motion for Leave to File an Answer and Answer to the Protests filed in this proceeding by Pattern Transmission LP (“Pattern”) and Western Independent Transmission Group (“WITG”) (together “Protestors”).¹ Protestors challenge two aspects of the ISO’s January 19, 2011, filing in compliance with the Commission’s order² approving the ISO’s Revised Transmission Planning Process (“RTPP”). The protests are based on misinterpretations of the ISO’s compliance filing and of the RTPP Order. The Commission should reject the protests.

I. BACKGROUND

On June 4, 2010, the ISO filed with the Commission tariff revisions to implement the RTPP. 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. On January 18, 2011, the ISO filed a motion for clarification related to the compliance filing required by the RTPP Order. The ISO submitted the compliance

¹ The ISO submits this filing pursuant to Rules 206(f), 212, and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.212, and 385.213 (2010).

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

filing with a motion for leave to file one day out of time on January 19, 2011, and an erratum on January 20, 2011.

As more fully described in the ISO's compliance filing and motion for clarification, under the revised transmission planning process, as part of the comprehensive transmission plan, the ISO identifies all needed additions and upgrades 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 Large Generator Interconnection Procedure ("LGIP") Network Upgrades considered as part of the RTPP. 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 Transmission Planning Process tariff provisions, which include, where applicable, an open solicitation process for project sponsors to build such elements.

During the technical conference in this proceeding, one area of uncertainty and some controversy was the nature of the distinctions between the categories of projects.

In response, the ISO stated in its initial post technical conference comments:

As the ISO indicated at the technical conference, reliability driven projects are limited to projects intended to mitigate specifically identified reliability issues on existing participating transmission owner facilities. Under the tariff, the scope of reliability driven projects cannot be expanded to cover public policy needs or projects to provide economic benefits. Reliability projects are limited solely to projects that meet identified reliability needs in a cost-effective manner. If an upgrade solves a reliability problem and also provides additional non-reliability driven benefits such as accessing renewables or mitigating congestion costs, the ISO anticipates that additional project cost would have to be incurred to realize such additional

benefits, and the project would no longer fit the narrow definition of a reliability project.³

The ISO made a similar statement with regard to projects to ensure the feasibility of long-term CRRs.⁴

The Commission addressed this issue in the RTTP Order:

[ISO] further clarifies in its pleadings that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project for which a PTO would have the exclusive right to build. We note that such language is not included in section 24.1.2 of [ISO's] existing tariff or RTTP proposed tariff section 24.4.6.2. Because this is an important distinction, we direct [ISO] to make a compliance filing within 30 days of issuance of this order. Consistent with [ISO's] pleadings, the compliance filing should include language to clarify that if a transmission upgrade solves a reliability problem while simultaneously providing additional benefits, the project would no longer fall within the narrow definition of a reliability project. Additionally, the compliance filing should include tariff language addressing how [ISO] will identify the existence of such additional benefits.

Such a project may instead be categorized as a policy-driven or economically-driven element, for which . . . all transmission developers would have an opportunity to compete for the right to build.⁵

The Commission made the same directive regarding projects to ensure the feasibility of long-term CRRs.⁶ In the motion for clarification, the ISO sought clarification that, “consistent with the [ISO's] pleadings,” (1) a transmission element that is approved

³ Initial Post Technical Conference Comments of the California Independent System Operator Corporation, Docket No. ER10-1401 at 10, filed September 8, 2010. For simplification of the discussion this motion frequently mentions only reliability projects, but the arguments made herein are intended and should be read to apply comparably to long-term CRR feasibility projects.

⁴ *Id.* at 10-11 (“Section 24.4.6.4 projects are limited to transmission upgrades or additions needed to maintain the feasibility of previously-released Long-Term CRRs. Under the existing tariff provisions, the scope of these projects cannot be expanded to cover public policy needs or projects to provide economic benefits. If an upgrade is necessary to maintain the feasibility of long-term CRRs and also provides additional benefits such as accessing renewables or mitigating congestion costs, the ISO anticipates that additional project cost would have to be incurred to realize such additional benefits, and the project would no longer fit the narrow definition of this category, *i.e.*, the most cost-effective means of maintaining the feasibility of long-term CRRs.”).

⁵ RTTP Order at PP 60-61.

⁶ *Id.* at P 71.

as an economically driven or policy-driven transmission element approved in the transmission planning process that also eliminates an identified reliability need, in accordance with applicable reliability criteria or the ISO Grid Planning Standards, or ensures the feasibility of long-term CRRs, does not, because of that fact, lose its character as an economically driven or policy-driven transmission element, and (2) a reliability-driven project or project to ensure the feasibility of long-term CRRs that has incidental economic or policy benefits, but does not meet the criteria to be approved as an economically driven or policy-driven transmission element, does not lose its character as a reliability-driven project or project to ensure the long-term feasibility of CRRs.

The compliance filing included the following language consistent with the ISO's post-technical conference comments and the requested clarification (the underlined language constitutes the compliance language):

The CAISO, in coordination with each Participating TO with a PTO Service Territory will, as part of the Transmission Planning Process and consistent with the procedures set forth in the Business Practice Manual, identify the need for any transmission additions or upgrades required to ensure System Reliability consistent with all Applicable Reliability Criteria and CAISO Planning Standards. . . . The Participating TO with a PTO Service Territory in which the transmission upgrade or addition deemed needed under this Section 24 will have the responsibility to construct, own and finance, and maintain such transmission upgrade or addition. If, as part of the Transmission Planning Process, the CAISO identifies a Category 1 policy-driven element or an economically-driven element as being needed under Sections 24.4.6.6 and 24.4.6.7 that eliminates an identified reliability concern under Applicable Reliability and CAISO Planning Standards, such element will retain its categorization as Category 1 policy-driven or economic element, respectively. If a transmission addition or upgrade required to ensure System Reliability provides other benefits without any expansion of its scope to explicitly include such benefits, such transmission addition or upgrade will retain its categorization as a reliability project.

Also relevant to the protests is the Commission's acceptance of the ISO's offer to clarify provisions regarding the construction responsibility for LGIP Network Upgrades. Section 24.4.6.5 of the RTPP tariff provisions states that Participating TOs will build additional components or expansions of LGIP Network Upgrades considered in the RTPP process, but only if the original upgrade would have been included in a LGIA as the result of the Phase II studies if built under the LGIP. In response to concerns regarding that the language in section 24.4.6.5, "would have been included in [an LGIA]" was vague, the ISO had explained that this language was intended to refer specifically to Network Upgrades identified as necessary in the LGIP Phase II studies but not yet set forth in an executed LGIA and offered to clarify the language accordingly. The compliance language thus provided:

Construction and ownership of Network Upgrades specified in the comprehensive Transmission Plan under this section, including any needed additional components or expansions, will be the responsibility of the Participating TO if the Phase II studies identified the original upgrade as needed and such upgrade has not yet been set forth in an executed Large Generator Interconnection Agreement. ~~the original Network Upgrade would have been included in a Large Generator Interconnection Agreement for Interconnection Customers as a result of the Phase II Interconnection Study or Interconnection Facility Study Process if built under the Large Generator Interconnection Process.~~

On February 2, 2011, Protestors filed answers to the ISO's motion for clarification. On February 9, 2011, Protestors filed motions to intervene and protests to the compliance filing.

II. MOTION TO FILE ANSWER

Rule 213(a) (2) of the Commission's Rules of Practice and Procedures generally prohibits answers to protests.⁷ The Commission has accepted answers that are

⁷ 18 C.F.R. § 385.213(a) (2) (2010).

otherwise prohibited if such answers clarify the issues in dispute⁸ and where the information assists the Commission in making a decision.⁹

As discussed below, Protestors fundamentally misstate or misunderstand the impact of the compliance language filed by the ISO on the breadth of the “reliability-driven projects” and “long-term CRR feasibility” categories. They also misinterpret the Commission’s mandate regarding LGIP network upgrades. This answer will provide a more complete explanation of those issues and, thus, both clarify the issues and assist the Commission’s understanding of Protestors’ errors. The ISO therefore requests that the Commission accept this answer.

III. ANSWER

Protestors each make the same two arguments. First, they assert that the tariff language included in the compliance filing blurs the distinction between transmission projects that a Participating TO must finance, construct, and own (in particular reliability-driven projects and projects to ensure the feasibility of long-term CRRs) and transmission elements for which construction responsibility is subject to a competitive solicitation.¹⁰ Second, they contend that the compliance provisions regarding construction responsibility for enhanced LGIP Network Upgrades go beyond specific limitations imposed by the Commission.¹¹ Neither of these arguments has merit.¹²

⁸ See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (2000).

⁹ See *El Paso Electric Co.*, 72 FERC ¶ 61,292 at 62,256 (1995).

¹⁰ Pattern Protest at 6-8; WITG Protest at 5-6.

¹¹ Pattern Protest at 8-10; WITG Protest at 6-7.

¹² Because Pattern and WITG make the same arguments, but Pattern makes them in greater detail, the ISO will direct its responses to the Pattern arguments.

A. Reliability-Driven Projects and Projects to Ensure the Feasibility of Long-Term CRRs.

Protestors assert that the ISO admitted in its transmittal letter that the revisions to sections 24.4.6.2 and 24.4.6.4 are not in compliance with the explicit directives of the Commission in the RTPP Order.¹³ They assert that the Commission intended that the categories of transmission projects for which Participating TOs have construction responsibility be clearly and narrowly defined. Otherwise, according to Protestors, “any project that provided some level of reliability benefits . . . could be treated as a reliability-driven project.”¹⁴ They contend that the ISO’s compliance filing has defined the categories of reliability-driven projects in an overly broad manner, “ensuring continuing disputes about whether any particular transmission upgrades confers [sic] whatever level of reliability benefits is ultimately found necessary to shield the project from the competitive solicitation process.”¹⁵

As an initial matter, the ISO did not “admit” that its filing was not in compliance with the RTPP Order. To the contrary, the ISO pointed out that the Commission had directed the ISO to revise sections 24.4.6.2 and 24.4.6.4 consistently with the ISO’s initial post technical conference comments; the ISO therefore filed language that was consistent with those comments and the RTPP Order itself. The ISO did not state or suggest that its compliance language was inconsistent with the Commission’s directives, but merely noted that the Commission’s summary description of the ISO’s position could be read in a manner inconsistent with the ISO’s original statements in its pleadings. In addition, it should be noted that the Commission never expressed

¹³ Pattern Protest at 6.

¹⁴ *Id.* at 7.

¹⁵ *Id.*

concerns that “any project that provided some level of reliability benefits could be treated as a reliability-driven project,” Rather, in response to Pattern’s concerns, the Commission found, “[T]he RTPP provides explicit provisions for determining how projects or elements will be categorized.”¹⁶

Indeed, the suggestion that the ISO failed to comply with the RTPP Order ignores the Commission’s actual directives. The ISO’s compliance filing was in response to the Commission’s explicit mandate that “the compliance filing should include tariff language addressing how CAISO will identify the existence of such additional benefits”¹⁷ that would cause a project resolving reliability needs to be categorized as a policy-driven or economically driven project.

More importantly, Protestors statements about the compliance tariff language are simply erroneous.¹⁸ The definition of reliability-driven projects in the compliance filing is quite specific: “If a transmission addition or upgrade *required* to ensure System Reliability provides other benefits without any expansion of its scope to explicitly include such benefits, such transmission addition or upgrade will retain its categorization as a reliability project” (emphasis added). Under the plain meaning of this language, a project does *not* qualify as a reliability project merely because it “provides some level of reliability benefit.” Protestors’ statements to the contrary are unfounded.

As a result, the ISO’s compliance language does not “ensur[e] continuing disputes about whether any particular transmission upgrade confers whatever level of reliability benefits is ultimately found necessary.” Rather, the ISO’s proposed language

¹⁶ RTPP Order at P 60.

¹⁷ RTPP Order at PP 60, 71.

¹⁸ Although protesters challenge both section 24.4.6.2 (reliability-driven projects) and section 24.4.6.4 (projects to ensure the feasibility of long-term CRRs), the ISO will here discuss only section 24.4.6.2. The same discussion is applicable to section 24.4.6.4.

clarifies the differences between the categories and establishes a bright-line test as to the categorization of projects that provide both reliability benefits and policy or economic benefits. As the ISO said in its initial post technical conference comments, and repeated in its motion for clarification, “It is possible that a needed public policy element could provide some incidental reliability benefits, but that does not make the project a reliability project. *Reliability projects are limited to projects that meet reliability needs as determined through the defined procedure for determining those needs in the transmission planning process.*”¹⁹ The section 24.4.6.2 tariff language is clear: reliability projects are those “*required to ensure System Reliability consistent with all Applicable Reliability Criteria and CAISO Planning Standards*” (emphasis added).

Furthermore, concerns – such as those expressed in Pattern’s Answer to the ISO’s Motion for Clarification – that Participating TOs will have a “first shot at labeling projects to their advantage,”²⁰ because reliability-driven projects are identified before transmission elements subject to competitive solicitation, are unfounded. The revised language in section 24.4.6.2 in the compliance filing addresses that issue. If a subsequently identified policy-driven or economically driven transmission element identified as needed under the tariff provisions governing such elements also resolves an identified reliability need, then the transmission plan element will not be reclassified as a reliability-driven project. In other words, when a transmission element identified to meet a policy or economic need eliminates an identified reliability concern, the transmission plan will not include a reliability-driven project to meet that need. Instead, the transmission plan will include the transmission element and responsibility for

¹⁹ ISO Initial Post Technical Conference Comments at 18-19 (emphasis added).

²⁰ Pattern Answer to Motion for Clarification, filed February 2, 2011, in Docket No. ER10-1401, at 9.

construction of the transmission element will be determined in phase 3, according to section 24.5.2.

It is the language proposed by Protestors, and not that included in the ISO's compliance filing, that is overly broad and would produce disputes:

If a transmission addition or upgrade identified in the Transmission Planning Process as required to ensure System Reliability provides other benefits, such transmission addition or upgrade will not be considered a reliability project under this Section 24.4.6.2 but will be considered a policy-driven element or an economically-driven element as needed under Sections 24.4.6.6 and 24.4.6.7, respectively.²¹

Under this proposed language, it is unlikely that any project would be considered a reliability-driven project. Virtually every reliability project increases the efficiency of the system by the mere fact that newer facilities are replacing older ones or are sharing the loading on older ones. For example, the ISO might need to approve a line in order to avoid a thermal overload on another line that constitutes a performance criteria violation. Although the new line would also provide efficiency benefits because the new line will reduce loading on the existing circuits and therefore reduce overall line losses, the ISO would never have approved the new line based solely on the economic benefits unless the benefits outweighed the expense of the new line. Similarly, replacing an older smaller transformer with a newer, larger and more efficient transformer for the sake of increased capacity will also provide an efficiency gain that would not be pursued unless the larger capacity was required. Yet, under Protestors' language, because increased efficiency is an unavoidable consequence of adding a new line or replacing a transformer with a larger unit, every reliability-driven new transmission line would become an economically driven project, even if the line costs \$5 million and produces

²¹ Pattern Protest at Attachment A-1.

only \$50,000 in economic benefits. This is certainly not what the ISO intended in its initial post technical conference comments and cannot reasonably be what the Commission intended when it instructed the ISO to revise the tariff language consistent with those comments. The Commission should therefore reject Protestors' argument.

B. LGIP Network Upgrades

Protestors contend that the ISO's revisions to section 24.4.6.5 "do not reflect the narrowness of the category of [LGIP Network Upgrades] that the Participating TO would have the exclusive right to build that the Commission recognized."²² Protestors rely upon paragraphs 98 and 99 of the RTPP Order, in which the Commission made reference to "modified network upgrades" and "modifications to network upgrades" in connection with the Participating TOs' right to build certain LGIP Network Upgrades.²³ Protestors would replace most references to "expansions" and "additional components" in section 24.4.6.5 with the term "modifications."²⁴

Protestors apparently believe that the Commission's compliance directive was making a distinction between "expansions" and "additional components," on the one hand, and "modifications," on the other. There is no basis for this interpretation of the RTPP Order. The Commission expressly "accept[ed] these [LGIP] features of [ISO's] proposal, including the consideration of certain LGIP network upgrades *and expansions* in the RTPP planning process under proposed tariff section 24.4.6.5,"²⁵ subject to one modification:

²² Pattern Protest at 10.

²³ *Id.* at 8-9.

²⁴ *Id.* at Attachment A-3.

²⁵ RTPP Order at P 92 (emphasis added).

We accept [the ISO's] offer to clarify RTPP proposed tariff section 24.4.6.5 to address Green Energy's concerns about the "would have been included in [an LGIA]" language. We direct [the ISO] to clarify that the applicable PTO will be responsible for constructing a modified upgrade if the LGIP Phase II studies identified the original upgrade as necessary and such upgrade has not yet been set forth in an executed LGIA. The clarification should also convey that at the time the upgrade is identified for consideration in the RTPP, no LGIAs for such upgrades will have been executed.²⁶

The Commission directed no other changes to section 24.4.6.5 that are relevant to the Protestors' arguments.²⁷ The ISO's offer to which the Commission referred was to clarify that the tariff "language is intended to refer specifically to network upgrades identified as necessary in the LGIP Phase II studies but not yet set forth in an executed LGIA" and that "no LGIAs will have been executed regarding these network upgrades at the time these upgrades are identified for consideration in the RTPP."²⁸ Neither the Commission nor the ISO made any distinctions among the terms "modifications," "expansions," or "additional components" in connection with the responsibility to build.

The ISO would also note two specific problems with the language proposed by protestors. First, if one assumes for the purposes of argument that the term "modifications" is a narrower category than "expansions" and "additional components," then Protestors' language to permit only "modifications" of Network Upgrades to be included in the transmission plan would be directly contrary to the Commission's approval, noted above, of the ISO's proposal for "consideration of certain LGIP network upgrades and expansions" in the Transmission Planning Process.

²⁶ *Id.* at P 99 (footnote omitted).

²⁷ The Commission also directed the ISO to specify in the tariff that "if a policy-driven element is identified in Phase 2 of the RTPP, it could supplant the need for LGIP projects that may have otherwise been identified in a subsequent LGIP process" and to "clarify its tariff to ensure that security deposits do not exceed the generation interconnection customer's possible cost exposure, as discussed above, and submit this revision within 30 days of issuance of this order." *Id.* at PP 107, 119.

²⁸ *Id.* at P 88.

Second, Protestors' language providing that construction responsibility for components or expansions not specified in Phase II studies would, in addition to being determined under section 24, "not be the exclusive responsibility of the Participating TO"²⁹ imposes a limitation contrary to another tariff provision approved by the Commission. Under section 24.5.2, the Participating TO will have an exclusive responsibility to build a transmission element in Phase 3 of the planning process if "the selected project involves an upgrade to or addition on an existing Participating TO facility, the construction or ownership of facilities on a Participating TO's right-of-way, or the construction or ownership of facilities within an existing Participating TO substation."

Protestors' proposals thus not only have no basis in the RTPP Order, but also are inconsistent with that order. The Commission should reject them.

IV. CONCLUSION

For the reasons explained above, the Commission should approve the ISO's compliance filing as submitted.

Respectfully submitted,

/s/ Michael E. Ward

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Dated: February 24, 2011

²⁹ Pattern Protest at Attachment A-3.

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 Washington, D.C. on this 24th day of February 2011.

/s/ Michael E. Ward

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