

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

Critical Path Transmission, LLC)	
and Clear Power, LLC)	
Complainants,)	
)	
v.)	Docket No. EL11-11-000
)	
California Independent System)	
Operator Corporation,)	
Respondent)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO COMPLAINT**

The California Independent System Operator Corporation (“ISO”) hereby submits its answer (“Answer”) to the complaint (“Complaint”) filed in this proceeding by Critical Path Transmission, LLC (“Critical Path”) and Clear Power, LLC (“Clear Power”) (together, “Complainants”).¹ Complainants argue that the ISO has violated its tariff by failing to study Complainants’ proposed projects under the ISO tariff rates, terms, and conditions that were in effect prior to the implementation of the ISO’s revised transmission planning process (“RTPP”) and that the evaluation of their proposed projects under the RTPP violates the filed rate doctrine. As explained below, these arguments lack merit and the Commission should deny the Complaint.²

¹ The ISO submits this filing pursuant to Rules 206(f) and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.206(f), 385.213 (2010), and the Notice of Extension of Time issued in this proceeding on December 17, 2010.

² Complainants also ask that, if the Commission finds that the ISO’s deferral of the evaluation of their projects was permissible under the previous ISO tariff, then Commission should set the justness and reasonableness of the tariff provisions for hearing. That request has been rendered moot by the Commission’s approval of tariff revisions implementing the RTPP in *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 (2010) (“RTPP Order”).

I. Summary

This proceeding concerns the RTPP, which the Commission approved, subject to a compliance filing, on December 16, 2010,³ and actions taken by the ISO during the development of the RTPP. Complainants filed the Complaint just prior to issuance of the RTPP Order. Under the tariff provisions implementing the RTPP and recently approved by the Commission, the ISO will evaluate proposals submitted in the 2008 and 2009 transmission planning request windows under the RTPP during the current planning cycle.

Complainants challenge the ISO's treatment of the 2008 and 2009 request window projects as being contrary to the ISO tariff as it existed prior to the RTPP, although they fail to cite any specific tariff provisions that the ISO violated or show how the ISO violated such tariff provisions.⁴ They contend that the ISO's actions required a tariff waiver from the Commission. They also contend that evaluation of the project proposals under the RTPP violates the filed rate doctrine and the rule against retroactive ratemaking.

Complainants' challenge fails in all respects. First, it was within the ISO's discretion to determine in which planning cycle it would evaluate project proposals submitted in the 2008 and 2009 request windows, as long as the ISO did not act discriminatorily or arbitrarily. Former section 24.2.3.1 of the tariff, concerning request windows, provides that the ISO will determine whether to include such proposals in the study plan "*as appropriate.*" Here, the lack of

³ RTPP Order.

⁴ Although Complainants allege violations of sections 24 (which comprises the entire transmission planning process) and 24.2 (which provides for consideration of economically driven projects), they do not identify any specific requirement that the ISO violated.

congestion data (for the 2008 projects) and California's 33 percent renewable standards portfolio requirements (for the 2008 and 2009 projects) and other environmental initiatives, which caused the fundamental changes in California's electric industry and significant uncertainty regarding key inputs necessary for transmission planning purposes, justified the ISO's deferred evaluation of the 2008/2009 request window projects. That deferral applied to *all* economically driven 2008 and 2009 request window projects, not just projects submitted by independent transmission developers as Critical Path and Clear Power infer. Further, as discussed *infra*, Complainants' projects are Large Projects under the former tariff, and that tariff expressly recognizes that the evaluation of Large Projects can span multiple planning cycles.

Second, Complainants misunderstand the filed rate doctrine, which requires utilities to charge the rate on file with the Commission at the time a service is rendered.⁵ The ISO has the right under Section 205 of the Federal Power Act to seek to modify its tariff at any time, and it elected to do so by filing the RTPP. The Commission approved the RTPP effective December 20, 2010. Due to the deferral, Complainants' proposals will be evaluated during the period when the RTPP is effective, and the RTPP contains no provision for evaluating them under the prior tariff sections. Accordingly, the filed rate doctrine requires that the proposals be evaluated under the RTPP. Moreover, Complainants had notice when they proposed their projects that the process for evaluating the proposal might change. Therefore, there can be no violation of the filed rate

⁵ *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 577 (1990).

doctrine or the rule against retroactive ratemaking.⁶ Finally, Complainants' arguments constitute an impermissible collateral attack on the RTPP Order.⁷

For these reasons, the Commission should deny the Complaint.

II. Background

The Complaint concerns the manner in which the ISO may evaluate economically driven projects submitted in the ISO's 2008 and 2009 request windows, as discussed below. The ISO introduced the concept of the request window in its December 2007 filing to comply with the transmission planning provisions of Order No. 890.⁸

The 2009 final transmission plan was issued in March 2009 and amended in June 2009. The 2009 final transmission plan noted that eight proposals for economic projects had been received during the 2008 request window.⁹ The ISO stated that it had not conducted any congestion studies in 2008, in part due to the timing of implementation of the ISO's new market. Because the new market, which includes a new methodology for managing transmission congestion based on locational marginal pricing, was implemented in April 2009, the ISO did not have sufficient data to determine the need for the economic project proposals accounting for the new market paradigm. The 2009 final transmission plan

⁶ See, e.g., *Consolidated Edison Co. of New York v. FERC*, 958 F.2d 429, 434 (D.C. Cir. 1992); *Tex. E. Trans. Corp. v. FERC*, 102 F.2d 174 (5th Cir. 1996); *Maine Pub. Serv. Co. v. FPC*, 579 F.2d 659, 667 (1st Cir. 1978).

⁷ *Alamito Co.*, 41 FERC ¶ 61,312 at 61,829 (1987), citing *Central Kansas Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978).

⁸ See, e.g., *Cal. Indep. Sys. Operator Corp.*, 123 FERC ¶ 61,283 (2008).

⁹ <http://www.caiso.com/2354/2354f34634870.pdf> at 10.

therefore stated that the ISO would undertake studies related to these proposals in the 2010 study plan.¹⁰

Consistent with the statements in the 2009 transmission plan, the study plan for the 2010 planning process stated that the results of the ISO's economic planning studies would determine whether the proposed projects addressed an identified need. If not, there would be no further evaluation of the proposed projects. The study plan stated that if the studies identified a need, the project sponsor could resubmit the project during the 2009 request window or advise the ISO that the project should be evaluated as an alternative to address an identified economic (congestion) need, although other projects to address that need could also be submitted during the 2009 request window.¹¹

During 2009, the ISO also concluded that the existing transmission planning process was not designed to effectively and efficiently accommodate the significant new challenges of planning the system in order to ensure construction of the infrastructure improvements needed to implement California's 33 percent renewable portfolio standard requirement in a timely manner. The ISO therefore initiated an effort to develop a revised transmission planning process and began a stakeholder process toward that end on September 15, 2009. The details of the 33 percent renewable portfolio standard requirement and the extensive stakeholder process for the development of that RTPP are contained in the RTPP tariff filing in Docket No. ER10-1401 and the RTPP Order.

¹⁰ *Id.* at 17.

¹¹ <http://www.caiso.com/2374/2374ed1b83d0.pdf> at 39-41.

On November 30, 2009, at the end of the 2009 request window (for the 2010 transmission plan), Critical Path submitted an application to the ISO for its proposed Clearview Project, and Clear Power submitted an application to the ISO for three proposed projects. The applications characterized these projects as economic projects.

As discussed in greater detail *infra*, in light of the significant changes in the electric industry, the new demands (and uncertainties) created by the 33 percent renewable portfolio standard, and the significant (but as yet undecided) infrastructure changes (and assumptions) that would be required to meet that goal, the ISO recognized that it did not have sufficient information to proceed with the evaluation of the pending economic project proposals. On December 2, 2009, when the ISO issued a straw proposal for the RTPP, it explained that “[e]valuation of economic transmission projects in the [transmission planning process] will not proceed while the ISO evaluates the impact of the renewable transmission build-out [that the ISO is overseeing] and tries to resolve other operational and planning uncertainties relevant to economic assessment.”¹²

The ISO issued the 2010 transmission plan in April 2010. The plan stated:

The ISO will consider economic projects submitted through the 2008 and 2009 transmission planning request windows, in connection with the development of a holistic plan for the ISO footprint, after taking into account, among other things, the impacts of the state’s environmental initiatives and the anticipated generation development patterns. Currently there are no BPM or

¹² *ISO Renewable Energy Transmission Planning Process (RETTPP): Second Revised Straw Proposal*, at n.3 (Dec. 2, 2009). This document is available on the ISO’s website at <http://www.caiso.com/2478/2478f34d3a6d0.pdf>.

tariff requirements to release detailed information about the 2008 and 2009 request window submissions.¹³

The ISO thus did not make a final decision regarding the Clearview Project and the three Clear Power projects in the 2010 transmission plan.

Throughout early 2010, the ISO revised its RTPP proposal based on stakeholder feedback. On June 4, 2010, the ISO filed tariff revisions to implement the RTPP with the Commission.¹⁴ In response to certain issues raised by the filing of the RTPP, Green Energy Express LLC and 21st Century Transmission Holdings, LLC, filed, on July 2, 2010, a Petition for Declaratory Order requesting clarification of certain provisions of or relating to the RTPP.¹⁵ The Commission conditionally accepted and suspended the RTPP on July 26, 2010.¹⁶ The Commission subsequently conducted a technical conference regarding the RTPP and received numerous comments. On December 16, 2010, the Commission issued an order accepting the ISO tariff revisions to implement the RTPP, subject to a compliance filing, with a December 20, 2010 effective date, and denying the Petition for Declaratory Order filed by Green Energy Express LLC and 21st Century Transmission Holdings, LLC.¹⁷

III. Answer

Under section 206 of the Federal Power Act (“FPA”), Complainants bear the burden of demonstrating in a complaint proceeding that the challenged ISO

¹³ <http://www.caiso.com/2771/2771e57239960.pdf> at 317. BPM refers to the ISO’s Business Practice Manuals.

¹⁴ The ISO submitted the RTPP Tariff Amendment in Docket No. ER10-1401-000.

¹⁵ Green Energy filed the Petition for Declaratory Order in Docket No. EL10-76-000.

¹⁶ *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,067 (2010).

¹⁷ RTPP Order.

tariff provision or ISO practice is unjust, unreasonable, or unduly discriminatory. They have not met that burden.

Complainants make two basic arguments: first, that the ISO violated its tariff and acted discriminatorily in its consideration of their project proposals; and, second, that evaluating their project proposals under the revised transmission planning process violates the filed rate doctrine and the rule against retroactive ratemaking. The first argument fails because, under the previous transmission planning process, it was within the ISO's discretion to determine when to evaluate economically driven project proposals. The second argument suffers from multiple deficiencies: (1) the ISO has the right under Section 205 of the Federal Power Act to amend its tariff at any time and, as a result, the filed rate doctrine compels, rather than prohibits, evaluation of Complainants' projects under the RTPP; (2) Complainants had notice that their projects might be evaluated under the RTPP, and (3) Complainants failed to raise the argument in a timely manner and it now constitutes a collateral attack on the RTPP Order.

A. Under the Previous Transmission Planning Provisions of the ISO Tariff, It Was Within the ISO's Discretion To Determine When To Evaluate Economically Driven Project Proposals.

Complainants assert that the ISO had no authority to defer consideration of their projects absent a tariff waiver.¹⁸ Their assertion is incorrect. A tariff

¹⁸ Complaints state that the ISO "suspended" consideration of their projects and that they are "stuck in Folsom Prison." Complaint at 4, 9-10, implying that the ISO has ceased consideration of their projects. To the contrary, the ISO resumed consideration of the 2008 and 2009 request window projects well before the Complaint was filed. The ISO undertook considerable effort to develop base cases and several 33 percent RPS scenarios (including a preferred case and several sensitivity cases), identify comprehensive planning portfolios, conduct a production simulation of RPS portfolios, conduct a transmission utilization analysis, and conduct an economic planning study (that reflects production costs) to identify areas of congestion on the grid. These study results were posted on the ISO's website as part of the record for the 2011

waiver was not necessary because the ISO has the discretion under the express terms of the then-effective ISO tariff to postpone consideration of projects submitted in the 2008 and 2009 request windows, as it did in the case of Complainants' and all other economically driven projects submitted in the 2008 and 2009 request windows. Complainants cite no tariff provision – nor can they – that required the ISO to act on their economic projects in a certain planning cycle or by a certain date. Indeed, as discussed below, the tariff provision applicable to their projects expressly contemplated that the evaluation process could span multiple planning cycles.

Former section 24.2.3.1 of the tariff, concerning request windows under the previous transmission planning process, provides the ISO with broad discretion in determining whether to include a proposed project in the study plan: “Following the submittal of a proposal for a transmission addition or upgrade. . . during the request window . . . , the CAISO will determine whether the proposal will be included in the Unified Planning Assumptions or Study Plan *as appropriate.*” (Emphasis added.) Although former section 24.2.3.1 of the tariff

Transmission Plan Stakeholder Initiative and were discussed with stakeholders at the December 2, 2010 stakeholder meeting and a follow-up call on December 16, 2010 to answer more questions and provide further clarification on the study results. On November 19, 2010, the ISO issued a Market Notice indicating that it had posted the 2008/2009 request window submission and providing stakeholders and project sponsors an opportunity to file initial comments on such submissions by November 30, 2010. The ISO stated that it would provide an additional opportunity for stakeholders to submit comments following the December 2, 2010 stakeholder meeting. That Market Notice stated that the “ISO will evaluate the submissions as part of the 2010/2011 annual study process.” The ISO provided an opportunity for parties to submit comments following the December 2 and 16 stakeholder meetings. There was discussion of the opportunity to submit comments on the 2008/2009 request window projects at the December 2 stakeholder meeting and what type of input stakeholders, including the project sponsors, might provide in connection with their projects, including providing any analysis supporting their projects. In fact, both Critical Path and Ziad Alaywan (who is one of the partners in Clear Power LLC) submitted comments pertaining to their request window projects. See <http://www.caiso.com/2861/2861c6ed34110.html> (which are included in the stakeholder comment section of the 2011 Transmission Planning process stakeholder initiative)

also provided that projects “can only be included” in the Study Plan if they meet three specific criteria (meets information requirements, not duplicative of upgrades or additions previously approved by the ISO, not inconsistent with regional and subregional plans if the project affects other interconnected Balancing Authority Areas), it did not direct the inclusion in the study plan of projects that meet those criteria. The criteria were necessary, but not sufficient, conditions for inclusion in the study plan.

Likewise the ISO tariff did not prescribe precisely how the ISO must study projects or when the ISO must complete its study of a project and reach a decision on the need for a project. Section 3 of the version of the transmission planning business practice manual in effect when the projects were submitted to the ISO was consistent with the ISO’s discretion to consider factors other than the three criteria in deciding whether to study a project. It stated in part, “Project proposals or Economic Planning Study requests that do not satisfy the request window requirements *or are not otherwise selected* may be submitted to the ISO’s alternative dispute resolution process under Section 13 of the ISO tariff.” (Emphasis added.) Section 2.2.1 of the manual stated that the transmission plan can identify transmission projects as “[t]ransmission project proposals that are at a conceptual stage or require additional study and that can be advanced to mitigate reliability issues or provide economic benefits to the ISO ratepayers.”

Former section 24.1 did state that when entities submit proposed projects, “the CAISO will determine, in accordance with this Section 24.1, whether the transmission addition or upgrade is needed.” Consistent with that provision, the

ISO's policy was that it would analyze all pending projects submitted in the request window, albeit not necessarily in the planning cycle immediately following the submission of such proposals. Although the transmission planning process was (and remains) an annual cycle, there was no requirement in the tariff that the ISO complete its evaluation of a proposal within a year. Indeed, former section 24.2.4(c) of the tariff expressly provided for projects that exceed \$200 million in capital costs ("Large Projects") – a category that includes Complainant's proposed projects – to be subject to an additional study and public participation process that may span more than one planning cycle.

Complainants also assert that the ISO never explained the source of its authority to defer projects. In light of the explicit tariff language regarding Large Projects, it is unclear why such an explanation would be necessary. Nonetheless, contrary to Complainants' assertion, the ISO explained its deferral authority on several occasions, both publicly and to any market participant that raised this issue. In particular, in a November 19, 2009 letter to Mr. Phil Harris, the managing partner of Clear Power (but regarding a different venture of Mr. Harris), the ISO set forth the legal basis for its authority to defer consideration of project proposals in detail.¹⁹ Additionally, in its Post Technical Conference Reply Comments filed in the RTPP proceeding, in response to complaints raised by certain parties, the ISO discussed the legal authority for its treatment of the 2008 and 2009 request window projects.²⁰ In response to arguments raised by a several parties in the Commission's transmission planning rulemaking

¹⁹ See Attachment A.

²⁰ Post Technical Conference Reply Comments of the California Independent System Operator Corporation at 28-34, Docket No. ER10-1401 (September 17, 2010).

proceeding in Docket No. RM10-23, the ISO again demonstrated how its treatment of the 2008 and 2009 request window projects was consistent with the tariff.²¹

The only question then is whether the ISO exercised its discretion in a reasonable and permissible manner, consistently with section 205 of the FPA. One clear mandate is that the ISO must exercise such discretion in a nondiscriminatory manner.²² The ISO did so. All economic project proposals (including those submitted by existing Participating Transmission Owners and other Project Sponsors) were deferred for further study,²³ so there is no basis for a claim of discriminatory treatment. Indeed, the economic project that has been pending ISO evaluation the longest – a project submitted before the 2008 and 2009 request windows – is PG&E's C3ETP project. The ISO has treated that project in the same manner, and for the same reasons, as the 2008 and 2009 request window submissions.²⁴ Complainants cannot legitimately argue that the

²¹ Reply Comments of the California Independent System Operator Corporation at 44-48, Docket No, RM10-23 (November 12, 2010). In response to objections raised by GEET and LS Power, the ISO made similar arguments regarding its authority for the handling of the request window projects in its Reply Comments filed in Docket No. AD09-8 on December 18, 2009 at 7-10.

²² For example, in a recent order, FERC concluded that PJM had the authority, in its discretion, to determine which entities would build transmission projects included in the PJM transmission plan. FERC cautioned, however, "PJM must designate projects under the relevant tariff provisions in a not unduly discriminatory manner, whether sponsored by transmission owners or others." *Primary Power, LLC*, 131 FERC ¶ 61,015 at P 62 (2010). With regard to another section providing a limited right of first refusal, FERC stated, "PJM should administer this tariff provision in a not unduly discriminatory manner; in this regard it should handle the study of Primary Power's application no differently than that of any other application proposing to build a project, be it an existing transmission owner or an "other entity," and would need to adequately justify its action if it denied the sponsor of the project the right to construct that project and receive the economic benefit of its project." *Id.* at P 64.

²³ See list of 2008-2009 projects to be considered in 2010-2011 planning cycle, available at <http://www.caiso.com/2853/285387e16d5b0.pdf>.

²⁴ 2010 Transmission Plan at 290.

ISO's treatment of their projects constitutes undue discrimination against them under these circumstances.

Complainants nonetheless assert that the ISO acted discriminatorily by continuing to process reliability projects and generator interconnection requests.²⁵ This decision, however, was not unduly discriminatory because there was a reasonable, indeed compelling, basis for the ISO to limit the deferral of project proposals submitted in request windows to economically driven projects. Reliability-driven projects are those upgrades or additions necessary to meet reliability criteria, including criteria of the North American Electric Reliability Corporation.²⁶ To defer consideration such projects would expose the ISO to the risk of violating those criteria, including violation of the transmission planning standards. Worse yet, deferral of those projects could result in the ISO being unable to operate the grid in a reliable manner, with potentially significant adverse consequences. Reliability projects often are necessary to address reliability contingencies that are identified as arising within the next few years, and a delay in the reliability projects could result in loss of load or even catastrophic system failures. Under the reliability requirements of the ISO tariff, the ISO did not have the authority to defer these projects while assessing the needs of the 33 percent renewable standards portfolio requirement. In any event, under the ISO tariff, reliability projects are distinct from economic projects (and public policy projects), and each type of project is evaluated under a separate set of criteria.

²⁵ Complaint at 4, 18-19.

²⁶ See former section 24.1.2 and definition of Applicable Reliability Criteria in ISO tariff, Appendix A.

Network Upgrades for generator interconnections were not part of the previous transmission planning process, other than as an input to the planning assumption. Network Upgrades under the Large Generator Interconnection Procedures are not economic projects; they are upgrades (including reliability upgrades) necessary to support the interconnection and delivery of new generation in the interconnection queue that will execute Large Generator Interconnection Agreements and be constructed. Requests for generator interconnections are initiated by generators and are subject to timelines mandated by the ISO tariff and Commission policy. As in the case of reliability driven projects, but unlike in the case of economically driven projects, deferral of such projects is simply not within the ISO's authority. Under such circumstances, deferring economically driven projects, but not reliability-driven projects and Network Upgrades cannot be considered unduly discriminatory.

A corollary of the prohibition against discrimination is the requirement that the ISO not exercise its discretion in an arbitrary manner.²⁷ As discussed above, the ISO explained in the 2009 transmission plan that it lacked the congestion data to analyze the 2008 request window projects. Ordinarily the 2008 request window projects would have been included in the study plan for the 2010 planning process, which governs studies conducted in 2009. Those 2009 studies would need to use 2008 congestion data. As a result of the change to the new market design in early 2009, the ISO lacked 2008 congestion data that would be

²⁷ See, e.g., *San Diego Gas & Elec. Co. v. Sellers of Ancillary Serv.*, 99 FERC ¶ 61,158 at 61,630 (2002). "With respect to the ISO's Tariff provision that such exemptions be granted by the ISO at its sole discretion, we find this provision not unreasonable as such discretion is reviewable by the Commission. Generators can file complaints if they believe the ISO has used its discretion in an arbitrary or discriminatory manner."

meaningful for the future. It was reasonable, therefore, for the ISO to delay consideration for a year while it collected the necessary congestion and other economic data.

By the time the ISO received the 2009 request window projects, it had begun the process of determining how to integrate the necessary resources to achieve California's 33 percent renewable portfolio standard. In the 2008 and 2009 planning cycles, market participants, including both independent transmission providers and incumbents, had submitted more than 30 transmission upgrade and addition project proposals through the request window. In order to evaluate these proposals, the ISO required a more comprehensive and realistic understanding of the key drivers for transmission planning in California during the next ten years than was available. The fundamental and monumental changes occasioned by the 33 percent RPS initiative and other environmental initiatives such as once-through cooling, as noted above, created significant uncertainty regarding the transmission planning process inputs and assumptions, including (1) where and on what timetable the renewable resources to meet a 33 percent RPS standard would be built, (2) which resources in the existing fleet were likely to be displaced by renewable or other resources or to retire as the result of once-through-cooling and other environmental initiatives, (3) how new intermittent resources would be reliably integrated into grid operations, (4) what the new congestion patterns would be as a result of changes in the resource fleet, (5) which renewable energy areas showed sufficient commercial interest for generation necessary to ensure

achievement of the 33 percent RPS goal while minimizing the risk of stranded investment, (6) which specific transmission facilities would be needed to ensure that these goals are achieved in a cost-effective and reliable manner, and (7) which generation and transmission interconnected balancing authority areas were interested in building. These uncertainties needed to be resolved in a comprehensive manner to some degree of certainty before the ISO could develop a cost effective transmission plan for the future.

Because any strategy for implementing a 33 percent renewable portfolio standard and other climate initiatives would affect the economics of both renewables integration and congestion relief, the ISO believed that the economically driven project proposals had to be studied further in the context of such strategy. The ISO tariff specifically contemplated consideration of such matters in the development of the study plan. Former section 24.2.1.1 stated that, in developing the Unified Planning Assumptions and Study Plan, the ISO will use (among other things) “[r]egulatory initiatives, as appropriate, including state regulatory agency initiated programs.” Moreover, section 2.2.1 of the planning business practice manual states that the transmission plan shall include system outlook information to facilitate transmission planning decisions, including “[o]ther factors, such as state and federal policies impacting transmission planning, economic trends, fuel prices outlook, activities from other entities in the region that should be considered, future technology, impact from climate changes, etc.”

Absent deferral of economically driven projects, the ISO could have ended up approving billions of dollars of transmission projects that would turn out not to be needed under future conditions. The ISO concluded that it simply would not be prudent for the ISO to study and approve proposed projects in a piecemeal fashion. The ISO has been consistent and transparent in explaining how these factors have affected the ISO's evaluation of the economically driven 2008 and 2009 request window submissions.

Complainants' attempted reliance upon the ISO's request for tariff waivers in connection with its reform of the generator interconnection queue²⁸ and efforts to facilitate achievement of California's 33 percent renewable standards portfolio requirement²⁹ does not further their argument. As discussed above, the ISO's Large Generator Interconnection Procedures are fundamentally different from the transmission planning process. When a generator requests interconnection, the ISO must study the projects to determine the necessary upgrades and must take the other actions necessary to implement the interconnection. The ISO's actions are subject to specific timelines under the ISO tariff.³⁰ Thus, when the ISO filed waiver requests in connection with its efforts to reform its generator interconnection queue, it identified the specific tariff sections for which a waiver would be necessary if the ISO were to be able to pursue its initiatives.³¹

In contrast, under the former transmission planning process, the ISO decided which project proposals to approve and had the discretion to determine

²⁸ Complaint at 17, citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008).

²⁹ Complaint at 18, citing *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010).

³⁰ See ISO tariff, Appendices U, V, Y, Z.

³¹ See 124 FERC ¶ 61,031 at P 9 n.12; 132 FERC ¶ 61,132 at P 1.

in which cycle it studied economically driven project proposals, as long as it exercised such discretion in a nondiscriminatory and non-arbitrary manner. There is no tariff provision that requires the ISO to evaluate economic projects by a certain date or establishes specific milestones for the evaluation of such projects. Indeed, as discussed above, the Tariff expressly contemplates that the evaluation of large projects can span multiple planning cycles. Complainants do not, and cannot, cite any particular tariff section for which a waiver was a prerequisite to deferral of the evaluation of economically driven projects. Unlike the case of interconnection procedures, therefore, no waiver was necessary.

Complainants have therefore produced no basis for concluding that they had a right to have their projects evaluated in the 2009/2010 planning cycle or that the ISO exceeded its authority in deferring evaluation of their projects. They have failed to meet their burden to demonstrate that the ISO violated its tariff or acted unjustly, unreasonably, or in an unduly discriminatory manner.

B. The Filed Rate Doctrine and Rule Against Retroactive Ratemaking Do Not Prohibit the Evaluation of 2009 request window Projects Under the RTPP.

1. The Filed Rate Doctrine Compels, Rather than Prohibits, the Evaluation of 2009 request window Projects Under the RTPP.

The “filed rate doctrine” derives from *Montana-Dakota Util. Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246 (1951). In *Montana-Dakota*, in determining that there was no justiciable cause of action challenging a rate that had not been filed with the Federal Power Commission (the Commission’s predecessor), the Supreme Court set forth the central requirement of the filed rate doctrine: a utility must charge, and a customer must pay, the rate on file with

the Commission.³² As the Supreme Court stated, “[A party] can claim no rate as a legal right that is other than the filed rate, whether fixed or merely accepted by the Commission, and not even a court can authorize commerce in the commodity on other terms.”³³ For example, the filed rate doctrine bars a utility from collecting amounts that exceed the charge on file with the Commission, even if that charge differs from the compensation that would be appropriate according to an underlying, but unfiled, contract.³⁴ A critical aspect of the filed rate doctrine for the purposes of this proceeding is that the applicable rate is the rate on file *at the time the service is provided*.³⁵

The Commission approved the RTPP effective December 20, 2010. At the time that the RTPP became effective, the ISO had not completed its evaluation of Complainant’s project proposals. Therefore, the RTPP will be the filed rate at the time the ISO completes that evaluation, and the filed rate doctrine requires that the evaluation be conducted pursuant to the RTPP.

A public utility “has the right in the first instance to change its rates as it will, unless it has undertaken by contract not to do so,”³⁶ subject only to the requirement that the rate be just and reasonable and not unduly discriminatory.³⁷ The ISO tariff is not a contract that prohibits unilateral amendments. To the contrary, section 15 of the ISO tariff specifically authorizes such changes:

³² See also *Commonwealth Elec. Co. v. Boston Edison Co.*, 44 FERC ¶ 61,004 at 61,032 (1988).

³³ *Montana-Dakota*, 341 U.S. at 251.

³⁴ See *Ark. La. Gas Co. v. Hall*, 453 U.S. 571 (1981).

³⁵ *Transwestern Pipeline Co. v. FERC*, 897 F.2d 570, 577 (1990) (“The filed rate doctrine prohibits the Commission from imposing a rate different from the one on file at the time gas is sold or service made available.”).

³⁶ *United Gas Pipe Line Co. v. Memphis Light Gas and Water Div.*, 358 U.S. 103, 113 (1958).

³⁷ 16 U.S.C. § 205.

Nothing contained herein shall be construed as affecting, in any way, the right of the [ISO] to furnish its services in accordance with this [ISO] Tariff, or any tariff, rate schedule or Scheduling Coordinator Agreement which results from or incorporates this [ISO] Tariff, or unilaterally to make an application to FERC for a change in rates, terms, conditions, charges, classifications of service, Scheduling Coordinator Agreement, rule or regulation under FPA Section 205 and pursuant to the FERC's rules and regulations promulgated thereunder.

The ISO exercised that right when it filed the RTPP. Under such circumstances, the ISO's exercise of these rights must apply prospectively to evaluations of 2008 and 2009 request window proposals.

The Commission addressed an analogous situation in *New York Independent System Operator, Inc.*, 123 FERC ¶ 61,090 (2008). In that order, the Commission approved an amendment to the New York Independent System Operator ("NYISO") tariff to modify credit requirements for holding transmission congestion credits. One protester (EPIC Merchant Energy, LLP) argued that the tariff amendment violated the filed rate doctrine and the rule against retroactive ratemaking because the new credit requirements applied to transmission congestion credits purchased prior to the effective date of the amendment. The Commission rejected the argument, stating:

NYISO's filing does not violate the filed rate doctrine because the NYISO will be charging, from the effective date of the tariff change, the just and reasonable tariff rate for collateral on file. The filing is not retroactive ratemaking since the NYISO is not seeking to recover past losses through a current rate; instead it is revising its collateral requirements to apply prospectively to future payment obligations associated with unexpired TCCs that exist at the effective date of the tariff changes. This is entirely appropriate as there continues to be a credit risk associated with the unexpired term of each TCC.

EPIC cites no provision in the NYISO's tariff that prevents the NYISO from filing to change the rate applicable to collateral for the

TCC market. In fact, section 14.4 of NYISO's Market Services tariff specifically permits the NYISO to file to make changes to its rates, terms and conditions of service, including the TCC market at issue here. EPIC and other customers, therefore, took service with knowledge that the NYISO could make a section 205 filing, as it did here, to revise collateral requirement. Just like any other rate change, the NYISO can apply such a revision prospectively, once the Commission determines the revision is just and reasonable.³⁸

That Complainants submitted their proposal under a previous transmission planning regime does not insulate them from the effect of tariff changes any more than an application for Scheduling Coordinator status insulates market participants from changes in the ISO's market design. Complainants cite no provision of any contract or of the ISO tariff that guaranteed that their projects would be evaluated under the previous transmission planning process in the ISO tariff if a new process, such as the RTPP, were approved prior to the evaluation. As a result, their filed rate argument must fail.

Complainants point out that the Midwest System Operator and the Southwest Power Pool excluded certain transmission expansion projects from revisions to applicable transmission planning processes overseen by these system planners.³⁹ These examples, however, provide no support to Complainants' arguments. Instead, they illustrate the fallacy of those arguments. The exclusions were policy decisions. They were not justified as necessary for compliance with the filed rate doctrine.⁴⁰ Both the Midwest Independent System Operator and the Southwest Power Pool decided to exclude only a subset of

³⁸ 123 FERC ¶ 61,090 at PP 28-29.

³⁹ Complaint at 20-21.

⁴⁰ See *Southwest Power Pool*, 131 FERC ¶ 61,252 at PP 112-117; *Midwest Indep. Sys. Operator, Inc.* 114 FERC ¶ 61,106 at PP 91-115, *aff'd sub nom. Pub. Serv. Comm'n of Wisc. v. FERC*, 545 F.3d 1058 (D.C. Cir. 2008).

pending project proposals, which would not be possible if the exclusion of pending project proposals was compelled by the filed rate doctrine.⁴¹ Moreover, the fact that the exclusions were specified in the tariff amendment implies that absent the specific tariff exclusion, the new process would apply to all pending projects.

Indeed, the ISO took the same approach in its reformation of the generator interconnection procedures. In its revised Large Generator Interconnection Procedures reforming the queue, the ISO's revised tariff specified a group of interconnection requests that would continue to be processed under the prior Large Generator Interconnection Procedures, *i.e.*, that would be grandfathered.⁴² The ISO took similar action in its reform of the Small Generator Interconnection procedures.⁴³ In both cases, absent the tariff language grandfathering the interconnection requests, the filed rate doctrine would have required that they be processed under the new procedures. In both cases, however, the ISO made a policy decision that the equities favored treating the interconnection requests under the old procedures. The Commission approved these grandfathering provisions.⁴⁴ With respect to the 2008 and 2009 request window projects, the Commission determined that such projects should be evaluated under the RTPP. Complainants fail to identify any compelling

⁴¹ 132 FERC ¶ 61,252 at PP 11, 117; 114 FERC ¶ 61,106 at 91-92.

⁴² See ISO tariff, Appendix Y, App. 1, § 1.2.2.

⁴³ See ISO tariff, Appendix Y, App. 8, § 2.

⁴⁴ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 at P 226 (2008); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223 at P 127 (2010). The ISO notes that, under RTPP, in light of the concerns raised by sponsors of the 2008 and 2009 request window projects that their proposals could be preempted by others, the RTPP provides that if projects submitted in the 2008 or 2009 request windows are found to be needed either as economically driven or public policy transmission elements, those elements can be built and owned by the applicable project sponsor. The Commission approved those tariff provisions.

reason or legal requirement why their projects should be evaluated under the old tariff.

In light of the above considerations, it is apparent that Complainants misconstrue the impact of the filed rate doctrine on the ISO's evaluation of the 2008 and 2009 request window proposals. As of December 20, 2010, the filed rate doctrine requires that those proposals be considered under the RTPP.

2. There Could Be No Violation of the Filed Rate Doctrine Because Complainants Had Notice that Their Projects Might Be Considered Under the RTPP.

As explained above, the filed rate doctrine requires that the ISO now evaluate Complainants' project proposals under the current approved transmission planning provisions of the ISO tariff, *i.e.*, under the RTPP. Even if one incorrectly assumes that the fact that the Complainants submitted their proposals under the previous transmission planning process means that the previous transmission process was the "filed rate" for the consideration of their proposals, however, the filed rate doctrine and rule against retroactive ratemaking would not preclude consideration of those proposals under the RTPP.

The ISO submitted tariff revisions to implement the RTPP under section 205 of the Federal Power Act. When tariff changes are made pursuant to section 205 (unlike the situation with section 206), "[t]he filed rate doctrine simply does not extend to cases in which the buyers are on adequate notice that resolution of some specific issue may cause a later adjustment to the rate being collected at

the time of service."⁴⁵ The court continued, noting "it is not that notice relieves the Commission of the bar on retroactive ratemaking, but that it changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision."⁴⁶ The reason for this more permissive interpretation of the filed rate doctrine and rule against retroactive ratemaking finds its basis in the policy rationale for having the rule in the first place: predictability.⁴⁷ Therefore, if the utility customer has adequate notice that the approved rate is subject to change, then the predictability rationale underlying the rule against retroactive ratemaking and the filed rate doctrine is satisfied, and there is no violation of either.⁴⁸ The Commission understands and applies this exception. For example, in *New England Power Company*, 69 FERC ¶ 61,376 at 62,424 (1994), the Commission noted that it "has the authority to allow surcharge provisions in certain circumstances, when the customer knows, prior to taking service, that the rate it pays is subject to future adjustment."⁴⁹ For the purposes of determining whether a rate change is impermissibly retroactive, notice need not have been explicit.⁵⁰

⁴⁵ *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1075 (D.C. Cir. 1992). In contrast, the specific tariff language of section 206 prohibits retroactivity in any circumstance. Thus, Complainants' reliance of *Electrical District No. 1 v. FERC*, 774 F.2d 490 (D.C. Cir. 1985), which involved a section 206 proceeding, is misplaced.

⁴⁶ *Id.* (quoting *Columbia Gas Transmission Corp. v. FERC*, 895 F.2d 791 (D.C. Cir. 1990)).

⁴⁷ See *Town of Concord. FERC*, 955 F.2d 67 (D.C. Cir. 1992).

⁴⁸ See, e.g., *Consolidated Edison Co. of New York v. FERC*, 958 F.2d 429, 434 (D.C. Cir. 1992); *Tex. E. Trans. Corp. v. FERC*, 760 F.2d 1053 (5th Cir. 1985; *Maine Pub. Serv. Co. v. FPC*, 579 F.2d 659, 667 (1st Cir. 1978)).

⁴⁹ See also *Transcontinental Gas Pipe Line Corp.*, 55 FERC ¶ 61,446 (1991).

⁵⁰ See *Pub. Util. Comm'n of Cal. v. FERC*, 988 F.2d 154, 164-165 (D.C. Cir. 1993)

In this instance, Complainants had such notice. As Complainants acknowledge, their projects were not traditional economically driven projects, but rather were intended to provide access to renewable resources.⁵¹ On September 15, 2009, two months before Complainants submitted their proposals, the ISO issued its first issue paper and straw proposal on its 33 percent renewables initiative, which would eventually lead to the RTPP. The document laid out a plan under which projects for accessing renewable resources would be submitted during the 2009 request window and considered under the new planning process.⁵² At the very least, Complainants were made aware that the process for considering projects that were intended to improve access to renewable resources and were submitted during the 2009 request window was in flux.⁵³ As a result, even if the previous transmission process were the “filed rate” for the consideration of Complainants’ proposals, the filed rate doctrine and rule against retroactive ratemaking bar evaluation of those proposals under the RTPP.

3. Complainants’ Argument Is A Collateral Attack on the RTPP Order.

In the RTPP Order, the Commission specifically rejected arguments that the 2008 and 2009 request window projects should be evaluated under the previous transmission planning process.⁵⁴ Although no party raised the filed rate

⁵¹ Complaint at 4.

⁵² See Getting to 33% Renewables Portfolio Standard: Establishing a New ISO Tariff Category For Renewable Transmission Projects: A Straw Proposal and Issue Paper, available at <http://www.caiso.com/242a/242afa1d3c210.pdf>.

⁵³ The decision to defer consideration was also included in the letter to Mr. Phil Harris, included as Attachment A, which was sent before the submission of the Clear Power project proposal.

⁵⁴ RTPP Order at P 267 (“We reject protestors’ requests to require CAISO to evaluate 2008/2009 request window proposals under the existing tariff and exempt those project sponsors from meeting the RTPP requirements”).

doctrine as an issue, the proceeding provided the opportunity to do so, not only in protests, but also in comments on the technical conference. Critical Path is a party to the proceeding. Although Clear Power is not a party, it had notice of the proceedings not only through the Commission's official notice, but also through the numerous market notices that the ISO issued throughout the RTPP stakeholder process.⁵⁵

Because the Commission found the evaluation of the 2008 and 2009 request window project proposals under the RTPP to be just and reasonable, Complainants' arguments that it violates the filed rate doctrine are a collateral attack on the RTPP Order. That the argument was not raised or that Clear Power was not a party does not make the collateral attack permissible.⁵⁶ As the Commission has stated:

Historically, the Commission's policy against relitigation of issues is not constrained by the limits of the judicial doctrine of collateral estoppel. The Commission's position on relitigation of issues is one where in the absence of new or changed circumstances requiring a different result, "it is contrary to sound administrative practice and a waste of resources to relitigate issues in succeeding cases once those issues have been finally determined."⁵⁷

⁵⁵ See <http://www.caiso.com/243f/243f832e70cb0.html>. As noted in the Complaint, Clear Power is a partnership formed by Philip G. Harris, also CEO of Green Energy Express, LLC, and Ziad Alaywan. Green Energy Express, LLC, is a party to the RTPP proceeding.

⁵⁶ Also, Clear Power should not be able to avoid the strictures against collateral attacks on Commission Orders by voluntarily choosing not to participate in the relevant proceedings. It should also be noted that, in light of the stakeholder process, Complainants had every opportunity to present the arguments in this complaint earlier, so that the Commission could consolidate the complaint with the RTPP proceedings, but instead chose to file the Complaint days before the expected order on the RTPP. (The Commission had conditionally accept the RTPP to be effective no later than January 3, 2011, 132 FERC ¶ 61,067 at Ordering Paragraph A, and the final Commission meeting before that date was December 16).

⁵⁷ *Alamito Co.*, 41 FERC ¶ 61,312 at 61,829 (1987), citing *Central Kansas Power Co.*, 5 FERC ¶ 61,291, at 61,621 (1978).

Complainants have not, and cannot, identify any changed circumstances since the RTPP Order that would justify relitigation. Critical Path is free to seek rehearing of the RTPP Order, and Clear Power could also do so if it first seeks late intervention. They are not free to challenge the RTPP Order through this complaint. As such, the Commission should reject the Complaint as a collateral attack on the RTPP Order.

IV. Service and Communications

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

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V. Conclusion

For the foregoing reasons, the Commission should deny the Complaint submitted in this proceeding.

Respectfully submitted,

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Dated: January 11, 2011

ATTACHMENT A



California ISO
Your Link to Power

California Independent
System Operator Corporation

Ali Chowdhury, Ph.D., MBA
Director of Regional Transmission (South)
(916) 608-1113

November 19, 2009

Mr. Phillip P. Harris
Green Energy Express, LLC
Ten Horseshoe Pointe Drive
Phoenixville, PA 19460

Dear Mr. Harris:

Thank you for your letter of November 2, 2009 in response to my letter of October 16, 2009. I wish to respond to some of the questions and concerns you raise regarding the California Independent System Operator Corporation's ("ISO") consideration of the Green Energy Express Transmission ("GEET") project.

In your letter you recognize that the ISO has not yet made a finding of need for the GEET project, and express concern that the ISO's "unilateral conversion" of the GEET Project to a "request for an Economic Planning Study" is not consistent with applicable Tariff provisions. You are correct that the ISO has not yet determined that there is a need for the GEET project. The GEET project remains pending consideration as an economic project. As I indicated in my October 16, 2009 letter, the ISO had not done any congestion studies in 2008 to determine whether any project was needed in the area of GEET's proposed footprint (or the footprint of other proposed projects) for purposes of mitigating congestion. Because the January 14, 2009 *Economic Analysis Supporting The Proposed Green Energy Express 500 KV Transmission Line* ("GEET Economic Study") which Green Energy Express provided to the ISO stated that GEET provides congestion cost benefits, it was appropriate for the ISO to conduct an economic planning study to consider any need for congestion mitigation. The GEET Economic Study also stated that GEET provides production cost benefits. The ISO's economic planning study takes into consideration of production costs. The general study assumptions for the economic planning study were set forth in Section 2.3.5 of the 2010 Final Study Plan and were discussed in the stakeholder process. Under the circumstances, it was appropriate for the ISO to use an economic planning study as one of the tools for evaluating the potential need for GEET, and GEET is still being considered as an economic project.

Your letter states that, while a project may be dropped from inclusion in the annual Study Plan if there are deficiencies, and a project sponsor has not corrected such deficiencies,

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Green Energy Express was never informed of any such deficiencies in its submissions to the ISO. The letter notes the ISO Staff confirmed in an email communication that the Project satisfied the criteria for Request Window screening and was "now eligible to be considered in the approval process." The letter also claims that the process set forth in the Tariff does not contemplate any unilateral conversion of projects from one category to another in the middle of a planning cycle, nor does it contemplate dropping a project from the annual planning process simply because a congestion study is required to be performed. As indicated above, the ISO has not dropped GEET from consideration as an economic project. In any event, Tariff Section 24.2.1.3 provides that projects "*can only be included*" in the Study Plan if they meet three criteria (meets information requirements, not duplicative of upgrades or additions previously approved by the ISO, not inconsistent with regional and sub regional plans if the project affects other interconnected Balancing Authority Areas). In other words, while only the projects that meet these criteria can be included in the Study Plan, there is no requirement that the ISO *must* include them in the Study Plan. The criteria are necessary, but not sufficient, conditions. Further, the ISO does not agree with the suggestion that it must undertake a comprehensive study of every single project that meets the minimum criteria identified in Section 24.2.1.3. That section sets forth only the minimum criteria for the ISO to use in exercising its discretion. It provides: "Following the submittal of a proposal for a transmission addition or upgrade, . . . during the Request Window . . . , the ISO will determine whether the proposal will be included in the Unified Planning Assumptions or Study Plan *as appropriate*." Likewise the Tariff does not prescribe precisely how the ISO must study each and every project, nor does it state exactly when the ISO must complete its study of a project and reach a decision on the need for a project.

The letter also expresses concern that the ISO's standard for "an identified need" as set forth in the second paragraph of the October 16, 2009 letter, *i.e.*, a "need for mitigation of congestion" is significantly narrower than the actual standard applicable to economic projects set forth in the Tariff (and the Business Practice Manual ("BPM")). The ISO agrees that it must consider benefits other than the alleviation of congestion in considering economic proposals. Section 24.1.1 of the Tariff confirms that the benefits of a proposed economic project "may include, but need not be limited to, a calculation of any reduction in production costs, congestion costs, transmission losses, capacity or other electric supply costs resulting from improved access to cost-efficient resources, and environmental costs." As noted above, the economic planning study examines more than just congestion; it also takes into consideration production costs. Moreover, as indicated above, the economic planning study is only one tool the ISO will use to evaluate the need for GEET. The ISO will use additional means in its further consideration of GEET to assess the other benefits claimed by GEET.

The November 2, 2009 letter notes that the ISO has not performed studies specific to the GEET project, and the ISO also has not requested further information or studies from Green Energy Express since January 2009. You argue that, under these circumstances, there is no valid justification for deferring consideration of the Project to next year's annual Transmission Plan. You also argue that the Tariff contemplates an annual study process, not a multi-year process. After further consideration, the ISO will not require the GEET

project or any of the other economic projects submitted in the 2008 request window to be resubmitted. Rather, they remain pending for consideration as economic projects. However, your suggestion that the ISO must conduct all studies and decide whether a submitted project is needed within a single annual planning cycle is incorrect. While the tariff contemplates an annual study process, there is no tariff requirement that the ISO complete all studies and "approve" or "disapprove" a project within one planning cycle. Indeed, Section 24.2.4(c) provides that transmission upgrades and additions that are Large Projects will be subject to a separate study process that may encompass more than one transmission planning process cycle. A Large Project is defined by the tariff as a proposed transmission upgrade or addition with facilities at the 200 kV level and up with capital costs in excess of \$200 million. It is not unusual for the evaluation of such projects to span multiple planning cycles, and the ISO has in fact studied projects through multiple planning cycles.

The electricity industry in California is undergoing fundamental changes as the result, *inter alia*, a proposed 33% renewable portfolio standard and other climate initiatives. This fact raises significant uncertainty for transmission planning purposes as a result of the following, among other factors:

- (1) which resources in the existing fleet will remain operational,
- (2) where will the renewable resources needed to meet a 33% RPS standard actually be built;
- (3) how new resources will be effectively integrated into the grid;
- (4) what the new congestion patterns will be as a result of the changes in the resources fleet,
- (5) what renewable energy areas show sufficient commercial interest for generation necessary to ensure achievement of the 33% goal,
- (6) what specific transmission facilities will be needed to ensure that these goals are achieved in a cost-effective and reliable manner, and
- (7) what generation and transmission interconnected, non-ISO Balancing Area Authorities are interested in building to meet a 33% RPS requirement.

The transmission build-out necessary to achieve the State's initiatives in an integrated, reliable and cost effective manner will depend on the assumptions made about these factors and a host of others. Because any strategy for implementing a 33% RPS and other climate initiatives will affect the economics of both resource integration and congestion relief, the ISO believes that economic projects, including the GEET project, must be studied further in the context of the development of such strategy and the facts/assumptions regarding where generation intended to meet these goals is likely to be located. Indeed, the GEET Economic Study discusses in numerous places the benefits that the project will provide in connection with accessing and integrating renewable resources. For the ISO appropriately to assess the renewable integration benefits of the GEET project, it must be in the context of the fundamental changes that are occurring.

Your letter also expresses concern with the "ISO's suggestion that the Project may either (i) be handled through the ISO's generation interconnection process or (ii) be subjected at some unknown future date to the moving target of a renewable transmission initiative that has not yet been filed with FERC and which is working its way through the stakeholder process." You indicate that there is no basis under the Tariff to suggest that the Project should be treated as a generator Network Upgrade. The October 16, 2009 letter did not

suggest that the GEET project be handled through the generator interconnection process. It was Green Energy Express, in the GEET Economic Study, which stated that the "GEET transmission project is aimed at interconnecting the renewable energy around Eagle Mountain and Twentynine Palms." The October 16, 2009 letter simply confirmed that generation interconnections and associated Network Upgrades are handled through the generation interconnection process.

You also state that it is inappropriate for the ISO to suggest that the processing of the GEET project under this year's planning process pursuant to the current filed tariff procedures should be placed on "hold" in any way simply because the ISO may develop new tariff procedures in the future. The Tariff and BPM make it clear that the ISO may take into account regulatory initiatives in developing the Study Plan:

- o Tariff Section 24.2.1.1 states that, in developing the Unified Planning Assumptions and Study Plan, the ISO will use (among other things) "Regulatory initiatives, as appropriate, including state regulatory initiated programs."
- o BPM Section 2.2.1 states that the Transmission Plan shall include System Outlook information to facilitate transmission planning decisions, including "Other factors, such as state and federal policies impacting transmission planning, economic trends, fuel prices outlook, activities from other entities in the region that should be considered, future technology, impact from climate changes, etc."

The GEET project cannot be considered in a vacuum without regard to the significant statewide initiatives and policies that are being developed and the fundamental changes that will be occurring in generation development patterns and their concomitant impacts on congestion, reliability and renewable integration. To do otherwise would invite stranded investment in facilities that are not needed given the expected future pattern of generation development and the development of the statewide grid. Considering the GEET project in isolation without regard to the significant changes occurring in California (and without a comprehensive analysis of what the impacts of those changes are likely to be) is neither prudent, nor consistent with good transmission planning practices. The ISO will evaluate the GEET project consistent with the discussion herein and the ISO Tariff.

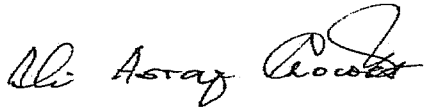
Finally, you request that the ISO clarify whether the ISO Staff has been party to discussions in which generators have been directed to redesignate the "conceptual" Red Bluff substation as their Point of Interconnection in the generator interconnection process, and if so, explain why a conceptual substation and an associated conceptual transmission line is being favored over a competing alternative that was properly submitted in the Request Window. It is my understanding that the need for the so-called Red Bluff substation (also referred to as a new 500/230 kV substation in the System Impact Study report) was identified in the System Impact Studies conducted pursuant to the Large Generator Interconnection Process ("LGIP") tariff provisions as needed to support the interconnection of new generation in the ISO's generation interconnection queue proposed to be located in the area. The facility qualifies as a Network Upgrade under the LGIP tariff

Mr. Phillip P. Harris
November 19, 2009
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provisions. 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 that will execute Large Generator Interconnection Agreements and be constructed. There is no basis for your statement that Network Upgrades under the LGIP must be evaluated by the ISO using the same assessment for economic transmission projects being studied under the transmission planning provisions of Section 24. Neither Tariff Section 24 nor the LGIP contains any such requirement, and that has never been the ISO's practice.

If you have any questions, please do not hesitate to call me.

Very truly yours,



Ali Chowdhury, Ph.D., MBA
Director of Regional Transmission (South)

AC/pm

cc: Keith Casey
Anthony Ivancovich
Judith Sanders
Mike Dozier
Andrew Ulmer
Bill DiCapo
Stephen Rutty
David Le

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service list for the captioned 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 this 11th day of January, 2011.

Anna Pascuzzo

Anna Pascuzzo