

**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)	
)	
California Independent System)	Docket No. ER10-1401-000
Operator Corporation)	
)	
California Independent System)	Docket No. ER11-2705-000
Operator Corporation)	
)	

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

The California Independent System Operator Corporation (“ISO”) hereby submits an Answer to the Motion to Lodge (“Motion”) filed in the above-identified proceedings by Critical Path Transmission, LLC (“Critical Path”).¹ The documents that Critical Path seeks to lodge have no relevance to the issues in any of these proceedings. The Commission should therefore deny Critical Path’s Motion.

On June 4, 2010, the ISO filed with the Commission tariff revisions to implement its Revised Transmission Planning Process (“RTPP”). The

¹ The ISO submits this filing pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385. 385.213 (2010).

Commission considered the tariff revisions in Docket No. ER10-1401. After several rounds of comments and a technical conference, the Commission accepted the ISO tariff revisions on December 16, 2010, subject to a compliance filing, with a December 20, 2010, effective date.² Requests for rehearing and clarification are pending.

On December 14, 2010, Critical Path, jointly with Clear Power, LLC, filed a complaint arguing that the ISO has violated its tariff by failing to study Critical Path's 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. The complaint further alleged that the evaluation of their proposed projects under the RTPP violates the filed rate doctrine. The complaint is pending in Docket No. EL11-11.

Pursuant to the RTPP Order, the ISO submitted its compliance filing with a motion for leave to file one day out of time on January 19, 2011, and an erratum on January 20, 2011. The Commission designated the compliance proceeding as ER11-2705.

The documents that Critical Path seeks to lodge are comments submitted by certain parties on the ISO's revised conceptual statewide plan in response to the ISO's solicitation of stakeholder comments on the plan. Critical Path asserts that the documents have a direct impact on the pending procedures. Yet Critical Path's own explanation of that impact, on its face, demonstrates that the documents are irrelevant to the issues in those Commission proceedings. Critical Path states that the documents "should be permitted as record evidence

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

to demonstrate the disparity between the representations made to this Commission, and the transmission planning process taking place in fact.”³ Even if one were to assume that the documents in question are evidence that the ISO is not properly implementing the RTPP – which they are not – the ISO’s implementation of the RTPP would simply still not be at issue in any of the three dockets.

Docket No. ER10-1401 concerns whether the ISO RTPP *tariff provisions* are just, reasonable, and not unduly discriminatory or preferential, as required by the Federal Power Act. The manner in which the ISO implements those provisions has no bearing on whether the provisions themselves meet the requirements of the Federal Power Act.

Docket No. ER11-2705 concerns solely whether the ISO’s compliance filing is consistent with the RTPP Order. Nothing that the ISO does in carrying out the tariff provisions can affect whether the tariff language submitted in the ISO’s January compliance filing actually complies with the Commission’s mandates.

The issue in Docket No. EL-11-11 involves the ISO’s treatment of Critical Path’s project proposals under *the previous* transmission planning process. The ISO’s actions under the previous process are complete; they are in the past. Nothing that the ISO is doing now, under a different set of tariff provisions, can affect whether those actions were, or were not, consistent with the then-existing tariff. The other issue raised in the complaint is whether evaluation of those project proposals under the RTPP violates the filed rate doctrine. This issue

³ Motion at 5.

relates purely to whether it is permissible to apply the RTPP tariff provisions to those project proposals and does not relate to the manner in which the ISO is implementing those tariff provisions. The issue Critical Path raises is a legal issue.

For these reasons alone, the Commission should deny the Motion. Nonetheless, the ISO must point out that the conclusions that Critical Path would have the Commission draw from the documents it submits are baseless at best, and perhaps misleading. As an initial matter, these are comments on the revised conceptual statewide plan. The conceptual statewide plan is an early step⁴ in the transmission planning process and is merely an *input* to the development of the ISO's comprehensive transmission plan.⁵ The conceptual statewide plan is only 11 pages. The comprehensive transmission plan will be in excess of 300 pages. It is impossible to draw from the conceptual statewide plan any conclusions about the studies and analyses that will be included in the comprehensive transmission plan.

Second, review of the actual text of the documents, rather than of the excerpts quoted by Critical Path, demonstrates that, with a few exceptions, they are not criticisms of the ISO's process, but rather are simply what they purport to be – stakeholder comments on the conceptual statewide plan. They contain exactly what one would expect in comments: suggestions for additional study and disagreements with certain of the assumptions and conclusions in the

⁴ Ordinarily, the ISO would publish the conceptual statewide plan more than six months before finalizing the comprehensive statewide plan. Because the RTPP was not effective until December 20, 2010, the ISO has compressed the schedule in order to complete all milestones and still be able to issue the 2010/11 transmission plan this Spring.

⁵ See ISO Tariff § 24.4.4.

conceptual statewide plan. Indeed, this is exactly the kind of input the ISO anticipated when it posted the conceptual statewide plan for comment. The only exceptions are comments by entities that appear to misunderstand the role of the statewide conceptual plan and to confuse it with the comprehensive plan, which it is not.

Thus, even if issues concerning the ISO's implementation of the RTPP were relevant to the pending dockets, these documents would still be of no value to the Commission's deliberations. There is no reason to accept them as "record evidence," particularly so long after the deadlines for submitting record evidence in each of the pending dockets.

III. Conclusion

For the foregoing reasons, the Commission should deny the Motion.

Respectfully submitted,

/s/ Michael E. Ward

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Dated: March 22, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service lists for the above-referenced 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. this 22nd day of March, 2011.

/s/ Michael E. Ward
Michael E. Ward