UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))))	**Docket Nos. ER11-2705-002**

MOTION FOR LEAVE TO ANSWER AND ANSWER TO PROTEST 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 Protest filed in this proceeding by Western Independent Transmission Group ("WITG") regarding the ISO's December 2, 2011, compliance filing.[1] The Commission should reject the protest as inconsistent with the Commission's prior orders in this proceeding.

I. BACKGROUND

On June 4, 2010, the ISO filed with the Commission tariff revisions to implement its Revised Transmission Planning Process ("RTPP"). On December 16, 2010, the Commission accepted the RTPP, subject to a compliance filing.[2] On January 18, 2011, the ISO filed a motion for clarification related to compliance. The ISO asked the Commission to clarify that (1) economically driven and policy-driven transmission elements approved in the transmission planning process that also eliminate a reliability need or ensure the feasibility of long-term congestion revenue requirements ("CRRs") do not, because of that fact, lose their character as economically driven or policy-driven

[1] The ISO submits this filing pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,18 C.F.R. §§ 385..212 and 385.213 (2010).

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

transmission elements, and (2) reliability-driven projects and projects to ensure the feasibility of long-term CRRs that have incidental economic or policy benefits, but are not deliberately expanded in scope to obtain such benefits or approved as economically driven and policy-driven transmission elements, do not lose their character as reliability-driven projects or projects to ensure the feasibility of long-term CRRs.

The ISO submitted the 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. On October 20, 2011, the Commission denied the requested clarification, rejected the portion of the compliance filing that reflected the requested clarification, and ordered a further compliance filing. [3] The ISO submitted the second compliance filing on December 2, 2011. On December 23, 2011, WITG protested the second 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.[4] The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute[5] and where the information assists the Commission in making a decision.[6]

WITG is the only party that protests the ISO's compliance filing. WITG makes two arguments that have not previously been made in this proceeding. This answer addresses these new arguments and will, thus, both clarify the issues and assist the Commission's understanding of Protestors' errors. The ISO therefore requests that the Commission accept this answer.

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3 *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,062 (2011) ("October 20 Order").

4 18 C.F.R. § 385.213(a) (2) (2011).

5 *See Southwest Power Pool, Inc.,* 89 FERC ¶ 61,284 at 61,888 (1999).

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

III. ANSWER

A. WITG's Argument that the Commission Should, in this Proceeding, Direct Early Compliance with Order No. 1000 Is An Impermissible Collateral Attack on Both the RTPP Order and Order No. 1000.

WITG notes that although the Commission has established a compliance period within which transmission owners must comply with Order No. 1000, [7] the substantive provisions of Order No. 1000 were placed into effect on October 1, 2011, sixty days after publication of the Order in the Federal Register. WITG requests that the Commission, in response to ISO's compliance filing, require CAISO to revise its Tariff to eliminate the exclusive right of participating transmission owners to construct any facilities that have been selected in a regional transmission plan for purposes of cost allocation, regardless of whether those facilities are categorized as reliability-driven, economic, for public policy reasons, or for any combination of those categories.[8]

WITG's request constitutes an impermissible collateral attack on the RTPP Order. In the RTPP Order, the Commission explicitly found that the right of participating transmission owners to construct reliability-driven transmission expansions had not been shown to be unjust, unreasonable, or unduly discriminatory or preferential.[9] Order No. 1000 did not reverse that conclusion. Rather, the Commission ordered the elimination of Federal rights of first refusal, prospectively as of October 11, 2012, as a means to improve efficiency through competition. [10] Indeed, the Commission denied rehearing of the RTPP Order *after* the issuance of Order No. 1000.[11]

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[7] Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities,* 136 FERC ¶ 61,051 (2011)

[8] WITG Protest at 7-8.

[9] RTPP Order at P 62.

[10] *See* Order No. 1000 at PP 256, 268.

[11] October 20 Order.

WITG's request is also a collateral attack on Order No. 1000 itself. As noted, Commission ordered the elimination of Federal rights of first refusal *prospectively* as of October 11, 2012. If WITG believed that the right of participating transmission owners to construct reliability-driven transmission expansions should be eliminated prior to that date, WITG's remedy was to seek rehearing on that basis. It did not.

B. WITG'S Argument that Any Degree of Economic Benefits Should Negate the Right of a Participating Transmission Owners to Construct Reliability-Driven Transmission Expansions Is Contrary to the RTPP Order.

The ISO has proposed a ten percent or 0.1:1.0 benefit to cost threshold for determining whether a reliability-driven project is subject to the competitive solicitation process for the right to build. WITG contends that the ISO's compliance filing is inconsistent with the RTPP Order. Although it does not say so explicitly, WITG's argument is that any degree of economic benefit should negate the right of a participating transmission owner to construct reliability-driven transmission projects.[12] It is WITG's argument, not the ISO's proposal, that is inconsistent with the RTPP Order.

As discussed, in the RTPP Order, the Commission explicitly preserved the ISO's tariff provision making participating transmission owners responsible for the construction of reliability-driven transmission expansions. The RTPP Order also left it up to the ISO to submit tariff language indicating how the ISO would identify the existence of additional benefits for purposes of determining whether a needed reliability project also provides economic benefits.[13] The Commission did not prescribe a specific methodology, and declined to find that the right-of-first refusal should be eliminated for

[12] WITG Protest at 5-6.

[13] RTPP Order at P 60.

reliability projects in light of its proposed policies in the transmission NOPR (which led to Order No. 1000).[14] As the Commission is aware, virtually every new reliability project that comes under this tariff provision will produce some de minimis economic benefit by reducing losses. Under WITG's standard, a reliability project costing 100 million dollars that provides one dollar in economic benefits (as the result of loss reductions) would be treated like an economic project. That essentially results in the "tail wagging the dog" in terms of whether the project should be treated as an economic project or a reliability project for the purposes of determining project sponsorship. Adoption of WITG's argument would eviscerate the Commission's decision in the RTPP Order that preserved the rights of participating transmission owners to build reliability projects.

Although WITG contends that the ISO's ten percent proposal is an arbitrary delineation between projects that are subject to the competitive solicitation process and those for which participating transmission owners are responsible, it offers no proposal for a different threshold that would maintain the rights that the Commission preserved. As the ISO noted in its compliance filing, it is necessary to establish a fair and reasonable threshold that accounts for potential margin of error in estimating project benefits and costs and ensures that there are real, rather than trivial, economic benefits from the project. Although it is not possible to determine a precise benefit-to-cost threshold with empirical evidence or studies, the Commission does not require such evidence or studies in determining reasonable thresholds for benefit/cost ratios.

For example, in Order No. 1000, the Commission concluded that a transmission planning region or public utility transmission provider may want to establish a

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[14] *Id.* at 62.

benefit/cost threshold for inclusion of a project in a regional plan (and thus for the elimination of the right of first refusal) to account for uncertainty in the calculation of benefits and costs. The Commission ruled that such a threshold may not include a ratio of benefits to costs that exceeds 1.25 unless the transmission planning region or public utility transmission provider justifies and the Commission approves a greater ratio. The Commission did not base this threshold on any particular empirical evidence, but rather on the need to ensure that the threshold not be so high that facilities with significant positive net benefits are excluded from cost allocation.[15] Here the ISO is proposing a mere 10% benefit –to-cost threshold. This is eminently reasonable under the circumstances.

Moreover, WITG would only look to see if the project provides any conceivable economic benefit; it does not seek to attribute any costs of the project to the economic component of the project. This is inconsistent with how economic projects are evaluated by ISOs and RTOs. Essentially, under WITG's approach, the economic component would be "getting a free ride" off of the reliability component project. It is just and reasonable, and consistent with accepted transmission planning principles, that the economic portion of a project show some semblance of *net* benefits before it is essentially treated as an economic project for purposes of determining who should build the project. 10% is a very low threshold that would effectively ensure net benefits while accounting for the potential margin of error. 10% is far lower than the thresholds that the

[15] Order No. 1000 at P 585. The Commission earlier approved such a ratio for inclusion of an economic project in PJM's regional transmission plan, which PJM explained "hedges against the uncertainty of estimating benefits in the future, while not being so restrictive as to overly limit the economic-based enhancements or expansions that would be eligible for inclusion in [the plan]." *PJM Interconnection,* 123 FERC ¶ 61,051 at P 7 (2008). The Commission has also approved a 1.0 benefit/cost ratio as a criterion for qualification as a multi-value project for cost-allocation under the MISO tariff. *Midwest Indep. Transmission Sys. Operator,* 133 FERC ¶ 61,221 at P 213 (2010).

Commission has approved in other instances for evaluating economic benefits. It reasonably ensures that all projects with real, non-deminimis regional economic benefits will be subject to the competitive solicitation process while preserving the right of participating transmission owners, as confirmed by the Commission, to build reliability projects.

To the extent the Commission is attempting to transform a project that is needed for reliability, but which also provides economic benefits, into a multi-value project, the ISO notes that the Midwest ISO's (MISO) tariff provisions for multi value projects provide for much stricter standards and thresholds than the ISO has proposed for purposes of determining whether a project qualifies as a multi-value project.(MVP) In order to qualify as an MVP project in MISO, a project must meet one of three criteria.[16] Under Criterion 1, an MVP must support documented policy goals and must be shown to enable the transmission system to deliver such energy in a manner that is more reliable or economically efficient than it otherwise would be without the transmission upgrade. Criterion 1 essentially requires that a project first "qualify" as a policy project, and then demonstrate economic and regional benefits.[17] The ISO's reliability plus identified policy benefit tariff language is analogous to this criterion.

Criterion 2 requires that an MVP provide multiple types of economic benefits across multiple pricing zones. The Commission recognized that Criterion 2 ensures that the projects qualifying for MVP status have regional benefits and prevents projects with only localized benefits from qualifying as MVPs.[18] Criterion 2 provides a rigorous

[16] *Midwest Independent Transmission System Operator, Inc.,* 133 FERC ¶61,221 at P 207 (2011).

[17] *Id.* at P 208.

[18] *Id.* at P 213.

qualifying standard because the economic benefits must be demonstrated to be widespread, and a project must provide multiple types of economic benefits, not just one type of benefit such as reduced losses.[19] The Commission found that the requirement of a benefit-cost-ratio of 1.0 (ten times the ISO's proposal) under Criterion 2 was just and reasonable because it ensures that the multiple economic benefits to all users are a least equal to the costs allocated to all users of the 20 years of service that are evaluated.[20]

Criterion 3 requires that an MVP address transmission issue associated with a projected violation of a NERC or Regional Entity reliability standard and a least one economic–based transmission issue that provides economic value across multiple pricing zones.[21] Criterion 3 ensures that projects provide broad regional benefits and economic value across multiple pricing zones and avoids granting regional cost sharing to projects that solve reliability problems, but only provide local economic benefits.[22] Criterion 3 also requires that total financially quantifiable benefits exceed total project costs.[23] The Midwest ISO also imposes a cost threshold for projects under Criterion 3 which ensures that the projects are regional in nature. Notably, the Commission rejected a request that under Criterion 3 benefits should only be compared to the costs of the "economic" portion of the project.[24] The Commission concluded that granting the request would subvert the premise that the total benefits must be greater than the total

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19 *Id.*

20 *Id.* at P 214. The ISO also considers net benefits for evaluating the need for economic upgrades or additions that do not also provide reliability benefits. See tariff section 24.4.6.7.

21 *Id.* at P 215.

22 *Id.*

23 *Id.*

24 *Id.*

costs for a project to receive regional cost sharing and would have the effect of lowering the cost-benefit ratio to something less than 1:1.[25]

WITG's proposal would have a similar subversive effect. As indicated above, under WITG's approach there would not be any comparison between the benefits of a project and the costs of a project. That is neither justifiable, nor consistent with accepted transmission planning practices. There must be some comparison between costs and economic benefits.

Finally, the Commission also approved a voltage cut-off for projects to qualify as MVP projects. The Commission found this was necessary to ensure the materiality of the projects. The ISO's proposed tariff provisions similarly ensure such materiality.[26]

Under the circumstances, the ISO submits that its proposed 10% threshold for purposes of determining whether a reliability project that also provides economic benefits should be open to completive solicitation is more than reasonable, and, indeed, is less strict than the thresholds being applied by the ISOs and RTOs, including the California ISO, in evaluating the need for economic projects.[27] The tariff provisions will ensure that projects provide demonstrable, tangible regional economic benefits in order to be eligible for competitive solicitation.

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[25] *Id.*

[26] *Id.* P 219.

[27] The ISO understands that, under MISO's existing agreements and tariff, existing transmission owners have the obligation to build all needed transmission facilities, including those that meet the MVP criteria for economic projects. FERC did not change those provision in it MVP Order.

IV. CONCLUSION

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

Respectfully submitted,

<u>/s/ Anthony J. Ivancovich</u>

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for these proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California on this 4th day of January, 2012.

/s/ Anna Pascuzzo

Anna Pascuzzo