

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

**California Independent System
Operator Corporation**

Docket No. ER13-103-000

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO THE MOTIONS TO LODGE OF PATTERN TRANSMISSION LLC
AND TRANS BAY CABLE LLC**

On December 23 and 24, 2013, respectively, Pattern Transmission LLC (“Pattern”) and Trans Bay Cable LLC (“TBC”) submitted “answers” to the December 10, 2013 motion to lodge filed by LS Power Transmission LLC and LSP Transmission Holdings LLC (collectively, “LS Power”) . While styled as “answers,” these pleadings are essentially additional motions to lodge the same document that was the subject of LS Power’s motion: the California Independent System Operator Corporation’s (“ISO’s”) Gates-Gregg Project Sponsor Selection Report (“Selection Report”). The ISO hereby submits its answer to these additional motions to lodge and requests that the motions be denied.¹

I. Issues Raised in the Additional Motions to Lodge are Outside the Scope of this Compliance Filing.

Pattern and TBC, similar to LS Power, challenge both the substance of the tariff comparative selection criteria and the manner in which the ISO applied the criteria in the

¹ The ISO files this answer pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.213. To the extent that the Commission disagrees with the ISO’s characterization of these filings, the ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the answers filed by Pattern and Trans Bay. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in the case. *See, e.g., Equitrans, L.P.*, 134 FERC ¶ 61,250, at P 6 (2011); *California Independent System Operator Corp.*, 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Services, Inc.*, 124 FERC ¶ 61,011, at P 20 (2008).

Selection Report.² As discussed in the ISO's answer to LS Power's motion to lodge, filed December 26, 2013, neither of these topics is at issue in this proceeding. Indeed, arguments suggesting that the selection criteria should be modified constitute a collateral attack on the Commission's April 18, 2013 order that approved the comparative evaluation process and criteria, subject to limited and specific tariff modifications currently pending Commission approval.³

Pattern does comment on the development and identification of particularly key selection criteria, one of the tariff modifications that is at issue in the ISO's supplemental compliance filing. However, while Pattern ostensibly urges the Commission to "require the California ISO to clarify in the tariff how key selection factors are identified and communicated"—which is exactly what the ISO has done in its supplemental compliance filing—Pattern's real complaint concerns the manner in which the ISO considered the specific key selection criteria identified for the Gates-Gregg project. This argument, along with other Selection Report criticisms, is not appropriate for consideration and determination in this proceeding. To the extent that participants in the Gates-Gregg selection process believe that the ISO did not correctly consider the information provided in their applications or that the key selection criteria were not appropriately considered, there are other avenues by which to pursue these matters. Pattern's criticism of the Gates-Gregg solicitation process is particularly surprising in light of its statement to the trade press, when the Selection Report was issued, that "the

² Pattern answer at 2: "[T]he tariff provisions must be further clarified so that the ultimate selection decision is based on a transparent and understandable determination by the California ISO." TBC answer at 1-2: "The Report demonstrates that the CAISO's actual application of the ten selection criteria has not resulted- and is unlikely to result in the future- in a fair and transparent competitive solicitation process."

³ LS Power answer at 4-5.

CAISO conducted a fair process and, along with Mid American and PG&E, should be congratulated.”⁴

Furthermore, to the extent that Pattern is concerned about how the ISO develops and identifies key selection criteria, the Selection Report is not relevant to the ISO’s supplemental compliance filing because it applied the tariff criteria in effect prior to the ISO’s initial Order No. 1000 compliance filing (*i.e.* prior to October 1, 2013).⁵ In response to the April 18 Order compliance directives, the ISO added clarifying language to Section 24.5.1 in its supplemental compliance filing that describes the process the ISO proposes to use in the future for identifying and posting the key selection factors under the proposed tariff provisions that will become effective upon acceptance by the Commission.

II. The Selection Report Does Not Provide Any Basis for the Fundamental Concerns Raised by Pattern and TBC.

As the basis for its motion to lodge, TBC raises very general concerns regarding the Selection Report that the ISO’s “analysis and conclusions . . . are unduly discriminatory in favor of the incumbent utility,” while “completely ignoring factors that would provide direct and valuable benefits to ratepayers.”⁶ Pattern asserts that the ISO’s analysis “provides no assurance that the project sponsor selected is best able to develop, finance, construct, own and operate the identified transmission solution in the

⁴ Statement of Dave Parquet, Pattern’s head of transmission, to SNL <http://www.snl.com/InteractiveX/article.aspx?CDID=A-25748547-10795&ID=25748547&Printable=1&KPLT=4>

⁵ In approving the ISO’s Order No. 1000 compliance filing, the Commission confirmed that the ISO was to complete the 2012/2013 planning cycle using the previous tariff provisions. *Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,057 at P 28 (2013) (“April 18 Order”).

⁶ TBC answer at 6.

most efficient or cost effective manner.”⁷ These statements are similar to the basic premise asserted by LS Power that the ISO’s comparative evaluation, using the tariff selection factors, will not produce a cost effective and efficient project.

As with LS Power’s arguments, these assertions incorrectly assume that “cost effective and efficient” means “least cost.” As the ISO pointed out in the LS Power answer, this conclusion is not supported by the April 18 Order, in which the Commission agreed that cost alone is not determinative of cost effectiveness.⁸ Indeed, in approving the ISO’s revised transmission planning process, under which the ISO prepared the Selection Report, the Commission expressly agreed with the ISO’s basic concern that in the absence of a binding cost cap or cost containment capability, the ISO cannot rely on cost estimates alone because these are subject to manipulation and the ISO does not have authority to enforce compliance with project cost estimates.⁹ The Commission’s direction in Order 1000 that the ISO develop “cost effective and efficient” transmission solutions is completely consistent with that decision. The plain meaning of these terms simply does not support the conclusion that cost effective and efficient always means “lowest cost.” Rather, these determinations require examination of the likely outcome as well. A more expensive project may be more cost effective or efficient because it provides additional benefits, such as reliability improvements or reduced maintenance requirements.

Pattern also has mischaracterized the ISO’s explanation, in its August 20, 2013 transmittal letter, regarding the development of the most cost effective and efficient

⁷ Pattern answer at 5. Pattern admits that its concern goes to the “quality” of the ISO’s analysis and not to the ability of PG&E/MATS to successfully construct the project.

⁸ LS Power answer at 7.

⁹ See, e.g. *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,224 at ¶224 (2010)

project in Phase 2 of the transmission planning process.¹⁰ Specifically, Pattern incorrectly attributes to the ISO the statement that “the ‘most efficient or cost-effective’ standard applies only during Phase 2” and then disagrees with that inaccurate attribution. However, contrary to Pattern’s statement, the ISO in fact pointed out in the transmittal letter that the standard in Phase 3 for selecting a project sponsor capable of building and operating the project in a cost effective and efficient manner takes into account far more (and different) considerations than simply looking at the more efficient or cost effective project solution.¹¹ As the ISO noted in the LS Power answer, the Commission approved tariff language clarifying that precise manner in which the ISO would conduct the comparative evaluation to select the project sponsor “best able to design, finance, license, construct, maintain and operate the particular transmission facility in a cost-effective, efficient, prudent, reliable and capable manner over the lifetime of the facility...”¹² Pattern misses the point of this tariff language by glossing over the difference between the transmission solution standard used during Phase 2 to identify the most cost-effective and efficient project and the project *sponsor* selection standard used during Phase 3 to determine the project sponsor.

Neither Pattern nor TBC has shown that the ISO’s comparative selection criteria must be based on a fundamental premise that, in the absence of a binding cost cap or cost containment mechanism, the ISO must weigh the project sponsor’s non-binding cost estimates and proposals more heavily than the other selection criteria specified in the ISO’s tariff, such as the technical, financial, and physical capabilities of a project

¹⁰ Pattern answer at 7, citing the ISO’s August 20, 2013, transmittal letter at 12.

¹¹ Transmittal letter at 13.

¹² LS Power answer at 8.

sponsor and its team. Thus, the Selection Report has no relevance to the issues inappropriately raised by these parties and by LS Power.

III. Pattern's and TBC's Criticism of Selection Report Details is Unfounded.

This proceeding on the ISO's supplemental compliance filing is not the appropriate procedural vehicle for aggrieved parties to challenge the findings and analysis set forth in the Selection Report.¹³ Nonetheless, it should be noted that the alleged report "deficiencies" asserted by TBC and Pattern are not well-founded and are focused on a few selected portions of the report, while ignoring others. TBC and Pattern make mostly conclusory assertions that are belied by a plain reading of the Selection Report. Furthermore, to the extent that these parties have painted the ISO's selection process as "opaque" and asserted that the analysis was difficult to understand, the ISO notes that these parties requested confidential treatment for much, and in some cases all, of the information provided in their applications, thus limiting the amount of specific data (particularly financial data) that could be included in a public report.¹⁴

TBC claims, without citation to the report, that the ISO focused on factors of "minimal importance," such as the PG&E/MAT existing rights of way, while "ignoring" factors that would provide "direct" ratepayer benefits.¹⁵ TBC also states that the ISO evaluated project sponsor experience "inconsistently" and did not give value to "rate proposal pledges" that would have provided ratepayer benefits. These statements are

¹³ The ISO certainly appreciates stakeholder feedback on the Selection Report, which was the first major transmission solution subject to the ISO's competitive solicitation process, and will carefully consider suggested improvements to the form and content for pending and upcoming solicitations.

¹⁴ This was explained on page 18 of the Selection Report.

¹⁵ TBC answer at 6.

vague and unfounded. For example, with respect to existing rights of way, the ISO quite specifically described potential ratepayer cost savings expected to accrue from lower acquisition costs and fewer siting approvals.¹⁶ And, although TBC contends that the ISO evaluated project sponsor experience inconsistently,¹⁷ it cites no examples of any alleged inconsistency, and the ISO is unaware of any inconsistency in its treatment.

Pattern raised more specific concerns about the Selection Report, but these suffer from the same infirmities. For example, Pattern complains that the ISO failed to consider the creditworthiness of the City of Pittsburg (even though this information was specifically cited in the report)¹⁸, and that the ISO also failed to consider the financial capability of Riverstone Holdings LLC (Riverstone) to provide Pattern with equity funding.¹⁹ However, Pattern provided no financial information about Riverstone with its application and the information that was provided indicated that Riverstone had made no binding commitment to fund the project, both of which provided the ISO no basis upon which to take Riverstone's financial capacity into account.

Pattern's arguments about how the ISO applied the criterion in tariff section 24.5.2.4(j) — demonstrated cost containment measures — fail to acknowledge all aspects of the ISO's evaluation and sidestep the important distinction between a binding cost cap and proposed cost containment measures.²⁰ Because both PG&E/MAT and Pattern proposed financial cost containment measures but did not agree to a binding cost cap, their proposals were evaluated based on thoroughness and details about

¹⁶ Selection Report at 8, see also IID's answer at 3-4

¹⁷ TBC Answer at 6.

¹⁸ Selection Report at 19.

¹⁹ Pattern answer at 8-9.

²⁰ Pattern answer at 14-16.

other cost containment strategies.²¹ Pattern has provided no support for its argument that the ISO “significantly discounted” its proposal for return on equity adjustments in comparison to PG&E/MAT’s agreement to forego an incentive return on equity, let alone any support for the proposition that this aspect of its proposal is more important than the numerous aspects of cost containment that the ISO evaluated in the Selection Report.

Furthermore, Pattern’s speculation that the ISO “misunderstood” that its equity adjustment proposal was “binding” is also not supported by the analysis in the Selection Report, nor by the statements made by Pattern in its application that it would be willing “to discuss with the ISO” cost containment measures and a cost cap, and that its tiered equity proposal was to serve as the “basis for further discussion with the ISO.” Based on these statements, the ISO concluded that Pattern’s financial cost containment measures were not binding commitments but future discussion points.

While these examples demonstrate the fallacy in Pattern and TBC’s arguments, in any event, the details of how the ISO arrived at its determination of the approved project sponsor for the Gates-Gregg project are not at issue in this docket. These arguments are thus irrelevant as support for the motion to lodge, which should be denied.

IV. TBC’s Motion to Intervene Out-of-Time Should be Denied.

Furthermore, as part of its “answer,” TBC also seeks leave to intervene out of time in this tariff compliance filing. This request should be denied because the Selection Report should not be included as part of the evidentiary record and the motion to lodge should be denied. Because TBC has not provided any other basis for

²¹ Selection Report at 46-47.

intervening so long after the period for intervention and protest has passed, there is no valid reason to grant this untimely request for party status.

V. Conclusion

Like LS Power, Pattern and TBC have been unable to show that the Selection Report relates to, or is dispositive of, any of the tariff modification proposals under consideration in this proceeding. The motion to lodge, and TBC's motion for intervention out-of-time, should be denied.

Respectfully submitted,

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Dated: January 7, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service lists in 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 Folsom, California this 7th day of January 2014.

Is/ Anna Pascuzzo
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