

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

Luna Valley Solar I, LLC)	
)	
v.)	Docket No. EL21-70-000
)	
Pacific Gas and Electric Co.)	
and the California Independent)	
System Operator Corp.)	

**ANSWER AND MOTION TO DISMISS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”) submits this answer and motion to dismiss in response to the Luna Valley Solar I, LLC (“Luna”) complaint, filed April 30, 2021 (“Complaint”).¹

I. Executive Summary

The Commission should dismiss Luna’s Complaint. Luna makes a variety of allegations directed entirely against Pacific Gas and Electric Company (“PG&E”) seeking to convince the Commission to exempt Luna from complying with the CAISO tariff and Large Generator Interconnection Agreement (“LGIA”) requirement to post interconnection financial security. Luna’s allegations are inaccurate, unsupported, and irrelevant. The CAISO tariff requires interconnection customers to post their interconnection financial security no later

¹ The CAISO submits its answer 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, and the Notice of Complaint issued in this proceeding on May 4, 2021. The CAISO submits its motion to dismiss pursuant to Rule 212 of the Rules of Practice and Procedure, 18 C.F.R. § 385.212.

than the start of construction activities because the interconnection customer directly finances the construction of the facilities the transmission owner must construct to keep interconnection projects on schedule.² Interconnection financial security also demonstrates that the interconnection customer is commercially viable and committed to progressing toward commercial operation.³

Additionally, Luna falls far short of carrying its burden of proof under Section 206 of the Federal Power Act to show the CAISO and PG&E have acted in a manner that is unjust, unreasonable, or unduly discriminatory or preferential. The Commission should reject the Complaint in its entirety, or, at a minimum, dismiss the Complaint as to the CAISO. Luna, in fact, admits the “CAISO is named as a respondent herein solely because the complaint involves an LGIA to which the CAISO is a party and aspects of the CAISO’s Open Access Transmission Tariff.”⁴ Yet Luna identifies neither an unjust tariff requirement, nor a tariff requirement the CAISO has violated. For these reasons, Commission precedent requires the Commission deny or dismiss the Complaint.

II. Answer

A. The Complaint conflates issues and ignores that Luna shares its upgrades with other interconnection customers

Luna’s principal argument is that “PG&E’s Third Posting Notice is unreasonable because [PG&E] has accelerated Luna’s security posting schedule at the same time PG&E has itself announced significant delays in Luna’s

² The transmission owner reimburses the interconnection customer for network upgrades upon commercial operation.

³ See *Calif. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124 at P 41 (2009).

⁴ Complaint at 1 n. 3.

assigned [Local Delivery Network Upgrade].”⁵ This allegation creates the impression that Luna’s partial third posting is tied directly to a delay in the Local Delivery Network Upgrades. This is inaccurate. Like most interconnection projects, Luna requires several network upgrades to interconnect safely, reliably, and with sufficient deliverability. As Luna admits elsewhere, PG&E quite reasonably agreed to split up Luna’s third posting into discrete segments as PG&E begins engineering, procurement, and construction of the various network upgrades and interconnection facilities.⁶ Although the CAISO tariff permits PG&E to require the entirety of the third posting at this time,⁷ PG&E only required Luna to post a fraction of its third posting. The fact that one or more facilities may face delays is irrelevant to Luna’s obligation under the CAISO tariff and the LGIA to submit its third posting at the commencement of construction generally. Third postings are tied to the start of construction activities; not the end of construction.

Luna argues that it “has tried in good faith to find out from PG&E the timing and basis for this premature security demand,” however, as noted above, the security demand is not premature, and Luna’s Complaint contains no evidence of any such attempt.⁸ Instead, Luna merely asserts that it “has received no substantive information or willingness to work with Luna to develop

⁵ Complaint at 12.

⁶ Complaint at 4 *et seq.* Section 11.3.2.3 of Appendix DD to the CAISO tariff allows the transmission owner and CAISO to split up the third posting where discretely phased construction schedules would enable doing so; however, it does not *require* them to do so.

⁷ See Section 11.3.2 of Appendix DD to the CAISO tariff.

⁸ Commission regulations require the Complaint to “[i]nclude all documents that support the facts in the complaint.” 18 C.F.R. § 385.206(b)(8) (2021).

appropriate milestone dates.”⁹ Belying this assertion, however, Luna’s complaint cites two different meetings among the parties to discuss the construction schedule and posting requirements.¹⁰ In fact, it appears Luna means that it has not received information to its own satisfaction, which would prove elusive given Luna’s election to suspend its interconnection obligations entirely two weeks before filing its Complaint—a relevant fact Luna has omitted.

Luna also omits that it shares cost responsibility for network upgrades with several other interconnection customers. Unlike facilities required for a single interconnection customer, exercising suspension provisions in the LGIA does not relieve an interconnection customer of its financing obligation for facilities other interconnection customers require for interconnection.¹¹ Although in suspension, Luna shares the cost responsibility for network upgrades with several other interconnection customers. Some of these interconnection customers already have achieved commercial operation and require the shared upgrades to achieve deliverability. Other interconnection customers have imminent commercial operation dates. Indeed, all of the other interconnection customers that share cost responsibility for these upgrades have posted their interconnection financial security postings without protest, as required by the CAISO tariff and their GIAs.

⁹ Complaint at 13.

¹⁰ *Id.*

¹¹ Article 5.16 of the LGIA (“The Interconnection Customer reserves the right, upon written notice to the Participating TO and the CAISO, to suspend at any time all work associated with the construction and installation of the Participating TO’s Interconnection Facilities, Network Upgrades, and/or Distribution Upgrades required under this LGIA, *other than Network Upgrades identified in the Phase II Interconnection Study as common to multiple generating facilities*” (emphasis added)).

B. Requiring the third posting at this time is consistent with the CAISO tariff and the LGIA

Luna ultimately acknowledges that PG&E's commencement of construction activities may relate to the engineering, procurement, and construction of other facilities besides the delayed Local Delivery Network Upgrade, stating, "PG&E may not manage its security posting process on the basis of the specific upgrades assigned to each customer, but instead based on procurement on a more generalized level in order to purportedly gain efficiencies for PG&E, e.g., equipment orders covering multiple needs."¹² Luna then argues that "[n]otwithstanding the merits of that practice, PG&E cannot depart from the terms of the CAISO Tariff to saddle Luna with security on an advanced schedule inconsistent with the requirements of the Tariff."¹³ Yet, Luna neither explains how PG&E's engineering and procurement is inconsistent with the CAISO tariff nor how it constitutes "an advanced schedule."¹⁴ The CAISO is unaware of any way in which PG&E's construction activities are inconsistent with the CAISO tariff. To the contrary, PG&E seems to be working to keep a complex construction schedule on track for multiple upgrades for multiple interconnection customers. And PG&E quite reasonably has divided Luna's third posting across the various phases of constructing the network upgrades even though the CAISO tariff and LGIA permit PG&E to require the entire third posting at the start of construction.¹⁵

¹² Complaint at 15.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Section 11.3.2 of Appendix DD to the CAISO tariff.

Luna argues that PG&E cannot require the third posting until the commencement of “Construction Activities.”¹⁶ This is inaccurate. Although this is the general practice, the tariff actually requires the third posting “[a]fter the second posting for a Queue Cluster has been made but *no later* than the start of Construction Activities.”¹⁷ The “commencement of Construction Activities” marks when all of the interconnection customer’s third posting is non-refundable if the interconnection customer withdraws; not when the transmission owner can require the third posting.¹⁸

Luna’s argument is further flawed in its misinterpretation of “Construction Activities,” which the CAISO tariff defines as “irrevocable financial commitments for the purchase of major electrical equipment or land for Participating TO’s Interconnection Facilities or Network Upgrades assigned to the Interconnection Customer that occur after receipt of all appropriate governmental approvals needed.”¹⁹ Luna emphasizes the “after” in its Complaint, but ignores the term “appropriate.” The CAISO tariff does not require every possible approval for every facility for every interconnection customer that shares upgrades. If it did, construction likely could never commence for any project. The tariff simply requires the “appropriate” governmental approvals to commence construction activities on a particular network upgrade, which PG&E has or otherwise does not require. The Complaint asserts that “[t]o Luna’s knowledge, PG&E has not

¹⁶ Complaint at 10 *et seq.*

¹⁷ Section 11.3.2 of Appendix DD to the CAISO tariff (emphasis added).

¹⁸ Section 11.4.2.4 of Appendix DD to the CAISO tariff.

¹⁹ “Construction Activities,” Appendix A to the CAISO tariff.

received all the required governmental approvals,” but Luna again fails to support this assertion in any way.

C. Luna’s first and second postings are irrelevant to its compliance with the third posting requirement

Luna argues its first and second interconnection financial security postings total \$6.97 million, sufficient to cover what PG&E may incur in construction costs this year.²⁰ According to Luna, it should not have to submit its third posting because its first and second postings are sufficient for now. This argument is irrelevant and should be disregarded by the Commission. As explained above and in the Complaint itself, the CAISO tariff requires Luna to submit its third posting no later than the start of construction.²¹ Because second postings cover 30 percent of the interconnection customer’s total financing obligation,²² they always will be sufficient to cover a portion of initial construction activities for any interconnection customer.²³ Accordingly, there is no tariff exception to the third posting requirement based on the previous postings. As the Commission has recognized, interconnection financial security postings have multiple functions beyond merely financing the construction of the interconnection customer’s facilities.²⁴ They demonstrate that the interconnection customer is commercially viable and committed to progressing in queue. They also help protect the transmission owner against the risk of interconnection customers’ withdrawing

²⁰ Complaint at 11.

²¹ Section 11.3.2 of Appendix DD to the CAISO tariff; Complaint at 10.

²² Section 11.3 of Appendix DD to the CAISO tariff.

²³ A 30 percent portion, to be exact.

²⁴ See *Calif. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124 at P 41 (2009).

and saddling the transmission owner with the costs of network upgrades still required for other interconnection customers. Because other interconnection customers are protected by firm cost caps in the CAISO, they do not inherit “cascading costs” when another interconnection customer withdraws.²⁵ Instead, the transmission owner uses the non-refundable portion of interconnection financial security from withdrawn interconnection customers to offset the financing costs of still-needed upgrades.²⁶ In any case, Luna’s assertion that its postings to date have been sufficient for PG&E’s present costs contravenes the CAISO tariff, and should be disregarded.

D. Luna’s allegation regarding its posting schedules and cost responsibility is irrelevant

Luna also argues its current posting schedule exceeds its maximum cost responsibility, and that “PG&E simply stated that they would adjust” the schedule “at some undefined time later.”²⁷ Again, Luna fails to include any email, affidavit, or other evidence to support this allegation, which is disingenuous because Luna omitted any mention of the fact that it suspended its project just two weeks prior to filing its Complaint. Accordingly, the CAISO and PG&E must evaluate Luna’s project milestones, shared cost responsibilities, and ability to come out of suspension before it can amend the LGIA and posting schedule. Luna knows it is impractical to do so before then. Moreover, Luna effectively admits that neither PG&E nor the CAISO would require actual third postings to exceed

²⁵ Section 14.2.2 of Appendix DD to the CAISO tariff.

²⁶ Section 7.6 of Appendix DD to the CAISO tariff.

²⁷ Complaint at 12.

Luna's maximum cost responsibility, which would violate the CAISO tariff.²⁸ In any case, PG&E has not required Luna to submit its entire third posting at this time, nor does the current posting requirement approach Luna's maximum cost responsibility. The Commission should disregard this allegation entirely.

III. Motion to Dismiss as to the CAISO

The Commission's Rules of Practice and Procedure require any complaint to satisfy certain minimum requirements. Specifically, Rule 203 requires all pleadings contain the "relevant facts" and the "position taken by the participant . . . and the basis in fact and law for such position."²⁹ Similarly, Rule 206 requires a complainant to "[c]learly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements [and] [e]xplain how the action or inaction violates applicable statutory standards or regulatory requirements."³⁰ A complainant must state a legally recognizable claim that the Commission has the statutory or regulatory power to address.³¹

The Commission previously has dismissed complaints that fail to meet these minimum requirements.³² The Commission should deny this Complaint in its entirety; however, at a minimum the Commission should dismiss the CAISO as a party. As was true of prior complaints the Commission has dismissed,

²⁸ The Complaint says PG&E declared its intention to modify the postings consistent with the cost cap. Complaint at 11.

²⁹ 18 C.F.R. §§ 385.203(a)(6)-(7).

³⁰ 18 C.F.R. §§ 385.206(b)(1)-(2).

³¹ See, e.g., *Californians for Renewable Energy, Inc. v. Cal. Indep. Sys. Operator Corp.*, 117 FERC ¶ 61,072, at PP 8-11 (2006).

³² See, e.g., *Californians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co., et al.*, 134 FERC ¶ 61,060, at PP 54-64, *reh'g denied*, 134 FERC ¶ 61,207, at PP 7-10 (2011); *Californians for Renewable Energy, Inc. v. Cal. Pub. Util. Comm'n, et al.*, 129 FERC ¶ 61,075, at PP 11-15 (2009).

Luna's Complaint neither alleges any illegal action by the CAISO nor any unjust and unreasonable CAISO tariff provision, and thus "fails to clearly and with specificity articulate the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements."³³ Consequently, "[t]he Commission is unable to discern the specific violations of the FPA [and other statutes] that are alleged."³⁴ For these reasons, the Commission should dismiss the Complaint as it applies to the CAISO.

IV. Conclusion

For the foregoing reasons, the Commission should dismiss the Complaint submitted in this proceeding or deny the Complaint in its entirety.

Respectfully submitted,

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*Designated for service and communications

³³ *CAifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co., et al.*, 142 FERC ¶ 61,143, at P 18 (2013).

³⁴ *CAifornians for Renewable Energy, Inc. v. Pac. Gas & Elec. Co., et al.*, 142 FERC ¶ 61,143, at P 18 (2013).

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 proceeding, 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 20th day of May, 2021.

Is/ Anna Pascuzzo
Anna Pascuzzo