

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

Meridian Energy USA, Inc.)	
)	
v.)	Docket No. ER13-1333-000
)	
California Independent System Operator Corporation)	
)	

**MOTION TO FILE ANSWER, ANSWER, AND
MOTION TO ESTABLISH STANDARD COMMENT PERIOD OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) files this motion to submit an answer, and files its answer, to the motion submitted by Meridian Energy USA, Inc. (“Meridian”) in its this proceeding on April 24, 2013 requesting a stay of its upcoming obligation to post interconnection financial security.¹ Meridian fails to satisfy the Commission’s standard for granting a motion for stay. Meridian will not suffer irreparable injury without a stay, issuing a stay would cause substantial harm, and granting a stay would not be in the public interest.

The ISO also requests that the Commission reject Meridian’s request for an expedited comment date regarding its request for waiver of the ISO’s interconnection financial security posting obligations. There is no need for an expedited comment period because the financial security that Meridian posts can always be refunded in full if the Commission determines that Meridian is entitled

¹ The ISO files this motion to submit an answer one day out of time pursuant to 18 C.F.R. § 385.212, and files its answer pursuant to 18 C.F.R. § 385.213. Capitalized terms not otherwise defined in this answer have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO tariff.

to relief. Moreover, due to the long and complicated factual history surrounding this issue, granting a shortened comment period would significantly prejudice the ability of parties, including the ISO, to adequately evaluate and respond to Meridian's request. Therefore, the ISO respectfully requests that the Commission establish a normal three-week period for filing answers to Meridian's request for limited tariff waiver.

Good cause exists for the Commission to accept this answer one day out of time. Meridian never served the ISO with its April 24 filing and this delayed the ISO's ability to respond to the shortened comment period. Also, this answer will assist the Commission in its decision-making process and accepting it will not cause undue prejudice or delay.²

I. Background

On April 24, 2013, Meridian filed in this proceeding public and confidential versions of a request for waiver of the ISO tariff. Specifically, Meridian requests that the requirement to make its second posting of interconnection financial security relating to the deliverability analysis for three generation projects which are being developed by Meridian³ be deferred until 90 days after Meridian receives cost information from its local utility that Meridian states is material to evaluating the total cost exposure of the projects. Each of the projects is subject

² The ISO reserves its rights to file separate comments addressing the merits of Meridian's request for waiver of the ISO's tariff.

³ The three projects are Jacob Canal Solar Farm (queue # 372), Lauren West Solar Farm (queue # 470), and Laurel East Solar Farm (queue # 471), which are being developed by Meridian's wholly owned subsidiaries Jacob Canal Solar Farm, LLC, Lauren West Solar Farm, LLC, and Laurel East Solar Farm, LLC, respectively.

to an existing Small Generator Interconnection Agreement (“SGIA”). Meridian asks that the Commission grant a shortened period of ten days to file answers to Meridian’s request for limited waiver.

Meridian’s April 24 filing also included a motion for stay of Meridian’s obligation under the ISO tariff to make its second posting of interconnection financial security, which is due on May 4, 2013. Meridian requested that the Commission provide a shortened comment period of five days to file answers to the motion for stay and issue an order on the motion for stay by the close of business on May 3, 2013. Meridian did not serve the ISO with a copy of its April 24 filing.

On April 25, 2013, the Commission issued a notice of filing stating that answers to Meridian’s motion for stay should be filed by April 29, 2013 and that answers to Meridian’s request for limited tariff waiver should be filed by May 6, 2013.

II. Answer

A. Good Cause Exists for the Commission to Accept this Answer

Good cause exists for the Commission to accept this answer to Meridian’s motion for stay. Meridian never served the ISO with either the public or the confidential version of its April 24 filing. Although it is unclear whether the Commission’s regulations explicitly require the service of tariff waiver requests in every case, Meridian should have served the ISO because it is the ISO whose

tariff is the subject of Meridian's waiver request.⁴ At a minimum, Meridian's failure to serve the ISO justifies accepting this answer one day out of time.

Further, good cause exists to accept this answer because it will provide information useful to the Commission, will ensure a complete record in the case, and will assist the Commission in the decision-making process.⁵ The ISO has a direct interest in the proceeding and Commission acceptance of the answer will not cause any undue prejudice or delay.⁶ In addition, acceptance of this answer will not adversely affect the Commission's decision-making process. Meridian requested that the Commission issue an order on its motion for stay by the close of business on May 3, 2013. Acceptance of the answer will in no way hinder the Commission's ability to issue an order on the motion for stay by May 3.

B. The Commission Should Deny Meridian's Motion for Stay

The Commission has explained that its standard for granting a stay is whether justice so requires.⁷ Under this standard, the Commission generally considers whether the moving party will suffer irreparable injury without a stay, whether issuance of a stay will substantially harm other parties, and whether a

⁴ Because Meridian is requesting relief from a requirement of the ISO's Commission-approved tariff, Meridian's request is in all pertinent respects identical to a complaint requesting modification of an existing tariff rule under Section 206 of the Federal Power Act, which the Commission's regulations require to be served on the subject of the complaint. 18 C.F.R. § 385.206(c).

⁵ See, e.g., *In Re Edison Mission*, 125 FERC ¶ 61,020, at P 26 (2008); *Transcontinental Gas Pipe Line Co., LLC*, 136 FERC ¶ 61,009, at P 11 (2011).

⁶ See, e.g., *TC Ravenswood, LLC*, 136 FERC ¶ 61,213, at P 6 (2011); *Broadwater Energy, LLC*, 140 FERC ¶ 61,009, at P 4 n.5 (2012).

⁷ 5 U.S.C. § 705 (2006); *Duke Energy Carolinas*, 124 FERC ¶ 61,254, at P 8 (2008).

stay is in the public interest.⁸ The most important of these factors is a showing that the movant will be irreparably injured without a stay.⁹ If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, the Commission need not examine the other factors.¹⁰ As explained below, Meridian fails to satisfy any of the three factors.

First, Meridian fails to show that it will be irreparably injured absent a stay. Meridian argues that it will have to choose between (a) withdrawing the projects from the interconnection queue, leading to forfeiture of financial security under the withdrawal provisions of Appendix Y of the ISO tariff, or (b) posting a second financial security deposit, which would increase the total security subject to forfeiture under the withdrawal provisions of Appendix Y.¹¹

Meridian's options are not as limited as it suggests. The financial security required to be posted by Meridian by May 4 relates solely to network upgrades associated with the request for full capacity deliverability status that Meridian made after the three projects entered into SGAs on an energy-only basis.¹² As such, even if Meridian was to fail to make the required posting, the ISO would not terminate Meridian's interconnection requests, but rather, simply remove the projects' current eligibility to receive full capacity deliverability status.

⁸ *Public Utility District No. 1 of Pend Oreille County*, 113 FERC ¶ 61,166, at P 6 (2005).

⁹ *Pacific Gas and Electric Co.*, 141 FERC ¶ 61,126, at P 25 (2012).

¹⁰ *TGP Development Company, LLC v. California Independent System Operator Corp.*, 135 FERC ¶ 61,083, at P 36 (2011) ("*TGP*").

¹¹ Meridian at 17-18.

¹² See ISO tariff Appendix Y, Section 8.1 (setting forth one-time full capacity deliverability option).

Regardless, the Commission has previously ruled that this type of choice does not result in an irreparable injury for purposes of a motion to stay. In a proceeding involving a complaint filed by TGP Development Company, TGP alleged that the Phase II interconnection study results provided by the ISO for four TGP projects were not “final” and therefore that publication of the study results did not trigger the 180-day second financial security posting requirement set forth in the ISO tariff. TGP requested that the Commission grant a stay of its obligation to post financial security until further Commission action.¹³ The Commission concluded that no irreparable harm arose from TGP “having to choose between posting a second financial security installment and withdrawing from the interconnection queue prior to the 180-day deadline in the CAISO’s tariff.”¹⁴ Instead, the Commission found that “this financial decision is a purely economic decision” and that “the potential for economic loss does not constitute irreparable harm for purposes of justifying a stay.”¹⁵

As in *TGP*, a choice for Meridian between posting a second financial security deposit and withdrawing from the queue is a purely economic decision that does not constitute irreparable harm for purposes of a stay.¹⁶ This is especially true because the Commission could direct in this proceeding that

¹³ *TGP* at P 1.

¹⁴ *Id.* at P 37.

¹⁵ *Id.*

¹⁶ As the ISO will explain in its answer to Meridian’s request for limited tariff waiver, Meridian has other options beyond this binary choice. Meridian could choose to have the Projects studied as energy-only without withdrawing from the queue.

Meridian’s posting of the second financial security deposit is fully refundable if the Commission grants Meridian’s request for limited tariff waiver.

It is appropriate for the Commission to deny Meridian’s motion for stay based solely on the lack of irreparable harm. In addition, issuance of a stay would substantially harm another party – Pacific Gas and Electric Company (“PG&E”), which is the affected participating transmission owner. As the Commission explained in *TGP*, “[o]ne purpose of the requirement that interconnection customers post interconnection financial security is to protect existing PTOs [participating transmission owners] . . . in case of default by an interconnection customer.”¹⁷ The Commission found that granting a stay of the requirement to post the second financial security installment would inappropriately shift the financial risk associated with TGP’s projects to the participating transmission owner, thus possibly causing it financial harm.¹⁸ The Commission should find that the same is true for Meridian’s motion for stay of the financial posting obligation. Granting this stay would disrupt the process for posting interconnection financial security set forth in Appendix Y to the ISO tariff for no good reason and undermine the ability of the ISO to administer its tariff.¹⁹

¹⁷ *TGP* at P 38.

¹⁸ *Id.*

¹⁹ See *SunPower Corporation*, 142 FERC ¶ 61,251, at P 25 (2013) (agreeing that granting a request for waiver of the deadline for withdrawing from the ISO’s generator downsizing process would “undermine the ability of CAISO to fairly and efficiently administer its tariff and conduct the interconnection process on a nondiscriminatory basis”).

Lastly, granting Meridian a stay of the financial security posting obligation would not be in the public interest. As the Commission stated in *TGP*, “allowing interconnection customers to seek stay to delay the financial security posting requirements would increase the costs associated with and inject greater uncertainty into the interconnection process.”²⁰

C. The Commission Should Establish a Normal Three-Week Period for Answers to Meridian’s Request for Tariff Waiver

There is no exigent need for the Commission to issue an order in this proceeding. The only matter at stake in this proceeding is the money that Meridian is required to post as financial security. As discussed above, the Commission could direct that Meridian’s posting of the second financial security deposit is fully refundable if the Commission grants Meridian’s request for limited tariff waiver.

Because there is no particular urgency associated with Meridian’s request for tariff waiver, the ISO submits that there is likewise no need for comments on Meridian’s April 24 filing to be due on an expedited schedule, as was proposed in Meridian’s April 24 filing and reflected in the Commission’s April 25 notice of filing. In addition, the issues raised by Meridian involve a long and complicated factual history, which require careful investigation and consideration by the ISO. Therefore, granting a shortened comment period would significantly prejudice the ISO’s ability to adequately evaluate and respond to Meridian’s request. Under these circumstances, giving the ISO and other parties the standard amount of time to file their comments will best assist the Commission in determining how to

²⁰ *TGP* at P 39.

rule on the merits of Meridian's request. For these reasons, the ISO requests that the Commission establish a normal three-week period for parties to file answers to Meridian's request for limited tariff waiver.

III. Conclusion

For the reasons explained above, the Commission should accept this answer for filing, deny Meridian's motion for stay of the obligation to make the second posting of interconnection financial security, and establish a normal three-week period for answers to the April 24 request for limited tariff waiver.

Respectfully submitted,

Nancy Saracino
General Counsel
Roger E. Collanton
Deputy General Counsel
Sidney M. Davies
Assistant General Counsel
The California Independent
System Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 608-7144
Fax: (916) 608-7296
E-mail: sdavies@caiso.com

/s/ Michael Kunselman
Michael Kunselman
Bradley R. Miliauskas
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
E-mail: michael.kunselman@alston.com
bradley.miliauskas@alston.com

Attorneys for the California Independent System Operator Corporation

Dated: April 30, 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 above-referenced 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 Washington, D.C. this 30th day of April, 2013.

/s/ Bradley R. Miliauskas
Bradley R. Miliauskas