UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

CSOLAR IV South, LLC	)	
Wistaria Ranch Solar, LLC	)	
CSOLAR IV West, LLC	)	
CSOLAR IV North, LLC	)	
	)	
v.	)	**Docket No. EL13-37-000**
	)	
California Independent System Operator Corporation	)	

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO COMMENTS ON COMPLAINT

The California Independent System Operator Corporation ("ISO") submits this answer[1] to comments filed in response to the CSOLAR entities' complaint[2] by Imperial Valley Solar, LLC ("IVS") and the California Wind Energy Association ("CalWEA").[3] The ISO files this answer to clarify several issues raised in comments submitted by these two parties, and to provide the Commission assurance that dismissal of the complaint will not harm any interconnection customers:

- The ISO has not "threatened" the CSOLAR entities or any other interconnection customer with termination for failure to build a phase

---

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 (2012).

2 The "CSOLAR entities" or "CSOLAR" refers to CSOLAR IV South, LLC, Wistaria Ranch Solar, LLC, CSOLAR IV West, LLC, and CSOLAR IV North, LLC.

3 Although CalWEA styles its pleading as a motion to intervene out-of-time and comments on the CSOLAR complaint, CalWEA's pleading is in fact a direct response to the ISO's answer to CSOLAR's complaint.

of its generating facility when an earlier phase is already in service, as CalWEA alleges. To the contrary, the ISO has provided developers with assurances that such an outcome would only be considered as a last resort and reiterated that the Commission would need to find that the particular facts and circumstances justified termination.

- The decisions cited by IVS and CalWEA do not demonstrate that the breach and termination provisions of the ISO's large generator interconnection agreement, which for all relevant purposes are identical to the Commission's *pro forma* interconnection agreement, inherently prohibit termination for failure to build the entire generating facility specified in the agreement.
- The ISO has provided mechanisms for developers to "downsize" the megawatt capacity of their generating facilities through non-conforming interconnection agreements and, most recently, a downsizing opportunity pursuant to the ISO tariff.
- In a stakeholder process to commence in the first quarter of 2013 the ISO will undertake an effort to develop a proposal to address the risk of termination of an interconnection agreement for failure to construct the entire generating facility where an earlier phase is already in-service as well as additional downsizing opportunities. The ISO does not intend to, and will commit not to, seek termination of an interconnection agreement for failure to construct the entire

generating facility where an earlier phase is already in-service, until the conclusion of this stakeholder process, including the filing of a tariff amendment and resulting Commission decision.

Because these clarifications will help the Commission to better understand the issues underlying CSOLAR's complaint and the pleadings submitted by IVS and CalWEA, the ISO respectfully requests that the Commission grant waiver of Rule 213 and consider this answer in its deliberations.[4]

I. DISCUSSION

A. The ISO has never "threatened" to terminate any customer under the circumstances posited in the CSOLAR complaint, contrary to CalWEA's allegation

In what it styles as comments on the CSOLAR complaint, but is in fact an answer to the ISO's answer, CalWEA asserts that the ISO has "threatened" to terminate the CSOLAR interconnection agreement, and alleges that CalWEA and its members have experienced similar termination "threats" from the ISO in the past.[5] These assertions are absolutely wrong. The circumstances described in the complaint are hypothetical. The ISO has never told an interconnection customer that it would terminate its interconnection agreement under the circumstances posited in the CSOLAR complaint – *i.e.*, a generating facility that has one or more phases in-service and one or more phases not in-

[4] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure generally prohibits answers to answers, however, the Commission has accepted answers that are otherwise prohibited if they clarify the issues in dispute and when the information assists the Commission in making a decision. *See Southwest Power Pool, Inc.,* 89 FERC ¶ 61,284 at 61,888 (1999); *El Paso Electric Co., et al. v.Southwestern Pub. Serv. Co*., 72 FERC ¶ 61,292 at 62,256 (1995).

[5] CalWEA at 4.

service within the milestones provided by the interconnection agreement. The ISO has explained that it is only in the hypothetical, "worst potential case," where the failure of a customer to complete its generating facility might be considered a breach of its interconnection agreement. There is no rational basis to interpret such a statement as a "threat." Indeed, responding to concerns voiced by developers, the ISO's Vice President of Market and Infrastructure Development, Dr. Keith Casey, spoke at a recent ISO Board of Governors meeting to clarify that the ISO did not view the termination of an interconnection agreement as anything but a last-resort option:

> In the meantime, I want to assure the board, LSA, and all renewable developers *that we would never want to be in a situation where we have, due to a contractual breach, have to disconnect an existing renewable project for failure of that project to do its full build-out. We would do everything we could to avoid that type of situation*.[6]

Moreover, as Dr. Casey pointed out, even were such a situation to occur, the ISO could not terminate an interconnection agreement without Commission approval.[7] Finally, Dr. Casey underscored the ISO's commitment to consider, in a stakeholder process to take place during 2013, additional options for generators to downsize their capacity, and whether to amend the tariff to include conditions under which termination would *not* occur in the event a generator failed to bring the entirety of its facility online.[8]

---

[6] Partial Transcript of Public Comments, December 14, 2012 ISO Board of Governors meeting (Attachment A to this Answer) at 8:8-20.

[7] *Id*., *Accord Southern California Edison Company* 97 FERC ¶ 61, 148 (2001) at 61,640-41 ("*Wildflower*").

[8] Attachment A at 8:8-20.

B. Contrary to CalWEA and Imperial Valley Solar's arguments, no blanket limitation to termination exists.

CalWEA and IVS argue that the breach and termination provisions of the ISO's large generator interconnection agreement ("LGIA"), which are substantively identical to the Commission's pro forma LGIA, contain an inherent limitation that forbids exercise of termination when an interconnection customer fails to bring online the entire generating facility specified in its LGIA. As the ISO explained in its answer to the CSOLAR complaint, the Commission has never defined or interpreted the LGIA's breach and termination provisions as containing such a blanket prohibition. To the contrary, the Commission explicitly agreed that this was a potential risk that justified the inclusion of non-conforming "partial termination" terms in the LGIAs of several ISO interconnection customers.[9] If such a blanket prohibition did exist, there would be no need to include such partial termination provisions. Thus, the ISO's hypothetical statement regarding the potential that a customer that fails to construct its full capacity could, in a "worst potential case," be considered to be in breach of its LGIA, is not an unreasonable interpretation of the LGIA, as asserted by CalWEA and IVS. While CalWEA and IVS make assertions that are somewhat different from those presented by CSOLAR, they are likewise unavailing.

The LGIA defines a breach as "the failure of a Party to perform or observe any material term or condition of this LGIA." CalWEA argues that "material" in this context should be read to mean only those circumstances

[9] See *Order Conditionally Accepting Non-Conforming Large Generator Interconnection Agreement*, 134 FERC ¶ 61,087 at PP 8-13 (2011).

involving adverse impacts to other interconnection customers.[10] CalWEA appears to be confusing two separate concepts in the LGIA: (1) the concept of "*material modification*," which relates to the conditions under which a generator can modify its facilities while retaining its queue position; and (2) the rights of the parties to the LGIA to seek to terminate the contract upon a "*material*" breach of the agreement. While *"material modification",* in the ISO's generator interconnection procedures tariff provisions, refers to adverse impacts on the cost and timing of other interconnection requests, "material" breach under the LGIA is not so limited in scope.

Indeed, the result that CalWEA advocates is plainly wrong and would render as nonsensical other LGIA provisions, such as those pertaining to costs or damages incurred by the participating transmission owner. For instance, if a customer were to breach its obligations under the LGIA to operate its facility in a safe and reliable manner,[11] under CalWEA's reading, such a breach could not be considered material for purposes of termination, unless the counterparties could show an adverse impact to the costs or timing of other interconnection customers.

IVS also contends that failure to develop the MW capacity of the entire generating facility cannot be breach of the LGIA because the Commission has already spoken to the situation. IVS argues that the Commission has decided

---

[10] CalWEA at 4-5.

[11] *See, e.g.,* California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, Appendix CC, Section 9.4.

the matter in *Illinois Power Company*.[12] *Illinois Power*, does not, however, support IVS' proposition. *Illinois Power* involved a viable generator moving toward commercial operations but needing an extension of its commercial operation date; it was not a situation involving a generating facility that was not being developed or was being partially abandoned. The difference is relevant because, in deciding that the generator in *Illinois Power* was entitled to an extension of its milestones, the Commission relied not only on the fact that the extension would not harm lower queued customers, but also on the fact that the generator had made good progress toward construction of the plant, and that the project was not speculative in nature.[13] Moreover, the Commission explicitly eschewed establishing any blanket rule concerning termination requests, stating that "to the extent the Commission receives similar requests in the future, we will evaluate those requests based on the specific facts in those instances."[14]

---

[12] IVS at 11 (citing *Illinois Power Co.*, 120 FERC ¶ 61,237 (2007)).

[13] *Illinois Power* at PP 24-25 (stating that "while the Commission allows interconnection customers flexibility with respect to interconnection milestones, it has also found that it is important to ensure that interconnection queues do not become clogged with speculative projects.")

[14] *Id*. at P 25. IVS also asserts that *Montgomery Great Falls Energy Partners LP v. NorthWestern Corp*., 123 FERC ¶ 61,181 at P 60 (2008), shows that the Commission has "determined that it is just and reasonable to allow an interconnection customer to continue service under its LGIA despite the partial termination of a later phase of its generating facility." IVS at 12. However, this case, in which the Commission rejected a complaint alleging discrimination in assigning an interconnection customer a new, lower queue position, says nothing of the sort. Rather, the Commission merely noted that the transmission provider had, as an alternative to withdrawing the entirety of an interconnection request, offered to allow the interconnection customer to interconnect the portion of its generating facility that it could bring online by its stated commercial operation date. The Commission did not evaluate the justness and reasonableness of this option, nor did it indicate that the transmission provider would have acted unjustly or unreasonably by not offering such an option.

CalWEA and IVS also argue that the Commission's *Judith Gap Energy* decision demonstrates that the only factor to be considered by the Commission in evaluating a termination request is harm to other interconnection customers.[15] This argument is flawed in several respects. First, the *Judith Gap* decision did not involve a termination request. Instead, it arose out of an unopposed request for a declaratory order asking the Commission to clarify that the generator would not lose its rights to network interconnection service for its full capacity due to a delay in achieving commercial operation greater than the safe harbor provided for in the LGIA. Moreover, although the Commission's analysis in *Judith Gap* centered on whether granting the request for declaratory order would harm other interconnection customers, the Commission never stated that harm to other interconnection customers should be the sole focus under all other circumstances. In sum, nothing in *Judith Gap*, or any of the other cases that CalWEA and IVS cite, leads to the conclusion that there exists a Commission blanket rule that an interconnection customer's failure to build the entire generating capacity *can never* rise to material breach of an interconnection agreement. Neither is there a Commission rule or directive that materiality of breach relates solely to later queued customers and whether they are directly financially or temporally harmed. Accordingly there is no basis for the Commission to direct the ISO that it is per se unjust and unreasonable to suggest that there may, hypothetically, be a contrary position.

[15] CalWEA at 6-7; IVS at 12-13 (citing *Judith Gap Energy LLC.,* 125 FERC ¶ 61,169 (2008)).

To be clear, the ISO is not suggesting that an interconnection customer's desire to drop a later phase is never permitted or that any particular termination request under such circumstances would necessarily be just and reasonable. Rather, this discussion demonstrates that there is no absolute prohibition under the interconnection agreement that inherently prevents making such an argument to the Commission if circumstances warranted. As the Commission's decisions make clear, the Commission reviews termination requests, and issues regarding retention of queue position, on a case-by-case, fact-specific basis.

Rather than the situations in *Illinois Power* or *Judith Gap Energy*, the issue raised in the complaint is more like the situation in *Wildflower*.[16] Although the actual interconnection agreement in *Wildflower* predates FERC Order 2003, the decision is instructive as to the Commission's treatment of an interconnection customer's claim of the chilling effect due to the uncertainty of a participating transmission owner's alleged interpretation of the interconnection agreement. In *Wildflower*, the interconnection customer argued that a section of the interconnection agreement would give SCE a right to terminate the interconnection agreement if the customer failed to give notice of a change to its generation equipment where the change "does or may cause material system impacts or may be materially inconsistent with the service provided" under the interconnection agreement. The customer argued that the language created "imprecise and speculative criteria allowing SCE to unilaterally

[16] *Southern California Edison Company, supra,* 97 FERC ¶ 61,148 (2001).

terminate the IA." The customer argued that "although subject to Commission approval, the power to terminate creates uncertainty and lessens Wildflower's ability to make firm long-term commitments of energy from its facility."[17] Accordingly, the customer argued that alternative language should replace the existing language. In rejecting the customer's request, the Commission noted that "[i]f SCE proposes to unilaterally terminate the IA, Wildflower is adequately protected." The Commission noted that the customer would have the opportunity to raise its concerns in the ISO ADR procedures and that the customer would have a chance to protest any termination before the Commission.[18]

C. The Commission should dismiss the complaint thereby allowing the ISO the opportunity to consider proposals for increased interconnection customer flexibility in the 2013 stakeholder process

The ISO understands and appreciates that developers such as CSOLAR desire more flexibility with respect to their ability to downsize their generating facilities while minimizing or eliminating any risk of contract breach or termination. By expanding downsizing options in its interconnection procedures as well as agreeing to add partial termination provisions to several LGIAs,[19] the

---

[17] *Id*. at 61,640.

[18] *Id*. at 61,641.

[19] In its comments, IVS contends that the ISO's recent downsizing opportunity "was not a suitable remedy" for many developers because they are reluctant to abandon portions of generating facilities as to which they have committed time and expense but have been unable to find a power purchaser for. IVS at 14. What IVS describes is essentially a desire for developers to remain in the queue indefinitely while speculating, in the hopes of finding a buyer for all of the capacity of their facilities. One of the primary reasons the ISO's queue essentially ground to a halt after the massive influx of interconnection requests in the wake of the California renewable mandates was that the ISO's rules provided no incentives for developers to avoid maintaining queue positions for purposes of speculation. Although the ISO understands that it may be a difficult business decision to terminate an interconnection request with respect to a

ISO has demonstrated that it takes these concerns seriously. The ISO recognizes that providing a fair path for customers to successfully develop and connect appropriately-scoped renewable generation facilities is a key component of the effort to achieve California's renewable integration goals.

Moreover, the ISO will kick off a new stakeholder process in the first quarter of 2013 to work with stakeholders to examine the risk of termination of an interconnection agreement for failure to construct the entire generating facility where an earlier phase is already in-service as well as additional downsizing opportunities. The ISO is targeting fall 2013 to seek approval from its Board of Governors to file any tariff amendments needed to implement changes that the ISO recommends to address these issues.[20] In order to provide greater assurance to the Commission that the stakeholder process is the appropriate mechanism to consider these issues, the ISO commits not to seek termination of any interconnection agreement for failure to complete the specified generating facility where a phase of the facility is in-service until the conclusion of this stakeholder process, including the filing of a tariff amendment and resulting Commission decision.

The ISO explained in detail in its answer to the CSOLAR complaint the value of resolving these issues through its stakeholder process as opposed to

---

portion of a generating facility in which a developer has made substantial investment, the fact is that the ISO's current interconnection queue contains capacity far in excess of any projected need, and it is critical that generators with a reasonable path to commercial viability can obtain interconnection service in a fair and efficient manner. This goal is fundamentally at odds with an unrestricted desire to speculate through queue position retention.

[20] If after working with stakeholders during 2013 it becomes apparent that resolution of this issue is more complex than initially anticipated, the ISO may need to target a later date for Board approval.

litigation. Nevertheless, CalWEA argues that the ISO should not be permitted the opportunity to do so because, according to CalWEA, the ISO's public statements on termination has made it more difficult for developers to finance generators in California, and the ISO's request to resolve these issues in a stakeholder process somehow exacerbates this risk. Given the hypothetical and theoretical nature regarding the risk of LGIA termination, the ISO's assurances that such options would only be exercised as a last resort under the worst potential circumstances, and its demonstrated commitment to addressing these issues, CalWEA's assertion that somehow the ISO's position has created a chilling effect on generation development in California, is without merit. CalWEA provides no evidence whatsoever to substantiate its allegations.[21] Indeed, this argument cannot be squared with the fact that the ISO's queue contains thousands of megawatts of generation facilities in excess of the capacity needed to meet California's renewables goals. In light of the lack of any compelling reasons to the contrary, the Commission should dismiss CSOLAR's complaint and allow the ISO to address these issues in its stakeholder process.

[21] Ironically, CalWEA argues that the ISO should follow the Midwest ISO's example in adopting tariff language regarding partial termination of generating facilities, *which were implemented in a tariff amendment developed through the Midwest ISO's stakeholder process*. CalWEA at 5 (*citing* Midwest Independent Transmission System Operator, Inc., Open Access Transmission, Energy and Operating Reserve Markets Tariff, Attachment X, Generator Interconnection Procedures (GIP), Appendix 6 to GIP, Generator Interconnection Agreement (GIA), § 2.3.1 ("MISO Tariff")).

II. CONCLUSION

For the reasons explained above, the ISO respectfully requests that the Commission consider these comments in its decision and ultimately dismiss the CSOLAR complaint.

Respectfully submitted,

/s/ Michael Kunselman
Michael Kunselman
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004

Counsel for the
California Independent System
Operator Corporation

Nancy J. Saracino
General Counsel
Roger E. Collanton
Deputy General Counsel
Sidney M. Davies
Assistant General Counsel
Baldassaro "Bill" Di Capo
Senior Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630

ATTACHMENT A

Partial Transcript of Public Comments
December 14, 2012 - ISO Board of Governors Meeting

CALIFORNIA ISO

BOARD OF GOVERNORS MEETING

The California Independent System Operator Corporation

250 Outcropping Way

Folsom, California 95630

(916) 351-4400

---o0o---

DECEMBER 14, 2012

---o0o---

PARTIAL TRANSCRIPT OF PUBLIC COMMENTS

---o0o---

VOLUME ONE OF ONE

PAGES 1-10

Transcription by: Katherine VanGrinsven, RPR, CSR #11985

Requested by: Stacey Karpinen

DECEMBER 14, 2012

---o0o---

CHAIRMAN ROBERT FOSTER: All right. Alan Comnes for the Large Scale Solar Association.

Alan?

ALAN COMNES: Yes. Hi. Good morning. My name's Alan Comnes. I'm director of transmission for SunPower Corporation, and I'm here today on behalf of the Large Scale Solar Association.

SunPower is a developer of photovoltaic modules and systems. We have business in residential, commercial, and utility scale. I work in our utility scale group, and we have gigawatts of solar going in all across the globe. I manage our California ISO interconnection requests, and we have gigawatts of interconnection requests in the queue.

I do want to say as a -- as a practical matter, we do have actual projects going into service as we speak. That's very exciting after many years of work. In particular, the California Valley Solar Project has gone commercial on certain phases. And that's been a great partnership with NRG, the owner, and with the ISO through its interconnection. So I just want to give a practical effect to the work we're doing today regarding interconnection policies.

Today I'm here for the Large Scale Solar Association, of which we're a member. Large Scale Solar

is a 14-member trade association dedicated to moving the policies of the solar industry forward. Its member companies share a common understanding and concern for the issues facing development of the solar industry. And the Large Scale Solar Association has over 1,200 megawatts of projects in service in North America and over 10,000 megawatts of projects in development in the west.

So as you know, in your board packet you have a letter in the public comment period. It's a follow-up from the September board meeting. LSA is a strong supporter of the downsizing initiative which is before FERC currently, and we've filed a limited protest, or an intervention to that effect. However, at the September 13th board meeting, where management's proposal was put to you for the downsizing proposal, the board directed management to consider the need for a second downsizing window in 2014 after Cluster 5 interconnection studies were complete and asked for management to report on the status of that effort later in 2013. But during that discussion we felt there were a couple of statements that we felt were inaccurate, and we just really felt we needed to correct the record.

ISO management has stated on numerous occasions the failure to build one project -- or one or more later phases of a generation project could constitute a breach of the Generation Interconnection Agreement and that could lead to ISO termination of that agreement.

While LSA does not agree with this position and

believes that it's contrary to both contract law and FERC precedent, the ISO's own statements indicate that it does not believe that splitting a project into multiple phases protects against a GIA cancellation of the earlier project phases if later phases are not built. But we feel that was in direct contradiction to the statements that management made at the September meeting.

And in particular I want to point out, you know, a statement that was made in the ISO filing in October directly related to phasing. The ISO has said in that filing and in prior filings:

> "In the case of a generating facility being constructed in phases such that each phase may achieve commercial operation at a different time, the failure of the interconnection customer to construct one or more later phases of the project can lead to a breach of the Generation Interconnection Agreement. This, in turn, has the potential for triggering termination of the interconnection agreement and even potential for disconnection of earlier phases of the generating facility that have reached commercial operation."

This is a very problematic statement when you're trying to bring a project that has a PPA, all its permits, and it's trying to get to a construction phase into financing. And we're hoping today that management can kind of correct its record on that statement.

The second problematic statement from September was that developers can avail themselves to explicit partial termination provisions in the interconnection agreement. It is true that these options exist and are in a handful of interconnection agreements that have been

filed at the FERC; they're nonconforming provisions. But the ISO's express criteria for partial termination is -- leads to a very limited set of circumstances and limits its applicability.

Specifically, the ISO wants to see a large separation between the completion of the project and the completion of the ultimate network upgrades that are needed for the project, and also that the project be constructed in phases and that the phases be constructed over multiple years. So those limited -- those facts don't exist for many projects that would like to utilize downsizing.

So what is our ask today? Again, I think, as we said at the September 13th board meeting, we would like the management to pursue a possible second downsizing window in 2014 and ideally state now to the market that this opportunity will be available for early projects.

It's important to note that although we support the downsizing window, there are many projects, whether they're in Clusters 1 through 4 or in Clusters 5, that won't be able to use the downsizing window. For projects in Clusters 1 through 4, they may have later-dated CODs, like 2016, and haven't finished permitting or marketing activities, and thus may not know what their ultimate project size is going to be; and for Cluster 5, the projects are -- haven't even received their interconnection studies.

And I might add that in 2013 we're going to have

new opportunities to market Large Scale Solar projects. Two RFOs are going to be hitting the streets in January for hundreds of megawatts of new market opportunities. So it would be unfortunate to force projects into downsizing prematurely.

Our second ask today, and I think it's also very important, is that the board continue to encourage management to state clearly that GIA termination for capacity that is built and operating, if the developer mitigates the damages, will not result in termination of the GIA for the -- for the operating project.

And with that I appreciate your opportunity to let me speak to you today.

CHAIRMAN ROBERT FOSTER: Thank you, Mr. Comnes.

Any questions for Mr. Comnes?

Mr. Casey.

MR. KEITH CASEY: Thank you, Chairman Foster.

And thanks, Alan, for the comments.

So, you know, I think rather than try to address and debate all -- all the issues and characterizations that were raised in the letter, I'd like to first just say that, you know, we understand the basic concern expressed. We get that renewable projects are scalable by nature and when a project starts out at an original size, things change over time, and developers need flexibility to be able to downsize as conditions change.

And that very issue, really what was driving a number of changes we made to our interconnection process

over the past couple of years, most notably the partial termination provisions that we provided. And I certainly agree with Alan's characterization that to date those provisions are nonconforming and they're done on an exception basis, on a case-by-case basis. But we've committed to the stakeholders. If there's interest in exploring, expanding those provisions, that's something we'll be willing to undertake in the stakeholder process. And, in fact, we offered to do that earlier this year, but overwhelmingly there was a desire to focus on the downsizing issue itself, so we focused our efforts there.

The -- and also, of course, that fundamental concern drove the downsizing option that was brought to you in September that you approved.

So we completely understand the importance of providing flexibility for projects to modify their sizes going forward as things change. And we've committed in our filing, in our white papers, and to this board to continue our stakeholder process next year to look for further opportunities to provide additional flexibility.

But I have to tell you that when you look at these options, the devil's really in the details. And when you start digging into, okay, well, what does what sounds good at a very high level mean in practice, and you start really fleshing it out, that's where you get the vision among the stakeholders and even within the renewable developers. And I think you saw that at the September board meeting where the very downsizing option that we

brought to you was opposed by some renewable developers.

It's a very competitive marketplace out there for renewable development, and where you stand on these issues often depends on where your project sits. So it just really underscores the importance of looking at these issues in a very rigorous, thorough way through a stakeholder process where all parties can weigh in, all stakeholders can weigh in, and all issues can ultimately be considered. Because what we're really trying to do is strike a balance here between providing flexibility and opportunities to manage risk while maintaining a fair and orderly process.

We have over 300 projects in our queue right now. It's a very difficult process to manage. I refer to it as the three-dimensional chess game, because when you start moving pawns here, it has a cascading effect on earlier queued projects or later queued projects. And you have to be really careful on how you structure these things because at the end of the day, if the process deteriorates into chaos, nobody wins, we fall short of achieving the State's RPS goal, and that's a situation none of us want to be in.

So what I would like to offer is that going forward in our stakeholder process for next year, we will be willing to consider, among other options for exploring flexibility on downsizing, whether we can provide language in the interconnection agreement that would clarify conditions under which we would not disconnect a project

being -- that is built for failure of the remaining project to develop.

There's a lot of details that would need to go into that, a lot of provisions, and we'd need to hear from all stakeholders on it. But if the renewable community sees that as a priority that they want us to take on, we'll commit to doing it.

In the meantime, I want to assure the board, LSA, and all renewable developers that we would never want to be in a situation where we have, due to a contractual breach, have to disconnect an existing renewable project for failure of that project to do its full build-out. We would do everything we could to avoid that type of situation.

And as we commented at the September board meeting, if we ever found ourselves in that situation, ultimately FERC would be the final decider in all of it. The ISO could not unilaterally disconnect a project without having a FERC process where FERC ultimately decides.

As to committing to a second downsizing window now, we continue to believe that the prudent thing to do right now is to get through the current downsizing window. Assuming we get a favorable FERC order, which we're anticipating getting at the beginning of the year, we'll have to go through that process.

We have a new generator interconnection transmission planning process we're implementing this

year. And what we committed to the board in September was we would come back next year and periodically brief you on how the first downsizing process went and what we think the prospects are of offering a second downsizing window.

And in meeting with our team, I think by the end of next year we should be in a position where we could recommend whether to allow a second downsizing window. And during that time we'll have the benefit of seeing how the first process went, what worked, what didn't work, what needs to be changed if we were to offer a second downsizing window.

And, additionally, through the other stakeholder initiatives that we may be considering along the way next year, I think that will further inform both the need and how we might structure another downsizing window if we were to do one.

So I think that's really the best we can offer right now, and we'll welcome any comments from the board.

CHAIRMAN ROBERT FOSTER: Governor Olsen.

GOVERNOR DAVID OLSEN: Thank you for that statement, Keith. That's very helpful.

As I said at the September board meeting, I think this is a very important issue for renewable developers. And so I am glad to hear that you will start a stakeholder process this next year to clarify, especially the disconnection, the risk of disconnection. That's just extremely important, so I appreciate that you will do that. And I hope that the renewable developers can engage

in that process and get a resolution that clarifies that situation.

CHAIRMAN ROBERT FOSTER: Any other comments?

Thank you, Mr. Comnes. Appreciate it.

(End of transcription.)

---o0o---

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 (2012)).

Dated at Washington, D.C. this 6th day of February, 2013.

/s/ Michael Kunselman

Michael Kunselman
Alston & Bird LLP