148 FERC ¶ 61,077
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

California Independent System Operator Corporation — Docket No. ER14-2063-000

ORDER ON TARIFF AMENDMENT

(Issued July 31, 2014)

1. On May 29, 2014, the California Independent System Operator Corporation (CAISO) filed tariff amendments designed to improve the efficiency and flexibility of the CAISO's generator interconnection process. The first proposed change would provide interconnection customers who are in good standing with an annual opportunity to "downsize" the capacities of their projects. The second proposed change addresses the risk that generation projects may be disconnected due to failure to build the projects to the full megawatt capacities reflected in their interconnection agreements. This order accepts CAISO's proposed tariff amendments, effective August 1, 2014, as requested.

I. Background

2. CAISO states that many renewable energy projects are scalable in size. According to CAISO, some developers have informed it that the projects they originally intended to build are now too large to be commercially feasible, but that smaller "downsized" projects would still be viable. CAISO states that although its tariff procedures contain several existing mechanisms by which customers can reduce the size of their facilities, those mechanisms have limitations regarding which interconnection customers can exercise them, the time within which the downsizing opportunities can be exercised, the megawatt amount of downsizing allowed, and the reasons for such downsizing.[1]

3. Specifically, the CAISO tariff contains five opportunities for generator downsizing. The first allows for downsizing between the Phase I and Phase II interconnection studies, and during the study process generally when such reductions

[1] CAISO Transmittal Letter at 2.

"improve the costs and benefits" of the interconnection.[2] The second option allows for downsizing after the study process where the modifications are not deemed to be of a material nature.[3] The third is a "safe-harbor" provision that allows an interconnection customer to reduce the capacity of the generating facility by up to 5 percent, for any reason, up to its commercial operation date.[4] The fourth provides an opportunity for interconnection customers who are allocated transmission plan deliverability pursuant to the allocation process set forth in appendix DD (Generator Interconnection and Deliverability Allocation Procedures) of the CAISO tariff.[5] Additionally, CAISO has filed, and the Commission has accepted, four non-conforming interconnection agreements that include a "partial termination" provision for certain phased projects.[6]

4. CAISO states that, due to the limitations of its tariff mechanisms, a number of interconnection customers requested that CAISO provide a more expansive downsizing opportunity. As a result, in 2012, CAISO developed and filed an amendment to its tariff to allow interconnection customers that entered the queue before cluster five a one-time opportunity to downsize their projects by any amount they desired.[7] CAISO states that although supportive of the one-time downsizing amendment, a number of stakeholders urged the CAISO to consider offering additional future downsizing opportunities of similar scope.[8] Under the terms of the one-time downsizing opportunity, CAISO required the posting of a $200,000 generator downsizing deposit applied as a pool of funds used to pay for the sum of the downsizing generator's obligations for study costs

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[2] CAISO, OATT, app. DD, § 6.7.2.1; app S, §1.3.4; app. U, § 4.4 and app. Y, § 6.9.2.1.

[3] *Id.* app. T, article 6.2; app. U, articles 4.4.3, 4.4.5; app. Z, article 5.19.1; app. BB, article 5.19.1; app. CC, article 5.19.1; app. EE, article 5.19.1; app. FF, article 6.2.

[4] *Id.* app. CC, article 5.19.4; app. EE, article 5.19.4.

[5] *Id.* app. DD, § 8.9 *et seq.*

[6] *See Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,087 (2011); *Cal. Indep. Sys. Operator Corp.*, 134 FERC ¶ 61,108 (2011); *Cal. Indep. Sys. Operator Corp.*, 137 FERC ¶ 61,055 (2011); *Cal. Indep. Sys. Operator Corp.*, Docket No. ER12-556-000 (Jan. 30, 2012) (delegated letter order).

[7] *See Cal. Indep. Sys. Operator Corp.*, 141 FERC ¶ 61,219 (2012) (December 20 Order).

[8] CAISO Transmittal Letter at 7-8.

and the costs to amend any affected generator interconnection agreements.[9] The downsizing generator's responsibility for the costs to amend generator interconnection agreements would be $10,000 for its own such agreement and $10,000 for each such agreement of an affected generator; however, a generator's responsibility for amending such agreements would be capped at $100,000.[10]

5. CAISO states further that during the development of the one-time downsizing opportunity, some stakeholders expressed concern that CAISO might attempt to terminate their generator interconnection agreements and then disconnect their projects for failure to build the projects to their full studied megawatt sizes, as reflected in their *pro forma* interconnection agreements. CAISO explained, in response, that it has never sought to terminate an interconnection agreement under these circumstances and that any such determination would be fact-specific, determined on a case-by-case basis, and would require Commission approval. CAISO states that stakeholders responded that even the theoretical possibility of such a termination, without more explicit guidelines for when it would be exercised, causes current financing problems, particularly in a situation in which certain phases of a project are already in operation.[11]

II. <u>CAISO's Tariff Filing</u>

A. <u>Overview</u>

6. CAISO states that the design of the proposed annual downsizing opportunity follows closely the design of the one-time downsizing opportunity approved in the December 20 Order. CAISO states that, like the one-time downsizing opportunity, the annual downsizing opportunity is designed to provide a balanced approach to eliminating non-viable interconnection requests from the CAISO queue while protecting non-downsizing generators from any harm resulting from the downsizing. CAISO maintains that the annual downsizing opportunity will promote the completion and commercial operation of projects that would be viable if not for an inability to construct the full generating capacities stated in the customers' interconnection requests. CAISO believes this change will help spur energy development and advance its efforts to reduce non-

[9] CAISO, OATT, app. GG (One-Time Generator Interconnection Downsizing Opportunity), § 1.2.2.

[10] *Id*. § 2.8.

[11] CAISO Transmittal Letter at 8-9. CAISO indicates that it considered both issues as part of its ongoing Interconnection Procedures Enhancement stakeholder initiative to meet its commitment to improving its interconnection process.

viable interconnection requests from the more than 200 requests that remain in the queue.[12]

7. CAISO further states that the annual downsizing opportunity will help address stakeholders' concern that the CAISO might attempt to terminate their generator interconnection agreements for failure to build their projects to their full studied megawatt sizes. CAISO states that the downsizing opportunity will provide interconnection customers with the annually recurring ability to reduce their project sizes and thus avoid the risk of breach and termination of their generator interconnection agreements.[13]

8. CAISO states that to further address the risk of disconnection, the proposed tariff modifications provide that the CAISO will not seek to terminate an interconnection customer's generator interconnection agreement solely due to the customer's failure to complete the full megawatt size of its project, provided that the customer participates in the next annual downsizing opportunity after it completes the capacity it intends to build. Finally, CAISO proposes to expand its "safe harbor" provision to include all interconnection customers (both large and small) so that an interconnection customer can reduce the capacity of its project by an amount up to a *de minimis* threshold without being in breach of its generator interconnection agreement.[14]

B. Specific Aspects of the Annual Downsizing Proposal

1. Network Upgrades

9. CAISO states that the annual downsizing opportunity will not create incentives for interconnection customers to "oversize" their projects, i.e., to submit interconnection requests for projects that are larger than the customers intend to build. CAISO states that a customer that submits an interconnection request and then downsizes its project pursuant to the annual opportunity will continue to be obligated to finance the costs of (1) network upgrades that the project previously triggered; and (2) network upgrades that are alternatives to the previously triggered network upgrades, if such previously triggered network upgrades or alternative network upgrades are needed by customers in the same queue cluster or later-queued customers, up to the original total cost responsibility of the downsizing customer. Thus, CAISO explains, a customer that deliberately submits an "oversized" project will risk being responsible for higher network upgrades costs than

[12] CAISO Transmittal Letter at 9-10.

[13] *Id*. at 10.

[14] *Id*.

would have been the case had it submitted an interconnection request for a more rationally sized project.[15]

2. Downsizing Study

10. CAISO proposes to add new section 7.5 to appendix DD to include an annual generator downsizing process as part of the annual reassessment process. CAISO states that all reductions to the capacity of generating facilities must now occur through the annual generator downsizing process unless explicitly exempted. Specifically, beginning on the date the first generator downsizing request window opens, all proposed reductions of generating capacity by interconnection customers will, regardless of the date of the interconnection customer's interconnection request, be subject to the annual process, except for capacity reductions made pursuant to the following pre-existing downsizing mechanisms: (1) while interconnection studies are still ongoing; (2) those currently made pursuant to the "safe harbor" threshold described above; (3) use of non-conforming partial termination provisions included in applicable interconnection agreements; and (4) the parking options set forth in sections 8.9.4, 8.9.5, and 8.9.6 of appendix DD, which allows an interconnection request to be "parked" and remain in the queue until the next cycle of transmission planning deliverability allocation. CAISO states that there will no longer be an option allowing for downsizing after the study process where the modifications are not deemed to be of a material nature. CAISO states that it will eliminate the current exemption for requests to reduce capacity pursuant to the modification provisions of its *pro forma* interconnection agreements, which allow customers to seek "non-material" modifications to their generating facilities without having to submit new interconnection requests.[16] CAISO states that these revisions will increase efficiency by ensuring that all downsizing requests are processed and analyzed in harmony with CAISO's ongoing cluster study process.[17]

3. Downsizing Request

11. CAISO states that in order to be eligible to participate in an iteration of the annual generator downsizing process, an interconnection customer must satisfy the requirements

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[15] *Id*.

[16] CAISO states that requests for capacity reductions are often difficult to evaluate in a piecemeal fashion because of the interrelationship between generators. Because the proposed downsizing process is available to all interconnection customers on an annual basis, CAISO concluded that the most reasonable approach is to funnel all project modification requests relating to capacity reduction through this downsizing process.

[17] *Id*. at 12.

regarding the customer's good standing[18] and the commercial operation status of the generating facility. An interconnection customer that wishes to utilize the annual generator downsizing process and meets the eligibility requirements described above must submit a generator downsizing request application to the CAISO in the form set forth on the CAISO website. CAISO states that the window for submitting generator downsizing requests will open on October 15 and close on November 15 of each calendar year.[19] CAISO will require the posting of a $60,000 generator downsizing deposit applied as a pool of funds used to pay for the sum of the downsizing generator's obligations for study costs and the costs to amend its generator interconnection agreement.[20] Unlike the one-time downsizing process, under the proposed downsizing process a generator will only be responsible for the costs to amend its own generator interconnection agreement.[21]

4. Termination Risk

12. CAISO proposes to revise its interconnection procedures to allow all interconnection customers the flexibility to make *de minimis* reductions in their generating facility capacities without risking breach of their interconnection agreements, and without having such reductions studied in the generator downsizing process. CAISO is proposing to remove the "safe harbor" provision from the *pro forma* LGIA and add a slightly modified version of this *de minimis* "safe harbor" provision to its interconnection tariff procedures. CAISO states that this change will ensure that the safe harbor applies to all interconnection customers, large and small, not just to those customers that have executed the most recent LGIA.[22]

13. If at the time an interconnection customer achieves final build-out of its project the actual capacity of its generating facility is reduced by no more than the greater of

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[18] To be in "good standing," an interconnection customer must meet the following requirements by the date the applicable generator downsizing request window closes: (1) the customer must have complied with all applicable requirements of the CAISO tariff, including timely submittal of all due interconnection financial security postings; (2) the interconnection request must not have been withdrawn or deemed withdrawn by CAISO; and (3) the customer must be in compliance with the terms of its generator interconnection agreement.

[19] *Id*. at 15.

[20] *Id*. at 16, 18.

[21] *Id*. at 20.

[22] *Id*. at 21-22.

five percent of its capacity or 10 MW, but not greater than twenty-five percent of the capacity of the generating facility, as compared to the capacity in the customer's current interconnection agreement, CAISO proposes that such a reduction will not constitute a breach of the interconnection customer's obligations under the CAISO tariff or its generator interconnection agreement. CAISO states that any reduction in generating facility capacity that exceeds the *de minimis* threshold set forth above will only be allowed pursuant to the annual generator downsizing process, subject to the listed exceptions.[23]

14. Thus, CAISO also proposes elimination of the current *pro forma* provisions that permit a request for capacity reduction greater than five percent when the requested reduction is warranted due to certain limited conditions beyond the control of the interconnection customer relating to permitting and site control. CAISO states that this language is no longer necessary because, under the annual generator downsizing process, interconnection customers will have the opportunity to downsize by more than five percent without having to make a demonstration that the customer satisfies one of the limited conditions.[24]

5. <u>Reassessment Process</u>

15. CAISO proposes to revise the reassessment process to include, as one of the purposes of that process, evaluation of the impact on network upgrades of valid generator downsizing requests submitted in the most recent generator downsizing window that meet the relevant requirements. CAISO states that studying generator downsizing requests in the reassessment process will efficiently leverage the existing reassessment process, in contrast with the special downsizing study required under the one-time generator downsizing opportunity. CAISO adds that it will ensure that the impacts of all downsizing requests are appropriately accounted for in CAISO's plan of service.[25]

16. CAISO proposes to add language to the reassessment process provisions to clarify the allocation of the costs of the reassessment study. CAISO states that its methodology will ensure that all interconnection customers who benefit from the reassessment will be charged an equal share of its actual costs.[26]

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[23] *Id*. at 22; *see also* P 10 *supra*.

[24] *Id*.

[25] *Id*. at 22-23.

[26] *Id*. at 23-24.

III. Notice of Filing and Responsive Pleadings

17. Notice of CAISO's filing was published in the *Federal Register*, 79 Fed. Reg. 32,932 (2014), with interventions, comments, and protests due on or before June 19, 2014.

18. Motions to intervene were filed by the City of Santa Clara, California and the M-S-R Public Power Agency, the Modesto Irrigation District, NRG Companies, and Pacific Gas and Electric Company. A timely motion to intervene and a limited protest were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities). On July 3, 2014, CAISO filed an answer to Six Cities' limited protest.

IV. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept CAISO's answer because it has provided information that assisted us in our decision-making process.

B. Six Cities' Limited Protest

21. Six Cities requests that the Commission condition approval of the proposed tariff revisions on a further refinement to one aspect of CAISO's filing, which would limit the ability of interconnection customers to receive refunds of network upgrade costs funded by interconnection customers in certain circumstances.[27]

22. Six Cities states that CAISO's tariff amendments do not adequately address whether interconnection customers should be reimbursed for network upgrade costs in situations where the network upgrades are built and placed into service (based on the original size of the project), but, following capacity reduction, turn out not to be needed by the project and are not needed or used by other interconnection customers. Six Cities argue that, in this scenario, network upgrade costs would not have been incurred if not for the project's original scope, and ratepayers should not be required to bear the costs of

[27] Six Cities Protest at 1.

these unnecessary and unused upgrades, especially where the interconnection customer had the opportunity to avail itself of an annual downsizing process and failed to do so.[28]

23. Six Cities objects to paying for upgrades that are not needed and whose cost could have been avoided had an interconnection customer participated in the downsizing process. Six Cities maintains that CAISO's proposed amendments should be revised to reflect that an interconnection customer whose as-built project capacity is less than the amount set forth in its interconnection agreement, (and does not qualify for the safe harbor capacity reduction), must forgo reimbursement for a *pro rata* share of the network upgrade costs associated with the unbuilt capacity, where the results of the next annual downsizing process reveal that upgrades that were constructed and placed into service are not needed either by the interconnection customer's project, following the capacity reduction, or by any other project.[29]

C. <u>CAISO's Answer</u>

24. In its answer, CAISO urges the Commission to reject Six Cities' protest. First, CAISO states that Six Cities' argument appears to be based on the mistaken assumption that the annual downsizing process will examine the utilization of network upgrades that are already constructed and placed into service. CAISO states that this is not the case. CAISO explains that the study of the impact of project downsizing will, per CAISO's proposal, be performed as part of CAISO's annual reassessment process. Because the primary purpose of the annual reassessment process is to account for the impact of changes in the interconnection queue (such as project withdrawals and downsizing) on existing plans of service, CAISO states the reassessment only studies the continued need for network upgrades that have not yet been constructed. When upgrades are constructed and placed into service they become part of the existing transmission system.[30]

25. CAISO further explains that during the development of the base case needed to perform the study, if construction activities on a network upgrade have commenced, then the study assumes that the network upgrade is in service. Accordingly, CAISO states that

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[28] *Id*. at 3-4.

[29] *Id*. at 4-5. According to Six Cities, CAISO initially proposed that interconnection customers in this situation would forgo eligibility for reimbursement of the cost of network upgrades in proportion to the unbuilt share of the project. Six Cities state that this aspect of the proposal was withdrawn in favor of the current proposal following objections from some stakeholders that the originally suggested approach would be unduly punitive if the upgrades were otherwise still needed by other customers or were not built at all based on a lack of need.

[30] CAISO Answer at 3.

both upgrades that are in service and those under construction are included in the "baseline" for the reassessment. CAISO claims that Six Cities' suggestion to study the utilization of transmission facilities already placed into service would interject significant additional complexity into the reassessment process, and thereby increase the costs to customers of performing this study.[31]

26. Next, CAISO asserts that Six Cities have demonstrated no compelling need to increase the scope and costs of the reassessment in this manner and that even Six Cities acknowledges that a situation involving actual construction of unnecessary upgrades due to projects coming online with significantly less capacity than set forth in their interconnection agreements may be "atypical."[32] CAISO further states that this is particularly true under its Generator Interconnection and Deliverability Allocation Procedures (GIDAP), under which "large-scale delivery network upgrades determinations" are based on the transmission planning process and not on individual interconnection requests. CAISO also notes that, even if a reliability network upgrade constructed and placed into service turned out to be unnecessary, the reimbursement provisions in the GIDAP limit any ratepayer impacts.[33]

D. Commission Determination

27. We find CAISO's proposal to establish an annual downsizing opportunity available to all interconnection customers, as well as its proposed tariff revisions to mitigate the risk of termination, to be just and reasonable and not unduly discriminatory.

28. We find the proposed annual downsizing opportunity provides a balanced approach to eliminate non-viable interconnection requests from the CAISO queue while protecting non-downsizing generators from any harm resulting from the downsizing. We find the proposed tariff amendments are responsive to requests from interconnection customers for more frequent opportunities to downsize their projects. The Commission believes that the annual downsizing opportunity will promote the completion and commercial operation of projects that would be viable but for an inability to construct the full generating capacities stated in the customers' interconnection requests. This change should facilitate energy development and advance CAISO's efforts to reduce non-viable interconnection requests that remain in the queue.

29. As the annual downsizing opportunity will be available to all eligible interconnection customers on a yearly basis (not just to interconnection customers prior

[31] *Id.* at 3-4.

[32] *Id.* at 4 (citing Six Cities Protest at 4).

[33] *Id.*

to queue cluster five on a one-time basis), this blanket downsizing opportunity should enhance the benefits we recognized when approving the one-time downsizing opportunity.

30. The annual downsizing opportunity should also help to address stakeholders' concern that CAISO might attempt to terminate their generator interconnection agreements for failure to build their projects to their full studied capacity, as it will provide interconnection customers with the annually recurring ability to reduce their project sizes and thus avoid the risk of breach and termination of their generator interconnection agreements.

31. We also find CAISO's proposed language that it will not seek to terminate an interconnection customer's generator interconnection agreement solely due to the customer's failure to complete the full capacity of its project due to its participation in an annual downsizing opportunity, provides increased certainty to market participants and further addresses their concern regarding the risk of termination of their interconnection agreements. Moreover, we find that the opportunity for an interconnection customer to reduce the capacity of its project by an amount up to a *de minimis* threshold without being in breach of its generator interconnection agreement, adds flexibility to the process.

32. Consistent with our determination in the December 20 Order, we find that it is reasonable and appropriate to require downsizing generators to continue to be responsible for costs of the remaining needed upgrades, in order to preserve the original allocation of costs determined under CAISO's interconnection procedures and to protect interconnection customers that choose not to downsize their generating facilities from any effects caused by interconnection customers that choose to downsize.[34] We agree with CAISO that the obligation to finance the costs of previously triggered or alternative network upgrades will continue to provide a disincentive for interconnection customers to "oversize" their projects in their interconnection requests.

33. We are not persuaded to adopt Six Cities' proposal. Six Cities fears that there may be limited circumstances where network upgrades are built and placed into service (based on the original size of a project), but, following capacity reduction, turn out not to be needed by the project and are not needed or used by other interconnection customers. We agree with CAISO that Six Cities misunderstands the scope of the downsizing study. The downsizing study does not examine network upgrades that are already constructed and, by Six Cities' own admission, it is unlikely that there will ever be upgrades already constructed but not needed due to underbuilt capacity.

34. Given that the harm Six Cities seeks to avoid is improbable, and given the built-in incentives not to "oversize" projects, discussed above, we find CAISO's tariff

[34] December 20 Order, 141 FERC ¶ 61,219 at P 48.

amendments, as written, adequately incentivize developers to “right-size” their projects. Under these circumstances, we find that Six Cities’ proposal would add unnecessary complexity to the study process and we therefore reject it.

The Commission orders:

(A) CAISO’s proposed tariff revisions are hereby accepted, effective August 1, 2014, as requested, as discussed in the body of this order.

(B) Six Cities’ limited protest is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.