THE UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	))	**Docket No. ER10-__**

PETITON FOR WAIVER OF TARIFF PROVISIONS REGARDING INTERCONNECTION FINANCIAL SECURITY AND REQUEST FOR RULING WITHIN 45 DAYS

Pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207, the California Independent System Operator Corporation ("ISO") respectfully requests a temporary waiver of the financial security deposit requirements set forth in Sections 9.2 and 9.3 of its large generator interconnection procedures for clustered interconnection requests ("Cluster LGIP").[1] The ISO respectfully requests that the Commission rule on this petition within 45 days of this filing, so as to allow the ISO to implement this waiver in sufficient time to secure the benefits that it will provide.

ISO's Request for Limited Waiver

The ISO requests a waiver of financial posting requirements for interconnection customers in the transition cluster, where a Participating Transmission Owner ("Participating TO") has committed to provide up-front funding for the customer's network upgrade costs.[2] The waiver will be limited to

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[1] Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window, Appendix Y to the ISO's FERC Electric Tariff.

[2] Because the first posting for interconnection customers in the transition cluster was due in December 2009, upon approval of this waiver request, the portion of the first posting relating to network upgrades that a Participating TO has agreed to provide up-front funding for will be returned to eligible customers.

the deposit amounts that would otherwise be required to secure the physical components of the network upgrades for which the Participating TO has committed to provide up-front financing.[3] The transition cluster is the first cluster to be processed under the Cluster LGIP.

The Cluster LGIP requires interconnection customers to post financial security in favor of the Participating TOs at three different points in the interconnection process, based on customers' total cost responsibility for both network upgrades and interconnection facilities. Cluster LGIP Section 9.2 relates to the first posting of financial security and Section 9.3 relates to the second and third of these postings. The financial postings securitize the customer's obligation to pay for construction of the interconnection components. The ISO seeks the waiver in cases where the obligation to pay for network upgrades has shifted from the transition cluster customer to the Participating TO.

Good Cause Exists for the Waiver Request

Good cause exists because ensuring the successful completion of projects in the transition cluster is critical, due to the pressing need to interconnect these renewable resources to the ISO-Controlled Grid, in order to help meet California's Renewable Portfolio Standard ("RPS") requirements. RPS is now set at 33% by 2020.[4] The requirement is driving renewable energy

[3] For example, this waiver will not excuse otherwise eligible interconnection customers from the requirement that they post financial security to cover the costs of *non-network facilities* (i.e. interconnection facilities) or any component of their network upgrades which is *not being funded by the Participating TO*.

[4] Some of the projects in the transition cluster have been identified by Governor Schwarzenegger's California Renewable Resources Action Team (REAT) as high priority projects meriting expedition under REAT's streamlining and coordinating activities. REAT was established through a Memorandum of Understanding ("MOU") executed by the California Energy Commission and California Department of Fish and Game in November 2008 and directed by

development to such a degree that renewables are now predominant in the ISO's "interconnection queue." Of all of the ISO's pending interconnection requests, renewables make up 71% of the megawatts in the queue (37,131out of a total 51,988). And the transition cluster makes up 22% of these renewable megawatts (8,214MW). Granting this waiver will provide increased assurance to developers and transmission owners that resources in the transition cluster which the transmission owners have identified as critical to meeting RPS objectives will have the best possible chance of achieving commercial operation.

Moreover, granting this waiver will assist developers in the transition cluster with accessing federal grant monies for renewable energy projects that the U.S. government has made available under Section 1603 of the American Recovery and Reinvestment Act of 2009 ("ARRA").[5] Securing this funding will further promote the successful interconnection and operation of these projects. As explained below in this filing, California's Governor, along with the state's energy regulatory and permitting agencies, have made securing this renewable development funding a major state policy goal. Granting the waiver will facilitate the process for expeditiously and efficiently interconnecting the ARRA projects and the other generating facilities in the transition cluster. The study process phase for this cluster is nearly finished, and there is not enough time to accomplish the offset for PTO-funded network upgrades through tariff

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Governor Schwarzenegger to streamline renewable project permitting pursuant to the Governor's Executive Order issued the same day. The MOU can be accessed on the Energy Commission's website at http://www.energy.ca.gov/siting/2008-11-17_MOU_CEC_DFG.PDF and the Executive Order and background information can be accessed on the Governor's webpage at http://gov.ca.gov/press-release/11073. This Executive Order also accelerated California's RPS from 20% to 33%.

[5] Public Law 111-5.

amendment and also satisfy the ARRA requirement to start construction before December 31, 2010.[6]

Granting this waiver will not undermine the efficacy of the cluster interconnection process which the ISO has established or discriminate against other projects in the ISO's interconnection queue. With regard to clusters following the transition cluster, the ISO has informed stakeholders that it intends to open a Cluster LGIP stakeholder process in December 2010 or January 2011 to evaluate the lessons learned to date since the ISO's cluster process went into effect, including a reevaluation of the financial security posting requirements. The ISO has discussed the substance of this waiver request with stakeholders during a conference call held on June 11, 2010.

If the waiver is granted as requested, the ISO anticipates submitting affected Large Generator Interconnection Agreements ("LGIAs") to the Commission as *pro forma* LGIAs submitted pursuant to ISO tariff, as modified by Commission ruling on the waiver request as to the posting requirements. The ISO understands that there is a separate but interrelated issue regarding the Participating TO's expectation that any commitment to provide up-front funding would be conditioned upon first receiving a Commission ruling that the Participating TO is entitled to abandoned plant recovery of prudently incurred

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6 The study phase will be completed in July 2010 with publication of the Phase II study reports to interconnection customers. This is followed by a Large Generation Interconnection Agreement ("LGIA") phase, of generally 90-days, in which the LGIA is negotiated and executed. Under the transition cluster timeline, this phase will generally run until October 2010, unless individual customers request longer periods to complete LGIA negotiations. The ISO believes that the outer boundaries of the duration of the waiver period requested in this filing will be January 2010.

costs (i.e. Abandoned Plant Approval), and whether inclusion of such a condition in an LGIA renders the agreement a non-conforming *pro-forma* agreement.[7]

The Request Meets the Commission's Standard for Waiver Requests

The Commission articulated the following standards for waiver requests when it granted the ISO's 2008 tariff waiver request as part of its transition to the Cluster LGIP: "Where good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, the Commission has found that a one-time waiver is appropriate."[8]

The Commission has also granted requests for waiver of tariff provisions in cases where the moving party has shown: (1) the waiver was of limited scope; (2) a concrete problem needed to be remedied; (3) the waiver did not have undesirable consequences, such as harming third parties; and (4) where there was error, the underlying error was made in good faith.[9] While the fourth element is not applicable to this situation, the ISO's waiver request satisfies each of the other three factors, and therefore should be approved.

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[7] Southern California Edison has defined Abandoned Plant Approval as a final FERC order, not subject to rehearing or appeal, granting the Participating TO's request for declaratory order that the Participating TO can recover 100% of its prudently incurred costs if the [approved transmission project which has been the subject of a FERC order granting incentive rate treatment, of which the interconnection network upgrades is part] is abandoned due to reasons outside of the control of the Participating TO. (*See, e.g*. Southern California Edison Company's Compliance Filing in Docket No. ER10-732, Transmittal Letter at p.6). In this docket, which concerns an LGIA with a generator that is a subsidiary of BrightSource Energy Inc, the Commission has indicated that the condition renders the agreement non-conforming; Southern California Edison has requested rehearing on the determination, the Commission has granted such rehearing request, and the issue is thus pending before the Commission. Southern California Edison has clarified to the ISO, and, we believe, to FERC, that the Participating TO would consider the condition fulfilled when the Abandoned Plant Approval Order is received, not upon a later prudency determination as to specific abandoned plant cost items.

[8] *California Independent System Operator* 124 FERC ¶ 61,031 at P19 (2008).

[9] *See ISO New England lnc*.,117 FERC ¶61,171 at P21 (2006); *see also* Gulf *South Pipeline Company, LP*, 112 FERC ¶ 61,294 (2005); *Great Lakes Gas Transmission Co*., 102 FERC ¶ 61,331 (2003); *TransColorado Gas Transmission Co*., 102 FERC ¶ 61,330 (2003); *Wisvest-Connecticut, LLC v. ISO New England, Inc.,* 101 FERC ¶ 61,372 (2002); *Northern Border Pipeline Co.*, 76 FERC ¶ 61,141 (1996).

I. BACKGROUND

A. This Waiver is Another Step in the ISO's Continuing Effort to Reform LGIP to Address the Challenges of Modern Generation Facility Development

The ISO's LGIP reform in 2008. As the Commission knows, the ISO has been engaged in ongoing efforts to reform its interconnection process to make it more efficient and to adapt the process so that it best facilitates a modern energy policy emphasizing renewables. Efficiency and policy issues were the subject of the Commission's December 11, 2007 Technical Conference on interconnection queuing practices, and a related March 20 2008 Order.[10] That order expressed concern about delays in processing interconnection queues and noted that all transmission providers should be evaluating whether changes are needed to their queue management practices to ensure the expediency called for by Order No. 2003. The order also specifically noted that the queuing backlog within the ISO has been creating additional challenges in meeting the state's renewable portfolio standard.[11]

That same year, the ISO began a two-step queue reform process that began with a tariff waiver petition, followed by its Generator Interconnection Process Reform ("GIPR Amendment"), which the Commission accepted in September 2008.

Major Features of GIPR. The most significant reforms of the GIPR process established (i) a clustered interconnection study approach and (ii) increased financial commitments for interconnection customers earlier in the

[10] Interconnection Queuing Practices, 122 FERC ¶ 61,252 (2008) (March 20 2008 Order).
[11] *Id*. at P 5.

interconnection process. The purpose of the increased financial commitments and related risks in the event of project withdrawal was to provide an incentive for developers to make realistic and timely decisions regarding project viability before entering the interconnection process. As a result, actual projects would more closely match system needs.[12]

Further Refinement in 2009. The ISO has been monitoring the efficacy of the reform measures and receiving feedback from interconnection customers, Participating TOs and California energy regulators and other representatives. From the onset, the ISO realized that it might be necessary to refine the process to incorporate lessons learned and issues arose as the GIPR was applied to the transition cluster. The ISO wants to ensure that the interconnection process does not act as a barrier to viable development, particularly for the increasing number of renewable projects seeking interconnection. The ISO made the first such refinement in 2009.

During the summer of 2009, the ISO completed its Phase I interconnection studies in a climate of changed economic conditions (an extreme downturn) and an increased policy emphasis on renewables (the state had increased its RPS to 33%). The ISO determined that, in light of changed external circumstances and its experience with the Phase I study effort, the financial posting requirements needed adjustment, or the interconnection process might indeed become a

[12] The increased financial commitments also addressed the problem of successive restudies that resulted when projects dropped from the queue in mid-process (often after the study phase) because they had not sufficiently matured to continue. In exchange for these increased financial commitments earlier in the process, the GIPR established a "cap" on the interconnection customer's financial responsibility for network upgrades, which addressed the cost uncertainty that resulted from restudies under the serial study approach, and because the serial process provided only cost estimates, with no maximum cost cap for network upgrades at any point in the process.

barrier to viable generation projects progressing to completion, particularly nascent renewable development.

Accordingly, the ISO amended its Cluster LGIP to lower the initial financial posting requirement and to split the second posting into two (from 100% to a second posting of 30% and a third posting of 100%). The Commission approved these changes in November 2009.[13]

Current Drivers of Accelerated RPS and ARRA. The policy drivers of California's 33% RPS and concentrated coordinated efforts by state representatives and renewable generators promote renewable development and secure ARRA cash grants for California have brought particular scrutiny to an aspect of the ISO's Cluster LGIP that presents a potentially significant barrier to success of projects in the transition cluster: The Cluster LGIP's advance posting requirements require the interconnection customer to post significant monies years in advance of construction for network upgrades that, at ultimate construction time, they will not be required to pay for, when a Participating TO has agreed to upfront fund them.

This situation did not occur under the prior serial LGIP process, because, there, the interconnection customer did not securitize its contractual obligation to pay for network upgrades until time of construction. Under the serial process, the customer's security posting and the offset for PTO up-front funding occurred simultaneously.

For purposes of this waiver petition, it is significant that the 2009 GIPR amendment splitting the second installment meant that customers would make a

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13 *California Independent System Operator Corporation* 129 FERC ¶ 61,124 (2009).

30% financial posting in advance of the transmission construction. The result is that interconnection customers put up increased security for the network upgrades *before* the start of construction (180 days after the Phase II study and possibly several years before construction of network upgrades). However, the offset for any PTO funded upgrades does not occur simultaneously with the customer posting, but only afterward, on or after the start of construction, when the interconnection customer's excess financial security would be returned to it. The ISO seeks this waiver because, as applied to the transition cluster (the first cluster to be processed), the increased generator commitment will have an overly strict result: instead of the customer *advancing security for the amount of its debt* (i.e. the amount of its cost-responsibility as determined by the applicable study report), Cluster LGIP Section 9 will require the customer to *advance security for **more than** its debt* (i.e. the cost responsibility before offset for the PTO-funded amount which is the true amount of the customer's debt at start of construction). Renewable projects already face high interconnection estimates due to their location constraints that required their location in remote "fuel" zones where transmission is not robust or perhaps does not exist; the ISO does not want the tariff to compound the hardship by requiring the customer to advance funds that are never meant to be drawn upon, but in fact returned, upon start of construction.

The ISO is concerned that this effect will counter, rather than further, the state policy goals of achieving its RPS and capturing ARRA cash grants for renewable generation. The ISO notes that the principle that state policy drivers are legitimately considered in the development of transmission infrastructure is consistent with Commission policy recently articulated in the Commission's recent NOPR on Transmission Planning and Cost Allocation.[14]

B. Financial Security Commitments Under the GIPR Interconnection Process

One of the ways in which GIPR increased the financial commitments was by requiring customers to make progressively larger security deposits throughout the study process, based on a percentage of a customer's total share of the costs of the network upgrades necessary to interconnect the projects in the customer's study group.[15] The ISO's Cluster LGIP requires interconnection customers to make three financial security deposits to cover the costs of network upgrades.[16]

Unless the applicable Participating TO elects to fund the network upgrades, the upgrades are funded by the interconnection customer, either by

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[14] Docket RM10-23-000 (June 2010).

[15] Customers are also required to post security to cover the costs of Participating TO interconnection facilities necessary to connect their project to the ISO-Controlled Grid. However, as noted above, these deposits are not at implicated in this waiver request.

[16] The three deposits are as follows:

(1) an initial deposit equal to roughly 15% of a customer's total cost responsibility for network upgrades identified in the first study (the "Phase I study"), to be made no later than 90 days after publication of the Phase I study he first deposit amount for network upgrades is based upon three screens, and is the lower of (i) 15% of cost responsibility; (ii) $20,000 per MW of electrical output of the generating facility that is the subject of the interconnection request; or (iii) $7,5 million, but in no event less than $500,000. Cluster LGIP, ISO Tariff App. Y, Section 9.2.

(2) a second deposit that brings the total security posted to 30% of a customer's total cost responsibility for network upgrades, to be made no later than 180 days after publication of the second study (the "Phase II study"); and

(3) a final deposit that brings the total security posted to 100% of the customer's cost responsibility for network upgrades, to be made on or before the start of construction of the upgrades.

If the customer withdraws from the queue any time after posting the initial security deposit, the customer forfeits a portion of its total deposit based on the time of withdrawal, as set forth in Section 9.4.2 of the Cluster LGIP.

means of drawing down the financial security already posted by the customer, or by providing additional financial security up to the customer's maximum cost responsibility.[17] Even if the Participating TO elects not to fund the network upgrades, the Participating TO is still responsible for funding any capital costs for the network upgrades that exceed the costs allocated to the customer (which are capped).

As stated above, the ISO intends the requested tariff waiver to apply to projects in the ISO's "transition cluster," which is the first group of projects to be studied under the ISO's Cluster LGIP. This cluster consists of all interconnection requests received by the ISO prior to June 2, 2008 that were not eligible for processing under the serial study group.[18] The transition cluster was established through the earlier tariff waiver, which the ISO brought before the Commission in May 2008 to organize interconnection requests in order to transition from the serial process to the Cluster LGIP.

C. California's RPS Requirements and the Interconnection of Renewable Resources

Established in 2002[19] and accelerated in 2006[20] and 2008[21], California's RPS is one of the most ambitious renewable energy standards in the country. This RPS program requires electric service providers to increase procurement from eligible renewable energy resources, by at least 1% of their retail sales

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17 After the initial deposit, the second or third deposits are based on the lower of the Phase I or Phase II study report.

18 The serial study group is generally composed of those projects that had a system impact study due for completion, or a PPA pending or approved, prior to May 1, 2008.

19 Senate Bill 1078 (Sher, Chapter 516, Statutes of 2002).

20 Senate Bill 107 (Smitian and Perata, Chapter 464, Statutes of 2006).

21 Governor's Executive Order No. S-14-08, dated November 17, 2008, accessible on the State of California website at http://gov.ca.gov/index.php?/executive-order/11072/.

annually, with the ultimate objective that all retail sellers of electricity must serve 33% of their load with renewable energy by 2020. This is an ambitious goal, given that various analyses report that there is currently a projected "net short" of over 52,000 GWh/year in renewable resources required to meet the 33% RPS mandate for 2020.[22] This represents nearly triple the amount of energy delivered by renewable electricity resources during 2007.[23] As a result, there is a pressing need to interconnect large numbers of renewable resources in California over the next decade. Significantly, California increased its RPS standard from 20% to 33% in November 2008, after the ISO designed its cluster process.[24]

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22 This estimate of net short is taken from analyses conducted by the California Transmission Planning Group (CTPG"). An estimate of 53,605 GWhr/yr is contained in CPTG's initial (Phase I) report, *2010 Phase 1 California Transmission Planning Group 2020 Study Report* (Feb 2010) at pp. 7-10, 20-27, available at http://www.ctpg.us/public/images/stories/downloads/2010-02-17_ctpg_phase_1_2020_study_report_final.pdf . As CPTG explained its Phase I analysis in its later (Phase II) report:

> In Phase 1, CTPG used the 2020 energy forecast found in the California Energy Commission's 2009 Integrated Energy Policy Report (IEPR), which resulted in an estimated 289,697 gigawatt-hours of retail load that was subject to the California Renewable Portfolio Standard. Under this estimate and assuming the thirty-three percent (33%) California Renewable Portfolio Standard goal was in place for the Year 2020; load-serving entities would be required to obtain a total of 95,600 gigawatt-hours of renewable energy in order to meet the target, of which *approximately 53,605 gigawatt-hours would be acquired from resources over and above existing and new renewables and other miscellaneous additions. This latter figure represents the "net short" renewable energy requirement*

(*2010 CTPG Final Study Report: Phase 2* (May 7, 2010) at p.26 fn7 (emphasis added) , available on the CPTG website at http://www.ctpg.us/public/images/stories/downloads/2010-05-07_final_phase_2_ctpg_study_report.pdf

In is subsequent (Phase II analysis), the CTPG settled upon a lower 52, 764 GWhr/yr net short amount and modeled at that renewable energy requirement. (*Id*. at p.9.)

23 *33% Renewables Portfolio Standard Implementation Analysis*, California Public Utilities Commission (June 2009) at 1, available at http://www.cpuc.ca.gov/NR/rdonlyres/1865C207-FEB5-43CF-99EB-A212B78467F6/0/33PercentRPSImplementationAnalysisInterimReport.pdf

24 The ISO filed in GIPR amendment in July 2008, whereas the Governor issued his executive order in November 2008. The California legislature is actively pursuing codifying the 33% RPS in statutory law, but has not done so as of the time of filing of this waiver petition. As

California is not alone in having adopted RPS standards. Indeed, over twenty-five states have adopted some form of renewable and alternative energy portfolio requirements.[25] The federal government has also made important strides towards encouraging the development of renewable resources. One of the primary examples of such is the energy-related provisions of ARRA, which provides significant new tax incentives related to the development and deployment of renewable energy and clean energy. Perhaps most significantly, however, Section 1603 of ARRA makes available to renewable developers direct grants in lieu of tax credits equaling 30 percent of a facility's tax basis, provided that construction begins on the facility prior to the end of 2010.[26] In addition, the federal government is taking steps to assist California in meeting the State's RPS goals. In October of 2009, this Commission, joined with eight other federal agencies in entering into a MOU in order to facilitate the siting of transmission on federal lands.[27] That same month, the Department of Interior and the State of California entered into an MOU to promote cooperation and collaboration in order to promote the achievement of the 33% RPS goal. As noted in the latter MOU,

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mentioned above, the 33% RPS was a driver of the ISO's 2009 LGIP Amendment and is also a driver of this waiver petition seeking further Cluster LGIP refinement for the cluster currently being processed. As explained elsewhere in this filing, the waiver is sought because there is insufficient time to implement a tariff amendment to bring relief to the transition cluster.

[25] See, e.g., Renewable Portfolio Standards in the States: Balancing Goals and Implementation Strategies, National Renewable Energy Laboratory (Technical Report, NREL / TP-670-41409, December 2007) at p. 1. This report notes that the District of Columbia has also established an RPS and that three additional states have adopted non-binding renewables portfolio goals.

[26] See US Treasury Guidance, Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009, (U.S. Treasury Department Office of the Fiscal Assistant Secretary, July 2009/ Revised March 2010) at p.5. The Guidance document is available on the US Treasury's website at http://www.ustreas.gov/recovery/docs/guidance.pdf . This document is linked to the US Treasury ARRA webpage at http://www.ustreas.gov/recovery/1603.shtml.

[27] This MOU is accessible on the Commission's website at http://www.ferc.gov/legal/maj-ord-reg/mou/mou-transmission-siting.pdf .

> The President and Congress have intensified the need for accelerated development of renewable energy projects in California with the passing of the American Recovery and Reinvestment Act (ARRA) of 2009. The Act specifically directs economic stimulus funding to qualified projects that begin construction by December 1, 2010.
> …
> The purpose of this MOU is to direct California Agencies and Department of the Interior Agencies …to take the necessary actions to further the implementation of the Governors Executive Order S-14-08 [establishing 33% RPS] and the Secretary's Order 3285 [articulating DOI policy to promote renewable development as a high priority] in a cooperative, collaborative, and timely manner. [28]

II. BASIS FOR WAIVER

The ISO requests that the Commission grant it a limited waiver of the requirements of Sections 9.2 and 9.3 of the Cluster LGIP (ISO Tariff App. Y). Specifically, for interconnection customers in the transition cluster for which a Participating TO has made a commitment to provide up-front funding for the costs of network upgrades, the ISO is seeking to waive the requirement that such interconnection customers be required to make the second and third postings of financial security to cover any network upgrades funded by a Participating TO. As explained above, these postings would be equal to 30 and 100 percent, respectively, of the customer's total cost responsibility for network upgrades. Also, because customers in the transition cluster posted their initial security in December 2009, the portions of those deposits relating to upgrades that a Participating TO have committed to up-front fund would be refunded for eligible

[28] Memorandum of Understanding between the State of California and the Department Of The Interior On Renewable Energy, Section I at p.1. This MOU can be accessed on the Governor's webpage at http://gov.ca.gov/pdf/press/2009-CA-INTERIOR-MOU.pdf

customers, although those customers will still be required to maintain the $500,000 minimum security amount set forth in Section 9 of the Cluster LGIP.

Although a Participating TO's commitment to provide up-front funding of network upgrades for an interconnection customer logically suggests that the customer be absolved from the need to post financial security during the interconnection process for those same components, there are no provisions in the ISO's Cluster LGIP providing such customers with any exemption from the financial security requirements. The current language of the Cluster LGIP requires the ISO to collect financial security deposits from all interconnection customers, regardless of whether a Participating TO has committed to providing up-front funding for certain upgrades.[29]

Also, the ISO is limiting this waiver to financial security deposits required to secure the costs for network upgrades only. Under the Cluster LGIP, interconnection customers must also post security based on the costs of necessary Participating TO interconnection facilities. However, because such costs are the sole responsibility of the interconnection customer and are not reimbursable, the ISO is not seeking to waive the security deposits relating to these facilities.

A. The Requested Waiver is of Limited Scope

One of the criteria that the Commission uses to assess requests for waiver of tariff provisions is whether the waiver is of "limited scope." The ISO's request to waive the security deposit requirements set forth in Sections 9.2 and 9.3 of the

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[29] As explained below, the ISO intends to initiate a stakeholder process later this year which will consider, among other issues, the desirability of modifying the Cluster LGIP to make the exemption requested herein generally applicable to future interconnection clusters.

Cluster LGIP satisfies this criterion. The ISO seeks the waiver only for those projects for which a Participating TO has committed to upfront fund the customer's share of network upgrade costs. Moreover, the requested waiver will apply only to those deposit amounts required to secure those specific network upgrades that the Participating TO has committed to fund. Therefore, should there be any portion of the network upgrades assigned to a customer that the Participating TO is not funding, the interconnection customer would still be required to post security covering the costs of those portions of the network upgrades, as these network component costs would be outside of the scope of the requested waiver.

Moreover, this waiver will only apply to projects in the ISO's transition cluster. As indicated above, the ISO plans to initiate a stakeholder process later this year to explore whether projects for which a Participating TO has committed to provide up-front funding should be generally exempted from the security deposit requirements of Section 9 of the Cluster LGIP.[30] However, any such change would be implemented through a Section 205 filing, after the satisfactory completion of the stakeholder process. The ISO anticipates that any tariff amendments coming out of this effort would be in effect prior to the time when similar financial commitments must be made on behalf of projects in the next Cluster LGIP clusters.[31] In sum, because this waiver will only apply to specific

[30] The ISO anticipates that it will initiate this stakeholder process in December 2010 or January 2011.

[31] The clusters following the transition cluster are known as the First Queue Cluster and the Second Queue Cluster. Under the ISO's Cluster LGIP timelines, projects in these clusters will be studied together in a Phase II study process concluding on or about November 30, 2011, with issuance of final Phase II study reports. Second financial postings would be required 180 days after publication of the final Phase II study reports, or approximately May 30, 2012. The ISO

qualifying projects in the ISO's transition cluster, it is of a strictly limited scope and duration, and therefore satisfies the Commission requirement that tariff waiver requests be of "limited scope."

In evaluating the circumstances leading to the filing of this tariff waiver request, the ISO considered whether it could conduct a tariff amendment process in time to effect a change in the posting requirements for transition cluster projects without jeopardizing the intended timelines for consummating Large Generator Interconnection Agreements ("LGIA") and commencing construction of these projects. Because many of these projects will need to complete LGIA negotiations in the third Quarter of 2010 and to initiate "start of construction" activities before December 31, 2010 in order to access ARRA funding, the ISO concluded that a full tariff amendment process, including stakeholder participation and input, could not be completed in sufficient time to assist these projects.

B. The Requested Waiver Will Help Solve a Concrete Problem That Requires Remedy

As noted above, there is currently a projected "net short" of over 52,000 GWh/year in renewable resources required to meet California's 33% RPS mandate for 2020. This represents nearly triple the amount of energy produced by renewable resources as of 2007. This statistic highlights the pressing need to add renewable capacity in California over the next decade, and the resulting challenges that the interconnection processes in California will face in connecting

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anticipates that any further amendments arising out of its stakeholder process commencing December 2010/January 2011 would be in place before the financial postings are due for the projects in these later clusters.

these resources to the grid. The ISO believes that the GIPR process has proven to be a fair and efficient means for processing interconnection requests, including requests relating to renewable resources, and has moved these projects further along in the process then would have been the case under the prior serial process. Indeed, the California Public Utilities Commission ("CPUC"), in its Implementation Analysis[32], has identified the GIPR process as one of the important reforms that would help expedite the interconnection of renewable resources, noting that it "has increased the speed and efficiency of studying interconnection requests by planning common transmission solutions for groups of generation projects and integrating such planning into the California ISO annual transmission planning process."[33]

While the ISO believes that the GIPR reform has significantly improved the interconnection process, the ISO still believes that more can and should be done to ensure that California meets its 33% RPS goal. Accordingly, as indicated above, the ISO believes that it is critically important to continue to seek out and implement available measures to improve on the efficiency of the existing GIPR interconnection process to increase the likelihood of success in meeting California's ambitious RPS requirements. The transition cluster is particularly important in this respect, because it contains a significant number of renewable resource projects. Of the approximately 10,419 MW of total capacity

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32 33% Renewables Portfolio Standard, Implementation Analysis, Preliminary Results (June 2009) (hereinafter, "CPUC Implementation Analysis"), available on the CPUC's website at http://www.cpuc.ca.gov/NR/rdonlyres/1865C207-FEB5-43CF-99EB-A212B78467F6/0/33PercentRPSImplementationAnalysisInterimReport.pdf/. Other information about this report can be found on the CPUC's 33% Implementation Analysis webpage at http://www.cpuc.ca.gov/PUC/energy/Renewables/hot/33implementation.htm .

33 CPUC Implementation Analysis at 44.

in the transition cluster, nearly 8,215 MW represents capacity from renewable resources. Timely interconnection of the resources in the transition cluster is crucial to contribute to much needed renewable capacity in California. Successful completion of the transition cluster will also provide confidence to the merchant generation community, generation financiers, transmission owners, and the marketplace as a whole, and could result in easier access to capital market for renewable projects situated in the later clusters.

Waiving the security deposit requirements relating to network upgrade costs, as set forth in Sections 9.2 and 9.3 of the Cluster LGIP, for projects in the transition cluster that a Participating TO has committed to provide up-front funding, will help to achieve these goals because it will facilitate the construction and interconnection of projects in the transition cluster, without undermining the reasons for adopting increased financial commitments in the GIPR process.

First, the requested waiver will facilitate the interconnection of renewable resources in the transition cluster because it will appropriately reduce the overall financial burden to interconnection customers faced with potentially large network upgrade costs in addition to other project costs. Further, renewable solar and wind projects tend to be very land-use intensive, with related large mitigation costs to permit construction and operation of the facilities.

The GIPR process, in conjunction with the ISO's location-constrained resource provisions, has ameliorated the burden of network upgrade costs on smaller developers, through the cost cap features and evaluating the triggering of network upgrades in groups of projects rather than individually. Regardless, many interconnections require significant transmission upgrades, the cost of which must still be fairly apportioned among projects in the study cluster, based on their point of interconnection. Renewable projects in the transition cluster, in particular, often face high up-front network upgrade costs because interconnection of their projects requires construction of new lines to relatively remote locations in newly identified renewable resource zones. Nevertheless, the ISO continues to believe that it is appropriate to require developers to post appropriate financial security deposits throughout the process based on the costs of these upgrades in order to ensure that the interconnection process does not bog down in a series of successive re-studies which results when customers withdraw from the queue late in the study process.

When a Participating TO commits to up-front fund network upgrades, however, there is a much reduced need for financial security on the part of the interconnection customer and, arguably, no need for such interconnection customers to post financial security to fund transmission upgrades. This is because a Participating TO commitment to up front fund will likely come into play after the first financial security posting has had the desired effect of incenting non-mature projects to step out of the present queue cluster and only after Phase II interconnection studies have been substantially completed, replacing conceptual plans of service with more final ones. At this point, a commitment by a Participating TO to provide up-front funding for network upgrade costs provides strong financial support to affected projects by virtue of the Participating TO's own resources as well as its access to capital. This result is also logical in light of the fact that the financial security must be posted in favor of the applicable Participating TO, because it is the Participating TO that bears the primary risk with respect to any sunk upgrade costs. If the Participating TO makes a business decision, on the other hand, that it will assume responsibility for these costs, then it seems appropriate to relieve the interconnection customer from the need to post security in favor of the Participating TO.

Exempting these customers from the financial security requirements of Sections 9.2 and 9.3 of the Cluster LGIP will provide them with significant financial relief. By committing to fund the initial payment of network upgrades, a Participating TO removes the need for a developer to secure the potentially large amount of capital necessary to fund its proportional share of network upgrade costs and associated security deposits. This, in turn, reduces the developer's overall financial burden and the risk that otherwise viable developers with less access to capital will be forced to withdraw from the interconnection process prior to the commencement of construction.

By reducing the risk of withdrawal prior to construction, this waiver will also significantly improve the ability of developers to access funds made available by the federal government under the cash grant in lieu of investment tax credit set forth in Section 1603 the ARRA legislation. Under ARRA, renewable developers are eligible for a direct financial grant of up to 30% of the tax basis of their facilities. Because these funds are available to any renewable developers for project financing costs that meet the basic eligibility standards, they have the potential to allow developers that might otherwise face difficulties in securing adequate financing to construct their facilities and to remain financially viable and reach commercial operation. At a minimum, the availability of these funds provides a strong financial impetus for renewable projects to enter and stay in the queue.

In order to be eligible for a grant under ARRA, a developer must begin construction on its project prior to the end of 2010.[34] For projects in the transition cluster, the ISO intends to complete the final Phase II study by July and enter into LGIAs in the fall. As explained above, excusing interconnection customers from the financial security requirements with respect to those network upgrades that a Participating TO has agreed to up-front fund will give those projects an increased chance to remain financially viable through the interconnection study process, and therefore, more likely to be in a position to reach construction and therefore access and make use of the substantial grant made available through ARRA.

This waiver will also help solve a potential pitfall with respect to a confluence of events that will occur in the third quarter of 2010 and may potentially hinder a developer's ability to access ARRA funds. As indicated above, developers seeking ARRA funding must meet the standard that "physical

[34] For projects that have not already been placed in service, developers must have started construction before December 31, 2010 and they cannot submit their application until such construction has begun. Start of construction occurs when "physical work of a significant nature" begins. The US treasury has developed a safe harbor provision under Section 1603 which provides that the standard is met if the applicant incurs or pays more than 5 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring or researching). ("Payments for Specified Energy Property in Lieu of Tax Credits under the American Recovery and Reinvestment Act of 2009, Program Guidance, US Treasury Dept (July 2009), pp.2-3, 6-7), accessible on the US Treasury website at http://www.ustreas.gov/recovery/docs/guidance.pdf. This document is linked to the US Treasury ARRA webpage at http://www.ustreas.gov/recovery/1603.shtml.

work of a substantial nature" has begun by December 31, 2010, an Internal Revenue Service standard which requires them to actually start construction activities prior to year's end. At approximately the same time, such developers would have to make their second posting of financial security, due within 180 days of publication of their Phase II study report. Prior to both of these events, those developers utilizing private financing for project construction must complete their financing transactions.

To complete the financing transactions, the ISO understands and believes that lenders will first require the execution of an LGIA setting forth with substantial certainty the full extent of the developers' cost responsibility, including financial security requirements. To optimize opportunities for private financing and cost responsibility determination, the ISO anticipates that the terms of any Participating TO commitments to provide up-front funding for network upgrades would also be substantially set forth in the LGIAs. In the absence of a Participating TO agreement for up-front funding in the LGIAs, and an associated exemption from the Cluster LGIP's financial security requirements, lenders will likely offer less optimal financing terms to the customer or, potentially, refuse to offer financing altogether, even though the customer will ultimately recoup any transmission upgrade costs once the costs are reflected in transmission rates. These potential pitfalls can be avoided by providing developers, as soon as possible, with clarity that when a Participating TO has committed to up-front fund network upgrades, further financial security deposits relating to those network upgrades will not be required. This will allow the parties to the interconnection process to reflect these terms in the applicable LGIAs, which will in turn, provide developers with better opportunities to retain private financing necessary to commence construction activities by the end of this year, and thereby, obtain ARRA funding.

Should developers not be able to obtain private funding in time to be certain that they can meet the 2010 deadline to start construction, they may be more likely to withdraw from the interconnection queue as a result. By waiving the requirement that developers provide financial security when a Participating TO has agreed to provide up-front funding of their network upgrades, developers will have a greater chance of reaching the construction stage, thereby obtaining ARRA funding. The ISO believes that the ARRA funding is a vital financial stimulus to the development of renewable resources in California and across the country. This is reflected in the fact that within the transition cluster, approximately 15 renewable resource projects representing 3,451 MW have already been identified by REAT, the Participating TOs and the ISO as ARRA cash grant funding projects[35]. It is therefore important to place projects in the best possible position to utilize these funds, when consistent with the fundamental principles of fairness and efficiency underlying the GIPR interconnection process. The requested waiver does just that.

The ISO submits that waiver is the most appropriate procedural tool to achieve these benefits for projects in the transition cluster, as opposed to a tariff

[35] These projects represent 28% of the transition cluster projects (15 out of 52 projects) and 33% of the total MW of the cluster (3,451 MW out of 10,419 MW). The transition cluster contains 8,215 MW of renewable generation and 2,204 MW of conventional generation, for a total of 10, 419 MW of generation addition to ISO-controlled grid.

amendment. First, the waiver can be implemented more quickly than a tariff amendment because there is no requirement that the Commission provide a 60-day notice and comment period prior to acting on this request. A faster outcome will provide more certainty for all participants in the interconnection and resource planning processes. Moreover, although the ISO is considering whether it would be appropriate to remove the security deposit requirements relating to network upgrades for projects that a Participating TO has agreed to up-front fund on a going-forward basis, this issue should be more fully vetted in a stakeholder process before permanently modifying the Cluster LGIP. Although the ISO firmly believes that this waiver will provide substantial benefits to the projects in the transition cluster, the ISO acknowledges that the GIPR interconnection procedures are still relatively new, and therefore, the ISO is still gaining experience and insight as to what level and scope of developer financial commitment provides the best opportunities for developer success while ensuring that the process remains fair and efficient for all participants and results in the most cost-effective and sensible deployment of resources on the ISO-Controlled Grid. A temporary waiver applicable to just the transition cluster will allow the ISO to obtain valuable information that will guide it in its decision as to whether this waiver should be applied to projects in future queue clusters through a tariff filing, while providing sufficient time to make this decision through a robust stakeholder process and implement it prior to the collection of any financial security as part of its next interconnection cluster.[36]

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[36] In this regard, interconnection customers in the subsequent clusters (the First Cluster Window and the Second Cluster Window) will receive their Phase II study reports in

C. Granting the Requested Waiver Will Not Have Undesirable Consequences, Such as Harming Third Parties

Granting the waiver requested herein will not have undesirable consequences and will not harm third parties such as other developers in the ISO's LGIP. Although this waiver may relieve certain developers from most of the security deposit requirements set forth in the Cluster LGIP, the fact that it is contingent on a Participating TO's commitment to provide up-front funding for the costs of network upgrades provides assurance that the fundamental goal of the GIPR reforms – that of ensuring an efficient interconnection process through requiring adequate financial security and generator commitment – will be protected.

First, the efficiency and fairness of the interconnection process will be protected because the ISO is proposing to permit this waiver only in cases when a Participating TO has made an unequivocal commitment[37] to provide up-front funding for the project by either: (1) entering into an LGIA which explicitly states the Participating TO's unconditional commitment to up front fund the network upgrades identified in the LGIA or (2) providing some other form of written, binding commitment to the ISO and the Interconnection customer stating an unconditional commitment to provide up-front funding of any network upgrades

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approximately December of next year (2011). Under Section 9.3.1, they will be required to post their second financial security under Section 9.3.1, to bring their deposit up to 30%, within 180 days of publication of their Phase II interconnection study report. This corresponds to May 2012. The ISO expects that it will conclude its stakeholder process and submit any further amendment to the Cluster LGIP to FERC well in advance of May 2012.

[37] It is expected that Participating TOs will not unequivocally commit to provide up-front funding until they receive abandoned plant approval. In such situations where the commitment to up front fund does not arise until a condition is met, the ISO will require the customer to post, subject to refund when the condition to funding is fulfilled (such as any condition that the Participating TO first receive abandoned plant approval).

ultimately identified in the LGIA. By requiring this firm commitment prior to granting the exemption from providing the second and third security deposits, the ISO will avoid any potential for unfairly avoiding financial security requirements and discriminatory application of this waiver.[38]

Also, as explained above, a commitment by a Participating TO to provide up-front funding for the network upgrade costs associated with a project provides strong financial support for that project, and therefore, there is a much reduced need for financial security on the part of the interconnection customer and, arguably, no need for the interconnection customer to post financial security to fund transmission upgrades. Moreover, interconnection customers eligible for relief under this waiver would still be required to maintain financial security to cover the costs of any Participating TO Interconnection Facilities, as well as the minimum $500,000 deposit relating to network upgrade costs. This will ensure that, in addition to the Participating TO's financial support, these customers will still have a direct monetary stake in the process.[39]

Finally, this waiver will not result in any harm to third parties, such as other customers in the ISO's LGIP. This is the case because this waiver does not in

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[38] The ISO understands that Participating TOs' commitments to continue to provide up-front funding will likely be contingent on developers meeting certain reasonable conditions subsequent, such as construction milestones. The ISO believes that such requirements should not disqualify projects for this waiver. In cases where a developer fails to meet the milestones agreed to in order to receive up-front funding, and the Participating TO withdraws its commitment, the ISO would require the developer to post the applicable security deposits in order to avoid a situation in which there is an unsecured financial obligation relating to upgrade costs. The ISO note that for conditions such as these related to the *continued obligation* to up front fund (a condition subsequent); they are not conditions that must be completed *before* the Participating TO will extend the commitment to fund (a condition precedent).

[39] The ISO also notes that is approximately 15,000 MW of renewable projects behind the transition cluster (in the first queue cluster and second queue clusters) to be connected to the grid, a fact that mitigates the risk of stranded investment in the event that some of the transition cluster projects which are the beneficiaries of PTO up-front funding should withdraw before project completion.

any way effect the calculation or allocation of upgrade costs to interconnection customers. Those costs will continue to be determined in accordance with the existing provisions of the ISO's LGIP. Customers in the transition cluster not implicated by this waiver will be in the same position they would have been absent this waiver, both financially and otherwise. With respect to customers in future clusters, the ISO will be initiating a stakeholder process to consider tariff amendments that would be implemented prior to the financial security posting requirements for the next cluster study groups.

III. SERVICE

The ISO has service copies of this filing upon the California Public Utilities Commission and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO has posted this filing on its website.

IV. CORRESPONDENCE

The ISO requests that all correspondence, pleadings and other communications concerning this filing be served upon the following:

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V. CONCLUSION

For the reasons discussed above, the ISO respectfully requests that the Commission grant the limited waiver requested herein in order to allow the ISO to waive the second and third required financial security postings relating to network upgrades with respect to those interconnection customers for which a Participating Transmission Owner ("Participating TO") has committed to provide up-front funding for the costs of network upgrades, so as to facilitate the process for expeditiously and efficiency interconnecting the facilities in the transition cluster, including the large amount of renewable resource capacity. For the reasons stated in this petition, the ISO requests that the Commission rule on the ISO's waiver request within 45 days of the date of this filing.

Respectfully Submitted,

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