

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

CalWind Resources, Inc.)	
)	
v.)	Docket No. EL14-4
)	
California Independent System Operator Corporation)	
)	
Southern California Edison Company)	Docket Nos. ER13-1216-000 and ER13-1216-001
)	

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTION FOR CONSOLIDATION AND FOR
TEMPORARY SUSPENSION OF PROCEDURAL SCHEDULE WITH
SHORTENED RESPONSE TIMES**

The California Independent System Operator Corporation (“ISO”) respectfully submits this answer to the motions filed by CalWind Resources, Inc. (“CalWind”) on October 11, 2013.¹ CalWind filed these motions in conjunction with a complaint filed at the same time,² which challenges the justness and reasonableness of Section 25 of the ISO’s tariff. Specifically, CalWind challenges the terms and conditions under which an existing generator that is transitioning from selling its full output to its interconnected utility to selling its output wholesale is eligible to receive an ISO interconnection agreement, without first entering the ISO’s interconnection queue.

In its motions, CalWind requests three forms of procedural relief: (1) a temporary suspension of the procedural schedule for the hearing established by the Commission in Docket ER13-1216, which involves the terms of an

¹ The ISO submits this answer pursuant Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 383.213 (2013).

² The complaint is in Docket EL14-4.

unexecuted large generator agreement (“LGIA”) for CalWind; (2) shortened time periods for responses to its procedural motions and the complaint itself; and (3) if the Commission does not summarily rule on the complaint, consolidation of the complaint with the hearing in Docket ER13-1216.

The ISO urges the Commission to act as follows on CalWind’s requests:

- Deny CalWind’s request for an open-ended suspension of the hearing established in Docket ER13-1216, but instead adopt CalWind’s alternative proposal for a discrete extension of the hearing schedule in ER13-1216 in order to keep the parties moving towards a resolution of that matter;
- Deny CalWind’s motion for a shortened response time for answers to the complaint because modifying the standard timeframe would unfairly prejudice the ISO, SCE and any other intervenors, and CalWind has not demonstrated good cause for a shortened response time;
- If the Commission determines that CalWind’s complaint should not be rejected on the pleadings alone, consolidate the complaint proceeding with the hearing in ER13-1216.

I. BACKGROUND

Docket No. ER13-1216 concerns an unexecuted LGIA filed by Southern California Edison Company (“SCE”) at the request of CalWind, an existing qualifying facility interconnected to the ISO controlled grid which previously sold

its full output to SCE. At the center of the dispute is the amount of interconnection service which CalWind is entitled to have reflected in an ISO LGIA, with CalWind asserting an entitlement to interconnection service in excess of its existing capacity, based on agreements with SCE that predate the inception of the ISO. The parties have recently concluded unsuccessful settlement discussions and the settlement judge referred the matter to the Chief Administrative Law Judge for further proceedings. On October 1, the Chief Judge issued an order appointing a Presiding Administrative Law Judge and placing Docket No. ER13-1216 on the Track II hearing schedule.

On October 13, CalWind filed a complaint in a separate docket alleging that sections 25.1 and 25.1.2 of the ISO tariff are not just and reasonable because they state that when an existing generator already interconnected to the ISO controlled grid seeks interconnection pursuant to the terms of the ISO tariff in order to commence wholesale sales, the maximum amount of interconnection service the generator is entitled to receive, without being required to submit a new interconnection request, can be no more than the generator's existing net generating capacity. CalWind argues that the ISO tariff should allow existing generators to receive interconnection service up to the amount reflected in their historical state-jurisdictional interconnection contracts, regardless of how much capacity a generator actually has installed.

CalWind asserts that the resolution of its complaint could affect the outcome of the matters set for hearing in Docket No.ER13-1216. On this basis, CalWind requests: (i) a temporary suspension of the procedural schedule in

Docket No. ER13-1216 pending a ruling on the complaint; (ii) a shortened response time of five days to that motion, followed by an expedited ruling on the suspension motion within five days thereafter; and a shortened response time of two weeks to the complaint. CalWind also requests that, if the Commission sets the complaint for hearing, it consolidate the complaint with the pending hearing proceeding in Docket No. ER13-1216.

II. DISCUSSION

A. The Commission Should Extend, Rather than Indefinitely Suspend the Hearing Schedule in Docket No. ER13-1216

The ISO agrees that the resolution of CalWind's complaint could have an impact on the outcome of Docket No. ER13-1216. A denial of the complaint could be determinative or, at the very least, could limit the issue to one of an interpretation of the ISO Tariff. Accordingly, the ISO does not object to an extension of the schedule in Docket No. ER13-1216. An open-ended suspension, however, is unwarranted. If CalWind cannot establish in this hearing that it has a right to transmission service that is greater than its installed capacity, based on its historical contracts with SCE, then the issue that it raises in its complaint, the justness and reasonableness of Section 25 of the ISO tariff, would be moot. Accordingly, the ISO is concerned that an open-ended suspension of the procedural schedule could turn into an indefinite delay of what is essentially a dispute between CalWind and SCE. The ISO therefore requests that the Commission deny CalWind's request to suspend the procedural schedule pending a decision on the complaint, and instead adopt one of CalWind's

alternative options: either a six-month extension of the due date for the Presiding Judge to issue his initial decision, or setting the case for hearing on a Track III schedule, which would effectively extend the deadline for an initial decision by sixteen weeks.³ Extending rather than suspending the procedural schedule will ensure that the parties will continue to move toward a resolution of the issues set for hearing in ER13-1216.

B. The Commission Should Reject CalWind's Request for a Shortened Period for Answers to the Complaint

In its complaint, CalWind requests that the Commission establish a shortened period of two weeks for answers to the complaint. Shortening the time period for responses will prejudice the ISO and any intervenors, and CalWind provides no good cause for doing so. Therefore, the Commission should reject this request in its order addressing CalWind's procedural motions, and retain, at a minimum, the standard period for answers to the complaint.⁴

The only reason that CalWind gives for shortening the time period for answers is that "many of the matters raised in [the complaint] have been the subject of ongoing discussions between the parties for a long time."⁵ Even if this

³ The Commission's Track II schedule provides 47 weeks after issuance of the order designating the presiding judge to issue an initial decision. The Track III schedule provides 63 weeks. See <http://www.ferc.gov/legal/admin-lit/time-sum.asp>.

⁴ See 18 C.F.R. § 385.206(f) ("Unless otherwise ordered by the Commission, answers, interventions, and comments to a complaint must be filed within 20 days after the complaint is filed."). On October 15, the Commission issued notice of CalWind's complaint, and set the due date for answers as October 31, i.e., 20 days after the date of filing. As noted above, CalWind also requested a shortened five-day response time to its procedural motions. The ISO does not oppose this request.

⁵ CalWind Complaint at 3.

were an appropriate basis for shortening the response period, in fact, CalWind has never directly presented arguments in ER13-1216 challenging the justness and reasonableness of the ISO tariff, for the good reason that it would be inappropriate to do so in the context of a Section 205 proceeding. As such, although the parties have discussed, mostly in the context of settlement, various issues raised in the pleadings submitted in ER13-1216, the ISO and SCE have never had the benefit of seeing and responding to CalWind's arguments that Section 25 of the ISO tariff is unjust and unreasonable. Therefore, shortening the time period for answers would prejudice the ISO and SCE, as well as other interested entities that may wish to intervene and comment.

Regardless, however, even if CalWind were correct that the issues raised in its complaint were discussed between the parties to ER13-1216, such discussions would not constitute good cause for limiting the ISO's, SCE's, and any other interested parties' time to respond. The timing of this complaint was entirely within CalWind's discretion. As observed by the Chief Judge in his order rejecting CalWind's request to suspend the pre-hearing conference in ER13-1216, CalWind had "ample opportunity to file its complaint and related requests with the Commission."⁶ CalWind has known of the ISO's and SCE's position regarding the application of Section 25 of the ISO tariff for many months. The fact that CalWind decided to wait until the "12th hour"⁷ to file its complaint is not a good reason to limit the time period for the ISO, SCE, and any other interested

⁶ Order of Chief Judge Denying Motion to Defer Prehearing Conference, Docket No. ER13-1216-001 (October 11, 2013) ("October 11 Chief Judge Order")

⁷ October 11 Chief Judge Order at P 2.

parties to respond. If there was truly a need for expedited treatment of the issues raised in the complaint, CalWind should have, and could have, filed its complaint sooner. Its decision to wait to file its complaint should not operate to prejudice the ISO, SCE and potential intervenors.

C. The ISO Supports CalWind's Motion to Consolidate

As the ISO will demonstrate in its answer, CalWind's complaint is without merit and the Commission should summarily reject it on the basis of the pleadings alone. If the Commission nonetheless determines that CalWind's complaint cannot be summarily rejected, the ISO agrees that the Commission should consolidate the complaint proceeding with Docket No.ER12-1216 for the reasons discussed above and in CalWind's motion.

III. COMMUNICATIONS

All service of pleadings and documents and all communications regarding this proceeding should be addressed to the following:

Sidney M. Davies
Assistant General Counsel
California Independent System
Operator Corporation
250 Outcropping Way
Folsom, CA 95630
Tel: (916) 351-4400
Fax: (916) 608-7296

sdavies@caiso.com

Michael Kunselman
Alston & Bird LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004
Tel: (202) 239-3300
Fax: (202) 239-3333

michael.kunselman@alston.com

IV. CONCLUSION

The ISO respectfully requests that the Commission act on CalWind's procedural motions as discussed above.

Respectfully submitted,

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

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

Counsel for the
California Independent System
Operator Corporation

October 16, 2013

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all of the parties listed on the official service lists for the above-referenced proceedings, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, DC this 16th day of October, 2013.

/s/ Michael Kunselman

Michael Kunselman