

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

Southern California Edison Company)
)
) **Docket No. ER18-156-000**

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“CAISO”)¹ respectfully submits this answer to the “Comments and Renewed Request for Hearing” filed by EDF Renewable Energy Inc. (“EDF”) (“EDF Comments”).² Like EDF’s previous pleadings in this proceeding, EDF’s most recent Comments offer no evidentiary support for its allegations and misinterpret the CAISO tariff. The CAISO has enforced and continues to enforce its tariff consistently and fairly, including for Project Q17. The CAISO has neither incentive nor interest in providing preferential treatment to Project Q17, the oldest interconnection customer in the CAISO’s queue. To the contrary, the fact that Project Q17 has remained in queue demonstrates that the CAISO has appropriately followed its tariff without discrimination or prejudice.

I. EDF’s allegations regarding compliance with the commercial viability criteria lack evidentiary support and are based on false premises.

EDF argues that the CAISO’s “new claim” that Project Q17 satisfied the commercial viability criteria “is highly suspect and unsubstantiated.”³ EDF bases this

¹ Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the CAISO tariff.

² The CAISO submits this answer pursuant to Rule 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2018).

³ EDF Comments at p. 2.

allegation solely on speculation regarding “prudent developer behavior” and how long EDF believes it should take to secure land and permits.⁴ The Commission should disregard these speculative arguments. As the CAISO noted in its previous answer in this proceeding, Commission precedent is clear that parties must provide “adequate support for their positions” in the form of “cogent evidence.”⁵ Put another way, the Commission has stated that “speculative allegations” alone are insufficient.⁶ The CAISO provided a declaration under penalty of perjury that Project Q17 provided documentation satisfying the commercial viability criteria.

The CAISO also notes that EDF’s allegations regarding Project Q17’s potential compliance are based on several false premises. First, EDF’s Comments state that the CAISO has provided “conflicting renditions about what occurred in terms of Project Q17’s claimed CVC compliance,” and that the CAISO “has now chosen one of those renditions.”⁷ For support, EDF cites its own previous answer in this proceeding, which distorted the CAISO’s clear statement that Project Q17 was not required to meet the commercial viability criteria as a solar project until after its technology change request had been approved but nevertheless provided documentation demonstrating that it already had the necessary permitting, land, and financing for a solar project.⁸ The CAISO’s declaration to support that answer likewise provided:

In February 2017 Project Q17 submitted a request for a material modification analysis to determine whether it could convert from a natural-

⁴ EDF Comments at pp. 4 *et seq.*

⁵ See *Cities of Anaheim, et al. v. California Independent System Operator Corp.*, 95 FERC ¶ 61,197 (2001).

⁶ *Eric S. Morris v. Southwest Power Pool Inc.*, 149 FERC ¶ 61,207 (2014).

⁷ EDF Comments at p. 3.

⁸ CAISO Answer at pp. 9-10.

gas-fired combined cycle plant to a photovoltaic solar plant. Although it was not yet required to do so under the CAISO tariff, Project Q17 also submitted new documentation demonstrating that it satisfied the commercial viability criteria as a solar plant in its material modification analysis request. In any case, the CAISO and SCE determined that Project Q17's conversion to a solar plant would not negatively affect the cost or timing of any other interconnection customer's project, and could be approved without need for any restudy. Accordingly, the CAISO and SCE approved Project Q17's request to change technology.⁹

The CAISO has thus been consistent in its account of the facts.

Second, EDF's arguments regarding "prudent developer behavior" for Project Q17 are based on three underlying premises:

1. Project Q17's facility is on land where Riverside County alone would be the permitting authority;
2. Project Q17 would not have pursued development as both a natural gas facility and a solar facility concurrently; and
3. Project Q17 could not have worked in concert with other generation developers and their projects.¹⁰

But EDF provides no evidentiary support for these premises. In reality, Project Q17 could have taken many routes to secure permitting and sufficient site exclusivity for its project. Generation developers invest significant funds in developing a project, and frequently pursue paths to successful development. The Commission should not accept EDF's speculation of what it thinks would have been required for Project Q17 to comply with the commercial viability criteria.

⁹ Le Vine Declaration at P 10.

¹⁰ EDF admits that "it is conceivable that Project Q17 might have partnered in some way with one of the three open solar facility permits" in Riverside, but dismisses the idea as "highly unlikely." EDF Comments at p. 7.

Third, EDF's arguments in this proceeding have been based on two contradictory premises: (1) That the CAISO recently developed the commercial viability criteria to prevent interconnection customers from lingering in the queue without meaningful development,¹¹ and (2) that the CAISO provided Project Q17 with preferential treatment to allow it to remain in the queue.¹² The first premise accurately states CAISO policy: The CAISO developed the commercial viability criteria to help ensure that interconnection customers not subject to the CAISO's modern interconnection procedures cannot continue to linger in queue unless they can demonstrate viability and active work toward commercial operation. EDF's second premise is false. The CAISO has absolutely no reason or incentive to provide preferential treatment to Project Q17 by failing to enforce the commercial viability criteria. The opposite is true. The fact that Project Q17 remains in the queue maintaining its deliverability status demonstrates that the CAISO enforces its tariff fairly and without discrimination. Project Q17 has been in queue for a long time, but each time it has requested a modification the CAISO's evaluation appropriately has been limited to whether Project Q17 met the tariff provisions in effect at the time.

As the CAISO noted in its previous answer in this proceeding, since the commercial viability criteria became effective in March 2016, the CAISO has applied the commercial viability criteria to 21 requests to extend commercial operation dates beyond their anticipated seven or ten years in queue.¹³ Like Project Q17, the majority

¹¹ See, e.g., EDF Comments at p. 10.

¹² EDF Comments at pp. 1-2, 20-21.

¹³ CAISO Answer at p. 10. Le Vine Declaration at P 3.

have been able to meet the commercial viability criteria and retain their deliverability capacity while they finalize permitting and construction. Several projects, however, could not meet the commercial viability criteria and either have been converted to Energy Only or are using their one-year safe harbor to seek financing.¹⁴

II. EDF misrepresents Project Q17's extension requests and the bases for their approval.

Section 3.5.1 of Appendix U to the CAISO tariff states:

The expected In-Service Date of the new Large Generating Facility or increase in capacity of the existing Generating Facility shall be no more than the process window for the regional expansion planning period (or in the absence of a regional planning process, the process window for the CAISO's expansion planning period) not to exceed seven years from the date the Interconnection Request is received by the CAISO, unless the Interconnection Customer demonstrates that engineering, permitting and construction of the new Large Generating Facility or increase in capacity of the existing Generating Facility will take longer than the regional expansion planning period. The In-Service Date may succeed the date the Interconnection Request is received by the CAISO by a period up to ten years, or longer where the Interconnection Customer, the applicable Participating TO and the CAISO agree, such agreement not to be unreasonably withheld.

EDF argues this provision limits time in queue unless the interconnection customer encounters "engineering, permitting, and construction" delays of the Large Generating Facility.¹⁵ While this is true, EDF takes this restriction much further, claiming that (1) extending the In-Service Date has nothing to do with transmission or interconnection facilities, and (2) the CAISO and SCE violated the CAISO tariff by permitting Project Q17 to remain in queue beyond its ten-year limit. These claims misinterpret the CAISO tariff.

¹⁴ *Id.*

¹⁵ EDF Comments at pp.14-15.

First, EDF bases its arguments entirely on the beginning of Section 3.5.1 and ignores the critical final provision: “The In-Service Date may succeed the date the Interconnection Request is received by the CAISO by a period up to ten years, or longer where the Interconnection Customer, the applicable Participating TO and the CAISO agree, *such agreement not to be unreasonably withheld.*”¹⁶ A straightforward reading of this sentence means that the transmission owner and the CAISO have the discretion to agree to any extension—notwithstanding any other provision—beyond the ten years contemplated, and that their agreement should not be unreasonably withheld. Project Q17 and other interconnection customers have been allowed to remain in queue beyond the anticipated timeline based on CAISO and transmission owner consent. To provide consistent and fair treatment, the CAISO and all participating transmission owners use one test to decide whether withholding consent would be reasonable: whether engineering, permitting, and construction will take longer.¹⁷ The CAISO and its transmission owners view such delays as beyond the interconnection customer’s control, and such delays evince that the interconnection customer is still making meaningful progress toward completion (as opposed to the inability to find a buyer for the project’s capacity or secure financing). Because Section 3.5.1 of Appendix U gives the CAISO and its transmission owners the ability (if not the obligation) to provide extensions, EDF’s allegations regarding tariff compliance should be dismissed.

¹⁶ Emphasis added.

¹⁷ Depending on the nature of the request, the CAISO and transmission owner also must evaluate the various other tariff provisions, such as the project’s impact on other customers and the commercial viability criteria.

Second, EDF argues that delays under Section 3.5.1 can only be permitted for engineering, permitting, and construction of the generating facility itself. EDF states that extension to In-Service Dates “[have] nothing to do with transmission [or] interconnection facilities. . . .”¹⁸ Again, this argument both ignores the discretion provided by the last provision in Section 3.5.1, and it makes no practical sense. The CAISO tariff defines “In-Service Date” as “the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Participating TO Interconnection Facilities to obtain back feed power.”¹⁹ If EDF were correct that In-Service Date extensions can only be granted for delays regarding the generating facility itself, it would mean that the CAISO and transmission owners could insist that generators maintain in-service dates even where it will be impossible for the generator to obtain back feed power or interconnect at all. EDF’s interpretation would require interconnection customers to construct generators even years before the construction of the interconnection facilities and the network upgrades required for reliable interconnection. This interpretation would create an unfair double standard for construction timelines because the transmission owner—not the interconnection customer—nearly always manages the permitting, engineering, and construction of the network upgrades and interconnection facilities.

Third, EDF alleges that Project Q17’s “lack of a PPA” should not have been cause for any delay to its in-service date.²⁰ The CAISO agrees: the lack of a PPA is

¹⁸ EDF Protest at p. 15.

¹⁹ Appendix A to the CAISO tariff.

²⁰ EDF Comments at pp. 15-20.

never an acceptable reason to allow an interconnection customer to extend its construction milestones, especially its In-Service Date.²¹ Nor was it with Project Q17. Nearly all of Project Q17's time in queue resulted from delays to the network upgrades for Project Q17 to interconnect, which Project Q17 itself has little to no control over. EDF argues these delays include SCE's efforts to seek regulatory certainty for its large transmission planning projects at the Commission before even agreeing to execute a generator interconnection agreement with Project Q17, and that this should not be a basis for an extension. EDF states this filing was for the West of Devers and Colorado Rivers transmission projects, which Project Q17 did not need to interconnect and are therefore a "red herring."²² EDF then contradicts this position in a footnote, admitting that the "CAISO notes that SCE [also] sought Commission confirmation for cost recovery approval for the Colorado-River-Devers-Valley 500kV transmission project."²³ Here EDF reverts to its prior argument that network upgrades are not a reason for extensions under Section 3.5.1 because they "[have] nothing to do with inhibiting Project Q17 [from] actually constructing its gas-fired Generating Facility."²⁴ This line of argument is flawed. As the CAISO has explained above, ignoring an interconnection customer's actual ability to interconnect would lead to absurd results and a double standard for the interconnection customer and the transmission owners. At no point did

²¹ The CAISO does allow extensions where an interconnection customer *has* a power purchase agreement and seeks to align its production date with its in-service date. See Section 6.7.5 of Appendix DD to the CAISO tariff. Interconnection customers requesting alignment must (1) provide a copy of the power purchase agreement and evidence of regulatory approval, and (2) confirm the power purchase agreement's standing and details in the annual TP Deliverability affidavit process. Such requests are not exempt from the commercial viability criteria.

²² EDF Comments at p. 19.

²³ EDF Comments at p. 19 n. 26.

²⁴ *Id.*

the CAISO or SCE grant an extension for any PPA-related reason (nor would they grant an extension for the lack of a PPA). EDF again misrepresents the facts, which are that Project Q17's delays were due to engineering, permitting, and construction delays for the facilities necessary for it to interconnect safely and reliably.

Fourth, EDF ignores the various counter-examples that do not conform to its theory of preferential treatment for Project Q17, including the several instances where the CAISO and SCE denied Project Q17's other requests to extend its in-service date or suspend construction.²⁵ These instances demonstrate that the CAISO and SCE interpreted and enforced the CAISO tariff fairly and without prejudice. Where Project Q17 needed to extend its in-service date due to delays in the permitting, engineering, and construction of its network upgrades (especially those managed by the transmission owner), the CAISO and SCE approved the extensions consistent with the CAISO tariff and its mandate that extensions should not be unreasonably withheld. Other requests to extend or suspend milestones (for any other reason) were denied. The CAISO and SCE thus treated Project Q17 exactly as they treat all interconnection customers.

III. The CAISO respectfully requests that the Commission decide this case based on the pleadings to date.

EDF argues that "the Commission cannot base its decision on CAISO's unsubstantiated comments," and that EDF is ambivalent to whether the Commission issue another deficiency letter requesting "all the documentation" or orders evidentiary

²⁵ See SCE/CAISO Response to Deficiency Letter at pp. 2-5.

hearings.²⁶ The CAISO disagrees on both accounts. First, the CAISO has provided a declaration under penalty of perjury regarding the facts it has presented. As such, the CAISO's comments are substantiated. More documentation will not provide the parties or the Commission with any more clarity than it now has to decide whether the LGIA amendment in this proceeding is just and reasonable.

Second, the CAISO does not share EDF's ambivalence regarding the potential for evidentiary discovery and protracted litigation. The irony of this proceeding has been that the CAISO itself has had to defend the existence of its oldest active project in queue. The CAISO has done so because—unlike the myriad interconnection customers the CAISO and its transmission owners have deemed withdrawn from the queue, found in breach of their GIAs, or converted to Energy Only deliverability status—Project Q17 has not violated the tariff or its GIA. Nor has the CAISO and SCE failed to enforce those tariff provisions. As the CAISO has argued in this answer: that the CAISO and SCE would defend Project Q17's maintaining its deliverability status demonstrates that they enforce the tariff without discrimination or prejudice.

Project Q17's behavior has hardly differed from any other interconnection customer trying to preserve its investment. The effective way to prevent non-viable interconnection customers from lingering in queue is to revise interconnection procedures themselves. The CAISO has done this and continues to do so through its interconnection process enhancement initiatives.²⁷ The Commission is now doing the

²⁶ EDF Comments at p. 23.

²⁷ See *California Independent System Operator Corp.*, 124 FERC ¶ 61,292 (2008) (approving revisions to move from a serial to a cluster process, and to establish project viability and developer commitment as soon as interconnection customers have an estimate of the costs of their projects); *California Independent System Operator Corp.*, 133 FERC ¶ 61,223 (2010) (approving revisions to harmonize the CAISO's LGIP with its SGIP by establishing integrated cluster study processes for small

same through its recent rulemaking to revisit Order No. 2003.²⁸ Retroactively overturning decisions for one interconnection customer subject to now anachronistic interconnection procedures would only have punitive effect.

IV. CONCLUSION

For the reasons discussed above, the Commission should disregard EDF's Comments and approve the amended LGIA as filed.

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and large generators, and to expedite study processes for independent or otherwise adroit generators by implementing new independent study and fast track processes; *California Independent System Operator Corp.*, 140 FERC ¶ 61,070 (2012) (approving revisions to integrate the transmission planning and generator interconnection processes); *California Independent System Operator Corp.*, 149 FERC ¶ 61,231 (2014); 148 FERC ¶ 61,077 (2014); 145 FERC ¶ 61,172 (2013); *California Independent System Operator Corp.*, 153 FERC ¶ 61,242 (2015); 154 FERC ¶ 61,169 (2016); and *California Independent System Operator Corp.*, Docket No. ER18-626-000.

²⁸ *Reform of Generator Interconnection Procedures and Agreements*, Docket No. RM17-8-000.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each party listed on the official service list for this proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010 (2017)).

Dated at Folsom, California on this 22nd day of February, 2018.

/s/ Grace Clark
Grace Clark