

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

**California Independent System)
Operator Corporation) Docket No. ER11-2503-000**

**ANSWER TO MOTIONS TO INTERVENE AND COMMENTS, AND
MOTION TO FILE ANSWER AND ANSWER TO PROTEST, OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

On December 23, 2010 the ISO petitioned the Commission for a limited waiver of Section 9.3.1 of Appendix Y to the ISO tariff. Two parties supported the waiver request, Hydrogen Energy California LLC (HECA) and First Solar, Inc. (First Solar).¹ A third party, Terra-Gen Power, LLC (Terra-Gen), protested the petition to the extent it does not apply to Terra-Gen's project(s).² The ISO hereby submits its answer to the comments of HECA and First Solar and requests leave to answer the protest of Terra-Gen.³

The ISO objects to Terra-Gen's attempt to expand the scope of the waiver requested by the ISO. Although the ISO disagrees with Terra-Gen's arguments, if Terra-Gen believes the facts applicable to its situation justify relief, it should file

¹ Motion to Intervene and Comments of Hydrogen Energy at p. 5, and Motion to Intervene and Comments of First Solar, Inc. at p. 6.

² Motion to Intervene and Protest of Terra-Gen, Inc. at p. 5.

³ The ISO submits this answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213 (2010). The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. *See, e.g., Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

its own tariff waiver, pursue dispute resolution under the generator interconnection procedures of the ISO tariff or file a complaint.⁴ No party – including HECA, First Solar and Terra-Gen – filed any comment or protest relating to the merits of the waiver request. Specifically, no party has protested or commented adversely with respect to the ISO’s request for waiver of tariff section 9.3.1 as applied to any of the seven interconnection customers. Accordingly, the Commission should grant the ISO’s waiver petition as to those seven interconnection customers, which include HECA and First Solar.

HECA and First Solar go on in their comments to raise issues beyond the scope of the ISO’s request, and what Terra-Gen seeks to do in its protest is to expand the tariff waiver beyond the scope of the ISO’s filing based on unsupported facts that are entirely different from the circumstances prompting the ISO’s waiver request. For the reasons more fully discussed below, the Commission should reject any consideration of comments that are outside the scope of the waiver request, grant the ISO’s waiver petition and reject the inaptly characterized “protest” of Terra-Gen.

⁴ In fact, Terra-Gen filed a complaint on January 27, 2011 in FERC Dockets No. EL11-17-000 and EL11-18-000 seeking relief similar to the waiver request filed by the ISO in this proceeding. *See also*, Waiver Petition of Calpine Corporation, FERC Docket No. ER11-2085-00, November 10, 2010 (seeking a limited waiver of the ISO tariff based on unique facts and circumstances to permit one of its facilities to qualify under certain limited conditions for a full refund of its initial posting of interconnection financial security); Complaint of AES Wind, FERC Docket No. EL11-14-000, December 30, 2010 (presenting facts and circumstances in support of its position that the Phase II interconnection study report for a specific interconnection customer should not be considered final and, therefore, the second installment of interconnection financial security was not due until 180 days after the final Phase II interconnection study report was published); and ISO Tariff, Appendix Y, LGIP for Requests in a Queue Cluster Window, at section 13.5 (providing escalation and dispute resolution procedures for an interconnection customer who objects to withdrawal of its interconnection request by the ISO).

I. Background

ISO Tariff, Appendix Y, Section 9.3.1 provides that an interconnection customer must post the second installment of interconnection financial security for network upgrades and participating transmission owner interconnection facilities within 180 days after the final Phase II study report has been published.⁵ The purpose of the limited waiver petition is to extend the timing of the posting requirement for the seven transition cluster interconnection customers that relied on erroneous information provided by the ISO to the effect that the 180 day period would be calculated from the date of subsequent revisions to their final Phase II study reports. The two interconnection customers whom the ISO was aware had expressed concern over reliance on this erroneous information have filed comments in support of the petition – HECA and First Solar. The third party to file comments and protest the request, Terra-Gen, is not one of the seven interconnection customers included within the scope of the waiver request.

HECA elaborates upon the circumstances specific to its situation in support of the requested waiver, and goes on to suggest the ISO should undertake a stakeholder process to determine what constitutes “finality” in the context of an interconnection study report. First Solar identifies itself as a beneficiary in support of the requested waiver and goes on to argue an interconnection study report should not be considered final until all material errors are corrected. Finally, Terra-Gen claims *without factual support* that its subsidiaries received Phase II interconnection studies that contained material

⁵ ISO Tariff, Appendix Y, LGIP for Requests in a Queue Cluster Window, at section 9.3.1 and, *see id.*, at Appendix 2, LGIP Relating to the Transition Cluster, section 5.3.

errors, that these reports should not be considered final until all material errors are corrected, and that the Commission should expand the scope of the waiver request to include its project(s).⁶

II. The Scope of the Original Waiver Request is Appropriately Limited

Each of the three intervening parties commented in some way on the ISO's determination of what constitutes a final Phase II interconnection study report for purposes of triggering the obligation to post the second installment of interconnection financial security. However, all interconnection customers that were misinformed by the ISO on this point are included within the scope of the waiver request originally filed by the ISO. These comments by the intervenors, therefore, either raise issues beyond the points necessary to obtain the relief they support or to suggest the Commission expand the scope of the waiver request to include their project(s). In other words, issues or questions concerning what constitutes a final Phase II interconnection study report are beyond the scope of what is necessary for the Commission to decide on the merits of the limited waiver request filed by the ISO.

While the ISO agrees with HECA that the ISO tariff and business practice manuals lack specific details on what constitutes finality in this context, there is no need for the Commission to consider these issues in this proceeding. The ISO tariff includes numerous undefined terms that are necessary for a full understanding and implementation and, in cases where different persons may

⁶ Terra-Gen protests the waiver request and at the same time seeks to expand its scope, and is represented by the same attorney representing First Solar who supports the requested waiver on behalf of First Solar. See Motion to Intervene and Protest of Terra-Gen, Inc. at p. 10, and Motion to Intervene and Comments of First Solar, Inc. at p. 11.

interpret something one way or another, it is appropriate for the ISO to apply a reasonable interpretation in a non-discriminatory manner. Indeed, the December 13-15 notice to all 52 transition cluster interconnection customers referenced by the ISO in its waiver request specifically described the conditions under which a Phase II interconnection study report is considered final for purposes of triggering the obligation to post the second installment of interconnection financial security. The ISO has every intention of continuing to transparently and non-discriminatorily implement what it considers to be a reasonable interpretation of its tariff under the circumstances.

While persons may not agree with the ISO's interpretation of finality in this context, particularly when it is in their interest to do so, the issue of what constitutes finality is beyond the scope of this waiver request. The waiver request applies to seven transition cluster interconnection customers who were misinformed by the ISO as to when their second installment of interconnection financial security would be due and no comments have been filed to suggest that the waiver should not be granted on that basis. That said, the ISO recognizes the continued need to be clear with respect to what the ISO considers to constitute a final Phase II interconnection study report for purposes of triggering the obligation to post the second installment of interconnection financial security. Accordingly, the ISO intends to undertake further actions on this point, including issuing a technical bulletin in addition to the notice it provided all transition cluster interconnection customers, discussing this matter with stakeholders in the upcoming review of its generator interconnection procedures and addressing this

matter within the context of its business practice manuals as appropriate. The ISO does, however, object to all comments suggesting this issue should or could be resolved within the context of the waiver request. This proceeding neither presents circumstances nor reason to do so.

III. The Commission Should Reject the Protest by Terra-Gen

Terra-Gen baldly states that the scope of the waiver request should be expanded to include its subsidiaries, while admitting it is uncertain whether the ISO counts the final Phase II interconnection study reports for its subsidiaries among the twenty reports that were revised to correct errors or omissions by the ISO or participating transmission owner.⁷ To be clear, the ISO has consistently informed Terra-Gen since the initial results meeting that the Phase II interconnection study reports for each of Terra-Gen's subsidiaries were final as of the date they were first published by the ISO, and that no revisions were necessary to correct any error or omission by the ISO or participating transmission owner or for any other reason. Indeed, the ISO discussed this matter once again with Terra-Gen following its protest in this proceeding and reiterated the ISO's position on this point – the study reports are final and the second installment of interconnection financial security must be posted 180 days from the date they were first published in accordance with the ISO tariff. While Terra-Gen may not like the answer provided by the ISO, expanding the scope of the waiver requested by the ISO is not the appropriate means for redress of its dissatisfaction. If Terra-Gen continues to dispute the ISO's contention that any of its Phase II interconnection study reports contain material errors and should not

⁷ Motion to Intervene and Protest of Terra-Gen, Inc. at p. 6, footnote 7.

be considered final, Terra-Gen may continue to discuss this matter with the ISO up to and including the dispute resolution procedures included in the generator interconnection procedures and, if necessary, file its own waiver request or complaint with the Commission, in which context it can include the factual support for its position that would provide the Commission with the opportunity to consider the merits of Terra-Gen's request. The Commission should not allow Terra-Gen to expand the scope of a limited waiver request by the ISO without any factual support for its position, particularly when the ISO has repeatedly confirmed to Terra-Gen that it is not similarly situated to the seven customers for which the waiver is sought, and the circumstances articulated by the ISO in support of the waiver request do not apply to Terra-Gen. Simply put, more appropriate procedural vehicles are available to Terra-Gen should it wish to pursue its arguments further in an effort to obtain some sort of relief.

In fact, on January 27, 2011, Terra-Gen filed a complaint with the Commission seeking relief similar to the relief requested by the ISO in this proceeding.⁸ In that complaint Terra-Gen suggests that it would withdraw its complaint if the ISO amended this waiver petition to include Terra-Gen's project(s).⁹ As stated above, the ISO does not agree with the position of Terra-Gen or that Terra-Gen is similarly situated to the seven transition cluster interconnection customers included within the scope of the ISO waiver petition. It would therefore be inappropriate for the ISO to entertain Terra-Gen's invitation.

⁸ See Complaint of TGP Development Company, LLC, FERC Dockets No. EL11-17-000 and EL11-18-000 (seeking relief from the obligation to post the second installment of interconnection financial security in accordance with the ISO tariff).

⁹ *Id.* at 22.

Rather, the ISO will respond to the Terra-Gen complaint in accordance with Commission directive in that proceeding.

IV. Conclusion

For the reasons discussed above, the ISO respectfully requests that the Commission grant the tariff waiver originally requested, set aside the extraneous comments filed by HECA and First Solar, and reject the protest filed by Terra-Gen.

Respectfully submitted,

By: //s// John C. Anders

Nancy Saracino

General Counsel

Sidney M. Davies

Assistant General Counsel

John C. Anders

Senior Counsel

California Independent System

Operator Corporation

250 Outcropping Way

Folsom, CA 95630

Tel: (916) 608-7287

Fax: (916) 608-7222

janders@caiso.com

Attorneys for the California Independent
System Operator Corporation

Dated: January 28, 2011

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 the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, CA on this 28th day of January, 2011.

Anna Pascuzzo
Anna Pascuzzo