UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

AES Wind Generation, Inc.,	**)**	
Complainants,	**)**	
	)	
v.	**)**	**Docket No. EL11-14-000**
	)	
California Independent System	**)**	
Operator Corporation,	**)**	
Respondent.	**)**	

ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTION FOR STAY

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure[1] and the Notice of Complaint and Notice Shortening Date for Filing Answers to Motion for Stay issued in this proceeding on January 3, 2011, the California Independent System Operator Corporation ("ISO") hereby submits its answer to the motion for stay filed in this proceeding by AES Wind Generation, Inc ("AES Wind").[2] For the reasons explained more fully below, the Commission should deny the motion for stay as unnecessary, given that, under the facts and circumstances related to AES Wind's interconnection request for its Red Mountain Ridge project, the ISO and Southern California Energy Company ("SCE") agree that the Phase II study report for this project is not yet final and, therefore, the second financial security posting is not yet due under the ISO's tariff. Accordingly, no Commission action is needed in response to AES Wind's

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1 18 C.F.R. §§ 385.206(f), 385.213.

2 The ISO is also sometimes referred to as the CAISO. Capitalized terms not otherwise defined herein have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

motion for a stay. As stated in the complaint, AES Wind is willing to withdraw its complaint if it is provided the sought after relief – namely that the second installment of interconnection financial security is not due on January 8 but rather 180 days after the final Phase II study report is published.[3] Moreover, AES Wind has authorized the ISO to state that it will imminently file to withdraw the complaint based on the position taken by the ISO in this answer.

I. Introduction and Summary

The ISO continues to process the transition cluster consistent with the large generator interconnection procedures approved by the Commission and included in the ISO tariff, including the interconnection request by AES Wind that is the subject of this proceeding.[4] As part of the interconnection process, ISO Tariff, Appendix Y, Section 9.3.1 provides that an interconnection customer must post the second installment of 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] AES Wind complains that the Phase II study report issued by the ISO contains "errors" and, therefore, the Phase II study report should not be considered final for purposes of triggering the obligation to post the second installment of interconnection financial security. Specifically, AES Wind identifies three aspects of the report that it believes should be "corrected" before this obligation should be triggered: (i) the cost of

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3 AES Wind Complaint, EL11-14-000, at p. 7.

4 *See generally,* 124 FERC ¶ 61,292 (2008) and Quarterly Report on Progress in Processing Interconnection Requests in Docket No. ER08-1317, April 30, 2010.

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.

telecommunications facilities; (ii) the inclusion of costs associated with income tax components of cost contributions; and (iii) the cost allocation for the facilities associated with the Highwind-Windhub location constrained interconnection facility ("Highwind LCRIF") which AES Wind intends to use to connect to SCE's Windhub Substation.[6]

Although the ISO disagrees with AES Wind's characterization of these three elements of the Phase II study report as errors, the ISO recognizes that, because of one unique circumstance, the Phase II study report for the AES Wind Red Mountain Ridge project is still incomplete and therefore not yet final. Specifically, the fact that AES Wind is proposing to interconnect to the ISO controlled grid at Windhub and the appropriate cost responsibility for the Highwind LCRIF has not yet been finally determined.

The ISO developed the LCRIF to address issues associated with financing resources in locationally constrained areas, typically wind and solar resources, and the Commission agreed with the principles underpinning this new approach to infrastructure development.[7] Now, it is necessary for the first time to address cost responsibility for LCRIF facilities in a Phase II study report. In addition, interconnection customer interest in the Highwind LCRIF has changed over time. All of this created some uncertainty and caused the ISO to further reflect on how

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6 A location-constrained resource interconnection facility ("LCRIF") is a special type of interconnection facility defined in Section 24.1.3 of the ISO tariff. In short, an LCRIF is a high-voltage transmission facility used to deliver capacity from generators that are location-constrained because of their fuel source (such as wind, solar and geothermal). Pursuant to Section 26.6 of the ISO tariff, the costs of the LCRIF are collected from the location-constrained generators interconnected to the LCRIF based on their capacity relative to the total capacity of the LCRIF.

7 *See generally* 121 FERC ¶ 61,286 (considering the policy underlying the LCRIF and conditionally accepting the ISO's proposed LCRIF tariff provisions),

most appropriately to reflect interconnection costs in the Phase II study report for the Red Mountain Ridge project– this is the heart of the matter.

Under the LCRIF provisions of the ISO tariff, interconnection customers connecting to an LCRIF pay their proportional share of the interconnection facilities costs. As the first application of the LCRIF tariff provisions, the ISO has been working with AES Wind and SCE to determine how to calculate and allocate the proportional share of costs for the Highwind LCRIF such that the result is a stable cost responsibility for the current group of interconnection customers who will utilize this LCRIF. The ISO is also still assessing which facilities are most appropriately shared proportionately and which should be the sole cost responsibility of AES Wind. When additional customers seek interconnection, the costs of added facilities at the Highwind Substation may be directly assigned to those future customers utilizing the LCRIF. This is intended to ensure that responsibility for the costs of the currently-configured Highwind LCRIF will not change as new interconnection customers seek to interconnect at the same location.

It is the ISO's intention that, once the outstanding issue relating to cost responsibility for the Highwind LCRIF facilities as outlined above has been completed, the ISO will issue a complete and final Phase II study report, thereby triggering, for AES Wind's Red Mountain Ridge project, the 180-day timeline for the second posting requirement under Section 9.3.1. Because the Phase II study report is not yet final, AES Wind's motion for a stay of the financial posting requirement is moot. As noted above, the ISO expects that AES Wind will file promptly to withdraw its motion complaint and there will be no need for the Commission to take any action in response to the motion or the complaint.

II. Service and Communications

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

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III. Answer to Motion for Stay

A. The AES Wind Red Mountain Ridge Phase II study report will not be final until the allocation of costs for the Highwind LCRIF facilities is finally determined.

AES Wind is the only transition cluster interconnection customer seeking to interconnect to the ISO-controlled grid by use of an ISO-approved LCRIF.[8] In this regard, the Highwind Substation LCRIF is the first LCRIF project to be approved by the ISO since the LCRIF mechanism was added to the ISO tariff.[9]

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8 As to the Highwind LCRIF, there are two other large generation interconnection projects seeking to interconnect at this location, which, because they are part of the ISO's serial study group, are not subject to the same financial security posting requirements as AES and other generators in the transition cluster. *See* ISO Tariff, Appendix U, Standard Large Generator Interconnection Procedures (providing the financial security requirements for serial interconnection projects)

9 The ISO Board conditionally approved the Highwind LCRIF project on May 18, 2009.

This LCRIF project has reached the point of maturity where interconnection customers are determining whether or not to move forward, and, in the case of AES Wind, post interconnection financial security as part of the interconnection process. Following publication of the initial Phase II study report for AES Wind's Red Mountain Ridge project dated July 12, 2010, the ISO and SCE agreed that the cost allocation for the Highwind LCRIF facilities (which are a component of the Red Mountain Ridge project's participating transmission owner interconnection facilities, and thus subject to the interconnection financial security posting obligation), should be modified. This review process has been ongoing and is anticipated to be completed in 30 days, at which time the ISO expects to be able to publish a complete and final Phase II study report for the Red Mountain Ridge project, including the costs and the associated financial security amount for the participating transmission owners' interconnection facilities. Because the ISO agrees that the initial Phase II study report for the Red Mountain Ridge project was not complete, and agrees that AES Wind's obligation to make the second posting of financial security is not triggered until the final Phase II study report is published, there is no need for Commission action to grant AES Wind's request for a stay of that posting requirement.

Although the ISO agrees that the Phase II Study report is not final until the LCRIF cost allocation issues described in the introduction above are resolved, the ISO disagrees with AES Wind that its cost responsibility for LCRIF should it withdraw from the queue must also be addressed in the Phase II study report for the Phase II study report to be considered final. AES Wind maintains that it should not be required to post the second installment of interconnection financial security unless this issue is also addressed.[10] The ISO disagrees that this is something that should be addressed in the Phase II study report. Rather, this is an issue that should be addressed in the context of the negotiation of the interconnection agreement or under the withdrawal procedures of the ISO tariff, depending upon the context and timeframe in which the interconnection customer makes its decision to withdraw.[11] It is not appropriate to resolve this issue in the context of a Phase II study report issued by the ISO. A study report is not equivalent to the negotiation of an interconnection agreement; the purpose of the study process is to study and report on the various interconnection facilities, including network upgrades, and to identify those interconnection components that will be the cost responsibility of the interconnection customer. If, after receiving the final study report, an interconnection customer disagrees with some cost element of the report and there is no error or omission by the ISO or participating transmission owner in conducting the study and reporting the results, the interconnection customer's avenue for redress at that time would be through the withdrawal procedures in the ISO tariff or the interconnection agreement negotiation procedures.

Moreover, the resolution of this issue is not necessary prior to requiring AES Wind to make its second posting of financial security because it will not

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10 AES Wind Complaint, EL11-14-000, at p. 18-19.

11 *See* ISO Tariff, Appendix Y, LGIP for interconnection requests in queue cluster window, sections 3.5, 9.4, and 11.3 (outlining the right and remedies for withdrawal of an interconnection and the process for a disagreement over the terms and conditions of the large generator interconnection agreement); *see generally also* ISO Tariff, Appendix Z, LGIA for requests in a queue cluster window (providing default and termination provisions following execution of a large generator interconnection agreement).

affect the amount of the posting. That amount will be determined based on AES Wind's proportional share of the costs of the Highwind LCRIF, regardless of whether or not it might decide in the future to withdraw or not achieve commercial operation. This is identical to the manner in which all other interconnection customers are treated under the interconnection financial security provisions of the ISO LGIP. In any event, these questions are not ripe for review at this time, since the ISO and SCE agree the Phase II study report is not yet final, and, accordingly, there is no need for relief from the Commission with respect to the motion for stay or the complaint.

B. The circumstances complained of by AES Wind should not be confused with the ISO's waiver request filed in ER11-2503-000.

On December 23, 2010, in Docket No. ER11-2503-000, the ISO filed a request for waiver of the date for making the second financial security posting with respect to seven transition cluster interconnection customers.[12] As more fully described in the waiver request, each of those seven interconnection customers had received a final Phase II study report that the ISO considers to have been complete but was later corrected to address an error or omission by the ISO or participating transmission owner. Revisions to each of those seven final Phase II study reports were delivered in advance of the due date for posting the second installment of financial security under Section 9.3.1. Unfortunately, the ISO erroneously informed each of those interconnection customers that the second installment of interconnection financial security would be due 180 days from the date of the revised report. Two of these customers informally

[12] *See* ER11-2503-000 (outlining in detail the circumstances supporting a request for waiver of the same tariff provision complained of in this proceeding).

complained that they had reasonably relied upon this information and were not prepared to meet the obligation to make the second posting of financial security within 180 days of the issuance of their final Phase II study report. Accordingly, the ISO chose to file a waiver request on their behalf to relieve them of the obligation to post the financial security 180 days after the final Phase II study was initially published.

The circumstances of AES Wind are different. Here, AES Wind argues that its Phase II study report is not final, and the ISO agrees, based on the outstanding issue with respect to the as-yet not unfinalized cost allocation determination associated with the Highwind LCRIF. The Phase II study report for the Red Mountain Ridge project did not contain errors or omissions by the ISO or participating transmission owner; rather there was a recognition of the need to more appropriately reflect the proportionate share of the costs relating to the Highwind LCRIF and to fix those costs going forward for the initial interconnection customers (consisting of Red Mountain Ridge and the two generator projects in the serial study group), such that future interconnection requests involving the Highwind LCRIF would not trigger a reallocation of interconnection costs. This aspect of the Phase II study report for the Red Mountain Ridge Project remains outstanding, and the ISO agrees that the report cannot be finalized until this issue is resolved. These circumstances distinguish AES Wind from the interconnection customers included in the waiver request. Accordingly, the ISO will not address issues associated with the waiver request in this answer and respectfully requests that the Commission restrict issues associated with the waiver request to the waiver request proceeding in Docket No. ER11-2503.

C. The telecommunication costs and income tax cost component elements of the Phase II study report did not contain errors by the ISO or participating transmission owner.

The Phase II study report to which AES Wind refers included cost estimates for a redundant telecommunications line. The assumption for the study was that the participating transmission owner would construct this facility using its own rights of way – a reasonable assumption given that AES Wind had given no prior indication that it had an alternative proposal to SCE's standard approach. In subsequent meetings it became apparent that AES Wind had an alternative right of way available on which to construct the redundant telecommunications line that was shorter, met the participating transmission owner requirements, and in turn would reduce the costs associated with the redundant line.

This does not constitute an error in the Phase II study report, but rather reflects new information learned from the interconnection customer following publication of the study report. The ISO does not believe an adjustment of this nature supports AES Wind's argument that a report should not be considered final unless it includes *all* possible adjustments to costs. Changes made to a Phase II study report at the request of the interconnection customer are not uncommon, in particular regarding redundant telecommunications facilities necessary to support a special protection scheme, and the ISO has always had every intention to make this adjustment and will make this adjustment at the same time the Highwind LCRIF cost allocation issue is addressed in the final Phase II study report. Such a change—by itself—should not trigger a new 180 day period for posting financial security

The Phase II study report also includes a cost figure for the income tax cost component of contributions, which is an appropriate cost component to include in the study report as it relates to the total cost of the interconnection facilities. This is not an error. The ISO agrees with AES Wind that it is not appropriate to include this cost in the calculation for the second installment of interconnection financial security, and AES Wind's contention that the posting amount is based in part on the tax amount is a misinterpretation of the report. In fact, the second installment of interconnection financial security as calculated from the previously issued but incomplete Phase II study report did not include any amount associated with the income tax cost components of contributions.

D. The ISO reserves its rights with respect to the issues raised in the complaint.

In its notice issued on January 3, the Commission indicated that answers to AES Wind's request for stay would be due on January 6, but that responses to the other issues raised in the complaint would be due on January 19. The ISO accordingly reserves its rights to comment more fully on the complaint filed by AES Wind on January 19 if necessary and as appropriate.

IV. Conclusion

For the foregoing reasons, in the event that AES Wind does not promptly file to withdraw its motion and complaint, the Commission should deny the request for stay contained in AES Wind's Complaint submitted in this proceeding.

Respectfully submitted,

By: *<u>/s/ John C. Anders</u>*
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Dated: January 6, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents 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 6th day of January, 2011.

/s/ Anna Pascuzzo
Anna Pascuzzo