132 FERC ¶ 61,005
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

California Independent System Operator Corporation Docket No. EL10-15-000

ORDER ON SECTION 206 INVESTIGATION OF FINANCIAL SECURITY DEPOSIT PROVISIONS

(Issued July 1, 2010)

1. On November 17, 2009, the Commission instituted a proceeding pursuant to section 206 of the Federal Power Act (FPA)[1] to determine whether certain provisions in the California Independent System Operator Corporation's (CAISO) tariff relating to the financial security deposit following an interconnection customer's switch in deliverability status may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful.[2] This order finds the CAISO's financial security deposit provisions to be unjust and unreasonable and directs the CAISO to reformulate its financial security deposit provisions such that a customer switching from full capacity deliverability to energy-only deliverability at the conclusion of the Phase I interconnection study would have its deposit requirements capped at the amount of the costs identified by the Phase I interconnection study for that customer's reliability network upgrades.

I. <u>Background</u>

2. On July 28, 2008, the CAISO filed with the Commission its generator interconnection process reform (GIPR) tariff revisions. The CAISO's GIPR filing proposed to revise its generator interconnection process, including changes to its large generator interconnection procedures (LGIP) and large generator interconnection

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[1] 16 U.S.C. § 824e (2006).

[2] *Calif. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124 (2009) (November 2009 Order).

agreement (LGIA).[3] The Commission conditionally accepted the CAISO's GIPR tariff revisions in an order issued on September 26, 2008.[4]

3. Under the GIPR tariff revisions, a number of interconnection customers that received Phase I interconnection study results raised concerns about the tariff requirements for posting interconnection financial security. Specifically, they expressed concern that the amount of financial security required prior to the commencement of construction was too high and such that the requirements could create an incentive for customers to withdraw their interconnection requests. Also of concern was that too large a portion of the posted financial security amount would be non-refundable if an interconnection customer, for reasons beyond its control, withdrew its interconnection request.[5]

4. In response to these concerns, on September 18, 2009, in Docket No. ER09-1722-000, the CAISO filed with the Commission tariff revisions to modify the GIPR process. The tariff revisions included, among other things, a proposal to modify the requirements for initial and subsequent postings of interconnection financial security contained in LGIP sections 9.2, 9.3, 9.4 and Appendix 2.[6] The CAISO's proposed tariff revisions modified the amounts and timing of interconnection financial security postings, as well as changing the refundability provisions if an interconnection customer withdraws its interconnection request or terminates its LGIA for reasons beyond the control of the interconnection customer. In connection with the revisions, the CAISO stated that, while it remains committed to the fundamental requirement of the GIPR that interconnection customers must provide sufficient and timely financial security so as to demonstrate project viability, it recognizes that the financial security obligations under the GIPR tariff

[3] The major revisions to the CAISO's interconnection process under the GIPR tariff revisions included changing from a serial study approach to a clustered study approach and increasing the financial commitments required from interconnection customers, particularly during the earlier stages of the interconnection process. Additionally, the CAISO reduced the number of interconnection studies from three to the two that are now known as the Phase I and Phase II interconnection studies.

[4] *Calif. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008).

[5] November 2009 Order, 129 FERC ¶ 61,124 at P 5.

[6] LGIP sections 9.2 and 9.3 contain procedures for the initial and subsequent postings of interconnection financial security, while section 9.4 contains procedures regarding the general effect of withdrawal of an interconnection request or termination of the LGIA on interconnection financial security. Appendix 2 of the GIPR LGIP contains variations from the GIPR LGIP that apply to projects in the transition cluster.

provisions should be adjusted as appropriate based on experience and prevailing economic conditions and should not create disincentives for the interconnection of generation resources.[7]

5. Clipper Windpower Development Company, Inc.'s (Clipper Windpower) protest argued that the CAISO failed to include provisions that would reduce the financial security obligations of interconnection customers who elect to change their status from full capacity deliverability (Full Capacity) to energy-only deliverability (Energy-Only) prior to the commencement of the Phase II interconnection study.[8] Clipper Windpower objected that projects initially studied as Full Capacity would be required to post security for the cost of upgrades for which they will not be responsible under the lesser Energy-Only deliverability service.

6. The Commission accepted the CAISO's proposed amendments to the GIPR LGIP in the November 2009 Order. However, the Commission noted that Clipper Windpower was protesting tariff provisions that had already been accepted by the Commission and were not under review in the current filing. The Commission found that requiring a financial security deposit that exceeds the total costs of network upgrades under the new election (i.e., following a switch from Full Capacity to Energy-Only service) may not be just and reasonable, or may be otherwise unlawful, and instituted the current proceeding under section 206 of the FPA to investigate whether the tariff provisions relating to the financial security deposit following such a switch in status are just and reasonable.

7. The Commission also directed the CAISO to submit within 30 days of the issuance of that order, a demonstration that its current tariff provisions relating to the

[7] November 2009 Order, 129 FERC ¶ 61,124 at P 6.

[8] *See* CAISO, FERC Electric Tariff, Fourth Revised Volume No. 1 (Market Redesign Technology Upgrade Tariff), App. A (Master Definitions Supplement). Full Capacity deliverability status is defined as the condition whereby a large generating facility interconnected with the CAISO controlled grid, under the CAISO Balancing Authority Area peak demand and a variety of severely stressed system conditions, can deliver the Large Generating Facility's full output to the aggregate of load on the CAISO controlled grid, consistent with the CAISO's Reliability Criteria and procedures and the CAISO On-Peak Deliverability Assessment. Energy-Only deliverability status is defined as a condition elected by an interconnection customer for a large generating facility interconnected with the CAISO controlled grid that makes the Interconnection Customer responsible only for the costs of Reliability Network Upgrades and not the cost of Delivery Network Upgrades. Energy-Only resources will be deemed to have a Net Qualifying Capacity of zero, and therefore, cannot be considered to be a Resource Adequacy Resource.

financial security postings following an interconnection customer's switch in status continues to be just and reasonable. Interested parties were advised to file a notice of intervention or motion to intervene, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure.[9] Interested parties were authorized to file comments within 30 days of the CAISO's filing.

II. Notice of Filing and Responsive Pleadings

8. Notice of the Commission's institution of the paper hearing was published in the *Federal Register*, 74 Fed. Reg. 62303 (2009), with a refund effective date of November 27, 2009, the date the notice appeared in the *Federal Register*.

9. Mirant Energy Trading, LLC, Mirant Delta, LLC and Mirant Potrero, LLC (collectively Mirant), filed a motion to intervene.

10. On December 17, 2009, the CAISO filed a Demonstration Regarding the Justness and Reasonableness of Existing Tariff Provisions Relating to Interconnection Financial Security (CAISO Demonstration). Clipper Windpower filed comments and the CAISO filed an answer to Clipper Windpower's comments.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), Mirant's timely, unopposed motion to intervene serves to make Mirant a party to this proceeding.

B. Interconnection Financial Security Requirements

1. The CAISO's Demonstration

12. The CAISO states that one of the primary goals of the GIPR tariff revisions was to reduce backlogs in its interconnection queue and encourage interconnection requests that more closely reflect system needs by increasing the level of developer financial commitment required to participate in the interconnection process, and by requiring substantial financial commitments earlier in the interconnection process. The GIPR tariff revisions also streamlined the interconnection process by reducing the number of interconnection studies from three to two and enhanced the first of the two studies, the Phase I interconnection study, by providing that the Phase I interconnection study would

[9] 18 C.F.R. § 385.214 (2010).

indicate, on a preliminary basis, all of the network upgrades necessary to interconnect the various facilities in a given study group, as well as the expected costs of the upgrades.

13. The CAISO further states that one of the main decisions that interconnection customers must make at the start of the interconnection process is whether they wish to be studied as a Full Capacity or Energy-Only resource. Full Capacity status signifies that an interconnection customer is willing to fund the network upgrades necessary to deliver the full output of its facility to the aggregate of load on the CAISO controlled grid (Delivery Upgrades). On the other hand, an interconnection customer that elects Energy-Only status signifies that it does not plan to fund Delivery Upgrades and therefore foregoes its ability to be counted as a resource adequacy resource for planning purposes.

14. The CAISO states that the way it conducts Phase I interconnection studies is determined by the interconnection applicant's initial request for either Full Capacity or Energy-Only service in order to interconnect a new or upgraded transmission project. For all projects within a study group, the Phase I interconnection study identifies the network upgrades necessary to safely and reliably interconnect to the CAISO controlled grid (Reliability Upgrades). In addition, for interconnection customers that have elected Full Capacity status, the Phase I interconnection study identifies the Delivery Upgrades necessary to allow the interconnection customer to participate on the CAISO controlled grid as a resource adequacy resource.

15. The CAISO states that the GIPR provision allowing an interconnection customer to switch its deliverability status from Full Capacity to Energy-Only following the issuance of the Phase I interconnection study was included so that customers who originally expected to interconnect as Full Capacity resources, but encountered unexpected hurdles prior to the commencement of the Phase II interconnection study could continue the interconnection process as Energy-Only resources, rather than having to withdraw and resubmit their interconnection application.

16. The CAISO argues that requiring interconnection customers that switch from Full Capacity to Energy-Only resources make their first posting of interconnection financial security based on the Phase I study cost assignments (including the cost associated with Delivery Upgrades) provides necessary financial consequences for switching and is not excessive in nature.

17. The CAISO argues that reducing the amount of the interconnection financial security posting required for a customer switching from Full Capacity to Energy-Only status would encourage gaming behavior by participants. According to the CAISO, while it is important to all potential interconnection customers that at least one customer in each group accept Full Capacity deliverability, it would also be beneficial to each potential interconnection customer to interconnect on an Energy-Only basis, while some other interconnection customer accepts Full Capacity status. The CAISO states that, under this scenario an interconnection customer would receive the benefits from having a different

interconnection customer pay the cost of Delivery Upgrades, while presumably the customer who switched to Energy-Only would not incur the cost but utilize the benefit of those Delivery Upgrades.

18. According to the CAISO, an interconnection customer gaming the system as described above would gain the benefits of both the Reliability Upgrades for which it would have to pay, as well as the Delivery Upgrades for which only the interconnection customer that retains Full Capacity deliverability status would pay. The CAISO states that such a result is contrary to a fair and efficient interconnection process.

19. The CAISO states that for an interconnection customer that switches from Full Capacity to Energy-Only the only cost will be the cost associated with maintaining a larger letter of credit or other financial security until the second security posting, which occurs 180 days after the publication of the Phase II interconnection study. The CAISO argues that, while the amount would vary by customer, this amount presumably would not be excessive.

20. The CAISO also states that, prior to the initial financial security posting date, the customer has the option to withdraw its application to interconnect and reapply with a new request for interconnection in a subsequent queue cluster. The CAISO states that a customer choosing this option would be required to pay an additional $250,000 study deposit and would be in a subsequent queue cluster with a different timeline.

21. The CAISO further states that there are limits on the overall amount of security that is required from all interconnection customers, including any who switch from Full Capacity to Energy-Only. Pursuant to section 9.2 of the LGIP, the required security is limited to the least of 15 percent of the total cost responsibility assigned to the customer for all network upgrades, $20,000 per megawatt of output, or $7.5 million (but in no event less than $500,000).

22. Finally, the CAISO states that all customers, including customers who switch from Full Capacity to Energy-Only status and then withdraw prior to the completion of the Phase II interconnection study, must forfeit a portion of its initial financial security posting. The CAISO observes that, pursuant to section 9.4.2 of the LGIP, if the customer

withdraws for certain reasons,[10] the amount forfeited is only half of the amount posted and is capped at a maximum of $10,000 per megawatt of the facility's approved capacity at the time of withdrawal.

23. The CAISO states that it believes its current tariff provisions are just and reasonable, striking a reasonable balance between promoting a transparent, efficient and cost-effective interconnection process and not excessively penalizing customers for changing their deliverability status. Nevertheless, the CAISO states that if the Commission believes that the current provisions may require customers who switch from Full Capacity to Energy-Only status after the Phase I interconnection study to bear an unreasonable risk, the CAISO recommends adopting a provision in which a customer who switches its deliverability status from Full Capacity to Energy-Only and subsequently withdraws for one of the reasons permitting a limitation on the forfeited amount, the amount of forfeiture would be limited to an amount equal to the interconnection customer's total cost responsibility for Reliability Upgrades as assigned in the Phase I interconnection study.

2. <u>Comments</u>

24. Clipper Windpower argues that the CAISO's demonstration fails to establish that the CAISO's current tariff provisions are just and reasonable as applied to customers who switch from Full Capacity to Energy-Only. Clipper Windpower states that the CAISO does not demonstrate that its current tariff provisions are consistent with principles of cost causation and that the current tariff provisions instead act to protect the CAISO from costs that the CAISO will not incur in constructing network upgrades for an interconnection customer that switches from Full Capacity to Energy-Only status.

25. Clipper Windpower further argues that the CAISO's demonstration does not show that its current tariff provisions are consistent with Commission policies to bring generation into national markets to meet growing demand and to promote increased competition, or to a proper balancing of the risk associated with the financing and development of new facilities. According to Clipper Windpower it is necessary to protect against the CAISO having too much security.

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[10] Section 9.4.1 of the LGIP provides a limitation on the amount of forfeited interconnection financial security in the event an interconnection customer withdraws due to (a) failure to receive a purchase power agreement, (b) failure to receive a necessary permit, (c) an increase in the cost of the participating transmission owner's interconnection facilities, or (d) a material change in the interconnection customer's interconnection facilities caused by a CAISO change in the point of interconnection.

26. Clipper Windpower argues that it has withdrawn from the CAISO's interconnection queue because the CAISO's current tariff provisions required Clipper Windpower to provide too much security to the CAISO. Clipper Windpower notes that it sought a temporary waiver from the CAISO's current interconnection financial security tariff provisions and that the Commission denied its request.[11]

27. Clipper Windpower states that its interconnection request was withdrawn from the CAISO's interconnection queue due to Clipper Windpower's inability to post a $7.5 million letter of credit on December 4, 2009, as required by section 9.2 of the CAISO's LGIP tariff.[12] Clipper Windpower argues that its inability to post the required letter of credit was based on the amount of required security exceeding the cost of Reliability Upgrades necessary to satisfy Clipper Windpower's interconnection request.[13]

28. Clipper Windpower further states that the amount of the nonrefundable half of the required interconnection financial security represented a risk to the project. According to Clipper Windpower, should its project be withdrawn for reasons beyond Clipper Windpower's control, the CAISO would have retained $3.75 million from Clipper Windpower's posted security. Clipper Windpower argues that the CAISO's interconnection financial security provisions are a barrier to entry for some project developers.

29. Finally, Clipper Windpower argues that reducing the nonrefundable amount of financial security to equal the amount of Reliability Upgrades, as proposed by the CAISO, is an inadequate solution. Clipper Windpower argues that requiring switching customers to post a large deposit that bears no relation to the actual potential costs to the CAISO unduly discriminates against corporations with smaller amounts of operating capital. Clipper Windpower argues that the requirement is unduly discriminatory even though the excessively large deposit amount is refundable.

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[11] *See Calif. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,197, at P 13 (2009) (noting that the Commission has instituted this section 206 investigation and established the refund effective date at the earliest possible date in order to protect Clipper Windpower and any other similarly situated entities, but that the CAISO's current tariff provisions remain in effect for the duration of the section 206 proceeding).

[12] Pursuant to LGIP section 9.2, Clipper Windpower was required to post financial security following the Phase I study based on its initial request to interconnect at the Full Capacity deliverability level.

[13] Clipper Windpower states that the Reliability Upgrades portion of its financial security deposit as an Energy-Only project was 15% of $4,578,000, i.e. $686,000.

3. <u>Answer</u>

30. The CAISO argues in its response to Clipper Windpower that it has addressed issues of cost causation in connection with the CAISO's current interconnection financial security tariff provisions. The CAISO states that under its LGIP, all interconnection customers, including those who switch from Full Capacity to Energy-Only deliverability status, are responsible only for their share of network upgrades, along with any customer-specific interconnection facilities. The CAISO states that a customer who switches from Full Capacity to Energy-Only deliverability will, at the end of the study process, be required to up-front fund no more than its share of Reliability Upgrades. The CAISO notes that it has proposed changing the tariff provisions regarding forfeiture of interconnection financial security for customers switching from Full Capacity to Energy-Only deliverability to limit the amount of interconnection financial security that is subject to forfeiture in the event of withdrawal to an amount equal to the amount of costs associated with Reliability Upgrades.

31. The CAISO reiterates its argument that its current interconnection financial security tariff provisions are consistent with Commission policies of bringing generation into national markets to meet growing demand and properly balancing the risks associated with financing and developing new facilities. The CAISO also argues that allowing interconnection customers that switch from Full Capacity to Energy-Only status to post interconnection financing security based only on their share of Reliability Upgrades would remove the incentive for interconnection customers to make candid and careful choices regarding their deliverability status early in the process and would therefore upset the proper balancing of risks.

32. Finally, the CAISO argues that if Clipper Windpower was unable to make the required security posting due to its lack of capital, that Clipper Windpower should have considered an Energy-Only interconnection at the outset. The CAISO contends that its interconnection process does not unfairly discriminate against particular developers just because the magnitude of the interconnection financial security requirements may make it more difficult for some projects to enter the interconnection process. The CAISO argues that it would be inappropriate to allow interconnection customers to switch from Full Capacity to Energy-Only deliverability at no cost whatsoever, arguing that such an option is detrimental to the interconnection process and that the higher financial security requirements should be maintained in order to retain a direct financial incentive for interconnection customers to make realistic deliverability decisions at the outset of the interconnection process.

4. <u>Commission Determination</u>

33. The Commission finds the financial security deposit provisions in sections 9.2, 9.3, 9.4 and Appendix 2 of the CAISO GIPR LGIP tariff to be unjust and unreasonable with respect to the financial security requirements for switching customers. The GIPR

tariff revisions were intended to reform the CAISO's generator interconnection process and balance generator flexibility with increased generation developer commitments.[14] In the case of customers who elect to switch from Full Capacity to Energy-Only status following the issuance of the Phase I interconnection study, the Commission finds that the financial security deposit requirements are excessive. By failing to recognize the reduction in costs to potential interconnection customers resulting from no longer requiring Delivery Upgrades, the current tariff provisions fail to appropriately balance the need for adequate financial security to demonstrate project viability with the requirement to avoid excessive financial commitments that may discourage development.

34. In response to the concerns of interconnection customers that the amount of financial security required prior to the commencement of construction was too high and could create an incentive for customers to withdraw their interconnection requests, the CAISO filed in Docket No. ER09-1722-000 tariff revisions to modify the requirements for postings of interconnection financial security, as well as changing the refundability provisions if an interconnection customer withdraws its interconnection request or terminates its LGIA for reasons beyond the control of the interconnection customer. This proceeding presents an issue parallel to the one presented in Docket No. ER09-1722-000. The CAISO acknowledges the opportunity for interconnection customers to switch their deliverability status from Full Capacity to Energy-Only at the conclusion of the Phase I study process rather than having to withdraw and resubmit their application.[15]

35. The CAISO supports its opposition to reducing the amount of interconnection financial security posting required for a customer switching from Full Capacity to Energy-Only by arguing that this will encourage gaming behavior by participants and thereby compromise the accuracy of the Phase I study in its preliminary identification of necessary network upgrades. However, CAISO's concerns regarding gaming behavior are speculative at this time.[16] Accordingly, we reject the CAISO's arguments regarding the potential for gaming behavior as a basis upon which to find that the current tariff provisions are just and reasonable.

36. We further note that under the GIPR LGIP, an interconnection customer must commit to a particular level of interconnection service prior to commencement of any system studies, before the customer has a meaningful understanding of potential costs

[14] *See* November 2009 Order, 129 FERC ¶ 61,124 at P 3.

[15] CAISO Demonstration at 5.

[16] This finding is without prejudice to CAISO making a future showing of the opportunity for gaming behavior.

(i.e., prior to the completion of the Phase I interconnection study the customer would have only certain base case study results, which may or may not indicate the full extent of network upgrade liability within a given queue cluster).

37. In addition, while the CAISO has placed limitations on the magnitude of the interconnection financial security posting required from customers who switch from Full Capacity to Energy-Only, we find that these limitations are not sufficient to render the required postings just and reasonable. That is, the current tariff provisions require a switching customer to post an amount of interconnection financial security that may exceed that customer's potential cost exposure upon completion of the interconnection process. While the amount by which the required interconnection financial security posting exceeds a customer's possible cost exposure will vary depending on the facts of each situation, the amount can be significant.[17] The Commission finds that this potential disparity could create an incentive for interconnection customers to withdraw their interconnection requests, as Clipper Windpower chose to do, and does not represent a proper balancing of the risk associated with the financing and development of new facilities. Our review indicates that the appropriate limitations should be revised so that the interconnection customer who switches from Full Capacity to Energy-Only should have its financial security requirements limited to no greater than the amount of Reliability Upgrades required for its Energy-Only interconnection. We believe that this amount should provide the proper balance between having security requirements that promote an efficient interconnection process while not excessively burdening interconnection customers.

38. Additionally, the Commission finds that the CAISO's proposal to limit the amount of a switching interconnection customer's forfeiture exposure is not sufficient to make the CAISO's existing tariff provisions just and reasonable. Under the CAISO's existing interconnection financial security tariff provisions, an interconnection customer who switches from Full Capacity to Energy-Only must post an interconnection financial security deposit that is calculated by reference to the estimated cost of both Reliability Upgrades and Delivery Upgrades. Once the interconnection customer has switched to become an Energy-Only resource, the customer will be responsible only for the cost of Reliability Upgrades, but is at risk to forfeit an amount of its interconnection financial

[17] The CAISO does not dispute Clipper Windpower's representation that the required financial security posting for its project was approximately $7.5 million, while the financial security posting would have been $686,000 had Clipper Windpower chosen Energy-Only interconnection at the outset and that the estimated costs of Reliability Network Upgrades for which Clipper Windpower would be required to pay was approximately $4,578,000 (i.e., approximately $3.0 million less than Clipper Windpower's financial security posting obligation).

security deposit that could exceed the interconnection customer's potential cost to complete interconnection. Reducing the amount subject to possible forfeiture as proposed by the CAISO does not avoid the situation and associated costs of a customer providing financial security for costs that will not be incurred in interconnecting that customer.

39. Finally, the CAISO suggests that any interconnection customer who is concerned about the size of the required financial security posting has the option to withdraw its interconnection request and resubmit the request as an Energy-Only resource in the next interconnection queue cluster. While the option to withdraw and resubmit is available to any customer, doing so would require a new interconnection study deposit of $250,000 and could delay completion of the interconnection process. The Commission finds withdrawal and resubmission to be an inadequate substitute for an appropriately determined level of interconnection financial security.

40. Based on the record in this proceeding, the Commission finds the CAISO's current interconnection financial security provisions unjust and unreasonable as they relate to interconnection customers exercising the option to switch their deliverability status from Full Capacity to Energy-Only following the issuance of the Phase I study report and prior to the commencement of the Phase II study. Based on the record in this proceeding, the CAISO is directed, within 60 days of the date of the issuance of this order, to submit a revision to its LGIP to provide that the amount of the initial interconnection financial security posting for customers switching from Full Capacity to Energy-Only shall not exceed the amount estimated for Reliability Upgrades for that customer in the Phase I interconnection study.

The Commission orders:

The CAISO is hereby directed to make a compliance filing within 60 days of the date of issuance of this order modifying its tariff as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Document Content(s)