UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

CXA La Paloma, LLC	)	
v.	)	**Docket No. EL23-24-000**
California Independent System Operator Corporation	)	

MOTION FOR LEAVE TO ANSWER, AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("CAISO") [1] submits this answer and motion for leave to answer in response to CXA La Paloma, LLC's ("La Paloma") [2] Consolidated Response Brief, Motion for Leave to Answer and Answer, and Supplement to Complaint ("Filing"), filed in this docket on March 15, 2023.[3] The CAISO responds in this answer to a new allegation related to La Paloma's complaint in this proceeding raised for the first time in La Paloma's supplemental Filing.

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[1] Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the CAISO tariff. References herein to specific tariff sections are references to sections of the CAISO tariff.

[2] La Paloma refers to CXA La Paloma, LLC, its predecessors in interest, and its representatives.

[3] The CAISO submits this motion for leave to answer and answer pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213.

I. Motion for Leave to File Answer

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[4] the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2) to permit it to answer La Paloma's supplement to the complaint filed in the proceeding. Good cause for the waiver exists because this answer will aid the Commission in understanding the issues in the complaint, inform the Commission in the decision-making process, and help to ensure a complete and accurate record in the case.[5] Under the Commission's rules, a respondent to a complaint must file an answer.[6] La Paloma's attempt to supplement its complaint by introducing a new allegation without properly amending the complaint pursuant to Commission rules creates uncertainty regarding the appropriate vehicle for the CAISO to respond.[7] The CAISO urges the Commission to reject La Paloma's supplement as a prohibited filing, particularly because La Paloma neither sought leave to supplement its complaint nor demonstrated good cause for so doing. To the extent the Commission allows La Paloma to add a new allegation to its original complaint without following the appropriate Commission rules, the CAISO will not otherwise have the opportunity to respond. The CAISO therefore requests leave to answer this new allegation to the extent the Commission does not reject its inclusion on procedural grounds.

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4 18 C.F.R. §§ 385.212, 385.213.

5 *See, e.g., Equitrans, L.P.,* 134 FERC ¶ 61,250 at P 6 (2011); *Cal. Indep. Sys. Operator Corp*., 132 FERC ¶ 61,023 at P 16 (2010); *Xcel Energy Servs., Inc.,* 124 FERC ¶ 61,011 at P 20 (2008).

6 18 C.F.R. § 385.213.

II. Answer

La Paloma states in its Filing that it "hereby supplements and amends its Complaint with a separate, specific allegation that CAISO is acting with undue discrimination towards CXA La Paloma."[8] La Paloma argues that "Section 25 of the CAISO tariff does not apply to CXA La Paloma's process to enter into a three-party [Large Generator Interconnection Agreement ("LGIA")]."[9] Instead, La Paloma refers to the CAISO's *pro forma* LGIA, which it has not executed. According to La Paloma, existing generators retain the interconnection capacity they contracted for through automatic renewal of those *pro forma* LGIAs. La Paloma alleges the CAISO is discriminating against it by using the Commission-approved Section 25 two-party to three-party GIA conversion process because "no other generator under the *pro forma* LGIA has to go through this process."[10] This claim is inaccurate. The CAISO's tariff requires the CAISO to evaluate La Paloma's total capability as part of its conversion from an anachronistic two-party GIA to the current CAISO *pro forma* LGIA. The CAISO performs this evaluation frequently for all similarly situated generating facilities whose two-party GIAs expire.[11] Consistent with Commission precedent, this conversion process is critical to align a new *pro forma* interconnection agreement with the existing

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[7] Commission Rule 215 allows for amendments to a complaint, so long as the amended complaint conforms to the requirements of a complaint. 18 C.F.R. § 385.215. La Paloma did not file such an amended complaint.

[8] La Paloma Filing at 4.

[9] La Paloma Filing at 2.

[10] La Paloma Filing at 31.

[11] *See* Section 25.1(d) of the CAISO Tariff.

physical interconnection requirements of an existing generator to ensure there will be no changes to the modeling of the facility or impacts to the grid.[12]

The Commission should thus dismiss La Paloma's complaint and its supplement as meritless. La Paloma continues to create new arguments to serve its own cause that have no basis in the CAISO tariff, Commission precedent, or reasoned policy.

A. The CAISO's Tariff Requires It to Evaluate Existing Generators' Total Capability When Converting to Three-Party Agreements

As the CAISO has described throughout this proceeding and the ER21-2592 proceeding, the CAISO's tariff provisions to effect the conversion from a two-party to a three-party GIA utilize a standard three step process:[13] (1) the generator owner attests to whether the facility will remain substantially unchanged; (2) the CAISO confirms the information included in the attestation; and (3) the process results in either interconnection service capacity reflecting the unchanged facility's capacity or the generator owner submitting an interconnection request if the capacity of the facility will substantially change.[14] Section 25.1.2 describes the process for submitting an affidavit and beginning the conversion process:

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[12] The Commission initially established this "substantially unchanged" test via Order No. 2003, which is further explained in Section A below.

[13] Section 25 of the CAISO tariff describes the processes applicable to all types of generators interconnecting to the CAISO grid, including those generating units whose total generation was previously sold to a Participating Transmission Owner ("Participating TO") and now will be sold in the wholesale market, *i.e.* two- to three-party GIA conversions (Section 25.1(d)). The CAISO has described this at length in previous filings. *See, Initial Brief of the Cal. Indep. Sys. Op. Corp.,* ER21-2592 at 10-14, 24 (filed Feb. 13, 2023; "CAISO's Initial Brief"); *see also Answer of Cal. Indep. Sys. Op. Corp. to Complaint of CXA La Paloma, LLC,* EL23-24 (filed Feb. 22, 2023; "CAISO's Answer") at 12, 26.

[14] Section 25.1.2 of the CAISO tariff.

> If the owner of a Generating Unit described in Section 25.1(d), (e), or (f) or its designee, represents that the total generating capability and electrical characteristics of the Generating Unit will be substantially unchanged, then that entity must submit an affidavit to the CAISO and the applicable Participating TO representing that the total generating capability and electrical characteristics of the Generating Unit have remained substantially unchanged. However, if there is any change to the total generating capability and electrical characteristics of the Generating Unit, the affidavit shall include supporting information describing any such changes and a $50,000 deposit for the study. *The CAISO, in coordination with the applicable Participating TO, will evaluate whether the total generating capability or electrical characteristics of the Generating Unit have substantially changed or will substantially change.* The CAISO may engage the services of the applicable Participating TO in conducting such verification activities. Costs incurred by the CAISO and Participating TO (if any) shall be borne by the party making the request under Section 25.1.2, and such costs shall be included in a CAISO invoice for verification activities.[15]

If the CAISO confirms that the total capability and electrical characteristics are substantially unchanged, then the parties move forward with an interconnection agreement.[16] If the CAISO cannot confirm that these will remain unchanged, then the owner of the generating unit will become an interconnection customer required to submit an interconnection request.[17]

This "substantially unchanged" test comes directly from the Commission. In Order No. 2003, the Commission addressed this exact issue of converting a two-party GIA to a three-party GIA. The Commission agreed with commenters, summarizing their positions:

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[15] Section 25.1.2 of the CAISO Tariff (emphasis added). Section 25.1(d), cited in this provision of the tariff and relevant to La Paloma covers "each existing Generating Unit connected to the CAISO Controlled Grid whose total Generation was previously sold to a Participating TO or on-site customer but whose Generation, or any portion thereof, will now be sold in the wholesale market, subject to Section 25.1.2."

[16] Section 25.1.2.1 of the CAISO Tariff.

[17] Section 25.1.2.2 of the CAISO Tariff.

> While only the contractual arrangements have changed, the physical interconnection requirements remain unchanged, and as long as the Generating Facility's output will be substantially the same after conversion, no Interconnection Studies are necessary and the Interconnection Customer should not be placed in the Transmission Provider's interconnection queue with new Generation Facilities.[18]

Even under a two-party agreement, these facilities would nonetheless be included in a transmission provider's base case because any generator interconnected to the bulk electric system is modeled in the Western Electricity Coordinating Council ("WECC") base cases, regardless of participation in the CAISO's market.[19] The Commission thus concluded "that the owner of the [Qualifying Facility] need not submit an Interconnection Request if it represents that the output of the generating facility will be substantially the same as before."[20] This test is specifically intended to reduce the burden on a generator converting to a three-party GIA by eliminating the need to enter the interconnection queue and be studied.

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[18] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,146 (2003; "Order No. 2003")) at P 812, *order on reh'g*, Order No. 2003-A, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,160, *order on reh'g*, Order No. 2003-B, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, *FERC Statutes and Regulations, Regulations Preambles 2001-2005* ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

[19] *See* MOD-032, available at https://www.nerc.com/pa/Stand/Reliability%20Standards/MOD-032-1.pdf.

[20] *Id.* at P 815. The Commission's Order No. 2003 discusses Qualifying Facilities, which were the specific type of two-party agreements raised by commenters in that proceeding. However, the reasoning is applicable to all GIA conversions: these generators are already modeled in the base case at a specific capacity and there is no need to study them for reliability impacts again. For the purposes of this test there is no meaningful difference between a Qualifying Facility and any other generator with a two-party interconnection agreement. The CAISO amended its tariff language in 2011 to specifically reflect that all two-party to three-party conversions are covered by the relevant Section 25 process. *See, infra,* fn. 30 and 31.

The CAISO's process recognizes that earlier GIAs may not have maintained the same planning standards and seeks to appropriately size the interconnection service capacity of the GIA to the generator as constructed.[21] The CAISO, following Commission precedent, therefore looks not at the interconnection service capacity of the terminated agreement but at the actual generating facility capacity, which is the capacity modeled in the CAISO's base case. This is relevant to this dispute because La Paloma's own terminated GIA includes conflicting information: Appendix E, which describes the interconnection service capacity as 1,160,000 kW (1,160 MW), also indicates that each of the four units at the generating facility has a "Nameplate Output Rating" of 255,000 @ 0.85PF kW (255 MW) and an output rating of 300,000 kVA (300 MVA).[22] La Paloma's agreement thus contemplates an interconnection service capacity of 1,160 MW and a generating facility capacity of 1,020 MW. The CAISO's conversion process, in which it first requests the generator owner attest to a substantially unchanged capacity, attempts to reconcile any such discrepancies and arrive at an interconnection service capacity that reflects the actual constructed capacity of the facility as has been modeled in the CAISO's system.

Further, the Commission already fully evaluated the CAISO's Section 25 process and the "substantially unchanged" test in the *CalWind* case and found it

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[21] The CAISO's interconnection request process limits interconnection service capacity to the generating facility capacity. *See* Appendix 1 of Appendix DD of the CAISO Tariff, at (h). This was not the case for all earlier GIAs, as evidenced by the discrepancy in La Paloma's own original GIA. *See infra* fn. 22.

[22] *See* Attachment 2 to the CAISO's Answer in this proceeding.

to be just and reasonable.[23] The facts are nearly identical and involve a wind facility transitioning from a two-party GIA to a three-party GIA. In that case, the generator owner submitted an affidavit representing that the project had a total gross generating capacity of a certain amount, but claimed it was due a higher interconnection service amount based on the terminated GIA. The CAISO informed the generator owner that it could not accommodate the request because the additional MW would not qualify as "substantially unchanged." The Commission agreed, finding the Section 25 process just and reasonable.[24] The Commission cited to Order No. 2003 and clearly articulated the rationale for the process: that it would be inappropriate to treat an existing facility with a two-party agreement as a newly interconnected generator because there is no need to study it separately when it has "illustrated that it will not increase its demands of the facility on the transmission system."[25] Those generators already exist in the base case that is used to determine the impacts of new generation. The base case utilizes generating facility capacity, not nameplate.[26]

This holding was subsequently confirmed in the Commission's Order No. 845,[27] specifically as it relates to surplus interconnection capacity, on which La

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[23] *CalWind Resources Inc. v. California Independent System Operator Corp.*, 146 FERC ¶ 61,121 (2014).

[24] *Id.* at P 33.

[25] *CalWind Res., Inc.,* 146 FERC ¶ 61,121, 61,527 (2014).

[26] The CAISO and PG&E's Joint Transmission Planning Base Case Preparation Process document is available at http://www.caiso.com/Documents/ISO-PG_EMOD-032-1Requirements.pdf. This document makes no mention of nameplate capacity, outside the limited context of distributed energy resources.

[27] *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 at P 491 (2018) ("Order No. 845"), *errata notice*, 167 FERC ¶ 61,123, *order on*

Paloma attempts to rely. Order No. 845 confirmed that facilities not built to support the full proposed interconnection capacity do not retain any surplus interconnection capacity above their constructed generating facility capacity.[28] The Commission confirms this again in Order No. 845-A, relying on the fact that "an original interconnection customer can only secure interconnection service based on the generating facility capacity of the generating facility that it constructs and continues to operate."[29] The Commission used this fact to assail concerns about hoarding interconnection service. A generator cannot hoard interconnection service capacity because it is not entitled to any beyond its constructed capacity.

La Paloma's supplemental Filing constitutes a collateral attack on these prior Commission decisions without offering any compelling reasons why the Commission should reconsider a policy it has consistently applied.

B. The CAISO's Tariff Provisions Apply to GIA Conversions Related to Terminated Two-Party GIAs.

There can be no debate that these Section 25 provisions apply when a two-party agreement expires or is terminated, regardless of whether the generating facility has an existing relationship with the CAISO following the execution of that agreement.[30] The CAISO expressly revised Section 25.1(d) in 2011 to make the language more broadly applicable after it had previously only

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reh'g, Order No. 845-A, 166 FERC ¶ 61,137 (2019) ("Order No. 845-A"), *errata notice*, 167 FERC ¶ 61,124*, order on reh'g*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

[28] Order No. 845 at P 493.

[29] Order No. 845-A at P 146.

[30] La Paloma attempts to state that because it already sells into the CAISO market under its two-party agreement that no conversion process is applicable to it at all. Filing at 2.

applied to Qualifying Facilities. The CAISO's transmittal explained that the purpose of the proposal was to state that the provision "govern[s] the application of the ISO's interconnection procedures once a generating unit's prior power sales arrangements to a participating transmission owner or on-site customer have terminated."[31] The Commission accepted these changes.[32] The reasoning behind the application to Qualifying Facilities is the same for all two-party generators: these facilities with anachronistic interconnection agreements are already modeled in the base case at their generating facility capacity, measured as net at point of interconnection, and there is no need to study them for reliability impacts so long as their capacity remains substantially unchanged.

There is no qualifier in the tariff language or text of the transmittal letter that this provision is intended to only apply to generating facilities that have no existing relationship with the CAISO. Further, any such qualifier would make no sense because all generators with two-party agreements began selling into the CAISO market with electricity market restructuring in California in the late 1990s. It would be the exception that swallows the rule entirely.

C. The CAISO is Not Discriminating Against La Paloma because La Paloma is Not Similarly Situated With Generators With a *Pro Forma* LGIA

The CAISO's use of the Section 25 process is not unduly discriminatory because those generators with a *pro forma* three-party LGIA are differently

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31 CAISO's Transmittal Letter, ER11-2574 (filed Dec. 29, 2010).

32 134 FERC ¶ 61,140, *subject to further revisions* (to other unrelated provisions in the tariff clarification filing), accepted by Letter Order, January 12, 2012.

situated from La Paloma.[33] Generators with existing three-party agreements have no need to convert their LGIAs under this process because they already have three-party LGIAs with the CAISO. In contrast, the CAISO's Commission-approved tariff requires all generators converting from a two-party to three-party GIA to utilize the procedures of Section 25, which includes a provision allowing the CAISO to confirm the information contained in the generator owner's submitted conversion affidavit. Because these generators are already modeled in the base case at their generating facility capacity, net at point of interconnection, only the contractual arrangements change when moving to a two-party GIA, not the physical interconnection requirements. The Commission thus requires the CAISO through its Commission-approved tariff to validate the generator owner's affidavit that the facility will remain substantially unchanged, and therefore modeled the same in the base case, before allowing a converting generator the opportunity to enjoy the fast-track conversion avoiding a traditional, full interconnection request. La Paloma submitted this required affidavit, attesting that the facility would remain substantially unchanged at approximately 1,065 MW.[34] It is for this validation purpose that the CAISO uses a checklist

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[33] Section 25.1(d) of the CAISO Tariff specifically governs generating facilities converting from a two-party to three-party agreement. Section 25 as a whole governs all potential interconnection customers and incorporates the several generator interconnection procedure appendices.

[34] *See* CAISO's Answer in this proceeding, Attachments 4 and 5. The conversion request and affidavit from La Paloma requested an interconnection service capacity of 1,060 MW for the Replacement Interconnection Agreement and attested that the facility would remain substantially unchanged at approximately 1,065 MW. The CAISO offered an extensive explanation and analysis of this conversion process in its Initial Brief in ER21-2592, the proceeding in which parties are litigating the appropriate interconnection service capacity. Note the conversion request utilizes the same form as a new interconnection request and the generic terms may be used interchangeably.

reviewing critical data points to confirm the "substantially unchanged" capacity of the converting generator, a capacity value which is first provided by the generator owner itself. [35]

La Paloma misrepresents the language of Order No. 2003, which directed the adoption of the *pro forma* LGIA. La Paloma argues that its pre-Order No. 2003 agreement should incorporate an evergreen provision because the agreement was grandfathered under Order No. 2003, which would essentially mean its new *pro forma* agreement must incorporate the terms of that prior agreement.[36] This inverts the facts. Although the terms of the pre-Order No. 2003 agreements may be incorporated into three party LGIAs, the "evergreen" provision of the *pro forma* LGIA was not retroactively applied to existing agreements, nor is there any requirement to incorporate the terms of La Paloma's pre-Order No. 2003 agreements into a new three-party LGIA.[37] La Paloma even acknowledges this point when it cites to Order No. 2003 where the Commission states it "is not requiring retroactive changes to individual interconnection agreements filed with the Commission prior to the effective date of this Final Rule." [38] La Paloma's existing two-party GIA with PG&E had a set term and that agreement terminated.

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[35] Nowhere in the Tariff does the conversion process utilize the former interconnection service capacity as a baseline for the substantially unchanged review. The CAISO does look at this figure, but also looks at factors such as PMax testing, Masterfile data, and basecase modeling, all of which are provided or demonstrated by the generator itself. These are discussed in the CAISO's Feb. 22 Answer, *see* fn. 70.

[36] La Paloma Filing at 24.

[37] Order No. 2003 at P 911.

[38] La Paloma Filing at 29, citing Order No. 2003 at P 911.

The CAISO's Section 25 process is used in these exact circumstances: to convert a terminated two-party agreement to a three-party *pro forma* agreement, to which the CAISO will also be a party. It is essentially a fast-track conversion process to bypass the more exhaustive interconnection study requirements, which are unnecessary if the facility will remain substantially unchanged. La Paloma's demand that the CAISO enter into a three-party agreement based on the previous GIA without doing any diligence on whether the facility was constructed as first planned and memorialized in an anachronistic pre-CAISO agreement essentially asks for unduly preferential (and unjustifiable) treatment.

III. Conclusion

La Paloma's complaint and supplement wholly lack merit. The CAISO has adhered to its just and reasonable tariff provisions that apply to La Paloma's two party GIA conversion. The Section 25 affidavit and validation process reflects the Commission's directives that generating facilities converting from two-party to three-party agreements need not be studied as a new interconnection customer

so long as the facility will remain substantially unchanged. The Commission should reject the complaint and the improperly filed supplement to the complaint.

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Dated: March 30, 2023

CERTIFICATE OF SERVICE

I certify that I have served the foregoing document upon the parties listed on the official service list in the captioned 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 Folsom, California this 30th day of March, 2023

/s/ Jacqueline Meredith

Jacqueline Meredith
An employee of the California ISO