

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

HYDROGEN ENERGY CALIFORNIA LLC

Docket No. ER11-3140-000

**MOTION TO INTERVE AND COMMENTS OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

The California Independent System Operator Corporation (“ISO”) respectfully moves to intervene in this docket, through which ISO interconnection customer Hydrogen Energy California LLC (HECA) seeks a temporary waiver of the second financial security posting requirement set forth in the ISO tariff, Appendix Y, Section 9.3.1.¹ Although the ISO is not opposed to the request, the ISO urges the Commission not to establish a rule that interconnection customers in the ISO’s interconnection queue should automatically be granted more time to comply with interconnection milestone deadlines (such as a financial security posting) because their business conditions require them to raise additional capital from additional investors. As discussed further herein, the ISO would defer to the Commission on the determination of whether HECA should be granted a waiver of 48 days (from March 28 to May 16, 2011) to make its second financial security posting, on the grounds that there is a public interest in the

¹ The ISO makes its request pursuant to Rules 211 through 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.211, 385.212, 385.213, and 385.214 (2010) and the Combined Notice of Filings dated March 18, 2011. The ISO is sometimes referred to as the “CAISO,” including within HECA’s waiver filing.

generation project. The ISO offers specific criteria which the ISO respectfully requests the Commission to consider in making its determination.

I. BACKGROUND

On March 16, 2011 HECA filed a request for temporary waiver of the second interconnection financial security deposit requirement contained in the ISO's Generation Interconnection Process (GIP), ISO tariff Appendix Y.² HECA argues that it should be granted an additional seven weeks (48 days) beyond the time that the ISO has requested that FERC grant in the ISO's own waiver request. The ISO's waiver request asks the Commission to extend the posting deadline to March 28, 2011. HECA's request in this proceeding asks for further extension to May 16, 2011. HECA states that it needs the further time because HECA does not have sufficient capital to move forward and needs additional investors for its project in order to raise the capital.³ Alone, such a claim of commercial interest should be clearly insufficient to meet the requisite burden for grant of a waiver. The real support for HECA's request, however, lies squarely within HECA's offered evidence as to the public interest that HECA claims its project furthers: more specifically, its proffer of support from the Department of

² The ISO tariff requires the interconnection customer to make the second interconnection financial posting in advance of the actual start of construction activities for construction of the network upgrades and interconnection facilities required for the interconnection. Appendix Y Section 9.3.1 requires the interconnection customer to make the second posting within 180 days of the ISO's issuance of the final Phase 2 Interconnection Study. This posting requirement is part of the "increased generator commitment" component of the ISO's generation interconnection procedures, and is designed to identify for further handling mature generation projects that are ready for interconnection.

³ *Hydrogen Energy California LLD Waiver Request*, in the instant FERC Docket No. ER11-3104-000, at p. 7. In *California Independent System Operator Waiver Request*, filed December 23, 2010 in FERC Docket No. ER11-2503-000 (opened December 23, 2010), the ISO included HECA's project among the seven interconnection requests within the scope of the ISO waiver request which, if granted by the Commission as requested for the reasons stated in ISO's waiver request, would require HECA to post on March 28, 2011).

Energy and HECA's representations that certain actions by the California Public Utilities Commission also evidence support for the project on public interest grounds.⁴ The ISO has no basis under its tariff to take into account such considerations. Accordingly, when contacted by HECA prior to the instant filing, ISO notified HECA that it could not grant a waiver and, after the March 28, 2010 deadline for posting the second financial security (a deadline based upon the date ISO requested be established through ISO's own waiver request) the ISO sent HECA a notice of withdrawal on March 28, 2011 for failure to post the second installment of interconnection financial security as required under the ISO tariff. It is now up to the Commission to determine whether relief is appropriate under the circumstances.

II. COMMUNICATIONS

The ISO requests that all communications and notices concerning this motion and these proceedings be provided to:

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⁴ *Hydrogen Energy California LLC Waiver Request*, FERC Docket No. ER11-3104-000, at pp. 3-6.

III. MOTION TO INTERVENE

The ISO is a non-profit public benefit corporation organized under the laws of the State of California, with a principal place of business at 250 Outcropping Way, Folsom, CA 95630. The ISO is the balancing authority area operator responsible for the reliable operation of the electric grid comprising the transmission systems of a number of utilities, including Pacific Gas & Electric Company; Southern California Edison Company; San Diego Gas & Electric Company; the Cities of Vernon, Pasadena, Anaheim, Azusa, Banning, and Riverside, California; Atlantic Path 15, LLC; Startrans IO, L.L.C.; Trans-Bay Cable LLC and, with regard to the Path 15 transmission lines in California, the Western Area Power Administration, Sierra Nevada Region. As the balancing authority, the ISO coordinates the ancillary services and electricity markets within its balancing authority area.

The ISO operates under the terms of the ISO tariff, which is on file with the Commission. A component of that tariff is the Generator Interconnection Procedures (“GIP”) mentioned above. As noted within HECA’s filing, there is an ISO tariff requirement that HECA post interconnection financial security within specified timeframes or the ISO must deem the interconnection request to be withdrawn. As such, the ISO has an interest in these proceedings, and no other party can adequately represent the interests of the ISO in these proceedings.

IV. COMMENTS

The ISO has serious concerns for the precedent that would be established where an interconnection customer is granted an extension of the

interconnection financial security posting requirement based on what amounts to the interconnection customer's own commercial interests, and its inability to post the required financial security, due to lack of capital. The very purpose of the ISO's generator interconnection reform process is to allow commercially viable projects to advance expeditiously through the process which, necessarily, results in the removal of projects that are not commercially viable. However, the ISO does appreciate the public interest asserted by HECA with respect to this project. The ISO strongly recommends that, if the Commission were to grant relief, any such ruling must

- (1) be limited to the specific facts and circumstances presented here and
- (2) establish clear criteria with respect to what the Commission would take into account when presented with similar requests from interconnection customers in the future.

In this regard, the ISO contends that the criteria should include evidence of:

- a) Project financial viability,
- b) a special public interest in maintaining the specific project in the queue which outweighs the need for adherence to the standard tariff requirement, and
- c) that the additional time requested is limited and will result in little or no harm.

The ISO currently has about 400 interconnection customers in its queue, all at various stages of development. Most of these projects can be said to support public policy objectives in one way or another (for example, by

advancing California's Renewables Portfolio Standard or California's greenhouse gas reduction policy under AB 32, because they are renewable energy projects). However, it seems inappropriate for these project proponents to claim that because their project contributes to overall advancement of express state energy or environmental goals (such as the goals outlined in California's Clean Energy Future publication⁵), it must automatically follow that they should be granted more time than the tariff rules provide to comply with interconnection milestone deadlines when their business conditions require them to raise additional capital from additional investors. The ISO has heard these arguments before, when interconnection financial security postings are due. And the ISO has consistently responded to requests for extensions on these grounds that the circumstance is insufficient to warrant relief from the tariff rules.⁶ There must be something more.

Here, HECA asserts that the California Public Utilities Commission and the US Department of Energy (DOE) have expressed support for this project, as represented in a DOE statement of project support which HECA has included with its pleading. Taking these assertions at face value, one federal and one state agency have expressed a desire to see this project succeed. The ISO would defer to the Commission to determine whether waiver should be granted

⁵ California Clean Energy Future (CCFE) is a collaborative effort by California environmental and energy agencies and the ISO to promote key elements for achieving the State of California's 2020 electricity and natural gas policy goals. These key elements are set out in the CCEF Overview Document accessible on the CCEF Webpage (www.cacleanenergyfuture.org) at <http://www.cacleanenergyfuture.org/2821/282190a82f940.pdf>. The description of CCEF and the purpose of the overview document content is found on page 1 of the overview document, which is entitled "*California's Clean Energy Future: An Overview of Meeting California's Energy and Environmental Goals in the Electric Power Sector in 2020 and Beyond.*"

⁶ The ISO has no authority to grant such requests and would defer to the Commission in any event, but in all likelihood such claims before the Commission would garner a protest from the ISO.

on the basis of an asserted public interest in the generation project and, if so, whether the quantum of evidence offered by HECA is sufficient. Managing waiver requests from interconnection customers seeking to delay their posting obligations could represent a significant burden on the Commission.

Accordingly, the ISO urges the Commission to grant any such waiver request only when the showing is justified under narrow criteria, to limit exposure to excessive numbers of waiver requests.

With respect to the question of whether any harm would result from granting HECA's request, the ISO has undertaken an internal assessment and has not identified any other interconnection customers that would be harmed at this time. In this connection, the ISO reviewed queue cluster windows 1, 2 and 3, currently pending in its interconnection queue. Having conducted this review, the ISO is not aware of any other project seeking interconnect in the geographic vicinity of the HECA project, such that it could be said to be electrically interrelated. That said, the generator interconnection study process is ever dynamic, and it is possible that there might be some unintended consequence that the ISO has not considered or identified. In addition, the ISO believes that the participating transmission owner with a financial stake in constructing the physical interconnection components of this project, Pacific Gas and Electric Company ("PG&E") would not be harmed by granting the limited waiver to extend the posting deadline for 48 days, until May 16.

The ISO does wish to express its opinion that one of HECA's asserted grounds for tariff waiver is without merit. HECA points to the form of Letter of

Credit security instrument that was posted on the Internet and alleges that, somehow, its ability to meet the deadline to post second installment of interconnection financial security was diminished because, as applied to HECA, the participating transmission owner's *form* letter of credit was inappropriate and inconsistent with the ISO tariff.⁷ The ISO does not believe there is a causal connection between the instrument and HECA's circumstances that can be the basis for tariff waiver. Looking to the facts, HECA did not contact the ISO to discuss this matter prior to filing its waiver request, nor did it contact PG&E, to ISO's knowledge. Further, the ISO understands that, once informed of the issue through HECA's pleading, PG&E promptly revised its form letter of credit. Accordingly, that the instrument is now appropriate to HECA's circumstances and the ISO understands that PG&E has informed HECA of this fact. Accordingly, the form of instrument was no barrier to HECA's ability to make the posting.

It is the ISO's position that, when an interconnection customer seeks waiver on such grounds, the customer's pleading to the Commission should establish that

- (1) the interconnection customer raised the issue with the participating transmission owner within a reasonable time after it discovered that the form of instrument was inapt,
- (2) the participating transmission owner did not or could not accommodate the customer's concern within a reasonable time frame, and

⁷ *Hydrogen Energy California LLC Waiver Request*, FERC Docket No. ER11-3104-000, at p. 9.

(3) the inaction by the participating transmission owner is causally connected to the customer's inability to timely make the posting.

V. CONCLUSION

As indicated by the foregoing, the ISO remains concerned about granting additional time based on generalized commercial interests of interconnection customers and generalized statements of public policy. The ISO requests that the Commission carefully consider the precedential impacts and adopt narrow criteria, such as the criteria proposed by the ISO, should the Commission grant HECA's requested relief.

Respectfully submitted,

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Dated: March 31, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned docket, in accordance with the requirements of Rule 2010 of the Commission Rules of Practice and Procedure (18 C.F.R. §385.2010).

Dated this 31st day of March, 2011 at Folsom, California.

/s/ Anna Pascuzzo
Anna Pascuzzo