

135 FERC ¶ 61,067  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

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

ORDER GRANTING WAIVER REQUEST

(Issued April 22, 2011)

1. On December 23, 2010, the California Independent System Operator Corporation (CAISO) submitted a petition for limited waiver of section 9.3.1 of Appendix Y of CAISO's tariff.<sup>1</sup> The limited waiver is intended to allow seven interconnection customers that received erroneous information regarding the timing for posting financial security to postpone their second financial security installments for a period of 180 days from the date of the revised Phase II Interconnection Study (Phase II Study) report. In this order, we grant the limited waiver, as discussed below.

**I. Background**

2. CAISO states that it is still processing interconnection requests in its transition cluster consistent with the Commission-approved large generator interconnection procedures (LGIP) in its tariff. According to CAISO, fifty-two transition cluster interconnection requests completed the Phase II Study process and received a final Phase II Study report between May 2010 and August 2010. CAISO states that following their publication, revisions were necessary for twenty of these reports. It notes that some of these revisions resulted in changes to the total costs associated with necessary network upgrades or participating transmission owner (PTO) interconnection facilities, with corresponding changes to the amount of financial security required to meet the second financial security posting requirement.<sup>2</sup> CAISO contends that revisions to final Phase II Study reports are not uncommon because the cluster study process is "dynamic." One reason for this, according to CAISO, is that interconnection customers do not have an

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<sup>1</sup> CAISO December 23, 2010 Petition (CAISO Petition).

<sup>2</sup> CAISO Petition at 3.

opportunity to ask questions about the Phase II Study results until after the final report's publication. CAISO states that final Phase II Study reports for the transition cluster were revised for a number of reasons, including interconnection customer requests and errors or omissions made by CAISO or the PTO.<sup>3</sup>

3. Between December 13 and 15, 2010, CAISO notified all interconnection customers with interconnection requests in the transition cluster of the timing and amount of their second financial security installments. CAISO states that prior to this notification, its staff inadvertently and incorrectly advised the interconnection customers associated with seven interconnection requests that the publication of the revised final Phase II Study report would trigger a corresponding adjustment to the second financial security installment due date.<sup>4</sup>

## **II. CAISO Petition**

4. According to CAISO, the only tariff provision relevant to its petition is section 9.3.1 of Appendix Y of its tariff. This section requires that the interconnection customer post the second financial security installment for network upgrades and PTO interconnection facilities on or before 180 calendar days after the final Phase II Study report's publication.<sup>5</sup>

### **Waiver Request**

5. To remedy CAISO's mistaken representation to the interconnection customers associated with these seven interconnection requests, CAISO requests limited waiver for posting the second security installment for these mistakenly advised customers. CAISO requests that these customers' second financial security installments not be due until 180 days from the publication of the revised Phase II Study report.<sup>6</sup>

6. CAISO argues that the inadvertent and incorrect advice that it gave to the customers associated with these seven interconnection requests constitutes good cause for granting waiver here.<sup>7</sup> Without this waiver, some of these customers would have been

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<sup>3</sup> CAISO Petition at 4-5.

<sup>4</sup> CAISO Petition at 5.

<sup>5</sup> CAISO Tariff, Appendix Y, section 9.3.1.

<sup>6</sup> CAISO Petition at 5.

<sup>7</sup> CAISO Petition at 6-7.

required to post the second financial security installment as early as December 30, 2010 or withdraw from the interconnection queue.

7. As further support for its request, CAISO notes that the waiver is limited in scope. It states that the waiver would only permit interconnection customers associated with seven requests in the transition cluster to post the second financial security installment 180 days from the publication of the revised final Phase II Study report. CAISO has limited its requested waiver to the interconnection customers that it advised incorrectly. Moreover, CAISO claims that granting this waiver will produce resultant benefits for these interconnection customers, because it will give them a commercially reasonable time to post the second financial security installment consistent with their original expectations. The affected customers would thereby be put in the position they would otherwise be in but for CAISO's mistake. CAISO also asserts that there are no undesirable consequences associated with this request and states that Pacific Gas & Electric Company (PG&E), the affected PTO, supports the waiver request.<sup>8</sup>

### **III. Notice, Intervention, and Responsive Pleadings**

8. Notice of the petition was published in the *Federal Register*, 76 Fed. Reg. 361 (2011), with motions to intervene, comments, and protests due on or before January 13, 2011. Timely motions to intervene and comments were filed by Hydrogen Energy California LLC (Hydrogen Energy) and First Solar, Inc. (First Solar). AES Wind Generation, Inc. and PG&E also filed timely motions to intervene. Terra-Gen Power, LLC (Terra-Gen) filed a timely motion to intervene and protest. On January 18, 2011, Calpine Corporation filed a motion to intervene. On January 28, 2011, CAISO submitted an answer to the comments and protest.

### **IV. Responsive Pleadings**

9. Hydrogen Energy<sup>9</sup> and First Solar support CAISO's petition and argue that they reasonably relied on CAISO's representation that their second financial security postings would not be due until 180 days after publication of a revised final Phase II

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<sup>8</sup> CAISO Petition at 7.

<sup>9</sup> In a separate waiver proceeding in Docket No. ER11-3140-000, Hydrogen Energy states that granting the waiver in the current proceeding will extend its posting deadline for the second financial security installment to March 28, 2011. Hydrogen Energy March 17, 2011 Waiver Petition at n. 24 (Docket No. ER11-3140-000). In the separate proceeding, Hydrogen Energy has requested waiver of section 9.3.1 of Appendix Y of CAISO's tariff to extend the posting deadline further to May 16, 2011. *Id.* at 2.

Interconnection Study report.<sup>10</sup> First Solar agrees with CAISO that the request is appropriately limited in scope because it only applies to customers who received erroneous study results and erroneous information on the due date of their second financial security installments.<sup>11</sup>

10. Though First Solar supports the waiver request, it asks the Commission to find that First Solar's initial Phase II study results were not "final" and that the 180 day financial security posting timeline did not begin to run until CAISO published a "revised final" study. It argues that studies containing "material errors" involving the "final" reliability network upgrades, delivery network upgrades, or PTO interconnection facilities cannot be said to be "final," because CAISO and the PTO, not the interconnection customer, are in control of the study inputs, analysis, and timing of the study results' release.<sup>12</sup>

11. First Solar also considers CAISO's tariff flawed, arguing that interconnection customers do not have the opportunity to review preliminary study results and consult with CAISO and the affected PTO prior to the study results' finalization. It argues that this defect can lead to unjust and unreasonable results. First Solar, therefore, argues that the Commission should order CAISO to amend its tariff to address this deficiency.<sup>13</sup>

12. In addition, First Solar asks the Commission to find that the security posting timeline does not begin until CAISO publishes interconnection studies that correct any material errors that may have appeared in the initial study results. It claims that requiring interconnection customers to post financial security based on erroneous study results would lead to posting excess security and discourage development.<sup>14</sup> Similarly, Hydrogen Energy asks the Commission to order CAISO to initiate a stakeholder proceeding either to define the phrases "final Phase I Interconnection Study report" and "final Phase II Interconnection Study report" or clarify elsewhere in the tariff what constitutes a "final" report.<sup>15</sup>

13. Terra-Gen contends that the Commission should require CAISO to defer the security posting requirement for all transition cluster projects that received Phase II Study

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<sup>10</sup> First Solar Comments at 4-5; Hydrogen Energy Comments at 5.

<sup>11</sup> First Solar Comments at 5.

<sup>12</sup> First Solar Comments at 7.

<sup>13</sup> First Solar Comments at 9.

<sup>14</sup> First Solar Comments at 10.

<sup>15</sup> Hydrogen Energy Comments at 5-6.

results containing material errors.<sup>16</sup> Terra-Gen claims that it received a final Phase II study from CAISO that included material errors that required revisions but those discussions are currently ongoing. Despite these discussions, Terra-Gen requests that the Commission find the security posting timeline does not begin until CAISO publishes the revised interconnection studies that correct any material errors that may have occurred in the initial study results.<sup>17</sup>

14. In its answer, CAISO argues that the scope of the original waiver request is appropriately limited, because it applies only to those interconnection customers that CAISO misinformed about the deadline for posting the second financial security installment. It argues that there is no need for the Commission to consider the meaning of “final” in this proceeding despite the requests of First Solar, Hydrogen Energy, and Terra-Gen. CAISO argues that all interconnection customers that were misinformed on this point have been included within the scope of this waiver request. Consequently, it claims that this issue is beyond the scope of what is necessary for the Commission to decide the merits of CAISO’s limited waiver request.<sup>18</sup>

15. Additionally, CAISO states that it has consistently informed Terra-Gen that its Phase II interconnection study reports were final as of the date of their publication, and that no revisions were necessary.<sup>19</sup> It states that Terra-Gen may continue to discuss this matter with CAISO and, if necessary, file its own waiver request or complaint with actual support for its position. CAISO states that the Commission should not, however, allow Terra-Gen to expand the scope of this limited waiver request when Terra-Gen has not provided factual support.

## **V. Discussion**

### **A. Procedural Matters**

16. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept

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<sup>16</sup> Terra-Gen Protest at 5.

<sup>17</sup> Terra-Gen Protest at 9.

<sup>18</sup> CAISO Answer at 4.

<sup>19</sup> CAISO Answer at 6.

CAISO's answer, because it has provided information that assisted us in our decision-making process.

## **B. Commission Determination**

17. The Commission grants CAISO's request for a limited waiver of section 9.3.1 of Appendix Y to its tariff. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.<sup>20</sup> Waiver, however, is not limited to these circumstances. For example, in several recent cases similar to this one, the Commission has found good cause for a waiver where the waiver would be of limited scope, there are no undesirable consequences, and there are resultant benefits to customers.<sup>21</sup> As elaborated below, we find good cause exists to grant a limited waiver of section 9.3.1 of the Appendix Y of CAISO's tariff, as the request in the instant proceeding meets these criteria.

18. We agree with CAISO that the seven interconnection requests that are the subject of this proceeding involve unique circumstances that merit granting its waiver request. CAISO has limited its waiver to the interconnection customers that it inadvertently misinformed about the correct deadline for posting the second financial security installment. Granting this limited waiver is appropriate here for several reasons. First, the seven affected interconnection customers may have to withdraw their interconnection request from the interconnection queue if they acted on the inaccurate information and are unable to timely post the second financial security installment. Second, the seven interconnection customers were mistakenly operating with erroneous information provided by members of CAISO's staff. Third, the limited amount of time extended to these interconnection customers through this waiver will be consistent with their original expectations. Finally, PG&E, the only PTO to which this second financial security installment is due, supports the waiver.

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<sup>20</sup> See, e.g., *ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (granting limited and temporary change to tariff to correct an error); *Great Lakes Transmission Limited Partnership*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

<sup>21</sup> See, e.g., *Calpine Corp.*, 134 FERC ¶ 61,232 (2011); *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007).

19. We also find that the issues raised by First Solar, Hydrogen Energy, and Terra-Gen pertaining to the definition of “final” are not relevant to our decision on CAISO’s waiver request. In this instance, CAISO staff advised the interconnection customers in question that the due date for the interconnection financial posting would be extended due to the revisions to the studies. Thus, whether these studies should have been considered “final” is not an issue raised by this waiver request, and this issue is beyond the scope of this waiver proceeding. For this reason, we will not address those issues here.

20. As for Terra-Gen’s protest, we find that Terra-Gen’s concerns are beyond the scope of this proceeding. CAISO intentionally limited its waiver request to the seven interconnection customers that it misinformed about the deadline for posting their second financial security installment. CAISO has expressly stated that the terms of this waiver request do not extend to Terra-Gen or its subsidiaries because CAISO staff advised Terra-Gen that CAISO would not extend the deadline for posting the second financial security installment. Accordingly, we will reject Terra-Gen’s request to extend the deadline to all transition cluster customers with material errors as being outside the scope of this proceeding but we note that TGP Development Company, LLC (a Terra-Gen affiliate) filed a complaint that raises similar concerns in Docket No. EL11-17-000, which the Commission will address in that proceeding.

The Commission orders:

CAISO’s request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.