

146 FERC ¶ 61,121
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

CalWind Resources, Inc.

v.

Docket No. EL14-4-000

California Independent System
Operator Corporation

ORDER DENYING COMPLAINT

(Issued February 21, 2014)

1. On October 11, 2013, CalWind Resources, Inc. (CalWind) filed a complaint (Complaint) against the California Independent System Operator Corporation (CAISO) alleging that sections 25.1 and 25.1.2 (collectively, section 25) of CAISO's open access transmission tariff (CAISO Tariff or Tariff) are not just and reasonable because they conflict with Commission policy. For the reasons set forth below, the Commission finds that CAISO Tariff section 25 complies with Commission policy. Accordingly, this order denies the Complaint.

I. Background

2. This proceeding relates to an ongoing dispute between CalWind and Southern California Edison Company (SoCal Edison)¹ regarding the amount of interconnection service that should be provided under a Large Generator Interconnection Agreement (LGIA) to CalWind, the owner of an existing interconnected qualifying facility (QF) that

¹ See Docket Nos. ER13-1216-000 and ER13-1216-001. CalWind also filed a motion for temporary suspension of the procedural schedule in those dockets and conditional motion to consolidate the Complaint with these dockets.

is converting from state-jurisdictional to Commission-jurisdictional interconnection service.²

3. Since 1997, CalWind has owned the Pajuela Peak Wind Park (Project), an existing QF wind generator, which has operated since 1985. The Project's maximum net generating capacity (i.e., the nameplate rating minus auxiliary load) has never exceeded 21.795 MW.³ Nevertheless, CalWind insists, that for purposes of its right to interconnection service from SoCal Edison without filing a new interconnection request, its Project should be considered a 37.5 MW facility (consisting of approximately 20 MW⁴ of existing installed capacity and another 17.5 MW of potential wind-powered electric generation). CalWind bases its claim for this amount of capacity on CalWind's predecessor in-interest's 1985 interconnection facilities agreement (IFA) with SoCal Edison that provided for the interconnection, in three phases, "not to exceed 37.5 MW."⁵

4. SoCal Edison historically purchased the Project's entire capability of 21.795 MW through a series of power purchase agreements (PPA) entered into under the Public Utility Regulatory Policies Act of 1978 (PURPA),⁶ the last of which expired March 29, 2013. During that timeframe, the QF received interconnection service under state-jurisdictional arrangements. In 2012, CalWind began the process of obtaining interconnection service under the CAISO Tariff, in order to sell the Project's output to Pacific Gas and Electric Company (PG&E), beginning October 1, 2013. Section 25 of the CAISO Tariff provides for a QF generator, like the Project, to transition from selling its total output to a participating transmission owner (like SoCal Edison) to selling its output on the wholesale market, without entering CAISO's interconnection queue, if the

² A more detailed history of this dispute can be found in the Commission's order setting the LGIA dispute for hearing and settlement procedures. *See S. Cal. Edison Co.*, 143 FERC ¶ 61,180 (2013).

³ *See* CalWind QF self-recertification, Docket No. QF83-290-001, at 4 (1997).

⁴ *See* Complaint at 4. CalWind removed approximately 2 MW of the Project's 21.795 MW of installed capacity in March of 2013, reducing the Project's installed capacity to approximately 20 MW.

⁵ *Id.* at 6.

⁶ Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended in scattered sections of 15, 16, 42, and 43 U.S.C.).

generator affirms that its “total capability and electrical characteristics...will remain substantially unchanged.”⁷

5. CalWind submitted an affidavit (dated January 10, 2012) representing that the Project has a “total gross generating capacity of 22.36 MW with power purchase capacity of 21.795 MW.”⁸ Nevertheless, it informed CAISO and SoCal Edison that it believed it was entitled to receive interconnection service from the CAISO LGIA for 37.5 MW. CalWind claims that the Project’s prior owners paid SoCal Edison for the interconnection facilities and network upgrades needed to deliver 37.5 MW of electricity onto SoCal Edison’s transmission network. CalWind adds that its predecessors also paid SoCal Edison’s charges for 37.5 MW of interconnection service continuously throughout the term of the IFA.

6. CAISO and SoCal Edison informed CalWind that this request could not be granted under section 25 because a 15.5 MW addition to a 22 MW facility would not qualify as “substantially unchanged.” Due to this dispute, SoCal Edison filed an unexecuted LGIA at CalWind’s request reflecting the existing level of capacity. CalWind protested the LGIA filing, arguing that it was entitled to an LGIA for a 37.5 MW plant based on a previous contract. The Commission set the issues relating to the unexecuted LGIA for hearing.⁹

II. CalWind’s Complaint

7. In its Complaint, CalWind posits that section 25 of the CAISO Tariff is contrary to Commission policy in Order No. 2003¹⁰ (as clarified by Order No. 2006).¹¹ CalWind

⁷ CAISO Tariff sections 25.1, 25.1.2.

⁸ See SoCal Edison, filing of unexecuted LGIA with CalWind, Docket No. ER13-1216-000, Ex.1 (filed April 1, 2013).

⁹ See *supra* notes 1 & 2.

¹⁰ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh’g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 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).

¹¹ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh’g*, Order

(continued...)

contends that it is the Commission's policy that a QF converting from state-jurisdictional to Commission-jurisdictional interconnection service does not need to file a new interconnection request so long as its transmission requirements are consistent with the capacity provided for in its "*existing interconnection agreement*."¹² Since CalWind claims that the 1985 IFA provides for 37.5 MW of capacity, it should be entitled to interconnect at that level without the need to file an interconnection request.

A. Compliance with Commission Interconnection Policy

8. CalWind first claims that CAISO failed to make a filing in compliance with the Commission's QF conversion policy stated in Order No. 2003 and later clarified in Order No. 2006. CalWind claims CAISO was required to amend its QF conversion process to allow a QF to avoid filing a new interconnection request if its requirements are consistent with its interconnection agreement and ensure that the CAISO Tariff is subordinate to the rights of QFs under existing agreements.¹³ As proof, CalWind points to Docket No. ER04-445-000, in which CAISO purportedly complied with Order No. 2003. In its compliance filing, CAISO made changes to the terminology in the then-existing section 5.7 of its Tariff (which CAISO later re-designated as section 25.1), but, according to CalWind, did not otherwise address QF conversions as required in Order No. 2003¹⁴ (as later clarified by Order No. 2006).¹⁵

9. Next, CalWind argues that the CAISO Tariff does not comply with Commission policy because, instead of looking to the capacity mentioned in the "*existing interconnection agreement*," section 25 incorrectly employs "*the generator's existing net generating capacity*" as the benchmark for determining whether an interconnection

No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

¹² Complaint at 13 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 559) (emphasis in Complaint).

¹³ Complaint at 14-15.

¹⁴ *Id.* at 14 (citing *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,009, at P 140 (2005) (The Commission directed CAISO to make tariff revisions on compliance).

¹⁵ *Id.* at 16 & n.38. CalWind claims that CAISO's August 2005 compliance filing also failed to address the issue. CalWind does note, however, that the Commission accepted CAISO's filing (citing *Cal. Indep. Sys. Operator Corp.*, 121 FERC ¶ 61,177 (2007)).

request is required.¹⁶ CalWind argues that under Order No. 2006, CAISO was required to recognize CalWind's existing interconnection agreement as controlling for purposes of interconnection without needing to file a new interconnection request.¹⁷ CalWind contends that since section 25 of the CAISO Tariff conflicts with Commission policy by focusing on "existing net generating capacity," rather than on the "existing interconnection agreement," the Commission must order CAISO to amend its Tariff to comply with Commission policy.¹⁸

B. Unreasonable Results

10. Next, CalWind asserts that CAISO's implementation of section 25 would lead to "absurd" results by limiting a QF's contract conversion rights to its net generating capability at the time of conversion, even if the net generating capacity is reduced due to last-minute changes (e.g., a *force majeure* event) or through equipment degradation.¹⁹

11. Finally, CalWind argues that CAISO's implementation of section 25 is inconsistent with section 25.3, which requires CAISO and participating transmission owners to take existing "encumbrances" (including pre-existing contracts) into account when they study new generator interconnection requests.²⁰

III. Notice of Filing, Responsive Pleadings, and Procedural Matters

12. Notice of CalWind's Complaint was published in the *Federal Register*, 78 Fed. Reg. 62,614 (2013), with interventions, comments, and protests due on or before October 31, 2013.

¹⁶ *Id.* at 13, 17-19 (citing CAISO Tariff sections 25.1(e), 25.1.2, 25.1.2.1, 25.1.2.2) (emphasis added).

¹⁷ *Id.* at 16 (citing Order No. 2006, FERC Stats. & Regs. ¶ 31,180 at P 559) (emphasis in Complaint).

¹⁸ *Id.* at 17-19 & n.43 (citing *Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services*, 101 FERC ¶ 61,127, at P 36 (2002)).

¹⁹ *Id.* at 20.

²⁰ *Id.*

13. On October 16, 2013, CAISO filed an answer and SoCal Edison filed a motion to intervene and answer to CalWind's procedural motions in the Complaint. On October 18, 2013, CalWind filed a reply concerning the procedural motions.²¹ Motions to intervene in the Complaint proceeding were filed by the California Department of Water Resources State Water Project and by PG&E. On October 31, 2013, CAISO filed an answer to the Complaint and SoCal Edison filed an answer and motion to dismiss the Complaint. On November 15, 2013, SoCal Edison filed a response to CAISO's answer, and CalWind filed an answer to the motions to dismiss filed by CAISO and SoCal Edison. On November 27, 2013, CAISO filed a response to the answers of CalWind and SoCal Edison. On December 12, 2013, CalWind filed a response to the answer of CAISO. On December 20, 2013, CAISO filed an answer to CalWind's response.

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers of CalWind and SoCal Edison, the responses of CAISO and CalWind, nor the answer of CAISO and will therefore, reject them.

IV. Discussion

A. Answers and Motions to Dismiss the Complaint

1. Motion to Dismiss on Procedural Grounds

16. CAISO first argues that the Complaint should be rejected procedurally, because the Complaint will be rendered moot before CalWind could develop any additional generating capacity to its existing facility. CAISO states that it plans to relinquish control over the transmission facility to which the Project is interconnected in December 2013, when the facility is reclassified as a distribution facility.²² According to

²¹ See *supra* note 1.

²² SoCal Edison explains that it is currently in the process of completing upgrades in the area in which the Project is located as part of the East Kern Wind Resource Area (EKWRA) reconfiguration project. This project, which was approved by CAISO in 2010, will turn numerous network transmission facilities into radial distribution facilities, including the line to which the Project is interconnected.

CAISO, the dispute is between CalWind and SoCal Edison involving what rights, if any, CalWind has under the state-jurisdictional agreement, and what capacity should be reflected in a Commission-jurisdictional interconnection agreement under SoCal Edison's Wholesale Distribution Access Tariff (WDAT). CAISO contends that its Tariff is not relevant to addressing these rights and that the Commission should dismiss the Complaint in the interest of judicial and administrative efficiency.²³

2. Motions to Dismiss the Complaint on Substantive Grounds

a. Compliance with Commission Interconnection Policy

17. CAISO and SoCal Edison argue that contrary to CalWind's contentions, section 25 complies with Commission policy, and the Commission has found it to be just and reasonable. They state that CalWind bases its argument on the incorrect assertion that CAISO never made any filing to conform its tariff with the Commission's QF conversion ruling in Order No. 2003. CAISO and SoCal Edison state that in a January 5, 2005 filing, CAISO included specific revisions to incorporate the QF conversion policy from Order No. 2003 into its tariff.²⁴ CAISO states that it added the language that is the subject of CalWind's complaint in that January 5, 2005 filing.²⁵

18. CAISO and SoCal Edison contend that the CAISO Tariff does comply with Order No. 2006 and that CalWind's complaint ignores the context of the Commission direction in Order No. 2006. According to CAISO and SoCal Edison, in the context of Order No. 2006, the language upon which CalWind relies was only meant to apply to cases where the QF conversion did not increase plant capacity.

²³ CAISO October 31, 2013 Answer (CAISO Answer) at 1-2, 7-8.

²⁴ *Id.* at 9 & n.15 (citing transmittal letter CAISO compliance filing, Docket No. ER04-445-006, at 32-33 (Jan. 5, 2005) (quoting Order No. 2003 at P 815); attachment H to that compliance filing (containing proposed tariff revisions)).

²⁵ *Id.* at n.16 (citing CAISO Tariff section 25.1.2 (allowing a converting QF to avoid having to submit an interconnection request if its "total capability and electrical characteristics . . . will remain substantially unchanged"))).

19. CAISO and SoCal Edison argue that the discussion in Order No. 2006 concerning the QF conversion rule was in response to comments filed by the California Wind Energy Association²⁶ (CalWEA). CalWEA noted the QF conversion rule in Order No. 2003, which provides that “the owner of the QF need not submit an Interconnection Request if it represents that the output of the generating facility will be substantially the same as before[,]”²⁷ and asked the Commission to clarify that the same logic applies to small QFs when they have a “*transmission demand that remains the same before and after contract conversion.*”²⁸ Noting that “in some cases a qualifying facility’s interconnection agreement provides for a capacity greater than the capacity sold pursuant to the PURPA power purchase contract,” CalWEA asked the Commission to clarify that “the QF, upon contract conversion, should not be obligated to file an Interconnection Request *so long as its transmission requirements are consistent with the capacity provided for in the prior interconnection agreement.*”²⁹

20. CAISO and SoCal Edison note that in response to these CalWEA comments the Commission stated:

California Wind Energy also asks the Commission to clarify that a plant repowering at the time of contract conversion *that does not increase plant capacity* will not trigger an obligation to file an Interconnection Request. We clarify that a contract conversion *that does not affect a generator’s demands on the Transmission System* does not trigger an obligation to file. When a QF’s existing interconnection agreement provides for capacity greater than the capacity sold by the QF to the interconnecting utility under the PURPA power purchase contract, the QF’s contract conversion will not trigger an obligation to file an Interconnection Request *if its*

²⁶ CalWind is a member of CalWEA. See CalWind Answer at 7 & n.10.

²⁷ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 815.

²⁸ CAISO Answer at 11-12 & n.27 (citing CalWEA comments at 3, Dkt. No. RM02-12 (October 3, 2003)) (emphasis added); SoCal Edison Answer at 14 & n.21 (same).

²⁹ CAISO Answer at 11-12 & n.27; SoCal Edison Answer at 14 & n.21

*transmission requirements are consistent with the capacity provided for in the existing interconnection agreement.*³⁰

21. CAISO argues that the first sentence in paragraph 559 indicates that the Commission was only speaking to conversions where a generator “does not increase plant capacity.”³¹ CAISO states that the most logical reading of this paragraph is that the Commission was clarifying the rule in Order No. 2003 to apply to a situation in which a QF has sold less than its total capability pursuant to a power purchase agreement with its host utility. This situation – a QF having previously sold less than its total capability – does not constitute a “substantial change” in capability and, therefore, the QF would still be entitled to receive an interconnection agreement reflecting its total capability upon conversion.³²

22. CAISO also argues that its interpretation is reinforced by the Commission’s statement that the QF conversion exemption only applies when conversion “does not affect a generator’s demands on the Transmission System.”³³ Argues CAISO, when a generator such as CalWind seeks to substantially increase its capacity above its existing and historic total capability, there is no way of knowing whether its demands on the transmission system would change without performing a study. Given the foregoing, CAISO asserts that CalWind’s suggestion that the Commission meant to extend its exemption for conversion QFs to situations in which a QF seeks to substantially increase its capacity above its existing capability is not plausible.³⁴

23. CAISO further argues that section 25 in its current form fully complies with Order No. 2006.³⁵ Under section 25, if a generator demonstrates that its total capability

³⁰ *Id.* at 12-13 (citing Order No. 2006, FERC Stats. & Regs. 31,180 at P 559) (emphasis added); SoCal Edison Answer at 14 (same).

³¹ CAISO Answer at 13.

³² *Id.* n.32.

³³ *Id.* at 13-14 & n.33 (citing Order No. 2006, FERC Stats. & Regs. 31,180 at P 559).

³⁴ *Id.* at 14 & n.34.

³⁵ *Id.* & n.34. CAISO observes that none of the tariffs of the other Independent System Operators and Regional Transmission Organizations include a provision that excuses an interconnection customer from submitting an interconnection request in the circumstances proposed by CalWind.

and electrical characteristics are “substantially unchanged” (compared to its configuration prior to conversion)³⁶ it necessarily shows that it will not increase the demands of the facility on the transmission system and does not need to be studied through the interconnection process. If not, the contract conversion might affect the facility’s demands on the transmission system and an interconnection request must be filed so that CAISO and the participating transmission owner can study whether additional network upgrades are necessary to accommodate changes to the facility.

24. SoCal Edison also asserts that CAISO Tariff section 25 fully complies with Order No. 2006.³⁷ SoCal Edison explains that, under PURPA, a QF may have a PPA with a utility for a certain quantity of power and also may use its “as available” PURPA rights to sell additional energy to the utility.³⁸ SoCal Edison states that because of these PURPA provisions, a QF’s interconnection agreement and its PPA may well reflect far different capacities.³⁹ However, this would only be in the circumstance where the generating capacity already exists, rather than future potential capacity. Accordingly, SoCal Edison avers that the CAISO Tariff language fully complies with paragraph 559, which provides that a converting QF that is neither increasing plant capacity nor changing its demands on the transmission system need not file an interconnection request if its existing interconnection agreement provides for greater capacity than the capacity the QF sells to its host utility under its PURPA PPA.

b. Unreasonable Results

25. Next, CAISO and SoCal Edison dispute CalWind’s allegation that section 25 in its current form would lead to unreasonable results.⁴⁰ They state that CalWind’s argument that section 25 would limit a QF’s contract conversion rights to its net generating

³⁶ See CAISO Tariff section 25.1.2.

³⁷ SoCal Edison Answer at 14-15.

³⁸ SoCal Edison notes that under PURPA, a QF does not need to enter into a PPA to sell energy to a utility and that the Commission has explained that “Section 304(d) of our PURPA regulations, 18 C.F.R. § 292.304(d) (2011), gives each QF the option either to sell its energy on an as-available basis with no advance commitment, or to sell its capacity and/or energy pursuant to a legally enforceable obligation taken on in advance.” *Id.* at 14 & n.22 (citing *Entergy Servs, Inc.*, 137 FERC ¶ 61,199, at P 17 (2011)).

³⁹ *Id.* at 14 & n.23.

⁴⁰ CAISO Answer at 15; SoCal Edison Answer at 26-27.

capability at the time of conversion, even if the net generating capacity is reduced due to last-minute changes (e.g., a *force majeure* event) or through equipment degradation, is flawed because it is based on hypotheticals that do not relate to the net capacity reflected in an interconnection agreement pursuant to section 25. First, they argue that the CAISO Tariff, in accordance with Order Nos. 2003 and 2006, requires an interconnection study only if there is “substantial” change in total capability or electrical characteristics. Thus, minor changes in output are already accounted for in the explicit language of section 25, and would not serve to disqualify a QF from utilizing the conversion exemption. Nor would temporary outages do so. Second, because a resource can operate below its historic maximum capability, CAISO requires the resource to be studied only if its maximum capability has increased or may increase above this amount, or if there are or will be other electrical changes that require a study.

26. Further, CAISO and SoCal Edison insist that CalWind’s contention that its previous interconnection arrangements with SoCal Edison should be treated as an “encumbrance” is without merit.⁴¹ CAISO and SoCal Edison state that encumbrances are defined in the CAISO Tariff as legal restrictions on a participating transmission owner that affect the operation of transmission lines and associated facilities.⁴² According to CAISO, the issue presented in the Complaint involves generator interconnection service, not transmission service, and therefore CalWind’s interconnection agreement with SoCal Edison would not be considered an “encumbrance.”⁴³ Finally, CAISO notes that its obligation with respect to legally binding encumbrances is limited to those obligations

⁴¹ CAISO Answer at 15-16; SoCal Edison Answer at 27-29.

⁴² CAISO Answer at 16 & n.38 (citing CAISO Tariff Appendix A, definition of “Encumbrance”); SoCal Edison Answer at 27-28 & n.45. SoCal Edison notes that it and its fellow participating transmission owners have hundreds of QF interconnection agreements, but they are not listed in the relevant Encumbrance appendices.

⁴³ CAISO Answer at 16 & n.39. CAISO also notes that since CalWind’s interconnection agreement with SoCal Edison has expired, there is no longer an “existing” state-jurisdictional interconnection contract to apply once the Project begins making wholesale sales, and therefore there is no existing obligation that could constitute an encumbrance.

reported to it by a transmission owner.⁴⁴ CAISO states that SoCal Edison has never identified its interconnection agreement with CalWind as an “encumbrance.”⁴⁵

27. CAISO and SoCal Edison next argue that CalWind’s interpretation of Commission policy would lead to unjust and unreasonable outcomes.⁴⁶ First, they state that CalWind’s contention that under Commission policy, it should be entitled to interconnect at 37.5 MW without the need to file an interconnection request would be contrary to system reliability and good utility practice. They state CalWind’s contention would require CAISO to provide interconnection service based on generating capacity that has never been reflected in CAISO’s base case and is substantially greater than the amount ever constructed, without CAISO first studying the contemporaneous impacts of interconnecting such additional capacity.⁴⁷

28. Second, CAISO and SoCal Edison state that CalWind’s contention would have serious negative implications for the efficiency and fairness of the CAISO’s interconnection process. They argue that this is the case because it would require CAISO and its transmission owners to either overbuild transmission upgrades to account for generating capacity that may never be built, thus increasing the costs to generators in the interconnection queue as well as transmission ratepayers, or to attempt to “re-prioritize” its interconnection queue when a QF demands a CAISO interconnection agreement for expansion capacity.⁴⁸

29. Finally, CAISO and SoCal Edison maintain that CalWind’s contention is inconsistent with the fundamental nature of interconnection service, which is distinct from transmission service. They explain that ongoing reservations of interconnection

⁴⁴ *Id.* & n.40 (citing Amended and Restated Transmission Control Agreement among the California Independent System Operator Corporation and Transmission Owners (January 3, 2013) at Sections 4.1.5, 6.4, *available at* <http://www.caiso.com/Documents/TransmissionControlAgreement.pdf>).

⁴⁵ *Id.* & n.41 (citing Transmission Control Agreement, Appendix B *available at* <http://www.caiso.com/Documents/TransmissionControlAgreementAppendices.pdf>).

⁴⁶ *Id.* at 16-21; SoCal Edison Answer at 16-29.

⁴⁷ CAISO Answer at 17; SoCal Edison Answer at 21-24.

⁴⁸ CAISO Answer at 17-19; SoCal Edison Answer at 24-25.

service would be contrary to well-established Commission policy holding that generators cannot hoard capacity on the transmission system in perpetuity.⁴⁹

B. Commission Determination

30. The Commission recognizes CAISO's assertion that SoCal Edison is completing a reconfiguration of certain facilities to which the Project is interconnected, and formerly under the operational control of CAISO as network facilities, which would require CalWind to replace its LGIA with a GIA under SoCal Edison's WDAT.⁵⁰ However, we find that such a prospective change does not moot the central issue raised in the Complaint, i.e., whether section 25 conforms to the Commission's policy regarding QF conversions. We, therefore, deny CAISO's motion to dismiss the Complaint on procedural grounds.

31. We will deny the Complaint because CalWind has failed to demonstrate that section 25 of the CAISO Tariff is unjust and unreasonable. We find that, contrary to CalWind's assertions, section 25 is compliant with the Commission's direction in Order Nos. 2003 and 2006.⁵¹ Those orders clarified that converting QFs do not have to be studied, if their capacity and electrical characteristics are "substantially unchanged" upon conversion.⁵²

32. In arguing that CAISO failed to comply with the Commission's Order No. 2003 compliance directives, we find that CalWind has conflated two unrelated issues. CalWind points to the compliance requirements regarding QF Participating Generator Agreements (QF-PGA). The QF-PGA compliance issue involved the relationship between the QF-PGA and the LGIA, where the Commission directed CAISO to amend its large generator interconnection procedures and LGIA "to be consistent with the PGA

⁴⁹ CAISO Answer at 20-21 & nn.49, 50 (citing *Aero Energy LLC*, 115 FERC ¶ 61,128 (2006); *Milford Wind Corridor LLC*, 129 FERC ¶ 61,149 (2009); *Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215 (2010)); SoCal Edison Answer at 16-21 & nn.32 & 36 (same).

⁵⁰ CAISO Answer at 6-7.

⁵¹ We note that in making this finding, we make no determination respecting the factual issues being decided in Docket Nos. ER13-1216-000 and ER13-1216-001.

⁵² See Order No. 2003, FERC Stats. & Regs. 31,146 at P 815.

designed for QFs.”⁵³ Based on this QF-PGA compliance requirement, CalWind reasons that the CAISO Tariff was required to be broadly subordinate to the rights of QFs under existing contracts, and thus QF conversion was subject to the capacity amounts contemplated in any interconnection agreement. We disagree. This QF-PGA compliance directive was distinct from the QF conversion rule outlined in Order No. 2003. CAISO proposed provisions (that were later renumbered as section 25) to comply with the QF conversion policy set forth in Order No. 2003. The Commission accepted these provisions without modification.⁵⁴ CAISO separately complied with the QF-PGA directive by adding language to its LGIA, stating that if a matter is explicitly addressed by the QF-PGA and is inconsistent with a provision of the LGIA, the QF-PGA will govern.⁵⁵ Therefore, contrary to CalWind’s assertions, we find that CAISO did submit the requisite compliance filings in response to directives related to Order No. 2003.

33. We also reject CalWind’s argument that section 25 is unjust and unreasonable based on language in Order No. 2006.⁵⁶ CalWind points to the Commission’s statement in paragraph 559 that a QF conversion will not trigger the need for a new interconnection request “if its transmission requirements are consistent with the capacity provided for in its existing interconnection agreement,” and suggests that this language modified the conversion rule set forth in Order No. 2003 so as to require a transmission provider to offer an interconnection agreement based on the amount of capacity reflected in a previous interconnection agreement, regardless of whether the capacity was ever actually constructed.⁵⁷ We find that CalWind’s interpretation conflicts with the logical reading of

⁵³ See *Cal. Indep. Sys. Operator Corp.*, 112 FERC ¶ 61,009, at P 140 (2005) (citing *Cal. Indep. Sys. Operator Corp.*, Opinion No. 464, 104 FERC ¶ 61,196 (2003)).

⁵⁴ See *id.* P 1 (stating that the Commission accepted CAISO’s compliance filing “with certain modifications, as discussed below”). The modifications did not include changes to tariff section 5.7.1 or 5.7.1.2.

⁵⁵ See CAISO transmittal letter for compliance filing, Docket No. ER04-435-015, *et al.*, at 11 (Aug. 30, 2005) (explaining that CAISO submitted proposed tariff revisions to comply with the Commission’s directive “to be consistent with the Qualifying Facility (‘QF’) specific Participating Generator Agreement (‘PGA’) offered by the ISO (‘QF PGA’)”); attachment A to that compliance filing (containing proposed tariff revisions).

⁵⁶ In order to clarify the Commission’s policy, we note that Order No. 2006 involves the Commission’s *pro forma* interconnection procedures and agreement for *small generators*, which the Commission defines as those with a capacity of 20 MW or less. Order No. 2006, FERC Stats. & Regs. 31,180 at n.3.

⁵⁷ Complaint at 10-11, 13, 16, 18.

the entirety of paragraph 559 as well as the proceedings leading to Order Nos. 2003 and 2006.

34. In the Order No. 2003 proceeding, commenters argued that it would be inappropriate to treat an existing QF as a newly interconnected generator because there would be no need to study it separately if the QF were already in the base case used to determine the impacts of new generation. The Commission concurred and concluded that an existing QF need not submit an interconnection request if it represents that “the output of its generator will be substantially the same after conversion.”⁵⁸

35. Given this background, we agree with SoCal Edison and CAISO that the reference to “the existing interconnection agreement” appearing in the last sentence of paragraph 559 must be read in conjunction with the phrase, “does not increase plant capacity” appearing in the first sentence in order to understand the context and substance of the Commission’s policy.⁵⁹ That is, a “QF’s contract conversion will not trigger an obligation to file an Interconnection Request if its transmission requirements are consistent with the capacity provided for in the existing interconnection agreement” (*see* the last sentence) and in those circumstances where the conversion “does not increase plant capacity” (*see* the first sentence). Thus, in the context of converting interconnection rights, CalWind has taken the last sentence out of context, and therefore it is not correct in its assertion that section 25 of the CAISO Tariff fails to comply with Commission policy.

36. In Order No. 2006, the Commission did not intend to extend its exemption for converting QFs to situations in which a QF seeks to substantially increase its capacity above its existing capability. The Commission, in response to commenters that included CalWEA, was clarifying the rule in Order No. 2003 to apply to a situation in which a QF has sold less than its total capability pursuant to a PPA with its host utility. For example, where a QF previously sold less than its total capability to its host utility, and then converts, it would still be entitled to receive an interconnection agreement for its total capability because this would not result in a “substantial change” or trigger a new interconnection request.

37. We find, therefore, that CAISO Tariff section 25 is consistent with Order No. 2006. Where a generator demonstrates that its total capability and electrical characteristics are “substantially unchanged” compared to its configuration prior to

⁵⁸ Order No. 2003, FERC Stats. & Regs. 31,146 at P 815.

⁵⁹ *See* quoted text *supra* P 20.

conversion,⁶⁰ it does not need to be studied through the generator interconnection process as it has illustrated that it will not increase its demands of the facility on the transmission system.

38. We are not persuaded by CalWind's arguments that CAISO section 25 in its current form would lead to unreasonable results. Consistent with Order Nos. 2003 and 2006, an interconnection study is only required if there is "substantial" change in total capability or electrical characteristics. Thus, minor changes in output, such as capacity reductions due to outages or equipment degradation, are already accounted for in the explicit language of section 25, and would not prohibit a QF from using the conversion exemption. Second, the CAISO Tariff requires a resource to be studied only if its maximum capability has increased or may increase (or there are or will be other electrical changes that require a study). We find this requirement consistent with the QF conversion policy described in Order Nos. 2003 and 2006.

39. Contrary to CalWind's assertion, we find no inconsistency between CAISO Tariff section 25.3 (addressing encumbrances) on one hand, and sections 25.1 and 25.1.2 on the other. CAISO section 25.3 places restrictions on new generating units from adversely affecting the ability of participating transmission owners from honoring their legal restrictions or covenants existing at the time an interconnection customer submits an interconnection request to the CAISO, which affect the operation of transmission lines or associated facilities.⁶¹ We find that these provisions address related, but separate aspects of generator interconnection and they complement, rather than conflict with each other. Notwithstanding the foregoing, whether CalWind's IFA constitutes an "encumbrance" under section 25.3 of the CAISO Tariff is a fact issue that may be considered at the hearing established in Docket No. ER13-1216 and is outside the scope of the Complaint.

40. Finally, given the decision in this order, CalWind's motion for temporary suspension of the procedural schedule Docket Nos. ER13-1216-000 and ER13-1216-001 and its conditional motion to consolidate the Complaint with those dockets are mooted.

The Commission orders:

(A) CAISO's motion to dismiss the Complaint as moot is denied for the reasons discussed in this order.

⁶⁰ See CAISO Tariff section 25.1.2.

⁶¹ See CAISO Tariff section 25.3 and Appendix A.

(B) CalWind's Complaint is denied on the merits for the reasons discussed in this order.

(C) CalWind's motions for a temporary suspension of the procedural schedule in Docket Nos. ER13-1216-000 and ER13-1216-001 and its conditional motion to consolidate the Complaint with these dockets are denied as moot for the reasons discussed in this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.