

Stakeholder Comments Template

Submitted by	Company	Date Submitted
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Please use this template to provide your comments on the 2015 Interconnection Process Enhancements (IPE) Revised Straw Proposal that was posted on May 11, 2015 and as supplemented by the presentation and discussion during the May 18, 2015 stakeholder meeting.

Submit comments to initiativeComments@caiso.com

Comments are due June 1, 2015 by 5:00pm

The Revised Straw Proposal posted on May 11, 2015 may be found at:

http://www.caiso.com/Documents/RevisedStrawProposal_InterconnectionProcessEnhancements2015.pdf

The presentation discussed during the May 18, 2015 stakeholder meeting may be found at:

http://www.caiso.com/Documents/Agenda-Presentation_InterconnectionProcessEnhancements2015.pdf

For each topic that was modified in the Revised Straw Proposal please select one of the following options to indicate your organization's overall level of support for the CAISO's proposal:

1. Fully support;
2. Support with qualification; or,
3. Oppose.

If you choose (1) please provide reasons for your support. If you choose (2) please describe your qualifications or specific modifications that would allow you to fully support the proposal. If you choose (3) please explain why you oppose the proposal.

First Solar appreciates this opportunity to submit comments on this initiative, and applauds the CAISO for moving forward with important improvements to the interconnection process.

Topic 1 – Affected Systems

First Solar concurs with the comments filed by LSA regarding Topic 1 - Affected Systems.

Topic 2 – Time-In-Queue Limitations

First Solar opposes the CAISO's proposal for four reasons:

- 1) The CAISO has improperly created a condition for COD extensions by requiring that parties demonstrate that engineering, procurement or construction will take longer than a maximum period. This requirement is not supported by FERC precedent and does not reflect the FERC-approved generator interconnection procedures. The CAISO established this requirement in its Business Practice Manual (BPM) for Generator Management, outside of the tariff process.¹ The CAISO cannot impose a requirement that significantly affects the rates, terms and conditions of service for interconnection customers without filing for approval by FERC;²
- 2) The commercial viability criteria proposed by the CAISO are too narrow and will adversely affect commercially-viable projects;
- 3) The CAISO's rationale for limiting COD extensions due to earlier-queued generators "reserving capacity" that could be used by "other generating facilities" is not sufficient reason to impose strict viability criteria that would prohibit an interconnection customer who is funding upgrades from obtaining a COD extension; and,
- 4) The CAISO proposes loss of full capacity deliverability service or partial capacity deliverability status but does not indicate how this would occur for projects with generator interconnection agreements.

¹ CAISO Business Practice Manual for Generator Management, Version 6, Revised April 30, 2015, p. 16, Sec. 3.5.2.1 ("Time in Queue").

² Provisions significantly affecting rates, terms and conditions of service cannot be established in the BPM and must be filed with FERC. *California Independent System Operator Corporation*, 122 FERC ¶ 61,271, at PP 16 (2008) ("Whether provisions included in the Business Practice Manuals must be filed under section 205 of the Federal Power Act (FPA) and made part of the CAISO's MRTU tariff is determined through the "rule of reason," which discerns those provisions significantly affecting rates, terms and conditions of service, which therefore must be filed for Commission approval."); *Id.*, at PP 84 ("The Business Practice Manuals exist to provide additional implementation details and transparency about the CAISO's operations to market participants.").

As explained below, CAISO can achieve its objective of preventing non-viable projects from squatting in the queue for indefinite amounts of time while also establishing a reasonable process for extensions of COD.

1. Improper limitation on giving COD extensions

Stakeholder comments to the March 23, 2015 proposal and CAISO response:

LSA raised concerns with the March 23, 2015 proposal that CAISO failed to address in the Revised Straw Proposal. LSA noted that FERC policy provides that a proposed COD modification should be assessed using the material modification standard, namely evaluating whether the extension will materially impact the costs or timing of later queued projects.³ LSA suggested that if the CAISO wishes to impose the time-in-queue limitation as outlined in its BPM, it should do so through a stakeholder process and FERC-approved tariff provision.⁴ The CAISO failed to address LSA's comments in its May 11, 2015 Revised Straw Proposal.⁵ Expanding on LSA's concerns, First Solar offers the following comments:

- The CAISO's existing process for extension of commercial online dates (COD), as reflected in its Business Practice Manuals, is a misapplication of the tariff and is inconsistent with applicable FERC precedent. In its revised straw proposal, the ISO proposes new tariff language that would perpetuate its current misapplication of its tariff while adding a new commercial viability requirement. Under CAISO's proposal, an interconnection customer seeking an extension to its COD beyond 7 years would need to show that the delay in COD was due to delays in engineering, permitting or construction that are beyond its control, while also satisfying the proposed viability criteria. The CAISO proposal would make it more, not less, burdensome for viable interconnection customers to get extensions of COD.
- Section 3.5.1.4 of the Generator Interconnection Procedures (GIP), which the CAISO relies upon as the basis of the 7-year time-in-queue rule, simply requires that the *initial* interconnection request include a proposed COD that is 7 years or less from the date of the request, unless the customer demonstrates that engineering, permitting and construction will take longer. This section of the GIP does not address or apply to modification of the COD following acceptance of the interconnection request or execution of the GIA.⁶ Such modifications are properly handled in accordance with GIP

³ LSA Comments, April 10, 2015, p. 3.

⁴ Id.

⁵ Revised Straw Proposal, p. 16.

⁶ As CAISO explained in when it established the 7 year limitation on proposed CODs in initial interconnection requests, "there are subsequent opportunities to adjust this date: (i) within five days of the Scoping Meeting, (ii) prior to the Phase II Interconnection Study, and (iii) at the meeting to discuss Phase II study result." CAISO ER08-

section 6.9.2. As such, the requirement that delays in COD be due to delays in “engineering, permitting, and construction”, does not apply to modification of the COD after acceptance of the initial interconnection request or execution of the GIA. Similarly, the requirement that extensions of COD will only be granted for circumstances beyond the control of the Interconnection Customer applies strictly to the Independent Study process, not the interconnection study process more generally.⁷

- FERC precedent concerning extensions of COD for projects with executed GIAs does not support limiting extensions of COD to delays that are due to “engineering, permitting and construction beyond the interconnection customer’s control.” Instead, FERC applies the material modification assessment standard, under which a modification, including extension of the milestone schedule, may be granted if no lower-queued interconnection customer would be harmed, in the context of extensions of COD.⁸ FERC also recognizes that many factors contribute to the need for more time to develop projects, and applies a case-by-case evaluation that is not allowed by the COD extension rules created by CAISO in its BPMs.
- Under the GIP, interconnection customers have a right to extend COD for up to 3 years.⁹ Accordingly, the time-in-queue limitation should be 10 years, not 7. Also, since it takes three to five years (or more) to negotiate and execute a GIA, 10 years is a better reflection of the time required to get through this process.

1317 Filing Letter. GIP section 6.9.1 (Commercial Operation Date) contemplates that “Parties may agree to new Commercial Operation Dates” to reflect the results of the Phase I Interconnection Study. (“California Independent System Operator Corporation Generator Interconnection Process Report Initiative Tariff Amendment,” p. 17, Docket No. ER08-1318-000 (July 28, 2008)). It is unclear from CAISO’s proposal whether it would apply the viability criteria to modifications of COD under these circumstances.

⁷ See CAISO Tariff, Appendix Y, Section 4.7 (“Extensions of the Commercial Operation Date for Interconnection Requests under the Independent Study Process will not be granted except for circumstances beyond the control of the Interconnection Customer.”)

⁸ See e.g. *Illinois Power Company*, 120 FERC ¶ 61,237, at P 24 (2007) (Rejecting notice of termination where generator had suspended GIA and was seeking an extension of COD beyond three years on the grounds that the utility seeking termination failed to show there was any harm to lower queued generators and that the generator had made substantial commitments to its proposed project.); *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 at P 28 (2011) (In rejecting a MISO notice of termination the Commission explained that when it considers whether to extend milestones it takes into account whether *the extension* would harm generators lower in the interconnection queue.); *Midwest Indep. Transmission Sys. Operator, Inc.*, 130 FERC ¶ 61,172 at P 13 (2010) (Providing guidance that extensions beyond three years are not precluded provided that there is not a material impact on lower queued projects.

⁹ “California Independent System Operator Corporation Generator Interconnection Process Report Initiative Tariff Amendment,” Docket No. ER08-1318-000 (July 28, 2008)(“the Interconnection Customer will be allowed to delay the Commercial Operation Date for its project for any reason up to a maximum of three years and not have it be deemed a Material Modification...”)

Proposed Modifications

For the reasons outlined above, First Solar proposes that CAISO consider the following modifications instead of the CAISO proposal:

1. Add a new section addressing total time in queue and extension of COD to section 6.9.2 of the GIP, which pertains to modification of Interconnection Requests. (Section 3.5.1.4, pertaining to initial interconnection requests would remain unmodified).
2. The new section under 6.9.2 would require that, for extensions of COD beyond 10 years from the initial Interconnection Request, the Interconnection Customer must demonstrate that the Generating Facility is commercial viable.
3. Commercial viability shall be defined as:
 - a. Having, at a minimum, applied for the necessary governmental permits or authorizations and that the permitting authority has deemed such documentation “as data adequate” for the authority to initiate its review process;
 - b. Having an executed power purchase agreement, attesting that the Generating Facilities will be balance-sheet financed, or otherwise receiving a binding commitment of project financing.
 - c. Demonstrating Site Exclusivity in lieu of any Site Exclusivity Deposit;
 - d. Having an executed Generator Interconnection Agreement (“GIA”); and
 - e. Being in good standing with its GIA such that neither the Participating TO nor the CAISO has provided the IC with a Notice of Breach of the GIA (where the breach has not been cured or the IC has not commented with curative actions).
4. Generating Facilities in Cluster 7 and beyond whose Phase II Interconnection Study require an extension of COD are exempt from the commercial viability criteria in this section provided that the COD modification is made within six (6) months of the CAISO’s publishing the Phase II Interconnection Study report. This exemption is inapplicable to report addendums or revisions required by a request from an Interconnection Customer for any reason.
5. Where an Interconnection Customer has an executed power purchase agreement and the PPA COD is subsequent to the GIA COD, the GIA COD shall be automatically extended to match the PPA COD and the Interconnection Customer shall not be required to otherwise demonstrate commercial viability.

6. “PPA COD” shall be defined as the commercial operation date provided for in the executed PPA, inclusive of all extensions provided for per the terms of the PPA.

2. The commercial viability criteria proposed by the CAISO are too narrow and will adversely affect commercially-viable projects.

In its comments on the Straw Proposal, LSA suggested that the CAISO should take the opportunity in this stakeholder process to promote better alignment between commercial operation dates in executed GIAs and PPAs. LSA noted that current market conditions have forced developers to sign PPAs with start dates several years into the future, and developers should not be forced to build generating projects and operate as merchant plants until the PPA COD when an extension of GIA COD would not result in harm to lower-queued customers.

The CAISO’s interpretation of this comment was that LSA was suggesting “fundamental changes to the interconnection process” to align with the CPUC procurement process, and noted that doing so was outside the scope of the interconnection process initiative.¹⁰ To the contrary, LSA is simply proposing a rational modification to the interconnection process that would link one measure of commercial viability that the CAISO itself identifies, securing a PPA, with the commercial reality that the needs of PPA counterparty, the purchasing utility, may not align with an interconnection COD established years earlier. Under the current framework, projects are forced to meet early on-line dates and operate as a merchant plant until PPA COD. In addition, in many cases, the purchasing utility insisting on the later COD in the PPA is also party to the GIA as the Participating Transmission Owner.

First Solar’s proposal would resolve this issue by automatically extending the GIA COD to align with the PPA COD, provided that any material impact on later-queued customers is mitigated.

3. The CAISO’s rationale for limiting COD extensions due to earlier-queued generators “reserving capacity” that could be used by “other generating facilities” is not sufficient reason to impose strict viability criteria that would prohibit an interconnection customer who is funding upgrades from obtaining a COD extension.

As support for its proposal to use commercial viability criteria to remove projects from the queue, the CAISO states that “Generating Facilities requesting a COD extension beyond the 7/10 year thresholds . . . reserve transmission capacity that could be used by other Generating Facilities.”¹¹ This is not a standard supported by FERC precedent. As explained above, in considering whether to extend milestones, FERC applies a material modification assessment standard. In *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 (2011), the

¹⁰ Interconnection Process Enhancements 2015, Revised Straw Proposal, p. 16.

¹¹ Revised Straw Proposal, p. 13.

Commission rejected MISO’s assertion that extension of the milestone schedule for the Lakeswind project would harm a lower queued generator. FERC explained that:

...when the Commission considers whether to extend milestones, it takes into account whether the extension would harm generators lower in the interconnection queue. Amending Lakeswind’s milestones does not change [the lower queued generator’s] cost responsibility; rather, Lakeswind’s existence in the queue impacts [the lower queued generator’s] cost responsibility.¹²

Here CAISO is making the same mistake that MISO did by measuring the impact on lower queued customers as the benefit they would receive if the customer requesting the COD extension were removed. This is incorrect. The proper test is not whether a lower-queued customer would benefit if the customer requesting the extension is removed from the queue, but whether the extension of COD would result in any additional impact on the lower-queued customer that it would not be subject to under the current schedule. In addition, without assessing which “other Generating Facilities” would use the “reserved transmission capacity” and whether those other facilities would be more capable of achieving commercial operation than the earlier-queued project, the CAISO should not be terminating deliverability for earlier-queued projects.

4. The CAISO proposes loss of full capacity deliverability service or partial capacity deliverability status but does not indicate how this would occur for projects with GIAs.

The CAISO does not distinguish between projects with GIAs in proposing the consequences for a project failing to meet commercial viability criteria, but states that if “Generating Facilities do not meet the commercial viability criteria, they will not be deemed withdrawn from the Generator Interconnection Queue. Instead, the Generating Facility’s deliverability status will be changed to Energy-Only.”¹³ For projects with GIAs, the CAISO cannot deem a project withdrawn from the queue, but must take action to terminate the GIA and support that action at FERC. Under the GIA, an interconnection customer in good standing is already funding the upgrades necessary to ensure deliverability of its project. For projects with GIAs, the CAISO cannot unilaterally change deliverability status to energy-only. The CAISO should clarify this in its proposal.

Topic 3– Negotiation of Generator Interconnection Agreements

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,008 at P 28 (2011)

¹³ Revised Straw Proposal, Page 13-14.

First Solar concurs with the comments filed by LSA regarding Topic 3 – Negotiation of Generator Interconnection Agreements.

Topic 5 - Stand-Alone Network Upgrades and Self-Build Option

First Solar concurs with the comments filed by LSA regarding Topic 4 – Stand Alone Network Upgrades.

Topic 10 - Forfeiture of Funds for Withdrawal During Downsizing Process

First Solar concurs with the comments filed by LSA regarding Topic 10 – Forfeiture of Funds for Withdrawal During Downsizing Process.

Topic 11 –TP Deliverability Option B Clarifications

First Solar concurs with the comments filed by LSA regarding Topic 11 – TP Deliverability Option B Clarifications.