

LGIP provided that the Interconnection Customer must provide documentation demonstrating:

a final, non-appealable permit, license, or other right to use the property for the purpose of generating electric power and in acreage reasonably necessary to accommodate the Generating Facility, which exclusive right to use public land under the management of the federal Bureau of Land Management shall be in a form specified by the Bureau of Land Management.

In response to protests arguing that this Site Exclusivity requirement is overly burdensome with respect to projects planning to locate on federal lands, the CAISO noted that this language was developed in consultation with the federal Bureau of Land Management (“BLM”). The CAISO explained that BLM represented to the CAISO that it currently does not have provisions for exclusive rights to a particular site on BLM land short of a final use permit, and that in the absence of such a mechanism, BLM representatives proposed that the CAISO simply require all Interconnection Customers proposing to locate their projects on BLM land to provide the Site Exclusivity Deposit. However, rather than make the Site Exclusivity Deposit an absolute requirement for Interconnection Customers in that situation, the CAISO proposed a definition of “Site Exclusivity” to preserve the option for a future mechanism (presumably to be developed by BLM) for assigning project developers some form of exclusive right to proceed with development activities for a particular site on BLM land. The CAISO stated that developers are free to deal directly with BLM to establish some form of rights they might be able to obtain from BLM, that might provide some advance assurance that they will be able to develop their projects on a particular site on BLM-administered land.

In its September 26, 2008 order approving the GIPR Amendment, the Commission found that the definition of Site Exclusivity was appropriate, and acknowledged the fundamental differences between projects proposed on federal land versus those proposed on private land. The Commission concluded that the increased requirements on public land, where site control is more difficult to attain, are just and reasonable and not unduly discriminatory. The Commission also noted that the Site Exclusivity Deposit is fully refundable if the Interconnection Customer demonstrates Site Exclusivity or withdraws its interconnection request.¹

On October 27, 2008, the Wind Parties, along with the Large Scale Solar Association (collectively, the “Wind and Solar Parties”), filed a request for rehearing of the September 26 Order, challenging the Commission’s approval of the GIPR LGIP’s definition of Site Exclusivity as applied to projects located on public lands. Thereafter, on December 19, the Wind Parties filed the Motion at issue, requesting that the Commission grant expedited consideration of their October 27 request for rehearing based on a recent CAISO Tariff Bulletin relating to the demonstration of Site Exclusivity on public lands.

III. ANSWER

The Wind Parties’ Motion requests that the Commission expedite their October 27 request for rehearing and direct the CAISO to modify the definition of Site Exclusivity as proposed by the Wind and Solar Parties’ comments on the GIPR Amendment, and require the CAISO to permit any party who has dropped out of the queue to re-enter the

¹ *California Independent System Operator Corp.*, 124 FERC ¶ 61,292 (2008) (“September 26 Order”) at P 63.

queue at their previous position if they can meet the test set forth in the Wind and Solar Parties' rehearing request. The Wind Parties base their request on a December 3, 2008 Tariff Bulletin issued by the CAISO regarding the interpretation of the tariff language relating to demonstrations of Site Exclusivity on public lands. According to the Wind Parties, the fact that the CAISO issued this Tariff Bulletin evidences a reevaluation by the CAISO of its position on Site Exclusivity and demonstrates that the CAISO's current position is "vague and unattainable."

The Wind Parties' argument regarding the import of the December 3 Tariff Bulletin is highly exaggerated. As the CAISO explained therein, it issued the Tariff Bulletin in advance of publishing a Business Practice Manual ("BPM") devoted to the interconnection process, and consistent with its plan to publish proposed BPMs for notice and comment prior to implementation. The December 3 Tariff Bulletin does not signal any re-evaluation of the CAISO's position, but rather merely clarifies in greater detail what the CAISO will consider to constitute an "other right to use the property for the purpose of generating electric power" for BLM lands, per the definition of Site Exclusivity. Specifically, the CAISO identified three demonstrations that, if made by an Interconnection Customer, would qualify as an "other right to use the property": (1) the Interconnection Customer has secured a temporary use permit; (2) the Interconnection Customer has undertaken significant additional activity to prosecute a permanent permit; and (3) the Interconnection Customer is the first in time applicant to satisfy the first two criteria.

On its face, nothing about this interpretation is inconsistent with or contradictory to the existing language in the GIPR LGIP regarding Site Exclusivity, and the Wind

Parties offer no evidence to support their argument to the contrary. Indeed, the criteria articulated in the December 3 Bulletin are directly apropos to the CAISO's comments in response to the Wind and Solar Parties protest regarding the option, short of a final use permit, to satisfy the Site Exclusivity requirement by obtaining some advance assurance from BLM that a developer will be able to locate its project on a particular site on BLM land. The Wind Parties' Motion provides no reason for the Commission to overturn its decision to accept the CAISO's definition of Site Exclusivity as applied to public lands, and certainly does not demonstrate a particularly pressing need for Commission action. Moreover, the Commission should reject the Wind Parties' meritless suggestion that any party who dropped out of the queue be permitted to re-enter the queue at their previous position if they can meet the test for Site Exclusivity proposed by the Wind and Solar Parties. As the Commission correctly noted in the September 26 Order, Interconnection Customers have the option of providing a fully refundable \$250,000 deposit in lieu of a demonstration of Site Exclusivity. Parties that chose not to avail themselves of this option and consequently decided to remove themselves from the queue should not be entitled to re-enter at their previous position. Doing so would cause substantial disruption to the CAISO's interconnection process, and would unduly discriminate against those entities that abided by the terms of the GIPR LGIP.

III. CONCLUSION

For the reasons explained above, the Commission should reject the Wind Parties' Motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the captioned proceeding, 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 Washington, D.C. this 5th day of January, 2009.

/s/ Daniel Klein
Daniel Klein