

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

**California Independent System            )  
Operator Corporation                        )       Docket No. ER10-1656**

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR  
CORPORATION TO COMMENTS AND PROTEST OF PETITION FOR WAIVER  
OF TARIFF PROVISIONS REGARDING INTERCONNECTION FINANCIAL  
SECURITY**

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation (“ISO”) hereby files its answer to various comments and moves for leave to answer protests to its petition for waiver of tariff provisions regarding interconnection financial security, which the ISO filed in this docket on June 30, 2010.<sup>1</sup> For the reasons explained below, the Commission should accept the ISO’s petition with only the limited clarification set forth in Section I.C below.

The ISO requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to make an answer to the protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding important issues raised in the protests to the GIPR filing and will provide additional information to assist the Commission in the decision-making process, and help to

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<sup>1</sup> Comments and/or protests were filed by M-S-R Public Power Agency and the City of Santa Clara d/b/a Silicon Valley Power (“M-S-R/SVP”); the Modesto Irrigation District (“Modesto”); the Large Scale Solar Association and the Solar Energy Industries Association (“LSSA”); the California Wind Energy Association (“CalWEA”); Macquarie Energy North America Trading; Southern California Edison Company (“SCE”); SolarReserve LLC; and Solar Millennium

ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 116 FERC ¶ 61,286, at P 6 (2006); *Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,124, at P 11 (2006); *High Island Offshore System, L.L.C.*, 113 FERC ¶ 61,202, at P 8 (2005).

## **I. ANSWER**

### **A. The ISO's Petition Meets the Commission's Test for Waiver Requests**

Most of the parties filing comments on the ISO's request support the proposed waiver.<sup>2</sup> However, M-S-R/SVP objects to the waiver, arguing that the ISO has failed to show that its request meets the three relevant factors articulated by the Commission for granting a tariff waiver.<sup>3</sup> First, M-S-R/SVP alleges that the ISO has not demonstrated that the requested waiver would be of limited scope.<sup>4</sup> To the contrary, the ISO explained that the waiver meets the limited scope requirement because: a) it will only apply to projects in the transition cluster; and b) it will only apply to projects for which a Participating TO has committed to provide up-front funding. M-S-R/SVP does not address either of these limitations. Rather, M-S-R/SVP takes issue with the fact that Participating TOs may not agree to provide a commitment to up-front fund projects unless they receive abandoned plant recovery. M-S-R/SVP asserts that the waiver should be limited to circumstances under which a PTO agrees to

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<sup>2</sup> See CalWEA at 7; SolarReserve at 5; Solar Millennium at 5; Macquarie at 2-3; SCE at 4-6; LSSA at 6-7.

<sup>3</sup> Modesto's protest adopts the arguments raised in the M-S-R/SVP protest. Therefore, except for one discrete issue raised in Modesto's protest, this discussion will refer solely to the M-S-R/SVP protest.

<sup>4</sup> M-S-R/SVP at 9-13.

place only its own funds at risk to front the necessary upgrade costs.<sup>5</sup> However, as explained in the discussion of the third factor below (avoidance of unintended consequences), the issue of whether a Participating TO requests abandoned plant recovery is beyond the scope of this waiver request, and would be resolved on its merits in a separate proceeding before the Commission. Granting this waiver request will not guarantee or pre-judge any Participating TO's request for abandoned plant recovery.

M-S-R/SVP also argues that the ISO has failed to explain the "financial scope" of the waiver, because the ISO has not provided any indication of the number of projects that would be eligible for the waiver based on a PTO commitment to provide up-front funding.<sup>6</sup> It is not, however, possible for the ISO to identify a specific number of projects that will be eligible for the waiver because it remains to be seen how many projects the Participating TOs will ultimately commit to up-front fund. M-S-R/SVP expresses concern that there is no indication of the amount of upgrade costs to which customers might be exposed if a project is abandoned. The potential cost exposure of customers from abandoned transmission upgrade costs is *not*, however, the subject of the ISO Cluster LGIP<sup>7</sup>, nor is it contingent on the approval of this waiver. Rather, the cost exposure issue depends on whether or not Participating TOs are permitted by the Commission to recover abandoned plant costs through rates, which is an issue beyond the scope of this proceeding. Indeed, this issue is beyond the scope of the ISO's Cluster LGIP, as the LGIP does not speak to the issue of

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<sup>5</sup> *Id.* at 10-12.

<sup>6</sup> *Id.* at 12-13.

<sup>7</sup> ISO FERC Electric Tariff, Fourth Replacement Volume No. II, Appendix Y

whether a Participating TO should provide up-front funding, or under what ancillary terms and conditions a Participating TO would offer to provide up-front funding; the LGIP merely states that the Participating TO has the option to up-front fund. Moreover, the ISO should not be required to identify the specific projects that will be eligible for the waiver in advance in order to meet the “limited scope” requirement. There is no Commission precedent suggesting that such a detailed showing is necessary, and adopting this argument would set the bar unreasonably high, significantly limiting the utility of tariff waiver requests. Boiling down M-S-R/SVP’s concerns, this issue is really a rate issue. The ISO’s LGIP does not speak to rate issues associated with PTO up-front funding, and neither does the waiver petition. Also, much of the benefit to be gained by approving the petition would be lost if the ISO were required to provide a definitive list of projects for which the Participating TOs have agreed to provide up-front funding prior to the Commission approving the waiver.

M-S-R/SVP also asserts that the ISO has failed to demonstrate that the waiver request will address a concrete problem that needs to be remedied. As with the first factor, M-S-R/SVP relies on an overly-cramped reading of Commission precedent regarding tariff waiver requests, suggesting that the ISO’s petition is deficient because it does not involve an “accident or an inadvertent mistake.” However, nothing in Commission precedent indicates that the Commission interprets a “concrete problem” as being limited only to instances involving accidents or mistakes. The Commission’s approval of the ISO’s 2007 waiver request relating to the Tehachapi wind resource area aptly illustrates this

point. In that case, the Commission approved the ISO's request to waive certain provisions in the ISO's then-existing LGIP in order to allow the ISO to study certain projects seeking to interconnect in an area particularly favorable for wind development as a cluster, rather than serially.<sup>8</sup> That request did not involve any "mistake" or "accident." Rather, the ISO explained, and the Commission accepted, that studying these projects serially would be highly inefficient from both cost and timing standpoints, because additional projects would require the need for more and more incremental upgrades.<sup>9</sup>

M-S-R/SVP claims that there is no record of any developer having financial difficulty obtaining sufficient project funding, including the associated costs of providing financial security to cover transmission upgrades.<sup>10</sup> This statement ignores the substantial amount of information to the contrary that was presented in the context of the ISO's 2009 amendment to modify the financial security requirements set forth in the ISO's Cluster LGIP.<sup>11</sup> Moreover, M-S-R/SVP's argument overlooks the specific concern that the ISO articulated in its petition with respect to the timing of the interconnection process and the ability of renewable developers to access funding under the American Recovery and Reinvestment Act ("ARRA"), and the ISO's explanation of how this tariff waiver will address this concern.

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<sup>8</sup> *California Independent System Operator Corp.*, 118 FERC ¶ 61,226 (2007).

<sup>9</sup> *Id.* at P 25.

<sup>10</sup> *Id.* at 13-14.

<sup>11</sup> See, e.g., Amendment to Tariff Provisions on Generator Interconnection Process Reform, Docket No. ER09-1722 (Sept. 18, 2009); Large Scale Solar Association Motion to Intervene and Comments, Docket No. ER09-1722 (Oct. 9, 2009) at 4-5; Motion to Intervene and Comments of Sunpower Corp., Docket No. ER09-1722 (Oct. 9, 2009) at 3-4.

Finally, M-S-R/SVP argues that the petition fails to consider the harm that could result to transmission customers if an interconnection customer fails to post security and also fails to complete its project. As such, M-S-R/SVP urges the Commission to limit the waiver to circumstances when a Participating TO agrees to fund network upgrades *solely at its own financial risk*. As stated above, however, this argument boils down to a rate issue. The objection does not go to the question of whether or not the waiver of financial security requirements is appropriate, but rather, whether and on what terms the Participating TO should be permitted abandoned plant recovery by the Commission. As such, this issue is beyond the scope of this proceeding. If a Participating TO wishes to provide up-front funding for projects only on the condition that it is authorized to recover any abandoned plant costs, then such authorization must come from the Commission, independent of this waiver. In sum, the issue of whether or not it is appropriate to expose transmission customers to abandoned plant costs is one that the Commission can and should consider in the context of the specific requests made by Participating TO's for such authority, rather than in this proceeding.

**B. Although Some Commentors Urge that All Projects in the Transition Cluster Should Be Relieved of the Posting Obligation, the Commission Should Limit the Waiver to Projects for Which the Participating TOs Have Committed to Upfront Fund**

Although agreeing that a waiver of financial security posting requirements is appropriate, CalWEA and SolarReserve contend that the ISO's requested relief does not go far enough. Specifically, CalWEA and SolarReserve argue that

the ISO should extend the waiver to all interconnection customers until the ISO completes its upcoming stakeholder process focusing on evaluating the lessons learned to date regarding the ISO's cluster process, including a reevaluation of the financial security posting requirements. These arguments go well beyond the waiver petition, implicating instead the fundamental tenet of the ISO's Cluster LGIP, as approved by the Commission, that interconnection customers be required to post some financial security to cover the costs of network upgrades. In their comments on the waiver petition, the primary reason advanced by CalWEA and SolarReserve to support their position for a drastically expanded waiver is this: while the narrower waiver proposed by the ISO may provide financial benefit to some projects, a waiver for all interconnection customers will necessarily benefit *even more projects*. While this may be true in a limited financial sense, it ignores the countervailing need to ensure the integrity of the interconnection process, which ultimately benefits all market participants, including developers, transmission owners, and ratepayers.

One of the fundamental drivers of the Cluster LGIP was to increase financial commitments and related risks in order to encourage developers to make realistic and timely decisions regarding project viability earlier in the interconnection process, thereby avoiding as much as possible the need for costly and time-consuming restudies, and ensuring that actual projects would more closely match system needs. The ISO recognizes that determining the correct level of financial commitment that appropriately balances the need to ensure the integrity of the interconnection process while not discouraging

otherwise viable projects is an ongoing process. This is demonstrated by the ISO's 2009 amendment to its LGIP, and its commitment to further study this issue in an upcoming stakeholder process. Nevertheless, CalWEA and SolarReserve's proposal would result in a wholesale disposal of the financial security requirements, providing developers in the transition cluster unchecked discretion to withdraw from the queue without any financial consequence. The ISO does not believe that this radical departure from the existing tariff regime is necessary or wise. The study and cost allocation procedures set forth in the Cluster LGIP, in particular the decision to cap developer liability for upgrade costs at the level established in the Phase I interconnection study, were adopted with the premise that some level of financial security would be provided by developers. If CalWEA and SolarReserve's proposal to remove all security requirements were accepted, transmission owners and customers would be exposed to far greater financial risks than originally contemplated. This would alter the fundamental "bargain" struck in the Cluster LGIP, a result which goes well beyond the limited relief contemplated in the ISO's waiver request. The ISO therefore urges the Commission to limit the waiver to those network upgrade costs for which a Participating TO has committed to provide up-front funding.

CalWEA and SolarReserve also criticize the ISO's waiver proposal as potentially discriminatory because it relies on decisions to fund network upgrades, which are within the discretion of the Participating TOs. However, as the ISO explained in its waiver request, a Participating TO's decision to up-front fund particular network upgrades largely alleviates the need to require financial

security for those upgrades, as well as the logic for doing so. Absent a Participating TO's commitment to provide up-front funding, however, the rationale for requiring developers to provide financial security based on the costs of network upgrades still applies. As such, the ISO's proposal properly distinguishes between network upgrades that are funded by a Participating TO, and network upgrades that are initially funded by interconnection customers, and as such is not unduly discriminatory.

**C. The ISO Agrees that Waiver of Security for Network Upgrades is Appropriate While a Participating TO's Request for Incentive Rate Treatment/Abandoned Plant Recovery is Pending, and Prior to Commencement of Construction**

The LSSA and Solar Millennium request that the ISO to clarify and/or modify the petition request so that the second and third financial postings required under Section 9.3 of the ISO Cluster LGIP would be waived as soon as a Participating TO initiates efforts to up-front fund in the form of an application to the Commission for abandoned plant recovery.<sup>12</sup> This means that the posting requirements would be waived (i) once the Participating TO has filed its request for incentive rate treatment and/or abandoned plant approval and (ii) for the period of time that the Participating TO's request for abandoned plant approval (only, not the incentive rate treatment) is pending.

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<sup>12</sup> LSSA at 8-10; Solar Millennium at 6-8. The ISO understands from discussions with one Participating TO (SCE), that it will contractually commit (in the LGIA) to up-front fund network upgrades once it receives abandoned plant approval from FERC, even if there is still an outstanding request for incentive rate treatment. Accordingly, the ISO believes that the scenario where parties are waiting for a Participating TO to finalize its up-front funding commitment will be limited to situations where the Participating TO is awaiting abandoned plant approval from the Commission.

The ISO is willing to make such a clarification and include this clarification within its tariff waiver request to the Commission. In order to ensure that the waiver is appropriately limited to upgrades that are ultimately up-front funded, in such situations where the Commission decision on abandoned plant approval is pending, the interconnection customer would be relieved of the obligation to post until the earlier of (i) a final determination by the Commission that either grants or denies abandoned plant approval or (ii) the Participating TO begins to undertake any action that would involve liquidating (*i.e.* drawing upon) an interconnection customer's financial security. Accordingly, if a final determination by the Commission denies abandoned plant approval, the interconnection customer would be required to make the financial security postings pursuant to Section 9.3. Moreover, if, during the pendency of the request, the Participating TO starts incurring expenses that the Cluster LGIP specifies are to be paid for by the interconnection customer's financial security posting, then the customer shall make the Section 9.3 financial security postings, subject to refund upon a final Commission grant of abandoned plant approval. This allows developers to be relieved from having to post security during the pendency of a Participating TO's request for abandoned plant recovery, while ensuring that only network upgrades with appropriate financial backing (either by the interconnection customer or Participating TO) are constructed.

## II. CONCLUSION

For the reasons discussed above, the ISO respectfully requests that the Commission grant, with the limited clarification specified in Section I.C above, its request to waive financial security postings relating to network upgrades with respect to those interconnection customers for which a Participating TO has committed to provide up-front funding.

Respectfully Submitted,

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Dated: July 29, 2010

## CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on the parties listed on the official service lists for the above-referenced 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 29<sup>th</sup> day of July, 2010.

**Daniel Klein**  
Daniel Klein