143 FERC ¶ 61,206
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Meridian Energy USA, Inc. Docket No. ER13-1333-000

v.

California Independent System
Operator Corporation

ORDER DENYING WAIVER REQUEST

(Issued June 4, 2013)

1. On April 24, 2013, Meridian Energy USA, Inc. (Meridian) submitted a request for a limited waiver of Appendix Y of the California Independent System Operator Corp. (CAISO) tariff to defer the second posting of interconnection financial security for the Jacobs Canal Solar Farm, Laurel West Solar Farm, and Laurel East Solar Farm (the Projects). In this order we deny the waiver request. The Commission grants confidential treatment to certain information contained in the waiver request.

I. Background

2. In 2008, Meridian executed Small Generator Interconnection Agreements (SGIA) for each of the Projects under the serial study provisions of the CAISO tariff, then in effect. All three SGIAs provide that the Projects will share a generator-tie line that will interconnect with a Pacific Gas & Electric Company (PG&E) substation. The scope, cost and timing to reconfigure the substation for interconnection is set forth in the SGIAs.[1] On December 26, 2010, the Commission accepted CAISO's proposal to transition from the serial study process for the interconnection of small generating facilities to a cluster

[1] Meridian April 24, 2013 Waiver Request at 7 (Waiver Request).

study process.[2] Meridian opted to be considered in the cluster application window for the fourth queue cluster to obtain full capacity deliverability status, while also maintaining its serial study position for energy-only deliverability status. Under the one-time option to be considered under this process for full capacity deliverability status, the interconnection customer will remain in the serial study group for energy-only deliverability status but will be considered in the phased cluster study for full capacity deliverability status.[3]

3. Under the cluster study process, CAISO conducts Phase I and Phase II interconnection studies that establish cost responsibility for network upgrades and provide the cost responsibility for the financing of network upgrades and the participating transmission owner's interconnection facilities. To remain in the interconnection queue, the interconnection customers are required to post interconnection financial security on or before 90-days after the Phase I interconnection study report, and on or before 180-days after the final Phase II interconnection study report.

4. Meridian proceeded through this interconnection process in the fourth queue cluster under the one-time option to obtain full capacity deliverability status. On January 4, 2012, Meridian received its Phase I interconnection studies for full capacity deliverability status and provided the required initial postings of interconnection financial security on April 2, 2012. On November 5, 2012, Meridian received its Phase II interconnection studies for full capacity deliverability status. Following the results of the Phase II interconnection studies, PG&E and CAISO provided Meridian with draft proposed amendments to the SGIAs to account for the changed point of interconnection. Meridian states that it provided comments and redlines to PG&E and CAISO on

---

[2] *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223 (2010) (Generator Interconnection Order) (The Commission accepted CAISO's proposal to provide projects that were previously studied without full deliverability status a one-time option to be studied for full capacity deliverability status). Within CAISO, interconnecting generation resources may request full deliverability status, which is a request for deliverability for the maximum megawatt (MW) output that a generation resource is able to provide, or partial capacity deliverability status, which is a request for a specific portion of the resource's maximum MW output. A resource that does not seek either full or partial capacity deliverability status is said to have energy-only deliverability status and does not qualify for payment as a resource adequacy resource.

[3] CAISO Tariff Appendix Y Section 8; *see also* Generator Interconnection Order, 122 FERC ¶ 61,223 at P 30.

December 28, 2012. Meridian claims that it has not received any comments in response to its draft amendments.[4]

5. Meridian's interconnection configuration was revised twice due to siting difficulties associated with the upgrades contemplated in the SGIAs. After the second revision to the point of interconnection, on January 21, 2013, Meridian requested that PG&E provide an updated scope, cost, and timing estimate for the new point of interconnection. Meridian has not received this information.[5]

6. Meridian was required to post incremental financial security for Phase II by no later than May 4, 2013, or else be subject to withdrawal from the queue for full capacity deliverability status. On April 24, 2013, Meridian requested a stay of its obligation to post incremental financial security on May 4, 2013, subject to further Commission action.[6] On May 3, 2013, the Commission denied Meridian's motion for stay, finding that Meridian's request did not demonstrate that Meridian would suffer irreparable harm absent a stay.[7]

II. <u>Request for Waiver</u>

7. On April 24, 2013, Meridian submitted a request for one-time waiver of the obligation to make the second interconnection financial security posting until 90 days after PG&E provides the scope, cost and timing for the upgrades associated with the changed point of interconnection. Meridian argues that good cause exists for the waiver because it is required to provide the second posting of interconnection financial security without the certainty about total upgrades and associated costs for which it is responsible as a result of the proposed interconnection.

8. Meridian states that the lack of material cost information results in uncertainty regarding its total cost exposure. Meridian states that it cannot reasonably elect to make the required financial security posting and risk forfeiting a large portion of that posting if it later finds out that total interconnection costs make the Projects uneconomic. Meridian states that the Commission previously granted waivers of the CAISO tariff to Calpine

---

[4] Waiver Request at 10.

[5] *Id.* at 3-9.

[6] *See* generally, *Meridian Energy USA, Inc.*, 143 FERC ¶ 61,094 (2013) (Order Denying Stay).

[7] *Id.*

Corporation (Calpine) to allow Calpine to receive a full refund of its initial interconnection financial posting because it was not aware of its total transmission upgrade costs prior to the financial posting deadline.[8]

9. Meridian contends that the waiver is limited in scope. Meridian states that its request is unique due to its participation in the fourth queue cluster under CAISO's revised tariff. Meridian states that the fourth queue cluster is closed and the related studies have been completed. Therefore, Meridian argues that the projects that this waiver could apply to are finite. Additionally, Meridian identifies that the circumstances of the interconnection of the Projects are unique where the point of interconnection had to be modified due to difficulty obtaining land rights.[9]

10. Meridian argues that the requested waiver will not result in undesirable consequences to other interconnection customers. The Phase II Interconnection Studies for projects in the fourth queue cluster are complete and the associated network upgrades have cost caps. Meridian states that, whether or not it provides the second posting of interconnection financial security on the current due date, or 90-days after PG&E provides updated scope, timing and the cost caps will remain unchanged. Therefore, Meridian argues that the interconnection customers in the fourth queue cluster will not be affected.[10]

11. Finally, Meridian argues that the waiver will provide benefits to energy customers in California. Meridian notes California's procurement target of 33 percent renewable energy by 2020 and states that granting the waiver will allow its renewable energy capacity to remain under development and available to satisfy these goals. Meridian also requests confidential treatment for certain information included in its waiver request.

[8] Waiver Request at 12, 14 (citing *Calpine Corporation*, 138 FERC ¶ 61,068 (2012) (*Sutter 2*); *Calpine Corporation*, 134 FERC ¶ 61,232 (2011) (*Sutter 1*) (The Commission granted waiver of the CAISO tariff for Calpine Corporation (Calpine) to allow Calpine to receive a full refund of its first and second financial security posting up to 90-days after it was provided the total cost exposure for the interconnection)).

[9] *Id.* at 15-16.

[10] *Id.* at 16.

III. Notice, Responsive Pleadings and Procedural Matters

12. Notice of the waiver request was published in the *Federal Register*, 78 Fed. Reg. 25,740-01 (2013), with interventions and protests due on or before May 6, 2013. On May 6, 2013, CAISO and PG&E submitted motions to intervene and protests to the waiver request. On May 21, 2013, Meridian submitted an answer to the protests.

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Meridian's answer and will, therefore, reject it.

IV. Comments and Protests on Waiver

15. PG&E and CAISO argue that the Commission should deny the request for waiver. CAISO argues that the Commission should deny the waiver request because the request does not meet the standard for granting a waiver. CAISO argues that Meridian has not shown good cause to waive the interconnection financial posting deadline. CAISO contends that Meridian's projects were originally studied under the serial study provisions. Under the serial study provisions, costs are subject to change, and customers are not required to provide any financial security until 20 business days prior to commencement of design, procurement and installation or construction of the upgrades indicated in their interconnection agreements.[11] As part of the generator interconnection reforms to implement a cluster study process, the tariff provides an escalating schedule of financial security posting requirements, and unlike under the serial study provisions, interconnection customers' responsibility for network upgrades costs is capped at the lesser of the estimated costs set forth in Phase I and Phase II interconnection studies.[12]

16. CAISO states that Meridian voluntarily elected to be considered on a one-time basis in CAISO's Phase I and Phase II of the interconnection cluster study for the limited purpose of determining what, if any, incremental upgrades are required in order to provide full capacity deliverability status. CAISO states that under the one-time option,

[11] CAISO May 6, 2013 Comments at 7-8.

[12] *Id.* at 8.

Meridian is required to post security for the interconnection cluster studies, and separately, for the serial study process. CAISO states that the upgrades relating to customers' interconnection, which Meridian states have changed as a result of the changed point of interconnection, remain part of the serial study process.[13] CAISO notes that pursuant to the serial study process, Meridian is not obligated to provide any financial security relating to the upgrades identified in the serial study process until the participating transmission owner is ready to commence design, procurement, installation and construction of the interconnection facilities and network upgrades.[14] Further, CAISO and PG&E state that the financial posting that Meridian seeks to defer is only for the network upgrades associated with Meridian's request to CAISO for full capacity deliverability status.[15]

17. PG&E also notes that Meridian did not question the costs of the network upgrades for full capacity deliverability status or challenge the magnitude of the required postings. PG&E states that the SGIAs contain information on Meridian's total estimated cost responsibility, and states that it will continue to work with Meridian to help make the Projects more viable, for instance, by changing the point of interconnection.[16]

18. CAISO argues that Meridian has provided no compelling reason why it should be afforded special treatment to defer the obligation to post security for the incremental upgrades for full-capacity deliverability status until it has certainty regarding all of its upgrade costs, including those that were identified in the serial study process. CAISO also states that if Meridian does not post security relating to the incremental upgrades associated with full capacity deliverability status it will lose its opportunity to pursue full capacity deliverability status pursuant to the one-time option for its Projects, but the Projects will remain in the serial queue as energy-only facilities. CAISO states that, contrary to Meridian's claim, Meridian will not be required to cease development.

19. CAISO notes Meridian's claim that the Commission granted waivers to Calpine for its Sutter Energy Center under similar circumstances.[17] However, CAISO argues that

[13] *Id.* at 9.

[14] *Id.* at 9.

[15] PG&E May 6, 2013 Comments at 1; CAISO May 6, 2013 Comments at 9.

[16] PG&E May 6, 2013 Comments at 2-3.

[17] Waiver Request at 12-13.

the Commission, in granting the waiver request in the Calpine Orders, relied on different circumstances. Specifically, CAISO states that Calpine's Sutter facility was already constructed, interconnected, and operating at the time of the request to change its point of interconnection, while Meridian's Projects are not yet in commercial operation. CAISO also distinguishes that Calpine had no means of estimating its cost exposure because CAISO was unable to provide a comprehensive estimate for the cost responsibility for network upgrades at the time of the interconnection study, and therefore Calpine's cost cap was subject to change. On the other hand, CAISO notes that Meridian has received the estimates regarding the network upgrades necessary for full capacity deliverability status, and those costs are capped.[18]

20. CAISO argues that the requested waiver would result in undesirable consequences by compromising the integrity of CAISO's interconnection process. CAISO states that the purpose of requiring increasing financial security postings is to ensure that projects advancing in the interconnection queue continue to have a reasonable path to commercial operation, and to encourage developers whose projects are not viable to make the decision to withdraw earlier in the interconnection process.[19] CAISO contends that allowing Meridian to delay its financial security based on uncertainty over the serial study process would undercut this policy underlying the financial security posting requirements, and CAISO's ability to conduct a fair and efficient interconnection process. PG&E also argues that the Commission's efforts to ensure an efficient interconnection process warrants denial of PG&E's request.[20] CAISO states that Meridian is not uniquely situated among customers that were studied in the serial process and then elected to utilize the one-time option to be studied for full-capacity deliverability status. CAISO states that other customers in the same situation may also seek a waiver to be relieved from complying with CAISO's interconnection financial security obligations.[21] Additionally, by deferring its posting obligations, CAISO states that Meridian will gain a substantial financial advantage compared to other customers.[22]

---

[18] CAISO May 6, 2013 Comments at 14.

[19] *Id.* at 15 & nn.25-26 (citing *Hydrogen Energy Cal.*, 135 FERC ¶ 61,068, at P 31 (2011) (citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, at P 151 (2008))).

[20] PG&E May 6, 2013 Comments at 2-3.

[21] CAISO May 6, 2013 Comments at 16.

[22] *Id.* at 15.

21. CAISO states that, even if Meridian were able to show that it was materially or uniquely disadvantaged by the application of the transparent financial security rules in CAISO's tariff, the appropriate result would not be to waive the financial posting requirements. Instead, CAISO states that, similar to the Calpine Orders, it would be appropriate to require Meridian to post security subject to potential relief of the amount of the financial security subject to forfeiture in the event the Projects are withdrawn.

22. CAISO also states that granting the waiver would have undesirable consequences for PG&E by shifting the financial risk associated with the interconnection customer's projects to the participating transmission owner. CAISO states that the Commission has made similar findings in the past where the Commission found that granting a stay of an interconnection customer's requirement to post financial security may potentially cause financial harm to the participating transmission owner.[23]

23. Finally, CAISO argues that granting the waiver would not result in benefits to any customers. CAISO argues that there is far more renewable capacity in CAISO's queue than is needed for the renewable portfolio standard goals in California, and there is no reason to believe that, as Meridian argues, its Projects are necessary to ensure that California renewable portfolio standard targets are achieved.[24]

V. <u>Commission Determination</u>

24. The Commission has typically only granted waiver requests involving an emergency situation or an unintentional error.[25] Waiver, however, is not limited to those circumstances. When good cause for a waiver of limited scope exists, and there are no

---

[23] *Id.* at 16 & n.29 (citing *TGP Development Company,* 135 FERC ¶ 61,083, at P 38 (2011)).

[24] *Id.* at 18 (stating that there are currently 295 renewable projects in the queue, representing 32,795 MW, as well as 20 renewable projects totaling 1,986 MW that have already achieved commercial operation. Only 20,000 MW are required to meet the 33 percent renewable portfolio standard targets).

[25] *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 LP.,* 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).

undesirable consequences, and the resultant benefits to customers are evident, we have found that a one-time waiver may be appropriate.[26] Meridian, however, has failed to satisfy any of these three factors; therefore, we deny Meridian's request for one-time waiver of its financial posting requirements until 90-days after PG&E provides scope, cost and timing information on the revised point of interconnection.

25. Here, Meridian has not demonstrated good cause for the requested waiver. Meridian initially entered the serial interconnection queue for energy-only status. Meridian then opted to be evaluated, under a one-time option, for full capacity deliverability status. Under the one-time option, Meridian is subject to different financial posting requirements for its energy-only status and its full capacity deliverability status. Though Meridian complained of having to make a financial posting as of May 4, it had been provided all of the information that it was supposed to be given by that date to keep in tact its required postings under the full capacity deliverability status process.

26. Meridian states that, due to its changed point of interconnection, it is not aware of its total costs for interconnection upgrades. However, the interconnection upgrades identified in the SGIAs are for *energy-only* deliverability status, which are being considered in the serial study process. Under that process Meridian will not have to post financial security for these upgrades until the Projects are closer to commencing construction, and the tariff does not require PG&E to provide the updated information that Meridian seeks at this time. The costs identified in the SGIAs are not capped, and the cost variability is inherent in the serial study process.

27. Conversely, in being considered for full capacity deliverability status, CAISO identified the network upgrades for full capacity deliverability status and the costs associated with these upgrades are capped. Therefore, consistent with the tariff, Meridian received these cost estimates prior to the financial posting deadline, and is aware of its total cost responsibility associated with the network upgrades for full capacity deliverability status. The financial posting, due on May 4, 2013, relates only to the network upgrades identified for full capacity deliverability status and the costs for full deliverability status are capped at the estimate received by Meridian in connection with these network upgrades. Meridian made a decision to be considered, under the one-time

[26] *See Pacific Gas and Elec. Co.*, 136 FERC ¶ 61,243, at P 8 (2011); *Cal. Indep. Sys. Operator Corp.*, 136 FERC ¶ 61,107, at P 7 (2011); *Coso Energy Developers,* 134 FERC ¶ 61,088, at P 8 (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, at P 9 (2007).

option for full capacity deliverability status while also retaining a position in the serial study process for energy-only distribution. Thus, Meridian made a business decision to be considered in two different tracks with different posting and study requirements. We note that, as CAISO commented, if Meridian does not post security for the network upgrades identified for full capacity deliverability status, the Projects will remain in the serial queue as energy-only facilities.

28. Also, the facts in the Calpine Orders upon which Meridian relies differ from those presented here. Calpine's Sutter facility was already constructed, and the information on cost responsibility that was required was not available at the time the financial posting was due from Calpine. Here, Meridian's Projects have not been built, and all the required information has been provided regarding the posting for full capacity deliverability status. We also note that in the Calpine Orders we only granted the parties the potential to recover their financial posting, not a waiver of the posting requirement as Meridian seeks here.

29. We find the waiver has not been shown to be limited in scope. CAISO stated that other customers in the same situation may also seek a waiver to be relieved from complying with CAISO's interconnection financial security obligations. Therefore, the Commission is concerned that all other interconnection customers that opted to be considered under the one-time offer for full capacity deliverability status are in similar circumstances as Meridian. These customers are subject to the same separate timelines for their cost responsibility and financial posting obligations under both the serial provisions and the cluster study process. Therefore, other customers may also be in the position to make business decisions based on their expected costs that are subject to change under the serial study process. In this instance, we find that Meridian has not demonstrated that its circumstances are unique such that a waiver of the second interconnection financial security posting would have no precedential effect regarding other interconnection customers who opted to be considered under the one-time option.[27] If the Commission grants Meridian's request for a waiver, other interconnection customers may be encouraged to argue that good cause exists for them to receive a waiver of their financial posting obligations under circumstances similar to those of Meridian.

30. We also find that granting the waiver may result in undesirable consequences. The Commission accepted CAISO's proposed generator interconnection procedures with its financial security posting requirements to deter speculative projects that lack a

[27] *See Coso Energy Developers*, 134 FERC ¶ 61,088 at P 18.

reasonable chance of achieving commercial operations.[28] Granting Meridian's request for a waiver here could allow a potentially speculative project to continue to occupy space in the queue without a financial posting. Allowing Meridian's Projects to remain in the queue without a financial posting requirement may delay or prevent other projects from being timely considered.

31. We are also not persuaded by Meridian's claims that granting the waiver will help achieve state policy goals. Meridian argues that granting the waiver will allow additional renewable energy capacity to remain under development to potentially help satisfy California's renewable energy procurement goals. However, CAISO notes that it has sufficient generation in its interconnection queue to satisfy the renewable portfolio capacity.[29] Based on the record in this proceeding, we do not find that state public policy goals compel the Commission to grant the requested waiver.

32. Finally, we grant Meridian's request for privileged treatment for portions of its waiver request and related motions and Attachments F and H. The Commission finds that providing confidentiality to this information is appropriate under CFR sections 388.112 and 388.107(d). The waiver request contains commercial and financial information that is commercially sensitive and therefore warrants confidential treatment.

The Commission orders:

(A) The request for waiver is hereby denied, as discussed in the body of this order.

(B) The Commission hereby grants the request for confidential treatment of portions of Meridian's filing, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[28] *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 at PP 151-153.

[29] *See supra* note 24.