

143 FERC ¶ 61,094  
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

ORDER DENYING MOTION FOR STAY

(Issued May 3, 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 the same filing, Meridian also submitted a motion for stay of Meridian's obligation to make the second posting of Interconnection Financial Security on May 4, 2013. In this Order, we deny Meridian's motion for stay. The Commission does not address the merits of the waiver request in this Order.

**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 SGIAAs provide that the Projects will share a generator-tie line that would interconnect with a Pacific Gas & Electric Company (PG&E) substation. On December 26, 2010, the Commission accepted CAISO's proposal to transition from the serial study process for SGIAAs to a cluster study process. Under this proposal, Meridian opted to be considered in the cluster application window for the fourth queue cluster to obtain Full Capacity Deliverability Status.<sup>1</sup>

3. Meridian has proceeded through the interconnection process in the fourth queue cluster. On January 4, 2012, Meridian received its Phase I Interconnection

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<sup>1</sup> Meridian motion for stay at 8-9 (citing *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223 (2010) (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)).

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 SGAs. Meridian states that it provided comments and redlines to PG&E and CAISO on December 28, 2012. Meridian claims that it has not received any comments in response to its draft amendments.<sup>2</sup>

4. The interconnection configuration was revised twice due to siting difficulties associated with the upgrades contemplated in the SGAs. 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 states that it has yet to receive updated scope, costs and timing estimates from PG&E.<sup>3</sup>

5. Meridian is required to post Incremental Financial Security by no later than May 4, 2013, or else be subject to withdrawal from the queue. On April 24, 2013, Meridian requested stay of this obligation to post Incremental Financial Security on May 4, 2013, subject to further Commission action. Additionally, Meridian requested a one-time waiver of the obligation to make the second Interconnection Financial Security Posting until up to 90 days after it receives scope, cost and timing information from PG&E.<sup>4</sup>

## **II. Request for Stay**

6. Meridian requests that the Commission grant the motion for stay, arguing that, absent the stay, Meridian will suffer irreparable injury. Meridian states that PG&E's failure to provide scope, cost and timing for upgrades resulting from the revised point of interconnection presents Meridian with options to either:

- (a) withdraw its projects from the queue, leading to a substantial financial forfeiture under the withdrawal provisions of Appendix Y of CAISO's tariff; or
- (b) "blindly" post a second financial security deposit without any information from PG&E regarding the scope, cost or timing of the upgrades. Under the

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<sup>2</sup> *Id.* at 10.

<sup>3</sup> *Id.* at 3-9.

<sup>4</sup> *Id.* at 11, 14.

second option, Meridian states that its total security subject to forfeiture under the withdrawal provisions of Appendix Y of CAISO's tariff would increase.<sup>5</sup>

7. Meridian argues that issuing a stay will not harm other parties because those other parties will be in the same position that they would be if Meridian withdraws the Projects. The Phase II Interconnection Studies for the fourth queue cluster are complete. The Network Upgrade cost caps generated by those studies are known and will remain the same whether Meridian withdraws the Projects.

8. Finally, Meridian states that the potential withdrawal of several interconnection requests for renewable energy projects under development to meet California's renewable portfolio standards is not in the public interest. Meridian argues that ensuring that competition remains robust among developers seeking to provide renewable energy serves the public interest by driving innovation and efficiency which can lower prices.<sup>6</sup>

### **III. Notice and Responsive Pleadings**

9. Notice of the motion for stay and request for waiver was published by the Secretary on April 25, 2013, with interventions and protests due on or before April 29, 2013 with respect to the motion for stay.<sup>7</sup> No responsive comments were filed.

### **IV. Discussion**

10. In this order, the Commission addresses and denies Meridian's motion for stay. The Commission does not, at this time, address the waiver request included in this docket.

11. Under the standards of the Administrative Procedures Act, the Commission may grant a stay "[w]hen ... justice so requires."<sup>8</sup> In deciding whether justice requires a stay, the Commission generally considers several factors, which typically include: (1) whether the party requesting the stay will suffer irreparable injury without the stay; (2) whether issuing the stay may substantially harm other

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<sup>5</sup> *Id.* at 17-18.

<sup>6</sup> *Id.* at 18.

<sup>7</sup> Comments regarding the waiver request are due by 5:00 pm Eastern Time on May 6, 2013.

<sup>8</sup> 5 U.S.C. § 705 (2006).

parties; and (3) whether the stay is in the public interest.<sup>9</sup> If the party requesting the stay is unable to demonstrate irreparable harm absent a stay, we need not examine the other factors.<sup>10</sup>

12. We do not find irreparable harm in the circumstances described here. Meridian argues that it will suffer irreparable harm by having to make a decision between: (1) posting the Incremental Financial Security Payment, and potentially facing significant withdrawal costs if it chooses withdrawal once it is notified by PG&E of the scope, timing and cost of the interconnection facilities; and (2) withdrawing from the interconnection queue at this time and paying the withdrawal fees. As Meridian concedes, the potential for economic loss does not constitute irreparable harm for purposes of justifying a stay.<sup>11</sup> Consistent with our prior holdings, we find Meridian’s decision to either post the Incremental Financial Security Payment or withdraw from the interconnection queue is a purely economic decision, and as such, does not constitute irreparable harm justifying the issuance of a stay. Therefore, we deny the motion for stay.

<sup>9</sup> *MidAmerican Energy Holdings Company (MidAmerican Energy)* 118 FERC ¶ 61,003, at P 22 (2007); *CMS Midland, Inc., Midland Cogeneration Venture Limited Partnership*, 56 FERC ¶ 61,177, at 61,630-31 (1991) (*CMS Midland*), aff’d sub nom., *Michigan Municipal Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir.), cert. denied., 510 U.S. 990 (1993); *Boston Edison Company*, 81 FERC ¶ 61,377 (1997).

<sup>10</sup> *CMS Midland*, 56 FERC at 61,631 (“The key element in our inquiry is irreparable injury to the moving party. If such party is unable to demonstrate that it will suffer irreparable harm if we do not grant the stay, we need not examine the other factors”).

<sup>11</sup> Meridian Motion for Stay at 17; *TGP Dev’t Co. v. Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,083, at PP 36-39 (2011) (having to choose between posting a second financial security installment and withdrawing from the interconnection queue is a financial decision that does not constitute irreparable harm); *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,013, at P 13 (2009) (finding that delay in processing an LGIP interconnection request is of a “purely economic nature”); *Wis. Gas v. FERC*, 758 F.2d at 674 (“The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.”) (quoting *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *Wash. Metropolitan Area Transit Comm’n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 n.2 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass’n v. FPC*, 259 F.2d at 925.

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The Commission orders:

The motion for stay is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.

Document Content(s)

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