

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

**California Independent System)
Operator Corporation)**

Docket No. ER09-1722-000

**MOTION FOR LEAVE TO ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO
PROTEST OF CLIPPER WINDPOWER DEVELOPMENT COMPANY, INC.**

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 moves for leave to answer the request for rehearing filed by Clipper Windpower Development Company, Inc. (“Clipper”) in this proceeding.

I. MOTION FOR LEAVE TO ANSWER REHEARING REQUEST

Pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the ISO moves for leave to answer Clipper’s protest to the ISO’s September 18, 2009 amendment to modify the provisions of the ISO’s Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window (“LGIP”). Rule 213(a)(2), 18 C.F.R. §385.213(a)(2), of the Commission’s Rules of Practice and Procedures generally precludes an answer to a request for rehearing. However, the Commission has accepted answers that are otherwise prohibited by this rule if such answers clarify the issues in dispute, *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (2000); *Eagan Hub Partners, L.P.*, 73

FERC ¶¶ 61,334 at 61,929 (1995), or assist the Commission, *El Paso Electric Co.*, 72 FERC ¶¶ 61,292 at 62,256 (1995). This answer is warranted because it provides context to the assertions made by Clipper in its protest, and points out the deficiency and logical flaw in Clipper's request for relief.

II. BACKGROUND

On September 18, 2009, the ISO filed its tariff amendment to modify the LGIP which was added as Appendix Y to the ISO tariff as a result of the Generator Interconnection Process Reform ("GIPR") filing, a prior amendment to the ISO's tariff which instituted comprehensive reforms of the ISO's interconnection process, and which the Commission accepted in September 2008.¹ The ISO preceded the September 18 filing with two stakeholder conference calls, first on August 27, 2009, to discuss the draft proposal and then on September 2, 2009, to discuss the final proposal.

Under the guise of a protest to the current amendment, Clipper seeks to protest a feature of the 2008 GIPR amendment, which was not modified in the September 18 amendment, namely, that an interconnection customer's initial security deposit for network upgrades is based on its share of both reliability network upgrades and deliverability network upgrades, even when that interconnection customer switches from Full Capacity deliverability status² to Energy-Only deliverability status.³ Clipper

¹ Capitalized terms not otherwise defined herein have the meanings set forth in Appendix A to the ISO tariff. The ISO is also sometimes referred to as the CAISO.

² Full Capacity deliverability status is defined in the ISO Tariff, Appendix A as "the condition whereby a Large Generating Facility interconnected with the CAISO Controlled Grid, under coincident CAISO Balancing Authority Area peak Demand and a variety of severely stressed system conditions, can deliver the Large Generating Facility's full output to the aggregate of Load on the CAISO Controlled Grid, consistent with the CAISO's Reliability Criteria and procedures and the CAISO On-Peak Deliverability Assessment."

³ Energy-Only deliverability status is defined in the ISO Tariff, Appendix A as "A condition elected by an Interconnection Customer for a Large Generating Facility interconnected with the CAISO Controlled

concedes in its protest that it first understood and appreciated this feature of the original GIPR amendment during the 2009 stakeholder process relating to the current amendment. Clipper then bootstraps an argument of reliance based upon a misstatement relayed to Clipper in September 2009, which the ISO shortly thereafter corrected, to argue that Clipper would not have made a \$250,000 deposit for study costs and continued on in the transition cluster a year earlier, in November 2008, had it understood then how the 2008 GIPR amendment actually worked. A key to the issue is set forth in footnote 5 of Clipper's pleading:

Clipper first learned of CAISO's intent to charge customers switching from FC [Full Capacity] to EO [Energy Only] the FC security requirement at a August 27, 2009 stakeholder meeting held by CAISO. This approach was not explicitly stated in the original CalSO tariff filing, nor was Clipper informed of the CAISO's position in its discussions with CAISO staff on FC and ER prior to the Concepcion Project's entering the transition cluster. At the August 27 meeting, Clipper commented that charging customers FC security after they switch from FC to EO is unreasonable. CAISO responded that it did not include a "subtractor"—i.e. an adjustment to the required security posting amount when a customer switches from FC to EO service, because, in its view, there is not always a downward cost effect for the cluster group when a customer makes such a switch. CAISO stated that its general lowering of the required security amount provides the financial relief that is the "impetus" for customers' request for a "subtractor." Proposed Changes to Large Generator Interconnection Procedures Processing, September 2, 2009.⁴

As Clipper's footnote explains, the feature that interconnection customers can switch from Full Capacity to Energy-Only was contained in the 2008 GIPR amendment, as is

Grid the result of which is that the Interconnection Customer is responsible only for the costs of Reliability Network Upgrades and is not responsible for the costs of Delivery Network Upgrades, but the Large Generating Facility will be deemed to have a Net Qualifying Capacity of zero, and, therefore, cannot be considered to be a Resource Adequacy Resource."

⁴ Clipper's Motion to Intervene and Protest at p. 3, n.5. The ISO understands Clipper's footnote to refer to comments made in the August 27 conference call and statements contained in the ISO's "Proposed Changes to the Large Generator Interconnection Procedures Cluster Processing" document (discussing the final proposal) which the ISO posted to its web site on August 31, 2009 and discussed in the second stakeholder conference call on September 2. The ISO has italicized certain portions of Clipper's footnote 5 for emphasis.

the fact that the initial financial security posting is based on both reliability network upgrades and delivery network upgrades, even if the customer should decide, after receiving Phase I study results and costs, to switch from Full Capacity to Energy-Only.

Clipper rounds out its protest with a discussion of why it believes that it is unreasonable for interconnection customers who change from Full Capacity to Energy Only deliverability status to have their initial financial security posting include amounts relating to delivery upgrades. This argument contains the same imbedded, and incorrect, assumption that the ISO pointed out in the stakeholder conference calls: that network upgrade costs always go *down* when individual interconnection customers in a study group switch from Full Capacity to Energy-Only. Tellingly, Clipper's protest does not attack the ISO response to the "subtractor" request that Clipper relays in the footnote: *that there is not always a downward cost effect*. Accordingly, the rationale underlying Clipper's argument and request for relief is wrong.

III. ANSWER

Clipper's protest goes to a feature of the LGIP put in place by the 2008 GIPR Amendment: the initial financial security instrument posting for network upgrades includes costs of both reliability network upgrades and the delivery network upgrades. The GIPR Amendment introduced for the first time in ISO's LGIP the ability for an interconnection customer who initially selected Full Capacity deliverability status in its interconnection request (as was so studied in the Phase I study process) to switch to Energy-Only deliverability status prior to the commencement of the Phase II studies.

The ISO's initial proposal for the September 18 LGIP Amendment proposed only to spread out the security postings from two to three installments. A number of stakeholders responded to the initial proposal with comments that the initial posting amount should also be changed, and that a "subtractor" (as they called it) should be included when a Full Capacity interconnection customer elected to switch to Energy-Only deliverability status before the commencement of the Phase II study. The ISO ultimately changed the proposal to lower the amount of the first posting but did not include a "subtractor" for the reasons stated above, *i.e.*, the fact that one or more interconnection customers change from Full Capacity to Energy-Only deliverability status does not necessarily lead to a reduction in overall network upgrade costs. Under such circumstances, it is necessary to complete the Phase II study to determine whether, and to what extent, any upgrades characterized in Phase I as deliverability upgrades are no longer required. Moreover, even if the total network upgrade costs do decline, a customer who switches to Energy-Only deliverability status does realize the benefit of such reduction because, under the September 18 LGIP amendment that is the subject of this proceeding, the second and third security postings are based on the lesser of Phase I or Phase II study costs. Accordingly, Clipper's claim that interconnection customers switching from Full Capacity to Energy-Only deliverability will be subjected to unreasonable and excessive security obligations is unfounded.

In its pleading, Clipper also attempts to assert reliance upon incorrect information relayed to Clipper in the September 11, 2009, Phase I Interconnection Study results meeting that it had with ISO staff.⁵ Clipper notes that, at the September 11 meeting, it was given "a different position" regarding the cost components of the initial financial

⁵ See pp. 2-3, n.3 to Clipper's Motion and Protest.

security posting than it had heard earlier in the September 2 stakeholder conference call. While, regrettably, this is the case, Clipper was subsequently informed on September 22 (by email) that the financial security information relayed at the results meeting had been incorrect, and that the posting would be based upon all Phase I network cost estimates (including both reliability and delivery network upgrades).⁶ In any event, Clipper cannot reasonably assert reliance upon a 2009 miscommunication, which the ISO subsequently corrected, as a basis for taking an action a year earlier in 2008 to provide a \$250,000 study deposit to the ISO and continue in the transition cluster.

III. CONCLUSION

For the reasons explained above, the Commission should reject Clipper's protest and request that LGIP Section 9.2 be revised to restrict the initial financial security posting to reliability network upgrades only for those interconnection customers who change their deliverability status from Full Capacity to Energy-Only.

Respectfully submitted,

⁶ A true and correct copy of this email communication from ISO Project Manager Judy Brown to Clipper representative Rhonda Peters is attached as Exhibit A.

Nancy Saracino
General Counsel
Sidney M. Davies
Assistant General Counsel
Baldassaro "Bill" Di Capo
Counsel
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

/s/ Michael Kunselman
Michael Kunselman
Alston & Bird LLP
The Atlantic Building
950 F Street, N.W.
Washington, DC 2004
Tel: (202) 756-3300
Fax: (202) 756-3333

Counsel for the California Independent
System Operator Corporation

Dated: October 26, 2009

Exhibit A

From: Brown, Judy
Sent: Tuesday, September 22, 2009 1:47 PM
To: 'Rhonda Peters'
Cc: Kevin Brokish; Betsey Rubio
Subject: RE: CaISO upcoming Cluster Tariff filing with FERC

Rhonda:

The changes included in the filing with FERC did not include any waiver of costs for the calculation of the financial security. If a full capacity project changes to energy only, the financial security will be calculated on the original network upgrade costs. If FERC approves, the cap on these costs will be \$20,000/MW or max of \$7.5 million.

Judy Brown
Project Manager
California ISO
(916) 608-7062

From: Rhonda Peters [mailto:RPeters@ClipperWind.com]
Sent: Thursday, September 17, 2009 1:57 PM
To: Brown, Judy
Cc: Kevin Brokish; Betsey Rubio
Subject: CaISO upcoming Cluster Tariff filing with FERC

Hi Judy,

Good afternoon. We recently received notice from the CaISO on the Large Generator Interconnection Procedures Cluster Processing Tariff Language soon to be filed with FERC. In our T209 meeting last Friday you had mentioned that under tariff revisions transition cluster projects would not be subject to any FC deposit requirements going into Phase II if they switch to EO. I was not able to find any language in the revision (15-Sep-2009" <http://www.caiso.com/242a/242adb4f17d20.pdf>) on that. If you could direct me to where that change is, I would be most appreciative.

Thank you,
Rhonda

Rhonda Peters
Grid Access Engineer

Clipper Windpower Development Company, Inc.
6305 Carpinteria Ave. Suite 300
Carpinteria, CA 93013

Tel: +1 (805)-576-1188
Cell: +1 (805)-252-0714
Fax: +1 (805) 899-1115
Email: rpeters@clipperwind.com
Web: www.clipperwind.com

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 26th day of October, 2009.

/s/ Daniel Klein
Daniel Klein