



December 11, 2012

Chair Robert Foster
Governor Ashutosh Bhagwat
Governor Angelina Galiteva
Governor Richard Maullin
Governor David Olsen

RE: CAISO GIP-3 Generator Downsizing Proposal

Dear Chair Foster and Governors Bhagwat, Galiteva, Maullin, and Olsen:

I am writing this letter on behalf of the Large-scale Solar Association (LSA) to clarify some misleading statements made during the September 13, 2012 Board meeting discussion about the Generator Project Downsizing initiative (see the September 7, 2012 memo “Decision on Generator Project Downsizing” (Proposal).

LSA is a strong supporter of this initiative and was an active participant in the stakeholder process. The ability to downsize a generation project during the development process is a high-priority issue for LSA members, and for developers generally. Developers need project-size flexibility, because interconnection and transmission lead times are much longer than generation-development timelines, so the optimal project size (given the outcome of contracting, permitting, financing and other activities that typically occur later) may be highly uncertain when Interconnection Requests must be submitted.

At the September 13th Board Meeting, the Board: (1) approved Management’s proposal for a “one-time” downsizing window for projects in the interconnection queue before Cluster 5 (Pre-C5 Projects); but (2) directed Management to consider the need for a second such window in 2014, after Cluster 5 interconnection studies are complete, and to report on the status of that later effort in late 2013. During the discussion, several Board members expressed concern at the suggestion that the CAISO might seek to terminate Generator Interconnection Agreements (GIAs) for the portions of generating projects that have already reached commercial operation if the developer does not construct all the contract capacity applied for in the Interconnection Request.

To address these concerns, Management made several statements to the Board suggesting that limiting downsizing opportunities in this manner would still leave Pre-C5 Project developers considerable sizing flexibility. However, these statements conflict with developers’ experience and other CAISO staff statements in other contexts.

The first problematic Management statement was that developers of large projects could help prevent this situation by segmenting their projects into multiple phases, and that this segmentation would protect earlier phases if later phases were not built. If this is true, LSA would appreciate clarification to that effect.

Management has stated on numerous occasions that failure to build one or more later phases of a generating project could constitute a breach of the GIA that could permit CAISO termination, even if the developer agreed to mitigate any potential damages¹. While LSA does not agree with this position – and believes that it is contrary to both contract law and FERC precedent – the CAISO’s own statements indicate that it does not believe that splitting a project into multiple phases protects against GIA cancellation of the earlier project phases if later phases are not built.

The second problematic Management statement was that developers can also protect projects by negotiating GIA “Partial Termination” (PT) provisions, to provide the option of cancelling later project phases. However, this mechanism has not been widely used, because it is not available to a broad array of generation developers. On the contrary, CAISO Management has stated repeatedly that “the ISO will only consider it in very limited circumstances²” and on a case-by-case basis. There have been very few such agreements filed to date.

As LSA and others said during the stakeholder process and at the September 13th Board Meeting, the potential loss of a GIA because of a need to downsize or cancel part of a project has caused developers severe financing problems that are likely to continue. For example, Pre-C5 Projects in early development (e.g., Cluster 3-4 projects (which just received Phase II Studies), and those with Commercial Operation Dates (CODs) in 2016 and later) probably can’t determine their optimal project size in time to use the upcoming “one-time” downsizing opportunity.

In summary, the Board should continue to encourage Management to pursue a possible second downsizing window in 2014, and ideally to state now that this opportunity will be available for the early-stage projects described above.

The Board should also direct Management to clearly say that failure to build an entire generating project would not trigger GIA termination for capacity that is built and operating if the developer mitigates any damages. As LSA noted in a recent filing in the FERC proceeding on the CAISO’s Downsizing Proposal, the Management position: (1) appears to be contrary to well-settled FERC precedent; and (2) could cause developers to downsize projects now (even where the larger project size might be viable) simply to avoid the catastrophic loss of capacity that is built.

Thank you in advance for your consideration of LSA’s positions on these issues.

Sincerely,

Shannon Eddy

Shannon Eddy
Executive Director

¹ “In the case of a generating facility being constructed in phases, such that each phase may achieve commercial operation at a different time, the failure of the interconnection customer to construct one or more later phases of the project can lead to breach of the generator interconnection agreement. This, in turn, has the potential for triggering termination of the interconnection and **even the potential for disconnection of earlier phases of the generating facility that have achieved commercial operation.**” (Generator Project Downsizing Draft Final Proposal, dated July 19, 2012 (<http://www.caiso.com/Documents/DraftFinalProposal-GeneratorProjectDownsizing.pdf>), Section 7.2.) (emphasis added)

² For example, “when phased generating facilities seeking full capacity deliverability status for which there is a significant time lag between the estimated in service date for the entirety of the network upgrades and the commercial operation date for the second phase of the generating facility (in the non-conforming interconnection agreements that have been filed this time lag was three years or more), where there would be no adverse impacts on later queued projects, and where there is little likelihood of stranded investment or under-utilized transmission capacity.” (Ibid.)