



October 30, 2012

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

RE: CAISO GIP-2 Generator Interconnection Agreement (GIA) refund provisions

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

We are writing on behalf of the Large-scale Solar Association (LSA) and the California Wind Energy Association (CalWEA) to request your help in resolving an issue of great concern to our members. LSA and CalWEA together represent over 35 developers and providers of utility-scale solar and wind generating resources – including many of the nation’s largest – as well as renewable-technology manufacturers, project component suppliers, support contractors and others. Our members are responsible for the majority of the renewable-energy capacity under active development in California.

Our concern arises out of the CAISO’s interpretation of the order from the Federal Energy Regulatory Commission (FERC) approving, in part, the CAISO’s Generator Interconnection Process Phase 2 (GIP-2) reforms. LSA and CalWEA very much appreciate the CAISO’s efforts to improve the GIP, including the GIP-2 reforms. However, we believe that certain language in new *pro forma* Generator Interconnection Agreements (GIAs) – concerning the timing of refunds for Network Upgrades (NUs) for non-phased generation projects – directly contradicts FERC’s order on clarification and rehearing in the CAISO’s GIP-2 docket.

As you may know, developers of new generation projects in the CAISO Interconnection Queue through Cluster 4 are required to initially fund construction of transmission NUs triggered by such projects. This provision is intended, in part, to protect ratepayers from unnecessary transmission costs, because if the generation projects that triggered the NUs are never completed, no refunds are provided unless a later generation project uses the resulting NUs.

Until the GIP-2 filing, the GIP and the *pro forma* GIAs have always provided that developers are entitled to refunds of NU costs (plus interest) beginning at the “Commercial Operation Date” (COD) of those projects, over a period of five years. The CAISO’s GIP-2 tariff filing,

however, sought to change that provision to delay NU refunds for non-phased projects until after the project's COD *and* completion of all NUs. The CAISO claimed that the change was a "clarification" of prior policy, even though neither the contract nor tariff stated that NUs must be complete and, to our knowledge, no generator understood that to be the CAISO's policy. Inexplicably, the CAISO changed the language only in the GIA, and did not make a corresponding change in the GIP tariff filing. The filed pro forma GIA (but not the accompanying tariff language in the filing) added the language in red below.

Upon the Commercial Operation Date of a Generating Facility that is not a Phased Generating Facility, **and the in-service date of the corresponding Network Upgrades**, the Interconnection Customer shall be entitled to repayment for the Interconnection Customer's contribution to the cost of Network Upgrades...

In its initial order, FERC did not specifically rule on this addition, although it did permit the CAISO to condition repayment for *phased* projects on the NUs for that phase being complete. Because FERC did not rule on the purported "clarification" for non-phased projects, LSA and CalWEA filed at FERC requesting clarification on this issue. On August 31, 2012, FERC granted clarification, ruling that the CAISO's "clarification" noted in the excerpt above contradicts the unambiguous tariff language that refunds for non-phased projects begin on COD.

In its order, FERC stated that the CAISO's interpretation "that interconnection customers for non-phased projects must wait until all the associated network upgrades are placed into service before being eligible to receive refunds for network upgrades contradicts this tariff language." FERC further stated that "the plain language of the tariff controls – not an interpretation based on a claim that the provision is ambiguous." Finally, FERC stated that, "if CAISO interprets the tariff differently, CAISO should file revised tariff language to clarify the timing of refunds associated with a non-phased projects [sic]".

Despite FERC's clear rejection of the language, it has come to our attention that the CAISO believes that FERC's order allows it to continue including the condition that, for non-phased projects, NUs must be complete before refunds begin. CAISO staff indicated that because FERC did not explicitly order the draft *pro forma* GIA to be revised in a compliance filing, it believes FERC accepted this language along with the other GIP-2 revisions to the agreements.

While the CAISO is free to make a new FERC filing to justify its position and attempt to implement a new refund policy prospectively, the order clearly states that the unambiguous Tariff language provides that NUs for non-phased projects will be refunded beginning upon COD. LSA and CalWEA do not believe that retention of GIA language that FERC clearly rejected complies with the letter or spirit of FERC's ruling, regardless of whether FERC ordered the CAISO to make a compliance filing.

Importantly, LSA and CalWEA members have been relying for years on the CAISO's "unambiguous" policy that NUs for non-phased projects would be refunded starting upon COD, and the CAISO's current change in position may unreasonably threaten the viability

of projects that were planned, developed and/or financed based on that policy. There are also numerous implementation concerns over this new policy, because the developers have no control over the timing of NUs, or even whether they will ever be constructed at all. FERC soundly rejected the CAISO's notion that the language was merely a "clarification," and developers, who have committed vast resources to interconnection requests, had no reasonable expectation that the CAISO would attempt to change this policy retroactively for generators already in the GIP process.

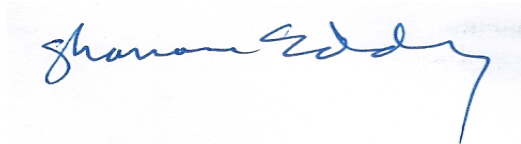
LSA and CalWEA also expended considerable resources to obtain FERC's ruling. We would prefer to avoid further litigation by having the CAISO simply conform to the *pro forma* GIA voluntarily, even if it believes that this would require a voluntary filing to correct the language.

Action on this matter is needed now, since there are many GIAs under negotiation. Failure to remove the rejected language from those GIAs could impair the viability of the affected generation projects by delaying their transmission-cost refunds until all of the NUs for the projects are complete, which may be many years after the project CODs. In addition, the CAISO plans to revise the NUs as necessary to better accommodate the generation projects. While this step is reasonable and beneficial, it also raises the possibility that the NUs associated with the project may never be completed as originally planned, introducing further uncertainties to an already complicated process.

Thus, we ask that the Board direct CAISO management to promptly remove the rejected language from the *pro forma* GIAs. An LSA member will attend the November 1 Board meeting to address any questions you may have, or please feel free to contact either of us with any concerns.

Thank you in advance for your consideration of LSA's and CalWEA's concerns on this issue.

Sincerely,



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