

140 FERC ¶ 61,168
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System
Operator Corporation

Docket No. ER12-502-002

ORDER ON REHEARING AND CLARIFICATION

(Issued August 31, 2012)

1. On February 29, 2012, California Wind Energy Association (CalWEA) and Large-Scale Solar Association (collectively Wind and Solar Parties) filed a request for expedited clarification and rehearing of a Commission order accepting tariff revisions for the California Independent System Operator Corporation (CAISO).¹ In the January 2012 Order, the Commission conditionally accepted tariff revisions proposed by CAISO pursuant to its Generator Interconnection Procedures Phase 2 (GIP Phase 2) stakeholder effort. GIP Phase 2 encompassed 18 different modifications to the generator interconnection procedures and related *pro forma* generator interconnection agreements set forth in CAISO's tariff. In this order, we grant clarification in part and deny Wind and Solar Parties' request for rehearing.

I. Background

2. CAISO's adopted its large generator interconnection procedures (LGIP) and small generator interconnection procedures (SGIP) to comply with the Commission's directives in Order No. 2003² and Order No. 2006,³ to facilitate the interconnection of new

¹ *Cal. Indep. Sys. Operator Corp.*, 138 FERC ¶ 61,060 (2012) (January 2012 Order).

² *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs.

(continued...)

generation while preventing undue discrimination, preserving reliability and increasing competitive energy supply in wholesale markets. In GIP Phase 1,⁴ CAISO sought to harmonize its LGIP and SGIP to address inefficiencies due to an increasing volume of small generator interconnection requests and the conflict between CAISO's study processes for small and large generators.⁵

3. CAISO's GIP Phase 2 tariff revisions addressed four general areas: (1) carry-over from GIP Phase 1; (2) CAISO's 2010 Revised Transmission Planning Process Filing; (3) issues arising from large generator interconnection agreement (LGIA) negotiations; and (4) issues that arose during the GIP Phase 2 stakeholder process. In the January 2012 Order, the Commission found the nine uncontested tariff modifications to be just and reasonable and accepted them. The Commission addressed in detail the remaining nine contested modification areas.

II. Wind and Solar Parties' Request for Rehearing and Clarification

4. Wind and Solar Parties requested rehearing and/or clarification in connection with the Commission's acceptance of certain tariff revisions to sections 12.3.2 and 9.3.2 of CAISO's GIP tariff.⁶

A. CAISO's "Clarification" that Refunds for Non-Phased Projects are Tied to In-Service Dates for All Associated Network Upgrades

5. Wind and Solar Parties state that prior to CAISO's GIP Phase 2 tariff revisions, section 12.3.2 of CAISO's GIP and article 11.4.1 of CAISO's *pro forma* generator interconnection agreement required CAISO to begin to refund the interconnection customer's network upgrade payments starting on the commercial operation date of the

¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

³ *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005), *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006).

⁴ *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,233 (2010) (GIP Phase 1 Order).

⁵ *See id.* P 1.

⁶ *See* Wind and Solar Parties' February 29, 2012 Request for Expedited Clarification and Rehearing (Rehearing Request).

generating project. They allege that the CAISO's clarification⁷ that the GIP permits it to defer refunds for non-phased projects until all associated transmission upgrades are in service violates the filed rate and has never been permitted under the CAISO tariff.⁸

6. According to Wind and Solar Parties, the GIP Phase 2 Filing split the refund provision into two provisions, one for phased projects and one for non-phased projects. Wind and Solar Parties argue that the new section 12.3.2.1 of the GIP did not fundamentally change the timing of refunds for non-phased projects, and these refunds continue to be triggered by the project's commercial operation date. However, in its GIP Phase 2 Filing, CAISO clarified that interconnection customers who were not planning to construct their projects in phases must wait until all the associated network upgrades are placed into service before they will be entitled to receive refunds for network upgrades.⁹ According to Wind and Solar Parties, this could result in delaying payment of refunds many years beyond the commercial operation date and after the generator's capacity is fully deliverable.¹⁰ Wind and Solar Parties argue that CAISO's stated clarification is contrary to the express language of CAISO's tariff and is legally erroneous. Wind and Solar Parties argue that in the absence of an express statement in the January 2012 Order rejecting CAISO's purported clarification of the timing of refunds for non-phased projects, the Commission's January 2012 Order is in violation of the filed rate doctrine.¹¹

Commission Determination

7. We grant Wind and Solar Parties' request for clarification regarding this issue. The CAISO tariff provides that, with respect to non-phased projects, refunds for network upgrades begin "[u]pon the Commercial Operation Date of the Generating Facility. . . ."¹² CAISO's January 5, 2012 clarification 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. The plain language of the tariff controls – not an interpretation based on a claim that the

⁷ See CAISO January 5, 2012 Answer at 17 ("The ISO is also proposing to clarify that this requirement applies to non-phased projects as well.").

⁸ Rehearing Request at 8-9.

⁹ *Id.* at 9.

¹⁰ *Id.* at 11.

¹¹ *Id.* at 9-12.

¹² CAISO Tariff, Appendix Y, § 12.3.2.1

provision is ambiguous.¹³ If CAISO interprets the tariff differently, CAISO should file revised tariff language to clarify the timing of refunds associated with a non-phased projects.

B. Tariff Provisions Linking Refunds for Phased Projects to In-Service Dates for the Associated Network Upgrades

8. Wind and Solar Parties argue that the January 2012 Order erred by accepting CAISO's proposed new tariff section 12.3.2.2(f), requiring that all transmission upgrades associated with each phase of a generation project be in service before the interconnection customer is eligible for refunds associated with the network upgrades.¹⁴ According to Wind and Solar Parties, the Commission did not adequately examine whether CAISO's proposed tariff revision is just and reasonable; rather, the Commission inappropriately deferred to CAISO's judgment. In particular, Wind and Solar Parties argue that the Commission erred by not articulating how CAISO would identify network upgrades associated with each phase of a project or how CAISO plans to keep track of the costs to be refunded.¹⁵

9. Wind and Solar Parties also argue that, in the January 2012 Order, the Commission erred by not ensuring that the refund policy contained in section 12.3.2.2(f) will not lead to unduly discriminatory results. Wind and Solar Parties argue that CAISO's tariff provisions will allow participating transmission owners (PTO) an inappropriate level of discretion in assigning network upgrade costs to a given phase of a generating project.¹⁶

10. Wind and Solar Parties also contend that, by tying the commencement of refunds to the completion of network upgrades rather than achievement of commercial operation by the generating facility, the acceptance of section 12.3.2.2(f) is contrary to Commission policy. Wind and Solar Parties further argue that allowing PTOs discretion regarding the

¹³ See *Koch Gateway Pipeline Co. v. FERC*, 136 F.3d 810, 814 (D.C. Cir. 1998) (when interpreting tariffs, a court first looks to see whether the language of the tariff is unambiguous because if so, it is controlling); *Ameren Servs. Co. v. FERC*, 330 F.3d 494, 498 (D.C. Cir. 2003) (unambiguous language in settlement agreement is controlling).

¹⁴ Rehearing Request at 12-21.

¹⁵ *Id.* at 12-15.

¹⁶ *Id.* at 15-19.

assignment of network upgrade costs for purposes of commencing refund amounts to a violation of the filed rate doctrine and is unduly discriminatory.¹⁷

11. According to Wind and Solar Parties, in the natural gas context, the courts have held that the “guiding concern of the filed rate doctrine is ‘[p]roviding the necessary predictability,’ allowing ‘purchasers of gas to know in advance the consequences of the purchasing decisions they make.’”¹⁸ Wind and Solar Parties contend that this legal principle is equally applicable to electric rates.¹⁹

12. Wind and Solar Parties also argue that CAISO’s GIP Phase 2 Filing does not provide interconnection customers with proper notice as to the eligibility date for refunds, claiming that decisions respecting the identification of network upgrades that will be associated with specific generating phases will be left to the sole discretion of the PTOs. According to Wind and Solar Parties, this delegation to the PTOs provides opportunities for abuse and manipulation since these same PTOs control the construction schedule of the network upgrades. According to Wind and Solar Parties, this approach contrasts starkly with the CAISO’s long-standing practice, and the terms of CAISO Tariff section 12.3.2.1, which use the commercial operation date of the generating project as the triggering event for the repayment of refunds. Wind and Solar Parties maintain that the generator’s commercial operation date is a bright-line event that is within the generator’s control and is easily monitored, factors which minimize opportunities for abuse and manipulation.²⁰

¹⁷ *Id.* at 19.

¹⁸ *Id.* at 19-20 (citing *Towns of Concord, Norwood and Wellesley v. FERC*, 955 F.2d 67, 75 (D.C. Cir. 1992); *See also Texas Eastern Transmission Corp. v. FERC*, 102 F.3d 174, 188-89 (D.C. Cir. 1996) (filed rate doctrine “seeks to prevent customers from relying on certain rates, only to find later that their purchasing decisions have been upset and their costs increased.”)).

¹⁹ *Id.* at 20 (citing *Arkansas Louisiana Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1981) (noting the “established practice of citing interchangeably decisions interpreting the pertinent sections” of the Natural Gas Act and the Federal Power Act)).

²⁰ *Id.* at 20.

Commission Determination

13. The pre-existing tariff section 12.3.2 provided that an interconnection customer is not entitled to *any* repayment for the interconnection customer's contribution to the cost of network upgrades until the commercial operation date of the entire generating facility, including all phases if the generating facility is constructed in phases. Therefore, prior to the GIP Phase 2 Filing, if the customer did not construct *all* phases of the generating facility, it was not entitled to *any* repayment of its contribution to network upgrade financing.

14. We deny Wind and Solar parties request for rehearing of the Commission's acceptance of section 12.3.2.2(f) and the condition that repayments for the cost of upgrades should be conditioned on network upgrades being completed. We continue to believe that the new tariff provision is a reasonable solution to the problems associated with the prior restrictive tariff language and the need for customers to construct their projects in phases. Under the new tariff provision, customers constructing their projects in phases will not have to complete all phases of the generating facility to qualify to receive a proportional repayment for network upgrade funding. The new provision allows eligible interconnection customers to receive partial repayment of network upgrade costs that they have funded prior to completing their entire projects, and it links partial repayment for phased projects to the network upgrades associated with the relevant phase of the project being placed in service.

15. In the Order No. 2003 series of orders, the Commission recognized the importance of ensuring that an interconnection customer bears an appropriate level of risk that network upgrades associated with its generating facility may become unnecessary if the interconnection customer's facility becomes commercially infeasible. For this reason, the Order No. 2003 series of orders required as a general policy that repayment should begin once transmission service to deliver the output of the interconnection customer's generating facility is provided.²¹

16. Thus, we reconfirm our determination that, under the Order No. 2003 series of orders, repayment of network upgrades costs is appropriately tied to the utilization of the transmission provider's transmission system. Requiring network upgrades to be in place that support the desired level of deliverability for each phase of a phased project is consistent with the policy described above.

²¹ January 2012 Order, 138 FERC ¶ 61,060 at P 53 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,171 at P 614).

17. In assessing tariff section 12.3.2.2(f), the proper legal standard to apply is whether the CAISO's proposal is just and reasonable under Section 205 of the Federal Power Act (FPA).²² Specifically, as the Commission has explained:

[t]he courts and this Commission have recognized that there is not a single just and reasonable rate. Instead, we evaluate [proposals under Section 205] to determine whether they fall into a zone of reasonableness. So long as the end result is just and reasonable, the [proposal] will satisfy the statutory standard.²³

18. Tariff section 12.3.2.2(f) falls well within the zone of reasonableness, because it reflects a rational flexible solution to the problems associated with the prior restrictive tariff language and is superior to Wind and Solar Parties' proposal.

C. Construction Phase Financial Security Obligations After Commercial Operation

19. Wind and Solar Parties contend that the Commission erred in the January 2012 Order by accepting CAISO's proposed amendment to section 9.3.2 of its tariff concerning interconnection financial security posting requirements without addressing a clarification requested by CalWEA. According to Wind and Solar Parties, CalWEA asked the Commission to clarify that interconnection customers are relieved of their financial security posting obligation for the construction of network upgrades attributed to them if the interconnection customer places its generating project into commercial operation before the PTO begins work on the upgrades.²⁴ Wind and Solar Parties explain that CalWEA argued that the CAISO's interpretation that interconnection customers remain obligated to post financial security after their projects achieve commercial

²² 16 U.S.C. § 824d (2006). Under Section 15 of the CAISO tariff, CAISO is the entity authorized to submit filings for Commission approval pursuant to Section 205 of the FPA.

²³ *Calpine Corp. v. California Independent System Operator Corp.*, 128 FERC ¶ 61,271, at P 41 (2009) (citations omitted). *See also New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990), *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992) (rate design proposed need not be perfect, it merely needs to be just and reasonable) (citing *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir. 1984) (utility needs to establish that its proposed rate design is reasonable, not that it is superior to all alternatives)).

²⁴ *Id.* at 21.

operation conflicts with the CAISO's tariff.²⁵ Wind and Solar Parties contend that the Commission erred by accepting the CAISO's tariff changes without analyzing whether such a posting is required under the tariff for generators that achieve commercial operation. According to Wind and Solar parties, accepting the CAISO's position is an impermissible interpretation of the tariff because it contradicts the filed rate.²⁶

20. Wind and Solar Parties assert that for phased generation projects neither CAISO's study process nor tariff specify any basis or provide any criteria, for assigning cost responsibility for network upgrades to phased projects after the phases have been placed into service. Wind and Solar Parties argue that the purpose of interconnection financial security posting is required to ensure that interconnection customers provide sufficient and timely financial security to demonstrate that their project is viable. According to Wind and Solar Parties, once a generating project has achieved commercial operation, it has demonstrated its viability, and requiring the interconnection customer to post financial security is unjust and unreasonable.²⁷

21. Wind and Solar Parties maintain that, by raising stranded cost concerns, CAISO is creating a distraction from the issue at hand. According to Wind and Solar Parties, CalWEA showed that the risk of a newly operational generating project suddenly terminating its service is unlikely, and the treatment of stranded costs for network upgrades is a ratemaking concern that the Commission never intended to address through the interconnection rules. Wind and Solar Parties contend that CAISO was unable to provide a single example of such an occurrence. Wind and Solar Parties argue that, in any event, CAISO holds Phase I and 2 study security deposits, and the tariff allows the CAISO to stop paying refunds if a project defaults, which mitigates any realistic stranded cost risk.²⁸

Commission Determination

22. We will deny Wind and Solar Parties' request that the Commission clarify that interconnection customers are not required to make the third financial security posting if their generating projects have achieved commercial operation. Wind and Solar Parties' argument that project viability should be determinative respecting the posting of security

²⁵ *Id.* at 21-22

²⁶ *Id.* at 22.

²⁷ *Id.* at 22-23.

²⁸ *Id.* at 23.

ignores the Commission policy that up-front security posting is needed to ensure that the required interconnection facilities or network upgrades are financed and constructed.²⁹ Project viability alone is not sufficient to provide the financial security necessary to ensure that required network upgrades or interconnection facilities are in fact built. The current tariff and policy already permits separate and discrete financial security postings, and we intend that CAISO's tariff explicitly recognize current policies.³⁰ The express language in GIP section 9.3.2 allowing the third posting of interconnection financial security to be parsed into separate and discrete components is appropriate. Thus, we confirm our finding that CAISO's proposed revisions to GIP section 9.3.2 are just and reasonable.

23. The Commission also reconfirms its determination that parsing the third interconnection financial security posting has the desirable effect of aligning the security posting requirements more closely to the needs of the generator without diminishing the protections provided by the security. We believe that CAISO's tariff revision establishes some level of flexibility for a generator to meet its third posting requirement without unduly burdening the interconnection customer.

The Commission orders:

The Wind and Solar Parties' request for rehearing and clarification is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁹ See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 585 (“The security amount would have had to be sufficient to cover the costs of procuring, constructing, and installing the Transmission Provider’s Interconnection Facilities or Network Upgrades. . . .”).

³⁰ See January 2012 Order, 138 FERC ¶ 61,060 at P 30.