

I. BACKGROUND

In July of 2008, the ISO filed with the Commission its Generator Interconnection Process Reform (“GIPR”) proposal (“2008 GIPR Amendment”), which consisted of comprehensive revisions to the ISO’s Large Generator Interconnection Procedures (“LGIP”) in order to address and remedy the problems that were causing serious inefficiencies in the ISO’s interconnection process. The Commission accepted the ISO’s proposal in an order issued on September 26, 2008.²

On September 18, 2009, the ISO filed its tariff amendment to modify the GIPR process in the LGIP, consisting in the main of reductions to the amount of financial security that it would require interconnection customers to post at the earlier stages of the process to cover the costs of any necessary network upgrades, as well as reducing the amount of financial security that would be forfeited by interconnection customers that withdrew prior to the construction of those upgrades. Under the label of a “protest” to this amendment, Clipper filed comments taking issue with a feature of the 2008 GIPR Amendment which was not modified by the September 18 filing, 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 status³ to

² 124 FERC ¶ 61,292 (2008).

³ 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

Energy-Only deliverability status⁴ following completion of the Phase I interconnection studies.

In the November 17 Order, the Commission accepted the ISO's September 18 amendment to the GIPR tariff provisions. With respect to the issue raised by Clipper regarding the appropriate financial security requirements for interconnection customers that change their status from Full Capacity to Energy-Only prior to the commencement of the Phase II study, the Commission noted that it agreed with the ISO as to the importance of tariff provisions balancing the need for required financial security amounts large enough to discourage speculative projects but not so large as to discourage the continuation of viable projects.⁵ However, the Commission expressed concern that it might not be just and reasonable "to require a financial security obligation for an amount greater than an interconnection customer's full exposure of reliability upgrades" following a customer's switch from Full Capacity to Energy-Only status.⁶ Therefore, the Commission instituted a Section 206 investigation into the justness and reasonableness of the ISO's current tariff provisions relating to the financial security deposit following an interconnection customer's change in status from Full Capacity to Energy-Only, and required the ISO to submit a filing within 30 days of

on the CAISO Controlled Grid, consistent with the CAISO's Reliability Criteria and procedures and the CAISO On-Peak Deliverability Assessment."

⁴ 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 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."

⁵ *November 17 Order* at P 41.

⁶ *Id.*

the date of this order demonstrating that such provisions are just and reasonable.⁷

On December 17, 2009, the ISO submitted the required demonstration.

Consistent with the schedule set forth in the November 17 Order, Clipper provided comments on the ISO's filing on January 19, 2010.

II. DISCUSSION

Clipper asserts that the ISO's December 17 filing does not address the Commission's concern, as expressed in the November 17 Order, that requiring that interconnection customers that switch from Full Capacity to Energy-Only deliverability post an initial financial security amount that includes the cost of Delivery Network Upgrades (as opposed to just Reliability Network Upgrades), but instead, focuses on the "integrity of the interconnection process."⁸ This argument, however, overlooks the lengthy explanation provided by the ISO as to why, given the importance of not allowing interconnection customers the risk- and cost-free option to switch deliverability status during the interconnection study process, it is reasonable to require that customers that switch their deliverability status post initial financial security that includes the costs of both Reliability and Delivery Network Upgrades. This explanation included a detailed discussion of the security requirements that would apply to customers switching their deliverability status as well as the various constraints limiting the overall amount of security required to be posted and the amount at risk of forfeiture in the event of a withdrawal.

⁷ *Id.* at P 42.

⁸ Clipper Comments at 2.

Clipper alleges that the ISO's filing is deficient because, Clipper asserts, it does not demonstrate that Section 9.2 of the ISO's LGIP is "consistent with well-established 'cost causation' principles of ratemaking."⁹ This argument is without merit. First, under the LGIP, all interconnection customers, including those who switch their deliverability status, are responsible only for the costs of their share of Network Upgrades, along with any customer-specific Interconnection Facilities. Any security posted in excess of this amount is refunded to the customer. Thus, a customer who switches from Full Capacity to Energy-Only will, at the end of the study process, be required to up-front fund no more than its share of Reliability Network Upgrades and any Interconnection Facilities. Moreover, as noted above, the ISO also addressed the justness and reasonableness of requiring interconnection customers who switch their deliverability status from Full Capacity to Energy Only to make their initial security posting based on their share of all Network Upgrades, explaining the need for a direct financial incentive for customers to make realistic choices regarding deliverability status at the outset of the interconnection process. Also, in order to avoid the potential for an interconnection customer who switches deliverability status but withdraws prior to the completion of the Phase II interconnection study to forfeit an amount of security greater than its total cost responsibility for Network Upgrades, the ISO proposed capping forfeited security at an amount equal to a customer's total cost responsibility for Reliability Network Upgrades as assigned in the Phase I study. For these reasons, it is simply erroneous to suggest that the ISO did not consider principles of cost causation in responding to the November 17 Order.

⁹ *Id.*

Clipper also contends that the ISO's response did not show that its financial security requirements are consistent with important Commission policies, such as bringing generation into national markets to meet growing demand and promoting increased competition and properly balancing the risk associated with financing and developing new facilities.¹⁰ Again, Clipper is in error. The ISO explained that allowing interconnection customers that switch deliverability status to post interconnection security based only on their share of Reliability Upgrades would remove the necessary incentive for customers to make candid and careful choices regarding their deliverability status early in the proceeding, and that the result would be a less efficient interconnection process that would undermine one of the primary reasons for developing GIPR, which was to encourage early decision-making based on the most accurate information, so as to avoid the consequences that all too often resulted under the ISO's previous process from customers withdrawing or modifying their requests well after the study process had commenced. It is axiomatic that, without an efficient interconnection process, the Commission's goals of bringing sufficient generation online to meet demand and promoting increased competition cannot be met effectively.

With respect to the concept of proper balancing of risk, it is precisely this notion that underlies the ISO's financial security requirements, and the ISO's desire to ensure that appropriate incentives remain in place to encourage developers to make realistic assessments regarding the viability of their interconnection requests early in the process, including the most appropriate level

¹⁰ Clipper Comments at 3 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order on Reh'g, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2005)).

of deliverability. The Commission endorsed this approach in its order approving GIPR, in which it agreed that the ISO's proposed increased financial security requirements represented a reasonable effort to deter speculative projects from entering or remaining in the queue.¹¹

Clipper's argument is that it was unable to make the required security posting because of its lack of capital, and therefore, was unfairly disadvantaged as opposed to companies with larger capital reserves. However, if Clipper was particularly capital-constrained, it is difficult to understand why Clipper did not elect Energy-Only deliverability at the outset. Indeed, given Clipper's financial status, this option would appear to have been the preferable choice, as one that more appropriately reflected Clipper's financial limitations. And the fact that Clipper was probably not in a sound financial position to elect a Full Capacity interconnection does not mean that it was unfairly disadvantaged vis-à-vis other developers. As the Commission made clear in its order approving GIPR, the fact that the increased financial security requirements may make it more difficult for underfunded projects to enter the interconnection process does not lead to the conclusion that these requirements are discriminatory against any particular class of developer.¹² Likewise, the fact that certain developers may be in a better position to bear the costs associated with a Full Capacity interconnection does not mean that the ISO's process unfairly discriminates against other developers with less access to capital. It simply requires such developers to be careful and

¹¹ *California Independent System Operator Corp.*, 124 FERC ¶ 61,292 (2008) at P 154.

¹² *Id.* at P 151.

circumspect in choosing an appropriate deliverability status, which the ISO submits is a laudable incentive, rather than a barrier to entry.

Clipper also takes issue with the ISO's proposal to cap the amount of security subject to forfeit for interconnection customers switching their deliverability status at an amount equal to the total cost of Reliability Network Upgrades, arguing that it is "no solution at all" because it would still be required to post a letter of credit that included the costs of Delivery Network Upgrades.¹³ Clipper clearly wants the option of selecting Full Capacity deliverability while retaining the ability to switch its status later in the process at no cost whatsoever. The ISO has thoroughly explained why this option is detrimental to the interconnection process, and why, therefore, it is important to maintain a direct financial incentive for interconnection customers to make realistic deliverability elections at the outset. The ISO's proposal to cap the amount of security that is subject to forfeit when a customer switches deliverability status maintains this incentive while eliminating the potential for a customer to forfeit security greater than the amount of Reliability Network Upgrade costs that it would have been responsible for as an Energy-Only project.

Finally, the ISO agrees with Clipper that it is telling that the only surviving wind projects in its transition cluster group were studied as Energy-Only in the Phase I report. What it suggests, however, is not that the ISO's process discriminates against these types of projects, but rather, that the developers of these projects were more realistic in electing the appropriate deliverability status for their projects at the outset. In this vein, it is also telling that Clipper is the only

¹³ Clipper Comments at 7-8.

party to have taken issue with the interconnection security provisions of the LGIP as they apply to customers that switch their deliverability status in the ISO's stakeholder process, the only party to have raised this issue before the Commission, and the only party to have filed comments on the ISO's December 17 filing. Given this, the ISO submits that Clipper's dire prognostications regarding the impact of the ISO's interconnection security provisions on California's RPS goals and the Administration's agenda of promoting alternative and renewable energy sources are exaggerated.

III. CONCLUSION

For the reasons explained above, the Commission should reject the arguments set forth in Clipper's comments and adopt the conclusions set forth in the ISO's December 17 filing.

Respectfully submitted,

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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 3rd day of February, 2010.

/s/ Rafael Lopez
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