UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)**	**Docket No. ER24-2671-000**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO ANSWERS AND PROTESTS

The California Independent System Operator Corporation (CAISO)[1] submits this limited answer to the answers and out-of-time protests filed in this proceeding between September 9 and 18, 2024,[2] regarding the CAISO's August 1, 2024 filing of tariff amendments (August 1 Filing) to implement Track 2 of its Interconnection Process Enhancements (IPE) 2023 initiative. While the vast majority of these filings simply repeat arguments made in the first round of comments and protests addressed by the CAISO's September 3, 2024 answer (September 3 CAISO Answer),[3] a few of these later filings raise new issues that require the CAISO to correct the record. For the reasons explained in the August

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[1] Capitalized terms not otherwise defined herein have the meanings set forth in appendix A to the current CAISO tariff, as revised by the CAISO's August 1, 2024 tariff amendment filing in this proceeding.

[2] Specifically, the CAISO answers the following entities that have filed answers: Aypa Power LLC (Aypa); Clearway Energy Group LLC (Clearway); Electric Power Supply Association (EPSA); Joint Publicly Owned Utility (or POU) Intervenors (consisting of the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California, Northern California Power Agency, and City of Santa Clara, d/b/a Silicon Valley Power); Shell Companies (consisting of Shell Energy North American (US), L.P., Shell New Energies US, LLC, and Savion, LLC); and Vistra Corp. and Dynegy Marketing and Trade, LLC (together, Vistra). In addition, the CAISO answers the answer and supplemental protest filed by Calpine Corporation (Calpine) and the limited protest filed by the Independent Energy Producers Association (IEP).

The CAISO files this answer (Answer) pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213. For the reasons explained below in section I of the Answer, the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the pleadings described above.

[3] Those earlier comments and protests were all filed on August 22, 2024.

1 Filing, the September 3 CAISO Answer, and this Answer, the Commission should accept the CAISO's tariff revisions to become effective October 1, 2024, allowing the CAISO to move forward expeditiously with its most recent and suspended interconnection queue cluster—cluster 15—providing customers with the benefit of the reforms contained in the August 1 Filing.

No entity in this second round of pleadings disputes the facts described in the August 1 Filing that the current interconnection queue is greatly oversubscribed or rebuts the widely supported conclusion that reforms specific to the CAISO region are needed to make the queue more manageable and produce any meaningful study results. Indeed, many of the pleadings submitted in the second round acknowledge the need for reforms to the interconnection queue and/or indicate support for most aspects of the August 1 Filing.[4]

The CAISO agrees with the Joint POU Intervenors' discussion of why components of the CAISO's proposed commercial interest scoring criteria are

[4] *See* Aypa at 2, 3 (stating that Aypa "supports effective interconnection reform" and "does not oppose interconnection reform, generally"); Calpine at 9, 10 (requesting that the Commission sever and reject the proposed commercial interest scoring criteria but agreeing with the CAISO that "timely implementation of these other revisions [in the August 1 Filing] is critical, as is an October 1, 2024 effective date"); Clearway at 6 (requesting only that the CAISO incorporate the Track 2 Final Addendum into its tariff and reject the commercial interest scoring criteria); EPSA at 9 (requesting that the Commission reject only the commercial interest scoring category element of the August 1 Filing); IEP at 2, 4 (stating that "IEP members have advocated for improving the interconnection queue" and "IEP is supportive of most of CAISO's filing"); Joint POU Intervenors at 29 (stating that the Commission should find the August 1 Filing to be just and reasonable, subject to the condition that the CAISO remove the 150 percent limit on the full allocation election); Vistra at 2, 3 (stating that "[t]here is little question that interconnection processes must evolve in order to meet the challenges of a rapidly changing transmission grid," and requesting that the Commission sever the interconnection interest scoring category element of the August 1 Filing and condition acceptance of the remainder of the August 1 Filing on requested CAISO commitments).

just and reasonable.[5] However, the CAISO disputes the criticisms of those criteria raised in the other second-round pleadings by a number of generation project developers (developers).[6] The second-round pleadings largely rehash arguments on the subject that the CAISO has already responded to in the September 3 CAISO Answer.[7] There is no need for the CAISO to repeat those responses here.[8]

This Answer supplements the record in this proceeding to address a single issue related to the commercial interest scoring criteria raised by most of the developers that submitted second-round pleadings: the reports that certain load-serving entities (LSEs) are developing requirements for a generator project developer to execute an exclusivity agreement—*i.e.*, an agreement by which a developer provides a deposit and commits to receive commercial interest points for its project only from that counterparty load-serving entity and to not later

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[5] Joint POU Intervenors at 10-28. The CAISO has nothing to add in this Answer to the response it provided to the Joint POU Intervenors in the September 3 CAISO Answer regarding the proposed 150 percent limit on load-serving entity full allocations. *See* September 3 CAISO Answer at 30-37. Similarly, the September 3 CAISO Answer has already addressed other arguments now raised in the second round. *See, e.g.*, September 3 CAISO Answer at 57-58 (addressing arguments raised by Vistra on its request that the Commission direct the CAISO to file informational reports—an issue that Vistra again raises in the second round at 13-14).

[6] *See* Aypa at 6-7; Calpine at 3-9; Clearway at 2-6; EPSA at 2-8; IEP at 4-7; Vistra at 3-13.

[7] *See* September 3 CAISO Answer at 24-29, 37-43.

[8] In their latest pleading, for example, the Shell Companies reiterate their claim that the CAISO has failed to provide deliverability data. Shell Companies at 4-8. The Shell Companies fail to account for the change in deliverability studies from previous years due to the increase to requests in previous clusters. As the CAISO accurately stated in its September 3 Answer, the CAISO has provided its study methodology, the deliverability base cases, and the deliverability results. In addition, the CAISO's study tool is available to all stakeholders to reverse engineer or understand any result. The CAISO only has refused to provide individual interconnection customer data that is confidential under the CAISO tariff. *See* September 3 CAISO Answer at 16, 56.

switch to a different load-serving entity—as a prerequisite for the developer to be eligible to receive commercial interest points.[9]

As explained below, the Commission should find no merit in the developers' arguments that the Commission should reject the commercial interest scoring criteria due to the use of exclusivity agreements. The load-serving entities that have established exclusivity agreements have done so to manage the regulatory risk that developers could re-market their projects and switch to another load-serving entity, forcing the first load-serving entity to meet its state and local resource planning and procurement needs by obtaining replacement capacity at future prices or else to pay penalties for a shortfall. Also, a load-serving entity's bargaining power in negotiating exclusivity agreements with developers is tempered by its need to obtain sufficient capacity to meet its obligations, and its competition from other load-serving entities. Developers also ignore the fact that a generator does not need commercial interest points to be included in the interconnection queue. The use of exclusivity agreements can facilitate the proposal in the August 1 Filing to make commercial interest one factor among many in helping to determine which projects should receive priority to be studied.

With this information in hand, the CAISO respectfully again urges the Commission to issue an order accepting the August 1 Filing effective October 1, 2024.[10]

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[9] This Answer supplements the discussion in the September 3 CAISO Answer (at 28-29).

[10] The CAISO has previously identified aspects of the August 1 Filing, including the commercial interest scoring criteria, as severable to the extent the Commission were to conclude

I. Motion for Leave to File Answer to Answers and Protests

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,[11] the CAISO respectfully requests waiver of Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), to permit it to answer the answers and protests filed in the proceeding. To the extent the Commission accepts those answers to answers and out-of-time protests, good cause for the waiver exists because this Answer will aid the Commission in understanding the issues in the proceeding, inform the Commission in the decision-making process, and help to ensure a complete and accurate record in the case.[12]

II. Answer

A number of the developers that submitted pleadings in the second round contend that the Commission should find LSEs' use of exclusivity agreements to be a basis for rejecting the CAISO's proposed commercial interest scoring criteria.[13] The Commission should find no merit in the developers' arguments.

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that any of those aspects of the CAISO's proposal are not yet fully justified. *See* transmittal letter for August 1 Filing at 55-57; September 3 CAISO Answer at 58-59. In such an event, the Commission could and should issue an order accepting the balance of the August 1 Filing effective October 1, 2024.

[11] 18 C.F.R. §§ 385.212, 385.213.

[12] *See, e.g.*, *PJM Interconnection, L.L.C.*, 187 FERC ¶ 61,173, at P 25 (2024); *Constellation Mystic Power, LLC*, 185 FERC ¶ 61,016, at P 15 (2023); *ISO New Eng. Inc.*, 175 FERC ¶ 61,172, at P 15 (2021); *Equitrans, L.P.,* 134 FERC ¶ 61,250, at P 6 (2011); *Cal. Indep. Sys. Operator Corp*., 132 FERC ¶ 61,023, at P 16 (2010); *Xcel Energy Servs., Inc.,* 124 FERC ¶ 61,011, at P 20 (2008).

[13] Aypa at 6-7; Calpine at 1-2, 4-8; Clearway at 3-4; EPSA at 1, 5-7; IEP at 2, 5-7; Vistra at 10-11. The Shell Companies are the only developers that did not raise the issue of exclusivity agreements in their second-round pleading.

These developers fail to take into account that a load-serving entity may be warranted in seeking certain protections because load-serving entities bear the regulatory risk associated with resource adequacy and state planning requirements. The load-serving entity must ultimately rely on the availability of one or several generators' capacity for purposes of meeting its state and local resource planning and procurement obligations. Load-serving entities can appropriately pursue contractual arrangements that mitigate these risks. Exclusivity agreements can serve the beneficial function of ensuring that load-serving entities can rely on having any capacity of the developer's project that, once built, will be available to serve customers. Otherwise the developer could simply take the commercial interest points from the load-serving entity and later solicit offers from a higher bidder, forcing the load-serving entity to find and purchase replacement capacity at future prices—possibly at the last minute—or else to pay penalties for a shortfall.[14]

Developers in the early stages of the interconnection request process, in contrast, face no such regulatory risk and do not have an obligation to serve customers. This is an especial risk to smaller load-serving entities that may only plan on a bespoke, single project for years. If that one project a load-serving entity sponsored and relied upon for years decides to find a new deal later, the load-serving entity may have little ability to meet its procurement needs.

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[14] *See* Joint POU Intervenors at 20 (explaining that "LSEs face a very real risk that, after dedicating time and staff resources to conducting processes for allocating commercial interest points in a fair and transparent way and providing points to projects that have been carefully evaluated for alignment with future resource needs, developers may simply walk away from their commitments to LSEs in favor of a better deal with another counter-party once they have secured their place in the interconnection study queue").

The developers also overstate the bargaining power that load-serving entities hold.[15] A developer is not required to sign an exclusivity agreement if the developer is unwilling to accept the agreement's terms. In its protest, for example, Calpine repeatedly cites to a load-serving entity's "template," not an executed agreement.[16] The developer can negotiate for terms it believes are better or refuse to bargain further with a load-serving entity whose proposed terms the developer is unwilling to accept. Presumably, such negotiable terms may include the portion of the interconnection project that would be subject to the exclusivity agreement, an associated deposit amount (if any), and the release date of the exclusivity agreements.

Again, the load-serving entity bears the regulatory risk, which gives it an incentive to adjust its negotiating position to reach agreement with generators developing a sufficient volume of projects to allow the load-serving entity to meet its resource planning and procurement obligations. Nor can the load-serving entity count solely or even primarily on meeting its obligations through affiliated resource developers. Unlike in other regions, the CAISO sees very few interconnection requests from utilities. Moreover, the CAISO proposes that for each cluster application window, a load-serving entity may allocate points to the greater of three interconnection requests from affiliates, or no more than 25 percent of its points to interconnection requests from affiliates based on their

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[15] *See, e.g.*, EPSA at 6 (arguing that "LSEs are strong-arming independent developers into exclusive arrangements at an exceedingly early point in the development process"); IEP at 7 (arguing that "the LSE has extraordinary bargaining power over the interconnection customer").

[16] Calpine at 2, 5-6.

requested interconnection service capacity.[17] Thus, the load-serving entity cannot avoid the need to ensure it has secured sufficient capacity from non-affiliated developers before it gets to the point allocation process. The load-serving entity will need to adjust its negotiating position accordingly.[18]

Some developers complain that different exclusivity agreements require different deposit amounts.[19] But those differences simply illustrate the fact that the degree of regulatory risk and the commercial approach undertaken to mitigate these risks can vary from one load-serving entity to another. It would be more concerning if the various load-serving entities' deposit requirements were the same because that could suggest they were working with one another to develop uniform requirements without considering their own unique risks.

Furthermore, developers can advance their projects even in the absence of receiving commercial interest points and an associated exclusivity agreement. A generator does not need commercial interest points to be included in the interconnection queue. As Pacific Gas and Electric Company (PG&E) recognized in its August 22 comments in this proceeding:

> the proposed scoring process would provide only 50 percent of the available megawatt capacity identified for a cluster study as eligible to receive LSE commercial interest points, while the CAISO is proposing to study up to 150 percent of available capacity for each zone. The other two-thirds of cumulative capacity that will be studied for TPD [*i.e.*, Deliverable] Zones will not have the ability to receive points from the LSE commercial interest category and thus

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17 *See* transmittal letter for August 1 Filing at 42.

18 For these reasons, IEP is incorrect that exclusivity agreements give LSEs the ability to favor utility-owned or affiliated projects. *See* IEP at 6-7.

19 *See* Clearway at 3-4.

> LSEs would have no input on the majority of projects that would proceed to the cluster study.[20]

Thus, under the proposals in the August 1 Filing, commercial interest will be scaled down from the available deliverability, meaning the CAISO will require projects that do not have commercial interest to be included under the 150 percent cap.

In addition, finding that the CAISO's interconnection reforms are not justified due to the use of exclusivity agreements would exacerbate the fundamental problem that the interconnection queue continues to be far oversized and unworkable. Unlike for previous clusters, it is simply not possible to produce study results for all of the interconnection requests submitted in cluster 15. That cluster volume is not only completely disproportionate to available transmission capacity, it is also completely disproportionate to load. The reality is that it is impossible for this amount of generation to achieve commercial operation; consequently, the CAISO must prioritize.

Commercial interest has traditionally been what determines whether an interconnection request reaches commercial operation—projects with off-takers build their generators, and projects without off-takers withdraw. But given the need to unclog the CAISO's interconnection queue, the CAISO proposes in the August 1 Filing that commercial interest be one factor among many in helping to determine which projects should receive priority to be studied. The use of exclusivity agreements can be a just and reasonable factor in that process,

[20] Comments of PG&E, Docket No. ER24-2671-000, at 3 (Aug. 22, 2024).

especially as local regulatory authorities begin to exercise their authority over this nascent process.

Lastly, to the extent that the Commission nonetheless has concerns with the commercial interest elements of the August 1 Filing, the CAISO reiterates that the commercial interest scoring criteria are severable from the balance of the tariff revisions submitted in this proceeding.

III. Conclusion

For the foregoing reasons, the Commission should accept the tariff revisions contained in the August 1 Filing without modification or condition effective October 1, 2024. In the alternative, the Commission should sever only select aspect(s) of the tariff amendments in the August 1 Filing and allow the remaining interconnection process enhancements to become effective October 1, 2024.

Respectfully submitted,

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Dated: September 20, 2024

CERTIFICATE OF SERVICE

I 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, DC this 20th day of September, 2024.

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