

COMMENTS OF SILVERADO POWER ON CAISO INTENTION TO RELEASE TRANSMISSION LINES AND ASSOCIATED FACILITIES FROM OPERATIONAL CONTROL

Silverado Power (Silverado) appreciates the opportunity to comment on the CAISO proposal to relinquish operational control over certain Southern California Edison (SCE) 115 kV transmission lines and related facilities. This change would convert such facilities from “transmission” to “distribution,” and upgrades needed to those facilities to facilitate generation interconnections from “Network Upgrades” to “Distribution Upgrades” under the CAISO Tariff.

Silverado is a wholesale solar photovoltaic (PV) development company that provides its customers with low-cost, clean energy from highly viable PV projects. To minimize risk and maximize capital efficiency, Silverado sites projects in areas with minimal environmental impacts and high interconnection capacity. Silverado is developing mid- and late-stage PV projects in seven of the most active renewable energy markets in the United States (including 110 projects in California), ranging from 1 to 400 MW in capacity.

Silverado has a strong and direct interest in the terms and conditions of the proposed transmission-to-distribution conversion, mainly through its interests in the East Kern Wind Resource Area (EKWRA), where similar conversions are possible. In particular, Silverado recently requested that SCE file two unexecuted Small Generator Interconnection Agreements (SGIAs) at FERC for generation projects in that area due to disputes over language related to EKWRA transmission facility conversions to distribution status that SCE insisted be included in those agreements.

This opportunity to comment here on the proposed conversion of the Devers-area transmission facilities to distribution contrasts with the heavy-handed SCE attempt to bypass an open and transparent process for similar potential future conversions of EKWRA transmission facilities. Moreover, it is possible that this process will establish precedential terms and conditions for such conversions that could also apply to any EKWRA conversions.

Silverado has no opinion at this time on the reclassification of the subject facilities from transmission to distribution. However, Silverado has two significant concerns with the impacts of such conversions, both here and in similar areas like EKWRA, on generator contracts now in effect and on transmission-cost refunds to developers. Silverado recommends that the CAISO condition support for these conversions on the following:

- **Sufficient transition time** to accommodate the changes to generator Points of Interconnection (POIs), and any related provisions, in existing Power Purchase Agreements (PPAs), Generator Interconnection Agreements (GIAs), other contracts, and CAISO system modeling.
- **Continued SCE refunds for Network Upgrade costs under the pre-conversion rules** to projects that are already operating or in the later stages of the interconnection process, as a condition of the conversion. Silverado suggests that the criterion for early- vs. late-stage development be the Initial Interconnection Financial Security (IFS) posting.

The first issue should be mainly administrative. It will take time to re-do all the necessary agreements and, if CPUC approval is required (PPAs) and/or if the changes are disputed or litigated at FERC, additional time will be needed. This process may not be simple, since the POI changes could impact pricing or other key contract elements; in addition, because PPAs typically require that the seller accept the risk of curtailment before the CAISO grid Point of Delivery (POD), the change will result in increased risk to sellers, and that may raise other issues as well.

The second issue is much more problematic because of the obvious financial implications to generators. While Distribution Upgrade costs are usually not refundable, there are significant equity and precedential arguments in favor of providing reimbursement to generators for the cost of the reclassified facilities despite the new status of those facilities as Distribution. Maintaining the current refund policy for operating projects or those advanced in the interconnection process is thus fully warranted as a transitional policy.

Equity issues

Certainly, once a project executes a GIA and then achieves Commercial Operation – i.e., once it has fully satisfied its obligations in those areas under the GIA – it would be unfair in the extreme if the PTO were allowed to abrogate its legal commitments to reimburse the project for the cost of facilities that were classified as Network Upgrades when the GIA was executed and the project became operational. The ability of the PTO under pro forma GIAs to stretch reimbursement payments over five years should not be used to deny developers of operating projects their reimbursement rights; the obligation to pay should apply once the project becomes operational.

Similarly, generation projects that have executed GIAs but are not yet operational, and those in the late stages of development, will have made significant financial and other commitments based on the rules in existence when their Interconnection Requests (IRs) were submitted, i.e., assuming refunds for such costs. Given the often large magnitude of those costs, it would be extremely disruptive to change those rules late in the interconnection process.

Notations in interconnection studies that certain facilities could possibly be reclassified as Distribution should not relieve the PTO of its reimbursement obligations for such late-stage projects. First, technically that is true of most any sub-200 kV facilities on SCE's system, given the significant changes that will be needed to accommodate 33% RPS, the inevitable large reduction in the interconnection queue as projects that fail to obtain PPAs withdraw, and the potential addition of generation projects later in the queue in different areas. Second, statements that a large group of facilities could be reclassified are not the same as identifying specific facilities and/or saying that they will be reclassified, and it would be poor public policy for projects to fail because such hypothetical statements impede financing and other necessary activities.

FERC and CAISO policy precedents

The concept of preserving existing rules for generation projects that are far along in the interconnection process is well-established in both FERC and CAISO policy. FERC orders supporting this policy in the face of CAISO interconnection-process changes include those listed below.

- **Order on Technical Conference**, issued March 20th, 2008, which stated at #19 that:
We note that reforms that would affect existing interconnection requests that are in later stages of the process create special circumstances that require careful consideration. Unlike reforms applicable to future and early-stage existing interconnection requests, any such reforms could significantly disrupt the activities of customers who may have taken action in reliance upon the existing process.
- **Order on Petition for Tariff Waiver**, issued July 14th, 2008, which reaffirmed this position:
As the Commission noted in its March 20 Order, reforms are likely to have significantly more disruptive effects on existing IRs that are in later stages of the process than on future and early stage existing IRs.

Certainly, generation projects that are already operating at the time of the conversion, or those where developers have posted significant IFS amounts (and would forfeit a large portion of those postings if projects were withdrawn) should qualify as “later-stage” projects. Typically, developers with projects at these stages of development would have spent considerable additional funds on other project-development activities, like land or land-rights acquisition, environmental and other permitting processes, PPA execution (including additional security postings for those agreements), and financing commitments to lenders and/or investors.

The CAISO itself has also recognized the importance of stability in the interconnection process. The CAISO Generation Interconnection Queue contains numerous different “Study Processes” under which IRs are being processed: Pre-Amendment 39, Amendment 39, Serial LGIP, Transition Cluster, SGIP, SGIP-Transition Cluster, and Clusters 1-4. Each study process has its own unique features, and projects far along in the then-existing procedures were allowed to complete their interconnections under those rules when the rules for later-queued projects were changed.

CAISO filings in its various interconnection-reform processes have explicitly recognized the importance of maintaining existing rules for “late-stage” IRs. For example, the CAISO’s May 15th, 2008 Petition for Waiver of Tariff Provisions to Accommodate Transition to Reformed Large Generator Interconnection Procedures, and Motion to Shorten Comment Period proposed a milestone-based definition for the LGIP Serial Group and allowed projects meeting those criteria to continue to be processed under the then-existing interconnection rules.

That filing stated that such projects “are in the later stages of the current LGIP process, and...are most likely to be significantly disrupted if they were subject” to new rules then under development. The filing characterized the proposed Serial Group as those that “were significantly advanced in the LGIP process,” based in part on milestones achieved in the interconnection process. Later filings related to small projects (SGIP) followed a similar framework.

Most recently, the CAISO filing at FERC of its “TPP-GIP Integration Initiative” proposal (Tariff Amendment to Integrate Transmission Planning and Generator Interconnection Procedures (TPP-GIP tariff amendment, dated May 25th, 2012) contained similar provisions. The filing states specifically (at p.11) that the new rules would apply only to Cluster 5 and later projects, in part because of “the expectations of the associated interconnection customers” regarding rules applicable to earlier-queued projects.

The CAISO steadfastly maintained its intent to apply these new rules only to projects not yet in the interconnection queue throughout the stakeholder process leading to that filing, even though several stakeholders urged the CAISO to apply them to Cluster 3 and 4 projects. Projects in both clusters had made their Initial IFS Postings but had not (and have not) received their Phase II Studies. If the CAISO believed that projects at that development stage should not be subject to the new TPP-GIP framework (which at least allows for the possibility of reimbursement of transmission costs), then there is no reason that this principle should not apply to other changes like facility reclassification.

Conclusion

In summary, truncating or eliminating transmission-cost refunds for generation projects that are operating or in the later stages of the interconnection process would irrevocably harm such projects and violate both FERC and CAISO policy. Thus, the CAISO should condition any conversion of existing or planned transmission facilities to distribution status on cost reimbursement to generators pursuant to the rules now in effect, for any projects where the Initial IFS Posting has been made.