

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System Operator Corp.)

Docket Nos. ER10-1656-000

**MOTION TO INTERVENE AND COMMENTS OF
CALIFORNIA WIND ENERGY ASSOCIATION**

Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214, the California Wind Energy Association (“CalWEA”) respectfully requests leave to intervene and comments on the California Independent System Operator Corp.’s (“CAISO”) petition for authorization to waive temporarily its tariff provisions concerning financial security deposits required under Sections 9.2 and 9.3 of its large generator interconnection procedures (“LGIP”) of its tariff for certain interconnection customers in the current “transition cluster” study group.¹ CAISO also proposes to refund prior security deposits posted by this limited group of customers, down to a minimum security amount of \$500,000.

As discussed below, CalWEA agrees that a waiver of the financial security posting requirement is appropriate. The CAISO has identified a number of serious concerns and inequities with the current financial security posting provisions of its tariff that may threaten the viability of otherwise meritorious generation projects. If not corrected immediately, the result could undermine California’s renewable portfolio standard (“RPS”) goals. We therefore agree with and support the waiver as far as it goes.

¹ *Calif. Indep. Sys. Operator Corp.*, “Petition for Waiver of Tariff Provisions Regarding Interconnection Financial Security and Request for Ruling Within 45 Days,” Docket No. ER10-1656-000 (filed June 30, 2010) (“Waiver Petition”).

CAISO's filing, however, fails to address the real problem in an even-handed, not unduly discriminatory manner and, therefore, does not go far enough. The CAISO's waiver plan potentially extends only to a select group of interconnection customers. Its plan is to refund previous security postings, and waive the obligation to provide additional security for transition cluster projects that have commitments by participating transmission owners ("PTOs") to finance the necessary network upgrades, thus essentially placing control over the waiver decision in the hands of the transmission owners. There is also considerable uncertainty about when PTO financing decisions will be made, and whether those will come soon enough to affect the security posting obligations for the majority of the transition cluster projects. The CAISO recognizes that PTO decisions to finance network upgrades triggered by interconnection requests may not come until construction is ready to begin, and in any event normally depend on rulings from this Commission assuring the PTOs that they will be able to recover abandoned plant costs if the associated generating projects are not completed. It is, therefore, not clear who the real beneficiaries of the CAISO filing will be or when they will know.

The CAISO states that it intends to convene a stakeholder process to reform the security posting requirements of its LGIP in the near future to develop appropriate and fair amendments, though it is vague about when that process will begin, and whether it will conclude before security postings are due from later study groups. Although it is possible that such amendments will provide relief to interconnection customers in those groups, they will come too late for transition cluster participants who do not qualify for the waivers proposed here. At a minimum, absent a CAISO commitment to conclude the tariff reform process before further security postings are due, the Commission should require the CAISO to address the problem now. In addition to accepting the CAISO's narrow waiver offer that may ultimately benefit very

few customers in the interconnection queue, the Commission should direct the CAISO to expand it to provide an across-the-board waiver of the security posting requirements until the CAISO completes that stakeholder process. Alternatively, the Commission should direct the CAISO to cap the security posting requirement applicable to all interconnection customers similar to the Section 9.2 of the LGIP as discussed below.

I. PERSONS TO BE SERVED

In addition to the undersigned counsel for CalWEA, persons who should receive communications in connection with this limited protest include the following:

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II. BACKGROUND

Sections 9.2 and 9.3 of the large generator interconnection procedures of CAISO's open access transmission tariff establish financial security posting requirements for generation interconnection requests at different stages of the interconnection study process. Section 9.2 requires interconnection customers to make an initial financial security posting within 90 calendar days after publication of the final "Phase I" interconnection study report. The initial financial security posting is to be in an amount equal to the lesser of (i) 15% of the total cost responsibility assigned to the interconnection customer in the study report, (ii) \$20,000 per megawatt for the proposed new generating capability, or (iii) \$7.5 million. The interconnection

customer's security posting obligation has a floor of \$500,000.² The CAISO explained that these security posting requirements and cap on the total amount of the security posting “appropriately balance the need for required financial security amounts that are large enough to discourage speculative interconnection projects and yet not so large as to discourage the continuation of viable projects.”³

Section 9.3 provides for second and third financial posting obligations. Section 9.3.1 requires interconnection customers to make two financial security postings within 180 calendar days of the final “Phase II” interconnection study report. The second financial posting must be equal to 30% of the total cost responsibility for network upgrades assigned to the interconnecting customer in either the final Phase I interconnection study, or the final Phase 2 interconnection study, whichever is lower, but in any event no less than \$500,000. The second financial posting also requires the interconnection customer to post financial security equal to 30% of its cost responsibility for participating transmission owner (“PTO”) interconnection facilities assigned to the interconnection customer in the final Phase II interconnection study.⁴ The third and final security posting covers 100% of the cost of the required network upgrades and must be made before the start of construction activities. The CAISO is requesting a tariff waiver for these second and third financial security postings.⁵

² CAISO, FERC Electric Tariff, Fourth Replacement Vol. No. II, First Revised Sheet No. 1806 (“CAISO Tariff”).

³ Ltr. of 9/18/09 from M. Kunselman to K. Bose at p. 8, Docket Nos. ER08-1317-005, ER09-1722-000 and EL10-15-000.

⁴ CAISO Tariff, First Revised Sheet No. 1806A.

⁵ Waiver Request at p. 14. CAISO also proposes to refund Phase I security postings for eligible interconnection customers, down to a \$500,000 minimum security amount that the CAISO would retain. *Id.* at pp. 14-15.

When it filed revised Section 9.3 with the Commission, the CAISO explained that the tariff provision governing the second posting requirement was intended to “allow the interconnection customer to provide the required interconnection security on a more gradual basis, instead of all at once”⁶ and would “balance the need for required financial security amounts large enough to discourage speculative interconnection projects but not so large as to discourage viable interconnection projects.”⁷ In other words, the CAISO’s rationale underpinning the financial security posting requirements for Sections 9.2 and 9.3 was the same, even though the requirements differed.⁸

Against this backdrop, CAISO has filed to request Commission authorization for a limited waiver of the financial posting requirements under the LGIP for interconnection customers being studied under the current “transition cluster” if a PTO has committed to provide up-front funding for the customer’s network upgrades. The CAISO believes this waiver will benefit projects receiving federal grants under the American Reinvestment and Recovery Act (“ARRA”). The CAISO explains that under its prior serial interconnection study process, interconnection customers were not required to post security for the construction of network upgrades until the time of construction, but now they must post security soon after studies are complete, which may be years before construction of transmission facilities occurs.⁹ Thus, under the prior process, if a PTO chose to fund a network upgrade, “the customer’s security posting

⁶ Ltr. of 9/18/09 from M. Kunselman to K. Bose at p. 9, Docket Nos. ER08-1317-005, ER09-1722-000 and EL10-15-000.

⁷ *Id.* at p. 10.

⁸ The CAISO also states in its Waiver Petition that it was motivated to revise both Sections 9.2 and 9.3 in 2009 because of concerns that generation developers might not be able to meet the credit posting requirements given the steep economic recession. Waiver Petition at p. 8. Although economic conditions have since improved, they can hardly be described as robust.

⁹ *Id.*

and the offset for PTO up-front funding occurred simultaneously.”¹⁰ Due to the mismatch between the timing of the security posting by the interconnection customer and the decision by the PTO to up-front finance network upgrades (two events that can be separated by many months, if not years), the interconnection customer’s security posting requirement may have the unintended consequence of requiring the customer to securitize far more than its actual debt obligation will be.¹¹

The CAISO contends that good cause exists to grant its waiver request because of the need to ensure the successful completion of projects in the transition cluster, particularly those receiving federal grants under the terms of Section 1603 of ARRA. CAISO states that the waiver will be limited to deposit amounts that would otherwise be required to secure the physical components of the network upgrades for which the PTO has committed to provide up-front financing.¹²

III. MOTION TO INTERVENE

CalWEA is a non-profit corporation supported by over 25 members of the wind energy industry, including turbine manufacturers, project developers actively involved in developing wind projects to help meet California’s RPS program, existing project owners, component manufacturers, support contractors, and others. CalWEA seeks to encourage and support the production of electricity through the use of wind generators, and actively represents the interests of its members in various proceedings before regulatory agencies and the CAISO.

The business interests of CalWEA’s members are significantly affected by regulatory policies such as California’s RPS requirements, the cost of, and access to,

¹⁰ *Id.*

¹¹ *Id.* at p. 9.

¹² *Id.* at pp. 2-3.

transmission facilities, and the requirements for interconnecting new generating facilities to the transmission system. As such, CalWEA and its members may be directly affected by the outcome of this proceeding. The interests of CalWEA and its members are not adequately represented by any other party. Accordingly, granting CalWEA's timely motion to intervene in this proceeding is in the public interest.

IV. PROTEST

CAISO Is Correct to Seek a Waiver of the Financial Security Posting Obligation, But Its Proposal Is Too Narrow, and Fails to Address the Real Problem.

CalWEA agrees with the CAISO that the financial security posting obligation that will be due within 180 days after publication of the Phase II study results for the transition cluster interconnection queue may jeopardize the projects in that cluster. The CAISO is rightly concerned that 22% of all renewable megawatts in the interconnection queue (totaling 8,214 MW, according to CAISO) may not achieve commercial operation without a waiver of the financial security posting requirement.¹³ CalWEA, therefore, strongly supports CAISO's waiver request. We are concerned, however, that the waiver does not go far enough to alleviate the burdens to projects in the transition cluster, and it is not clear when the CAISO intends to implement tariff amendments to provide a permanent solution for projects in future cluster study groups.

Although the CAISO is correct that one of the factors the Commission considers is whether a waiver request is narrowly tailored, waivers also may not be granted arbitrarily,¹⁴

¹³ *Id.* at p. 3.

¹⁴ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463, U.S. 29, 43 (1983) (an agency decision must reflect reasoned decision making based upon a rational connection between the facts found and the choice made).

but instead must be implemented in a manner that is not unduly discriminatory.¹⁵ As presented, the CAISO’s waiver request may be arbitrary because the relief it proposes does not follow from the problem it describes. The CAISO argues the waiver is needed to “provide increased assurance to developers and transmission owners that resources in the transition cluster which the transmission owners have identified as critical to meeting RPS objectives will have the best possible chance of achieving commercial operation.”¹⁶ Yet, the CAISO’s proposed waiver would potentially benefit only some of the projects in the transition cluster—those with network upgrades that the PTOs have chosen to finance. Other generators that are also needed for state RPS purposes will not qualify for the waiver.

Moreover, the waiver request is potentially unduly discriminatory because the waiver decision ultimately rests on PTO decisions to fund the network upgrades, but those funding decisions are entirely discretionary. In essence, the CAISO proposes to cede the waiver decision to the PTOs without specifying the criteria they will apply. This defect can be cured through an across-the-board waiver for the transition cluster.

The timing of PTO funding decisions is also uncertain, which makes it difficult to predict which transition cluster projects may benefit. As the CAISO itself points out, PTO decisions to finance network upgrades triggered by interconnection requests are often not made until near the time when construction is to begin, which may not happen until years after the security posting.¹⁷ Further, while PTOs have shown a willingness to make up-front funding decisions earlier in the process, those decisions have depended on assurances from the

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,185, at P 41 (2009); *Calif. Indep. Sys. Operator Corp.*, 113 FERC ¶ 61,262, at P 14 (2005).

¹⁶ Waiver Petition at p. 3 (emphasis added).

¹⁷ *Id.* at pp. 8-9.

Commission of full, unconditional, recovery of the cost of the network upgrades in transmission rates.¹⁸ Under these circumstances, it is not certain which projects in the transition cluster will benefit from PTO decisions to up-front fund the associated network upgrades, so any decision now to waive the financial security posting requirement for some transition cluster projects, but not others, would be entirely arbitrary. Again, an across-the-board waiver fixes this problem.

Additionally, since all projects in the transition cluster presumably contribute to state RPS targets, there is no reason to limit the waiver only to those projects that happen to trigger sufficient network upgrades to interest the PTOs in petitioning the Commission for rate incentives. Given the absence of any evidence by the CAISO connecting particular financial security posting amounts to the viability of projects in the transition cluster, it would be equally reasonable to infer from its arguments that the Phase II study financial security posting requirement is a threat to the viability of all projects in that cluster. Indeed, the CAISO's intended beneficiaries of its waiver request—those that will receive ARRA grants and have PTO financing for the network upgrades they need—may be less needful of the additional waiver than projects in the queue that do not have these advantages. Waiving the security posting requirement for all transition cluster projects alleviates this concern.

The CAISO promises to hold a stakeholder process to draft revisions to the financial security posting requirements of its LGIP to be filed with the Commission as tariff revisions in the future.¹⁹ It expects to complete these revisions in time to apply them to

¹⁸ *Id.* at p. 5. It is noteworthy that a PTO recently advised the Commission that it will revoke its up-front funding commitment if the Commission's conditional approval of the abandoned plant incentive does not become unconditional after the Commission rules on a future compliance filing by the utility. *Southern California Edison Co.*, Compliance Filing at p. 4 (Docket No. ER10-732-000) (filed June 14, 2010). Such conditional funding promises further obscure the availability of CAISO's proposed security posting waiver.

¹⁹ Waiver Filing, at pp. 4, 16.

interconnection customers in future cluster studies, but makes no firm commitment to meet that objective. Even if the CAISO achieves its goals to revise the tariff, many projects in the current transition cluster would miss out on the benefit. In any event, absent a clear schedule and commitment to revise the security posting requirements, there is no reason to limit the waiver as proposed by CAISO given the problems with identifying who the waiver recipients should be, the unduly discriminatory treatment of similarly situated customers, and the uncertainty about when the CAISO will file tariff changes.

The Commission can readily correct the flaws in the CAISO's waiver request by requiring the CAISO to apply it to all projects in the interconnection queue until the CAISO completes its promised stakeholder process to revise the financial security posting requirement. As the CAISO points out, transition cluster projects undergoing Phase II studies have already made their Phase I financial security postings, which likely will have had "the desired effect of incenting non-mature projects to step out of the present queue cluster" ²⁰ Thus, any policy concerns with an across-the-board waiver are greatly lessened for transition cluster customers completing Phase II studies.

Further, an across-the-board waiver will give the CAISO time to address a number of concerns about the financial security calculation and posting process that have emerged over the past year in stakeholder discussions. In this regard, there are a number of issues that will need to be addressed in the stakeholder process and reflected in any future tariff amendment.

For example, there is currently no mechanism in place to verify the accuracy or reasonableness of PTO network upgrade cost estimates. CAISO committed to its stakeholders to

²⁰ *Id.* at p. 20.

address this issue prior to Phase II security posting deadlines at the time of its amendments to Sections 9.2 and 9.3, but has not yet done so. CalWEA and its members remain concerned that there is no incentive for the PTOs to provide reasonable and verifiable cost estimates for network upgrades which are used as a basis for calculating interconnection customer financial security posting obligations. Indeed, PTOs have every incentive to over-estimate the cost of the upgrades to increase the financial security that interconnection customers must post. The financial security posting calculations must be transparent and verifiable. This is particularly important because the required upgrades may not be placed into service for several years—perhaps many years—which impairs the ability of generators to meet their delivery obligations in power purchase contracts and delays excessively the time between the financial security posting and the receipt of reimbursement for the posting.²¹

Moreover, while the CAISO has committed to take up the financial security posting question in a stakeholder process to begin in December 2010 or January 2011, we note that there is currently a stakeholder process underway to take up questions concerning generator interconnection reforms, so there is no need for the CAISO to put off the issue any longer. The CAISO itself has made a compelling case for taking up the issue now, rather than waiting another half a year, so as not to risk the viability of generators needed for RPS requirements.

Finally, as an alternative, the Commission should simply direct the CAISO to apply similar financial security posting requirements already in place for Phase I studies to the Phase II studies. In that regard, we request that, to address the concern that otherwise speculative projects not be able to continue in the queue, while not also discouraging otherwise

²¹ Here it is also important to recognize that the time value of money computation under the CAISO tariff and the Commission's regulations is not fully compensatory to interconnection customers who often have a much higher cost of capital.

viable projects, the CAISO should impose a financial security posting requirement within 360 days after publication of the Phase II study that is the lower of (i) 30% of the lower of total transmission cost responsibility assigned to the interconnection customer in Phase I or Phase II study reports, (ii) \$30,000 per megawatt the proposed new generating capability, or (iii) \$7.5 million, with a floor of \$500,000. Presumably projects that remained in the queue after the Phase I studies would be able to continue to meet similar financial security posting obligations without threatening project viability.

Furthermore, the 180 additional days afforded to the interconnection projects to post their incremental Phase II financial security posting will not only help the projects deal with the financial impact of potentially drastic financial security postings, but also provide time to conduct stakeholder meetings and finalize tariff amendments for filing with the Commission. Finally, using this approach would eliminate the arbitrary quality to the CAISO's waiver request, alleviate the serious undue discrimination concerns raised by its proposal, and meet its objective of encouraging renewable generation to meet RPS targets.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, (1) CalWEA respectfully moves for leave to intervene as a full party to this proceeding, (2) comments on CAISO's filing as discussed above, (3) respectfully requests the Commission to waive temporarily the financial security posting obligations of all interconnection customers until the CAISO completes a stakeholder process to develop revised obligations, or (4) in the alternative, apply financial posting obligations similar to those under Section 9.2 of the LGIP, as discussed above, to all generators.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by electronic mail or U.S. mail upon each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C. this 14th day of July, 2010.

/s/ Chimera N. Bowen

Chimera N. Bowen