

129 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

California Independent System
Operator Corporation

Docket Nos. ER08-1317-006
ER09-1722-001
EL10-15-001

ORDER ON CLARIFICATION AND WAIVER

(Issued December 3, 2009)

1. On November 20, 2009, Clipper Windpower Development Company, Inc. (Clipper Windpower) filed an emergency motion for clarification of the Commission's November 17, 2009 order in this proceeding,¹ as well as a request for temporary waiver of section 9.2 of the California Independent System Operator Corporation's (CAISO) Large Generator Interconnection Procedures (LGIP) as part of its Generator Interconnection Process Reform (GIPR).² As discussed below, we will deny the motion and request for waiver.

I. Background

2. On September 18, 2009, in Docket No. ER09-1722-000, CAISO filed to revise provisions of its GIPR LGIP for interconnection requests in a queue cluster window. In the same filing, under Docket No. ER08-1317-005, CAISO also submitted a revision directed by the Commission in its September 17, 2009 order.³ On November 17, 2009, the Commission issued an order that accepted CAISO's proposed amendments and the

¹ *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124 (2009) (November 17, 2009 Order).

² CAISO, Market Redesign and Technology Upgrade Tariff, App. Y (Large Generator Interconnection Procedures for Interconnection Requests in a Queue Cluster Window).

³ *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,247, at P 28 (2009) (September 17, 2009 Order).

compliance revision. The Commission also in that order instituted a proceeding under section 206 of the Federal Power Act (FPA)⁴ in Docket No. EL10-15-000 regarding the justness and reasonableness of CAISO's GIPR LGIP, particularly section 9.2, as they relate to the financial security obligation following a customer's election to switch from Full Capacity deliverability to Energy-Only deliverability service.

II. Motion for Clarification and Temporary Waiver

3. Clipper Windpower states that, although the Commission determined that the financial security deposit obligation as applied to Clipper Windpower may be unjust and unreasonable, Clipper Windpower still is in the position of having to post a \$7.5 million deposit even though the total cost of Network Upgrades assignable to Clipper Windpower for the service it has requested is approximately \$4.6 million. Clipper Windpower also states that such a situation may lead to the cancellation of its 400 MW wind energy project.⁵

4. Clipper Windpower explains that it exercised the option to switch its requested service from Full Capacity deliverability service to Energy-Only deliverability service pursuant to section 7.1 of CAISO's LGIP. Clipper Windpower states that this switch reduced the estimated Network Upgrade cost for its requested service to \$4,578,000 (from approximately \$538,000,000 under its originally requested, Full Capacity deliverability service). Therefore, Clipper Windpower states that the Network Upgrade portion of its financial security deposit should be 15 percent of \$4,578,000, i.e., \$686,700.

5. Clipper Windpower requests that the Commission clarify that it is not required to provide CAISO with the amount of financial security deposit required by section 9.2 of CAISO's GIPR LGIP unless and until the Commission determines that such a deposit is just and reasonable, following the investigation that the Commission initiated under section 206 of the FPA in Docket No. EL10-15-000. Thus, Clipper requests a temporary waiver of section 9.2 of CAISO's GIPR LGIP pending resolution of the issues set for investigation.

6. In support of its temporary waiver request, Clipper Windpower argues that the \$7.5 million required financial security obligation exceeds the cost of Network Upgrades for its project; the benefit of the Commission's doubt about the reasonableness of section 9.2 should go to Clipper Windpower as the interconnection customer; and, otherwise, the Commission's policy of protecting interconnection customers from providing too much

⁴ 16 U.S.C. § 824e (2006).

⁵ Clipper Windpower Motion at 2.

security will have been defeated.⁶ Moreover, Clipper Windpower contends that refund protection under FPA section 206 “is not a viable remedy,” because Clipper Windpower “is not a large utility company with vast financial resources”; the security obligation “would impose a severe financial hardship” on Clipper Windpower and “may well discourage the continuation of [Clipper Windpower’s] project.”⁷

III. Answer

7. On November 30, 2009, CAISO submitted an answer to Clipper Windpower’s motion. CAISO contends that Clipper Windpower has provided no evidence to support its assertion that the Commission could not have intended to require Clipper Windpower to post financial security based on its share of the network upgrade costs associated with its study group, including both reliability and deliverability upgrades (i.e., prior to its switch from Full Capacity to Energy-Only deliverability service). CAISO points out, however, that the Commission’s decision was “clear and unambiguous,” given that it set the earliest possible refund effective date of November 17, 2009.

8. CAISO acknowledges that, should Clipper Windpower withdraw and the Commission determine that Clipper Windpower is responsible only for its share of the reliability upgrades identified in the Phase I study, “Clipper Windpower would be entitled to receive a refund of a portion of the retained security, based on the difference between the amount posted and the amount determined by the Commission to be just and reasonable.”⁸ Thus, CAISO states that Clipper Windpower’s only harm is the temporary cost of maintaining a larger letter of credit.

9. CAISO reiterates the reasons for maintaining the larger financial security obligation in such a case; namely,

creat[ing] stronger incentives for generators, by way of requiring a greater level of financial commitment, to require interconnection customers to make serious and sound judgments as to the scope and viability of their proposed projects as early in the process as possible, and to time their participation in the process so that premature entry is not

⁶ Clipper Windpower Motion at 7-8.

⁷ *Id.* at 9.

⁸ CAISO Answer at 5-6.

followed by withdrawal and the consequent detrimental impact on the process and other interconnection customers.[⁹]

According to CAISO, the freedom to switch status from Full Capacity deliverability to Energy-Only deliverability without any financial consequence will undermine the incentive for interconnection customers to accurately determine their level of service and will create numerous gaming opportunities.¹⁰

10. Further, CAISO contends that Clipper Windpower has not demonstrated that its request for waiver (or for a stay or injunction) is in the best interest of other customers and has no undesirable consequences.

11. On December 1, 2009, Clipper Windpower filed an answer to CAISO's answer, arguing, *inter alia*, that CAISO mischaracterizes Clipper Windpower's request for temporary waiver.

IV. Discussion

A. Procedural Matters

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2009), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept Clipper Windpower's answer and will, therefore, reject it.

B. Commission Determination

13. We will deny Clipper Windpower's motion and request for waiver. Earlier in this proceeding, Clipper Windpower raised its issue about the large discrepancy between its financial security obligation and the actual cost of its share of the upgrades related to its interconnection project, given its switch from Full Capacity deliverability service to Energy-Only deliverability service. In response, the Commission instituted a section 206 investigation to determine whether the current financial security obligation is too high for those who switch status from Full Capacity to Energy-Only deliverability and, if so, what would be an appropriate obligation. By setting the refund effective date at the earliest possible date, *viz.*, November 27, 2009,¹¹ the Commission provided protection to

⁹ *Id.* at 7.

¹⁰ *Id.*

¹¹ 74 FR 62303-04 (Nov. 27, 2009); *see also* November 17, 2009 Order, 129 FERC ¶ 61,124 at P 43.

Clipper Windpower and other similarly situated entities. However, until the section 206 proceeding is resolved, section 9.2 of CAISO's GIPR LGIP remains in effect (subject to refund), and as such Clipper Windpower remains obligated to its original financial security deposit until such time, if at all, that this amount is determined to be unjust and unreasonable and a new just and reasonable amount is established. We agree with CAISO that, should Clipper Windpower withdraw and the Commission determine that Clipper Windpower is responsible only for its share of the reliability upgrades related to the Energy-Only deliverability service, Clipper Windpower would be entitled to receive a refund of a portion of the retained security, based on the difference between the amount posted and the amount determined by the Commission to be just and reasonable. Further, in this case we are not persuaded that good cause exists to grant waiver—or that irreparable harm has been shown for a stay—of section 9.2 of CAISO's GIPR LGIP. Accordingly, we will deny the motion.

The Commission orders:

Clipper Windpower's motion and request for waiver is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.