138 FERC ¶ 61,068
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Calpine Corporation Docket No. ER12-472-000

ORDER GRANTING LIMITED WAIVER

(Issued January 30, 2012)

1. On November 23, 2011, Calpine Corporation (Calpine), on behalf of Sutter Energy Center (Sutter), filed a request for a limited waiver of Appendix Y of the Large Generator Interconnection Procedures (LGIP) in the California Independent System Operator Corporation (CAISO) tariff.[1] Specifically, Calpine's request for waiver will permit Sutter to qualify, under certain limited conditions, for a full refund of both its interconnection financial security for Phase I and Phase II postings submitted pursuant to sections 9.2, 9.3 and 9.4 of the LGIP. In this order, we grant the limited waiver, as discussed below.

## I. **Background**

2. Sutter, a nominal 550 MW gas-fueled, combined-cycle generation facility, was previously operated within the CAISO Balancing Authority Area, and is currently operated under the Sacramento Municipal Utility District Balancing (SMUD) Authority Area.[2] Sutter is owned and operated by Calpine's subsidiary company, Calpine

[1] Calpine November 23, 2011 Request for Limited Waiver of the CAISO Tariff Appendix Y to Permit Full Recovery of Interconnection Financial Security (Request for Waiver).

[2] Prior to January 2005, the portion of the Western Area Power Administration's (Western) transmission system containing Sutter was contractually operated by Pacific Gas and Electric Company (PG&E). That portion of the system was under the operational control of CAISO and within CAISO's Balancing Authority Area, providing direct access to CAISO markets. On January 1, 2005, Western withdrew from the CAISO Balancing Authority Area and became part of the SMUD Balancing Authority Area, effectively eliminating Sutter's direct access to CAISO markets.

Construction Finance Corporation, and is located near Yuba City in Sutter County, California. Since commencing operation in 2001, Sutter has been physically interconnected to Western's transmission system through a 230 kV generation tie at the O'Banion substation. Calpine has submitted a request to CAISO for the direct interconnection of Sutter to the CAISO system via PG&E's Table Mt. – Tesla 500 kV transmission line.

3. On November 10, 2010, Calpine requested waiver of Appendix Y of the CAISO tariff to permit two limited circumstances under which Calpine could withdraw from the interconnection queue and receive full recovery of its initial posting of interconnection financial security (Initial Request Waiver). In the Initial Request Waiver, Calpine explained that CAISO needs to coordinate studies with affected systems, including Western and SMUD, to determine Sutter's potential cost responsibility for upgrades on affected systems.[3] Additionally, Calpine noted that Sutter's disconnection from Western and its direct interconnection to a 500kV transmission line on the CAISO grid will require a Western Electricity Coordinating Counsel (WECC) rated-path review. Calpine stated that these additional studies would not begin until after its final Phase I study is completed. Thus, Calpine submitted that the waiver was appropriate because the posting of the interconnection financial security for Phase I would not give Calpine the benefit of knowing its total exposure to network upgrade costs in advance of construction.[4]

4. Given the unique circumstances, the Commission granted Calpine's requested limited waiver, permitting Calpine the option to withdraw its interconnection request with full refund of its Phase I interconnection financial security if either: (1) Sutter has not received a final determination of its total affected system cost responsibility within one year of the date on which Sutter has posted its Phase I interconnection financial security; or (2) Sutter's total affected system cost responsibility is $1 million or more above the cost estimate for aggregated affected system upgrades set forth in CAISO's Phase I interconnection study report.[5]

[3] An "affected system" is an electric system other than the CAISO-controlled grid that may be affected by the proposed interconnection, including participating transmission owner's (PTO) electric systems that are not part of the CAISO-controlled grid. CAISO Tariff, Appendix A.

[4] Initial Request for Waiver at 2-3.

[5] *Calpine Corp.*, 134 FERC ¶ 61,232 (2011) (March 2011 Order).

## II. CAISO Tariff

5. Pursuant to the LGIP section 9.2, an interconnection customer is obligated to make an interconnection financial security deposit in accordance with the requirements of the LGIP on or before ninety (90) calendar days after publication of the final Phase I interconnection study report, in an amount determined by CAISO.

6. In addition, pursuant to the LGIP section 9.3, an interconnection customer is obligated to make a second posting of interconnection financial security on or before one hundred eighty (180) calendar days after the issuance of the final Phase II interconnection study report.

7. LGIP section 9.4 states that "withdrawal of an Interconnection Request . . . shall allow the applicable [PTO] to liquidate the Interconnection Financial Security, or balance thereof, posted by the Interconnection Customer for Network Upgrades at the time of withdrawal. . . . Withdrawal of an Interconnection Request . . . shall result in the release to the Interconnection Customer of any Interconnection Financial Security posted by the Interconnection Customer for [PTO]'s Interconnection Facilities, except with respect to any amounts necessary for costs incurred or irrevocably committed by the applicable [PTO] on behalf of the Interconnection Customer for the [PTO]'s Interconnection Facilities and for which the applicable [PTO(s)] has not been reimbursed."

8. Pursuant to LGIP section 9.4.1, a portion of the interconnection financial security shall be released to an interconnection customer if the withdrawal of an interconnection request occurs due to: (1) failure to secure a power purchase agreement; (2) failure to secure a necessary permit; (3) increase in the cost of a PTO's interconnection facilities; or (4) material change in the interconnection customer interconnection facilities created by a CAISO change in the point of interconnection.

9. LGIP section 9.4.2 establishes the schedule for determining non-refundable portions of the interconnection financial security for network upgrades. Pursuant to LGIP section 9.4.2, an interconnection customer withdrawing within 180 calendar days following issuance of the Phase II interconnection study report is reimbursed 50 percent of its posted interconnection financial security, subject to the PTO's retention being capped at $10,000 per megawatt of capacity. If the interconnection financial security has been drawn on to finance pre-construction activities, the amount so expended is not subject to reimbursement as part of the 50 percent referenced above.

## III. Waiver Request

10. Due to changed circumstance since the Initial Request for Waiver, Calpine requests that the Commission grant the same waiver for the Phase II security deposit as it granted for the Phase I security deposit in the March 2011 Order. Calpine also seeks an

extension of the waiver granted in the March 2011 Order for Phase I, which expires one year from the date that it posted financial security deposit for Phase I.[6]

11. Calpine argues that this new waiver is appropriate because the delay in CAISO's publication of its final Phase I study report caused a delay in the commencement of the WECC-rated review process, along with the additional affected system studies, and triggered the deposit requirement for Phase II study sooner than expected. According to Calpine, the final Phase I study report was published on August 12, 2011 and the Phase II study report was published only ten days later, on August 22, 2011. When it submitted the Initial Request for Waiver, Calpine posits that it expected the Phase I study report to be issued on or about November 15, 2010 and for the additional affected system studies, along with the WECC-rated review process, to commence shortly thereafter. Given the usual time frame between Phase I and Phase II studies, according to Calpine, it assumed that the WECC-rated review and the additional affected system studies would be completed prior to the due date for Phase II deposit.[7] Thus, Calpine states that it expected that when its Phase II deposit became due it would have been apprised of Sutter's total affected system cost responsibility and would have certainty about its total cost responsibility in order to determine whether to submit Phase II deposit or withdraw from the interconnection queue.

12. However, Calpine explains that due to the compressed timeframe between the publication of Phase I and Phase II study reports, the additional affected system studies and the WECC-rated review is not yet complete; therefore, Calpine contends that it still lacks certainty about its total cost responsibility upon which to base its decision to submit the Phase II deposit or to withdraw from the interconnection queue.[8] The publication of the final Phase II study triggered the need for the Phase II security deposit of an incremental $7.5 million (for a total of $15 million in deposits), which is due on or before February 17, 2012.[9] Calpine argues that it is in the same "untenable position" that it was in prior to the Commission's issuance of the March 2011 Order and that, in the absence of the requested waiver, Calpine will be required to make security posting decisions

---

[6] March 2011 Order, 134 FERC ¶ 61,232 at P 9. Calpine submitted a Phase I financial security deposit of $7.5 million on November 10, 2011.

[7] Ordinarily, Calpine notes, a Phase II study commences after a Phase I study report is issued and is completed within 196 days thereafter. The security deposit for Phase II is due 180 days after publication of the final Phase II interconnection study report. Request for Waiver at 2.

[8] *Id.* at 6.

[9] CAISO Tariff, Appendix Y, Section 9.3.1.2.

without adequate knowledge and assurance of its financial responsibility to effectuate its interconnection request. Calpine asserts that the requested waiver will allow it to make a decision after having been "apprised by each affected system of Sutter's total affected cost responsibility, without risking forfeiting its financial security."[10]

13. Thus, Calpine requests that the Commission allow Sutter to withdraw from the interconnection queue and receive full recovery of its interconnection financial security for both Phase I and Phase II postings under LGIP section 9.4.1 and 9.4.2 if either: (1) Sutter has not received a final determination of its total affected system cost responsibility from all affected systems within one year of the date it posted its Phase II security deposit (sunset date);[11] or (2) the aggregate amount of upgrade costs for all affected systems and WECC path mitigation, combined, exceeds the cost estimate in the Phase II interconnection study report by at least $1 million. In either of the aforementioned circumstances, within ten (10) calendar days, Sutter agrees to provide notice to CAISO of its intent to proceed with the interconnection or withdraw from the queue. Calpine also states that, if Sutter receives a determination of its cost responsibility from all affected systems earlier than 90 days prior to the sunset date, Sutter will inform CAISO, within 90 days of receipt of such information, whether it intends to proceed with the interconnection.

## IV. Notice of Filing and Responsive Pleadings

14. Notice of Calpine's filing was published in the *Federal Register*, 76 Fed. Reg. 75,541 (2011), with interventions and comments due on or before December 14, 2011. City of Santa Clara, California and the M-S-R Public Power Agency, jointly; and Modesto Irrigation District filed timely motions to intervene. The Commission received no comments or protests.

---

[10] Request for Waiver at 2-3 (citing March 2011 Order, 134 FERC ¶ 61,232 at P 24).

[11] Calpine requests that the waivers granted with respect to both Phase I and Phase II security deposit postings expire on the same sunset date since the risk of forfeiture is the same with respect to each deposit. Calpine states this would result in only a three-month extension of the sunset date applicable to the waiver of the Phase I deposit, as originally granted in the March 2011 Order.

## V. Discussion

### A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding.

### B. Commission Determination

16. The Commission grants Calpine's request for a limited waiver of Appendix Y to the CAISO tariff. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.[12] Waiver, however, is not limited to those circumstances. For example, in several recent cases similar to this one, the Commission has found good cause for a waiver where the waiver would be of limited scope, there are no undesirable consequences, and there are resultant benefits to customers.[13] The factors presented in this case are virtually the same as those in Calpine's prior waiver request and, as elaborated below, we find good cause exists to grant a limited waiver of Appendix Y of the CAISO LGIP for the same reasons as we did in the March 2011 Order.

17. We agree that Calpine's interconnection to the CAISO system presents unique circumstances which set this interconnection request apart from other interconnection requests. In accordance with LGIP sections 9.2 and 9.3, Calpine is required to post its financial security on or before 90 calendar days after the publication of the final Phase I interconnection study report and 180 calendar days after the publication of the final Phase II interconnection study report.

18. In the instant case, Calpine has submitted an interconnection financial security deposit for Phase I pursuant to LGIP section 9.2 and commits to making Phase II security

---

[12] *See, e.g., ISO New England Inc.*, 117 FERC ¶ 61,171, at P 21 (2006) (granting limited and temporary change to tariff to correct an error); *Great Lakes Transmission Limited Partnership*, 102 FERC ¶ 61,331, at P 16 (2003) (granting emergency waiver involving *force majeure* event for good cause shown); and *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

[13] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010); and *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010).

posting pursuant to LGIP section 9.3. However, given the need for review by third parties outside the interconnection review contemplated in the LGIP process, Calpine seeks some flexibility to withdraw from the interconnection queue and fully recover its financial security postings in certain circumstances. Because this set of unusual circumstances has made Calpine's total cost exposure uncertain prior to the deadline for posting financial security, we find that granting this waiver will provide the proper balance between having a security requirement that promotes an efficient interconnection process while not excessively burdening the interconnection customer.[14]

19. We find that the waiver affords Calpine limited additional time to await the completion of the WECC rated-path review and associated affected system studies and to be apprised by each affected system of the total affected system cost responsibility, without risk of forfeiting its financial security. The waiver will expire after the sunset date, unless CAISO consents to an extension. Within 10 calendar days of the sunset date, Calpine shall provide notice to CAISO of whether it intends to proceed with the interconnection or withdraw from the queue. Additionally, to the extent that Calpine receives a final determination of its cost responsibilities from all affected systems earlier than 90 days prior to the sunset date, Calpine commits to informing CAISO within 90 days of its receipt of these determinations whether it intends to proceed with the proposed interconnection or withdraw its request. If Calpine proceeds, its interconnection request will be subject to the CAISO LGIP requirements. Therefore, once the necessary studies are completed, enabling Calpine to assess its total cost responsibility for the interconnection, Calpine's responsibility to post subsequent financial security obligations will not be delayed or reduced.

<u>The Commission orders:</u>

Calpine's request for waiver is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,
Deputy Secretary.

---

[14] *See Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,005 (2010).