132 FERC ¶ 61,132
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation — Docket No. ER10-1656-000

ORDER GRANTING WAIVER OF TARIFF PROVISIONS

(Issued August 13, 2010)

1. On June 30, 2010, the California Independent System Operator Corporation (CAISO) filed a request for temporary waiver of the financial security deposit requirements set forth in sections 9.2 and 9.3 of the CAISO's large generator interconnection procedures for clustered interconnection requests (Cluster LGIP).[1] As proposed, the CAISO Filing requests waiver of the financial posting requirements used to secure network upgrades for interconnection customers in the transition cluster,[2] when a participating transmission owner (PTO) has committed to up-front fund the customer's share of network upgrade costs. The primary objectives of the CAISO's proposed waiver are to assist transmission owners with satisfying California's Renewable Portfolio Standards (RPS) goal,[3] while helping projects eligible for American Recovery and

[1] CAISO's June 30, 2010 Petition for Waiver of Tariff Provisions Regarding Interconnection Financial Security and Request for Ruling within 45 Days, Docket No. ER10-1656-000 (CAISO Filing).

[2] The transition cluster is comprised of interconnection requests that were submitted on or before June 2, 2008, which are studied under a slightly modified version of the generation interconnection process reform (GIPR). *See Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031, at P 5 (2008) (GIPR Waiver Order); *see also Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124, at P 4 (2009) (November 2009 Order).

[3] CAISO Filing at 2 (referencing Executive Order S-14-08, which accelerates California's RPS targets from 20 percent to 33 percent).

Reinvestment Act of 2009 (ARRA) funding to meet ARRA construction deadlines. As discussed below, we grant the CAISO's request for waiver.

I. Background

2. On July 28, 2008, the CAISO filed with the Commission its GIPR tariff revisions. In general, the CAISO's interconnection process under the GIPR included changing from a serial study approach to a clustered study approach and increasing the financial commitments required from interconnection customers, particularly during the earlier stages of the interconnection process.[4]

3. On September 18, 2009, the CAISO filed tariff revisions to modify the amounts and timing of interconnection financial security postings. This filing changed the refund provisions to adequately address when an interconnection customer withdraws its interconnection request or terminates its large generator interconnection agreement (LGIA) for reasons beyond the control of the interconnection customer. [5]

4. The Commission accepted the CAISO's proposed revisions to the GIPR LGIP in the November 2009 Order. However, the Commission instituted a proceeding under section 206 of the Federal Power Act (FPA)[6] to investigate, among other things, whether CAISO's interconnection financial security provisions are unjust and unreasonable as they relate to interconnection customers exercising the option to switch their deliverability status from full capacity deliverability (Full Capacity) to energy-only deliverability (Energy-Only) following the issuance of the Phase I interconnection study report and prior to the commencement of the Phase II interconnection study.

5. On July 1, 2010, the Commission found the financial security provisions, as applied to the exercise of the option to switch deliverability status, to be unjust and unreasonable.[7] Thus, the Commission directed the CAISO to revise its LGIP to ensure

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[4] *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008) (GIPR Order).

[5] *See* LGIP Sections 9.2 and 9.3, which contain procedures for the initial and subsequent postings of interconnection financial security, and section 9.4, which contains procedures regarding the general effect of withdrawal of an interconnection request or termination of the LGIA on interconnection financial security. *See also* Appendix 2 of the GIPR LGIP, which contains variations from the GIPR LGIP that apply to projects in the transition cluster.

[6] 16 U.S.C. § 824e (2006).

[7] *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,005, at P 40 (2010).

that customers switching from Full Capacity to Energy-Only shall not be required to tender security that exceeds the costs estimated for network reliability upgrades for that customer in the Phase I interconnection study.

II. The CAISO's Proposed Waiver

6. The CAISO requests that the Commission grant it a limited waiver of the requirements of Sections 9.2 and 9.3 of the Cluster LGIP for projects in its transition cluster, when a PTO has committed to up-front fund all or a portion of the customer's share of network upgrades. The Cluster LGIP requires interconnection customers to post financial security at the following points in the interconnection process: (1) an initial deposit of approximately 15 percent of a customer's total cost responsibility for the identified network upgrades is due within 90 days of the publication of the Phase I study;[8] (2) a second deposit that brings the total up to 30 percent of a customer's total cost responsibility for the identified network upgrades is due within 180 days of the date of publication of the Phase II study; and (3) a final deposit that brings the total up to 100 percent of the customer's total cost responsibility for network upgrades is due on or before the start of construction of the upgrades.[9]

7. Interconnection customers in the transition cluster met their first financial posting requirement in December 2009 and, therefore, Commission acceptance of the proposed limited waiver will effectively waive the second and third financial posting requirements for eligible projects in this cluster. According to the CAISO, the portion of this first posting relating to eligible network upgrades will be returned.

8. The CAISO provides that the instant request for temporary waiver of the financial security posting requirements is intended to further the ability of utilities to meet California's RPS goal of 33 percent by 2020.[10] The CAISO states that renewables make up approximately 71 percent (37,131 MW of a total of 51,988 MW) of the megawatts in

[8] The first deposit amount for network upgrades is based on three screens and is the lower of (i) 15 percent of cost responsibility; (ii) $20,000 per MW of electrical output of the generating facility that is the subject of the interconnection request; or (iii) $7.5 million, but in no event less than $500,000. CAISO Filing at n.16 (citing Cluster LGIP, CAISO Tariff Appendix Y, Section 9.2).

[9] *Id.*

[10] CAISO Filing at 2.

the interconnection queue and that the transition cluster makes up 22 percent (8,215 MW) of these renewables.[11]

9. The CAISO has requested Commission action within 45 days of the date of filing to assure that eligible resources have access to available ARRA funds.[12] In order for projects to qualify for ARRA funding,[13] construction must begin by December 31, 2010. The CAISO submits that securing ARRA funding will promote the successful interconnection and operation of these projects. Moreover, the CAISO states that granting this waiver will support projects in the transition cluster that have been identified as critical to meeting the RPS objectives.[14]

III. Notice, Intervention, and Responsive Pleadings

10. Notice of the CAISO Filing was published in the *Federal Register*, 75 Fed. Reg. 39237 (2010), with comments, and protests due on or before July 14, 2010. Motions to intervene, were filed by the following: (1) Mirant Energy Trading, LLC, Mirant Delta, LLC and Mirant Potrero, LLC; (2) Transmission Agency of Northern California; (3) Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California; (4) NRG Power Marketing LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power LLC, Long Beach Generation LLC and NRG Solar Blythe LLC; and (5) California Department of Water Resources State Water Project.

11. Timely comments and/or protests were filed by the following: (1) Macquarie Energy North America Trading Inc. (MENAT); (2) California Wind Energy Association (CalWEA); (3) Solar Millennium, LLC (Solar Millennium); (4) City of Santa Clara, California and the M-S-R Public Power Agency (Santa Clara); (5) Modesto Irrigation District (Modesto); (6) Southern California Edison Company (SoCal Edison); (7) SolarReserve, LLC (SolarReserve); and (8) Large-scale Solar Association and Solar Energy Industries Association (Solar Parties).

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[11] *Id.* at 3.

[12] Within the transition cluster, 15 renewable projects representing 3,451 MW have already been identified by the California Renewable Resources Action Team, the PTOs, and the CAISO as ARRA cash grant funding projects. *Id.* at 24.

[13] Section 1603 of ARRA makes available to renewable developers direct grants in lieu of tax credits equaling 30 percent of a facility’s tax basis. *Id.* at 13.

[14] *Id.* at 3.

12. The CAISO filed an answer on July 29, 2010.

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions and notices to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the CAISO answer and will, therefore, reject it.

B. Substantive Matters

1. Granting of Waiver

14. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.[15] Waiver, however, is not limited to those circumstances. When good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident, we have found that a one-time waiver is appropriate.[16] For the reasons discussed below, we grant the CAISO's requested waiver.

2. The Requested Waiver Is of Limited Scope

a. CAISO Filing

15. The CAISO asserts that its waiver request is of limited scope because waiver would apply only to those projects in the transition cluster for which a PTO has committed to pay up-front the customer's share of network upgrade costs. Specifically,

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[15] *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 LP.*, 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).

[16] *See e.g., Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226, at P 24 (2007); GIPR Waiver Order, 124 FERC ¶ 61,031 (2008) (granting waivers of the CAISO's LGIP to allow it to create three study groups in order to streamline interconnection requests).

the CAISO's request provides that for any portion of the network upgrades assigned to an interconnection customer that the PTO is not funding, the interconnection customer would still be required to post the required financial security amount.[17] Further, the CAISO states that waiver will be permitted only when a PTO has demonstrated an unequivocal commitment to provide up-front funding. This demonstration may be made either by entering into an LGIA which explicitly states the PTO's unconditional commitment to up-front fund certain network upgrades identified in the LGIA, or by providing some other form of written, binding commitment to the CAISO and the interconnection customer.[18]

16. In addition, in December 2010 or January 2011, the CAISO intends to initiate a stakeholder process to evaluate the lessons learned to date since the CAISO's cluster process went into effect, including a reevaluation of the financial security posting requirements. The CAISO states that any tariff amendments resulting from this effort would be in effect prior to the time when similar financial commitments must be made on behalf of subsequent clusters. Moreover, the CAISO considered whether it could conduct a tariff amendment process in time to change the financial security posting requirements for the transition cluster; however, because many of these projects will need to complete LGIA negotiations in the third quarter of 2010 and to start construction activities by December 31, 2010 in order to access ARRA funding, the CAISO concluded that a full tariff amendment process would not be feasible.[19]

b. <u>Comments and Protests</u>

17. Santa Clara argues that the CAISO Filing leaves transmission customers exposed to risks of abandonment, since PTOs likely will not unconditionally agree to fund network upgrades unless they are first granted abandoned plant incentives.[20] Moreover, Santa Clara asserts that a developer that is not meeting its milestones and, as a result, loses the up-front funding and must post security itself, is less likely to be viable and

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[17] CAISO Filing at 16.

[18] *Id.* at 26.

[19] *Id.* at 17.

[20] Santa Clara July 14, 2010 Comments at 11-12 (Santa Clara Comments). Abandoned plant approval would allow a PTO to recover 100 percent of its prudently-incurred costs if the transmission project has to be abandoned for reasons outside of its control. *See* SoCal Edison July 14, 2010 Comments at 4-5 (SoCal Edison Comments).

capable of providing that security.[21] Santa Clara states that if a project fails, the sunk funds spent by the PTO would become the transmission customers' problem, given that the PTOs will not commit to funding without being granted abandoned plant approval.[22] Thus, Santa Clara argues that any waiver should be limited to circumstances when the PTO unconditionally agrees to place its own funds at risk to front the development costs necessary for the PTO to reach its renewable energy goals.[23]

18. Santa Clara asserts that the CAISO also fails to explain the financial scope of its waiver. Specifically, according to Santa Clara, the CAISO does not explain how many of these projects are eligible for the waiver based on a PTO commitment to up-front costs, nor does it provide the total interconnection upgrade costs the waiver could impose on transmission customers.[24]

19. SoCal Edison states it is willing to finance certain transmission projects upon obtaining abandoned plant approval (other conditions for financing would be specified in the individual LGIAs).[25] SoCal Edison explains that for those projects in which its financing commitment is conditioned upon abandoned plant approval or other factors, it would provide a written commitment to unconditionally finance the projects when the conditions specified in the LGIA are met, which would remove the obligation to provide financial security.[26] Therefore, SoCal Edison argues that if there are projects for which it has received abandoned plant approval and has unconditionally agreed to finance the

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[21] In its comments, SoCal Edison points out that the posting requirement could be reinstated if the interconnection customer fails to continue to meet its development milestones and the PTO amends the LGIA to provide for the traditional interconnection customer financing option. SoCal Edison Comments at 6.

[22] Santa Clara Comments at 11-12.

[23] *Id.* at 11.

[24] *Id.* at 12.

[25] The CAISO states that SoCal Edison has defined abandoned plant approval as "a final FERC order, not subject to rehearing or appeal" that grants the PTO's request for declaratory order that the PTO can recover 100 percent of its prudently incurred costs if the project is abandoned due to circumstances beyond the PTO's control. CAISO Filing at 5 n.7.

[26] SoCal Edison Comments at 5.

network upgrades, it is not necessary for the interconnection customer to post financial security.[27]

c. Commission Determination

20. As discussed below, we agree with the CAISO that its requested waiver is limited in scope. Specifically, the CAISO Filing applies only to the financial security posting requirements for interconnection customers within the transition cluster when the PTO has unequivocally committed to provide up-front funding for network upgrade costs.

21. The Commission finds that commenters' concerns regarding abandoned plant approval are beyond the scope of this proceeding.[28] Although commenters (including SoCal Edison) suggest that it is likely that PTOs will seek abandoned plant approval in a subsequent filing, they have not done so in this proceeding. Thus, these concerns are beyond the scope of the instant proceeding.

22. In addition, we find that Santa Clara's concern that waiver could apply to agreements that would require that security be posted if certain milestones are not met is beyond the scope of the instant proceeding. In the instant proceeding, waiver is conditioned upon unequivocal commitment by a PTO to fund network upgrades. Specifically, the CAISO explains that a PTO may demonstrate unequivocal commitment by either "entering into an LGIA which explicitly states the [PTO's] unconditional commitment to up-front fund the network upgrades in the LGIA," or by "providing some other form of written, binding commitment to the [CA]ISO and the interconnection customer stating an unconditional commitment to provide up-front funding of any network upgrades ultimately identified in the LGIA."[29] No requests for abandoned plant approval or requesting other deviations from the *pro forma* tariff are pending in this docket. Thus, we will not speculate as to the terms that may be included in LGIAs that have yet to be filed. For subsequent clusters following the transition cluster, the CAISO has committed to convene a stakeholder process to reevaluate its financial posting

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[27] *Id*.

[28] A similar abandoned plant approval issue is currently pending rehearing in Docket No. ER10-732-001, which involves proposed deviations from the CAISO's *pro forma* LGIA that include, among other things, a provision allowing for abandoned plant approval.

[29] *See* CAISO Filing at 26-27.

requirements and determine whether a permanent tariff revision is warranted prospectively to extend the proposed limited waiver provisions. Accordingly, we find that Santa Clara's concerns are beyond the scope of the instant proceeding.

23. Finally, we find that Santa Clara's claim that the waiver is not limited in financial scope is without merit, since there is no requirement that waivers be limited in financial scope.[30] Rather, we reiterate our finding that that the waiver is limited in scope as it would apply only to those projects in the transition cluster for which the PTO has committed to pay up-front the customer's share of network upgrade costs. For the above reasons, we find that the CAISO Filing is limited in scope.

3. Granting the Requested Waiver Will Not Have Undesirable Consequences

a. CAISO Filing

24. The CAISO argues that granting the requested waiver will not result in any undesirable consequences for the following reasons: (1) waiver is permitted only when the PTO has made an unequivocal commitment to provide up-front funding for the project;[31] (2) interconnection customers eligible for relief under this waiver would still be required to maintain financial security to cover the costs of any PTO interconnection facilities, as well as the minimum $500,000 deposit relating to network upgrade costs; (3) transition cluster customers that are not implicated by this waiver will be in the same position they would have been absent this waiver, both financially or otherwise; and (4) the waiver does not affect the calculation or allocation of upgrade costs to interconnection customers.[32] For these reasons, the CAISO argues that its requested waiver will not have undesirable consequences and should be granted.

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[30] In fact, the waiver is limited in financial scope by virtue of the limited number of interconnection customers that may qualify for the waiver. The CAISO's waiver request does not identify a dollar amount associated with the waiver request, but identifying a precise dollar amount is different than limiting the financial scope of the waiver request.

[31] *See supra* P 15.

[32] CAISO Filing at 27-28.

b. Comments and Protests

25. Santa Clara asserts that the requested waiver will have unintended consequences on third parties. Specifically, Santa Clara points out that the CAISO focuses only on whether other interconnection customers will be harmed and makes no mention of the risks to transmission customers who would be saddled with the sunk costs if an interconnection customer is not required to post financial security and also fails to complete its project.[33] Thus, Santa Clara submits that the Commission should limit any waiver to circumstances in which the PTO has, without any conditions, agreed to place the PTO's funds at risk to fund the network upgrades.[34]

26. Modesto notes that network upgrades would be rolled into the CAISO's transmission access charge and wheeling access charge, paid by customers for use of the CAISO-Controlled Grid. Modesto asserts that in order to help ensure that the requested waiver does not increase costs for customers who pay the transmission access charge or wheeling access charge, the Commission should consider requiring that ARRA/state grant funds be applied toward the necessary security deposits, to the extent permitted by grant terms and conditions. Modesto argues that such a provision would provide mitigation in the transmission access charge or wheeling access charge, and greater protection for customers from expenditures that would not benefit the CAISO-Controlled Grid.[35]

c. Commission Determination

27. We are not persuaded by commenters that granting the CAISO's request for waiver will have undesirable consequences on third-party transmission customers, or that mitigation of any potential increases in the transmission access charge is appropriate at this time. As explained by the CAISO, interconnection customers that are not implicated by the proposed waiver will be unaffected, as the financial posting requirements for these interconnection customers will not change. Regarding interconnection customers that will benefit from the waiver, Santa Clara has not provided evidence to demonstrate that these projects are more likely to fail and impose risks on transmission customers. Nevertheless, we find that the limited scope of the proposed waiver helps to mitigate any potential financial risk to market participants. Moreover, the Commission finds that the benefits of granting CAISO's short-term waiver proposal outweigh unsupported and

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[33] Santa Clara Comments at 15.

[34] *Id.*

[35] Modesto Comments at 7.

speculative concerns regarding undesirable consequences. For the same reasons, we deny Modesto's mitigation proposal.

4. Resultant Benefits to Customers are Evident

a. CAISO Filing

28. The CAISO states that there is a projected "net short" of over 52,000 gigawatt-hours per year in renewable resources needed to meet California's 33 percent RPS goal.[36] Hence, the CAISO argues that there is a pressing need to add renewable capacity over the next decade, which will result in many challenges to the interconnection processes. The CAISO submits that the transition cluster is important because it contains approximately 8,215 MW of renewable capacity. Thus, the CAISO asserts that timely interconnection of the resources in the transition cluster would contribute much needed renewable capacity, while providing confidence to the merchant generator community, generation financers, transmission owners, and the marketplace as a whole.[37]

29. The CAISO states that granting waiver will facilitate the construction and interconnection of projects in the transition cluster without undermining the reasons for recently adopted provisions to increase financial commitments.[38] In addition, the CAISO provides that the waiver will reduce the overall burden to interconnection customers faced with potentially large network upgrade costs in addition to other project costs.[39]

30. The CAISO explains that renewable projects in the transition cluster often face high up-front network upgrade costs because interconnection of their projects requires construction of new lines to relatively remote locations in newly identified renewable resource zones. The CAISO asserts that the cost of these transmission upgrades must still be fairly apportioned among projects in the study cluster, based on their point of interconnection. Thus, the CAISO argues that that it is appropriate to require developers to post appropriate financial security deposits throughout the process based on the costs of these upgrades in order to ensure that the interconnection process does not bog down

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[36] CAISO Filing at 17.

[37] *Id.* at 19.

[38] *Id.*

[39] The CAISO states that renewable solar and wind projects tend to be very land-use intensive, with related large mitigation costs to permit construction and operation of the facilities.

in a series of successive re-studies, which results when customers withdraw from the queue late in the study process.[40]

31. The CAISO submits that a commitment by a PTO to provide up-front funding for network upgrade costs provides strong financial support to affected projects by virtue of the PTO's resources and capital. Therefore, the CAISO argues if the PTO decides to assume responsibility for these costs, it is appropriate to relieve the interconnection customer of its obligation to post financial security in favor of the PTO.[41]

32. The CAISO states that by committing to fund the initial payment of network upgrades, a PTO removes the need for a developer to secure the large amount of capital necessary to fund its share of network upgrade costs and associated financial security deposits, while reducing the developer's overall financial burden. According to the CAISO, this will reduce the risk of withdrawal prior to construction, thus the waiver will improve the ability of developers to access ARRA funds, which could allow eligible developers to secure adequate financing to construct their facilities, remain financially viable, and reach commercial operation.[42]

33. The CAISO explains that without waiver, developers interested in ARRA funds would be required to make their second posting of financial security within 180 days of publication of the Phase II study report, expected in July 2010, and to start construction by December 31, 2010. Prior to both of these events, the CAISO provides that developers utilizing private financing for project construction must complete their financing transactions.[43] Without waiver, the CAISO explains that viable developers with less access to capital may be forced to withdraw from the interconnection process

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[40] *Id.* at 20.

[41] *Id.* at 21.

[42] *Id.* at 22.

[43] The CAISO states that it believes that lenders will require the execution of an LGIA that sets forth the full extent of the developer's cost responsibility, including financial security requirements. According to the CAISO, in the absence of a PTO agreement for up-front funding and waiver of the financial security requirements, lenders may offer less optimal financing terms or potentially refuse to offer financing altogether, even though an interconnection customer will ultimately recoup any transmission upgrade costs. The CAISO anticipates that the terms of any PTO commitments to provide up-front funding for network upgrades would be set forth in the LGIAs. *Id.* at 23.

prior to construction. Thus, the CAISO argues that approving the waiver will afford developers a greater chance of reaching the construction stage and obtaining ARRA funding.[44]

34. The CAISO argues that the waiver is the most appropriate procedural tool to achieve benefits for projects in the transition cluster because it can be implemented more quickly than a tariff amendment, and it will provide more certainty for all participants in the interconnection and resource planning processes.[45] Further, a temporary waiver of the financial security requirements in the Cluster LGIP will help the CAISO to assess whether to bring to the stakeholder process tariff changes that would make the waiver permanent.[46]

b. Comments and Protests

35. SolarReserve and CalWEA are concerned that the waiver will benefit only a subset of projects that the PTOs commit to finance, while developers of other projects will still be required to post financial security.[47] SolarReserve and CalWEA also raise concerns that the waiver does not provide any criteria by which the PTOs would exercise their discretion to finance network upgrades, nor is it clear when PTOs will make decisions as to which projects to fund.

36. SolarReserve argues that the CAISO Filing does not achieve the CAISO's objective, which is to remove a burdensome security posting requirement that jeopardizes otherwise viable renewable generation projects, thereby potentially impeding California's RPS goals.[48] SolarReserve submits that, presumably, all renewable projects in the transition cluster will help the state to meet its RPS targets, not just those projects for which the CAISO is seeking limited waiver. Thus, SolarReserve argues that the

[44] *Id.* at 21-22.

[45] *Id.* at 25.

[46] *Id.*

[47] CalWEA explains that other generators that are also needed for state RPS purposes will not qualify for the waiver. CalWEA July 14, 2010 Comments at 8 (CalWEA Comments). Similarly, SolarReserve is concerned that limiting waiver to projects with PTO-financed network upgrades will not protect most of the projects in the transition cluster and could have unduly discriminatory consequences. SolarReserve Comments at 5.

[48] *Id.* at 7.

requested waiver is missing a logical connection between the problem presented by the CAISO and the request for waiver of the second and third posting requirements for some but not all projects in the transition cluster.[49]

37. SolarReserve contends that the CAISO Filing provides favorable conditions for projects that have been earmarked by California as being likely to receive ARRA funding. However, SolarReserve asserts that such preferential treatment violates Order No. 2003's mandate that interconnection customers are to be accommodated in a non-discriminatory manner.[50] SolarReserve argues that to ensure that all projects in the transition cluster are treated in a not unduly discriminatory manner, the Commission should direct the CAISO to grant an across-the board waiver of the second and third posting obligations for interconnection customers in the transition cluster. SolarReserve explains that waiving the financial security posting requirements for network upgrades for all projects would mitigate harm in a way that will protect all projects in the transition cluster, while promoting the goals of ensuring the continuation of all viable projects and helping California meet its RPS targets.[51]

38. CalWEA submits that 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. CalWEA argues that given the absence of any evidence connecting particular financial security posting amounts to the viability of projects in the transition cluster, it would be equally reasonable to infer that the Phase II study financial security posting requirement is a threat to the viability of all projects in that cluster. Accordingly, CalWEA argues that 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.[52]

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[49] *Id.*

[50] *Id.* at 8 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 20 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, at P 3 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171, at P 1, *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005)).

[51] *Id.*

[52] CalWEA July 14, 2010 Comments at 9 (CalWEA Comments).

39. CalWEA asserts that even if the CAISO ultimately revises its tariff, many projects in the transition cluster would miss out on the benefit. CalWEA argues that “absent a clear schedule and commitment to revise the security posting requirements, there is no reason to limit the waiver as proposed by the 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.”[53]

40. CalWEA submits that the Commission should require the CAISO to apply the waiver to all projects in the interconnection queue until the CAISO completes its promised stakeholder process to revise the financial security posting requirements. CalWEA notes that 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 . . . .”[54] Further, CalWEA asserts that an across-the-board waiver would give the CAISO time to address a number of concerns about the financial security calculation and posting process that have emerged in stakeholder discussions.[55]

41. As an alternative, CalWEA provides that the CAISO could impose a financial security posting requirement within 360 days after publication of the Phase II study that is the lower of (i) 30 percent of the lower of total transmission cost responsibility assigned to the interconnection customer in the 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. CalWEA argues that 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, CalWEA asserts that the 180 additional days afforded to the interconnection projects to post their incremental Phase II financial security posting would 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.[56]

42. Santa Clara argues that the CAISO’s Filing fails to demonstrate that renewable projects will not be developed without the waiver. Rather, Santa Clara states that the CAISO Filing speculates regarding the potential impact of the waiver on the financing of

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[53] *Id.* at 10.

[54] *Id.* (citing CAISO Filing at 20).

[55] *Id*.

[56] *Id.* at 11-12.

generation and how potential PTO agreements to fund network upgrade costs will potentially improve developers' access to private capital.[57]

43. Santa Clara argues that the Commission should ensure that the CAISO's process does not result in unduly discriminatory conduct by a PTO. Santa Clara contends that the PTOs wield considerable bargaining power when competing for renewable resources because they get to decide if they will front network upgrade costs (and they also have a say in what is a network upgrade as opposed to an interconnection facility). Moreover, Santa Clara explains that the CAISO's Filing recognizes that the PTOs choose to provide up-front funding for projects that they "have identified as critical to meeting the RPS objectives."[58] Santa Clara argues that this provides the PTOs with a significant bargaining advantage and, therefore, the Commission should scrutinize the application of any waiver it grants to ensure there is no discriminatory conduct.

44. Solar Millennium supports the CAISO's waiver request, asserting that the requested waiver would relieve a significant burden on interconnection customers at a time when they are already under significant pressures to meet the ARRA construction deadlines. Solar Millennium explains that to "commence construction" a developer must have all local, state, and federal permits in place, complete preconstruction design and prototype testing, engage all contractors, and order all necessary essential equipment and supplies.[59] Specifically, Solar Millennium argues that by removing the financial security requirements for network upgrades, interconnection customers will stand a much better chance of executing an LGIA before the ARRA deadlines, obtaining financing, and meeting the ARRA deadlines. Solar Millennium asserts that a broad public interest is served by this waiver request and associated PTO financing approvals because renewable projects are needed to meet California's RPS, and expanding the transfer capability of the grid in the locations of interest to Solar Millennium will allow for an additional 1400 MW of capacity in a portion of the grid identified by the U.S. Department of Energy (DOE) as a National Interest Electric Transmission Corridor.[60]

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[57] Santa Clara Comments at 13.

[58] *Id.* (citing CAISO Filing at 3).

[59] Solar Millennium July 14, 2010 Comments at 5 (Solar Millennium Comments). Alternatively, Solar Parties offer that the "commence construction" is also satisfied if more than 5 percent of the cost of the facility is expended on or before the deadline. *See* Solar Parties Comments at 7.

[60] *Id.* at 6 (In accordance with section 216(a) of the Federal Power Act, the U.S. DOE issued an order on October 2, 2007 for a Southwest Area National Corridor. A map

(continued…)

c. **Commission Determination**

45. As discussed below, we find that the waiver's resultant benefits to customers are evident. Accordingly, we grant the CAISO's requested waiver.

46. We disagree with assertions by SolarReserve, CalWEA, and Santa Clara that the waiver may unduly discriminate against interconnection customers in the transition cluster that have not received up-front PTO funding for network upgrades. As discussed above,[61] the requested waiver is limited to projects in the transition cluster for which the PTO has committed to up-front fund the customer's share of network upgrade costs. Previously, the Commission has recognized the unique circumstances of particular types of generators and has concluded that dissimilar treatment of dissimilar resources does not constitute undue discrimination.[62] Under the CAISO's proposal, projects with PTO up-front funding are not similarly situated with projects without commitments from a PTO to up-front fund their network upgrades.[63] Accordingly, we find that the CAISO's proposed limited waiver is not unduly discriminatory.[64]

47. We do not agree with SolarReserve and CalWEA that the proposed waiver should be expanded to waive financial security posting requirements for all projects in the transition cluster. The CAISO's Filing maintains the balance that was struck in the GIPR

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for the Southwest Area National Corridor and the Federal Register Notice are *available at*: http://nietc.anl.gov/nationalcorridor/index.cfm).

[61] *See supra* P 20-23.

[62] *See, e.g., Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,087, at P 43 (2010); *Westar Energy Inc.*, 130 FERC ¶ 61,215, at P 35-36 (2010) (allowing Westar to assess different generator regulation charges for intermittent resources); *Southwest Power Pool, Inc.*, 127 FERC ¶ 61,283, at P 29 (2009) (allowing the Southwest Power Pool to modify its eligibility requirements and corresponding cost allocation methodology in order to designate wind resources as network resources); *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, at P 69 (2007) (accepting a CAISO proposal with special rate treatment for the costs of interconnection facilities for location constrained resources).

[63] As explained further below, the issue of whether the PTOs unduly discriminated when determining eligibility for up-front funding is not before us in this proceeding.

[64] The Commission has found that a security deposit should not exceed the interconnection customer's obligation. *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,005, at P 37 (2010).

Order and the November 2009 Order, which were based upon 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."[65] The CAISO has demonstrated that the financial security posting requirements are not necessary for projects receiving up-front PTO funding, as the PTO will assume a portion of the financial risk and eliminate the need for these projects to also post financial security. However, no demonstration has been made that the financial security posting requirements are no longer necessary for entities that do not have PTO up-front funding. Although CalWEA argues that projects undergoing Phase II studies have already made their Phase I posting, which should have incented non-mature projects to step out of the queue, CalWEA does not identify any reason or change in circumstance that would make the financial posting requirements unnecessary, so as to justify deviating from the previously approved financial posting requirements. Moreover, we find that CalWEA has provided no evidence to support its assertion that it would be reasonable to infer from the CAISO Filing that the Phase II study financial security posting requirement is a threat to the viability of all projects in that cluster. Rather, we reiterate that projects ineligible for waiver are not affected if the proposed waiver is granted.[66] For these reasons, we will not expand the CAISO's proposal to encompass waiving the financial security posting requirements for all projects in the transition cluster.

48. We find that commenters' concerns that the waiver does not establish criteria governing PTO discretion to finance network upgrades, and that the waiver does not specify when PTOs will make these funding decisions are beyond the scope of this proceeding. Under the CAISO Tariff, PTOs have the option to elect to fund the full capital for identified Reliability and Deliverability Network Upgrades.[67] Moreover, any project that does not receive up-front PTO funding of its network upgrades will merely be required to satisfy its existing obligations and will not be harmed or disadvantaged from its current position by the Commission granting the requested waiver. Also, we note that any party that finds it has suffered undue discrimination under the CAISO Tariff may file a complaint with the Commission under section 206 of the FPA.[68]

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[65] November 2009 Order, 129 FERC ¶ 61,124 at P 41; *see also* GIPR Order, 124 FERC ¶ 61,292 at P 60.

[66] *See supra* P 27.

[67] *See* CAISO Tariff Appendix Y, LGIP for Requests in a Cluster Window, Section 12.3.1.

[68] 16 U.S.C. § 824e; *see also Sacramento Municipal Utility District v. FERC,*

(continued…)

49. We find that a waiver that removes the financial security posting requirements when a PTO has agreed to up-front fund the network upgrades will help eligible interconnection customers execute an LGIA, obtain financing, and meet the ARRA deadlines.[69] We do not agree with Santa Clara's assertion that the CAISO Filing fails to demonstrate that renewable projects will not be developed without the waiver. Rather, we note the potential benefits to projects eligible for waiver and the fact that no party will be disadvantaged by granting waiver. Moreover, while commenters argue that all renewable projects in the queue will help meet RPS targets, not just those projects for which the CAISO is seeking waiver, we reiterate that the CAISO has proposed to waive the financial security posting requirements for a narrow group for which a PTO is assuming the risk that would otherwise be covered by the required financial security postings. No showing has been made that the financial security posting requirements are not necessary for transition cluster projects that have not received up-front funding from a PTO.

50. Finally, as noted above, CalWEA asserts that even if the CAISO Tariff is revised many projects in the transition cluster would miss out. However, even if this claim were true it would not invalidate the legitimate basis for the instant waiver that has been demonstrated to be just and reasonable for certain projects. In addition, upon finding that good cause exists to grant the requested waiver, we need not consider CalWEA's alternate financial security posting proposal. For the above reasons, we find that the benefits to the customers from granting waiver are evident.

5. Requested Clarifications

a. Comments and Protests

51. Solar Parties and Solar Millennium assert that the CAISO Filing lacks clarity as to when the tariff waiver would become effective and relieve the interconnection customer from making a second and third posting of financial security. Specifically, Solar Parties argue that the financial security posting requirements should be waived as soon as the

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No. 07-1208, at 41 (D.C. Cir. July 23, 2010) (finding that, if in the future, an allocation process results in an unjust outcome, San Diego may petition the Commission to order appropriate changes at that time under section 206 of the FPA).

[69] Solar Millennium submits that if the requested waiver is granted and it obtains a timely tariff waiver, it will be relieved of a significant hurdle in meeting its ARRA deadlines. Solar Millennium Comments at 6.

PTO commits to fund the interconnection customer's share of the network upgrades either in writing or by filing a request for abandoned plant cost approval with the Commission.[70] In addition, Solar Parties argue that the Commission should determine that application of the requested waiver will not automatically render an LGIA non-conforming.

52. Solar Millennium submits that to be effective in assisting ARRA eligible projects, the tariff waivers are needed now. Solar Millennium explains that to obtain financing in advance of the ARRA deadlines, most interconnection customers will have to make the second security posting before the 180-day due date runs so that they can obtain LGIAs. Solar Millennium explains that to start construction by December 31, 2010, interconnection customers will have to make the financial security posting requirements while the abandoned cost approval applications are either being prepared or are pending before the Commission. Thus, Solar Millennium urges the Commission to require the CAISO to clarify that the proposal will apply before the posting requirements are due.[71]

53. MENAT asks that the Commission confirm that the requested waiver will apply to all interconnection customers in the cluster that otherwise would bear cost responsibility for the network upgrades that a PTO has agreed to fund.[72]

b. Commission Determination

54. The Commission has determined that good cause has been shown to grant waiver of the Commission's notice requirements pursuant to section 35.11 of the Commission's regulations.[73] Thus, the waiver requested in the CAISO Filing is effective upon the date of this order so that it may immediately relieve projects as soon as they become eligible

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[70] Solar Parties Comments at 10.

[71] Solar Millennium explains that if the tariff waiver would only apply once a PTO has obtained final Commission approval for abandoned plant cost recovery, the requested waiver will be of no assistance to ARRA eligible projects, as final Commission approval would occur after interconnection customers have to start construction. Solar Millennium Comments at 7.

[72] MENAT Comments at 3.

[73] 18 C.F.R. § 35.11 (2010).

for the waiver (i.e., projects in the transition cluster with unequivocal commitments[74] from a PTO to up-front fund network upgrades) from the requirement to make the second and third financial security postings.

55. We find that the application of the requested waiver will not automatically cause an LGIA to be non-conforming. Section 11.5 of the *pro forma* LGIA contains the relevant language regarding security requirements:

> The Interconnection Customer is obligated to provide all necessary Interconnection Financial Security required under Section 9 of the LGIP in a manner acceptable under Section 9 of the LGIP. Failure to satisfy the LGIP's requirements for the provision of Interconnection Financial Security shall result in the Interconnection Request being deemed withdrawn and subject to LGIP Section 3.8.

The CAISO waiver request does not change the requirements of Section 11.5 of the LGIA.[75] The CAISO Filing simply waives the financial security posting requirements for network upgrades that the PTO has agreed to up-front fund. In this case, once waived, these financial security postings are no longer required under Section 9 of the Cluster LGIP. Accordingly, we find that the granting of waiver does not cause an LGIA to be non-conforming.[76]

56. In response to MENAT, the CAISO Filing will waive the financial security posting requirements used to secure network upgrades for those interconnection customers in the transition cluster for whom a PTO has committed to provide up-front funding of network upgrade costs. The Commission finds that this should include any interconnection customer with whom the PTO has entered into an LGIA or other binding agreement to provide up-front funding for network upgrades.

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[74] *See supra* P 15.

[75] CAISO Tariff Appendix Z, Section 11.5.

[76] However, the introduction of changes in an LGIA such as abandoned plant approval may render the LGIA non-conforming. *See Cal. Indep. Sys. Operator Corp.*, 131 FERC ¶ 61,016, at P 23 (2010).

<u>The Commission orders</u>:

The CAISO'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.