

134 FERC ¶ 61,232  
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.

Calpine Corporation

Docket No. ER11-2085-000

ORDER GRANTING LIMITED WAIVER

(Issued March 25, 2011)

1. On November 10, 2010, 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. Specifically, Calpine's request for waiver will permit Sutter to qualify under certain limited conditions for a full refund of its initial posting of its interconnection financial security submitted pursuant to section 9.2 of the LGIP.<sup>1</sup> 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 (SMUD) Balancing Authority Area.<sup>2</sup> Sutter is owned and operated by Calpine's subsidiary company,

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<sup>1</sup> Calpine November 10, 2010 Request for Limited Waiver of the CAISO Tariff Appendix Y to Permit Full Recovery of Interconnection Financial Security, Docket No. ER11-2085-000 (Request for Waiver). On January 20, 2011, Calpine made the Commission aware that CAISO had informed Calpine that its requirement to post its initial financial security by approximately February 15, 2011 had been postponed until CAISO issued a new Phase I Interconnection Study Report.

<sup>2</sup> 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 the CAISO and within CAISO's Balancing Authority Area,

(continued...)

Calpine Construction Finance Corporation, and is located near Yuba City in Sutter County, California. Since commencement of its 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.

## **II. CAISO Tariff**

3. 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 LGIP on or before ninety (90) calendar days after publication of the final Phase I Interconnection Study Report,<sup>3</sup> in an amount determined by CAISO.

4. LGIP section 9.4 states that “[w]ithdrawal of an Interconnection Request ... shall result in the release to the Interconnection Customer of any Interconnection Financial Security posted by the Interconnection Customer for Participating [transmission owners’ (PTO)] 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.”

5. 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.

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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.

<sup>3</sup> The Phase I Interconnection Study Report includes the assignment of preliminary costs associated with the necessary network upgrades resulting from an interconnection customer's proposed interconnection request. The report also identifies the cost responsibility of each interconnection customer associated with the interconnection facilities provided by the applicable PTO(s) on behalf of the respective interconnection customer. *See* CAISO Tariff, Appendix Y, section 6.2.

### III. Waiver Request

6. Calpine seeks a waiver of Appendix Y to permit two limited circumstances under which Sutter could withdraw from the interconnection queue and receive full recovery of its initial posting of interconnection financial security under LGIP section 9.4.1.

7. Calpine argues that waiver is appropriate because Sutter does not fall within the two reasons which customarily could require the posting of interconnection financial security: (1) to ensure that new generation projects seeking interconnection are financially viable;<sup>4</sup> and (2) to give interconnection customers the benefit of knowing their total exposure to network upgrade costs well in advance of construction.<sup>5</sup>

8. Calpine explains that Sutter is an existing facility and that it is willing to post the initial interconnection financial security in accordance with the requirements of LGIP section 9.2. However, through the waiver, Sutter seeks the ability to recover its financial security because CAISO's final Phase I Interconnection Study Report will not provide a comprehensive calculation of the total transmission upgrade costs prior to Sutter's posting of its initial interconnection financial security, as is customary. Calpine explains that to approve and effectuate Sutter's interconnection request, CAISO will need to coordinate studies with affected systems,<sup>6</sup> including Western (to which Sutter currently interconnects) and SMUD (Sutter's current Balancing Authority Area). Calpine states that the additional studies needed to determine Sutter's potential cost responsibility for upgrades on affected systems cannot begin until after CAISO completes its Phase I Interconnection Study Report.<sup>7</sup> Calpine also notes that Sutter's disconnection from Western and its direct interconnection to a 500 kV transmission line on the CAISO grid will require a Western Electricity Coordinating Council (WECC) rated-path review. Calpine states that the results of the WECC rated-path review could materially affect the total costs of the interconnection, particularly on affected systems, for which Sutter could be responsible. Calpine points out that the WECC rated-path review is not contemplated

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<sup>4</sup> Request for Waiver at 1-2 (citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, at P 146, 151 (2008) (September 26 Order); *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132, at P 47 (2010)).

<sup>5</sup> Request for Waiver at 2 (citing September 26 Order, 124 FERC ¶ 61,292 at P 155-156).

<sup>6</sup> An "affected system" is an electric system other than the CAISO-controlled grid that may be affected by the proposed interconnection, including PTO's electric systems that are not part of the CAISO-controlled grid. CAISO Tariff, Appendix A.

<sup>7</sup> Request for Waiver at 2.

in LGIP's sequencing of interconnection studies. Calpine states that CAISO informed it that the WECC process will not begin until after the final Phase I Interconnection Study Report is released and Calpine posts its initial interconnection financial security.<sup>8</sup> Calpine notes that there are no deadlines in the LGIP for determining Sutter's cost responsibility for modifications that may be necessary to remedy Sutter-related impacts on the path rating (including a remedial action scheme) or affected systems. Therefore, Calpine argues that the requested waiver is appropriate because the posting of the interconnection financial security will not, in this instance, give Sutter the benefit of knowing its total exposure to network upgrade costs well in advance of construction.

9. Specifically, Calpine requests that the Commission allow Sutter to withdraw from the interconnection queue and receive full recovery of its initial posting of interconnection financial security under LGIP section 9.4.1 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 initial financial security (sunset date);<sup>9</sup> or (2) the aggregate amount of upgrade costs for all affected systems and WECC path mitigation, combined, exceeds the cost estimate in the Phase I Interconnection Study Report by at least \$1 million.<sup>10</sup> 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.

10. If Sutter goes forward with the interconnection without knowledge of its total cost responsibility, then it would accept the risk that those costs may equal or exceed the \$1 million threshold.<sup>11</sup> Calpine states that Sutter could also proceed with the

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> Calpine states that the waiver would not be available after the sunset date, unless CAISO at its discretion provides consent for an extension.

<sup>10</sup> In its waiver request, Calpine requests waiver if the final total affected system cost responsibility, received by the sunset date, equals or exceeds \$1 million. Request for Waiver at 4. In its comments, CAISO seeks clarification that the \$1 million threshold would be an amount at least \$1 million above the cost estimates for the aggregate amount of upgrade costs for all affected systems and WECC path mitigation that are set forth in CAISO's Phase I Interconnection Study Report, rather than an absolute value of \$1 million for these costs. CAISO Comments at 5. In its answer, Calpine agrees with CAISO's clarification. Calpine Answer at 3.

<sup>11</sup> *Id.*

interconnection, subject to existing LGIP rules on security going forward, if it chooses to accept total cost responsibility in excess of the \$1 million threshold.<sup>12</sup>

11. If, upon withdrawal of Sutter's interconnection request during the waiver period, the total network upgrade costs allocated to the cluster members remain unchanged, Sutter agrees to forego the refund of the portion of its security deposit that corresponds to its network upgrades allocated costs to ensure that PG&E, the transmission owner, is no worse off with respect to this component of the network upgrades than it would have been absent this waiver. Calpine notes that Sutter's commitment is limited to those *pro rata*-shared network upgrade costs to which PG&E is exposed that are attributable solely to Sutter's withdrawal as of the sunset date. Calpine states that any withdrawal of Sutter's interconnection request after the sunset date would be processed in accordance with CAISO's LGIP.

#### **IV. Notice of Filing and Responsive Pleadings**

12. Notice of Calpine's filing was published in the *Federal Register*, 75 Fed. Reg. 74033 (2010), with interventions and comments due on or before December 1, 2010. CAISO; Cities of Santa Clara, California and Redding, California and the M-S-R Public Power Agency, jointly; City of Roseville, California; Modesto Irrigation District (Modesto); SMUD, Transmission Agency of Northern California (TANC); and Western the filed timely motions to intervene. CAISO, Modesto, SMUD and TANC filed comments. Western filed a protest. Calpine and CAISO filed answers.

13. CAISO states that, given these unique circumstances, it does not object to Calpine's request for a limited waiver of provisions of the LGIP, subject to the clarification agreed to by CAISO and Calpine.<sup>13</sup> CAISO states that it is sympathetic to Calpine's unusual circumstances because Sutter is a currently operating facility that is seeking to reconnect to the CAISO Balancing Authority Area. CAISO notes that it is uncommon for its interconnection studies to require further studies through the WECC path rating process and for an interconnection customer to be subject to the amount of cost uncertainty for potential network upgrades. CAISO states that it cannot accurately quantify Sutter's exposure to potential network upgrades in advance of the affected systems' determination of those costs.

14. Western argues that, prior to deciding whether to grant Calpine's waiver request, the Commission should examine the cost estimates for the project and whether Calpine

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

can afford to pay for the network upgrades.<sup>14</sup> Western asserts that, while Sutter is currently operational, due to Calpine's failure to satisfy all of Western's claims resulting from Calpine's bankruptcy, there is no assurance that it can adequately fund the costs associated with the proposed new interconnection.

15. Western also argues that the Commission should require Calpine to provide reasonable security to demonstrate its commitment to the project. Western recommends that rather than disconnecting Sutter from Western's system, the Commission should open a proceeding under section 206 of the Federal Power Act (FPA) to determine whether CAISO's pilot pseudo-tie program<sup>15</sup> should be made long-term.

16. Calpine answers that its bankruptcy and the disposition of Western's claims arising out of the bankruptcy proceedings are beyond the scope of this proceeding.<sup>16</sup> Calpine states that there is no need or basis for the Commission to examine Calpine's financial wherewithal.<sup>17</sup> Calpine adds that there is no need for the Commission to require it to provide financial security to demonstrate Calpine's commitment to the project because it has stated that it will adhere to the LGIP section 9.2 requirement to post the financial security. Calpine notes that it has not requested waiver of the additional study deposits that would be required following the completion of subsequent study phases.

17. Both Calpine and CAISO argue that there is no need for the Commission to initiate an FPA section 206 proceeding to investigate the feasibility of a long-term pseudo-tie agreement for Sutter as an alternative to disconnecting from Western's system.<sup>18</sup> Both parties note that a CAISO-administered stakeholder process on the feasibility of a long-term pseudo-tie agreement is already underway. CAISO states that it would be disruptive and inefficient for the Commission to institute an overlapping section 206 investigation. CAISO anticipates submitting proposed tariff amendments to the Commission on this issue in 2011.<sup>19</sup> Calpine and CAISO argue that an FPA section 206

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<sup>14</sup> Western Protest at 3-5.

<sup>15</sup> A pseudo-tie is a remote real-time meter reading of a generator's output that is used as a tie-line flow in an area control error equation, thereby allowing a generator in one control area to appear to be in another control area electrically.

<sup>16</sup> Calpine Answer at 4.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 5; CAISO Answer at 1-2.

<sup>19</sup> CAISO Answer at 2.

investigation would be outside the scope of this proceeding and urge the Commission to deny Western's request.

18. Finally, Calpine welcomes Commission involvement, separate from this proceeding, to assist Calpine and Western with potential disputes relating to Sutter's transition from its current relationship with Western to a direct interconnection with the CAISO-controlled grid.<sup>20</sup> Calpine states that informal discussions under the auspices of the Commission would facilitate a constructive resolution of Western and Calpine's respective concerns.<sup>21</sup>

19. SMUD states that given Calpine's acknowledgment of its financial responsibility for adverse impacts the interconnection may have on affected systems, it expects Calpine will mitigate any impacts that result from the interconnection, as identified in the WECC rated-path review.<sup>22</sup> TANC notes that "[i]nterconnection with facilities that comprise the Electric System of a Party to the Amended Owners Coordinated Operation Agreement (Amended OCOA) requires adherence to the terms for Modification."<sup>23</sup> It adds that any modifications to a party's electric system must avoid adverse impacts. TANC therefore argues that the studies required for Sutter's proposal need to evaluate and identify the required mitigation of adverse impacts on the California-Oregon Transmission Project, SMUD and Western. Calpine responds that it is premature for the Commission to comment in this proceeding on possible mitigation issues that may arise in connection with certain identified agreements.

## V. Discussion

### A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions 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 will accept Calpine and CAISO's answers because they have provided information that assisted us in our decision-making process.

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<sup>20</sup> Calpine Answer at 6 n.17.

<sup>21</sup> *Id.*

<sup>22</sup> TANC concurs with SMUD's Comment. TANC Comments at 6-7.

<sup>23</sup> TANC Comments at 6 (citing PG&E FERC Rate Schedule No. 229).

## B. Commission Determination

21. The Commission grants Calpine's request for a limited waiver of Appendix Y to the CAISO tariff, as modified by the clarification agreed to by Calpine and CAISO.<sup>24</sup> The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.<sup>25</sup> 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.<sup>26</sup> As elaborated below, we find good cause exists to grant a limited waiver of Appendix Y of the CAISO LGIP because Calpine's request meets these criteria.

22. We agree that Sutter's interconnection to the CAISO system presents unique circumstances which set this interconnection request apart from other initial interconnection requests. In accordance with LGIP section 9.2, Sutter is required to post its financial security on or before 90 calendar days after the publication of the final Phase I Interconnection Study Report.

23. In the instant case, Sutter commits to making an initial financial security posting pursuant to LGIP section 9.2. However, given the need for review by third parties outside the interconnection review contemplated in the LGIP process, Sutter seeks some flexibility to withdraw from the interconnection queue and fully recover its financial security posting in certain circumstances.<sup>27</sup> Because this set of unusual circumstances

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<sup>24</sup> See *supra* note 10.

<sup>25</sup> 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).

<sup>26</sup> 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); *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,020 (2010); *Coso Energy Developers*, 134 FERC ¶ 61,088 (2011).

<sup>27</sup> Sutter has committed to forego the refund of the portion of its security deposit associated with Sutter's pro-rated costs of shared network upgrades in the event shared network upgrade costs remain unchanged upon withdrawal of Sutter's interconnection request as of the sunset date.

has made Sutter'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.<sup>28</sup>

24. We find that the waiver affords Sutter 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 Sutter's 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, Sutter shall provide notice to CAISO of whether it intends to proceed with the interconnection or withdraw from the queue. Additionally, to the extent that Sutter receives a final determination of its cost responsibilities from all affected systems earlier than 90 days prior to the sunset date, Sutter 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 Sutter proceeds, its interconnection request will be subject to the CAISO LGIP requirements. Therefore, once the necessary studies are completed, enabling Sutter to assess its total cost responsibility for the interconnection, Sutter's responsibility to post subsequent financial security obligations will not be delayed or reduced.

25. We find that Western's requests for the Commission to examine how much the project will cost and whether Calpine can pay for it are beyond the scope of this proceeding. We decline to make an assessment of either the Phase I Interconnection Study Report or Calpine's overall financial position for the purpose of this proceeding. We find Western's request that we require Calpine to provide financial security to demonstrate its commitment unnecessary because Calpine has stated that Sutter will follow the LGIP financial security posting requirements, and we have already found such security posting requirements to be sufficient. For these reasons, we deny these requests.

26. We also find that Western's request for the Commission to open an FPA section 206 proceeding regarding CAISO's pilot pseudo-tie program is outside the scope of this proceeding. This proceeding is limited to Calpine's desire to interconnect Sutter directly to the CAISO-controlled grid and whether Calpine has shown good cause for waiver. Furthermore, CAISO explains that it is in the midst of a stakeholder initiative on dynamic scheduling issues, where any interested party may participate and propose suggestions. We note that CAISO expects the stakeholder process to conclude in 2011, at which time it plans to submit a filing to the Commission of proposed amendments to its tariff. We

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<sup>28</sup> See *Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,005 (2010).

also note that, individually, Western and Calpine may avail themselves of the Commission's dispute resolution services to resolve issues between them.<sup>29</sup>

27. With respect to TANC's desire to avoid adverse impacts on facilities that comprise the system of any party to the Amended OCOA, as required under its terms for modification, we note that the facilities of the parties to the Amended OCOA are among the affected systems to be studied under Sutter's proposed interconnection request. We expect that Sutter's total affected system cost responsibility will include any costs resulting from such adverse impacts, if any. As Calpine has stated, if Sutter decides to go forward with its interconnection request, it commits to adhering to any network upgrade requirements and additional financial requirements set forth in the LGIP. Therefore, we find that TANC's concerns are premature at this time.

The Commission orders:

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

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>29</sup> The Director of the Commission's Dispute Resolution Service (DRS) is Deborah Osborne, who can be contacted at (202) 502-8831. The DRS helpline may also be reached at (877) FERC-ADR (877) 337-2237) or at (202) 502-6651.