

135 FERC ¶ 61,083
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

TGP Development Company, LLC

v.

Docket No. EL11-17-000

California Independent System Operator Corp.

ORDER ON COMPLAINT AND DENYING MOTION FOR STAY

(Issued April 27, 2011)

1. On January 28, 2011, TGP Development Company, LLC (TGP) filed a complaint against the California Independent System Operator Corporation (CAISO) under section 206 of the Federal Power Act (FPA).¹ TGP alleges that the Phase II generator interconnection study results that CAISO provided on or about August 12, 2010 for four of TGP's projects in the transition cluster interconnection queue were not "final." Therefore, TGP argues that the publication of these study results did not trigger the 180-day second financial security posting requirement delineated in CAISO's tariff. TGP requested that the Commission issue an order by no later than February 4, 2011 and grant a motion that stays TGP's obligation to post financial security until further Commission action. For the reasons discussed below, the Commission denies TGP's request for stay of its financial security posting obligation. The Commission also denies the complaint, because TGP has failed to meet its burden under section 206 of the FPA.

I. Background

2. TGP, a wholly-owned subsidiary of Terra-Gen Power, has proposed to interconnect four projects to the existing non-CAISO-controlled Dixie Valley-Oxbow 230 kV line, which interconnects to the CAISO-controlled grid at Southern California Edison Company's (SoCal Edison) Control substation.² TGP states that CAISO studies

¹ 16 U.S.C. § 824e (2006).

² TGP January 28, 2011 Complaint at 6, 8 (TGP Complaint).

these projects, along with certain other projects in the transition cluster interconnection queue, under the former Large Generator Interconnection Procedures (LGIP) in Appendix Y of CAISO's tariff.³ TGP states that CAISO studied two other projects, which it refers to as Q58 and Q185, as part of the serial study group and pursuant to the pre-GIPR interconnection procedures, and that both projects proposed to interconnect to the CAISO-controlled grid at the same interconnection point as TGP's four projects.⁴ According to TGP, CAISO completed the serial study process for Q58, but not for Q185, which withdrew from the interconnection queue on or about January 3, 2011.⁵

3. Generally, TGP alleges that the Phase II interconnection study results it received were "non-final," as they lacked information critical to its business analysis on whether to proceed with its projects. According to TGP, CAISO's Phase II study results, which it received on or about August 12, 2010, concluded that TGP's projects would contribute to overloading of transmission facilities and, therefore, would require mitigation. TGP states that CAISO proposed three alternatives to mitigate certain impacts described in the study results. The first alternative involves new radial shared generation interconnection facilities that could later be classified as location constrained resource interconnection facilities. The second and third alternatives, according to TGP, involve variations of primarily network solutions to interconnect the projects. Finally, TGP states that 180 days after the publication of the final Phase II study results it is required to make its second financial security posting on or before February 7, 2011, pursuant to Appendix Y, Section 9.3.1 of CAISO's tariff.⁶

³ On September 26, 2008, the Commission accepted CAISO's proposed Generator Interconnection Process Reform (GIPR) tariff amendments. *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008), *reh'g denied*, 127 FERC ¶ 61,177 (2009) (GIPR Order). As a first step in its GIPR process, CAISO petitioned the Commission for waiver of certain of its tariff provisions to waive the time deadlines in its LGIP and the permissible duration for a queue cluster window. *Id.* P 6 (citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008)). The purpose of this waiver was to create three categories of interconnection request: 1) a "grandfathered serial study group that [would] continue to be processed under the existing LGIP"; 2) an "initial GIPR cluster to be treated under the GIPR tariff"; and 3) a "transition cluster generally subject to the GIPR but with the recognition that those interconnection requests were initially filed under the existing LGIP tariff structure." *Id.*

⁴ TGP Complaint at 8.

⁵ *Id.* at 9.

⁶ *Id.* at 9-10.

II. TGP Complaint and Motion for Stay

4. TGP disagrees with CAISO about this deadline, arguing that CAISO's Phase II studies were inadequate in several respects and therefore should not be deemed final for the purpose of initiating the 180-day second posting obligation. It alleges that CAISO's study results omitted critical information from the radial interconnection alternative, including the proposed total project transfer capability for each TGP project. TGP considers this information critical for determining its total cost responsibility for each project. Moreover, TGP argues that this detail is especially critical for location constrained resource interconnection upgrades, because the cost responsibility for such facilities differs from typical radial upgrades. TGP states that CAISO responded to its request for information by stating that performing the necessary studies to determine total project transfer capability would be outside the scope of the Phase II studies. According to TGP, CAISO also claimed that it would be unable to complete such an analysis before TGP was required to make its service election.⁷ Based on CAISO's response, TGP asked CAISO to proceed by making the assumption that it would adopt one of the network solutions but stated that it would not finalize its election until CAISO provided the requested information.⁸

5. TGP also states that CAISO failed to clear the serial study group interconnection requests, including Q185, prior to establishing the base case for its projects. TGP claims that, because of constrained transmission access, finalizing the studies for the serial study group was particularly important in the region where TGP's projects would be located.⁹ TGP argues that, because of CAISO's failure, Q185 had not yet made "the required election of which Delivery Network Upgrades would be installed," and therefore, CAISO "simply assumed" that Q185 would not install any delivery network upgrades.¹⁰ TGP contends that if Q185 had elected to install delivery network upgrades, some or all of the facilities identified in TGP's Phase II studies would have become unnecessary. TGP believes that its costs and the second financial security posting obligation would have been reduced if Q185 had opted to install any portion of delivery network upgrades.¹¹

⁷ *Id.* at 10.

⁸ *Id.* at 10-11.

⁹ *Id.* at 11.

¹⁰ *Id.*

¹¹ *Id.* at 12

6. Again, TGP argues that a Phase II study should not be considered “final” as long as the study results rest upon missing essential financial or technical information. TGP argues further that the Phase II study results for its projects were not final until Q185 withdrew, roughly six weeks prior to the deadline for the second financial security posting. TGP takes this position, because it believes that the network upgrades made necessary by its projects and the associated cost allocation were not firmly established until Q185 withdrew.¹²

7. Additionally, TGP claims that CAISO’s refusal to afford TGP the same 180-day financial security posting deferral that CAISO requested for seven other transition cluster customers in Docket No. ER11-2503-000 is unduly discriminatory.¹³ TGP argues that in order to avoid being unduly discriminatory, such a waiver should apply to all interconnection customers with material study errors or assumptions that require revisions. TGP maintains that granting a waiver on the basis it describes would meet the Commission’s waiver test, because the waiver would: (1) be based on unintentional errors; (2) be limited in scope; (3) benefit all adversely affected interconnection customers in the transition cluster; (4) not cause undesirable consequences; and (5) place the affected parties in the position they would otherwise be in, to the greatest extent possible, but for CAISO’s mistake.

8. Finally, TGP also filed a motion for stay arguing that the Commission may be unable to return TGP to the status quo in the absence of a stay of the second financial security posting requirement. Although TGP acknowledges that purely economic circumstances generally do not warrant a stay, it asserts that the Commission may consider granting a stay when the Commission may otherwise be unable to return injured parties to the status quo.¹⁴ TGP argues that a stay is necessary so that TGP will not be required to post its second financial security deposit with less than one-quarter of the review time provided by CAISO’s tariff. TGP points out that its only alternative to making the second financial security posting would be to withdraw from the queue. According to TGP, it may be irreparably harmed if it is forced to make this choice. TGP asserts that withdrawing from the queue will result in the loss of some or all of its first security deposit, as well as lost commercial opportunities. To substantiate TGP’s claim that it may be forced to withdraw from the interconnection queue, TGP asserts that: (1) it did not know the final posting amounts at least 180 days prior to the CAISO-asserted deadline; (2) it had to deal with the additional burden of being required to obtain and post

¹² *Id.* at 13-14.

¹³ *Id.* at 16-18.

¹⁴ *Id.* at 19 (citing *Cal. Indep. Sys. Operator Corp.*, 114 FERC ¶ 61,339, at P 21 (2006); *Mont. Power Co.*, 85 FERC ¶ 61,400, at 62,535 (1998)).

a higher amount of financial security than should have been required; and (3) CAISO's LGIP does not explicitly provide for full release of excessive financial security postings if CAISO determines that lesser amounts are required.¹⁵ TGP also claims that potentially having to withdraw its "otherwise meritorious renewable energy projects," which are under development to meet California's renewable portfolio standard requirements, would not be in the public interest.

III. Notice of Filing and Responsive Pleadings

9. Notice of the complaint was published in the *Federal Register*, 76 Fed. Reg. 7186 (2011), with answers to the motion for stay due on or before February 14, 2011 and interventions and protests due on or before February 17, 2011.

10. Calpine Corporation, Green Borders Geothermal, LLC, and Modesto Irrigation District filed timely motions to intervene. SoCal Edison filed a timely motion to intervene and an answer to TGP's motion to stay.¹⁶

11. On February 14, 2011, CAISO filed a timely answer to the motion to stay.¹⁷ On February 17, 2011, CAISO filed an answer to the complaint.¹⁸ On February 17, 2011, Ormat Technologies, Inc. filed a motion to intervene. On February 22, 2011, TGP filed a reply to SoCal Edison's and CAISO's answers. On February 23, 2011, TGP filed an errata and revised reply.¹⁹

A. SoCal Edison's Answer to the Motion to Stay

12. SoCal Edison asks the Commission to reject TGP's stay request. SoCal Edison also claims that TGP's circumstances do not warrant a tariff waiver, because TGP has not shown that it is similarly situated to the seven interconnection customers covered by CAISO's waiver petition.²⁰

¹⁵ *Id.* at 20-21.

¹⁶ SoCal Edison February 14, 2011 Answer (SoCal Edison Answer).

¹⁷ CAISO February 14, 2011 Answer (CAISO Answer to Motion for Stay).

¹⁸ CAISO February 17, 2011 Answer (CAISO Answer to Complaint).

¹⁹ TGP February 23, 2011 Errata and Revised Reply (TGP Reply).

²⁰ SoCal Edison Answer at 5.

13. SoCal Edison also argues that when the justness and reasonableness of a financial security posting is at issue, the correct process is for the interconnection customer to post the security, subject to refund.²¹ SoCal Edison notes, however, that TGP has attempted to conditionally withdraw from the interconnection queue subject to reinstatement if TGP is successful in this proceeding. SoCal Edison argues that CAISO's tariff does not provide for conditional withdrawal from the interconnection queue and that TGP is attempting to retain its queue position without risking forfeiture of its financial security. SoCal Edison disagrees with TGP and maintains that TGP must post its second financial security installments, subject to refund in order to retain its current interconnection queue positions.²²

14. SoCal Edison also takes issue with TGP's argument that CAISO's assumption that Q185 would interconnect as energy-only was inappropriate. According to SoCal Edison, TGP argued that this assumption resulted in the assignment of network upgrades to TGP's projects that could have been assigned to Q185, if Q185 had chosen full deliverability status. SoCal Edison responds that the serial interconnection process does not require generators to choose between interconnection as energy-only or full deliverability projects until the execution of a large generator interconnection agreement (LGIA).²³ SoCal Edison therefore concludes that CAISO's assumption in its TGP Phase II study base case that Q185 would elect to be energy-only was appropriate to properly assess costs to transition cluster generators like TGP. For these reasons, SoCal Edison argues that the resultant cost allocation of the network upgrades to TGP was consistent with CAISO's planning protocols.²⁴

15. Additionally, SoCal Edison argues, among other things, that allowing TGP 125 additional days to decide whether to post the required financial security will create uncertainty. SoCal Edison argues that allowing TGP to conditionally withdraw its projects from CAISO's interconnection queue would likewise create further uncertainty. More specifically, it argues that granting TGP's request will increase uncertainty about which projects to include in the transmission base case; therefore CAISO will be unable to accurately determine what network upgrades are necessary and how to allocate the associated costs appropriately among the projects remaining in CAISO's interconnection

²¹ *Id.* at 5 (citing *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,197 (2009) (*Clipper Wind*)).

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 7.

queue. Consequently, SoCal Edison states that it could be required to pay for network upgrades for a previously queued project that failed to materialize.

B. CAISO Answer to Motion for Stay

16. CAISO states that TGP has not shown irreparable harm and, therefore, has failed to justify a stay. It asks the Commission to deny the relief requested by TGP and, instead affirm existing precedent that requires interconnection customers to post financial security during the pendency of an FPA section 206 proceeding.²⁵ CAISO states that in the *Clipper Wind* case, a Commission-instituted FPA section 206 proceeding, an interconnection customer sought clarification and waiver of the requirement to post the full amount of its interconnection security.²⁶ According to CAISO, the interconnection customer explained that as a result of its decision to switch from full capacity to energy-only service, the amount of required security exceeded its total network upgrade costs. CAISO states that the customer argued that the Commission might ultimately conclude that the required amount of financial security was unjust and unreasonable.²⁷ CAISO states that the Commission denied relief and held that interconnection customers must post interconnection financial security, subject to refund, until such time as the Commission determines whether the required amount of financial security is just and reasonable.²⁸ CAISO notes that in the *Clipper Wind* case, the Commission also confirmed that CAISO's tariff remains in effect until resolution of the FPA section 206 proceeding. Because the Commission has not yet found the amount of interconnection financial security to be unjust or unreasonable, CAISO argues that TGP must post the financial security associated with its interconnection request in order to remain in the interconnection queue during the pendency of this proceeding.²⁹ Moreover, CAISO states that TGP concedes that the amount of the financial security is just and reasonable for the network upgrades described in the Phase II results. CAISO concludes that TGP's intention is simply to delay the second financial security posting requirement.³⁰

17. Furthermore, CAISO argues that TGP will suffer no irreparable harm in the absence of a stay, because the aforementioned Commission precedent effectively

²⁵ CAISO Answer to Motion for Stay at 6.

²⁶ *Id.* at 7.

²⁷ *Id.* (citing *Clipper Wind*, 129 FERC ¶ 61,197, at P 5).

²⁸ *Id.* at 8 (citing *Clipper Wind*, 129 FERC ¶ 61,197, at P 13).

²⁹ *Id.*

³⁰ *Id.* at 9 (citing TGP Complaint at 5-6).

addresses TGP's current situation.³¹ It concludes that TGP simply seeks relief from making a capital outlay, which CAISO considers an economic harm in the form of lost opportunity costs that prevent TGP from using the money for other purposes.³² CAISO asserts that economic harm like TGP's does not constitute irreparable harm or warrant a stay.³³

18. CAISO also asserts that its decision to not include TGP in its waiver request in Docket No. ER11-2503-000 does not constitute irreparable injury or grounds for redress under section 206 of the FPA. CAISO argues that TGP has no factual basis to allege discrimination in this regard. CAISO states that if TGP believes that it has a factual basis to support a tariff waiver, then TGP should have filed a waiver request on its own behalf. Further, CAISO argues that its tariff waiver request to grant extensions for posting financial security is not a unilateral action. Instead, CAISO argues that it sought authorization to grant an extension for projects with modified Phase II studies where CAISO provided incorrect information to the project sponsors. CAISO's contention is that it did not request a waiver applicable to TGP, because CAISO did not provide incorrect information to TGP or modify TGP's Phase II study. Again, CAISO contends that TGP is simply objecting to the timing of its obligation to post interconnection financial security. As evidence, CAISO states that TGP's complaint appears to admit that the Phase II interconnection study results were final as of January 3, 2011, the date Q185 withdrew from the transition cluster queue, as TGP proposes that this event triggered its financial security posting obligation.³⁴

19. Finally, CAISO argues that allowing an interconnection customer to stay the requirement to post financial security during the pendency of a complaint proceeding would seriously undermine the policy behind this tariff obligation.³⁵ According to CAISO, the cluster study process requires examination of the interdependencies of cluster customers as well as earlier-queued and later-queued cluster windows. More specifically, CAISO contends that abiding by the financial security posting requirements allows viable projects to move forward and clears non-viable projects. Finally, CAISO submits that permitting interconnection customers to postpone their security posting requirements by

³¹ *Id.*

³² *Id.* at 10.

³³ *Id.* (citing *Cal. Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,111, at P 11 (2000); *Wis. Gas v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1984)).

³⁴ *Id.* at 11-12 (citing TGP Complaint at 16).

³⁵ *Id.* at 13.

seeking a stay of the financial security posting requirement, with the potential for later withdrawal from the interconnection queue could create substantial disputes and uncertainty and would unnecessarily expend resources.³⁶

C. CAISO Answer to Complaint

20. CAISO states that in TGP's February 8, 2011 letter, TGP requested to withdraw the interconnection requests associated with this proceeding subject to certain conditions. On February 10, 2011, CAISO responded that its tariff does not provide for conditional withdrawal, and that TGP therefore withdrew its projects on February 8, 2011 when it failed to post the required financial security. CAISO informed TGP that it had five days from February 10, 2011 to post the second financial security installment. CAISO states that, as of February 17, 2011, the date of CAISO's second answer, TGP had not made the second financial security installment. For this reason, CAISO states that it will not reinstate these projects in the interconnection queue unless the Commission orders it to do so.³⁷

21. CAISO argues that there is no correlation between CAISO's failure to clear the serial study group interconnection requests, including Q185, and Q185's failure to choose "full deliverability" status. CAISO states that TGP offers no evidence to support this alleged causal connection, and CAISO argues that TGP ignores the fact that interconnection customers under the standard LGIP (the pre-cluster serial process) are not required to choose a deliverability status during the study cycle.³⁸

22. CAISO also states that its tariff requires it to conduct Phase I studies in a way that determines an interconnection customer's maximum cost responsibility.³⁹ For this reason, CAISO assumed, for the purpose of TGP's projects, that the earlier-queued Q185 would be energy-only. Nevertheless, CAISO points to TGP's concession that its study costs were correct as of January 3, 2011, the date Q185 withdrew.⁴⁰ Additionally, even though CAISO concedes that "uncertainty is a fact of transmission study," it states that engineers deal with this uncertainty by stating the assumptions on which an interconnection study is based.⁴¹ CAISO argues that granting TGP's requests would

³⁶ *Id.* at 14.

³⁷ CAISO Answer to Complaint at 2.

³⁸ *Id.* at 4.

³⁹ *Id.* (citing CAISO Tariff, Appendix Y, Section 6.2 of the Cluster LGIP).

⁴⁰ *Id.* at 6.

⁴¹ *Id.* at 8.

countenance the “untenable rule” that interconnection studies are not final and cannot be utilized until all underlying assumptions are closed by execution of an interconnection agreement or project withdrawal.⁴²

D. TGP Reply

23. TGP claims that CAISO’s reliance on *Clipper Wind* is misplaced. TGP argues that the affected interconnection customer in that case was adequately protected, because the Commission had already set a refund effective date, which the Commission has not done here. TGP also argues that the Commission’s decision forced the affected interconnection customer out of the interconnection queue with no remedy for that harm even though the Commission eventually held that forcing an interconnection customer to choose between posting excessive financial security and withdrawing from the queue is not just and reasonable.⁴³

24. On the issue of the stay, TGP asserts that being forced to choose between posting potentially excessive financial security or withdrawing from the queue is not purely financial harm, because these withdrawals may result in the loss of commercial opportunities that will not come again. Therefore, it believes that a stay is appropriate here. Alternatively, if the Commission does not grant a stay, TGP asks the Commission to rule quickly on the merits of TGP’s complaint and to restore TGP’s projects to their original queue positions.⁴⁴

25. Finally, TGP argues that CAISO distorts the record when it claims that TGP concedes that the Phase II studies became final on January 3, 2011. Though TGP does say that finality arguably occurred at this point, TGP argues that the security posting clock should not begin to run until the Commission rules on the complaint, because TGP’s rights and obligations are still not clearly delineated.⁴⁵

⁴² *Id.* at 7-8.

⁴³ *Id.* at 8.

⁴⁴ *Id.* at 9.

⁴⁵ *Id.* at 11.

IV. Commission Determination

A. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴⁶ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁴⁷ prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept TGP's answer, because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Complaint

28. To prevail in a proceeding under section 206 of the FPA, a complainant must first demonstrate that an existing practice is unjust, unreasonable, unduly discriminatory, or preferential.⁴⁸ For the following reasons, we find that TGP has not established that any particular practice by CAISO is unjust, unreasonable, unduly discriminatory, or preferential.

29. Section 9.3.1 of Appendix Y of CAISO's tariff, which the Commission accepted on November 17, 2009,⁴⁹ requires that an interconnection customer post its second financial security installment "on or before one hundred eighty (180) days after publication of the final Phase II Interconnection Study report."⁵⁰ Sections 6.6 and 7.5 of

⁴⁶ 18 C.F.R. § 385.214 (2010).

⁴⁷ 18 C.F.R. § 385.213(a)(2) (2010).

⁴⁸ 16 U.S.C. § 824e(b) (2006).

⁴⁹ *Cal. Indep. System Operator Corp.*, 129 FERC ¶ 61,124 (2009), *order on clarification*, 129 FERC ¶ 61,197 (2009). On December 16, 2010, the Commission accepted CAISO's tariff revisions to its generator interconnection procedures, which supersede the LGIP. *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223 (2010). However, the financial security requirements for large generating facilities described therein did not change with respect to the matters raised in TGP's complaint. CAISO, OATT, app. Y, § 9.3.1.2, .3 (2.0.0).

⁵⁰ CAISO Tariff, Appendix Y, Section 9.3.1 of the LGIP.

Appendix Y detail the procedures for developing, completing and publishing the Phase I and Phase II interconnection study reports. Both sections of the LGIP state that at the end of the processes described therein, CAISO “will issue a final . . . Interconnection Study report to the Interconnection Customer.”⁵¹ In this proceeding, we find that a report is final under section 9.3.1 when CAISO issues the report to an interconnection customer, which CAISO did for TGP’s projects on or around August 12, 2010. It is this occurrence that triggers the 180 days for the second financial security posting.

30. We note that one purpose of the Phase II study is to provide an interconnection customer with a scope of the necessary network upgrades and estimated cost of interconnecting its projects. To prepare the Phase II study, CAISO must make assumptions concerning other projects that affect its study; without making such assumptions, CAISO would not be able to complete many Phase II studies. We disagree with TGP’s position that interconnection study results cannot be “final” for the purpose of section 9.3.1 of the LGIP until all assumptions underlying an interconnection study are resolved. To follow this logic and to allow interconnection customers to withhold financial security until all underlying assumptions are resolved would make the generator interconnection process unworkable. CAISO would potentially be unable to finalize interconnection study reports for a significant time, and developers would linger for extensive periods in the queue while all assumptions are resolved. The interconnection process would become impractical if reasonable assumptions could not be made.

31. Moreover, we note, consistent with Commission precedent, that requiring interconnection customers to post financial security is necessary to protect participating transmission owners (PTO) in case of default by an interconnection customer.⁵² To delay financial security postings because of uncertainty that is inherent in the interconnection process would undercut this aspect of the policy underlying financial security requirements.

32. Furthermore, while changes from the underlying assumptions could ultimately impact the total cost of and security postings related to network upgrades required to interconnect a particular customer, we find that there are sufficient protections in place to justify this use of assumptions in the interconnection study process. First, we expect CAISO to rely upon the best information available at the time when making such assumptions, and we find CAISO’s assumptions related to TGP to be reasonable including with regard to Q185. In particular, we find that it was reasonable for CAISO to assume that Q185 would opt for energy-only deliverability status in order to determine the maximum cost responsibility for TGP to interconnect TGP’s projects, because Q185

⁵¹ CAISO Tariff, Appendix Y, Sections 6.6, 7.5 of the LGIP.

⁵² *Coso Energy Developers*, 134 FERC ¶ 61,088, at P 19 (2011).

was under no obligation to choose a deliverability status at the time CAISO developed TGP's interconnection study results. Second, the required posting for the second financial security installment is only a percentage of the total cost responsibility assigned to an interconnection customer in the Phase I or Phase II study results for network upgrades and a percentage of the total cost responsibility assigned to the interconnection customer in the Phase II study results for the PTO's interconnection facilities.⁵³ CAISO amended this section of its LGIP in order "to allow the interconnection customer to provide the required interconnection security on a more gradual basis, instead of all at once."⁵⁴ This mechanism provides more flexibility to interconnection customers that have not made a final decision about remaining in the interconnection queue. Finally, allowing 180 days from the issuance of the interconnection study report provides the interconnection customer with a significant opportunity to assess its potential costs and financial viability and to put in place the necessary credit support.

33. For these reasons, we conclude that section 9.3.1 is just and reasonable and that the Phase II results published by CAISO on or about August 12, 2010 were final and provided the total cost responsibility numbers necessary for TGP to calculate the correct amount of its second financial security installments with certainty. Accordingly, TGP's obligation to post financial security within 180 days was triggered when CAISO published these results on or about August 12, 2010.

34. In addition, TGP has not persuaded us to extend the time TGP has to decide whether to post such security or withdraw from the interconnection queue.⁵⁵ First, we disagree with TGP's argument that the inclusion of a location constrained resource interconnection option in the study results causes them to not be final simply because CAISO did not perform the necessary studies to determine the total project transfer capability of the proposed radial alternative. As noted earlier, the tariff provides that a Phase II interconnection study report is final when CAISO issues it to an interconnection customer. CAISO issued study results to TGP on or about August 12, 2011. The final Phase II interconnection study reports explained that TGP's projects would contribute to transmission overloading that would require mitigation and put forth three options for TGP to mitigate these impacts, including a radial alternative, which CAISO stated could "later be classified" as a location constrained resource interconnection facility. The radial option presented the potential opportunity to share costs with other interconnection customers. However, it also presented uncertainty as the final cost may not have been available for some time. The reason is that the ultimate cost allocation for the radial

⁵³ *Cal. Indep. System Operator Corp.*, 129 FERC ¶ 61,124, at P 11.

⁵⁴ *Cal. Indep. System Operator Corp.*, 129 FERC ¶ 61,124, at P 10, 11.

⁵⁵ TGP Complaint at 8.

alternative, which is of concern to TGP, is dependent on which other interconnection customers, if any, choose to participate. While the final costs of the radial option could not be final for some time and TGP was averse to taking the risk of this uncertainty, TGP had other more concrete options to choose from. TGP then chose its preferred alternative. It would thus be inappropriate to allow the finality of the study results to hinge on which mitigation approach TGP chose, and we find that the report was final without regard to that selection. Therefore, we find that the implementation of such a radial project is beyond the scope of CAISO's Phase II interconnection studies and cannot affect the finality of the study.

35. Additionally, we note that in the waiver proceeding in Docket No. ER11-2503-000, our granting of CAISO's request for waiver of section 9.3.1 of its LGIP did not affect the finality of the interconnection studies that CAISO provided to the affected customers. As CAISO states, the final Phase II interconnection studies for the seven interconnection customers affected by the waiver were published between May 2010 and August 2010.⁵⁶ If these studies had not been final, there would have been no need for CAISO to request or the Commission to grant waiver of section 9.3.1, because the publication of a final Phase II report initiates the 180-day posting requirement provided by this section. CAISO's waiver request was necessitated because CAISO inadvertently misinformed these seven customers, not because the study results were not final. Finally, TGP has failed to demonstrate that CAISO's waiver petition in Docket No. ER11-2503-000 is unduly discriminatory or preferential. In that proceeding, we found that CAISO appropriately limited its waiver to the seven misinformed interconnection customers.⁵⁷ In those circumstances, we concluded that granting a waiver was appropriate. However, TGP does not allege that CAISO inadvertently misinformed TGP about TGP's deadline. Accordingly, we find no basis to conclude that TGP should have been included among the seven interconnection customers for whom CAISO sought waiver.

2. Motion to Stay

36. We conclude that TGP has failed to meet the standard for granting a request for stay. Under section 705 of the Administrative Procedure Act, the Commission may grant a stay "when justice so requires."⁵⁸ In addressing motions for stay, the Commission considers: (1) whether the moving party will suffer irreparable injury without a stay; (2) whether issuing a stay will substantially harm other parties; and, (3) whether a stay is

⁵⁶ *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,067, at P 2 (2011); CAISO December 23, 2010 Petition at 3.

⁵⁷ *Cal. Indep. Sys. Operator Corp.*, 135 FERC ¶ 61,067, at P 18, 20.

⁵⁸ 5 U.S.C. § 705 (2006).

in the public interest.⁵⁹ A key element in the inquiry is irreparable injury to the moving party.⁶⁰ If a party is unable to demonstrate that it will suffer irreparable harm absent a stay, we need not examine the other factors.⁶¹

37. First, we do not find irreparable harm in the circumstances described here. TGP alleges that it has been irreparably harmed by having to choose between posting a second financial security installment and withdrawing from the interconnection queue prior to the 180-day deadline in CAISO's tariff. We find that this financial decision is a purely economic decision. As TGP concedes, the potential for economic loss does not constitute irreparable harm for purposes of justifying a stay.⁶² TGP also argues that having to make this choice will result in the loss of some or all of its security deposit and lost commercial opportunities. However, TGP does not quantify the extent of such harm. Also, TGP had 180 days from the publication of these studies to consider the costs that CAISO allocated to its projects. As discussed above, we find this to be a reasonable amount of time for TGP to consider its options. Accordingly, we disagree with TGP's claim that CAISO did not afford TGP the 180 days required by CAISO's tariff.

38. Second, we find that issuance of the stay as proposed by TGP could potentially harm SoCal Edison. Specifically, SoCal Edison states that granting this stay would leave it, the affected PTO, without security for an additional 125 days for a cluster interconnection request.⁶³ SoCal Edison states that it may need this security for the design, engineering, permitting, and licensing of the required network upgrades, and

⁵⁹ *Pinnacle West Cap. Corp.*, 115 FERC ¶ 61,064, at P 8 (2006) (citing *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,361 (1991), *aff'd sub nom. Mich. Mun. Cooperative Group v. FERC*, 990 F.2d 1377 (D.C. Cir. 1993), *cert. denied*, 510 U.S. 990 (1993)).

⁶⁰ *Id.*

⁶¹ *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,361 (1991).

⁶² TGP Complaint at 19; *Cal. Indep.Sys. Operator Corp.*, 126 FERC ¶ 61,013, at P 13 (2009) (finding that delay in processing an LGIP interconnection request is of a "purely economic nature"); *Wis. Gas v. FERC*, 758 F.2d at 674 ("The possibility that adequate compensatory or other corrective relief will be available at a later date, in the ordinary course of litigation weighs heavily against a claim of irreparable harm.") (quoting *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d 921, 925 (D.C. Cir. 1958)); *Wash. Metropolitan Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 843 n.2 (D.C. Cir. 1977); *Va. Petroleum Jobbers Ass'n v. FPC*, 259 F.2d at 925.

⁶³ SoCal Edison Answer at 2.

granting this stay could lead to it having to finance TGP's share of the network upgrades' costs.⁶⁴ One purpose of the requirement that interconnection customers post interconnection financial security is to protect existing PTOs like SoCal Edison in case of default by an interconnection customer.⁶⁵ Because we are denying the complaint for this reason as well, we will deny the motion for stay. If we stay the requirement that TGP post the second financial security installment, the financial risk associated with TGP's projects would be inappropriately shifted to SoCal Edison. Issuing a stay under these circumstances could therefore substantially harm SoCal Edison.

39. Finally, the public interest must be considered in addressing a request for a stay. We agree with CAISO that allowing interconnection customers to seek stay to delay the financial security posting requirements would increase the costs associated with and inject greater uncertainty into the interconnection process. For this reason, we believe that granting a stay under these circumstances would not be in the public interest.

The Commission orders:

(A) The Commission denies TGP's complaint, as discussed in the body of this order.

(B) The motion for stay is hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.

⁶⁴ *Id.* at 2-3.

⁶⁵ *Coso Energy Developers*, 134 FERC ¶ 61,088, at P 19.