

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System Operator Corporation)

Docket No. ER10-1656-000

**MOTION TO INTERVENE AND COMMENTS OF  
THE LARGE-SCALE SOLAR ASSOCIATION  
AND THE SOLAR ENERGY INDUSTRIES ASSOCIATION**

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Date: July 14, 2010

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Pursuant to Rules 212 and 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. §§ 385.212 and 385.214 (2010), and the Commission’s Notice of Filing dated June 30, 2010, the Large-scale Solar Association (“LSA”) and the Solar Energy Industries Association (“SEIA”) hereby respectfully move to intervene and submit comments regarding the California Independent System Operator Corporation (“CAISO”) Petition For Waiver of Tariff Provisions Regarding Interconnection Financial Security (hereinafter “Waiver Request”). LSA and SEIA (hereinafter “Solar Parties”) generally support the Waiver Request, but request that FERC require the CAISO to provide additional clarity for the Waiver Request. In particular, the CAISO should provide greater detail regarding the circumstances under which Section 9.2 and 9.3 would be waived. The Solar Parties are also concerned about the timeframes for implementing the tariff waiver. The tariff waiver would be conditioned on participating transmission owners (“PTOs”) obtaining abandoned plant cost recovery, which will likely occur after the security postings are due. For the Waiver Request to be effective in assisting American Recovery and Reinvestment Act (“ARRA”) eligible projects in meeting the ARRA construction deadlines, FERC should condition its approval of the Waiver Request on the CAISO’s agreement

to conditionally waive the advanced funding requirements under the LGIP *before* the second and third postings are due.

In support here of, LSA and SEIA states as follows:

## **I. BACKGROUND**

The CAISO's LGIP transition cluster began in 2009. In the fourth quarter of 2009, CAISO released the study results for Phase 1 of the transition cluster. CAISO is now in the process of releasing the Phase 2 results. Once the Phase 2 results are available, an Interconnection Customer ("IC") will be required to make financial security postings within 180 days.<sup>1</sup> CAISO Tariff Section 9.3.2.1 requires an IC to post the lesser of 30% of the total cost responsibility for network upgrades assigned to the IC in the final Phase 1 or 2 Interconnection Study (hereinafter "second posting").<sup>2</sup> CAISO Tariff Section 9.3.2 requires an IC to post 100% of the total cost responsibility assigned to the IC for the Network Upgrades on or before the start of construction (hereinafter "third posting").<sup>3</sup> Thus, even though FERC rules<sup>4</sup> provide that an IC is not ultimately responsible for the costs of network upgrades, the CAISO's Large Generator Interconnection Procedures ("LGIP") requires an IC to provide the initial funding for its share of the network upgrades.

FERC rules also provide that if a transmission owner commits to fund a network upgrade, the IC is not responsible for funding the network upgrades. Article 11.3 of the Standard Large Generator Interconnection Agreement ("LGIA") provides that "[u]nless the Transmission

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<sup>1</sup> Id. at Sec. 9.3.1.

<sup>2</sup> See California ISO Fifth Replacement Version of the FERC Electric Tariff (hereinafter "CAISO Tariff") (June 28, 2010), Appendix Y, Sec. 9.3.1, available at: <http://www.caiso.com/27c3/27c3ea753b1f0.html>

<sup>3</sup> Id. at Sec. 9.3.2.

<sup>4</sup> See for example 5 year repayment provision in Standard LGIA, Article 11.4.1.

Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by Interconnection Customer.”<sup>5</sup> Thus, when a PTO commits to fund network upgrades, an IC should not be required to make the second and third posting (which require an IC to upfront fund network upgrades) under the CAISO tariff.

On June 30, 2010, the CAISO filed a Petition for Waiver of Tariff Provisions Regarding Interconnection Financial Security and Request for Ruling within 45 days. If approved, the CAISO Waiver Request would temporarily suspend the financial security posting requirements under Section 9.2 and 9.3 of its LGIP for network upgrades identified in the transition cluster.<sup>6</sup> The Tariff Waiver would only apply when a PTO commits to provide up-front funding. As noted in the comment section below, there is some ambiguity as to when the security postings would be waived. The Waiver Request suggests that the PTO’s commitment would be conditioned on the Commission ruling that a PTO is entitled to abandoned plant recovery of prudently incurred costs.<sup>7</sup> It remains unclear whether the security postings would be waived before the Commission makes that determination. As noted in the CAISO tariff proposal, the tariff waiver (in conjunction with a PTO’s commitment to fund network upgrades) will “remove the need for a developer to secure the potentially large amount of capital necessary to fund its proportional share of network upgrade costs and associated security deposits.”<sup>8</sup> The Waiver

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<sup>5</sup> See Standard LGIA, FERC Order 2003, available at: <http://www.ferc.gov/industries/electric/indus-act/gi/stdn-gen.asp> ; Similarly, Article 11.3 of the CAISO Standard LGIA provides that “Unless the Participating TO elects to fund the capital for the Distribution Upgrades and Network Upgrades, they shall be funded by the Interconnection Customer in an amount determined pursuant to the methodology set forth in Section 13 of the LGIP.” available at: <http://www.caiso.com/1b93/1b9388ec11d10.pdf>

<sup>6</sup> See CAISO Waiver Request at p. 2.

<sup>7</sup> See CAISO Waiver Request at p. 4.

<sup>8</sup> CAISO Waiver Request at p. 21.

Request would apply to transition cluster ICs, and in particular, ICs that will be securing financing to start construction before 2011.

## **II. INTERVENTION**

The Large-scale Solar Association (“LSA”) represents twelve of the nation’s largest developers and providers of utility-scale, solar generating resources. Collectively, LSA’s members, whose technologies and models span both photovoltaic and solar thermal electric applications, have contracted to provide over 6 gigawatts (“GW”) of clean, sustainable solar power to utilities in the Western United States, including utilities in the CAISO territory. LSA members are engaged in the development, construction and/or operation of renewable generation plants throughout California and other western states. Many LSA members are also ICs in the transition cluster and pursuing ARRA grants. As such, LSA and its members may be directly affected by the outcome of this proceeding.

Established in 1974, the Solar Energy Industries Association (“SEIA”) is the national trade association of the solar energy industry. As the voice of the industry, SEIA works with its 1,000 members to make solar a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy. SEIA represents solar companies across a variety of solar energy technologies, including photovoltaic, solar water heating and concentrating solar power (CSP). SEIA members include manufacturers, distributors, contractors, installers, financiers and developers of solar energy projects on both the wholesale and retail level. SEIA and its members may be directly affected by the outcome of this proceeding.

The interests of LSA and SEIA are not adequately represented by any other party. This timely motion of LSA and SEIA to intervene in this proceeding is in the public interest.

Accordingly, LSA and SEIA request that they be made a party to this proceeding with all rights attendant to such status.

All communications regarding this matter, including all pleadings, filings and orders should be served on the following persons:

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### III. COMMENTS

#### **A. LSA Supports the Waiver Request Even Though Existing FERC Rules Do Not Require An IC To Fund Network Upgrades A PTO Has Committed To Fund.**

The Solar Parties support the Waiver Request because the Request will help ensure that many ICs will be able to meet the ARRA construction deadlines. ICs that are renewable generators are subject to extremely onerous cost projections for network upgrades, in part because of the remote nature of renewable resources. The cost projections for network upgrades in the CAISO's Phase 1 results far exceeded the Solar Parties and other parties' expectations, and the Solar Parties do not expect this issue to change with the release of the CAISO's Phase 2 results. Even though the ICs will not ultimately be responsible for the cost of network upgrades, ICs must make security postings for 100% of the cost for network upgrades before the upgrades are built.

The cost burden for network upgrades identified in the transition cluster comes at a time when ICs are under significant pressures to meet the ARRA start of construction deadlines: December 31, 2010. 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. Many banks also condition financing on executed LGIAs. Alternatively, more than 5% of the cost of the facility can be expended, on or before the deadline. Under either alternative, a developer cannot commence construction without financing in place well in advance of the ARRA deadline. By removing the security requirements for network upgrades, ICs will stand a much better chance of executing an LGIA before the ARRA deadlines, obtaining financing, and meeting the ARRA deadlines.

The Waiver Request would apply when a PTO unconditionally commits to upfront fund the IC’s share of network upgrades. As noted in the background section above, FERC rules provide that an IC is not responsible for financing network upgrades that the PTO agrees to finance. In other words, the Waiver Request does not signal a shift in CAISO policy since the CAISO already can and should waive security postings that are effectively rendered unnecessary by virtue of a PTO’s commitment to fund network upgrades. In sum, while the Solar Parties support the waiver request, existing rules already allow the CAISO to waive the financial security postings when a PTO agrees to finance the network upgrades.

**B. The Solar Parties Request That FERC Require The CAISO To Provide Additional Clarity For The Waiver Request Regarding The Circumstances Under Which Section 9.2 and 9.3 Would Be Waived. The CAISO Should Clarify**

**That The Waiver Request Would Waive The Second And Third Posting Requirements *Before* They Are Due.**

The Waiver Request lacks clarity as to when the tariff waiver will be effective. As noted in the background section above, the CAISO Waiver Request would waive the posting requirements for the second and third postings when a PTO has “unconditionally committed” to upfront fund the IC’s share of network upgrades (i.e., the PTO has obtained FERC approval for abandoned plant cost recovery). The Waiver Request also suggests that the tariff waiver would apply “if the Participating TO makes a business decision. . . that it will assume responsibility for these costs, then it seems appropriate to relieve the interconnection customer from the need to post security in favor of the Participating TO.”<sup>9</sup> Thus, the Waiver Request lacks clarity as to when the tariff waiver would become effective and relieve the IC from making the second and third posting requirement.

For the Waiver Request to be effective in assisting ARRA eligible projects in meeting the ARRA construction deadlines, FERC should condition its approval of the Waiver Request on the CAISO’s agreement to relieve the financial security posting requirements *before* the postings are due. As noted above, the Second posting requirement will be due within 180 days of the release of the CAISO’s Phase 2 results. Under the current transition cluster schedule, this period will run well after ARRA eligible projects must commence construction. ARRA eligible projects must secure financing months before the ARRA deadline, and to obtain financing, ICs must have all permits and approval in place. At the same time as the ICs are negotiating LGIAs and obtaining financing for the project as a whole, the ICs will also have to contend with the significant financing burden for the Second and Third posting requirements. However, if the

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<sup>9</sup> See CAISO Waiver Request at P. 21

Second and Third posting requirements are conditionally waived when the PTO makes the business decision to seek upfront abandoned plant cost recovery, ICs will be able to seek financing for the project as a whole without the burden of funding the Second and Third posting requirement. Thus, the Solar Parties urge the FERC to condition its approval of the tariff waiver on the CAISO's commitment to waive the Second and Third posting requirements *before* they are due. To interpret the CAISO Waiver Request otherwise and require posting while the PTO request for abandoned plant cost recovery is pending simply frustrates the purpose of both the CAISO Waiver Request AND the PTO Abandoned Plant Cost Recovery request. No public purpose would be served.

Now therefore, the Solar Parties request that FERC grant the CAISO Waiver Request and waive the application of the following language in Section 9.3 of the CAISO Tariff Waiver:

On or before one hundred eighty (180) calendar days after publication of the final Phase II Interconnection Study report the Interconnection Customer shall post, with notice to the CAISO, two separate Interconnection Financial Security instruments.

First, the Interconnection Customer shall post an Interconnection Financial Security instrument such that the total Interconnection Financial Security posted by the Interconnection Customer for Network Upgrades equals thirty percent (30%) of the total cost responsibility assigned to the Interconnection Customer for Network Upgrades in either the final Phase I Interconnection Study or final Phase II Interconnection Study, whichever is lower, but in no event less than \$500,000.

The failure by an Interconnection Customer to timely post the Interconnection Financial Security required by this LGIP Section 9.3.1 shall constitute grounds for termination of the LGIA pursuant to LGIA Article 2.3.

**Third Posting of Interconnection Financial Security.**

On or before the start of Construction Activities for Network Upgrades or Participating TO's Interconnection Facilities on behalf of the Interconnection Customer, whichever is earlier, the

Interconnection Customer shall modify the two separate Interconnection Financial Security instruments posted pursuant to LGIP Section 9.3.1 as follows. With respect to the Interconnection Financial Security Instrument for Network Upgrades, the Interconnection Customer shall modify this Instrument so that it equals one hundred percent (100%) of the total cost responsibility assigned to the Interconnection Customer for Network Upgrades in either the final Phase I Interconnection Study or Phase II Interconnection Study, whichever is lower, but in no event less than \$500,000.

The failure by an Interconnection Customer to timely post the Interconnection Financial Security required by this LGIP Section 9.3.2 shall constitute grounds for termination of the LGIA pursuant to LGIA Article 2.3.

The aforementioned tariff language should be waived as soon as the PTO commits fund the IC's share of the network upgrades either in writing or through the filing of a request for Abandoned Plant Cost Recovery with FERC. Furthermore, FERC should determine that the application of the CAISO Waiver Request in and of itself will not automatically render an LGIA non-conforming.

#### **IV. CONCLUSION**

The Solar Parties support the Waiver Request even though existing FERC rules do not require an IC to fund network upgrades that a PTO has committed to fund. The Solar Parties request that FERC condition its approval the Waiver Request on the CAISO's commitment to provide additional clarity for the Waiver Request. The CAISO should clarify that the Waiver Request would conditionally waive the advanced funding requirements *before* the Second and Third postings are due.

The Solar Parties respectfully move for leave to intervene in the above-captioned proceeding and urge the Commission to condition its approval of the CAISO Waiver Request on

the resolution of the issues discussed above.

Date: July 14, 2010

Respectfully submitted,



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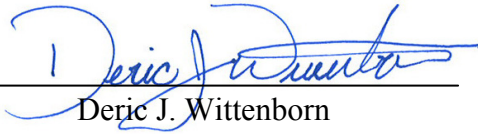
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list of ER10-1656-000 in this proceeding and in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Dated at Sacramento, California, this 14<sup>th</sup> day of July 2010.

  
\_\_\_\_\_  
Deric J. Wittenborn

**ER10-1656-000**  
**Service List**  
**July 14, 2010**

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