134 FERC ¶ 61,088
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.

Coso Energy Developers
Coso Finance Partners
Coso Power Developers

Docket No. EL11-4-000

ORDER DENYING WAIVER REQUEST

(Issued February 4, 2011)

1. On November 18, 2010, Coso Energy Developers, Coso Finance Partners, and Coso Power Developers (collectively, Coso) submitted a request for waiver of the interconnection financial security deposit set forth in the California Independent System Operator's (CAISO) large generator interconnection procedures (LGIP).[1] In this order, we deny Coso's request.

I. Background

2. Coso states that all three petitioners are wholly-owned subsidiaries of Terra-Gen Power, LLC, an independent renewable energy company that develops, operates, and owns geothermal, wind, and solar generation. Coso states that it is affiliated with three geothermal facilities located in China Lake, California, with nameplate ratings of

[1] CAISO Tariff, Appendix Y. The CAISO recently combined its large and small generator interconnection procedures into a single process, the Generator Interconnection Procedures (GIP), effective on December 19, 2010. *Cal. Indep. Sys. Operator Corp.*, 133 FERC ¶ 61,223 (2010). Under the GIP, large generating facilities are subject to the same financial posting requirements as they were under the LGIP. Thus, the Commission would have reached the same result whether we evaluated Coso's waiver request under the GIP or LGIP requirements.

99.9 MW, 102.4 MW, and 99.9 MW, respectively (the Coso Projects).[2] Coso states that the Coso Projects are interconnected with the CAISO-controlled transmission grid at two Southern California Edison Company (SoCal Edison) substations. The Coso Projects provide renewable base load power to SoCal Edison under long-term purchase power agreements.[3]

3. Coso states that the Coso Projects have been in operation for over 20 years. Over time, however, Coso states that the efficiency of the geothermal fields that service the facilities decreased such that the output of the Coso Projects decreased. In an effort to restore a portion of the facilities' prior output, Coso has recently undertaken measures to improve the efficiency of the geothermal fields. Coso states that although none of these efforts altered the electrical characteristics of the generating equipment, CAISO required Coso to submit new interconnection requests in 2008 to accommodate the 45 MW of aggregate increased capacity anticipated as a result of improving the efficiency of the geothermal fields. Coso notes that the interconnection requests were placed into CAISO's transition cluster, which is the first cluster to be processed under the Cluster LGIP,[4] with January 2010 identified in the interconnection request as the commercial operation date for the additional 45 MW.[5]

4. According to Coso, 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

[2] Coso explains that direct ownership of the Coso Projects has been transferred via a sale/leaseback arrangement to another affiliate of Coso. While Coso has no control over the operation, management or sale of the power from the Coso Projects, it explains that it is the petitioner in this proceeding because it submitted the interconnection requests to CAISO and, as the named interconnection customer, is liable for CAISO's security deposit requirements.

[3] Coso November 18, 2010 Petition for Limited Waiver in Docket No. EL11-4-000 at 3-4 (Petition).

[4] *See* CAISO Tariff, Appendix Y, at § 9.3.1. Under the Cluster LGIP, CAISO performs studies on a group of interconnection requests jointly to determine the effects on the transmission system. The Cluster LGIP replaced the serial study process, in which each individual interconnection request was studied separately. *See also Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 (2008) (Generation Interconnection Process Reform (GIPR) Order).

[5] Petition at 4-5.

interconnection study;[6] (2) a second deposit that brings the total financial security 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 interconnection 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.[7]

5. Coso states that CAISO's phase I interconnection study released in July 2009 identified significant upgrades, including a change in the point of interconnection for the Coso Projects at a cost to Coso of $23.4 million. Coso explains that, in order to remain in the interconnection queue, the Cluster LGIP requires it to post financial security based on the three intervals discussed above. Coso states that, following the release of the phase I interconnection study, it posted an initial deposit of $1.5 million in December 2009. Coso asserts that CAISO determined under its phase II interconnection study that the Coso Projects could deliver the additional 45 MW to the grid without any reliability impacts on an energy-only basis until the network upgrades are constructed.[8] CAISO completed the phase II interconnection study in August 2010. Under the Cluster LGIP, Coso is required to post a second financial security deposit of approximately $5.7 million by February 8, 2011, or be deemed withdrawn from the queue. Coso is seeking a limited waiver of this second financial security deposit. Coso states that the third and final deposit, which will bring its total security posted up to 100 percent of its cost responsibility must be made on or before the start of construction of the network upgrades. Coso notes that it remains subject to the third security deposit requirement.[9]

II. <u>Notice, Intervention, and Responsive Pleadings</u>

6. Notice of the waiver request was published in the *Federal Register*, 75 Fed. Reg. 76,455 (2010), with motions to intervene, comments, and protests due on or before

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[6] 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 Tariff at Appendix Y, § 9.2.

[7] *Id.*

[8] Coso requested full capacity deliverability status for the additional 45 MW. Petition at 2.

[9] Petition at 5-6.

December 16, 2010. Timely motions to intervene and comments were filed by CAISO and SoCal Edison.

III. <u>Discussion</u>

A. <u>Procedural Matters</u>

7. 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.

B. <u>Substantive Matters</u>

1. <u>Granting of Waiver</u>

8. The Commission historically has granted certain waiver requests involving an emergency situation or an unintentional error.[10] 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.[11] We do not find that good cause exists for granting Coso's request. Thus, for the reasons discussed below, we deny Coso's limited request for waiver of section 9.3.1.

2. <u>Scope of the Requested Waiver</u>

9. Coso claims that its request for waiver is limited in scope and discrete. Coso states that it seeks a one-time waiver from only one of the three deposits due and will

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[10] *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); *TransColorado Gas Transmission Co.*, 102 FERC ¶ 61,330, at P 5 (2003) (granting waiver for good cause shown to address calculation in variance adjustment).

[11] *See e.g., Cal. Indep. Sys. Operator Corp.*, 118 FERC ¶ 61,226, at P 24 (2007); *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 (2008) (granting waivers of the CAISO's LGIP to allow CAISO to create three study groups in order to streamline interconnection requests). *See also Cal. Indep. Sys. Operator Corp.*, 132 FERC ¶ 61,132 (2010) (granting limited waiver of the LGIP for projects in the transition cluster when a participating transmission owner has committed to up-front fund all or a portion of the customer's share of network upgrades).

remain subject to the third and final deposit on or before the start of construction of the network upgrades. Coso explains that the waiver is further limited in scope by the unique status of the Coso Projects in the transition cluster. Specifically, Coso states that the Coso Projects are existing projects that have achieved the commercial operation dates identified in their interconnection requests. Coso contends that because there are no similarly situated projects in the transition cluster, the relief sought is not warranted for any other project.[12]

10. Coso also asserts that because CAISO has stated its intent to revisit the financial security requirements, the relief sought by Coso here will establish no precedent for future waiver requests.[13]

11. According to SoCal Edison, the circumstances presented do not warrant a waiver of the interconnection financial security deposit provisions of the CAISO tariff. SoCal Edison argues that Coso has not proven that its projects are so unique as to warrant a waiver of tariff provisions which are administered in the same way and in the same amounts for all interconnection requests, in order to ensure no discriminatory treatment.[14]

12. In response to the assertion that the waiver petition is not precedential because the CAISO intends to revisit the financial security requirements, SoCal Edison contends that CAISO's statement of intent is not determinative as to which direction CAISO may take when and if it revisits the requirements. SoCal Edison asserts that it is possible that any revised posting requirements will be further protective of participating transmission owners and their potential risks in relation to security requirements for network upgrades.[15]

3. Consequences of Granting the Requested Waiver

13. According to Coso, in reforming its generation interconnection process that established the Cluster LGIP and financial security deposit requirements, CAISO stated that, "the fundamental requirement of the GIPR is to ensure that the interconnection customers provide sufficient and timely financial security in order to demonstrate project

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[12] Petition at 8.

[13] *Id.*

[14] SoCal Edison December 16, 2010 Comments in Docket No. EL11-4-000 at 3-4 (SoCal Comments).

[15] *Id.*

viability."[16] Coso claims that as existing operational facilities, the Coso Projects are "clearly viable," and therefore, the second posting is not required to demonstrate viability in this case. In addition, Coso asserts that granting the waiver would not be discriminatory with respect to other projects in the transition cluster, because as noted above, the Coso projects are the only existing projects in the cluster that achieved their commercial operation dates.[17]

14. Further, Coso asserts that granting the waiver will not create a credit risk. Coso avers that all three petitioners are "well-established and trustworthy entities" that have significant performance incentives outside of the financial posting requirements. Coso maintains that it has provided or will provide adequate assurances of creditworthiness apart from the second security deposit.[18]

15. SoCal Edison argues that because the Coso Projects are part of a cluster that will require pre-construction activities for network upgrades to be shared by those in the cluster, there is not sufficient rationale to waive the second financial security posting. In addition, SoCal Edison states that it has no agreement in place to provide interconnection or transmission for the additional 45 MW of capacity, and has not been informed by CAISO that Coso has reached commercial operation of this increased capacity. Thus, despite Coso's claim that there is no risk of abandonment, SoCal Edison maintains that there may be unforeseen circumstances where Coso could decide not to execute agreements for these generation increase projects. SoCal Edison states that if that were to happen, SoCal Edison would be at risk of having to finance network upgrades. Therefore, SoCal Edison contends that Coso should not be relieved of its financial posting requirements. In addition, SoCal Edison argues that if Coso is granted waiver of the second posting, SoCal Edison could be left with less security to construct the upgrades identified in the study.[19]

16. CAISO acknowledges Coso's unique circumstances and states that it does not object to the petition for limited wavier of the second posting, but requests that the Commission add two conditions to any grant of waiver, stipulating that: (1) if the participating transmission owner incurs costs in connection with the network upgrades for the study group in which the Coso Projects have been studied prior to the time of the

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[16] Petition at 9 (citing *Cal. Indep. Sys. Operator Corp.*, 129 FERC ¶ 61,124, at P 41 (2009); GIPR Order, 124 FERC ¶ 61,292 at P 60).

[17] *Id*.

[18] *Id*. at 9-10.

[19] SoCal Edison Comments at 3-4.

third posting, that Coso be directed to pay to the transmission owner its pro rata share of costs; and (2) if the interconnection requests are withdrawn, that the amount due from the interconnection customers (under section 9.4 of Appendix Y of the CAISO tariff) be calculated as if the interconnection customers had made the second financial security deposit and the interconnection customers be directed to pay to the transmission owner, in the event of withdrawal, immediately upon demand, the amount calculated under section 9.4 as if the interconnection customer had made the waived second financial security deposit.[20]

4. Resultant Benefits of Granting the Waiver

17. Coso contends that the second security deposit will tie up funds that would otherwise be invested in developing additional renewable power that could be used to meet California's renewable portfolio standard goals. Further, Coso argues that the opportunity cost associated with its second posting of $5.7 million is substantial and could approach $2 million (assuming a 5 percent annual carrying cost over 84 months). Thus, Coso claims that the waiver will provide a benefit by facilitating investment in the development of additional renewable resources.[21]

5. Commission Determination

18. As noted above, the Commission has previously granted certain waiver requests when it has found that good cause for a waiver of limited scope exists, there are no undesirable consequences, and the resultant benefits to customers are evident. In this instance, we find that Coso has not demonstrated that its circumstances are so unique that a waiver of the second financial security deposit would have no precedential effect. We are likewise unpersuaded by Coso's claim that no precedent would be set by granting the requested waiver due to CAISO's stated intent to revisit the financial security requirements. We find that claims regarding the potential direction of CAISO's interconnection financial security reforms are speculative. Thus, depending on whether CAISO makes any revisions to its interconnection financial security requirements, and the nature of any such revisions, granting Coso's waiver could serve as precedent for existing projects in future clusters, potentially leading to adverse impacts on the interconnection process.

19. In addition, we agree with Coso that the security deposit is intended primarily to demonstrate project viability. But it is also intended to protect existing participating transmission owners in case of default, even in the event of project expansion. In

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[20] CAISO December 16, 2010 Comments in Docket No. EL11-4-000.

[21] Petition at 10-11.

addition to serving that function, interconnection security deposits are also intended to protect existing participating transmission owners in case of default. In particular, regardless of whether the Coso Projects are unique in the sense that they are existing projects that are increasing output, SoCal Edison is still exposed to material financial risk associated with the transition cluster. While Coso points out that it is has posted the first security deposit, $1.5 million, that deposit accounts for only a fraction of Coso's total cost responsibility. Moreover, SoCal Edison points out that it has no agreement in place to provide interconnection or transmission for the additional 45 MW of capacity and has not been informed by CAISO that Coso has reached commercial operation of this increased capacity. We also note that while CAISO does not object to the requested waiver, it still seeks a form of financial security with the adoption of two conditions that would protect the participating transmission owner in the event that it incurs costs prior to the third financial posting, or in the event that the interconnection requests are withdrawn. Therefore, we find that without posting of the second deposit, the financial risk associated with Coso's project is inappropriately shifted to SoCal Edison, making waiver of the second posting inappropriate.

20. Further, we note that prior to the GIPR Order, an interconnection customer was not required to post interconnection financial security for network upgrades associated with its project until construction of those facilities began as specified in its large generator interconnection agreement. In approving the GIPR, the Commission found that financial security requirements proposed by CAISO represented a reasonable effort to change its process, noting that "[t]he staggered financial posting requirement was proposed to balance realistic participation in the interconnection process with the inherent uncertainties of project development."[22] Coso has not convinced us that that the staggered posting requirements do not strike the appropriate balance as applied to Coso.

21. Given the financial risks faced by SoCal Edison and uncertainty regarding the precedential effect from granting this waiver, the Commission finds that it would not be appropriate to grant Coso's request. Coso has not demonstrated that the scope of the requested waiver is sufficiently limited or that granting the waiver poses no risk of undesirable consequences to SoCal Edison. We therefore deny Coso's limited request for waiver of section 9.3.1.

[22] GIPR Order, 124 FERC ¶ 61,292 at P 154.

The Commission orders:

Coso's waiver request is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.