

168 FERC ¶ 61,012
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

California Transmission Project Corp.

Docket No. ER19-1695-000

ORDER DENYING WAIVER REQUEST

(Issued July 10, 2019)

1. On April 29, 2019, as amended on May 3, 2019, California Transmission Project Corp. (CTP) filed a request for a one-time waiver (Waiver Request) of Sections 3.8 and 11.2 of Appendix DD of California Independent System Operator Corporation's (CAISO) Tariff (Tariff). The waiver would allow CTP additional time to post financial security to Pacific Gas and Electric Company (PG&E) for CTP's Gemini Wind North Project (Project) interconnection request. For the reasons discussed below, we deny CTP's Waiver Request.

I. Background and Waiver Request

2. Appendix DD of the CAISO Tariff contains the Generator Interconnection and Deliverability Allocation Procedures (GIDAP). Section 11.2 of Appendix DD requires interconnection customers to post an initial financial security relating to Participating Transmission Owner's Interconnection Facilities "no later than ninety (90) calendar days after the issuance of the final Phase I Interconnection Study report for the Interconnection Customers in the Queue Cluster."¹ If an interconnection customer fails to timely post the required financial security, the interconnection request is deemed withdrawn, subject to Section 3.8 of the GIDAP.²

3. In particular, pursuant to Section 3.8, if the interconnection customer fails to adhere to all requirements of the GIDAP:

¹ CAISO Tariff, App. DD, § 11.2.2.

² *Id.* § 3.8 and §11.2.6.

CAISO shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Interconnection Customer within five (5) Business Days of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Upon receipt of such written notice, the Interconnection Customer shall have five (5) Business Days in which to respond with information or action that either cures the deficiency or supports its position that the deemed withdrawal was erroneous.³

According to CTP, there are no Tariff procedures for extending the deadline to post financial security.⁴

4. CTP explains that the Project is an offshore wind farm located in the Pacific Ocean, and includes a substation adjacent to the Diablo Canyon Power Plant substation. CTP states that an interconnection request for the project was filed with CAISO in April 2018.⁵ CTP also states that CAISO's Final Phase I Study Report for the queue cluster was published on January 15, 2019, making CTP's deadline to post the financial security to PG&E April 15, 2019. CTP explains that it arranged for a partner to post the financial security to PG&E; however, the partner withdrew from the arrangement after PG&E filed for Chapter 11 bankruptcy protection on January 29, 2019. CTP subsequently found a second partner; however, shortly before the April 15 deadline, the second partner withdrew from the deal after media reports suggested PG&E's financial position might be weaker than previously thought. CTP then found a third partner, but the new partner informed CTP that it would need additional time beyond April 15 to perform due diligence.⁶

5. CTP states that on April 22, 2019, CAISO informed CTP that it would deem the interconnection request withdrawn within five business days pursuant to Section 3.8 of Appendix DD of the Tariff. CTP states that if the interconnection request is withdrawn, CTP will lose its queue position in the CAISO interconnection process, which would

³ *Id.* § 3.8.

⁴ Amended Waiver Request at 3.

⁵ The Project was assigned interconnection queue position 1474. CTP also notes that the Cal Energy Development Company LLC (CEDC) was the original developer who filed the interconnection request with CAISO. CTP later entered into an agreement with CEDC and CAISO, assigning the rights and obligations under the Study Agreement to CTP. *Id.*

⁶ *Id.* at 3-4.

result in the loss of time and money to CTP, as well as delay the benefit of the Project to CAISO and rate payers.⁷

6. CTP requests a one-time waiver of Sections 3.8 and 11.2 of Appendix DD to the CAISO Tariff, to extend the deadline for CTP to post the required security to one week following the date the Commission issues an order on this proceeding.⁸ CTP asserts that its Waiver Request meets the Commission's standards for granting waivers, noting the four criteria used by the Commission to assess waiver requests: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.⁹

7. First, CTP argues that it acted in good faith and arranged for two previous partners to post the required financial security to PG&E. CTP states, however, that PG&E's bankruptcy proceedings impacted the funding partners' willingness to post financial security. According to CTP, the bankruptcy could impact PG&E's ability to honor its refund obligations and that the bankruptcy proceedings are beyond CTP's control.

8. Next, CTP asserts that the waiver is limited in scope, as the waiver is a one-time waiver limited to Sections 3.8 and 11.2 of Appendix DD of the CAISO Tariff for a single project, and would apply for one week after the Commission's Order date granting this Waiver Request. Specifically, in its amended Waiver Request, CTP includes a letter from PG&E stating that CTP's financial security deposit will not be impacted by PG&E's bankruptcy proceeding. With this reassurance, CTP maintains that its funding partner will be prepared to complete the necessary due diligence and post the financial security within one week of the Commission granting a limited waiver.¹⁰

9. CTP further states that the waiver addresses a concrete problem, because permitting a short deadline extension will prevent CTP from having its interconnection request withdrawn, which would result in a significant loss of time and money and delay the project's benefits to CAISO and ratepayers. Finally, CTP states that it is not aware of

⁷ *Id.* at 4, 6.

⁸ *Id.* at 1.

⁹ *Id.* at 4-6.

¹⁰ *Id.* at 1, Ex. 1.

any way that the waiver would adversely affect third parties.¹¹ CTP seeks an effective date of April 29, 2019, for its waiver.

II. Notice and Responsive Pleadings

10. Notice of CTP's April 29, 2019 filing was published in the *Federal Register*, 84 Fed. Reg. 19,920 (2019), with interventions and protests due on or before May 20, 2019. CTP's May 3, 2019 amended filing was published in the *Federal Register*, 84 Fed. Reg. 20,876 (2019), with interventions and protests due on or before May 24, 2019.

11. CAISO filed a timely motion to intervene and submitted comments. CAISO states that it is wary of establishing a precedent that grants tariff waivers based on PG&E's bankruptcy, noting that the Commission considers whether the waiver request addresses a concrete problem in determining whether to grant a request. According to CAISO, generation developers' financing can fail for many reasons independent of the interconnecting transmission owner. CAISO argues that granting a waiver premised on PG&E's bankruptcy could lead to similar petitions and impair CAISO's ability to enforce its Tariff. CAISO notes that of 141 interconnection requests received in the cluster that closed on April 15, 2019, 75 proposed to interconnect to PG&E. Additionally, of the 34 interconnection customers in PG&E territory that CAISO sent notices to post financial security, 22 successfully posted security, 6 submitted notices of withdrawal, and 4 were withdrawn by the CAISO for failure to post.¹²

12. CAISO also objects to CTP's assertion that granting the waiver would not have a negative impact on third parties. First, CAISO argues that granting CTP's waiver unavoidably prejudices these other interconnection customers in the queue that proposed to interconnect to PG&E, who faced the exact same circumstances as CTP. Second, CAISO states that the next phase of interconnection studies does not begin until financial security has been posted for all parties in a cluster, or interconnection requests have been withdrawn. CAISO further explains that the Gemini Wind North Project is a 2,000+ MW wind project that could affect grid topology for this and future clusters. As such, CAISO states that it and PG&E must delay all interconnection studies in the area until the issue in this proceeding is resolved to avoid having to conduct restudies.¹³

¹¹ *Id.* at 4-6.

¹² CAISO Comments at 1-2.

¹³ *Id.* at 2. CAISO requests that if the Commission grants the waiver request, that it be "for a defined temporary period, and limited." *Id.*

13. Finally, CAISO notes that without requiring interconnection customers to timely post financial security, interconnection customers could linger in the queue without risk, potentially exposing transmission owners to covering any shortfall in network upgrade financing. According to CAISO, the purpose of financial security is to show that interconnection customers are financially able and committed to the development of the project. CAISO asserts that if CTP cannot timely post financial security, it calls into question whether CTP can develop the project under the same requirements as all other interconnection customers.¹⁴ CAISO states that granting the waiver might impair CAISO's ability to enforce its tariff in the future.¹⁵

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), CAISO's timely, unopposed motion to intervene serves to make CAISO a party to this proceeding.

B. Commission Determination

15. The Commission has granted waiver of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not have undesirable consequences, such as harming third parties.¹⁶ We conclude that CTP failed to show that the Waiver Request satisfies the waiver criteria, and therefore, we deny the Waiver Request.

16. Specifically, we find that CTP has not demonstrated that its requested waiver is limited in scope. The record here shows that many other interconnection customers face similar financing risks amidst PG&E's bankruptcy proceedings. Indeed, CAISO states that of 141 interconnection requests received in the cluster that closed on April 15, 2019, 75 proposed to interconnect to PG&E and that, of the 34 interconnection customers in PG&E territory to which CAISO sent notices to post financial security, 22 successfully posted security, six submitted notices of withdrawal, and four were withdrawn by the

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 1.

¹⁶ *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059, at P 13 (2016).

CAISO for failure to post.¹⁷ Where the business risks that CTP faces are not more clearly distinguishable from those facing many other interconnection customers, we find it would be inappropriate to grant CTP a waiver that effectively would shield it from the consequences of that risk. In this respect, the Commission previously rejected waiver of a deadline for posting financial security where the interconnection customer essentially sought to mitigate its financial risk, explaining that the customer offered no compelling reason why it should be afforded special treatment compared to other interconnection customers who must make business decisions based on costs that are subject to change.¹⁸

17. In addition, we find that CTP has not demonstrated that a waiver of the interconnection financial security posting requirement would have no undesirable consequences. The requirement to timely post financial security protects other generators in the queue from the consequences of queue departures later in the process, which disrupt queue processing and could alter the calculations of the costs of needed network upgrades for the remaining generator interconnection customers.¹⁹ Thus, we find that CTP has not shown that the requested waiver would have no undesirable consequences, such as harming third parties.

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁷ CAISO Comments at 2.

¹⁸ *Meridian Energy USA, Inc. v. Cal. Indep. Sys. Operator Corp.*, 143 FERC ¶ 61,206, at P 29 (2013) (denying waiver request where interconnection customer sought to delay posting of financial security without further information providing full certainty about upgrade costs).

¹⁹ *See Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, at P 151 (2008).