

130 FERC ¶ 61,148  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Southern California Edison Company

Docket No. ER10-510-000

ORDER ACCEPTING AND SUSPENDING AGREEMENTS AND ESTABLISHING  
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 26, 2010)

1. On December 28, 2009 Southern California Edison (SoCal Edison) filed an unexecuted Large Generator Interconnection Agreement (LGIA), a Wholesale Distribution Service Agreement (Service Agreement), and a Project Tie-Line Facilities Agreement (Tie-Line Agreement) (collectively Agreements) between itself and Brea Power II, LLC (Brea Power).<sup>1</sup> As discussed below, we accept the proposed Agreements for filing, suspend them for a nominal period to become effective February 27, 2010, as requested, subject to refund and establish hearing and settlement judge procedures.

**I. Background**

2. Brea Power owns the Brea Power II Project (Project), a 27.4 MW landfill gas-fired combustion turbine generating facility, to be located at the Orange County Olinda/Alpha Landfill in Brea, California. SoCal Edison explains in its transmittal letter that Brea Power submitted applications to SoCal Edison for interconnection of its Project and for wholesale Distribution Service<sup>2</sup> for the Project's generation from Brea Substation to the California Independent System Operator Corporation (CAISO) grid at SoCal Edison's Olinda 220 kV Substation.

---

<sup>1</sup> SoCal Edison states that the LGIA and Service Agreement have been designated as Service Agreement Nos. 235 and 236, respectively, under SoCal Edison's FERC Electric Tariff, First Revised Volume No. 5. The Tie-Line Agreement has been designated as SoCal Edison Rate Schedule FERC No. 481.

<sup>2</sup> Capitalized terms used but not otherwise defined in this order have the meanings ascribed to them in SoCal Edison's Wholesale Distribution Access Tariff.

3. SoCal Edison filed an LGIA, which utilizes SoCal Edison's *pro forma* LGIA from its Wholesale Distribution Access Tariff (WDAT). It specifies the terms and conditions, pursuant to which SoCal Edison will engineer, design, procure, construct, install, own, operate and maintain the Interconnection Facilities and Distribution Upgrades required to interconnect Brea Power's generating facility to SoCal Edison's Distribution System. SoCal Edison states that the Distribution Upgrades will facilitate the Distribution Service SoCal Edison will provide Brea Power under the Service Agreement. In accordance with the LGIA, Brea Power is to be responsible for an Interconnection Facilities Charge, an Interconnection Facilities Payment of \$2,073,000, and a Distribution Upgrades Payment of \$770,000.

4. SoCal Edison explains that the Agreement specifies that following the completion date of the Interconnection Facilities, Brea Power will pay SoCal Edison a monthly Interconnection Facilities Charge to recover the on-going revenue requirement for the Distribution Provider's Interconnection Facilities. This monthly charge is calculated as the product of the Customer-Financed Monthly Rate and the Interconnection Facilities Cost. The Customer-Financed Monthly Rate is 0.38%.<sup>3</sup> The monthly Interconnection Facilities Charge will be \$6,737 (0.38% x \$1,773,000).<sup>4</sup>

5. The Service Agreement sets forth SoCal Edison's agreement to provide distribution service for 27.4 MW produced by the Brea Power Project from the Project's interconnection on SoCal Edison's Brea-Recycle 66 kV Distribution Line to the CAISO grid at SoCal Edison's Olinda 220 kV Substation.

6. The Tie-Line Agreement specifies the terms and conditions pursuant to which SoCal Edison will engineer, design, procure, construct, install, own, operate, and maintain the Tie-Line Facilities and for Brea Power to pay for such facilities. SoCal Edison states that the Tie-Line Facilities are those facilities necessary to connect the Project's switchyard to the Distribution Provider's Interconnection Facilities at SoCal

---

<sup>3</sup> SoCal Edison states that this rate is the rate most recently adopted by the California Public Utilities Commission (CPUC) for application to SoCal Edison's retail electric customers for customer-financed added facilities. According to SoCal Edison, use of the CPUC rate is consistent with the SoCal Edison rate methodology accepted for filing by the Commission in Docket No. ER09-1731-000. SoCal Edison states that it provided cost justification for this rate in Docket No. ER09-1345-000.

<sup>4</sup> Section 14, Appendix A, Standard Large Generator Interconnection Agreement, Southern California Edison Company FERC Electric Tariff, First Revised Volume No. 5, Service Agreement No. 235, provides for an additional one time cost of \$300,000 for Brea Substation Relocations and Upgrades.

Edison's Brea Substation. Brea Power will pay SoCal Edison a Tie-Line Facilities Payment and a monthly Tie-Line Facilities Charge.

7. The Tie-Line Facilities Payment based on estimated costs is \$3,342,250. The Tie-Line Facilities Payment compensates SoCal Edison for the capitalized costs incurred by SoCal Edison associated with the engineering, design, procurement, construction, and installation of the Tie-Line Facilities, including any non-capitalized costs associated with such facilities.

8. SoCal Edison explains that when the Tie-Line Facilities are complete, successfully tested and ready for service, Brea Power will pay SoCal Edison a monthly Tie-Line Facilities Charge to recover the ongoing revenue requirement for the Tie-Line Facilities. The Tie-Line Facilities Charge payments will initially be based on the estimated Tie-Line Facilities Cost specified in the Tie-Line Agreement. The monthly Tie-Line Facilities Charge will be calculated as the product of the Customer-Financed Monthly Rate and the Tie-Line Facilities Cost. The estimated Tie-Line Facilities Charge will be \$11,571.95/month (0.38% x \$3,045,250).<sup>5</sup>

9. SoCal Edison states that Brea Power requested that it file these Agreements as unexecuted because Brea Power believes that the parties have reached an impasse.

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

10. Notice of this filing was published in the *Federal Register*, 75 Fed. Reg. 1,766 (2010), with interventions and comments due on or before January 19, 2010. Brea Power filed a motion to intervene and protest and SoCal Edison and Brea Power filed answers.

11. In its protest, Brea Power disagrees with SoCal Edison on several issues including: (1) SoCal Edison's refusal to classify any of the associated facilities as Network Upgrades; (2) the legitimacy of the approximately 100 percent increase in Tie-Line Facilities costs that SoCal Edison claims; (3) the reasonableness and prudence of the costs SoCal Edison will need to incur to replace the substandard poles it recently installed; and (4) who should bear the "excessive" cost of SoCal Edison's telecommunications facilities.

### **A. Classification of Facilities as Network Upgrades**

12. Brea Power argues that SoCal Edison has incorrectly classified all of these facilities in the LGIA at or beyond the Brea Substation as interconnection facilities or

---

<sup>5</sup> Attachment C to the LGIA identifies a \$297,000 "one time charge" that is not capitalized.

distribution upgrades. Brea Power argues that these will benefit all customers of the grid and, thus Brea Power should not be allocated the costs since it is contrary to Commission policy.

13. Brea Power contends that the Commission's "at or beyond the Point of Interconnection Test" in Order No. 2003 states that all upgrades at or beyond the Point of Interconnection with the transmission provider's system must be classified as Network Upgrades in recognition of the fact that such upgrades benefit all users of the transmission system.<sup>6</sup> Brea Power also contends that although SoCal Edison seeks to characterize the WDAT facilities at issue as distribution facilities, the Commission has recognized that SoCal Edison provides transmission service under its WDAT.<sup>7</sup> In addition, Brea Power contends that the output of the Project will be scheduled for transmission on the CAISO controlled grid. Accordingly, Brea Power argues that under the Commission's "at or beyond the point of interconnection test," all of the upgrades SoCal Edison proposes are at or beyond SoCal Edison's Brea Substation and must, therefore, be classified as network upgrades since the Project will interconnect with SoCal Edison's transmission system at SoCal Edison's Brea Substation.

14. Brea Power also states that the Commission's integration test further compels classification of the facilities as Network Upgrades. Brea Power argues that the Commission previously held that upgrades on facilities over which SoCal Edison provides distribution service under its WDAT must be classified as Network Upgrades if they are integrated network facilities.<sup>8</sup> Brea Power argues that because the upgrades at issue here will be integrated with, and provides important benefits to the CAISO-controlled grid, it makes no difference whether they are physically located on SoCal Edison's WDAT facilities or on CAISO-controlled facilities. Brea Power contends that the Commission has made it clear that where upgrades provide benefits to the CAISO controlled transmission grid, the upgrades must be classified as Network Upgrades.<sup>9</sup>

---

<sup>6</sup> Brea Power protest at 5 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 65 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007)).

<sup>7</sup> *Id.* (citing *S. California Edison Co.*, 107 FERC ¶ 61,017, at P 3 n.3 (2004)).

<sup>8</sup> *Id.* at 6 (citing *S. California Edison Co.* 117 FERC ¶ 61,103 (2006) (*Whitewater*)).

<sup>9</sup> *Id.* at 7 (citing *Whitewater*, 117 FERC ¶ 61,103 at P 30; *Cabazon Wind Partners, LLC v. S. California Edison Co.*, 117 FERC ¶ 61,212, at P 20 (2006)).

Brea Power asserts that SoCal Edison's proposed classification of the upgrades at issue here are contrary to representations SoCal Edison has made to the Commission.

15. Brea Power further states the Commission's five-factor *Mansfield* test requires that SoCal Edison classify the upgrades as Network Upgrades.<sup>10</sup> Specifically, Brea Power states that the *Mansfield* factors compel classification of the facilities as Network Upgrades because the facilities clearly provide benefits to the transmission grid and can be relied on for coordinated operation of the grid. In addition, Brea Power states that the facilities will provide a new source of renewable energy to the CAISO controlled-grid, provide supply diversity, increase reliability, foster a more competitive market, add additional energy supplies, reduce the need for imports and associated congestion, and facilitate compliance with renewable portfolio standards. Brea Power states that the Commission has recognized the significance of such benefits to classification of upgrades as Network Upgrades.<sup>11</sup>

16. Consequently, Brea Power maintains that requiring it to bear the entire cost of these facilities, without reimbursement, would be unjust, unreasonable, unduly discriminatory, and contrary to Commission policy. Therefore, Brea Power requests that SoCal Edison be ordered to revise the Agreements to reflect classification of all the facilities and upgrades at or beyond the Brea Substation as Network Upgrades.

#### **B. Tie-Line Facilities Costs**

17. Brea Power argues that SoCal Edison's proposed Tie-Line Facilities charge is unsupported and excessive. Brea Power states that in 2007, SoCal Edison provided it with a \$1.7 million estimate of the costs for the tie-line facilities. Then, on September 29, 2009, SoCal Edison doubled its estimate, claiming that the increase was attributable to the need to install the facilities underground. Brea Power asserts that SoCal Edison had long known that it would have to install the entire 1.5 mile tie-line underground and had been providing its prior estimates based on that understanding. Brea Power contends that SoCal Edison's proposed Tie-Line Facilities charge must be summarily rejected. Brea Power also contends that SoCal Edison should be required to negotiate a just and reasonable Tie-Line Facilities charge with Brea Power that is consistent with its prior estimate.

---

<sup>10</sup> *Id.* at 10 (citing *Mansfield Mun. Electric Depart. v. New England Power Co.*, 97 FERC ¶ 61,134 (2001), *reh'g denied*, 98 FERC ¶ 61,119 (2002) (*Mansfield*)).

<sup>11</sup> *Id.* at 11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,109 (2009); *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009); *Northeast Texas Electric Coop., Inc.*, 111 FERC ¶ 61,189, at P 28 (2005)).

**C. Pole Replacement Costs**

18. Brea Power argues that SoCal Edison provided no support for its proposal to make Brea Power bear the cost of pole replacement on the intertie. Brea Power claims that when a portion of the existing intertie was destroyed by a wildfire in 2008, Ridgewood Renewable Power, LLC, an owner operator and developer of renewable electric power and infrastructure projects, and an affiliate of Brea Power promptly contacted SoCal Edison to ensure that the pole replacements incorporated the pole design specified for the Brea Power Project. Brea Power states that SoCal Edison ignored Brea Power's communication and instead installed substandard poles that SoCal Edison knew would need to be immediately replaced because they did not meet the standard required for the Brea Power Project. Accordingly, Brea Power contends that the cost of replacing the substandard poles has not been prudently incurred, is unreasonable, and must be borne by SoCal Edison.

**D. Telecommunication Facilities Costs**

19. Brea Power states that SoCal Edison's proposed charge of \$1,030,000 for costs that it claims will be incurred to install a 1.5 mile fiber optic cable and other telecommunications facilities along the tie-line to be constructed between the Brea Power Project and the Brea Substation are unreasonable, grossly excessive, and unduly discriminatory. Brea Power argues that while the proposed telecommunication facilities contemplated by SoCal Edison may be appropriate for a large scale power plant or a substation interconnection, they are not necessary for a short tie-line that will serve a 27.4 MW project. Brea Power contends that SoCal Edison has not demonstrated why the proposed facilities are necessary and why other, much less expensive alternatives would be inadequate. Brea Power also contends that the estimated costs appear grossly excessive in that it should be possible for SoCal Edison to lay the fiber optic cable at the same time that the tie-line is being installed. Therefore, Brea Power requests that the estimated \$1,030,000 telecommunications costs be eliminated from the Tie-Line Agreement or that SoCal Edison be responsible for such costs.

20. In its answer, SoCal Edison contends that the upgrades in dispute here are not at or beyond the Transmission-Distribution Point of Interconnection and, thus, these costs may be directly assigned pursuant to the terms of the WDAT LGIA. SoCal Edison also argues that Brea Power's argument regarding reclassification of the upgrades that are necessary to interconnect Brea Power to the SoCal Edison transmission and distribution system is inappropriate because Brea Power has failed to provide any supporting engineering analysis. SoCal Edison also states that the classification of upgrades is governed by the WDAT LGIA, which has been routinely applied to numerous wholesale generators, including those owned by SoCal Edison.

21. SoCal Edison states that Brea Power's only apparent issue is that SoCal Edison's latest estimate reflected in the Tie-Line Agreement exceeds SoCal Edison's preliminary estimate provided in the interconnection study reports. SoCal Edison states that Commission precedent allows utilities to estimate the cost of direct-assignment facilities, which are then trued-up to reflect the actual, prudently-incurred costs. SoCal Edison states that Brea Power is obligated to pay the actual recorded costs of construction, regardless of the magnitude of any of the SoCal Edison estimates. SoCal Edison also states that it will not have the actual recorded costs for the Tie-Line until construction of the facilities has been completed and all of the costs accurately calculated. Therefore, SoCal Edison contends that the Tie-Line estimate does not represent a legitimate issue of factual dispute among the parties.

22. SoCal Edison states that Brea Power's attempt to shift the pole replacement costs required by the Tie-Line to SoCal Edison's retail customers has no merit, is unreasonable, and should be summarily dismissed. SoCal Edison states that as the result of the fire, it had to replace approximately 125 damaged poles, including the wooden poles at issue here. SoCal Edison states that Brea Power did request that SoCal Edison replace the wooden poles that had been destroyed with poles that met the design specified for the Tie-Line. However, SoCal Edison states that it could not accommodate Brea Power's request because the poles required for the Tie-Line were not readily available. SoCal Edison contends that its first responsibility in cases of fire damage is to restore service as soon as possible and replace the damaged facilities. SoCal Edison asserts that Brea Power's request would have significantly interfered with that responsibility.

23. SoCal Edison asserts that Brea Power, like any other interconnection customer, must pay for the costs of necessary telecommunication equipment. SoCal Edison states that it operates a large scale, inter-utility telecommunications network. SoCal Edison states that in order to reliably and cost effectively engineer, construct, operate, and maintain a network, it is necessary to implement consistent designs throughout the system. SoCal Edison states that it is maintaining its standard telecommunication design practice for the Brea Power Project. SoCal Edison contends that diverging from this design would unnecessarily burden SoCal Edison and its ratepayers with increased costs, reduced operational efficiencies, and potentially negatively impact SoCal Edison's entire system. SoCal Edison also argues that accommodating Brea Power's request would lower interconnection service reliability for Brea Power.

24. Accordingly, SoCal Edison requests that the Commission approve the Brea Power Agreements as filed by SoCal Edison.

25. In its answer, Brea Power contends that under the WDAT LGIA, the upgrades are not part of SoCal Edison's distribution system as defined in the WDAT. Brea Power also asserts that retaining control of the upgrades does not give SoCal Edison the ability to dictate their classification. Furthermore, Brea Power disagrees with SoCal Edison's characterization of *Whitewater* and argues that SoCal Edison misapplied the *Mansfield*

factors. Brea Power also asserts that SoCal Edison has failed to adequately support its proposed \$1.7 million increase in the tie-line cost and the proposed telecommunications facilities. Finally, Brea Power argues that SoCal Edison should be responsible for the costs of replacing substandard poles.

### **III. Discussion**

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Brea Power's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SoCal Edison's and Brea Power's answers because they have provided information that assisted us in our decision-making process.

27. Our preliminary analysis of the current record evidence indicates that that SoCal Edison's proposed Agreements have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the proposed Agreements, suspend them for a nominal period, effective February 27, 2010, as requested, subject to refund, and set them for hearing and settlement judge proceedings, as ordered below. At the hearing, SoCal Edison will be required to demonstrate the justness and reasonableness of its proposed Agreements and address the issues discussed above. As to the telecommunication facilities cost, SoCal Edison must demonstrate whether the costs associated with the telecommunication facilities are just and reasonable and describe how these facilities maintain reliability on its system.

28. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>12</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.<sup>13</sup> The settlement judge

---

<sup>12</sup> 18 C.F.R. § 385.603 (2009).

<sup>13</sup> If the parties decide to request a specific judge, they may make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience ([www.ferc.gov](http://www.ferc.gov) – click on Office of Administrative Law Judges).

shall report to the Chief Judge and the Commission within 30 days of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SoCal Edison's proposed Agreements are hereby accepted for filing and suspended for a nominal period, to become effective February 27, 2010, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held concerning the justness and reasonableness of the unexecuted Agreements. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2009), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE,

Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.