132 FERC ¶ 61,150
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.

Southern California Edison Company — Docket Nos. ER10-732-000, ER10-732-001

ORDER ON COMPLIANCE FILING, GRANTING REHEARING AND ACCEPTING LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued August 23, 2010)

1. On May 13, 2010, Southern California Edison Company (SoCal Edison) filed a request for clarification or in the alternative, request for rehearing of an April 13, 2010 Commission order conditionally accepting a large generator interconnection agreement (LGIA) among SoCal Edison, Solar Partners I, LLC (Solar Partners) and the California Independent System Operator Corporation (CAISO).[1] This order grants rehearing and accepts the LGIA, to become effective February 13, 2010, as requested. This order also addresses SoCal Edison's compliance filing as directed by the LGIA Order and filed on June 14, 2010.

I. Background

2. On February 12, 2010, SoCal Edison filed the LGIA for Solar Partners' DPT 1 Project (Project), a 100 MW solar thermal generating facility, to be located in San Bernardino County, California. The LGIA is based on the CAISO's *pro forma* LGIA. The Network Upgrades and Distribution Upgrades described in the LGIA are part of SoCal Edison's proposed Eldorado-Ivanpah Transmission Project (EITP).

3. SoCal Edison has committed to up-front finance the network components of the EITP, including the Network Upgrades and Distribution Upgrades identified in Appendix A to this LGIA, contingent upon: (1) SoCal Edison's receipt of a Commission order that it can recover 100 percent of its prudently incurred costs for EITP if such project is abandoned due to circumstances outside of SoCal Edison's control (Abandoned Plant Approval), and (2) achievement of the development milestones by Solar Partners set forth in Appendix A to the LGIA.

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[1] *Southern California Edison Co.*, 131 FERC ¶ 61,016 (2010) (LGIA Order).

4. On October 1, 2009, SoCal Edison filed a request with the Commission for Abandoned Plant Approval and other incentives for the EITP in a Petition for Declaratory Order in Docket No. EL10-1-000. On December 17, 2009, the Commission conditionally granted SoCal Edison's petition.[2]

II. The LGIA Order

5. The Commission issued the LGIA Order on April 13, 2010. The LGIA Order found that SoCal Edison's inclusion of abandoned plant provisions in the LGIA constitutes a material deviation from the CAISO's *pro forma* LGIA.

6. The LGIA Order found that pursuant to Order No. 2003,[3] the LGIA in this matter was a non-conforming agreement. Under Order No. 2003, the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.[4] The LGIA Order further noted that given the Commission's conditional approval of the abandoned plant provisions in the EITP Incentive Order, in conjunction with SoCal Edison's decision to fund the Network

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[2] *Southern California Edison Co.*, 129 FERC ¶ 61,246 (2009) (EITP Incentive Order). The EITP Incentive Order authorized certain transmission pricing incentives for the EITP, including 100 percent recovery of prudently incurred costs in the event the EITP is cancelled, conditioned upon the project being approved by the CAISO's transmission planning process. The EITP Incentive Order currently is pending before the Commission on rehearing.

[3] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (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).

[4] Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 at P 140 ("[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision and provide a redline document comparing the non[-]conforming agreement to the effective *pro forma* LGIA.").

Upgrades related to the EITP, SoCal Edison has included material deviations in the LGIA.[5] The LGIA Order further indicated that such material deviations must be consistent with the EITP Incentive Order.[6]

7. Specifically, the Commission found inconsistent with the EITP Incentive Order the requirement for the Interconnection Customer to pay termination charges in the event the LGIA is terminated,[7] provided that such charges shall not be applicable to the extent costs associated with the termination of the LGIA are subject to Abandoned Plant Approval received by SoCal Edison. The Commission further found that the inclusion of the termination cost provisions in the LGIA fully mitigates SoCal Edison's risks associated with the up-front financing.[8]

8. The Commission reasoned that, if the EITP fails to secure approval in the CAISO transmission planning process, the termination cost provisions would allow SoCal Edison to obtain full cost recovery through the Commission's current policy providing 50 percent abandoned plant cost recovery from transmission customers, with the remaining 50 percent charged to the interconnection customer. However, if the EITP receives approval in the CAISO transmission planning process, then under the EITP Incentive Order, SoCal Edison would receive 100 percent abandoned plant cost recovery from transmission customers, if it makes the demonstration required in the EITP Incentive Order.[9]

9. The LGIA Order accepted SoCal Edison's LGIA, to become effective February 13, 2010, conditioned upon SoCal Edison making a compliance filing modifying the termination cost provisions of the LGIA so as to eliminate any cost recovery associated with abandoned plant regarding Network and Distribution Upgrades. On compliance, SoCal Edison was also directed to clearly identify other portions of the LGIA (including appendices) that differ from the CAISO's *pro forma* LGIA and provide justification for each non-conforming provision.

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[5] LGIA Order, 131 FERC ¶ 61,016 at P 23.

[6] *Id.*

[7] Termination charges were provided pursuant to Appendix A, section 12(a) (vii) of the LGIA, as applied to article 2.4 of the LGIA.

[8] LGIA Order, 131 FERC ¶ 61,016 at P 25.

[9] Under the EITP Incentive Order, SoCal Edison would be allowed to recover 100 percent of prudently incurred abandoned plant costs based on a showing in a subsequent filing under section 205 of the Federal Power Act (FPA). 16 U.S.C. § 824d (2006).

III. SoCal Edison's Request for Rehearing

10. On May 13, 2010, SoCal Edison filed a request for clarification, or in the alternative, request for rehearing of the LGIA Order. SoCal Edison argues that the termination cost provisions in the LGIA address the treatment of abandoned plant costs under different circumstances than the EITP Incentive Order; that the termination cost provisions have been agreed to by the interconnection customer; and that the termination cost provisions exist to facilitate the EITP's progress prior to SoCal Edison receiving full Abandoned Plant Approval under the EITP Incentive Order.[10]

11. SoCal Edison argues that the Commission incorrectly interpreted the termination cost provisions of the LGIA to mean that SoCal Edison would recover 50 percent of abandoned plant costs from transmission customers and 50 percent from the interconnection customer in the event SoCal Edison did not receive Abandoned Plant Approval for the EITP.[11]

12. SoCal Edison argues that the parties' intent under the LGIA is that if SoCal Edison does not receive Abandoned Plant Approval, SoCal Edison will not be willing to provide up-front financing for the costs of Network Upgrades. As a result, if SoCal Edison does not receive Abandoned Plant Approval, all termination or abandonment costs will be borne by the interconnection customer. SoCal Edison states that this result is consistent with the *pro forma* LGIA.[12]

13. SoCal Edison argues that, in the event SoCal Edison does receive Abandoned Plant Approval, SoCal Edison would then be willing to provide up-front financing for Network Upgrades. Under these circumstances and pursuant to the EITP Incentive Order, SoCal Edison would be authorized to recover any prudently incurred abandoned plant costs from transmission customers following a demonstration in a subsequent FPA section 205 filing.[13]

14. SoCal Edison argues that it was necessary to enter into the LGIA with these provisions because the interconnection customer needed SoCal Edison to move forward with licensing, engineering and early procurement now, before SoCal Edison has

[10] SCE does not seek clarification or rehearing on the requirement that it identifies and justifies other portions of the LGIA that differ from the CAISO's pro forma LGIA. SoCal Edison Request at 2 n.2.

[11] SoCal Edison Request at 5.

[12] *Id.*

[13] *Id.* at 3-4.

satisfied the conditions under the EITP Incentive Order to obtain Abandoned Plant Approval.[14] SoCal Edison states that any delay in the interconnection customer's project might impede the interconnection customer's ability to obtain funding under the American Recovery and Reinvestment Act.[15] SoCal Edison states that, in the absence of a termination cost provision assigning responsibility for abandonment costs to the interconnection customer, SoCal Edison would not have been willing to accelerate licensing, engineering and procurement activities prior to receiving Abandoned Plant Approval.[16]

15. SoCal Edison states that in its petition for declaratory order preceding the EITP Incentive Order, it identified certain risks associated with the EITP project, including the need for state and federal regulatory approvals, the significant capital outlay; and the uncertainty that the renewable generation would be completed. SoCal Edison argues that these risks, which were recognized by the Commission in the EITP Incentive Order, are not eliminated by requiring the interconnection customer to bear the risk of abandonment before SoCal Edison receives Abandoned Plant Approval.[17]

16. SoCal Edison requests the Commission confirm the termination cost provisions as consistent with the EITP Incentive Order and find that the termination cost provisions properly allocate the risk of abandonment costs by assigning them entirely to the interconnection customer until SoCal Edison obtains Abandoned Plant Approval. At such time that SoCal Edison obtains Abandoned Plant Approval, SoCal Edison explains that abandoned plant costs would be allocated under the EITP Incentive Order.[18]

IV. Brightsource Energy, Inc.'s (Brightsource) Motion to Intervene

17. On May 13, 2010, Brightsource filed a motion to intervene out of time and request for expedited rehearing. Brightsource states that there is good cause to grant its motion to intervene out of time. Brightsource explains that it is the parent company of Solar Partners, the interconnection customer and a party to the LGIA. Further, Brightsource argues that the LGIA Order represents a change in policy by the Commission and creates regulatory uncertainty which Brightsource argues may adversely affect the financing of Brightsource's solar projects that will interconnect to the EITP. Brightsource states that

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[14] *Id.* at 6.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 9.

[18] *Id.* at 7.

its interests are not adequately represented by other parties to the proceeding and that permitting Brightsource to intervene will not prejudice, or add burdens upon the existing parties to the proceeding.

V. **SoCal Edison's Compliance Filing**

18. On June 14, 2010, SoCal Edison submitted in Docket No. ER10-732-000, the compliance filing that was directed by the LGIA Order (Compliance Filing). In the Compliance Filing, SoCal Edison submitted changes to this non-conforming LGIA to remove the obligation on the Interconnection Customer to pay termination costs for Network and Distribution Upgrades. SoCal Edison states that because it will only finance the EITP if it receives final Abandoned Plant Approval, if SoCal Edison does not receive such final approval from the Commission for Abandoned Plant Approval[19] or if SoCal Edison's request for rehearing in this docket is not granted, SoCal Edison will file a revised LGIA to revert to the *pro forma* LGIA provisions requiring the Interconnection Customer to finance the Network and Distribution Upgrades and be responsible for any related termination costs. SoCal Edison also requests that if the Commission finds the termination cost provisions and Article 2.4 were correctly included in the LGIA as requested in SoCal Edison's request for rehearing, that the originally-filed LGIA be reinstated.

19. The Compliance Filing also identified and provided justifications for the provisions in the LGIA that differ from the *pro forma* LGIA as they relate to SoCal Edison's commitment to fund the Network and Distribution Upgrades, as required by Order No. 2003 and directed by the LGIA Order.

20. In addition, though not a part of the Compliance Filing, SoCal Edison states that it is in the process of negotiating a letter agreement requiring the Interconnection Customer to fund an escrow account. The escrow account would cover the costs incurred by SoCal Edison for final engineering and procurement prior to SoCal Edison receiving Abandoned Plant Approval. SoCal Edison states that the escrow account will terminate and SoCal Edison will not draw any amounts funded to the escrow account if and when SoCal Edison has final Abandoned Plant Approval.

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[19] The Compliance Filing states that SoCal Edison will file the revised LGIA referred to in this section if SoCal Edison does not receive final approval on its Incentives Petition (Docket No. EL10-1-000). However, SoCal Edison did not file a request rehearing on the Commission's conditional approval of abandoned plant cost recovery within 30 days of the issuance of the EITP Incentive Order, pursuant to Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2010). Accordingly, for SoCal Edison to receive final Abandoned Plant Approval, the EITP must be approved in the CAISO transmission planning process.

VI. Discussion

A. Procedural Matters

21. When late intervention is sought after the issuance of a dispositive order, the possibility of prejudice to other parties and burden on the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. We deny Brightsource's motion to intervene because it has not met this higher burden of justifying its late intervention.

B. Commission Determination

22. The EITP Incentive Order addressed abandoned plant recovery issues. The EITP Incentive Order granted SoCal Edison's request for Abandoned Plant Recovery (of prudently incurred costs), provided that the abandonment is a result of factors beyond the control of SoCal Edison (to be demonstrated in a subsequent proceeding under section 205 of the FPA).[20] Recovery of prudently incurred abandonment costs is also conditioned on the EITP being approved under the CAISO transmission planning process.

23. According to SoCal Edison, this LGIA has divided possible abandoned plant costs into two separate categories. SoCal Edison argues that, based on the circumstances presented in this LGIA, it is appropriate that the interconnection customer be assigned responsibility for any abandoned plant costs that might occur before final approval of SoCal Edison's incentive petition, i.e., before the EITP is approved in the CAISO transmission planning process, as noted above. According to SoCal Edison, it will not agree to up-front finance Network or Distribution Upgrades during this time.

24. The second category of possible abandoned plant costs are those occurring after final approval of SoCal Edison's incentive petition, i.e., after the EITP is approved in the CAISO transmission planning process. For this category of possible abandoned plant costs, SoCal Edison states that abandoned plant costs would be allocated according to the EITP Incentive Order, i.e., prudently incurred abandoned plant costs would be recovered from transmission customers following a demonstration by SoCal Edison in a subsequent proceeding under section 205 of the FPA.

25. The EITP Incentive Order did not contemplate such a categorization of abandoned plant costs. Rather, under the EITP Incentive Order, SoCal Edison was authorized a

[20] 16 U.S.C. § 824d (2006).

package of rate incentives including Abandoned Plant Recovery, that did not consider such a categorization. The incentives were conditioned on the EITP receiving approval in the CAISO transmission planning process.

26. According to SoCal Edison, Solar Partners stated that it needed SoCal Edison to move forward with licensing, engineering and early procurement now, before SoCal Edison has obtained Abandoned Plant Approval because a delay in the Project schedule might impede Solar Partners' ability to obtain American Recovery and Reinvestment Act stimulus funding.[21] SoCal Edison further reiterates that it is unwilling to finance the costs of network upgrades. As a result, the costs of abandonment of network upgrades would be borne by the Interconnection Customer, not transmission ratepayers.[22] In the event that SoCal Edison does obtain Abandoned Plant Approval, the Interconnection Customer would not be responsible for charges related to abandonment of network upgrades, which would be recovered pursuant to the EITP Incentive Order.

27. SoCal Edison has clarified that it will not fund any Network or Distribution Upgrades until it has received full Abandoned Plant Approval consistent with the conditions of the EITP Incentive Order. It also clarifies that under no circumstances will SoCal Edison's shareholders (or its transmission customers) take on the risk to be responsible for the costs due to the generation failing to materialize or other similar factors outside SoCal Edison's control before the conditions of the EITP Incentive Order are met. Accordingly, we grant rehearing and find that result in this instance to be just and reasonable. Based on the clarifications that have been presented during the pendency of SoCal Edison's request for rehearing, the Commission will grant rehearing and eliminate the condition that SoCal Edison's compliance filing modify the termination cost provisions of the LGIA.

C. <u>The Compliance Filing</u>

1. <u>Notice and Responsive Pleadings</u>

28. Notice of the Compliance Filing was published in the *Federal Register*, 75 Fed. Reg. 35,785, with interventions and protests due on or before July 6, 2010. Brightsource filed comments in support of SoCal Edison's compliance filing. No other interventions or protests were received.

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[21] *Id.* at 6.

[22] *Id.* at 5.

2. **Commission Determination**

29. Because this order grants SoCal Edison's request for rehearing and eliminates the condition that SoCal Edison modify the termination cost provisions of the LGIA to eliminate any cost recovery associated with abandoned plant regarding Network and Distribution Upgrades, we will grant SoCal Edison's request that the originally-filed LGIA be reinstated.

30. Our review of SoCal Edison's proposed non-conforming provisions in the LGIA, which incorporate modifications to reflect SoCal Edison's commitment to fund the Network and Distribution Upgrades, indicates that these provisions are reasonable in the context of SoCal Edison's commitment to fund the Network and Distribution Upgrades. Accordingly, we will accept for filing those modifications, effective February 13, 2010.

The Commission orders:

(A) SoCal Edison's request for rehearing is granted, as discussed in the body of this order.

(B) The Compliance Filing is accepted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.