

133 FERC ¶ 61,019
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
California Independent System Operator Corporation

Docket No. ER10-2169-000
ER10-2282-000

ORDER CONDITIONALLY ACCEPTING NON-CONFORMING LARGE
GENERATOR INTERCONNECTION AGREEMENT

(Issued October 7, 2010)

1. On August 10, 2010, Southern California Edison Company (SoCal Edison) filed under its transmission tariff, a Large Generator Interconnection Agreement (LGIA) among itself as transmission operator, Desert Sunlight Holdings, LLC (Desert Sunlight) as interconnection customer, and the California Independent System Operator Corporation (CAISO). On August 19, 2010, CAISO filed the identical LGIA, as a non-conforming service agreement under its tariff. In this order, we conditionally accept the LGIA under both SoCal Edison and CAISO's tariffs, effective, August 10, 2010.

I. Background

2. Desert Sunlight, through various predecessor companies, proposes to interconnect a 550 MW solar photovoltaic generating facility, to be located in Riverside County, California (the Project),¹ to SoCal Edison's transmission system at the proposed Red Bluff 230kV bus, and to transmit energy and/or ancillary services to the CAISO-controlled grid.

3. SoCal Edison states that the LGIA is based on the CAISO's *pro forma* LGIA. It specifies the terms and conditions pursuant to which SoCal Edison and CAISO will provide, and Desert Sunlight will pay for, interconnection service. SoCal Edison will design, procure, construct, install, own, operate, and maintain the interconnection facilities and reliability network upgrades required to interconnect the Project to SoCal Edison's transmission system.

¹ Desert Sunlight applied for a loan guarantee from the Department of Energy under the American Recovery and Reinvestment Act. Desert Sunlight, September 9, 2010 at 2.

4. SoCal Edison states that Appendix A of the LGIA identifies the interconnection facilities, and network upgrades of the LGIA. SoCal Edison states that it has committed to up-front finance reliability network upgrades, as specifically identified in Appendix A to the LGIA, subject to the following conditions: (1) SoCal Edison has received a Commission order granting its recovery of 100 percent of its prudently incurred costs for these facilities if the Project is abandoned due to circumstances outside of SoCal Edison's control (abandoned plant approval);² and (2) Desert Sunlight's achievement of the development milestones set forth in Appendix A to the LGIA.

5. SoCal Edison identifies the following provisions in Appendix A to the LGIA as possibly being interpreted as differing from the *pro forma* CAISO LGIA: (1) definition of abandoned plant approval; (2) its commitment to up-front finance the cost of the reliability network upgrades, and the development milestones, including actions to be taken following completion of or failure to complete milestones in sections 12(d), (f), (g), (h), and (k) of Appendix A; and (3) limits on SoCal Edison's commitment to file for abandoned plant approval within (60) calendar days of the execution and filing of the LGIA. SoCal Edison anticipates that, to the extent these provisions are non-conforming to the CAISO's *pro forma* LGIA, CAISO will make a filing with the Commission and request that the Commission consolidate our review of CAISO's filing with our review in this docket.³

6. SoCal Edison states that, in accordance with Appendix A to the LGIA, Desert Sunlight is required to provide credit support in the amount of \$3,851,000.00 to cover SoCal Edison's estimated costs for the network upgrades anticipated to be incurred through November 2010 in the absence of abandoned plant approval. SoCal Edison states that this security will be a backstop funding mechanism for costs incurred to

² SoCal Edison notes that on August 4, 2010, it filed in Docket No. EL10-81-000 a Petition for Declaratory Order seeking incentives, including assurance from the Commission that it may recover 100 percent of its prudently incurred costs for the network upgrades required to interconnect the Desert Sunlight Project to CAISO controlled-grid (Red Bluff Substation) if the Red Bluff Substation project is abandoned due to circumstances beyond SoCal Edison's control.

³ SoCal Edison notes that it filed for review this LGIA before receiving the Commission's order on rehearing in Docket No. ER10-732-000. That rehearing order was subsequently issued as *Southern California Edison Co.*, 132 FERC ¶ 61,150 (2010). The rehearing order accepted the non-conforming LGIA changes as reasonable in the context of SoCal Edison's commitment to fund the Network and Distribution Upgrades. *Southern California Edison Co.*, 132 FERC ¶ 61,150 at P 30.

perform work on the network upgrades in the event that Desert Sunlight terminates the LGIA prior to abandoned plant approval. SoCal Edison states it will release the security following abandoned plant approval.

7. SoCal Edison states that, in accordance with Appendix A to the LGIA, Desert Sunlight is to be responsible for an interconnection facilities payment of \$1,845,000. Following the completion date of the interconnection facilities, Desert Sunlight will also pay SoCal Edison a monthly interconnection facilities charge to recover the ongoing revenue requirement for SoCal Edison'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 percent.⁴ The monthly interconnection facilities charge will be \$7,011 (0.38 percent x \$1,845,000).

8. SoCal Edison and CAISO request waiver of the 60-day prior notice requirement⁵ so that the LGIA can become effective August 10, 2010. SoCal Edison states that the waiver would be consistent with the Commission's policy set forth in *Central Hudson Gas & Electric Corp.*⁶ SoCal Edison claims that good cause exists because granting such waiver will enable SoCal Edison to commence engineering, design, and procurement of the facilities necessary to connect the project to the CAISO-controlled grid by Desert Sunlight's requested in-service date of June 2012.

9. Separately, CAISO filed the same LGIA as SoCal Edison to have it accepted as a non-conforming service agreement under the CAISO tariff and to enter it into CAISO's eTariff system consistent with SoCal Edison's filing. CAISO requests that the Commission consolidate the review of its filing with the review of SoCal Edison's filing of the same LGIA, designated by SoCal Edison as Service Agreement No. 86 under its Transmission Owner Tariff in Docket No. ER10-2169-000. CAISO requests that the LGIA be accepted as a Non-Conforming Service Agreement No. 1647 under its Open Access Transmission Tariff effective August 10, 2010. CAISO states that the provisions

⁴ 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 prior large generator interconnection agreement dockets. SoCal Edison states that it provided cost justification for this rate in Docket No. ER10-1435-000.

⁵ 16 U.S.C. § 824d(d) (2006); 18 C.F.R. § 35.3 (2010).

⁶ 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

in the LGIA that may be interpreted as differing from the CAISO *pro forma* LGIA were justified by SoCal Edison in its June 14, 2010 filing of an LGIA containing similar provisions in Docket No. ER10-732-000.⁷

II. Notices of Filings and Responsive Pleadings

10. Notice of SoCal Edison's filing was published in the *Federal Register*, 75 Fed. Reg. 51,260 (2010), with interventions and protests due on or before August 31, 2010. A timely motion to intervene and protest was filed by the M-S-R Public Power Agency and the City of Santa Clara, California (collectively, the M-S-R Parties). Desert Sunlight filed an out-of-time motion to intervene and answer to protest. SoCal Edison filed an answer to the M-S-R Parties' protest.

11. Notice of CAISO's filing was published in the *Federal Register*, 75 Fed. Reg. 52,521 (2010), with interventions and protests due on or before September 9, 2010. A timely motion to intervene was filed by Desert Sunlight.

A. Protests

12. The M-S-R Parties argue that SoCal Edison's filing raises the same concerns that it protested in SoCal Edison's LGIA filing with SES Solar One, LLC in Docket No. ER10-796-000. M-S-R Parties claim the LGIA is emblematic of a pattern of activity by SoCal Edison that potentially involves anti-competitive and discriminatory behavior that the Commission denounced in Order No. 2003.⁸ The M-S-R Parties also argue that SoCal Edison fails to explain the differences between this LGIA and the CAISO *pro forma* LGIA. The M-S-R Parties state that the Commission should require SoCal Edison to resubmit with this LGIA, a discussion justifying the deviations from the *pro forma* LGIA.⁹

13. The M-S-R Parties object to SoCal Edison's commitment to provide up-front financing for network upgrades contained in Appendix A of the LGIA. Specifically, they argue that SoCal Edison's decision to make such financing contingent upon the

⁷ SoCal Edison's June 14, 2010 compliance filing in Docket No. ER10-732-000 explained and justified similar non-conforming provisions and was accepted by the Commission in an order issued August 23, 2010. *Southern California Edison Co.*, 132 FERC ¶ 61,150.

⁸ M-S-R Parties Protest at 7.

⁹ M-S-R Parties Protest at 17.

Commission granting abandoned plant approval deviates from CAISO's *pro forma* LGIA as approved by the Commission, and is not consistent with or superior to the *pro forma* terms.¹⁰

14. The M-S-R Parties argue that SoCal Edison's preferential treatment of particular renewable generators violates Commission policy and harms transmission customers. Specifically, they contend that because SoCal Edison has executed a power purchase agreement with Desert Sunlight and also must meet Renewable Portfolio Standard benchmarks, it has a vested interest in the Project that is akin to an ownership interest.¹¹ They argue that SoCal Edison has contravened the Commission's interconnection policies because it agreed to provide up-front financing to Desert Sunlight pursuant to a potentially discriminatory application of an LGIA provision.

15. The M-S-R Parties state that Order No. 2003 described and rectified the problem of Transmission Providers providing favorable and discriminatory treatment for interconnection of their own generation. They argue that SoCal Edison's interest in the Project has created a situation mirroring the one addressed in Order No. 2003.¹² Moreover, they claim that SoCal Edison has agreed to front the network upgrade costs for only seven of the ten interconnection agreements for projects SoCal Edison filed in the last year, because it has executed power purchase agreements with the developers of these seven projects.

16. Additionally, the M-S-R Parties assert that by agreeing to pay for \$145 million in costs that Desert Sunlight would otherwise front, SoCal Edison has wielded significant negotiating power at the expense of its ratepayers. They state that the Commission must ensure that these costs are not being incurred and charged to customers under discriminatory, potentially anti-competitive practices.

17. The M-S-R Parties raise the concern that SoCal Edison's LGIA might run afoul of the Commission's requirement that a transmission provider separate its transmission and marketing arms in order to ensure that it is not providing unduly preferential or

¹⁰ We note that material deviations from the *pro forma* LGIA are not subject to the "consistent with or superior to" standard of review. Rather, material deviations that are submitted on an individual case basis are subject to a higher burden, requiring an applicant to explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement. *See Southern California Edison Co.*, 131 FERC ¶ 61,016, at P 23 (2010).

¹¹ *Id.* at 8-9.

¹² *Id.* at 11.

discriminatory treatment.¹³ They point to Order No. 717's separation of function requirements and the prohibition on a transmission provider and its employees, contractors, consultants, and agents from disclosing non-public transmission function information to marketing function employees.¹⁴

18. The M-S-R Parties contend that the Desert Sunlight LGIA and other SoCal Edison LGIAs raise the question of whether SoCal Edison has breached the Commission's Standards of Conduct.¹⁵ They request that the Commission require SoCal Edison to demonstrate that it has maintained the Standards of Conduct to ensure that it cannot skirt regulations in order to provide itself a competitive advantage.

B. SoCal Edison's Answer and Desert Sunlight's Answer

19. SoCal Edison disagrees with the M-S-R Parties' arguments that Appendix A of the LGIA contains material deviations from the CAISO *pro forma* LGIA; it claims that because M-S-R Parties' arguments do not provide any basis for modification of the LGIA, these arguments should be rejected.¹⁶ SoCal Edison states that the Commission's and CAISO's *pro forma* LGIAs explicitly provide for up-front financing of network upgrades by transmission owners. Additionally, SoCal Edison asserts that neither the CAISO tariff nor Commission precedent imposes conditions addressing when transmission owners can exercise this option or limit conditions that transmission owners may impose on exercising it. SoCal Edison contends that if the Commission believed that any conditions or restriction of this sort needed to be imposed on transmission owners, it would have included them in Order No. 2003.

20. SoCal Edison also argues that if the Commission believes that the abandoned plant approval condition deviates materially from the *pro forma* LGIA, it should approve it as superior to the *pro forma* LGIA.¹⁷ It argues that the Commission should make this finding, because the condition increases the likelihood that generation will be constructed, and, thus, able to interconnect to CAISO grid.

¹³ *Id.* at 14.

¹⁴ *Id.* at 15.

¹⁵ *Id.*

¹⁶ SoCal Edison Answer at 3.

¹⁷ *Id.* at 4.

21. SoCal Edison disagrees that the abandoned plant approval condition is discriminatory and provides SoCal Edison with a competitive advantage.¹⁸ It maintains that its choice to make up-front funding of network upgrades contingent upon the receipt of abandoned plant approval is not based upon whether it has a power purchase agreement with the interconnection customer. Instead, SoCal Edison claims that its decisions reflect its effort to determine the optimum network upgrades within its service territory that will need to be constructed or financed for California to reach its Renewable Portfolio Standard goals. It claims that “the fact that there is a Power Purchase Agreement . . . with [SoCal Edison] is not the only factor” used to determine whether to up-front finance network upgrades.¹⁹ To demonstrate this point, SoCal Edison states that the interconnection customer has power purchase agreements with not only SoCal Edison but also with Pacific Gas and Electric Company (PG&E). SoCal Edison states that it has entered into a power purchase agreement with Solar Millennium, the developer of another solar power plant that will interconnect at the Red Bluff Substation, for 242 MW. That power purchase agreement grants Solar Millennium the option to source generation from the Red Bluff Substation or from other generation resources developed by Solar Millennium that are not interconnecting at Red Bluff, however, Solar Millennium may choose to sell the remainder of its output from its generating facility to any entity.²⁰ For these reasons, SoCal Edison contends that its selection of which network upgrades to up-front fund does not inhibit an open, transparent renewable generation procurement process.

22. SoCal Edison addresses the M-S-R Parties’ specific allegation that it agreed to up-front finance network upgrades for 7 of the 10 LGIAs SoCal Edison filed this year because it executed power purchase agreements with those 7 generators.²¹ SoCal Edison points out that there are no network upgrades associated with the remaining three generator interconnections—Brea Power II, Dagget Ridge, and Western Wind Energy. It also states that it had already received CAISO and Commission approval to up-front fund the Tehachapi Project, which Alta Wind will utilize to facilitate its interconnection to the CAISO grid. SoCal Edison also cites to the recent Commission decision that concluded SoCal Edison had reasonably exercised its authority to elect to up-front finance the Network Upgrades in approving the LGIA with Solar Partners I.²²

¹⁸ *Id.*

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 6 (citing *Southern California Edison Co.*, 132 FERC ¶ 61,150 at P 30).

23. SoCal Edison dismisses as incorrect the M-S-R Parties' claim that SoCal Edison provides benefits to generators at the expense of transmission customers because it earns a return on equity on the network upgrades it has chosen to fund up-front.²³ SoCal Edison states that because network upgrades are part of its transmission system, it will earn a return on this investment regardless of who provides the funding. Finally, SoCal Edison dismisses the M-S-R Parties' allegation that it may have violated the Standards of Conduct as a bad faith allegation intended to intimidate SoCal Edison by suggesting to the Commission that there should be an investigation. SoCal Edison claims that exercising its option to up-front finance these network upgrades does not involve impropriety.

24. Desert Sunlight submits that the protest is without merit and should be disregarded. Desert Sunlight states that the M-S-R Parties failed to establish that certain provisions of the LGIA are discriminatory. Desert Sunlight also states that the M-S-R Parties erroneously assumed that certain provisions are deviations from the *pro forma* LGIA, since both the *pro forma* LGIA and Order No. 2003 expressly allow SoCal Edison to elect to up-front finance the costs of network upgrades.

25. Desert Sunlight argues that the LGIA provisions that allow SoCal Edison to up-front finance the cost of network upgrades are not unduly discriminatory. Desert Sunlight states that those provisions are reasonable and serve a Commission policy goal of promoting the development of renewable resources and that renewable generation often faces unique challenges because it tends to be location-constrained.²⁴ Desert Sunlight offers that the LGIA provisions reflect the realities faced by solar developers and promote a Commission public policy objective.

26. Desert Sunlight responds to the M-S-R Parties' claim that due to SoCal Edison's power purchase agreement with Desert Sunlight, SoCal Edison has an interest akin to the ownership interest that the Commission found to be unduly discriminatory in Order No. 2003. Desert Sunlight explains that it is not affiliated with SoCal Edison and clarifies that it is a wholly owned subsidiary of First Solar, Inc., an independent merchant developer of solar generation projects. Desert Sunlight also notes that the LGIA was negotiated at arm's length with the parties to the agreement. For those reasons, Desert Sunlight argues that there is nothing in this situation that is like the common ownership

²³ *Id.* at 6.

²⁴ Desert Sunlight, September 9, 2010 at 6-7 (citing *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061, at P 68, *order on reh'g and clarification*, 120 FERC ¶ 61,244 (2007); *Pac. Gas & Elec. Co.*, 123 FERC ¶ 61,067, at P 33 (2008)).

of generation and transmission by vertically-integrated utilities that concerned the Commission in Order Nos. 888 and 2003.

27. Desert Sunlight argues that there is no evidence of discrimination in the ten recent SoCal Edison LGIA filings identified by M-S-R Parties. Desert Sunlight offers that in the seven cases where SoCal Edison agreed to up-front finance the costs of network upgrades it did so to eliminate an obstacle to the financing and construction of those renewable projects. Desert Sunlight states that SoCal Edison did not agree to up-front finance the costs of network upgrades in the other three cases because “there were no network upgrades identified in the LGIAs in those three cases.”²⁵

28. Desert Sunlight states that because the *pro forma* LGIA and Order No. 2003 expressly allow a transmission provider to up-front finance the costs of network upgrades, the provisions of the LGIA governing the up-front financing of the network upgrades are not deviations from the *pro forma* LGIA. Desert Sunlight states that the Commission has upheld virtually identical provisions in a different SoCal Edison LGIA on the grounds that those provisions were “reasonable in the context of SoCal Edison’s commitment to fund the network and distribution upgrades.”²⁶ Desert Sunlight states that up-front financing by SoCal Edison will allow the network upgrades to be funded by the party with the lowest capital cost and the party that is in the best position to finance those upgrades. Finally, Desert Sunlight states that SoCal Edison’s financing of the network upgrades will remove an obstacle to the construction and financing of the solar project and enhance Desert Sunlight’s ability to complete its clean energy project.

29. As discussed above, CAISO also states that the provisions in the LGIA that may be interpreted as differing from the CAISO *pro forma* LGIA were justified by SoCal Edison in its June 14, 2010 filing of an LGIA containing similar provisions in Docket No. ER10-732-000.

III. Discussion

A. Procedural Matters

30. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, the M-S-R Parties timely, unopposed motion to intervene serve to make them parties to this proceeding.²⁷ Pursuant to Rule 214(d) of the Commission’s Rules of Practice and

²⁵ *Id.* at 8.

²⁶ *Id.* at 9 (citing *Southern California Edison Co.*, 132 FERC ¶ 61,150 at P 30).

²⁷ 18 C.F.R. § 385.214 (2010).

Procedure, the Commission will grant Desert Sunlight's late-filed motion to intervene and answer to protest given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.²⁸ Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.²⁹ We will accept SoCal Edison's answer and Desert Sunlight's answer, because they provided information that assisted us in our decision-making process.

B. Commission Determination

31. As discussed below, we will conditionally accept the LGIA with Desert Sunlight, subject to the outcome of the proceeding in Docket No. EL10-81-000 regarding SoCal Edison's request for incentives and abandoned plant approval. According to the application, SoCal Edison will up-front finance the network upgrades if Desert Sunlight achieves certain development milestones set forth in Appendix A to the LGIA and SoCal Edison receives abandoned plant approval.

32. We will grant waiver of the 60-day notice requirement for good cause shown and conditionally accept the LGIA subject to the Commission's decision regarding SoCal Edison's request for abandoned plant approval under Docket No. EL10-81-000, effective August 10, 2010.³⁰

33. The Commission does not find sufficient evidence to conclude that this LGIA involves anti-competitive or discriminatory behavior as alleged by the M-S-R Parties. In addressing the M-S-R Parties' protest, it is initially important to note that the M-S-R Parties proffer no evidence in support of their allegations of potentially anti-competitive or discriminatory behavior on the part of SoCal Edison. Rather, the M-S-R Parties protest is based solely on assumptions drawn by the M-S-R Parties as a result of SoCal Edison's choice to up-front finance network upgrades for the Project while also entering into a purchase power agreement with Desert Sunlight.

²⁸ *Id.* § 385.214(d).

²⁹ *Id.* § 385.213(a)(2).

³⁰ *See Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338-39, *order on reh'g*, 61 FERC ¶ 61,089; *see also Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (waiver of prior notice will be granted if service agreements are filed within 30 days after service commences).

34. As stated by SoCal Edison, both Order No. 2003 and CAISO's *pro forma* LGIA contemplate that Transmission Owners may choose to up-front fund network upgrades associated with an interconnection customer's Project. Additionally, there are no specified standards which must be applied in deciding whether to up-front fund network upgrades. Nevertheless, the Commission would not sanction undue discrimination or anti-competitive practices in connection with the option to provide up-front funding for network upgrades. In the absence of evidence to the contrary, we find just and reasonable SoCal Edison's decision to provide up-front financing of network upgrades to all 7 generators having network upgrades associated with their generators, including generators which have power purchase agreements with both SoCal Edison and PG&E.

35. We also agree with SoCal Edison and Desert Sunlight that there is no evidence presented on this record from which we could conclude that SoCal Edison's agreement to provide up-front funding of network upgrades, subject to conditions, is violative of our standards of conduct. The M-S-R Parties provide no evidence of collusion between SoCal Edison's transmission and marketing arms. Nor do we find evidence that this LGIA was negotiated in an inequitable manner. Desert Sunlight is an independent entity without corporate ties to SoCal Edison. Based on these facts we are unable to conclude that any impropriety has occurred in the negotiation of this LGIA.

36. We do not find that the mere existence of a purchase power agreement between SoCal Edison and Desert Sunlight creates in SoCal Edison an interest that is akin to an ownership interest. As discussed above, both order No. 2003 and the CAISO's *pro forma* LGIA permit Transmission Owners to provide up-front funding of network upgrades. We find no evidence in this instance that SoCal Edison has agreed to up-front fund network upgrades for any reason other than to facilitate the opportunity to complete the Project and assist SoCal Edison in meeting the renewable portfolio standards imposed by the state of California.

37. Finally, we agree with CAISO and Desert Sunlight that SoCal Edison has justified the non-conforming provisions of this LGIA by virtue of SoCal Edison's filings in Docket No. ER10-732-000.³¹ Consistent with our findings in Docket No. ER10-732-000, our conditional acceptance of the non-conforming LGIA in this docket is based on our conclusion that SoCal Edison has identified the portions of this LGIA that differ from the *pro forma* LGIA and adequately explained why the unique circumstances of the interconnection require a non-conforming LGIA.

³¹ See *Southern California Edison Co.*, 132 FERC ¶ 61,150 at P 30.

The Commission orders:

SoCal Edison and CAISO's LGIA is conditionally accepted subject to the Commission decision regarding SoCal Edison's requested abandoned plant approval incentive in Docket No. EL10-81-000, effective August 10, 2010.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.