

139 FERC ¶ 61,185
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

OPINION NO. 520

Southern California Edison Company

Docket No. ER07-1034-002

ORDER AFFIRMING INITIAL DECISION

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Before Commissioners: Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

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(Issued June 8, 2012)

1. On July 24, 2009, the Presiding Administrative Law Judge (ALJ) issued an Initial Decision in which he determined that certain facilities located between the Green Borders generating facility and the California Independent System Operator Corporation (CAISO) transmission grid should be classified as interconnection facilities, and not network upgrades.¹ As discussed below, the Commission affirms the ALJ's determination that the facilities at issue are properly classified as interconnection facilities and that the costs for such facilities should be directly assigned to Green Borders.

I. Background

A. The Proposed Interconnection

2. On February 22, 2005, Green Borders applied to interconnect its proposed 62 megawatt (MW) geothermal generating facility (Green Borders Project or Project) to the CAISO controlled grid. The Project, located near Hawthorne, Nevada, connects to an existing 220 kV transmission line,² Dixie Valley-Oxbow, which interconnects to

¹ *Southern Cal. Edison Co.* 128 FERC ¶ 63,003 (2009) (Initial Decision).

² Dixie Valley-Oxbow 220 kV transmission line is not owned by Southern California Edison Company (SCE).

Southern California Edison's (SCE) transmission system at SCE's 115-kilovolt (kV) bus at the SCE Control Substation located in northern Inyo County, California.³

3. To interconnect the Green Borders Project, Green Borders proposes to construct and own two facilities consisting of: (1) a new, 12-mile, 230 kV generation tie line⁴ running from the Green Borders Project to the existing Dixie Valley-Oxbow 230 kV generation tie line (Dixie-Oxbow line); and (2) a new switching station near Aurora, Nevada (Aurora Station), adjacent to the Dixie-Oxbow line. The Dixie -Oxbow line currently delivers energy produced by the Oxbow Qualifying Facility (Oxbow QF) to the CAISO controlled grid. The 12-mile line will connect the Green Borders Project to the Aurora Station, which in turn, will connect the line to the Dixie-Oxbow line.⁵

B. Filing the LGIA and Partial Settlement

4. On June 14, 2007, SCE and CAISO filed an unexecuted Large Generation Interconnection Agreement (LGIA) with Green Borders (Service Agreement No. 49). On August 10, 2007, the Commission accepted the proposed agreement for filing, made it effective August 14, 2007, subject to refund and established hearing and settlement procedures.⁶ On July 31, 2008, following settlement discussions, the parties reached a partial settlement which resolved all but one issue related to Service Agreement No. 49. The Partial Settlement did not resolve the classification of certain telecommunications facilities, and the resulting allocation of costs associated with those facilities. The Partial

³ Initial Decision, 128 FERC ¶ 63,003 at P 7.

⁴ Generation tie line refers to a radial line that delivers electric power from a generator, or generators, to the integrated transmission grid, but is not part of that grid, *i.e.*, is not under the control of the transmission provider.

⁵ The Dixie-Oxbow line interconnects with the CAISO controlled grid at the Control Substation.

⁶ *See Southern Cal. Edison Co.*, 120 FERC ¶ 61,149 (2007). The LGIA was designated as Service Agreement No. 49 of SCE FERC Electric Tariff, Second Revised Volume No. 6, and the Certificate of Concurrence was designated as Service Agreement No. 839 of CAISO FERC Electric Tariff, Third Replacement Volume No. II.

Settlement was certified to the Commission as uncontested on August 27, 2008.⁷ The Commission approved the Partial Settlement on October 27, 2008,⁸ accepting the attached tariff sheets for filing and making them effective on July 31, 2008.

C. Upgrades Necessitated by the Interconnection of the Green Borders Project

5. In order to prevent the Green Borders Project from overloading the CAISO transmission grid during certain emergencies, while at the same time permitting the Oxbow QF to continue delivering power to the grid during such emergencies, the parties determined that certain upgrades and modifications were needed to isolate the Green Borders Project when such emergencies arise.⁹ CAISO estimated the costs of the upgrades and installations necessitated by the interconnection to be \$27,000,000. The parties agreed to classify as network upgrades those facilities associated with (1) equipment replacement and upgrades at four SCE substations, (2) upgrades to the Bishop, Kramer and High Desert remedial action scheme to incorporate isolation and tripping of the Green Borders Project under certain contingency conditions, and (3) redesign and technology upgrades at the Kramer Substation.¹⁰ These upgrades include telecommunication equipment which will serve circuit breakers controlling several generation tie lines and monitoring CAISO-controlled facilities.¹¹ The parties also agreed to classify the installation of redesign technology upgrades at the Green Borders Project and the installation of new revenue quality meters at the control station as interconnection facilities.¹² The parties' remaining dispute is over the classification of

⁷ *Southern Cal. Edison Co.*, 124 FERC ¶ 63,014 (2008).

⁸ *Southern Cal. Edison Co.*, 125 FERC ¶ 61,096 (2008).

⁹ In the absence of upgrades, the interconnection of the Green Borders Project to the CAISO controlled grid would require an exclusion of the Oxbow QF's generation to protect the grid in situations that would not dictate such exclusion today. Initial Decision, 128 FERC ¶ 63,003 at PP 22-23.

¹⁰ *Id.* PP 29-30 (citing JST-8 at 64-70).

¹¹ *Id.* P 30 (citing SCE-1 at 6:12-17).

upgrades that include certain fiber-optic and microwave telecommunications channels needed to support an upgraded remedial action scheme (Telecommunications Facilities).

The Telecommunications Facilities at issue consist of:

- a. Approximately 68 miles of fiber optic cable that will run from the SCE Control Substation to the proposed Aurora Station; and
- b. Microwave facilities at the Aurora Peak, South Benton Range, and Polenta Canyon communication sites, and at the Aurora Station.¹³

6. The estimated cost for such facilities totals \$20,058,000.¹⁴ The parties agreed that SCE will own and control the Telecommunications Facilities. The Telecommunications Facilities will monitor and control the circuit breakers at the proposed Aurora Station and at the switchyard and will connect to the Green Borders Project. In cases of emergency, the Telecommunications Facilities will send a signal to isolate the Green Borders Project from the grid, without disturbing service to the existing Oxbow QF.¹⁵ The fiber optic cable will be the primary means of communication between CAISO's remedial action scheme and the Green Borders Project, and the microwave facilities will provide a second and independent means of sending the tripping signal to these facilities, should the fiber optic cable become unavailable.¹⁶

¹² *Id.* P 31 (citing Ex. JST-8 at 62-64).

¹³ *Id.* P 32 (citing Ex. JST-8 at 63).

¹⁴ *Id.* (citing Stipulation No. 15).

¹⁵ *Id.* P 33 (citing Stipulation No. 16, Ex. ISO-1 at 10:19-23).

¹⁶ *Id.* P 33. On April 4, 2006, SCE published a Technical Assessment (TAS 1) to analyze the load flows that would result from the interconnection of the Green Borders Project. On June 16, 2006, SCE published a Facilities Study, which provided a cost summary for the interconnection facilities and CAISO system upgrades that had been identified in TAS I. The study estimated the costs for interconnection facilities and system upgrades at \$215,000 and \$217,442,000 respectively. On December 12, 2007,

(continued...)

D. Hearing Proceedings and Joint Narrative Statement of Issues

7. On September 12, 2008, the ALJ convened a prehearing conference in the proceeding and granted the participants' request to forego a hearing and instead file stipulations, testimony and briefs.¹⁷ On October 22, 2008, CAISO filed a Joint Stipulation of Documents and Facts on behalf of the active parties in the proceeding. CAISO, SCE, Green Borders and Staff, each filed direct testimony, and CAISO, Green Borders and Staff filed rebuttal testimony. On February 12, 2009, CAISO filed a Joint Narrative Statement of Issues (Statement of Issues) on behalf of the all the active participants. The Statement of Issues set forth one primary issue:

Whether telecommunications facilities identified in the revised interconnection studies...as necessary to interconnect the Green Borders Geothermal project to the CAISO Controlled Grid, consisting of a fiber optic cable and microwave equipment, should be classified as interconnection facilities or Network Upgrades.¹⁸

8. The participants' position was that resolution of the primary issue rests on resolution of six sub-issues regarding the Telecommunications Facilities, including:

- (1) whether the facilities provide a benefit to the CAISO controlled grid;

CAISO, in coordination with SCE, published a second Technical Assessment (TAS II) which concluded that modifications to CAISO's existing remedial action scheme at the Bishop, Kramer and High Desert facilities to incorporate tripping of the Green Borders Project would obviate the need for many of the network upgrades identified in TAS I. The modifications would assure that generation from the Oxbow QF would continue to flow to the grid, absent circumstances that would have required exclusion of the generation, prior to the interconnection of the Green Borders Project. *See Id.* PP 11-12, 16.

¹⁷ *See id.* PP 35-39.

¹⁸ *Id.* P 37.

- (2) whether the facilities constitute a discrete upgrade to CAISO's remedial action scheme or instead are an integral part thereof;
- (3) whether the location of the facilities on the Green Borders side of the interconnection is relevant to determining the appropriate classification;
- (4) whether the fact that SCE will own and operate the facilities supports classifying them as Network Upgrades;
- (5) whether and, if so, how *Southern Cal. Edison Co.*, 97 FERC ¶ 61,148 (2001) (referred to as *Wildflower*), is relevant to the facilities classification; and
- (6) whether it is appropriate to compare the facilities to a "radial transmission line" (i.e., a generation tie line) for purposes of classifying them.¹⁹

9. CAISO, SCE, Green Borders and Staff filed initial and reply briefs. The ALJ held an oral argument on the merits on April 16, 2009.

10. By Order dated June 16, 2009, the ALJ directed the participants to file supplemental briefs addressing whether the definitions contained in CAISO's Tariff should determine the classification of the Telecommunications Facilities. The participants filed supplemental briefs on June 22, 2009. On July 24, 2009, the ALJ issued an Initial Decision concluding that the Telecommunications Facilities should be classified as interconnection facilities, and that direct assignment of the Facilities' cost to Green Borders is appropriate. On August 24, 2009, Green Borders and Staff filed briefs on exceptions. On September 14, 2009, CAISO, SCE, Staff, and Green Borders filed briefs opposing exceptions.

¹⁹ *Id.*

II. Discussion

A. Initial Decision

11. The ALJ determined that the Telecommunications Facilities' location behind the point of interconnection mandates classifying them as interconnection facilities and precludes classifying them as network upgrades. Because the costs of interconnection facilities are borne by the interconnection customer, whereas the costs of network upgrades are rolled into the transmission rates paid by users of the integrated transmission grid, the ALJ concluded that direct assignment of the costs of the Telecommunications Facilities to Green Borders is appropriate.

12. In making this determination, the ALJ concluded that sub-issue 3 (whether the location of the facilities on the Green Borders side of the interconnection is relevant to determining the appropriate classification)²⁰ controlled the classification of the Telecommunications Facilities, and resolution of the remaining sub-issues was not relevant to their classification.²¹

13. To classify the Telecommunications Facilities, the ALJ first examined the governing LGIA, Service Agreement No. 49, between the parties in this case. The ALJ concluded that the definitions of "Interconnection Facilities" and "Network Upgrades" in Service Agreement No. 49 and all the related definitions in the body of the Agreement and in Appendix A²² control the classification of the Telecommunications Facilities. The ALJ further explained that the relevant provisions in the body of Service Agreement No. 49 are identical in all material respects to their counterparts in the body of CAISO's LGIA.²³ The ALJ also determined that Service Agreement No. 49's definitions of

²⁰ *Id.* P 37.

²¹ *Id.* P 70.

²² Under Appendix A, the "Point of Interconnection" is defined as the "Participating TO's Control 115 kV Substation position 8," referred to as Breaker Bay #8 of the Control Substation. *Id.* P 62.

²³ *Id.* P 68.

“Interconnection Facilities” and “Network Upgrades” are substantively identical to their counterparts in the Order No. 2003 LGIA.²⁴

14. The ALJ stated that the Order No. 2003 LGIA definition of “Interconnection Facilities” incorporates the at-or-beyond test.²⁵ That definition states,

Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modifications, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider’s Transmission System.²⁶

²⁴ *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), *cert. denied*, 552 U.S. 1230 (2008). In making this determination, the ALJ explained that Service Agreement No. 49’s definition of “Network Upgrades” includes Participating TO’s Delivery Network Upgrades and Participating TO’s Reliability Network Upgrades. Additionally, the ALJ found that the definition of Participating TO’s Reliability Network Upgrades in CAISO’s LGIA includes the following sentence that is not included in its counterpart in Order No. 2003: “Participating TO’s Reliability Network Upgrades also include, consistent with Applicable Reliability Council practice, the Participating TO’s facilities necessary to mitigate any adverse impact the Large Generating Facility’s interconnection may have on a path’s Reliability Council rating.” The ALJ determined that the drafters of CAISO’s LGIA did not intend for these textual differences to materially expand or revise the definition of network upgrades set forth in Order No. 2003. Initial Decision, 128 FERC ¶ 63,003 at PP 52-61. The ALJ also concluded that the record established in this proceeding indicates no dispute between the parties regarding the definitions contained in the body of Service Agreement No. 49. *Id.* PP 62, 64.

²⁵ *Id.* P 49.

²⁶ *See* Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at 31,132.

Order No. 2003 defines “Network Upgrades” as,

... the additions, modifications, and upgrades to the Transmission Provider’s Transmission System required at or beyond the point at which the Interconnection Facilities connect to the Transmission Provider’s Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider’s Transmission System.²⁷

15. The ALJ noted that Order No. 2003 LGIA’s definition of “Network Upgrades” contains two prerequisites: to fall within the definition, an interconnection-necessitated facility not only must be located at-or-beyond the generator’s point of interconnection with the grid, it must also be an upgrade to the integrated transmission grid.²⁸

16. Thus, the ALJ determined that both the definitions of “Network Upgrades” and “Interconnection Facilities” incorporated the Commission’s long-standing at-or-beyond test. The ALJ explained that the Commission articulated the at-or-beyond test in *Entergy Gulf States, Inc.*, when it said, “[n]etwork facilities include all facilities at or beyond the point where the customer or generator connects to the grid.”²⁹ The ALJ also explained that in Order No. 2003, the Commission stated that it had “developed a simple test for distinguishing Interconnection Facilities from Network Upgrades: Network Upgrades include only facilities at or beyond the point where the Interconnection Customer’s Generating Facility interconnects to the Transmission Provider’s Transmission System.”³⁰ The Commission subsequently explained that “interconnection facilities refer

²⁷ Initial Decision, 128 FERC ¶ 63,003 at P 51 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 63-65).

²⁸ *Id.*

²⁹ *Id.* P 45 (citing *Entergy Gulf States, Inc.* 98 FERC ¶ 61,014 at 61,023, *reh’g denied*, 99 FERC ¶ 61,095 (2002), *remanded sub nom. Entergy Servs., Inc. v. FERC*, 391 F.3d 1240 (D.C. Cir. 2004), *order on remand sub nom. Nevada Power*, 111 FERC ¶ 61,161 (2005)).

³⁰ *Id.* P 45 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 21. In Order No. 2003, the Commission also noted that the at-or-beyond test does not apply where the generating facility interconnects to the transmission provider’s distribution

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to all facilities and equipment from the generating facility up to (but not including) the point of interconnection.”³¹

17. Therefore, the ALJ determined that the record demonstrates that the Telecommunications Facilities are interconnection facilities because the location of Telecommunications Facilities is between the Green Borders Project and the CAISO grid.³² The ALJ noted that no participant disputes this location.³³ The ALJ determined that the definitions of “Interconnection Facilities” and “Network Upgrades” contained in Service Agreement No. 49, both of which incorporate the Commission’s at-or-beyond test, support this conclusion. In reaching this determination, the ALJ rejected a number of Green Borders’ arguments regarding the interpretation of the relevant provisions in Service Agreement No. 49.³⁴ The ALJ similarly rejected Green Borders’ claim that the at-or-beyond test should not apply in this case.³⁵

system and upgrades are needed to the distribution system to accommodate the interconnection. These costs must be assigned to the interconnection customer because distribution facilities typically deliver electricity to particular localities and do not serve the bulk delivery service for the entire system as in the case for transmission facilities. Therefore, the ALJ found that it is not appropriate that all transmission customers share the cost of distribution upgrades). *Id.* P 46 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 697).

³¹ *Nevada Power*, 111 FERC ¶ 61,161 at P 13.

³² Initial Decision, 128 FERC ¶ 63,003 at P 74.

³³ Initial Decision, 128 FERC ¶ 63,003 at P 73, citing Green Borders Initial Brief at 11 (“[t]he location of the telecommunication facilities on the Green Borders side of the interconnection is irrelevant to determining their appropriate classification.”)

³⁴ Green Borders argued that the definition for “Network Upgrades” in Service Agreement No. 49 demonstrates that the Telecommunications Facilities can be classified as Network Upgrades, regardless of location. The ALJ rejected this claim, finding that this argument relied upon an incorrect interpretation of the relevant contract provision. Green Borders also argued that the definitions of “Interconnection Facilities” “Network Upgrades” and related terms contained in Attachment A of CAISO’s Tariff take

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18. The ALJ explained that the classification of the Telecommunications Facilities governs who shall ultimately pay the costs of those Facilities. Under Service Agreement No. 49, if facilities do not fall within the definition of network upgrades, then Green Borders must pay their costs.³⁶ Therefore, the ALJ stated that direct assignment of the costs for the Telecommunications Facilities to Green Borders is appropriate.³⁷

19. Although the ALJ determined that the Facilities' location behind the point of interconnection was dispositive in classifying the facilities, the ALJ addressed the merits of the remaining sub-issues stipulated by the parties in the Statement of Issues.³⁸ The ALJ found each sub-issue to be irrelevant to the primary issue because the definitions contained in Service Agreement No. 49, which adopt the at-or-beyond test, were controlling in classifying the Telecommunications Facilities.

B. Exceptions to the Initial Decision

20. Green Borders argues that the ALJ erred in finding that the disputed Telecommunications Facilities should be classified as interconnection facilities and not network upgrades. Green Borders makes a number of related arguments to challenge the ALJ's determination. Green Borders states that the ALJ incorrectly based his

precedent over their counterparts in Service Agreement, and support classification of the Telecommunications Facilities as network upgrades. The ALJ similarly dismissed this contention, noting that Service Agreement No. 49 specifically addressed these matters, and thus Service Agreement No. 49 shall govern.

³⁵ In particular, the ALJ concluded that Green Borders' reliance on *Southern Cal. Edison Co.*, 117 FERC ¶ 61,103 was not persuasive, finding that the case is factually distinguishable from this dispute.

³⁶ Initial Decision, 128 FERC ¶ 63,003 at P 69 (noting that the provisions of Service Agreement No. 49 provide reimbursement to the Interconnection Customer only for the costs of Network Upgrades).

³⁷ *Id.* P 91.

³⁸ *Id.* P 92.

determination solely on the location of the facilities. Green Borders contends that, as part of his classification of the Telecommunications Facilities, the ALJ should have considered the purpose and function of the disputed facilities to evaluate the benefits that these facilities provide. Although Green Borders acknowledges that the disputed Telecommunications Facilities are located behind the point of interconnection, it claims they serve a network purpose because they are an integral part of the remedial action scheme needed to trip Green Borders' output off-line to protect the CAISO controlled grid when system conditions so require. Therefore, Green Borders argues that the Telecommunications Facilities offer grid-wide benefits and should be classified as network upgrades, regardless of their location.³⁹

21. Green Borders also objects to the ALJ's application of the Commission's at-or-beyond test to reach its determination. Green Borders claims that the Commission has indicated that the at-or-beyond test for classifying facilities is not appropriate to apply in all instances, particularly because "it may not allow "[the Commission] to distinguish between non-integrated facilities and Network Upgrades in certain instances."⁴⁰ Green Borders cites *Southern California Edison*⁴¹ and *Wildflower* to argue that the Commission should not base its determination solely on the location of the facilities, as is required by the at-or-beyond test, but instead should also look to the function of the facilities.⁴²

22. In addition, Green Borders also argues that the ALJ incorrectly interpreted the relevant contract provisions. In particular, Green Borders claims that the definition for "Participating TO's Reliability Network Upgrades" in CAISO's LGIA demonstrates that the Telecommunications Facilities, regardless of location, should be classified as network upgrades.

³⁹ Green Borders Brief on Exceptions at 10-11.

⁴⁰ *Id.* at 10 (citing Ex. S-1 at p 12, lines 9-12).

⁴¹ 117 FERC ¶ 61,103 (2006).

⁴² According to Green Borders, the Commission's decision in *Southern Cal. Edison Co.*, 97 FERC ¶ 61,148 (2001) (*Wildflower*) demonstrates that a remedial action scheme installed in lieu of costly network upgrades can be classified as network upgrades.

23. Green Borders asserts that the ALJ erred in finding that the disputed Telecommunications Facilities were built in lieu of a generation tie-line, and should therefore be classified as interconnection facilities. Green Borders states that no proposal to install a generator tie-line from the Green Borders Project directly to the CAISO controlled grid was considered during the interconnection process. Green Borders points out that the purpose of the TAS II re-study was to determine whether previously identified network upgrades totaling \$217,442,000 could be eliminated or reduced. Green Borders asserts that the ALJ's determination in this proceeding will encourage Green Borders and other future interconnection customers to elect costly network upgrades in lieu of more cost-effective alternatives, which maximize the efficient use of the existing transmission system because interconnection customers would be eligible for transmission service credits for the costly network upgrades.

24. Finally, Green Borders claims that the ALJ's determination that the Telecommunications Facilities are Interconnection Customer's Interconnection Facilities, as that term is defined in Service Agreement No. 49, will require that Green Borders violate Section 11.1 of that agreement.⁴³ That provision requires that the interconnection customer "design, procure, construct, install, and/or operate" the interconnection customer's interconnection facilities. Because it was stipulated that SCE will own and operate the Telecommunications Facilities, Green Borders argues that classifying such facilities as interconnection customer's interconnection facilities will cause Green Borders to be in breach of the governing LGIA. For all of these reasons, Green Borders argues that the ALJ's determination was in error, and the Telecommunications Facilities should be classified as network upgrades, regardless of the physical location of the facilities.

25. CAISO, SCE and Staff support the ALJ's determination that location of the Telecommunications Facilities mandates their classification as interconnection facilities, rather than network upgrades. CAISO, SCE and Staff support the ALJ's finding that the definitions for "Interconnection Facilities" and "Network Upgrades" contained in Service Agreement No. 49 (which incorporate the Commission's at-or-beyond test) control the classification of the Telecommunications Facilities. CAISO argues that the at-or-beyond test, which was reaffirmed in Order No. 2003, has been strictly applied by the Commission to distinguish between network upgrades and interconnection facilities, with

⁴³ Green Borders Brief on Exceptions at 12.

very few limited exceptions.⁴⁴ CAISO also notes the location of the Telecommunications Facilities between the Green Borders Project and the CAISO controlled grid is not in dispute; therefore, the ALJ correctly applied the definitions set forth in CAISO's LGIA and Service Agreement No. 49 to conclude that Telecommunications Facilities should be classified as interconnection facilities.

26. CAISO and Staff assert that the *Wildflower* decision is not relevant to the facts in this case because the facilities at issue in *Wildflower* were located beyond the point of interconnection, whereas the facilities at issue in the instant proceeding are located behind the point of interconnection. CAISO notes that, consistent with the *Wildflower* decision, remedial action scheme upgrades required to safely interconnect the Green Borders facility, which are located beyond the point of interconnection, have been reflected in Appendix A of Service Agreement No. 49, as network upgrades.⁴⁵

27. CAISO and Staff disagree with Green Borders' assertion that classification of the Telecommunications Facilities requires an evaluation of the function of the facilities to determine what benefits might be provided.⁴⁶ CAISO states that Green Borders provides no support for departing from the at-or-beyond test in this case and argues that Order No. 2003 expressly reaffirmed that this test would remain the standard for distinguishing between interconnection facilities and network upgrades. CAISO also states that the ALJ correctly determined that it was unnecessary to evaluate whether the Telecommunications Facilities offered a grid-wide benefit for purposes of classifying those facilities.⁴⁷

⁴⁴ CAISO Brief Opposing Exceptions at n.7 (citing *Tampa Electric Co.*, 99 FERC ¶ 61,192, at 61,796-97 (2002) (allowing certain metering equipment used to measure generation located at the point of interconnection to be treated as an interconnection facility); *Nevada Power Co.*, 113 FERC ¶ 61,007, at P 26 (2005), (explaining that direct assignment of certain transmission facilities would be allowed when they fell into an "exceptional category" of facilities "that are so isolated from the grid that they are and will remain non-integrated"))).

⁴⁵ *See id.* at 5-6; Staff Brief Opposing Exceptions at 30.

⁴⁶ *See* CAISO Brief Opposing Exceptions at 3-6; Staff Brief Opposing Exceptions at 13-14.

⁴⁷ CAISO Brief Opposing Exceptions at 5.

CAISO argues that even if it were appropriate to consider whether the facilities offer grid-wide benefits for purposes of classifying such facilities, the ALJ correctly concluded that the Telecommunications Facilities offer no such benefits.

28. SCE argues that the record demonstrates that the Telecommunications Facilities serve the single purpose of disconnecting the Green Borders facility when system conditions require, without also disconnecting the Oxbow QF, and therefore, are not “part and parcel of the [remedial action scheme]” as Green Borders claims.

29. CAISO states that the Telecommunications Facilities are not integrated and do not provide a distinct benefit to the CAISO controlled grid because they are not necessary to implement the remedial action scheme and do not provide a grid-wide benefit.⁴⁸ If Green Borders had chosen to interconnect via a separate radial line, CAISO claims that it would have been able to trip Green Borders directly at the point of interconnection. According to CAISO, Green Borders’ decision to interconnect using an existing radial line makes it necessary to install the Telecommunications Facilities in order to isolate Green Borders without adversely affecting the existing customer using the line.

30. Staff points out that the Telecommunications Facilities bestow no ongoing benefits to the CAISO control grid. Rather, these facilities only offer the threshold benefits associated with any initial interconnection and, according to Staff, if the Telecommunications Facilities are not installed, Green Borders cannot access the CAISO controlled grid via the Dixie Valley Oxbow transmission line, without degrading the service that the Oxbow QF currently enjoys.⁴⁹ Staff also argues that because the location of the facilities dictates their classification, whether the Telecommunications Facilities are a discrete upgrade or an integral part of the remedial action scheme is irrelevant.⁵⁰

31. While Staff supports the ALJ’s determination regarding the classification of the Telecommunications Facilities, Staff argues that the Initial Decision fails to recognize the distinction between the threshold benefits to the CAISO controlled grid (which result

⁴⁸ *Id.* at 7-8.

⁴⁹ Staff Brief Opposing Exceptions at 15.

⁵⁰ SCE Brief Opposing Exceptions at 5.

from the interconnection of any additional generation) and additional, ongoing benefits that the facilities in question provide above and beyond the threshold benefits. Staff states that the ALJ erred in rejecting [in a footnote] its argument that the Telecommunications Facilities will benefit only the Oxbow QF. Staff explains that the facilities at issue provide no benefit to the CAISO controlled grid beyond that of making the initial interconnection of Green Borders' generator to the grid. Beyond this threshold benefit, Staff asserts that the Telecommunications Facilities benefit only the Oxbow QF by ensuring that existing deliveries of energy over the Dixie Valley-Oxbow transmission line are not affected or degraded in any way by Green Borders.⁵¹

C. Commission Determination

32. The Commission affirms the ALJ's determination that the Telecommunications Facilities are interconnection facilities, and not network upgrades, and thus direct assignment of their costs to Green Borders is appropriate. This conclusion is based upon the relevant defined terms contained in Service Agreement No. 49, the location of the Telecommunications Facilities, and the limited purpose of the Facilities. The Commission finds that the ALJ performed a thorough analysis of the record, and in so doing examined the relevant contract terms that govern the classification of the Telecommunications Facilities, considered the facts regarding the nature and location of the Telecommunications Facilities and applied long-standing Commission precedent to make this appropriate determination. We agree with the ALJ's determination that the function of the Telecommunications Facilities supports their classification as interconnection facilities because the Facilities serve a single purpose, and do not provide benefits to the CAISO controlled grid in any way that would justify passing their costs onto CAISO ratepayers.⁵²

33. As an initial matter, we agree with the ALJ that the definitions of "Interconnection Facilities" and "Network Upgrades" in Service Agreement No. 49, and all the related

⁵¹ Staff Brief on Exceptions at 9-10.

⁵² Initial Decision, 128 FERC ¶ 63,003 at P 95.

definitions in the body of that Agreement and in Appendix A support the classification of the Telecommunications Facilities as interconnection facilities.⁵³

Interconnection facilities are defined in Service Agreement No. 49 to include:

... [a]ll facilities and equipment between the Generating Facility and the Point of Interconnection, including any modifications, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Participating TO's Transmission System.

34. Network upgrades are defined in Service Agreement No. 49 to encompass "Participating TO's Delivery Network Upgrades" and "Participating TO's Reliability Network Upgrades." The definitions for both of these terms describe network upgrades as "additions, modifications, and upgrades to the Participating TO's Transmission System at-or-beyond the point of interconnection."⁵⁴ Thus, we find that the definitions for both network upgrades and interconnection facilities base the classification of facilities on the location of the facilities.

35. The Commission finds that the ALJ correctly applied the locational standard that underlies the Commission's at-or-beyond test to the Telecommunications Facilities. As the Commission reaffirmed in Order No. 2003, the at-or-beyond test is a simple test that is used to classify facilities pertaining to generation interconnection as interconnection

⁵³ Upon Commission approval of the Partial Settlement, and the resulting effectiveness of Service Agreement No. 49, the definitions contained therein could not be revised by any party. *Id.* P 68. No party disputed the definitions contained in the body of Service Agreement No. 49, which are materially identical to CAISO's LGIA.

⁵⁴ Participating TO's Delivery Network Upgrades are the "additions, modifications, and upgrades to the Participating TO's Transmission System at-or-beyond the Point of Interconnection, other than Reliability Network Upgrades, identified in the interconnection studies and in Appendix A, to relieve constraints on the CAISO Controlled Grid." Under Service Agreement No. 49, the Point of Interconnection is defined as the point where the interconnection facilities connect to the Participating TO's Transmission System. The record demonstrates that the point of interconnection is defined in Service Agreement No. 49 as Breaker Bay No. 8 of the Control Substation.

facilities or network upgrades. If the facilities are located at-or-beyond the point of interconnection, they provide system benefits given the integrated nature of the transmission grid and therefore, they are classified as network upgrades. In Order No. 2003, the Commission specifically stated,

[w]e are removing references to beneficiaries from the definition [of Network Upgrades], because our well-established precedent regarding what constitutes Network Upgrades does not require a case-specific determination that all users benefit from the Network Upgrade; instead we look only as whether the upgrade is at or beyond the Point of Interconnection.⁵⁵

36. The record demonstrates that the Telecommunications Facilities are physically located between the Green Borders Project and the point of interconnection, i.e., behind the point of interconnection with the CAISO controlled grid.⁵⁶ No party disputes this fact.⁵⁷ Thus, the Commission finds that the location of the Telecommunications Facilities supports a determination that these Facilities should be classified as interconnection facilities. This is also consistent with the definition of “Interconnection Facilities” included in Service Agreement No. 49, which incorporates the Commission’s at-or-beyond test.⁵⁸

⁵⁵ Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 66.

⁵⁶ Initial Decision, 128 FERC ¶ 63,003 at P 76.

⁵⁷ *Id.* P 73.

⁵⁸ *Id.* P 74 (citing Ex. JST-8 at 11. Service Agreement No. 49 identifies 2 types of Interconnection Facilities, “Participating TO’s Interconnection Facilities” and “Interconnection Customer’s Interconnection Facilities.” In general, the distinction between these types of facilities depends on whether the interconnection facilities are located beyond the Point of Change of Ownership, as that term is defined in Service Agreement No. 49. This distinction is not relevant to our determination here, because the Participating TO’s Interconnection Facilities and Interconnection Customer’s Interconnection Facilities encompass all of the interconnection facilities. The

(continued...)

37. Based on our review of the record, we find that the limited function of the Telecommunications Facilities further supports a determination that such Facilities should be classified as interconnection facilities. We agree with the ALJ's determination that the Telecommunications Facilities do not provide network benefits warranting the classification of the facilities as network upgrades. In particular, CAISO characterized the Telecommunications Facilities in the following manner.

“[b]ecause the Green Borders Project will interconnect to the CAISO controlled grid using an existing line which also serves as the means of interconnection for the Oxbow QF, full redundant telecommunications routes must be constructed from the Control Substation to the new Aurora switching station in order to send the tripping signal to the project while still allowing the Oxbow QF to remain in service. The fiber optic cable and microwave facilities will allow the [Special Protection Systems] to monitor and control the circuit breakers at the Aurora switching station and at the generator's switchyard, such that in cases of emergency, the Green Borders Project can be isolated from the grid, without disturbing [transmission] service to the Oxbow QF.”⁵⁹

38. We agree with the ALJ that the Telecommunications Facilities serve a single purpose of delivering “a signal from the [remedial action scheme] facilities on the CAISO Controlled Grid that will isolate and exclude the Green Borders' generation . . . without overloading the grid.”⁶⁰ Thus, the Telecommunications Facilities do not serve a network purpose. The record demonstrates that without the Telecommunications Facilities, CAISO would be forced to trip Breaker Bay No. 8 of the Control Substation under certain emergency conditions, which would exclude both the Green Borders Project, and the Oxbow QF. The Telecommunications Facilities hold the Oxbow QF

Commission needs only to determine whether the disputed facilities fall within the general category of interconnection facilities, for purposes of allocating the costs of such facilities).

⁵⁹ Ex. ISO-1 at 9:12-22.

⁶⁰ Initial Decision, 128 FERC ¶ 63,003 at P 95 (citing Stipulation No. 16; Ex. ISO-1 at 9:18-23).

harmless by allowing that facility to continue delivering power during certain emergency conditions once the Green Borders facility is operational and delivering power onto the CAISO grid.

39. Recognizing that the Telecommunications Facilities are interconnection facilities, and not network upgrades, we affirm the ALJ's determination that the costs for such facilities should be directly assigned to Green Borders. Section 11.4.1 of Service Agreement No. 49 provides that Green Borders will only be reimbursed for the costs of network upgrades. Thus, because these Facilities are classified as interconnection facilities, Green Borders should not be reimbursed for these costs.

40. On exceptions, Green Borders makes a number of arguments to challenge the ALJ's determination. We find each of these arguments unpersuasive. Green Borders generally argues on exceptions that the Telecommunications Facilities should be classified as network upgrades, despite their undisputed location and the relevant definitions under Service Agreement No. 49, because the Facilities provide a network benefit, and are "part and parcel" of a remedial action scheme necessary to protect the reliability of the CAISO controlled grid. Thus, Green Borders argues that the Commission should not only look at location when classifying such facilities, but it should also evaluate the function of the facilities to determine the benefits that are provided. Green Borders argues that the function of the Telecommunications Facilities supports their classification as network upgrades. Green Borders asserts that the Commission's decision in *Wildflower*⁶¹ supports its position. Green Borders argues that because the Facilities in dispute in this proceeding serve a similar function to those in *Wildflower*, they should be classified as network upgrades.⁶²

41. We disagree with Green Borders' assertion that the Facilities provide any network benefits that would warrant classifying them as network upgrades. The Commission finds that the Telecommunications Facilities are not an integral part of the remedial action scheme; they serve the limited purpose of disconnecting the Green Borders Project while preserving the Oxbow QF's right to deliver power onto the CAISO grid during emergency conditions. The limited precedent cited by Green Borders to demonstrate

⁶¹ *Southern Cal. Edison Co.*, 97 FERC ¶ 61,148 (2001) (referred to as *Wildflower*).

⁶² Green Borders Brief on Exceptions at 6-8.

otherwise is inapposite to the facts in this case, and is unpersuasive. In *Wildflower*, the Commission considered whether direct assignment of the costs for remedial action scheme facilities located beyond the point of interconnection was appropriate. The Commission determined that the facilities were network upgrades that provided system-wide benefits and therefore could not be directly assigned to the interconnection customer. Green Borders suggests that because the function of the facilities addressed in *Wildflower* are similar to those offered by the Telecommunications Facilities, the facilities in dispute should be classified as network upgrades.⁶³ This argument is not persuasive. As demonstrated above, unlike the facilities in *Wildflower*, the Telecommunications Facilities are located behind the point of interconnection and provide no network benefits. Moreover, in contrast to *Wildflower*, the Telecommunications Facilities at issue are separate and discrete from the remedial action scheme, and not necessary to implement the remedial action scheme. Green Borders cites one other case, *Southern Cal. Edison Co.*,⁶⁴ to support its position that the function of the disputed facilities warrants their classification as network upgrades. As demonstrated above, the Commission considered the limited function of the Telecommunications Facilities and determined that their function supports their classification as interconnection facilities. Therefore, we dismiss their contention.

42. The Commission also rejects Green Borders' contention that the definition of Participating TO's Reliability Network Upgrades in CAISO's LGIA supports a determination that the Telecommunications Facilities are network upgrades. According to Green Borders, the second sentence of the definition of Participating TO's Reliability Network Upgrades means that "Participating TO's facilities, regardless of location, can be classified as Participating TO's Reliability Network Upgrades."⁶⁵ We dismiss this contention. As the ALJ correctly pointed out, there is no evidence in the record to suggest that the drafters of CAISO's LGIA intended to substantively revise and expand

⁶³ *Id.* at 11.

⁶⁴ 117 FERC ¶ 61,103 (2006).

⁶⁵ Green Borders Brief on Exceptions at 13.

the definition of network upgrades beyond what was originally included in Order No. 2003.⁶⁶

43. Green Borders also argues that the ALJ failed to account for other relevant terms of the LGIA when the ALJ determined that certain portions of the Telecommunications Facilities are Interconnection Customer's Interconnection Facilities. Section 11.1 of the LGIA addresses ownership and control of the Interconnection Customer's Interconnection Facilities. That issue is not relevant to the Commission's classification of the Telecommunications Facilities, and is therefore irrelevant and dismissed.

44. Staff objected to the ALJ's rejection of the Staff assertion that the Telecommunications Facilities only benefit the Oxbow QF.⁶⁷ In particular, Staff asserts that the ALJ failed to recognize that there is a distinction between the threshold benefits associated with the initial interconnection of new generation, and the ongoing network benefits that such facilities may provide. The Commission finds that this exception does not bear on our determination in this case. As explained above, the Telecommunications Facilities serve the limited purpose of enabling the Oxbow QF to deliver power onto the CAISO grid during emergency conditions after the Green Borders Project is interconnected and operational. Thus, the Facilities do not serve a network purpose. Whether the Telecommunications Facilities benefit only the Oxbow QF has no bearing on our finding. Thus, the Commission declines to reach a determination on this issue.

45. Finally, Green Borders asserts that the ALJ erred in determining that the disputed Telecommunications Facilities were built in lieu of a generation tie-line.⁶⁸ We similarly find this argument to be irrelevant to our resolution of the issue in dispute here.

46. For all of the reasons set forth above, we affirm the ALJ's determination that the Telecommunications facilities are interconnection facilities. Thus, the costs for such facilities should be directly assigned to Green Borders

⁶⁶ Initial Decision, 128 FERC ¶ 63,003 at P 61.

⁶⁷ Staff Brief on Exceptions at 7.

⁶⁸ Green Borders Brief on Exceptions at 8.

The Commission orders:

The Initial Decision is hereby affirmed, as discussed in the body of this order.

By the Commission. Chairman Wellinghoff is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.