142 FERC ¶ 61,101
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony T. Clark.

Sycamore Cogeneration Company
Southern California Edison Company

Docket No. ER13-133-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued February 8, 2013)

1. In this order, we grant Sycamore Cogeneration Company's (Sycamore) and Southern California Edison Company's (SoCal Edison) (collectively, the Parties) application under section 205 of the Federal Power Act (FPA) for Commission authorization for Sycamore to make wholesale power and capacity sales to its affiliate, SoCal Edison, at market-based rates.[1] We find that the proposed affiliate sale satisfies the Commission's concerns regarding affiliate abuse. Accordingly, we will authorize this affiliate sale, effective December 17, 2012, as requested.

I. Background

2. On October 16, 2012, the Parties requested authority for Sycamore to make sales to its affiliate, SoCal Edison, as the result of Sycamore's selection as a winning bidder in SoCal Edison's 2011 request for offers.

3. The Parties state that Sycamore is a California general partnership, owned equally by two general partners: Chevron Sycamore Cogeneration Company and Western Sierra Energy Company (Western Sierra).[2] According to the Parties, Western Sierra is a wholly-owned indirect subsidiary of Edison Mission Group, which in turn, is wholly-owned by Edison International, a public utility holding company that is also the ultimate parent company of SoCal Edison. The Parties note that Sycamore is authorized by the

[1] 16 U.S.C. § 824d (2006).

[2] October 16 Filing at 3.

Commission to sell electric energy, capacity, and ancillary services at market-based rates and state that SoCal Edison is authorized to sell electric energy and ancillary services at market-based rates.[3]

4. The Parties explain that SoCal Edison conducted the request for offers in accordance with, and as a result of, the Qualifying Facility and Combined Heat and Power Program Settlement Agreement (Settlement Agreement), which has been approved by the California Public Utilities Commission (California Commission).[4] According to the Parties, the Settlement Agreement requires SoCal Edison to conduct three requests for offers by November 22, 2015 for the purpose of entering into new power purchase agreements with combined heat and power facilities to purchase 1,402 megawatts (MW).[5] The Parties further state that the Settlement Agreement sets forth the process by which SoCal Edison conducted its request for offers and delineates the requirements that facilities must satisfy in order to participate in that process.[6]

5. The Parties state that SoCal Edison conducted the instant request for offers on December 15, 2011[7] and SoCal Edison received a substantial number of offers on February 16, 2012, including an offer from Sycamore.[8] An independent evaluator, retained by SoCal Edison, monitored and recorded SoCal Edison's receipt of indicative offers.[9] According to the Parties, after evaluating those offers for approximately one month, SoCal Edison developed a short list of offerors with whom SoCal Edison proceeded to engage in contract negotiations for 10 weeks.[10] The independent evaluator

[3] *Id.* (citing *Colinga Cogeneration Co.*, Docket No. ER10-607-000 (Apr. 21, 2010) (delegated letter order) (granting Sycamore market-based rate authority)).

[4] *Id.* at 4; *cf. Pacific Gas & Electric Co.*, 135 FERC ¶ 61,234, at P 5 (2011) (discussing the Settlement Agreement).

[5] October 16 Filing at 4; *id.*, Ex. C at 3 (*hereinafter* IE Report).

[6] October 16 Filing at 4; IE Report at 4.

[7] October 16 Filing at 5.

[8] IE Report at 11.

[9] *Id.* at 24. The independent evaluator consisted of Merrimack Energy Group, Inc. and its subcontractor New Energy Opportunities, Inc.

[10] *Id.* at 11.

reviewed SoCal Edison's selection of indicative offers for further negotiation.[11] The independent evaluator additionally monitored SoCal Edison's negotiations with some offerors, including all negotiations between affiliates, including those between the Parties.

6. Final offers were submitted to SoCal Edison on May 29, 2012. The Parties state that SoCal Edison evaluated those final offers pursuant to a "least-cost/best-fit" analysis, which took into consideration both quantitative and qualitative considerations.[12] The independent evaluator reviewed SoCal Edison's analysis of final offers, including the quantitative evaluation for capacity and energy costs and benefits, credit and collateral, and the greenhouse gas reduction benefits under the double benchmark standard specified in the Settlement Agreement. The IE Report notes that "during the validation process, the [independent evaluator] identified several inaccuracies in certain aspects of the analysis, which [SoCal Edison] corrected before compiling the final decision documents."[13] The independent evaluator participated in various meetings involving the selection process.[14]

7. The IE Report states that SoCal Edison ultimately executed agreements with five generators, one of which was Sycamore.[15] The Parties further explain that they have

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[11] *Id.* at 24. According to the IE Report, the independent evaluator developed a simplified version of the model used by SoCal Edison to evaluate the economics of offers, using the same input assumptions used by SoCal Edison to check whether SoCal Edison's evaluation of offers was in accordance with the framework developed for review of indicative offers. In addition, the independent evaluator inquired whether particular offers satisfied eligibility requirements in the Participant Instructions and the Settlement Agreement and/or would result in countable MWs toward meeting SoCal Edison's MW targets under the Settlement Agreement. *Id.*

[12] *Id.* at 30-31. The IE Report explains that the "least-cost/best-fit" analysis evaluates both quantitative and qualitative aspects of each offer to estimate the offer's value to SoCal Edison's customers and the offer's relative value in comparison to other offers. *Id.* at 31.

[13] *Id.* at 26.

[14] *Id.* at 26-27.

[15] *Id.* at 11. SoCal Edison entered two "Resource Adequacy" contracts with Calpine—one for 130.0 MW over a term of five years and one for 280.5 MW over a term

(continued…)

entered into six agreements (Sycamore Agreements), subject to regulatory approvals, pursuant to which Sycamore will provide capacity and energy for a seven year term beginning on January 1, 2014.[16] In addition, the Sycamore Agreements will provide 300 MW toward meeting SoCal Edison's MW targets under the Settlement Agreement and approximately 96,000 metric tons in greenhouse gas emissions reductions would be credited to meeting SoCal Edison's greenhouse gas reduction target under the Settlement Agreement.[17]

8. The Parties maintain that SoCal Edison's request for offers satisfies the competitive solicitation process requirements established by the Commission for affiliate power sales in *Edgar*[18] as well as the four guidelines outlined by the Commission in *Allegheny* (i.e., Transparency, Definition, Evaluation, and Oversight).[19] Accordingly, the Parties request that the Commission authorize Sycamore to make sales of energy, capacity, and other products to its affiliate, SoCal Edison, effective December 17, 2012.

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of seven years. SoCal Edison also executed a "Combined Heat and Power" contract with Berry Petroleum Newhall to acquire 41.6 MW over a term of seven years. Further, SoCal Edison executed a "Utility Prescheduled Facilities" contract with Harbor Cogen to acquire 80.0 MW and 3,215 MT/year of greenhouse gas emissions reductions over a term of seven years. *Id.* at 11.

[16] *Id.* The Parties explain that SoCal Edison and Sycamore entered: (1) a baseload Power Purchase and Sale Agreement; and (2) a Resource Adequacy Confirmation agreement; and (3) a Unit Contingent Toll Confirmation agreement. Additionally, the Parties state that the Resource Adequacy Confirmation agreement and the Unit Contingent Toll Agreement are subject to an EEI Master Power Purchase Agreement. The Parties also executed two amendments to these agreements to correct an error in the Unit Contingent Toll Confirmation agreement and to extend the time period in which the Parties could seek the requisite regulatory approvals. The Parties refer to the four aforementioned agreements together with the two amendments as the "Sycamore Agreements." *See* October 16 Filing at 7.

[17] In addition to energy and capacity, the power purchase agreement between the Parties requires Sycamore to convey "Resource Adequacy Benefits," "Green Attributes, Capacity Attributes, and all other attributes associated with the electric energy or capacity" of Sycamore's generating facility. *See* October 16 Filing, Ex. B.

[18] *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

[19] *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

II. Notice of Filing and Responsive Pleadings

9. Notice of the Parties' filing was published in the *Federal Register*, 77 Fed. Reg. 64,974 (2012), with motions to intervene and protests due on or before November 6, 2012. None was filed.

III. Discussion

A. Affiliate Abuse Analysis

10. At issue here is whether the Parties' filing satisfies the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate sales agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted. Under *Edgar*, the Commission has approved affiliate sales resulting from competitive bidding processes after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.[20]

11. When an entity presents evidence seeking to satisfy the *Edgar* criteria, the Commission has required assurance that: (1) a competitive solicitation process was designed and implemented without undue preference for an affiliate; (2) the analysis of bids did not favor affiliates, particularly with respect to non-price factors; and (3) the affiliate was selected on some reasonable combination of price and non-price factors.[21]

12. In *Allegheny*, the Commission provided guidance as to how it will evaluate whether a competitive solicitation process satisfies the *Edgar* criteria.[22] As the

[20] *See Edgar*, 55 FERC at 62,167-69; *see also Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999).

[21] *Edgar*, 55 FERC at 62,168.

[22] *See also Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 540, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs.

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Commission stated in *Allegheny*, the underlying principle when evaluating a competitive solicitation process under the *Edgar* criteria is that no affiliate should receive undue preference during any stage of the process. The Commission stated that the following four guidelines will help the Commission determine if a competitive solicitation process satisfies that underlying principle: (1) Transparency: the competitive solicitation process should be open and fair; (2) Definition: the product or products sought through the competitive solicitation should be precisely defined; (3) Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders; and (4) Oversight: an independent third-party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection. The *Edgar* criteria and *Allegheny* guidelines are designed to ensure that the transactions between affiliates do not unduly favor affiliates, and thereby protect captive customers from affiliate abuse.

13. As discussed below, the Commission concludes that the request for offers described by the Parties satisfies the Commission's concerns regarding affiliate abuse. Accordingly, the Commission will grant the Parties' request for authorization for Sycamore to make affiliate sales to SoCal Edison pursuant to the Sycamore Agreements, effective December 17, 2012.

1. <u>Transparency Principle</u>

14. The Parties argue that SoCal Edison's implementation of the request for offers satisfies the Commission's Transparency guideline because no party had an informational advantage in any part of the solicitation process.[23] The Parties state that SoCal Edison publicized the request for offers and made the related documentation available to all potential bidders at the same time. The Parties explain that notice regarding the official launch of the request for offers was distributed to over 2,500 email addresses. The Parties add that the notice directed recipients to SoCal Edison's website for documents and instructions, notified prospective bidders of a pre-offer conference, and provided instructions for submitting questions. The Parties also state that SoCal Edison established, maintained, and updated a publicly available website for the request for offers on which SoCal Edison posted all relevant documents concerning the solicitation. Thus, the Parties conclude that all prospective counter-parties had equal access to data relevant to the request for offers.

¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Pub. Citizen, Inc. v. FERC*, 133 S. Ct. 26 (2012).

[23] October 16 Filing at 9.

15. Furthermore, the Parties point out that SoCal Edison retained an independent evaluator that was active throughout the solicitation process. For instance, the independent evaluator assisted SoCal Edison's preparation for the request for offers.[24] The independent evaluator also monitored and recorded SoCal Edison's receipt of indicative offers.[25] Additionally, the independent evaluator reviewed SoCal Edison's selection of indicative offers for further negotiation.[26] The independent evaluator later monitored SoCal Edison's negotiations with some offerors, including all negotiations between SoCal Edison and its affiliates.[27] Furthermore, the IE Report also opines that SoCal Edison's request for offers was conducted in a manner consistent with the Commission's Transparency guideline.[28]

16. Based on the Parties' representations, the Commission finds that the request for offers was implemented in a manner that is consistent with the Commission's Transparency guideline.

2. Definition Principle

17. The Parties contend that SoCal Edison's description of the products for which it solicited offers satisfies the Commission's Definition guideline.[29] The Parties state that the products identified in the participant instructions provided on SoCal Edison's website were defined in the *pro forma* power purchase agreement attached to those instructions.[30] SoCal Edison's *pro forma* power purchase agreement defines the products to be conveyed as "the Power Product and Related Products."[31] Under the *Pro Forma* PPA

[24] IE Report at 21-23,

[25] *Id.* at 24.

[26] *Id.*

[27] *Id.* at 25.

[28] *Id.* at 45.

[29] October 16 Filing at 9.

[30] *Id.*

[31] SoCal Edison, Power Purchase & Sale Agreement: Pro Forma Agreement for CHP Facilities Request for Offers Program 15 (2012), http://asset.sce.com/Documents/Environment - Renewable Energy/121206_CHP_AttachmentC_CHPRFOPPA.doc; *id.*, Ex. A at 20 (*hereinafter Pro Forma* PPA Definitions).

Definitions, "Power Product," means "(a) the Net Contract Capacity and (b) all electric energy produced by the Generation Facility . . . ."[32] The *Pro Forma* PPA Definitions further define the term "Related Products" to include "Resource Adequacy Benefits,"[33] "Green Attributes,"[34] "Capacity Attributes,"[35] in addition to "all other attributes associated with the electric energy or capacity of the Generating Facility."[36]

18. The IE Report states that SoCal Edison conducted the request for offers in a manner that was consistent with the Commission's Definition guideline.[37] In particular, the IE Report observes that the participant instructions described the products that were sought by SoCal Edison. In addition, the IE Report points out that further details were provided in the *Pro Forma* PPA Definitions.[38]

19. Based on these representations, the Commission finds that the competitive solicitation was consistent with the Commission's Definition guideline.

3. Evaluation Principle

20. The Parties further argue that SoCal Edison conducted the request for offers in a manner that is consistent with the Evaluation guideline. The Parties state that the participant instructions clearly specified the price and non-price criteria under which SoCal Edison would evaluate offers. Notably, the Parties contend that the participant

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[32] *Pro Forma* PPA Definitions at 20.

[33] The *Pro Forma* PPA Definitions define the term "Resource Adequacy Benefits" to mean "the rights and privileges attached to the Generating Facility that satisfy any Person's resource adequacy obligations." *Id.* at 24.

[34] The *Pro Forma* PPA Definitions define the term "Green Attributes" to mean "any and all credits, benefits, emissions reductions, offsets, and allowances . . . attributable to the generation from the Project, and its avoided emission of pollutants." *Id.* at 12-13.

[35] The *Pro Forma* PPA Definitions define the term "Capacity Attributes" to mean "any and all current or future defined characteristics . . . attributed to or associated with the electricity generating capability of the Generating Facility." *Id.* at 4.

[36] *Id.* at 22-23.

[37] IE Report at 45-46.

[38] *Id.* at 45.

instructions clearly described the specific evaluation and ranking principles to be used by SoCal Edison to evaluate and assess the offers' components.

21. The IE Report states that SoCal Edison evaluated both quantitative and qualitative aspects of each offer to estimate its value to SoCal Edison's customers and its relative value in comparison to other offers.[39] The IE Report further explains that the evaluation methodology evolved from that used at the indicative bid/short-listing stage to that used for assessing final offers. For short listing, the IE Report states that evaluation focused almost exclusively on the price-per-MW quantitative metric for eligible offers. For evaluating final offers, the IE Report states that SoCal Edison continued to use the price-per-MW quantitative metric while other factors, especially greenhouse gas emissions reduction contributions, were treated as qualitative factors in the selection process.[40]

22. The independent evaluator evaluated SoCal Edison's evaluation methodology by examining whether: (1) the procurement targets, products solicited, and objectives were clearly defined in the solicitation materials; (2) the bid evaluation and selection process and criteria were reasonably transparent such that offerors would have a reasonable indication as to how they would be evaluated and selected; (3) SoCal Edison's bid evaluation was based on and consistent with the information requested in the request for offers; (4) the evaluation methodology reasonably identified the quantitative and qualitative criteria and described how they would be used to qualify and rank offers; (5) the bid evaluation and selection methodology was a reasonable method to effectuate a solicitation consistent with the terms of the Settlement Agreement; (6) the quantitative evaluation methodology was reasonable and allowed for reasonably consistent evaluation of different types of offers; and (7) the bid evaluation framework and selection process contained any undue or unreasonable bias that might influence project ranking and selection results to favor affiliate bids.[41] The independent evaluator found that the

[39] *Id.* at 31.

[40] *Id.* at 32-33. SoCal Edison considered other qualitative factors in the selection process as well, including: (1) aspects of projects' development progress and viability, such as environmental and permitting status, project development experience, site control, and electrical interconnection status; (2) whether an offeror was certified as a "California woman, minority or disabled veteran business enterprise;" (3) offeror concentration, dispatchability and curtailability; and (4) cost effectiveness of reducing greenhouse gas emissions. *Id.* at 32.

[41] *Id.* at 30.

evaluation and selection methodology developed by SoCal Edison was satisfactory and was not biased in favor of affiliates.[42]

23. Based on these representations, the Commission finds that the request for offers was consistent with the Commission's Evaluation guideline.

4. Oversight Principle

24. The Parties argue that SoCal Edison's implementation of the request for offers satisfies the Commission's Oversight guideline in two ways.[43] First, the Parties explain that the request for offers was implemented pursuant to the Settlement Agreement, which resulted from extensive negotiations among California's largest investor-owned utilities and governs the general design of the request for offers. Specifically, the Parties maintain that the Settlement Agreement determined several aspects of SoCal Edison's request for offers. For instance, the Settlement Agreement prescribes that offerors must meet the federal definition of a "qualifying cogeneration facility" under the Commission's regulations,[44] meet the definition of "cogeneration" under the California Public Utilities Code,[45] as well as meet the Emissions Performance Standard established by the California Public Utilities Code.[46] The Settlement Agreement further governs the scope of SoCal Edison's request for offers and the criteria by which SoCal Edison evaluates those offers. The Settlement Agreement also requires SoCal Edison to evaluate combined heat and power offers in comparison to other combined heat and power offers.[47] The Settlement Agreement additionally mandates that SoCal Edison give preference to *pro forma* offers with no options, relative to non-Pro Forma offers.[48]

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[42] *Id.* at 36.

[43] October 16 Filing at 10.

[44] IE Report at 4 (citing 18 C.F.R. § 292.205 (2012)).

[45] *Id.* (citing Cal. Pub. Util. Code § 216.6 (2012)).

[46] *Id.* (citing Cal. Pub. Util. Code § 8341 (2012)).

[47] *Id.* at 6.

[48] *Id.* (quoting Settlement Agreement).

Moreover, the Settlement Agreement establishes the maximum term for power purchase agreements resulting from SoCal Edison's request for offers.[49]

25. Second, the Parties point out that SoCal Edison engaged an independent evaluator to monitor and assist in the design and execution of the request for offers.[50] The Parties contend that the independent evaluator was highly involved throughout the design and execution of SoCal Edison's request for offers. For instance, in anticipation of the request for offers, the independent evaluator reviewed and commented on SoCal Edison's draft solicitation documents as well as SoCal Edison's design of the bid evaluation and selection processes.[51] The independent evaluator participated in a variety of internal meetings, as well as SoCal Edison's offeror conference.[52] The independent evaluator not only monitored the questions received by SoCal Edison from prospective offerors, but also reviewed responses to ensure that all participants had access to the same information and that the respective responses were reasonable.[53] The independent evaluator further reviewed SoCal Edison's consideration of indicative offers to confirm that SoCal Edison's evaluation was in accordance with the evaluation framework previously developed.[54] Once offerors were selected to SoCal Edison's short list, the independent evaluator monitored the various contract negotiations. The independent evaluator was required to monitor all negotiations between SoCal Edison and its affiliates.[55] The independent evaluator also monitored SoCal Edison's negotiations with counterparties that appeared to present sensitive or difficult issues, and where that was not possible, followed up with the pertinent contract negotiator for SoCal Edison. Furthermore, the independent evaluator participated in the development of SoCal Edison's method of evaluating negotiated offers, which involved assessing multiple combinations of offers

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[49] *Id.* at 4-5. In addition, the Parties note that the Sycamore Agreements have been submitted for approval by the California Commission.

[50] October 16 Filing at 10. The Parties note that the independent evaluator does not have a financial interest in any of the bidders or in the outcome of SoCal Edison's solicitation.

[51] IE Report at 21.

[52] *Id.*

[53] *Id.* at 22.

[54] *Id.* at 24.

[55] *Id.* at 25.

against the MW target prescribed by the Settlement Agreement, the net cost or benefit of the offers, the price-per-MW metric, and the reductions in greenhouse gas emissions created by the respective offers, as required by the Settlement Agreement.[56]

26. Based on these representations, the Commission finds that the request for offers was consistent with the Commission's Oversight guideline.

B. Other Issues

27. This order satisfies the requirement that Sycamore must first receive Commission authorization, pursuant to section 205 of the FPA, before engaging in power sales at market-based rates for these affiliate sales. We note that Sycamore must receive prior approval from the Commission under section 205 of the FPA for any other sales to affiliates with a franchised electric service territory and captive customers.

28. Finally, we will direct Sycamore to submit a compliance filing, within 30 days of the date of this order, revising the limitations and exemptions section of its market-based rate tariff to list the specific, limited waiver granted herein and to include a citation to this order.[57]

The Commission orders:

(A) The Parties' request for authorization for Sycamore to make power sales to SoCal Edison under the Sycamore Agreements, pursuant to SoCal Edison's December 15, 2011 request for offers is granted, effective December 17, 2012, as discussed in the body of this order;

(B) Sycamore is hereby directed to submit a compliance filing, within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

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[56] *Id.*

[57] Order No. 697, FERC Stats. & Regs. ¶ 31,252 at App. C, *order on reh'g*, Order No. 697-A, FERC Stats & Regs. ¶ 31,268 at P 384.