

131 FERC ¶ 61,071  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket No. ER10-796-000

ORDER CONDITIONALLY ACCEPTING IN PART AND REJECTING IN PART  
NON-CONFORMING LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued April 26, 2010)

1. On February 25, 2010, Southern California Edison Company (SoCal Edison) filed a Large Generator Interconnection Agreement (LGIA) among itself as transmission provider, SES Solar One, LLC (Solar One) as interconnection customer, and the California Independent System Operator Corporation (CAISO). In this order, we will accept in part and reject in part SoCal Edison's LGIA to become effective February 26, 2010, subject to a compliance filing.

**I. Background**

2. Solar One proposes to interconnect an 850 MW solar generating facility, to be located in Newberry Springs, San Bernardino County, California (the Project), to SoCal Edison's electric system at the Pisgah 220 kV switchyard, 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 the CAISO will provide, and Solar One will pay for, interconnection service. SoCal Edison will design, procure, construct, install, own, operate, and maintain the interconnection facilities, reliability network upgrades, and distribution upgrades required to interconnect the Project to SoCal Edison's transmission system.

4. SoCal Edison states that Appendix A of the LGIA identifies the interconnection facilities, network upgrades, and distribution upgrades of the LGIA. It states that the reliability network upgrades will be constructed in two phases: Phase 1 will provide interconnection service for up to 275 MW connected to the existing Pisgah 220 kV switchyard, and Phase 2 will provide interconnection service for the full output of the Project. SoCal Edison states that it has committed to up-front finance the Phase 2 network upgrades, as specifically identified in Appendix A to the LGIA, subject to the following conditions: (1) Solar One has paid for the Phase 1 network upgrades; (2) Solar

One has achieved commercial operation of 275 MW of generating capability from the Project; (3) SoCal Edison has received a Commission order granting its recovery of 100 percent of its prudently incurred costs for the Phase 2 network upgrades if the Project is abandoned due to circumstances outside of SoCal Edison's control (abandoned plant approval); and (4) Solar One's achievement of the development milestones set forth in Appendix A to the LGIA. SoCal Edison states that if these conditions are not met, then the LGIA will be amended, and Solar One will be responsible to pay the up-front finance costs associated with the Phase 2 network upgrades and will potentially receive transmission credits for such costs in accordance with the LGIA.

5. SoCal Edison states that, in accordance with Appendix A to the LGIA, Solar One is to be responsible for an interconnection facilities payment of \$1,771,000, a distribution upgrades payment of \$250,000, and a reliability network upgrades payment of \$45,971,320 related to Phase 1 of the Project. Following the completion date of the interconnection facilities, Solar One 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.<sup>1</sup> The monthly interconnection facilities charge will be \$6,729.80 (0.38 percent x \$1,771,000).

6. SoCal Edison requests waiver of the 60-day prior notice requirement<sup>2</sup> so that the LGIA can become effective February 26, 2010. It argues that the waiver would be consistent with the Commission's policy set forth in *Central Hudson Gas & Electric Corp.*<sup>3</sup> 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 Solar One's requested in-service date.

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<sup>1</sup> SoCal Edison states that this rate is the rate most recently adopted by the California Public Utilities Commission (CPUC) for application to SoCal Edison's retail electric customers for customer-financed added facilities. According to SoCal Edison, use of the CPUC rate is consistent with the SoCal Edison rate methodology accepted for filing by the Commission in Docket No. ER10-223-000. SoCal Edison states that it provided cost justification for this rate in Docket No. ER09-1345-000.

<sup>2</sup> 16 U.S.C. § 824d(d) (2006); 18 C.F.R. § 35.3 (2010).

<sup>3</sup> 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

## II. Notices of Filings and Responsive Pleadings

7. Notice of this filing was published in the *Federal Register*, 75 Fed. Reg. 11161 (2010), with interventions and protests due on or before March 18, 2010. Timely motions to intervene and protest were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities) and the M-S-R Public Power Agency, the City of Redding, California, and the City of Santa Clara, California (collectively, the M-S-R Parties) (all collectively, Protesters). Solar One filed an out-of-time motion to intervene. SoCal Edison filed an answer.

### A. Protests

8. Protesters object to SoCal Edison's commitment to provide up-front financing for the Phase 2 network upgrades contained in Appendix A of the LGIA. Specifically, they argue that SoCal Edison's decision to make such financing contingent upon the 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. Six Cities request that the Commission require SoCal Edison to make a compliance filing to remove the inconsistent terms. 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.<sup>4</sup>

9. Six Cities argue that the Commission should reject the abandoned plant approval provisions in the LGIA, because they have discriminatory implications for other load-serving entities and renewable resource suppliers.<sup>5</sup> Six Cities concede that CAISO's Large Generator Interconnection Procedures permit Participating Transmission Owners to provide capital funding for network upgrades. However, they state that these procedures do not allow abandoned plant approval as a pre-condition to Participating Transmission Owner funding.

10. Protesters also argue that SoCal Edison appears to only offer up-front funding to interconnecting generators when it is in its interest to do so.<sup>6</sup> Six Cities contend that SoCal Edison has done so here because it wants to purchase the output from Solar One and it can shift the abandonment risk to the CAISO transmission customers. Six Cities also claims that there is no standard established for up-front funding by SoCal Edison and therefore no means to ensure that SoCal Edison is treating all interconnection requests equally.

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<sup>4</sup> M-S-R Parties Protest at P 28.

<sup>5</sup> Six Cities Protest at 7.

<sup>6</sup> *Id.* at 5; M-S-R Parties Protest at P 13, 16-19.

11. Additionally, Protesters are concerned that if SoCal Edison is allowed to favor renewable generators of its choosing over others, it can gain unfair competitive advantage in the renewable generation market.<sup>7</sup> Six Cities consider it discriminatory to permit SoCal Edison to “cherry pick” among interconnection requests and to only offer risk-free financing to interconnection customers with which it has entered into supply arrangements. They state that other load-serving entities subject to Renewable Portfolio Standards, who lack the ability to fund the upgrades required by their selected suppliers, are left with limited renewable procurement options.

12. The M-S-R Parties request that the Commission reject the Solar One LGIA as filed. They state that the LGIA is emblematic of a pattern of activity by SoCal Edison that potentially involves the type of anti-competitive and discriminatory behavior that the Commission denounced in Order No. 2003.<sup>8</sup> They 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 Solar One and also must meet Renewable Portfolio Standard benchmarks, it has a vested interest in the Project that is akin to an ownership interest.<sup>9</sup> They argue that SoCal Edison has contravened the Commission’s interconnection policies because it agreed to provide up-front financing to Solar One pursuant to a potentially discriminatory application of an LGIA provision.

13. 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.<sup>10</sup> Moreover, they claim that SoCal Edison has only agreed to front the network upgrade costs for three of the six interconnection agreements for projects SoCal Edison filed in the last year, because it has executed power purchase agreements with the developers of these three projects.

14. Additionally, the M-S-R Parties assert that by agreeing to pay for \$102 million in costs that Solar One would otherwise front, SoCal Edison has wielded significant negotiating power at the expense of its ratepayers. They state that the Commission must

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<sup>7</sup> *Id.* at 6-7; M-S-R Parties Protest at P 14, 21.

<sup>8</sup> M-S-R Parties Protest at P 12.

<sup>9</sup> *Id.* P 15, 17.

<sup>10</sup> *Id.* P 17.

ensure that these costs are not being incurred and charged to customers under discriminatory, potentially anti-competitive practices.

15. 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 discriminatory treatment.<sup>11</sup> 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.<sup>12</sup>

16. The M-S-R Parties contend that the Solar One LGIA and other SoCal Edison LGIAs raise the question of whether SoCal Edison has breached the Commission's Standards of Conduct.<sup>13</sup> 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**

17. In its answer, SoCal Edison explains its plan to file a petition for declaratory order with the Commission requesting incentive rate treatment for its planned Lugo-Pisgah Project, including abandoned plant approval.<sup>14</sup> SoCal Edison states that the protesters' arguments represent an attack on an incentives request that it has not yet filed and that the Commission should refrain from ruling upon these arguments at this time.

18. SoCal Edison disagrees with the Protesters' arguments that Appendix A of the LGIA contains material deviations from the CAISO *pro forma* LGIA; it claims that because the Protesters' arguments do not provide any basis for modification of the LGIA, these arguments should be rejected.<sup>15</sup> 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

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<sup>11</sup> *Id.* P 22.

<sup>12</sup> *Id.* P 23.

<sup>13</sup> *Id.* P 24.

<sup>14</sup> SoCal Edison Answer at 3.

<sup>15</sup> *Id.* at 4.

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.

19. 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.<sup>16</sup> 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 the CAISO grid.

20. SoCal Edison disagrees that the abandoned plant approval condition is discriminatory and provides SoCal Edison with a competitive advantage.<sup>17</sup> It maintains that its choice to make up-front funding of network upgrades contingent upon the receipt of abandoned plant incentives 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.<sup>18</sup> To demonstrate this point, SoCal Edison cites the up-front funding it has agreed to provide for the Eldorado-Ivanpah project triggered by solar generation in the area.<sup>19</sup> It explains that it decided to fund these network upgrades up-front despite the fact that Pacific Gas and Electric Company executed power purchase agreements for “significant amounts” of this generation. 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.

21. SoCal Edison addresses the M-S-R Parties’ specific allegation that it agreed to up-front finance network upgrades for three of the six LGIAs SoCal Edison filed this year, because it executed power purchase agreements with those three generators (Solar

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* at 6.

<sup>19</sup> *Id.* We note that the Commission granted SoCal Edison’s petition for declaratory order for the Eldorado-Ivanpah project. *Southern California Edison Co.*, 129 FERC ¶ 61,246 (2009). It also accepted the related LGIA with Solar Partners. *Southern California Edison Co.*, 131 FERC ¶ 61,016 (2010).

Partners, Solar One, and Alta Wind).<sup>20</sup> It 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.

22. 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.<sup>21</sup> 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 to intimidate it 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.

### **III. Discussion**

#### **A. Procedural Matters**

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.<sup>22</sup> Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant Solar One's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.<sup>23</sup> 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.<sup>24</sup> We will accept SoCal Edison's answer, because it has provided information that assisted us in our decision-making process.

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<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 7.

<sup>22</sup> 18 C.F.R. § 385.214 (2010).

<sup>23</sup> 18 C.F.R. § 385.214(d) (2010).

<sup>24</sup> 18 C.F.R. § 385.213(a)(2) (2010).

## B. Commission Determination

24. As discussed below, we will conditionally accept in part and reject in part the LGIA with Solar One. We will conditionally accept the provisions of the LGIA that pertain to Phase 1. We will reject without prejudice the provisions of the LGIA pertaining to the Phase 2 network upgrades. According to the application, SoCal Edison will up-front finance the Phase 2 network upgrades if Solar One meets certain conditions including, among other things, the commercial operation of 275 MW of generating capability for the Project and a Commission order granting it abandoned plant approval. Although SoCal Edison has voiced its intention to do so, it has not yet filed a petition for declaratory order requesting that the Commission grant abandoned plant approval for the Phase 2 upgrades. We therefore find that including an abandoned plant approval provision in the LGIA is premature. Additionally, SoCal Edison has not clearly indicated the need for an LGIA for Phase 2 upgrades to be on file at this time, given the conditions stipulated for funding by SoCal Edison. Because the issues raised by protesters address SoCal Edison's treatment of the Phase 2 upgrades and we are rejecting those provisions, we need not address those issues in this proceeding.

25. We will grant waiver of the 60-day notice requirement for good cause shown and conditionally accept those provisions of the LGIA that pertain to Phase 1, effective February 26, 2010.<sup>25</sup> Within 60 days of the date of this order, SoCal Edison must make a compliance filing that removes those provisions related to the Phase 2 network upgrades.

26. If SoCal Edison later files an amended LGIA that includes the Phase 2 network upgrades, it will need to support its deviations from the CAISO *pro forma* LGIA in accordance with Commission precedent. In Order No. 2003, the Commission required Transmission Providers to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.<sup>26</sup> At the same time, the Commission recognized that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for non-conforming agreements.<sup>27</sup> The Commission made clear that the filing

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<sup>25</sup> See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338-39, *order on reh'g*, 61 FERC ¶ 61,089 (1992); 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).

<sup>26</sup> *Florida Power & Light Co.*, 118 FERC ¶ 61,176, at P 10 (2007) (*FP&L*).

<sup>27</sup> Order No. 2003 at P 913-915; *FP&L* at P 11.

party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the circumstances require a non-conforming interconnection agreement.<sup>28</sup>

27. The Commission analyzes such non-conforming filings to ensure that reliability concerns, novel legal issues, or other unique factors necessitate the non-conforming provisions.<sup>29</sup> A party seeking a case-specific deviation from an approved *pro forma* interconnection agreement bears a burden to explain what makes the interconnection unique and why its changes are operationally necessary (not merely “consistent with or superior to” to the *pro forma* LGIA).<sup>30</sup>

The Commission orders:

(A) SoCal Edison’s LGIA is conditionally accepted in part, effective February 26, 2010, and rejected in part, subject to the conditions set forth in the body of this order.

(B) SoCal Edison is directed to make a compliance filing within 60 days of the date of this order, as discussed in the body of the order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>28</sup> Order No. 2003-B at P 140 (“[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each nonconforming provision and provide a redline document comparing the nonconforming agreement to the effective *pro forma* [Interconnection Agreement].”); *FP&L* at P 11.

<sup>29</sup> See *PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (*PJM*); *Southern Company Servs., Inc.*, 116 FERC ¶ 61,231, at P 14 (2006) (*Southern*).

<sup>30</sup> *PJM* at P 9; *Southern* at P 14.