

144 FERC ¶ 61,202
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Watson Cogeneration Company

Docket No. TX13-1-000

Southern California Edison Company

Docket No. ER13-1995-000
(Not consolidated)

ORDER DISMISSING APPLICATION FOR INTERCONNECTION AND
ACCEPTING LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued September 16, 2013)

1. This order accepts an unexecuted Large Generator Interconnection Agreement (LGIA) filed by Southern California Edison Company (SoCal Edison) for service to its affiliate, Watson Cogeneration Company (Watson)¹ (LGIA Filing) and rejects Watson's proposal to memorialize in the LGIA the ability to have priority over future third-party generators on a 1.4 mile 220 kV double circuit interconnection facility owned by SoCal Edison as premature. This order also dismisses Watson's application for interconnection (Interconnection Application) as moot.

I. Background

2. Watson owns and operates a 398 MW cogeneration facility in Carson, California that has been interconnected to SoCal Edison's system since 1987, via a 1.4 mile 220 kV double circuit line. According to Watson, the double-circuit line was specifically constructed at Watson's expense in order to provide its customer² with reliable delivery

¹ Both Watson and SoCal Edison are subsidiaries of Edison International. *See* SoCal Edison's August 3, 2012 filing in Docket No. ER12-2397-000 at n.1. Neither party mentioned this affiliation in either of the instant proceedings.

² Watson explains that the generating facility supplies electricity and thermal energy to the Tesoro Los Angeles Refinery, which produces transportation fuels. Watson states that this is the largest producer of jet fuel for the Los Angeles International Airport and one of the largest petroleum refineries on the West Coast. *See* Watson July 23, 2013 application for interconnection (Interconnection Application) at 3.

of Watson's capacity over SoCal Edison's, and subsequently, the California Independent System Operator Corporation (CAISO)-controlled grid.

3. The parties have agreed to terminate the original Power Purchase Agreement in favor of service under the LGIA of the CAISO Open Access Transmission Tariff (Tariff).³ The parties negotiated and agreed to all terms of the LGIA, save one. Watson sought to include a provision granting Watson priority use of the existing interconnection facilities should a third party request interconnection service on those facilities in the future. SoCal Edison considered this provision to be in conflict with Article 9.9.2 of the *pro forma* LGIA, which SoCal Edison asserts provides for the use of interconnection facilities by third parties and requires that curtailments be made on an equitable and non-discriminatory basis, and therefore refused to include the provision in the LGIA.

A. Watson's Interconnection Application - Docket No. TX13-1-000

4. On July 12, 2013, in response to SoCal Edison's refusal to include the disputed provision in the LGIA, Watson filed its Interconnection Application pursuant to sections 202(b) and 210 of the Federal Power Act (FPA).⁴ In its filing, Watson requests that the Commission: (1) direct SoCal Edison to continue providing the existing physical interconnection to the Watson facility; (2) direct SoCal Edison and CAISO to execute the LGIA including Watson's proposed deviation from the *pro forma* LGIA; and (3) establish the effective date of the LGIA to be contemporaneous with the effective date of a transition power purchase agreement.

B. SoCal Edison's LGIA Filing - Docket No. ER13-1995-000

5. SoCal Edison made the LGIA Filing on July 18, 2013, pursuant to section 205 of the FPA,⁵ noting that Watson's request to include the disputed language would grant Watson priority over future third-party generators on the double circuit line that connects Watson's facilities to the CAISO-controlled grid. According to SoCal Edison, Watson's request is tantamount to a request for curtailment priority which SoCal Edison asserts is precluded by Article 9.9.2 of the *pro forma* LGIA.

³ SoCal Edison requests an LGIA effective date of August 1, 2013 in its Docket No. ER13-1995-000 filing. SoCal Edison states it filed the unexecuted LGIA to avoid any gap in service resulting from expiration of the state-jurisdictional Power Purchase Agreement.

⁴ 16 U.S.C. §§ 824a(b) and 824i (2006).

⁵ 16 U.S.C. § 824d (2006).

II. Notice of Filings and Responsive Pleadings

6. Notice of Watson's Interconnection Application was published in the *Federal Register*, 78 Fed. Reg. 43,198 (2013), with interventions, comments, and protests due on or before August 12, 2013. Notice of SoCal Edison's LGIA Filing was published in the *Federal Register*, 78 Fed. Reg. 44,945 (2013), with interventions, comments, and protests due on or before August 8, 2013.

7. On July 26, 2013, CAISO filed motions to intervene and comments in both dockets. On August 7, 2013, in Docket No. ER13-1995-000, Watson filed a motion to intervene and motion to dismiss SoCal Edison's LGIA Filing, or in the alternative a protest and motion to consolidate. On August 12, 2013, in Docket No. TX13-1-000, SoCal Edison filed a motion to dismiss and answer to Watson's Interconnection Application. On August 22, 2013, in Docket No. ER13-1995-000, SoCal Edison filed an answer to Watson's motion to dismiss, a motion for leave to file an answer and an answer to Watson's motion to intervene and motion to dismiss or in the alternative protest and motion to consolidate. On August 27, 2013, in Docket No. TX13-1-000, Watson filed an answer to SoCal Edison's motion to dismiss, and a motion for leave to file a reply and a reply to SoCal Edison's answer.

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), CAISO's timely, unopposed motion to intervene serves to make it a party to these proceedings and Watson's timely, unopposed motion to intervene serves to make it a party to Docket No. ER13-1995-000.⁶

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest and an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by SoCal Edison and Watson because they assisted us in our decision-making process.

1. SoCal Edison's Motion to Dismiss the Interconnection Application and Watson's Answer

10. SoCal Edison argues that the Commission should dismiss Watson's Interconnection Application as moot. SoCal Edison states that Watson is an existing, interconnected generation resource and that there is no question that SoCal Edison will

⁶ By virtue of being the subject of the interconnection request under sections 202(b) and 210, SoCal Edison is automatically a party to Docket No. TX13-1-000.

continue to provide existing physical interconnection to the Watson facility; thus, an application for interconnection is not the proper Commission vehicle for addressing this dispute. SoCal Edison argues that under the Large Generator Interconnection Procedures an LGIA dispute between parties may be sent to dispute resolution or be elevated to the Commission upon request by the interconnection customer for the transmission provider to file the unexecuted agreement with the Commission. SoCal Edison states that Watson instead has sought to improperly bypass the established protocol by filing its Interconnection Application.

11. SoCal Edison urges that the Commission should not allow parties to bypass existing procedural mechanisms, without good cause. SoCal Edison stresses that this is not a case like *Aero Energy*, in which the interconnection customer filed an application for an order directing the transmission owner to respond to the customer's request for interconnection service to allow it to interconnect, after the transmission provider did not respond to its customer's request for service.⁷ SoCal Edison argues that, by contrast, it negotiated with Watson in good faith and was willing to sign the *pro forma* LGIA, or to file it with the Commission unexecuted. Further, SoCal Edison posits that the existence of its LGIA Filing renders the instant proceeding moot.

12. Watson responds that SoCal Edison acknowledges (in its motion to dismiss) that Watson has a right to priority in the allocation of capacity of the existing interconnection facilities when and if a third party later seeks to interconnect using the same facilities.⁸ Given this "admission," Watson states that its Interconnection Application is warranted and is not "moot" as SoCal Edison argues.

2. Watson's Motion to Dismiss the LGIA Filing and SoCal Edison's Answer

13. In turn, Watson moves to dismiss SoCal Edison's LGIA Filing. First, Watson argues that SoCal Edison's Transmission Owner Tariff does not permit SoCal Edison to

⁷ SoCal Edison August 12, 2013, Motion to Dismiss at 3-4 (citing *Aero Energy, LLC*, 115 FERC ¶ 61,128, at P 5 (2006) (Proposed Order), *order granting modification*, 116 FERC ¶ 61,149 (2006), *final order*, 118 FERC ¶ 61, 204 (2007), *order on reh'g*, 120 FERC ¶ 61,188 (2007) (*Aero Energy*)).

⁸ Watson August 27, 2013 Answer at 4 (citing SoCal Edison August 12, 2013 Motion to Dismiss at 7):

Watson's rights to the interconnection capacity will be respected by [SoCal Edison] such that if a lower-queued generator seeks an interconnection, [SoCal Edison] will study whether there is "room" for another generator and if not, what upgrades are needed to make room.

file an unexecuted LGIA *unless* the counterparty expressly requests such a filing⁹ and that Watson has made no such request.

14. Next, Watson argues that SoCal Edison's LGIA Filing should be dismissed because it was filed in response to Watson's Interconnection Application and is duplicative and unnecessary. Alternatively, Watson moves for the Commission to consolidate the two filings for administrative efficiency.

15. In response, SoCal Edison urges the Commission to deny Watson's motion to dismiss the LGIA Filing. SoCal Edison argues that Watson's claim that SoCal Edison lacked authority to file the LGIA unexecuted mischaracterizes the issue. SoCal Edison states that Watson is an existing interconnection customer pursuant to a state-jurisdictional interconnection facilities agreement, who seeks continuing interconnection services after transitioning to a Commission-jurisdictional LGIA. SoCal Edison states that it filed the LGIA to set the terms for SoCal Edison to continue providing interconnection service to Watson while this dispute is being addressed before the Commission.

16. Next, SoCal Edison argues that Commission precedent permits SoCal Edison to impose an LGIA with terms the interconnection customer does not agree with, until the parties' dispute is resolved.¹⁰ In this instance, SoCal Edison states that it used the Commission-approved *pro forma* LGIA. In contrast, SoCal Edison argues that Watson's Interconnection Application contains a proposed LGIA that deviates from the Commission-approved *pro forma* LGIA. Given SoCal Edison's willingness to provide service, and its rate-filing authority under the FPA, SoCal Edison urges that the Commission accept the terms of its LGIA, which reflects the Commission-approved *pro forma* terms, during the pendency of any further resolution of the dispute.

17. SoCal Edison finally argues that the fact that Watson did not request SoCal Edison to file the LGIA unexecuted does not provide a basis for dismissing the unexecuted LGIA Filing. According to SoCal Edison, the Large Generator Interconnection Procedures

⁹ Watson August 7, 2013 Motion to Dismiss at 5 (citing section 8.1.3 of the LGIA):

...a party requesting Interconnection shall request in writing that the Participating TO tender to such party an Interconnection Agreement that will be filed with FERC.

¹⁰ SoCal Edison August 22, 2013 Answer at 5 (citing *Florida Power & Light Co.*, 62 FERC ¶ 61,251 (1993) (utility properly filed a new tariff so that it would be compensated for back-up service in connection with capacity and energy agreements with an existing customer that did not already provide for such a service)).

provide a procedural vehicle for an interconnection customer to seek interconnection services; the Large Generator Interconnection Procedures do not prevent a Transmission Owner from filing an unexecuted LGIA in circumstances such as those presented here.

3. Commission Determination

18. We will deny Watson's motion to dismiss the LGIA Filing. Watson is already interconnected with SoCal Edison, and SoCal Edison is currently providing, and has committed to continue providing, interconnection service to Watson as it transitions from state- to Commission-jurisdictional interconnection service. In these circumstances, we find that SoCal Edison's LGIA Filing is the appropriate proceeding in which to resolve this dispute.¹¹

19. For similar reasons, Watson's Interconnection Application pursuant to sections 202(b) and 210 is not the proper vehicle to resolve this matter. Section 202(b) establishes the Commission's authority to direct a public utility to establish physical connection "with the facilities of one or more other persons engaged in the transmission or sale of electric energy, to sell energy to or exchange energy with such persons." Section 210 states, in part, "upon application of any electric utility, ... qualifying cogenerator, or qualifying small power producer," the Commission may require "the physical connection of any cogeneration facility, any small power production facility, or the transmission facilities of any electric utility, with the facilities of such applicant." We agree with SoCal Edison that this is not a case like *Aero Energy*, in which the interconnection customer filed an application for an order directing the transmission owner to respond to the customer's request for interconnection service to allow it to interconnect where the transmission provider did not respond to its customer's request for service. Rather, in this case, Watson and SoCal Edison are already physically interconnected and will continue to be (based on SoCal Edison's commitments) through Watson's transition to federal-jurisdictional interconnection service. Additionally, we are resolving the parties' dispute in SoCal Edison's LGIA Filing.¹² Accordingly, we will dismiss Watson's Interconnection Application (as well as Watson's motion to consolidate) as moot.

¹¹ Cf. *Florida Power & Light Co.*, 62 FERC ¶ 61,251.

¹² See *Pacific Gas and Electric Co.*, 60 FERC ¶ 61,321 (1992) (dismissing application for interconnected operations as moot based on subsequent utility filings regarding the same).

B. SoCal Edison's LGIA Filing and Watson's Proposed Deviation

20. Watson's proposed deviation from the *pro forma* LGIA (paragraph 13(c) to Appendix A) provides:

If, during the term of the LGIA, the Participating TO elects to provide service to another entity that relies in part or in whole on the Participating TO's Interconnection Facilities, the charges due hereunder shall be adjusted in accordance with Section 9.9.2 of the LGIA based on the Participating TO's cost allocation principles in effect at such time and subject to FERC's approval; provided, however, the CAISO and Participating TO acknowledge and agree that: (i) the Interconnection Customer's Large Generating Facility is a cogeneration Qualifying Facility supplying electric and thermal energy to a petroleum refinery; (ii) reliable Interconnection Service provided to Customer pursuant to Section 4 of the Agreement includes, as part of the Participating TO Interconnection Facilities, a double-circuit 220 kV transmission line; (iii) the 220 kV transmission line is specifically designed as a double-circuit line in order to provide Customer's Large Generating Facility reliable export capability over one circuit on occasions when the other circuit is out of service; (iv) notwithstanding any other provision in the Agreement or Appendices thereto, Customer's Interconnection Service pursuant to the Agreement includes, but is not limited to, the reliable export of the Large Generating Facility capability over any one of the two circuits comprising the Participating TO's double-circuit 220 kV transmission line detailed in Section 1(b)(1) of Appendix A to the Agreement on any occasion of one circuit being out of service.

21. SoCal Edison filed the unexecuted LGIA, noting that Watson's request to include the disputed language would grant Watson the equivalent of a curtailment priority over the double-circuit line that connects Watson's facilities to the CAISO-controlled grid. According to SoCal Edison, such curtailment priority is precluded by Article 9.9.2 of the *pro forma* LGIA. Article 9.9.2 of the LGIA provides for the use of interconnected facilities by third parties and states that, if required by applicable laws and regulation to "allow one or more third parties to use the Participating TO's Interconnection Facilities, or any part thereof," the Interconnection Customer may be entitled to compensation for the capital expenses that it incurred. SoCal Edison maintains that Article 9.9.2 does not give the generator curtailment priority if other generators later interconnect and use the

same Interconnection Facilities (or an expanded set of facilities).¹³ Additionally, SoCal Edison states that Watson's rights to the interconnection capacity will be respected by SoCal Edison such that, if a lower-queued generator seeks an interconnection, SoCal Edison will study whether there is "room" for another generator and if not, what upgrades are needed to make room. SoCal Edison argues that the Commission explained its policy on curtailments on generation ties in *Aero Energy*, where the Commission stated that later-queued generators, i.e., with lower capacity reservations, had to be curtailed *pro rata* with others using the line because that is "what comparability of service requires."¹⁴

22. In support of its proposed deviation from the *pro forma* LGIA, Watson states that it paid for the existing double circuit configuration to ensure the reliable supply of thermal energy to its host refinery which, according to Watson, has no material alternative supply for its thermal requirements. Watson states this level of deliverability was and is an essential contractual requirement for any interconnection agreement with SoCal Edison. Watson states that it recognizes and supports the provisions related to SoCal Edison's open access transmission for available capacity *in excess* of Watson's reliability requirements, but seeks a Commission order finding the unexecuted LGIA, including the disputed section preserving Watson's existing rights, to be just and reasonable.

23. Watson argues that SoCal Edison's Transmission Owner Tariff under the CAISO Tariff establishes SoCal Edison's obligation to preserve and give priority to existing rights under section 8.1.1.¹⁵ Watson states that, besides the reservation for reliability in this provision, the tariff also provides for the transmission owner to honor its existing "encumbrances." Watson argues that one such "encumbrance" under the CAISO Tariff is the existing obligation to Watson to provide for the full reliability of export capacity associated with the double circuit line under a loss of capacity of one of the two circuits. Watson argues that SoCal Edison's tariff provides sufficient authority for it to continue to

¹³ SoCal Edison LGIA Filing at 4.

¹⁴ *Id.* (citing *Aero Energy, LLC*, 118 FERC ¶ 61,204 at P 32).

¹⁵ Section 8.1.1 of SoCal Edison's Transmission Owner Tariff states:

The Participating TO shall identify any such adverse effect on its Encumbrances in the System Impact Study [...] To the extent the Participating TO determines that the interconnection will have an adverse effect on Encumbrances, the party requesting interconnection shall mitigate such adverse effect.

honor Watson's existing "right," and to deny to any future third party a right to "confiscate" Watson's double circuit reliability feature.¹⁶

24. Watson argues that section 9.9.2 of the LGIA is not relevant. Watson states that this section deals with financial accommodations where there is competing use of the interconnection facilities for transmission service; it only permits such financial settlement when such third-party use is required "by Applicable Laws and Regulations...." However, Watson argues that there is no applicable law allowing third party use of the interconnection facilities because Watson's use is an existing right, or an encumbrance under the CAISO Tariff. Watson posits that this right falls within the Commission's grounds for reserving transmission capacity to an existing operation as articulated in the *Aero Energy* line of cases.¹⁷ Watson argues that these cases permit and recognize a limitation to third party access to transmission or interconnection facilities that have been reserved for reliability of service.

25. In response to Watson's arguments, SoCal Edison again urges that the Commission reject Watson's proposed provision because it conflicts with the Commission's curtailment policy articulated in *Aero Energy* and the Commission-approved *pro forma* LGIA.¹⁸ SoCal Edison maintains that the dispute is not about refusal to provide reliable service, as the Commission defines that term. Moreover, SoCal Edison states that the dispute is *not* about "recognition of the existing double circuit configuration as a reliability feature of the existing facility," as it has filed an LGIA that provides for a double circuit configuration. Rather, SoCal Edison states that the dispute is over access to the facility in the event future generators ever seek to use the same facility. SoCal Edison states that, consistent with Commission precedent, it intends to curtail service on the double circuit line at issue here on a *pro rata* basis should another generator ever require the use of the facilities. According to SoCal Edison, Watson inappropriately seeks superior curtailment rights in comparison with potential future interconnection customers.

26. According to SoCal Edison, Watson's proposal is a nonconforming agreement and would require a waiver of several LGIA provisions, including section 9.7.2.2. SoCal Edison notes that the Commission has stated that only "a small number of extraordinary

¹⁶ Watson August 7, 2013 Protest at 11-12.

¹⁷ *Id.* at 11.

¹⁸ See SoCal Edison August 22, 2013 Answer at 10-11 (citing LGIA Article 9.9.2 (Third Party Users); LGIA Article 30.2 (requiring that terms found in LGIA will govern in case of disputes); LGIA Article 9.7.2 (allowing Participating TO or CAISO to "interrupt or reduce deliveries of electricity" under certain conditions); LGIA Article 9.7.2.2 (requiring that such interruptions be made on an equitable basis)).

interconnections where reliability concerns, novel legal issues or other unique factors would call for non-conforming agreements.”¹⁹ SoCal Edison also asserts that the Commission has held that a transmission provider seeking a case-specific deviation from a *pro forma* service agreement bears an extremely high burden to “justify and explain that its changes are necessary (not merely ‘consistent with or superior to’) changes.”²⁰ SoCal Edison states that Watson’s proposed language fails to rise to a level such that SoCal Edison could justify filing it.

27. In its answer to SoCal Edison’s answer, Watson argues the issue presented by Watson’s interconnection claim is not curtailment, but rather access to the double-circuit interconnection line capacity reserved for an existing, operating qualifying facility serving a major refinery. If SoCal Edison schedules one of the two circuits down for maintenance, Watson insists that the other must be available to sustain the entirety of Watson’s output to ensure the reliability of the refinery.²¹

28. Next, argues Watson, its proposed provision does not conflict with the *pro forma* LGIA, but rather assures that other provisions will not be reinterpreted to undermine the protections afforded by the provision. Watson argues that, far from conflicting with the LGIA, the provision acknowledges the interconnection facilities available to future third parties and addresses Watson’s existing rights.²²

29. Finally, Watson claims that SoCal Edison misapplies *MISO* and *PJM* in arguing that deviations from the *pro forma* agreement must be justified by a higher burden of proof. Watson states that the higher burden set by the Commission in those cases applies only to changes to the *pro forma* agreement proposed by a transmission provider; it does not apply to changes negotiated by the parties, which need only be shown to be just and reasonable.²³

30. CAISO comments that the CAISO Tariff includes provisions that apply to combined heat and power resources, such as Watson, and provide a higher level of protection against curtailment under certain circumstances. Specifically, CAISO Tariff

¹⁹ *Id.* at 8-10 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 116 FERC ¶ 61,252, at PP 10-11 (2006) (*MISO*)).

²⁰ *Id.* (citing *PJM Interconnection, LLC*, 111 FERC ¶ 61,098, at PP 4, 9 (2005) (*PJM*)).

²¹ Watson August 27, 2013 Answer at 2, 11-12.

²² *Id.* at 2, 6-11.

²³ *Id.* at 7-8 (citing *MISO*, 116 FERC ¶ 61,252 at P 12).

section 4.6.3.4.4 limits CAISO's ability to curtail such resources below a minimum operating limit unless there is a system emergency. CAISO states that it included such provisions in its tariff to encourage the transition of qualifying facilities to the CAISO Tariff.

C. Commission Determination

31. The Commission is not persuaded that there is any need to approve a deviation from the *pro forma* LGIA at this time. This dispute turns on whether to include in the LGIA Watson's non-conforming provision providing Watson the right to export over any one of the two circuits comprising the existing interconnection facilities, notwithstanding any other provision in the LGIA, in the event SoCal Edison elects to provide service to another entity relying in part or in whole on the interconnection facilities. There is no third party requesting such service now, nor have we been made aware of any such third party request on the foreseeable horizon.

32. We find this contingency too remote and speculative to warrant a deviation from the *pro forma* LGIA between these parties now. We therefore will accept the unexecuted LGIA and reject the proposed deviation as unnecessary. We also accept, for good cause shown, the requested effective date of August 1, 2013. The Commission will address any actual future disputes, should they arise, when and if they are presented to us in future filings.

The Commission orders:

(A) The unexecuted LGIA filed in Docket No. ER12-1995-000 is hereby accepted, effective August 1, 2013, as requested, as discussed in the body of this order.

(B) The Interconnection Application filed in Docket No. TX13-1-000 is hereby dismissed as moot, as discussed in the body of this order.

(C) Watson's motion to dismiss Docket No. ER13-1995-000 is hereby denied, as discussed in the body of this order.

(D) Watson's motion to consolidate Docket No. ER13-1995-000 with Docket No. TX13-1-000 is hereby dismissed as moot, as discussed in the body of this order.

(E) SoCal Edison's motion to dismiss Docket No. TX13-1-000 as moot is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.