

151 FERC ¶ 61,273  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Philip D. Moeller, Cheryl A. LaFleur,  
Tony Clark, and Colette D. Honorable.

Southern California Edison Company

Docket No. EL15-16-000

ORDER ON PETITION FOR DECLARATORY ORDER

(Issued June 30, 2015)

1. On November 6, 2014, Southern California Edison Company (SoCal Edison) filed a petition seeking a declaratory order affirming that the limitation on damages contained in Article 18.2 of the *pro forma* large generator interconnection agreement (LGIA)<sup>1</sup> forbids an interconnection customer from recovering, from its transmission provider, lost profits or revenues from power sales.<sup>2</sup> As discussed below, this order grants SoCal Edison's petition, but also affirms that the limitation on damages in Article 18.2 does not preclude a party to an LGIA from recovering lost profits or revenues from an LGIA counterparty for breaches of an agreement other than the LGIA.

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<sup>1</sup> See *pro forma* LGIA, Article 18, Indemnity, Consequential Damages and Insurance, at Article 18.2, stating:

Other than Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

<sup>2</sup> SoCal Edison November 6, 2014 petition (Petition) at 1.

## I. SoCal Edison's Filing

2. According to SoCal Edison, the need for a Commission order in this proceeding arises as a result of SoCal Edison's expansion of transmission access for renewable generation in California. Specifically, SoCal Edison refers to its Tehachapi Renewable Transmission Project (Tehachapi Project), which it explains has been designed to interconnect a potentially large and concentrated supply of wind generation in the Antelope Valley-Tehachapi region in California.<sup>3</sup> SoCal Edison further states that the Tehachapi Project consists of a 173-mile delivery system, which was designed to be built in segments. According to SoCal Edison, the Tehachapi Project was California's first large transmission project for renewable generation and is a key element of efforts to meet California's renewable target of 33 percent by 2020.<sup>4</sup>

3. SoCal Edison states that it worked with wind and solar generation developers to provide what SoCal Edison calls "early interconnection" of their generating facilities to the Tehachapi Project, meaning interconnection of wind and solar generators while the project remained under construction.<sup>5</sup> Specifically, SoCal Edison states that certain wind and solar generating facilities were permitted to interconnect with the Tehachapi Project prior to the completion of network upgrades required for full capacity deliverability status,<sup>6</sup> with the understanding that construction was not complete. SoCal Edison states that the need to complete additional facilities was spelled out in appendices to the various LGIAs and that SoCal Edison was required to take various transmission facilities out of service at times to complete the necessary construction work.<sup>7</sup>

4. SoCal Edison states that certain generators that interconnected early have initiated civil litigation against SoCal Edison alleging, among other things, that the generators were provided inadequate notice of outages under their LGIAs and/or that SoCal Edison did not abide by the coordination requirements in the LGIAs. SoCal Edison states that the generators have alleged that they lost profits under separate agreements that they

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<sup>3</sup> Petition at 2.

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

<sup>5</sup> *Id.*

<sup>6</sup> Full deliverability status is analogous to network resource interconnection service as described in the *pro forma* LGIA. *Id.*

<sup>7</sup> Petition at 2-3.

entered into for the sale of power.<sup>8</sup> SoCal Edison argues that the lawsuit seeks to undermine the regulatory regime promulgated by the Commission. According to SoCal Edison, it does not ask the Commission to resolve the factual issues in the litigation, but only to resolve what SoCal Edison refers to as a generic legal issue regarding the recoverability of lost profits.

5. SoCal Edison argues that Article 18.2 of the LGIA established a national standard prohibiting a generator from recovering lost profits from power sales. SoCal Edison states that in issuing Order No. 2003,<sup>9</sup> the Commission intended to adopt a limitation on consequential damages nationwide.<sup>10</sup> SoCal Edison relies on the discussion in Order No. 2003 of risks to transmission owners and their ratepayers from consequential damages, along with comments that state laws regarding liability vary around the country to argue that, under the Commission's *pro forma* LGIA, lost profits or revenues do not constitute consequential damages.<sup>11</sup>

6. SoCal Edison also references the choice of law provision in the *pro forma* LGIA, Article 14.2.1, noting that the LGIA is generally governed by the laws of the state in which the point of interconnection is located.<sup>12</sup> However, SoCal Edison argues that there is no basis to conclude that the choice of law provision was intended to undermine the Commission's intent to establish a national liability standard in Article 18.2.

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<sup>8</sup> *Id.* at 3.

<sup>9</sup> *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) (Order No. 2003).

<sup>10</sup> Petition at 9 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 906).

<sup>11</sup> *See id.* at 9-10 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at PP 901-902, 906).

<sup>12</sup> *Id.* at 10 (citing Article 14.2.1, which reads: The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of laws principles).

7. Finally, SoCal Edison states that the Commission has enforced certain interconnection agreements predating Order No. 2003, including provisions that disallowed recovery of lost revenue or profits.<sup>13</sup> SoCal Edison states that subsequent to the issuance of Order No. 2003, the Commission has accepted tariff definitions that specifically exclude loss of profits or loss of revenues as direct damages.<sup>14</sup>

8. According to SoCal Edison, all of these matters taken together demonstrate that the Commission has established a nationwide policy that, when considering possible breaches of an LGIA, lost profits or revenues should always be considered consequential, not direct, damages and as such, are not recoverable by an interconnection customer from its transmission provider.

## **II. Notice of Filing and Responsive Pleadings**

9. Notice of SoCal Edison's filing was published in the *Federal Register*, 79 Fed. Reg. 68,438 (2014), with interventions or protests due on or before December 8, 2014. Timely motions to intervene were filed by NRG Companies, E.ON Climate & Renewables North America, and Modesto Irrigation District. San Diego Gas and Electric Company, Pacific Gas and Electric Company (PG&E), the Cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (Six Cities) and the Edison Electric Institute (EEI) filed motions to intervene and comments in support. The California Wind Energy Association (CalWEA) and the Alta Wind Companies (collectively Alta Wind)<sup>15</sup> filed motions to intervene and a protest. SoCal Edison filed a motion for leave to answer and answer and CalWEA and Alta Wind each filed motions to reply and replies. On June 15, 2015 SoCal Edison submitted to the Commission a letter regarding the procedural status of related civil litigation in California. Alta Wind filed a response to SoCal Edison's submission on June 19, 2015.

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<sup>13</sup> *Id.* at 11 (citing *Northeast Energy Assos. v. Boston Edison Company*, 91 FERC ¶ 61,069, at 61,253 (2000)).

<sup>14</sup> *Id.* at 12 (citing *Midwest Independent System Operator, Inc.*, 110 FERC ¶ 61,164, at P 24 (2005)).

<sup>15</sup> The Alta Wind Companies are Alta Wind I, LLC, Alta Wind II, LLC, Alta Wind III, LLC, Alta Wind IV, LLC, Alta Wind V, LLC, CHIPS Alta Wind IV Holding Company, LLC and Alta Windpower Development, LLC.

### III. Discussion

#### A. Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept SoCal Edison's answer and Alta Wind and CalWEA's replies because they have provided information that assisted us in our decision-making process.

#### B. Substantive Matters

##### 1. Comments and Protests

12. PG&E, Six Cities, and EEI support SoCal Edison's request for declaratory order. Six Cities asserts that SoCal Edison seeks reaffirmation of an established national policy that remains relevant and therefore SoCal Edison's request should be granted.<sup>16</sup> Six Cities states that the Commission's purposes for adopting Article 18.2 of the LGIA were to provide certainty to transmission providers by "standardizing" liability protections and to protect transmission customers such as Six Cities by militating against excessive rates.<sup>17</sup> Six Cities asserts that no obvious change in circumstance warrants revisiting the policy, and that the proliferation of generator interconnections due to changes in renewable procurement policies over the last decade reinforces the need for the uniform liability limits adopted by the Commission in Order No. 2003. Six Cities argues that if the Commission were to find that state law may trump the limitation on liability in Article 18.2 of the LGIA, then transmission customers such as Six Cities face potentially limitless exposure to consequential damages passed through to transmission customers in rates or to cost increases as a result of system overbuilding by transmission providers to mitigate outages that might result in lost profit damages for certain customers.<sup>18</sup>

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<sup>16</sup> Six Cities December 8, 2014 Comments at 4-5 (Six Cities Comments).

<sup>17</sup> *Id.* at 4.

<sup>18</sup> *Id.* at 5.

13. PG&E requests that the Commission confirm that a party to the LGIA remains liable to the other parties to the LGIA for damages based on the alleged breach of another agreement, but cannot be held liable for lost profits allegedly suffered under that other agreement for an alleged breach of the LGIA. PG&E also requests that the Commission confirm that its ruling here also applies to the Small Generator Interconnection Agreement (SGIA), noting that Order No. 2003 should be used as guidance for interpreting and implementing the SGIA, as the Commission stated in Order No. 2006.<sup>19</sup>

14. In its comments in support of SoCal Edison's petition, EEI states that the Commission should issue a ruling that gives effect to the policy determination set forth in Order No. 2003; the LGIA includes a uniform limitation on "consequential damages," that includes a limitation on lost profits.<sup>20</sup> EEI asserts that the Commission should also affirm that the choice of law provision in Article 14.2.1 of the LGIA was not intended to interfere with the application of the limitation of liability in Article 18.2 on a uniform national basis. EEI also states that the possibility of litigation in states that allow recovery of lost profits from power sales under the LGIA could have consequences ranging from higher insurance costs that would be passed on to customers to investors declining to support construction of new transmission in those states.<sup>21</sup>

15. Alta Wind and CalWEA urge the Commission to deny SoCal Edison's request. Alta Wind asserts that the petition is an attempt by SoCal Edison to interject the Commission into a state court proceeding between Alta Wind and SoCal Edison.<sup>22</sup> Alta Wind and CalWEA assert that SoCal Edison seeks to rewrite Article 18.2 contrary to its plain language. They state that SoCal Edison ignores the last provision in Article 18.2, which states that "damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages."<sup>23</sup> They further state that the LGIA in *Northeast Gas*

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<sup>19</sup> PG&E December 8, 2014 Comments at 4-5 (citing *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at P 59, *order on reh'g*, Order No. 2006-A, FERC Stats. & Regs. ¶ 31,196 (2005) *order granting clarification*, Order No. 2006-B, FERC Stats. & Regs. ¶ 31,221 (2006)(PG&E Comments)).

<sup>20</sup> EEI December 8, 2014 Comments at 2-3 (EEI Comments).

<sup>21</sup> *Id.* at 4.

<sup>22</sup> Alta Wind December 8, 2014 Protest at 1 (Alta Wind Protest).

<sup>23</sup> *Id.* at 5 (citing Order No. 2003, Appendix C, Standard Large Generator Interconnection Agreement, Article 18.2); Alta Wind Protest at 5.

*Associates*, relied on by SoCal Edison in its petition, did not include a separate provision that would allow lost profits to be considered direct damages, and is, therefore, different than consideration of Article 18.2 of the *pro forma* LGIA.<sup>24</sup>

16. Similarly, CalWEA and Alta Wind argue that granting the petition would effectively require the Commission to disregard Article 18.2's provision that "damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages."<sup>25</sup> CalWEA and Alta Wind assert that if SoCal Edison was dissatisfied with the scope of Article 18.2, the proper course would have been to file a timely request for rehearing, an option that is now time-barred.<sup>26</sup> Furthermore, CalWEA and Alta Wind assert that a new interpretation of an existing regulation must be consistent with the underlying rule, or else it would constitute a change to the rule, requiring the Commission to initiate a new rulemaking proceeding.<sup>27</sup>

17. CalWEA further states that the purpose of a declaratory order is to "terminate a controversy or remove uncertainty"<sup>28</sup> and that granting SoCal Edison's petition would do neither. CalWEA asserts that SoCal Edison is not asking the Commission to resolve the state court controversy that has prompted this petition, and since SoCal Edison has omitted the factual context of that dispute, it is unclear where the uncertainty lies. Absent details about the current dispute between SoCal Edison and Alta Wind and without any limiting rationale provided by SoCal Edison, CalWEA asserts that the Commission

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<sup>24</sup> *Id.* at 17-18 (citing *Northeast Energy Assocs. v. Boston Edison Co.*, 91 FERC at 61,253) (finding that a provision in an LGIA denying recovery of consequential damages in the absence of gross negligence precluded recovery of lost revenue from service interruptions.)

<sup>25</sup> *Id.* at 5 (citing Order No. 2003 FERC Stats. & Regs. ¶ 31,146, Appendix C, Standard Large Generator Interconnection Agreement, Article 18.2); Alta Wind Protest at 5.

<sup>26</sup> Alta Wind Protest at 16; CalWEA December 8, 2014 Protest at 4 (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Indep. Sys. Op. Corp. and the Cal. Power Exchange Corp.*, 133 FERC ¶ 61,014, at P 20 (2010)) (CalWEA Protest).

<sup>27</sup> *Id.* at 6 (citing *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914,919 (D.C. Cir. 1998)); Alta Wind Protest at 11.

<sup>28</sup> *Id.* at 6 (quoting 18 C.F.R. § 385.207(a)(2)).

cannot evaluate whether granting the petition would remove any uncertainty from contract terms that are otherwise clear and unambiguous. Therefore, CalWEA asserts that granting SoCal Edison's petition would amplify, rather than resolve, uncertainty about the meaning of Article 18.2 in countless agreements across the nation.

18. Alta Wind asserts that the Commission should not interject itself into a contractual dispute properly before a state court. Alta Wind states that in cases of concurrent jurisdiction with state courts regarding contractual disputes, the Commission uses the three-part *Arkla* test to determine whether to assert primary jurisdiction and resolve the dispute.<sup>29</sup> Under the test, Alta Wind states, the Commission will assert primary jurisdiction when: (1) the Commission possesses special expertise which makes the case peculiarly appropriate for a Commission decision, (2) there is a need for uniformity of interpretation of the type of question raised in the dispute; and (3) the case is important in relation to the Commission's regulatory responsibilities.<sup>30</sup>

19. Applying that test here, Alta Wind states that no special Commission expertise is needed to interpret a limitation on liability clause such as Article 18.2 of the LGIA. Furthermore, Alta Wind asserts that SoCal Edison presents no evidence of competing interpretations of Article 18.2 that might impinge significantly on the operations of public utilities across the nation and necessitate a uniform interpretation. If granted, Alta Wind asserts, the declaratory order would undermine the Commission's regulatory responsibilities as it would upset the careful but clear balance struck in Article 18.2 of the LGIA limiting liability for transmission providers in certain instances, while expressly stating that parties may still be liable under other agreements.<sup>31</sup> Alta Wind also asserts that granting the petition would effectively eliminate Article 14.2.1 of the LGIA, which determines which state's law will govern any contractual dispute.<sup>32</sup> Finally, Alta Wind asserts that SoCal Edison represented to a California Superior Court that a Commission order granting its requested petition would purportedly resolve their state court proceeding and moot Alta Wind's claims before the court.<sup>33</sup>

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<sup>29</sup> Alta Wind Protest at 7 (citing *Ark. La. Gas Co. v. Hall, et al.*, 7 FERC ¶ 61,175, *reh'g denied*, 8 FERC ¶ 61,031 (1979) (*Arkla*)).

<sup>30</sup> *Id.* (citing *Arkla*, 7 FERC at 61,322; *Questar Pipeline Co.*, 140 FERC ¶ 61,040, at P 59 (2012)).

<sup>31</sup> *Id.* at 13.

<sup>32</sup> *Id.* at 18.

<sup>33</sup> *Id.* at 2, 5.

20. In its answer, SoCal Edison asserts that the *Arkla* test does not apply here because this matter involves *pro forma* contractual terms imposed by the Commission, not contractual terms bargained for by bilateral parties.<sup>34</sup> Even applying the *Arkla* test, SoCal Edison states that the Commission is the appropriate body to interpret Article 18.2 of the LGIA. SoCal Edison asserts that the Commission has special expertise to interpret a provision that it mandated be adopted, such as Article 18.2, and that the Commission routinely rules on cases involving interpretations of the LGIA or SGIA.<sup>35</sup> Thus, SoCal Edison distinguishes this case from matters involving interpretation of contracting parties' intent. Furthermore, SoCal Edison argues that the Commission adopted Article 18.2 to impose a uniform, national limitation on consequential damages "precisely because state liability statutes vary."<sup>36</sup> SoCal Edison asserts that the Commission's regulatory responsibilities are relevant here because in adopting Article 18.2, the Commission hoped to achieve greater regulatory certainty, to cap excessive damages awards and thus excessive utility rates, and to reduce litigation, all regulatory policy goals.<sup>37</sup>

21. SoCal Edison also asserts that it is not attempting to modify Article 18.2 as Alta Wind and CalWEA state, and that Alta Wind's and CalWEA's interpretation of the provision in Article 18.2 allowing recovery of consequential damages in connection with other agreements between the parties is incorrect. SoCal Edison argues that the provision simply means that parties may not use Article 18.2 as a shield from consequential damages resulting from a breach of another agreement; SoCal Edison asserts that the language does not allow parties to recover under another agreement for breaches of the LGIA.<sup>38</sup> SoCal Edison asserts that the Commission should reject CalWEA's argument, similar to the action taken in *Nicole Gas Production Ltd.*, where SoCal Edison states that protestors asserted a Commission order would not resolve ongoing litigation. SoCal Edison states that, as the Commission did in that case, it should

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<sup>34</sup> SoCal Edison December 23, 2014 Answer at 3-4 (SoCal Edison Answer).

<sup>35</sup> SoCal Edison Answer at 6-8 (citing *Judith Gap Energy LLC and Nw. Corp.*, 125 FERC ¶ 61,169 (2008); *Virginia Elec. & Power Co.*, 108 FERC ¶ 61,206 (2004); *Southwest Power Pool, Inc., et al.* 132 FERC ¶ 61,137 (2010)).

<sup>36</sup> *Id.* at 9 (quoting Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 906)).

<sup>37</sup> *Id.* at 12 (citing Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 906)).

<sup>38</sup> *Id.* at 15.

exercise its discretion here to “provide clarity to the parties and promote uniform interpretation.”<sup>39</sup>

22. In its Reply, CalWEA states that the Commission should reject SoCal Edison’s answer, asserting that it does not provide any information, analysis, or argument that SoCal Edison could not have anticipated prior to filing its petition.<sup>40</sup> CalWEA also asserts that neither SoCal Edison nor EEI have identified any state court that has shown confusion about how to interpret Article 18.2, and that SoCal Edison has made inconsistent arguments regarding the *Arkla* test, providing grounds for dismissal. Lastly, CalWEA states that *Nicole Gas* dealt with an ambiguous contract term at the center of pending state court litigation, and is therefore different from the facts before the Commission here.<sup>41</sup>

23. In its reply, Alta Wind again asserts that the Commission should decline to exercise jurisdiction in this matter, stating that generic legal questions of contractual interpretation implicate none of the Commission’s special expertise, and that Article 14.2.1 entrusted this function to courts.<sup>42</sup> Furthermore, Alta Wind asserts that if the separate provision in Article 18.2 stood for the proposition that the LGIA does not affect the liability of a party for breach of another agreement, then there would be no need for the separate provision since contracts typically do not limit damages available under separate and distinct contracts.<sup>43</sup> Alta Wind also asserts that use of the word “hereunder” instead of “thereunder” in Article 18.2 makes clear that such damages are not excluded from the LGIA if caused by breaches of the LGIA. Alta Wind asserts that Article 18.2 works in conjunction with the indemnification provisions of Article 18.1 to impose liability on transmission owners regardless of whether the interconnection customer has a PPA with the transmission owner or a third party.<sup>44</sup>

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<sup>39</sup> *Id.* at 19 (citing *Nicole Gas Production Ltd.*, 103 FERC ¶ 61,328 (2003) (*Nicole Gas*)).

<sup>40</sup> CalWEA January 8, 2015 Reply at 1 (citing *Delmarva Power & Light Co.*, 69 FERC ¶ 61,144 (1994)) (CalWEA Reply).

<sup>41</sup> *Id.* at 6.

<sup>42</sup> Alta Wind January 8, 2015 Reply at 2 (Alta Wind Reply).

<sup>43</sup> *Id.* at 5 (citing *Rogers v. Parish Corp. & Professional Serv. Industries, Inc.*, No. 5:92:CV:101, 1993 WL 13654533, at 5-6 (W.D. Mich. Aug 30, 1993)).

<sup>44</sup> Alta Wind Reply at 6-7.

## 2. Commission Determination

24. The Commission grants SoCal Edison's request for declaratory order as discussed herein. As an initial matter, we do not find the petition to be an untimely request for rehearing of or a collateral attack on Order No. 2003. Order No. 2003 established a national standard forbidding the recovery of consequential damages, including lost profits or revenue, from recovery under a *pro forma* LGIA.<sup>45</sup> SoCal Edison's petition does not challenge a particular determination in Order No. 2003; it asks how Order No. 2003 applies to a particular fact pattern involving a live dispute. We agree with SoCal Edison that the provision for which it is seeking the Commission's interpretation is a *pro forma* provision set forth by the Commission in Order No. 2003, not a provision bargained for by the parties to the LGIA. We also find that addressing the issue raised in this proceeding will help promote regulatory certainty by clarifying this aspect of the *pro forma* LGIA. However, we do not address the merits of any breach of contract claim brought by any particular party here and leave that issue to the state court.<sup>46</sup>

25. We confirm that the ban on recovery of lost profits or revenues in Article 18.2 of the LGIA includes lost profits or revenues from foregone power sales, consistent with the discussion of this provision in Order No. 2003, where the Commission stated that the provision protects either party to an LGIA from liability for any consequential damages, including "profit or revenue."<sup>47</sup> This interpretation is also consistent with the plain language of Article 18.2 of the *pro forma* LGIA, which provides that, other than liquidated damages, "in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue...." However, we also clarify that this ban on recovery of lost profits or revenues for breaches of the LGIA does not shield an LGIA party from damages properly awarded by a court for a breach of a separate agreement between the parties, consistent with Order No. 2003.<sup>48</sup> In order for the full text of Article 18.2 to have meaning,

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<sup>45</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 906 (finding that standardizing liability protections under the LGIA gives greater certainty to transmission providers and interconnection customers because state liability statutes vary).

<sup>46</sup> Even if we were so inclined, the pleadings in this proceeding do not elicit sufficient facts upon which we could determine whether any breach of any agreement had occurred.

<sup>47</sup> See Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 906.

<sup>48</sup> *Id.* ("The Parties remain liable for any liquidated damages payable, and any damages for which a Party may be liable to the other Party under another agreement.").

damages under another agreement between the parties to the LGIA cannot be considered special, indirect, incidental, or consequential damages *under the LGIA*.<sup>49</sup>

26. We find the choice of law provision in Article 14.2.1 of the LGIA, as well as the indemnity provisions of Article 18.1, to be immaterial to our consideration of this matter. As we stated above, Order No. 2003 established a national standard foreclosing recovery of lost profits or revenues for breaches of the LGIA. As to the validity, interpretation, and performance under the LGIA, Article 14.2.1 specifies that the LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of laws principles.

The Commission orders:

Southern California Edison Company's petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>49</sup> As noted above, Article 18.2 provides "that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder." *See* n.1, *supra*.