

157 FERC ¶ 61,132  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Jacumba Solar, LLC

Docket No. TX16-3-000

PROPOSED AND FINAL ORDER DIRECTING  
THE PROVISION OF TRANSMISSION SERVICE

(Issued November 21, 2016)

1. In this order, we grant the request of Jacumba Solar, LLC (Jacumba) for an order directing San Diego Gas & Electric Company (SDG&E) to provide transmission service pursuant to section 211 of the Federal Power Act (FPA).<sup>1</sup>

**I. Background**

2. Jacumba states that it will own and operate a 20 MW solar photovoltaic project that will be interconnected with SDG&E's wholly-owned transmission facilities that are operated as part of the California Independent System Operator Corporation (CAISO) controlled grid. Jacumba adds that it has entered into an amended Small Generator Interconnection Agreement (SGIA) among Jacumba, SDG&E and CAISO, and that it has also entered into a power purchase agreement with Southern California Edison Company (SoCal Edison) that requires the project to be operational in 2017.<sup>2</sup> Jacumba states that the SGIA identified certain interconnection facilities and network upgrades that must be constructed for the project to receive full capacity deliverability status at the time it commences commercial operation.

3. According to Jacumba, sections 142(a)(8) and 142(f) of the Internal Revenue Code of 1986 provide an exemption, for federal tax purposes, for interest on certain debt issued by state or local government units to provide financing for eligible transmission,

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<sup>1</sup> 16 U.S.C. § 824j (2012).

<sup>2</sup> Application at 1-2.

distribution, or generation facilities that are part of a system for the “local furnishing” of electric energy.<sup>3</sup> Jacumba adds that SDG&E has received letter rulings from the Internal Revenue Service (IRS) confirming that it operates a local furnishing system, and must therefore abide by IRS conditions to maintain the tax-exempt status of its bonds.<sup>4</sup> One of those conditions, Jacumba asserts, is that no component of SDG&E’s local system facilities may be built sooner, larger or of a different design than is reasonably expected to be needed to provide service to retail customers within SDG&E’s service territory. Jacumba states that SDG&E determined that the network upgrades required for Jacumba’s project will be built sooner, larger or of a different design than is reasonably expected to be needed to provide service to SDG&E’s retail customers within SDG&E’s service territory. Consequently, Jacumba argues that, absent some over-riding exception, SDG&E cannot provide the requested interconnection and transmission service to Jacumba without jeopardizing the tax-exempt status of SDG&E’s outstanding local furnishing bonds, unless such transmission service is provided pursuant to section 211 or section 213 of the FPA.<sup>5</sup>

4. Accordingly, on September 26, 2016, Jacumba submitted an application requesting that the Commission issue an order pursuant to section 211 of the FPA requiring SDG&E to provide transmission services for Jacumba’s project. Jacumba states that SDG&E is willing to provide Jacumba with the requested interconnection and transmission services, but informed Jacumba that it needs a Commission order directing it to provide the requested transmission service pursuant to section 211 of the FPA in order to prevent the loss of tax-exempt status of its local furnishing bonds. Jacumba asserts that the Energy Policy Act of 1992<sup>6</sup> amended the IRS Code to preserve the local furnishing status of a utility’s system (and therefore, the tax-exempt status of the utility’s bonds) if: (1) electricity is transmitted through the utility’s system pursuant to a Commission order issued under section 211 or section 213 of the FPA; and (2) the portion of the cost of the facilities used to provide the directed transmission service that is

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<sup>3</sup> *Id.* at 3 (citing 26 U.S.C. §§ 142(a)(8), 142(f)(1) (2012)). “Local furnishing” of electric energy is defined as furnishing service “solely within the area consisting of (A) a city and 1 contiguous county, or (B) 2 contiguous counties.”

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

<sup>5</sup> *Id.* at 3-4 (citing 16 U.S.C. §§ 824j, 824l (2012)).

<sup>6</sup> Pub. L. No. 102-486, § 1919, 106 Stat. 2776 (1992).

financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy.<sup>7</sup>

5. Jacumba states that it is authorized by SDG&E to state that none of the costs of the interconnection facilities and network upgrades needed to provide the services requested by Jacumba will be financed in whole or in any part by proceeds of tax-exempt local furnishing bonds. Jacumba adds that no portion of the electric interconnection or transmission service requested by Jacumba will be allocable to the portion of the cost of SDG&E's existing local transmission system, which is allocable to the local furnishing of electric energy within the meaning of section 142(f)(2) of the Internal Revenue Code.<sup>8</sup> Jacumba also notes that, in Order Nos. 888, *et seq.*, the Commission adopted *pro forma* tariff provisions specifically intended to avoid, or minimize, the loss of tax-exempt status for local furnishing debt due to open access transmission service.<sup>9</sup> Further, Jacumba contends that SDG&E's Transmission Owner (TO) Tariff includes language similar to the *pro forma* tariff that likewise ensures that the expansion of network facilities required to provide transmission service will not jeopardize the tax-exempt status of bonds used to finance the facilities on its system, and likewise requires a party to tender a section 211 application for such service.<sup>10</sup>

6. As required by section 9.3.3 of the SDG&E TO Tariff, Jacumba states that SDG&E has informed Jacumba that SDG&E will waive its rights to a request for service under section 213(a) of the FPA and to the issuance of a proposed order under section 212(c) of the FPA.<sup>11</sup> Jacumba further states that any delay in securing Commission approval could jeopardize the project, as SDG&E informed Jacumba that SDG&E cannot commence construction of the facilities until the Commission issues an order with an effective date for transmission service.<sup>12</sup> Thus, Jacumba requests that the Commission issue an order directing SDG&E to provide the requested transmission

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<sup>7</sup> Application at 4.

<sup>8</sup> Jacumba states that SDG&E will confirm the allocation of these costs prior to providing the requested services. *Id.* at 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 5-6 (citing SDG&E TO Tariff, section 9.3.3).

<sup>11</sup> *Id.* at 1.

<sup>12</sup> *Id.* at 2.

service effective November 25, 2016, stating that the power purchase agreement with SoCal Edison requires that Jacumba be operational in 2017.<sup>13</sup>

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

7. Notice of Jacumba's filing was published in the *Federal Register*, 81 Fed. Reg. 70,418 (2016), with protests and interventions due on or before October 18, 2016. SDG&E filed a timely motion to intervene.

## **III. Discussion**

8. We will dismiss SDG&E's motion to intervene. As the subject of Jacumba's application, SDG&E is a party to this proceeding under Rule 102(c)(2) of the Commission's Rules of Practice and Procedure.<sup>14</sup>

9. In Order Nos. 888 and 888-A, the Commission recognized that open access transmission service might jeopardize the tax-exempt status of local furnishing bonds.<sup>15</sup> Accordingly, the Commission required any public utility subject to Order No. 888 that had financed transmission facilities with local furnishing bonds to include in its tariff a provision that it will not contest the issuance of an order under section 211 of the FPA requiring the provision of such service and will, within 10 days of receiving a written request by an applicant, file with the Commission a written waiver of its rights to a request for service from the applicant under section 213(a) of the FPA and to the issuance

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<sup>13</sup> *Id.* at 1-2, 10.

<sup>14</sup> 18 C.F.R. § 385.102(c)(2) (2016).

<sup>15</sup> *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002) (Order No. 888). The revised *pro forma* tariff adopted in Order No. 890, as modified in Order Nos. 890-A and 890-B, did not revise section 5 of the Commission's *pro forma* tariff. *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

of a proposed order under section 212(c) of the FPA.<sup>16</sup> As discussed below, we find that Jacumba has satisfied the requirements of sections 211 and 212 of the FPA.<sup>17</sup>

**A. Jurisdiction**

10. Under section 211(a) of the FPA, any electric utility, federal power marketing agency, or any other person generating electric energy for sale for resale may apply to the Commission for an order requiring a transmitting utility to provide transmission services to the applicant. The Commission has found that interconnection customers intending to construct generation facilities meet the jurisdictional requirements of section 211(a).<sup>18</sup> Therefore, Jacumba is eligible to request an order requiring SDG&E to provide it with transmission services.

**B. Good Faith Request**

11. Because SDG&E has waived its rights under sections 211 and 213 of the FPA to a request for service, and is willing to provide the transmission service requested by Jacumba, compliance with this requirement is not necessary here.

**C. Public Interest**

12. Section 211(a) of the FPA provides that the Commission may issue an order directing transmission service if the order meets the requirements of section 212 of the FPA and would otherwise be in the public interest. In *Florida Municipal Power Agency v. Florida Power & Light Company*,<sup>19</sup> the Commission determined that, as a general matter, the availability of transmission service enhances competition in power markets by increasing power supply options of buyers and sales options of sellers, and that this should result in lower costs to consumers. The same principles apply here. Accordingly, we find that the public interest will be served by directing SDG&E to provide the requested transmission service to Jacumba.

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<sup>16</sup> 16 U.S.C § 824k (2012).

<sup>17</sup> See generally *Nevada Power Co.*, 110 FERC ¶ 61,029, at PP 14-22 (2005) (discussing and applying requirements of section 211 and 212 of the FPA).

<sup>18</sup> See, e.g., *Aero Energy, LLC*, 115 FERC ¶ 61,128 (2006).

<sup>19</sup> 65 FERC ¶ 61,125, *reh'g dismissed*, 65 FERC ¶ 61,372 (1993), *final order*, 67 FERC ¶ 61,167 (1994), *order on reh'g*, 74 FERC ¶ 61,006 (1996), *order on reh'g*, 96 FERC ¶ 61,130 (2001).

**D. Reliability**

13. Section 211(b) of the FPA precludes a transmission order that would unreasonably impair the continued reliability of the affected electric systems. According to Jacumba, SDG&E has already conducted all necessary studies and has identified the interconnection facilities and network upgrades that will be necessary to accommodate Jacumba's request, and Jacumba has agreed to their construction. Therefore, we find that ordering the requested transmission service will not unreasonably impair the continued reliability of the affected electric systems.

**E. Effect on Contracts or Rate Schedules**

14. Section 211(c)(2) of the FPA provides that no order may be issued under section 211 that requires the transmitting utility subject to the order to transmit, during any period, an amount of electric energy that replaces any amount of electric energy that is required to be provided to the applicant pursuant to a contract during such period or that the utility subject to the order currently provides to the applicant pursuant to a rate schedule on file with the Commission. As noted by Jacumba, SDG&E is not selling to Jacumba the energy that is to be transmitted to SoCal Edison; rather, Jacumba is seeking an order so that SDG&E can provide the requested interconnection and transmission services so that Jacumba may sell its power to SoCal Edison, while preserving the tax-exempt status of SDG&E's local furnishing bonds.<sup>20</sup> Therefore, section 211(c)(2) does not preclude an order for transmission service in this case.

**F. Rates**

15. Section 212(a) of the FPA requires that the transmitting utility subject to an order under section 211 provide wholesale transmission services at rates, charges, terms and conditions which permit the recovery by such utility of all the costs incurred in connection with the transmission services and necessary associated services. Section 212(a) further provides, to the extent practicable, for recovery of such costs from the applicant for such order and not from the transmitting utility's existing wholesale, retail, and transmission customers. Jacumba states that the order requested here would not shift costs to other customers because the costs of constructing the interconnection facilities and network upgrades are being paid by Jacumba under the SGIA, and transmission service will be provided under the rates, terms, and conditions of SDG&E's TO Tariff

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<sup>20</sup> Application at 9.

and the CAISO Fifth Replacement Electric Tariff on file with the Commission.<sup>21</sup> Thus, we find that this arrangement satisfies the requirements of section 212(a).

**G. Applicability**

16. An order under section 211 of the FPA cannot be made effective prior to the date of a final Commission order.<sup>22</sup> As SDG&E has waived its rights to a Proposed Order, this order is a Final Order. Therefore, we will grant Jacumba's request to direct SDG&E to provide the requested transmission service, effective on the date of this order.

The Commission orders:

Jacumba's request for an order directing transmission service is hereby granted, and SDG&E is hereby directed, pursuant to section 211 of the FPA, to provide the requested transmission service to Jacumba.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>21</sup> *Id.* at 9-10.

<sup>22</sup> See *City of College Station, Texas*, 76 FERC ¶ 61,138, at 61,743 (1996), *final order*, 86 FERC ¶ 61,165, at 61,583 (1999).