

157 FERC ¶ 61,234
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

December 22, 2016

In Reply Refer To:
San Diego Gas & Electric Company
Docket No. ER16-2600-000

San Diego Gas & Electric Company
8330 Century Park Court, CP32D
San Diego, CA 92123

Attention: Jonathan J. Newlander, Esq.

Dear Mr. Newlander:

1. On September 16, 2016, San Diego Gas & Electric Company (SDG&E) filed a Notice of Cancellation of the Large Generator Interconnection Agreement (LGIA)¹ among Bull Moose Energy, LLC (Bull Moose), SDG&E, and CAISO regarding Bull Moose's request to interconnect its Otay Mesa Biomass Facility (Project) to the CAISO-controlled grid at SDG&E's Border Substation. As discussed below, we accept the Notice of Cancellation, effective November 15, 2016, as requested.

2. According to SDG&E, Bull Moose submitted its request for interconnection to CAISO on May 2, 2006, which reflected that the Project would have a total maximum net output of 27 MW, have an in-service date of July 1, 2008, and achieve commercial operation on December 1, 2008.² SDG&E states that, after necessary studies were conducted, the parties executed the LGIA, effective January 28, 2010, which was subsequently amended, effective September 20, 2011.³

¹ The LGIA was included in SDG&E's 2016 second quarter Electronic Quarterly Report and conforms with the standard LGIA in California Independent System Operator Corporation's (CAISO) tariff.

² SDG&E Transmittal at 1. CAISO assigned the Project Queue Position #103.

³ *Id.*

3. SDG&E states that, on March 31, 2015, CAISO notified Bull Moose of the need for an amended interconnection facilities study for the Project due to the outdated vintage of the original cost estimates in its May 14, 2008 interconnection facilities study report. According to SDG&E, after CAISO did not receive a response from Bull Moose, SDG&E notified Bull Moose in June 2015 of the utility's intent to exercise its rights, pursuant to Article 17.1.2 of the LGIA, to declare a default and terminate the agreement, unless Bull Moose took necessary action in response to CAISO's notice.⁴ SDG&E states that, ultimately, Bull Moose agreed to the performance of an amended interconnection facilities study for the Project.⁵ According to SDG&E, on September 22, 2015, CAISO delivered to Bull Moose the amended study, which identified updated costs for inclusion in an amendment to the LGIA (2015 Amended LGIA). SDG&E states that CAISO tendered the 2015 Amended LGIA to Bull Moose on October 30, 2015 and indicated that the amendment required execution by Thanksgiving 2015 in order to meet the Project's updated April 30, 2016 in service date.⁶

4. SDG&E contends that Bull Moose did not execute the 2015 Amended LGIA. SDG&E explains that in March 2016 it offered to Bull Moose a final opportunity to cure its breach of the agreement by either: (1) withdrawing Bull Moose's interconnection request; or (2) providing both CAISO and SDG&E with Bull Moose's edits to the 2015 Amended LGIA draft, including a revised in-service date. SDG&E indicates that Bull Moose had taken neither action at the time of the instant filing.⁷

⁴ Article 17.1.2 of CAISO's standard LGIA states:

Right to Terminate: If a Breach is not cured as provided in this Article, or if a Breach is not capable of being cured within the period provided for herein, the affected non-Breaching Party(ies) shall have the right to declare a Default and terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not such Party(ies) terminates this LGIA, to recover from the Breaching Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this LGIA.

⁵ SDG&E Transmittal at 2.

⁶ *Id.*

⁷ *Id.*

5. SDG&E asserts that Bull Moose has been unwilling to negotiate regarding the 2015 Amended LGIA as part of a strategy to delay its execution of the agreement and payment of the associated financial commitments. SDG&E contends that Bull Moose is potentially tying up interconnection capacity that could be used by later-queued, but more commercially viable projects, and is wasting SDG&E's and CAISO's administrative resources.⁸ SDG&E maintains that Bull Moose's unwillingness to participate fully and in good faith in the process constitutes a breach of the LGIA. Therefore, SDG&E requests that the Commission terminate the LGIA, pursuant to Article 17.1.2, effective November 15, 2016.

6. Notice of SDG&E's filing was published in the *Federal Register*, 81 Fed. Reg. 65350 (2016), with interventions or protests due on or before October 7, 2016. CAISO filed a timely motion to intervene and comments supporting SDG&E's filing. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2016), the timely, unopposed motion to intervene serves to make CAISO a party to this proceeding.

7. CAISO concurs with SDG&E's representations that Bull Moose is in breach of its LGIA and supports SDG&E's proposed cancellation of the agreement.⁹ However, CAISO states that, after SDG&E filed its proposed Notice of Cancellation, Bull Moose represented to CAISO and SDG&E that it would take steps to execute the 2015 Amended LGIA, post the required financial security, and commence commercial operations.¹⁰ CAISO states that, based on these assurances, CAISO and SDG&E agreed that SDG&E would withdraw its proposed Notice of Cancellation if Bull Moose: (1) executed the 2015 Amended LGIA by October 21, 2016; and (2) submitted the required interconnection financial security by October 28, 2016. Absent a filing by SDG&E to withdraw the proposed Notice of Cancellation, CAISO requests that the Commission approve SDG&E's proposal.¹¹ No other filings in this proceeding were submitted.

8. We find that the Notice of Cancellation appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. SDG&E and CAISO have represented that Bull Moose has not executed the 2015 Amended LGIA or satisfied the associated financial commitments consistent with the requirements of the LGIA and CAISO's associated Large Generator

⁸ *Id.* SDG&E notes that CAISO and SDG&E have been attempting to work with Bull Moose for over a year to finalize cost estimates and an achievable in-service date.

⁹ CAISO Comments at 1-2.

¹⁰ *Id.* at 1.

¹¹ *Id.* at 1, 3.

Interconnection Procedures (LGIP).¹² We understand that SDG&E and CAISO have provided Bull Moose with several opportunities to do so, even after Bull Moose had failed to execute the 2015 Amended LGIA within the original required timeframe¹³ and after the time period for curing its breach of the 2015 Amended LGIA had expired.¹⁴ There is nothing in the record of this proceeding indicating that Bull Moose took advantage of these additional opportunities to cure the breach. We note that Bull Moose has not intervened or otherwise participated in this proceeding. As SDG&E notes, if a breach is not cured as provided in the LGIA, the LGIA permits non-breaching parties to declare a default and terminate the agreement via written notice.¹⁵ Therefore, we accept the Notice of Cancellation, effective November 15, 2016, as requested.

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹² The LGIA requires that the interconnection customer comply with all applicable provisions of the CAISO tariff, including the LGIP. CAISO Tariff, Appendix BB, Article 3.2 (Agreement Subject to CAISO Tariff). Section 11.2 of the LGIP discusses the requirements and timelines for execution of an LGIA after receipt of a final interconnection facilities study report, and section 11.3 of the LGIP discusses the additional financial security that may be required upon execution of the LGIA. CAISO Tariff, Appendix U, sections 11.2 (Standard Large Generator Interconnection Agreement – Negotiation) and 11.3 (Standard Large Generator Interconnection Agreement – Execution and Filing).

¹³ The LGIP provides that, unless otherwise agreed by the parties, if the interconnection customer has not executed and returned the LGIA, requested filing of an unexecuted LGIA, or initiated Dispute Resolution procedures within 90 days after issuance of the final interconnection facilities study report, it shall be deemed to have withdrawn its interconnection request. *Id.* Appendix U, section 11.2. We note that, according to SDG&E, CAISO provided to Bull Moose an amended interconnection facilities study report on September 22, 2015. SDG&E Transmittal at 2.

¹⁴ The LGIA provides that the breaching party has up to 90 days after receipt of a written default notice to cure such breach. CAISO Tariff, Appendix BB, Article 17.1.1 (Default – General)

¹⁵ *Id.* Article 17.1.2 (Default – Right to Terminate).