

120 FERC ¶ 61,149
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeem G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern California Edison Company

Docket No. ER07-1034-000

ORDER ACCEPTING AND SUSPENDING LARGE GENERATOR
INTERCONNECTION AGREEMENT AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued August 10, 2007)

1. On June 14, 2007, Southern California Edison Company (SoCal Edison), on behalf of SoCal Edison and the California Independent System Operator Corporation (CAISO), filed an unexecuted Large Generator Interconnection Agreement (LGIA) between Green Borders Geothermal, LLC (Green Borders), SoCal Edison, and the CAISO. In this order, we accept for filing the proposed LGIA and suspend it for a nominal period, to become effective August 14, 2007,¹ subject to refund. We also establish hearing and settlement judge procedures.

Background

2. SoCal Edison states that Green Borders has applied to the CAISO to interconnect its 62,000 kilowatt generating facility (Project) to the CAISO grid. The Project, located near Hawthorne, Nevada, will connect to the non-SoCal Edison owned Dixie Valley – Oxbow 220 kilovolt (kV) transmission line, which will ultimately interconnect to SoCal Edison’s transmission system at SoCal Edison’s 115 kV substation. SoCal Edison states that it has performed the requisite studies to identify the system modifications/additions necessary for interconnection and has conveyed the results to Green Borders.

¹ SoCal Edison requests “an effective date of August 13, 2007...which date is 60-days after the date of this filing.” SoCal Edison Transmittal at 4.

3. SoCal Edison states that the LGIA is the result of contract negotiations between Green Borders, SoCal Edison, and the CAISO. The LGIA specifies the terms for SoCal Edison and the CASIO to provide interconnection service; for SoCal Edison to engineer, design, construct, install, own, operate, and maintain the interconnection facilities and reliability network upgrades (network upgrades); and for Green Borders to pay for such facilities. According to the LGIA, Green Borders is responsible for paying both the interconnection facilities payments and the network upgrades payments, which will compensate SoCal Edison for the capitalized and non-capitalized costs associated with both the interconnection facilities and network upgrades. SoCal Edison estimates the cost of the interconnection facilities at \$215,000 and the cost of network upgrades at approximately \$237 million. In addition, article 11.4.1 of the LGIA provides for the repayment to the interconnecting customer of amounts advanced for network upgrades,² including interest calculated in accordance with section 35.19a of the Commission's regulations.³

4. With the exception of issues related to network upgrades, SoCal Edison states that Green Borders, SoCal Edison, and the CAISO have resolved all issues that were raised during the negotiations.⁴ Specifically, the issues in dispute involve the projected \$237 million cost of network upgrades, whether Green Borders is responsible for all network upgrades, and whether SoCal Edison is obligated to upfront fund the construction of the network upgrades. SoCal Edison argues that funding of the network upgrades is at the discretion of the interconnecting utility.

Notice of Filing and Protest

5. Notice of SoCal Edison's filing was published in the *Federal Register*, 72 Fed. Reg. 35,457 (2007), with interventions and protests due on or before July 5, 2007.

² Article 11.4: Transmission Credits provides that the interconnecting customer, no later than 30 days prior to commercial operation, may elect to receive firm transmission rights in lieu of a refund of the cost of network upgrades.

³ 18 C.F.R. § 35.19a (2007).

⁴ SoCal Edison explains that since the parties did not reach consensus on the disputed issue, Green Borders requested that SoCal Edison unilaterally file the unexecuted LGIA.

The California Electricity Oversight Board filed a timely motion to intervene. Green Borders filed a timely motion to intervene and protest. The CAISO and SoCal Edison filed answers to Green Borders' protest.

6. In its protest, Green Borders questions the reasonableness and allocation of the network upgrades payments associated with interconnecting the Project. Green Borders states that it has sought clarification from SoCal Edison as to whether certain mechanisms such as remedial action schemes or congestion management could mitigate the need for some or all of the identified network upgrades and therefore reduce the \$237 million project cost of network upgrades associated with the Project. Green Borders also argues that the network upgrades are not properly allocated entirely to Green Borders; to the extent that the network upgrades provide system reliability upgrades rather than just delivery upgrades, Green Borders claims it should not bear 100 percent of the network upgrade cost.

7. Green Borders states that it has been working cooperatively with SoCal Edison and the CAISO to further address its issues and believes that further discussion would be fruitful. Accordingly, Green Borders requests that the Commission find the unexecuted LGIA to be unjust and unreasonable and to set the issues for hearing. Green Borders further requests that the Commission suspend hearing procedures and implement settlement judge procedures, pursuant to which the parties can engage in further negotiations and discussion in an attempt to reach resolution short of an evidentiary hearing.

8. The CAISO answers that it has not comprehensively evaluated the viability of the alternative solutions proposed by Green Borders to address the reliability concerns identified in the interconnection studies performed by SoCal Edison. SoCal Edison also responds that it has not determined the feasibility of Green Borders' suggested alternatives, but it does not object to studying these alternatives. Both the CAISO and SoCal Edison state that they do not oppose Green Borders' request to set this matter for hearing, suspend the hearing procedures, and implement settlement procedures.

Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the CAISO's and SoCal Edison's answers because they have provided information that assisted us in our decision-making process.

Hearing and Settlement Judge Procedures

11. SoCal Edison's proposed LGIA raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below.

12. Our preliminary analysis indicates that SoCal Edison's LGIA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept SoCal Edison's proposed LGIA for filing, suspend it for a nominal period, make it effective August 14, 2007,⁵ subject to refund, and set it for hearing and settlement judge procedures.

13. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

⁵ Absent waiver, this is the earliest date that SoCal Edison's proposed LGIA can be made effective (*i.e.* on the 61st day after filing, after 60-days notice). *See Utah Power & Light Co.*, 30 FERC ¶ 61,015, at 61,024 n.9 (1985) (stating that proposed changes in rates, terms, and conditions cannot become effective – absent waiver – earlier than 60 days' notice to the Commission and that the 60-day notice period required by the Commission's regulations starts to run the first day after the date of the filing); *Central Hudson Gas & Electric Co.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992); *Prior Notice Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *clarified*, 65 FERC ¶ 61,081 (1993).

⁶ 18 C.F.R. § 385.603 (2007).

otherwise, the Chief Judge will select a judge for this purpose.⁷ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) SoCal Edison's proposed LGIA is hereby accepted for filing and suspended for a nominal period, to become effective August 14, 2007, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning SoCal Edison's proposed LGIA. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2007), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or

⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Acting Deputy Secretary.