131 FERC ¶ 61,016
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
and John R. Norris.

Southern California Edison Company Docket No. ER10-732-000

ORDER CONDITIONALLY ACCEPTING LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued April 13, 2010)

1. On February 12, 2010, Southern California Edison (SoCal Edison) filed a Large Generator Interconnection Agreement (LGIA) between itself, Solar Partners I, LLC (Solar)[1], and the California Independent System Operator Corporation (CAISO).[2] In addition, SoCal Edison submitted for filing revised rate sheets reflecting the cancellation of letter agreements with BrightSource Energy.[3] As discussed below, we conditionally accept the proposed LGIA and revised rate sheets to become effective February 13, 2010, as requested.

I. Background

2. Solar owns the DPT 1 Project (Project), a 100 MW solar thermal generating facility, to be located in San Bernardino County, California. SoCal Edison explains in its transmittal letter that Solar applied to the CAISO to interconnect its Project to SoCal Edison's Eldorado – Baker – Cool Water – Dunn Siding – Mountain Pass 115 kV line via

[1] Solar, formerly DPT Ivanpah, LLC, is a subsidiary of BrightSource Energy, Inc. as successor to Luz II Inc., a limited liability company organized and existing under the laws of the State of Delaware.

[2] SoCal Edison states that the LGIA will be designated as Service Agreement No. 73 under SoCal Edison's Wholesale Distribution Access Tariff (WDAT), FERC Electric Tariff, Second Revised Volume No. 6.

[3] SoCal Edison states that the letter agreements were designated as Service Agreement Nos. 53 and 54 under SoCal Edison's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Volume No. 6.

the Ivanpah Substation, a new substation to be located about seven miles east of SoCal Edison's existing Mountain Pass Substation, and to transmit energy and/or ancillary services to the CAISO-controlled grid.

3. SoCal Edison filed an LGIA, which is based on the CAISO's *pro forma* LGIA. It specifies the terms and conditions pursuant to which SoCal Edison and the CAISO will provide, and Solar will pay for, interconnection service. SoCal Edison will design, procure, construct, install, own, operate, and maintain its interconnection facilities, reliability network upgrades, delivery network upgrades, and the distribution upgrades required to interconnect the Project to SoCal Edison's transmission system.

4. SoCal Edison states that Appendix A to the LGIA identifies the network upgrades and the distribution upgrades of the LGIA that comprise part of the SoCal Edison's proposed Eldorado-Ivanpah Transmission Project (EITP). SoCal Edison states that it has committed to up-front finance the network components of the EITP, including the network upgrades and distribution upgrades identified in Appendix A, contingent upon: (1) SoCal Edison's receipt of a Commission order that it can recover 100 percent of its prudently incurred costs for EITP if such project is abandoned due to circumstances outside of SoCal Edison's control (Abandoned Plant Approval), and (2) achievement of the development milestones by Solar set forth in Appendix A.

5. SoCal Edison states that on October 1, 2009, it filed a request for Abandoned Plant Approval and other incentives for the EITP in a Petition for Declaratory Order in Docket No. EL10-1-000. On December 17, 2009, the Commission conditionally granted SoCal Edison's petition.[4]

6. SoCal Edison states that if the conditions outlined in the EITP Incentive Order are not met, then the LGIA will be amended and Solar will be responsible to up-front finance costs associated with the network upgrades and potential receipt of transmission credits for such costs in accordance with the LGIA.

7. SoCal Edison states that in accordance with the LGIA, Solar is to be responsible for an interconnection facilities charge and an interconnection facilities payment of $1,119,000.

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[4] *Southern California Edison Company*, 129 FERC ¶ 61,246 (2009) (EITP Incentive Order) The EITP Incentive Order authorized certain transmission pricing incentives for the EITP, including recovery of 100 percent of prudently-incurred costs in the event the EITP is cancelled, subject to the approval of the project pursuant to the CAISO's transmission planning process.

8. SoCal Edison explains that the agreement specifies that following the completion date of the interconnection facilities, Solar will pay SoCal Edison a monthly interconnection facilities charge to recover the on-going revenue requirement for the Participating Transmission Owner's interconnection facilities. This monthly charge is calculated as the product of the customer-financed monthly rate and the interconnection facilities cost. The customer-financed monthly rate is 0.38 percent.[5] The monthly interconnection facilities charge will be $4,252.20 (0.38 percent x $1,119,000).

9. SoCal Edison states that it has provided revised rate sheets to cancel the letter agreements with BrightSource Energy, Inc.[6] because each states that it will terminate upon the effective date of the LGIA. SoCal Edison also states that amounts paid under the letter agreements will be refunded to the interconnection customers in accordance with the LGIA.

II. Notice of Filing and Responsive Pleadings

10. Notice of this filing was published in the *Federal Register*, 75 Fed. Reg. 8687 (2010), with interventions and protests due on or before March 5, 2010. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities) filed a motion to intervene and protest. SoCal Edison filed an answer. Six cities filed an answer to SoCal Edison's answer.

11. In its protest, Six Cities argue that the language in Appendix A relating to the abandoned plant incentive for the EITP should be omitted from the LGIA. Six Cities state that SoCal Edison's proposed LGIA modifications reflects material deviations from the CAISO's *pro forma* LGIA approved by the Commission that are not consistent with or superior to the *pro forma* terms, are discriminatory, and provide SoCal Edison with an undue competitive advantage.

12. Six Cities contend that among these deviations are commitments by SoCal Edison to provide up-front financing for network and distribution upgrades required to connect Solar's proposed generating facility to the transmission network, provided that SoCal Edison is guaranteed recovery of 100 percent of its prudently-incurred costs in the event

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[5] SoCal Edison states that this rate is the rate most recently adopted by the California Public Utilities Commission (CPUC) for application to SoCal Edison's retail electric customers for customer-financed added facilities. According to SoCal Edison, use of the CPUC rate is consistent with the SoCal Edison rate methodology accepted for filing by the Commission in Docket No. ER10-223-000. SoCal Edison states that it provided cost justification for this rate in Docket No. ER09-1345-000.

[6] BrightSource Energy, Inc. is Solar's parent corporation.

the EITP is cancelled due to circumstances beyond SoCal Edison's control. Six Cities also claim that the proposed LGIA provides for: (1) additional security in the event that SoCal Edison is not authorized to recover abandoned plant cost; (2) the elimination of termination charges in the event that SoCal Edison is authorized to recover abandoned plant costs; (3) conditions on up-front financing, one of which is receiving authorization for abandoned plant costs; (4) refunds for preliminary costs previously paid by Solar if abandoned plant costs are approved; and (5) future modifications to the LGIA if abandoned plant costs are not authorized.

13. Six Cities contend that SoCal Edison has not acknowledged that its proposed LGIA provisions relating to the recovery of abandoned plant costs constitute deviations from the terms of the *pro forma* LGIA. In addition, Six Cities contend that SoCal Edison has not attempted to justify these provisions as consistent with or superior to the terms included in the CAISO *pro forma* LGIA upon which the proposed LGIA is purportedly modeled.

14. Six Cities request that the Commission require SoCal Edison to omit from the proposed LGIA all provisions related to the recovery of abandoned plant costs, and confirm that no abandoned plant costs associated with the EITP and incurred prior to approval of the EITP through the CAISO's transmission planning process are eligible for recovery pursuant to the Commission's EITP Incentive Order.

15. In its answer, SoCal Edison states that Six Cities' argument that the language in Appendix A conditioning SoCal Edison's up-front financing represents an improper attack on the EITP Incentive Order. SoCal Edison states that none of Six Cities' arguments provide any basis for modification of the LGIA and that the arguments should be rejected.

16. SoCal Edison states that Six Cities' claim that SoCal Edison has failed to justify the abandoned plant conditions completely ignores the extensive discussion of the issue and the Commission's conditional approval of the abandoned plant incentive in the EITP Incentive Order. SoCal Edison states that if Six Cities disagreed with the Commission's findings in the EITP Incentive Order, then Six Cities should have raised the issue in a request for rehearing of the EITP Incentive Order.

17. SoCal Edison states that Six Cities have wrongly characterized the abandoned plant condition as a material deviation from the CAISO *pro forma* agreement. SoCal Edison contends that the CAISO's tariff explicitly gives the transmission owner the

option to up-front finance identified network upgrades.[7] However, SoCal Edison states that if the Commission finds the abandoned plant condition to be a material deviation from the CAISO *pro forma* agreement, it should approve the condition as being superior to the *pro forma*, as it increases the likelihood that the generation will actually be able to interconnect to the CAISO grid.

18. SoCal Edison claims that Six Cities' argument that the abandoned plant condition is discriminatory and provides SoCal Edison with a competitive advantage is also an improper attack on the EITP Incentive Order. SoCal Edison states that Six Cities made essentially identical arguments in their protest in the EITP Incentive Order proceeding and the Commission rejected them.[8] In addition, SoCal Edison states that Six Cities' discriminatory argument is flawed because, while Six Cities complain that the interconnection customer is receiving favorable treatment, they have failed to identify any similarly situated customers who have been treated discriminatorily.

19. SoCal Edison states that Six Cities' argument that the Commission should, if it does not order the abandoned plant provision removed from the LGIA, condition the recovery of costs to the period after Commission acceptance of SoCal Edison's compliance filing in Docket No EL10-1-000 is also improperly raised in this proceeding. SoCal Edison contends that any arguments regarding the implementation of the abandoned plant incentive should have been considered in Docket No. EL10-1-000.

III. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2009), Six Cities' timely, unopposed motion to intervene serves to make them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SoCal Edison's answer because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Six Cities' answer and will therefore reject it.

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[7] SoCal Edison answer at 4, (citing Conformed Fourth Replacement CAISO Tariff, Appendix U, § 3.4.1 ("Unless the Participating TO elects to fund the capital for Reliability and Delivery Network Upgrades, they shall be solely funded by the Interconnection Customer")).

[8] *See* EITP Incentive Order, 129 FERC ¶ 61,246 at P 67-68.

B. Commission Determination

21. The EITP Incentive Order addressed abandoned plant recovery issues. The EITP Incentive Order explicitly granted SoCal Edison's request for recovery of 100 percent of prudently-incurred costs associated with abandonment of the EITP, provided that the abandonment is a result of factors beyond the control of SoCal Edison, (something that must be demonstrated in a subsequent proceeding under section 205 of the Federal Power Act).[9] Recovery of prudently-incurred abandonment costs is also conditioned on the EITP being approved under the CAISO transmission planning process.[10]

22. First, we find that there is no merit in Six Cities' request to limit the recovery of abandoned plant costs to those that are incurred after approval of the EITP in the CAISO's transmission planning process. The EITP Incentive Order was explicit that all of the incentives granted by that order are conditioned on the EITP being approved in the CAISO transmission planning process.[11] In the event EITP is approved in the CAISO planning process, but subsequently cancelled due to events outside SoCal Edison's control, all of SoCal Edison's prudently incurred costs related to this project are eligible for abandoned plant recovery. However, in the event that the EITP is not approved in the CAISO transmission planning process, abandonment costs would be treated under the Commission's normal abandoned cost recovery policy, which Six Cities acknowledges would permit recovery of prudent costs based upon an allocation of 50 percent of such abandonment costs to ratepayers and 50 percent of such costs to shareholders.[12]

23. In reviewing Appendix A to the instant LGIA, the Commission finds that SoCal Edison's inclusion of abandoned plant provisions in this LGIA constitutes a material

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[9] *Id.*

[10] *Id.*

[11] *Id.* P 69.

[12] *See* Six Cities protest at 8-9. Six Cities requests this treatment for any abandonment costs incurred prior to approval of the EITP in the CAISO transmission planning process.

deviation from the CAISO's *pro forma* LGIA. Order No. 2003[13] required transmission providers to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with those documents. At the same time, the Commission recognized in Order No. 2003 that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement.[14] The Commission made clear that the filing party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the unique circumstances of the interconnection require a non-conforming interconnection agreement.[15] A Transmission Provider seeking a case-specific deviation from its approved *pro forma* interconnection agreement bears an even higher burden to explain what makes the interconnection unique and why its changes are operationally necessary (not merely "consistent with or superior to") changes.[16] Given the Commission's conditional approval of the abandoned plant provisions in the EITP Incentive Order, in conjunction with SoCal Edison's decision to fund the Network Upgrades related to the EITP project, SoCal Edison has included material deviations in the LGIA. However, these deviations must be consistent with the EITP Incentive Order. SoCal Edison bears the burden of identifying each deviation and explaining why each is necessary and consistent with the EITP Incentive Order.

24. Our review indicates that the proposed abandonment provisions included in the instant LGIA are not consistent with the EITP Incentive Order and, as such, must be

[13] *See 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).

[14] *Id.* P 913-15.

[15] Order No. 2003-B at P 140 ("[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain its justification for each non-conforming provision").

[16] *See MidAmerican Energy Company*, 116 FERC ¶ 61,018, at P 8 (2006).

modified. Specifically, Appendix A, section 12(a)(vii) [17] provides for the Interconnection Customer to pay termination charges pursuant to Article 2.4 of the LGIA in the event the LGIA is terminated, provided that such charges shall not be applicable to the extent the costs associated with the termination of the LGIA are subject to Abandoned Plant Approval received by the Participating TO. In essence, this provision would allow SoCal Edison to obtain full cost recovery from its transmission customers through the Commission's current policy providing 50 percent abandoned plant cost recovery;[18] the remaining 50 percent would be charged to the interconnection customer should the EITP fail to secure approval in the CAISO transmission planning process. If the EITP receives approval in the CAISO transmission planning process, then under the EITP Incentive Order, SoCal Edison may recover 100 percent of abandoned plant cost, if it makes the demonstration required in the EITP Incentive Order.

25. SoCal Edison's choice to provide up-front financing for the Network Upgrades and Distribution Upgrades necessary to complete this interconnection was, at least in part, offered in recognition of the risks associated with providing that up-front financing and to secure the incentives provided on a conditional basis by the EITP Incentive Order. If the termination cost provisions as proposed are permitted to remain in this proposed LGIA, SoCal Edison's risks associated with the up-front financing will be totally mitigated. That is, under the proposed LGIA, SoCal Edison would be assured of recovering 100 percent of the funds it provided in up-front financing, either by the allowance of abandoned plant recovery or from the interconnection customer.

26. We further find that SoCal Edison has not demonstrated that this modification is operationally necessary or otherwise justified as requiring this non-conforming LGIA as filed. Accordingly, the Commission's acceptance of this LGIA is conditioned upon SoCal Edison making a compliance filing within 60 days of the date of this order modifying the termination cost provisions of this LGIA so as to eliminate any cost recovery associated with abandoned plant regarding Network Upgrades and Distribution

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[17] Appendix A, section 12(a) reads as follows, in relevant part: The Interconnection Customer shall pay to the Participating TO the following charges in accordance with the LGIA: (vii) termination charges pursuant to Article 2.4 of the LGIA, provided that such charges shall not be applicable to the extent the costs associated with termination of the LGIA are subject to Abandoned Plant Approval received by the Participating TO.

[18] *See Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007) at n. 105 (citing orders).

Upgrades. On compliance, SoCal Edison must also clearly identify other portions of the LGIA (including appendices) that differ from the CAISO's *pro forma* LGIA and provide justification for each non-conforming provision.

27. Finally, the Commission finds Six Cities' arguments that the abandoned plant provisions are discriminatory or that they provide SoCal Edison with a competitive advantage are addressed by our findings as discussed above. By approving SoCal Edison's petition with appropriate conditions, the EITP Incentive order rejected Six Cities' objection and recognized the likelihood that network upgrades could be funded by SoCal Edison.

The Commission orders:

(A) SoCal Edison's proposed LGIA and revised rate sheets are conditionally accepted for filing, to become effective February 13, 2010, as discussed in the body of this order.

(B) SoCal Edison is directed to make a compliance filing within 60 days from the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.