

143 FERC ¶ 61,180
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
Cheryl A. LaFleur, and Tony Clark.

Southern California Edison Company

Docket No. ER13-1216-000

ORDER ACCEPTING UNEXECUTED AGREEMENT AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued May 30, 2013)

1. On April 1, 2013, Southern California Edison Company (SoCal Edison) tendered an unexecuted Large Generator Interconnection Agreement (LGIA) among CalWind Resources, Inc. (CalWind), SoCal Edison and the California Independent System Operator Corporation (CAISO). This order accepts the unexecuted LGIA for filing, effective March 29, 2013, as requested, subject to refund, and establishes hearing and settlement judge procedures.

I. Background

2. This proceeding involves a dispute between the parties regarding the correct amount of interconnection service that should be provided under an LGIA to CalWind, the owner of an existing interconnected qualifying facility (QF) that is converting from state-jurisdictional to Commission-jurisdictional interconnection service.

3. CalWind and SoCal Edison were parties to a Power Purchase Agreement, dated April 30, 1991 (1991 PPA).¹ The 1991 PPA was entered into pursuant to the Public Utility Regulatory Policies Act of 1978 (PURPA),² and the Pajuella Peak Wind Park

¹ The 1991 PPA was an update to two earlier PPAs (dated 1983 and 1985) entered into between SoCal Edison and CalWind's predecessor in interest.

² Pub. L. No. 95-617, 92 Stat. 3117 (codified as amended in scattered sections of 15, 16, 42, and 43 U.S.C.).

(Project) is certified, under PURPA, as a QF.³ Appended to the 1991 PPA was an Interconnection Facilities Agreement (1991 IFA),⁴ under which CalWind's predecessor in interest and SoCal Edison established interconnection arrangements between the Project and SoCal Edison's electric system. The 1991 PPA and the 1991 IFA terminated by their own terms on March 28, 2013.⁵

4. On January 10, 2013, before the termination of the 1991 PPA and the 1991 IFA, CalWind submitted an affidavit to CAISO, under CAISO Tariff section 25.1.2.1, in which it declared that it planned to "sell the electrical output from [the] Project . . . in the wholesale market, either through participation in the CAISO's markets or by selling its partial or full generation output pursuant to a bilateral agreement."⁶ According to SoCal Edison, with this declaration to CAISO, CalWind began the process of obtaining a Commission-jurisdictional interconnection agreement.

5. In turn, SoCal Edison presented CalWind with several draft agreements, the last of which is the LGIA submitted with the SoCal Edison filing. The LGIA replaces the 1991 IFA and establishes interconnection arrangements pursuant to the CAISO Tariff.

A. The Unexecuted LGIA

6. The terms of the LGIA are largely undisputed. The LGIA utilizes CAISO's currently-effective *pro forma* Large Generator Interconnection Agreement in Appendix CC of the CAISO Tariff (CAISO *pro forma* LGIA).

B. The Disputed Interconnection Service Reservation

7. During negotiations of the LGIA, a dispute arose between CalWind and SoCal Edison as to the appropriate amount of interconnection service that should be reflected in the LGIA. CalWind claims it has reserved or is otherwise entitled

³ The Project interconnects to the Arbwind Substation in Kern County, California. CalWind downsized the capacity of the Project from 21.795 MW to 19.955 MW, effective March 28, 2013. This area is currently undergoing a reconfiguration known as the East Kern Wind Resource Area 66 kV Reconfiguration.

⁴ The 1991 IFA fell under the jurisdiction of the California Public Utilities Commission (CPUC).

⁵ The 1991 IFA is co-terminus with the 1991 PPA. The PPA defines the "Agreement" as "this document and appendices, as amended from time to time." SoCal Edison April 1, 2013 tariff filing (SoCal Edison Filing), Ex. 4 at § 2.1.

⁶ *Id.*, Ex. 1 at P 5.

to 37.5 MW of Interconnection Service, because the 1985 amendment to a prior PPA with SoCal Edison, (which later became the 1991 IFA), indicated that the Project's owner was permitted to design, construct, and install the interconnection facilities that would allow SoCal Edison to provide 37.5 MW of interconnection service. On the other hand, SoCal Edison disagrees and asserts that CalWind is entitled to no more than 21.795 MW of interconnection service under the LGIA. Because the parties could not resolve this dispute, CalWind requested SoCal Edison and CAISO to file the LGIA with Commission without executing it.

C. History of the Project and Its Service Reservation

8. Arbutus Corporation (Arbutus) and SoCal Edison entered into a PPA on June 22, 1983 (1983 PPA) that assumed the eventual construction of a 37.5 MW windfarm.⁷ The 1983 PPA was amended on February 8, 1985 to include an Appendix A.1 (1985 IFA Appendix).⁸

9. As a result of a dispute, the 1985 PPA was replaced by an entirely new PPA signed by Arbutus on April 30, 1991.⁹ The 1991 PPA assumed operations under the PPA would start on March 29, 1991 and had a term of 22 years. The 1991 PPA identified the Nameplate Rating of the Project at 21.795 MW.¹⁰ The 1991 PPA provided that "Seller may not increase the Nameplate Rating after the effective date of this Agreement."¹¹ The 1991 PPA also included an Appendix G denoted "Interconnection Facilities Agreement" (the 1991 IFA), which was comprised of the 1985 IFA Appendix.¹²

10. The Project later changed hands. SoCal Edison asserts that no one at SoCal Edison investigated the generation or interconnection capacity installed at the time of the sale because the customer's relevant transformer bank is only rated 20 MVA and it is impossible to support a project of 37.5 MW of generation capacity with this single transformer.

⁷ SoCal Edison Filing, Ex. 2.

⁸ SoCal Edison Filing, Ex. 3.

⁹ *Id.* Ex. 4.

¹⁰ *See id.* § 1.1(b).

¹¹ *Id.*

¹² SoCal Edison indicates that the 1985 IFA Appendix was simply photocopied and added to the 1991 PPA with an additional coversheet.

11. CalWind bought the Project in 1997 and re-certified it to the Commission with a 21.795 MW net generation capacity.¹³ SoCal Edison states that historically it has modeled the CalWind Project at 21.795 MW, and that this modeling approach is fully supported by the size of generating facilities installed and the QF certification.

II. Notice of Filing and Responsive Pleadings

12. Notice of SoCal Edison's filing was published in the *Federal Register*, 78 Fed. Reg. 20,904 (2013), with interventions, comments, and protests due on or before April 22, 2013. A timely motion to intervene and comment was filed by CAISO on April 22, 2013. A timely motion to intervene and protest was filed by CalWind on April 22, 2013. On May 7, 2013, SoCal Edison filed a motion for leave to answer and an answer. On May 22, 2013, CalWind filed a reply to SoCal Edison's answer.

A. SoCal Edison's Tariff Filing

13. SoCal Edison argues that CAISO Tariff section 25.1 controls QF conversion and reflects the same policy as Order No. 2003¹⁴ – that if a QF has been interconnected and operating for years, there is no need to restudy or “queue it” if the total capability and electrical characteristics of the generating unit will remain substantially unchanged.¹⁵ SoCal Edison asserts that a 50 percent increase in generating capacity cannot, under any interpretation of “substantially unchanged,” meet that standard.¹⁶

14. Next, SoCal Edison argues that even if a reservation previously existed, that reservation was lost decades ago when CalWind's predecessor failed to construct additional generating capacity to operate at 37.5 MWs. SoCal Edison posits that entities that can demonstrate that they have specific, pre-existing generation expansion plans with milestones for construction of generation and that have made material progress toward meeting those milestones may have firm priority rights on their (non-integrated)

¹³ See Docket No. QF83-290.

¹⁴ *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).

¹⁵ SoCal Edison Filing at 8-13.

¹⁶ *Id.* at 12.

transmission facilities.¹⁷ SoCal Edison states that were CalWind to submit an interconnection request in the next cluster study process window, SoCal Edison expects that the resulting studies would show that upgrades would be required to satisfy such a request due to higher-queued generators.

B. CalWind's Protest

15. In its protest, CalWind disputes SoCal Edison's arguments concerning the unexecuted LGIA and claims that SoCal Edison has tried to strip CalWind of its contractual rights of up to 37.5 MW of interconnection capacity.¹⁸

16. Next, CalWind states that SoCal Edison did not comply with its own Tariff Rule Rule 21 (Rule 21). CalWind claims that while it and its predecessors paid SoCal Edison the operation and maintenance charges based on the facilities needed to provide up to 37.5 MW of interconnection service, CalWind was never paid the net salvage value or the fair market value of any portion of the interconnection facilities based on the fact that SoCal Edison used them to provide service to other customers.¹⁹

17. Next, CalWind argues that SoCal Edison incorrectly interprets section 25.1 of CAISO's tariff concerning QF conversions. CalWind argues that section 25.1 of CAISO's tariff does not apply to its situation, since CalWind is not giving up its QF status or selling into the wholesale power spot markets.²⁰

18. Finally, CalWind claims that SoCal Edison has not followed the Commission's policy for filing QF interconnection agreements. CalWind contends that the Commission held in Order No. 2003 that when an interconnection facilities agreement survives the termination of an associated PPA, the interconnection facilities agreement must be filed with the Commission effective on the date that the interconnection QF is authorized to make third party sales.²¹ Accordingly, CalWind requests that the Commission reject the

¹⁷ *Id.* at 14 & n.19 (citing *Aero Energy LLC*, 116 FERC ¶ 61,149, at P 28 (2006) (*Aero Energy*); *Milford Wind Corridor, LLC*, 129 FERC ¶ 61,149, at P 22 (2009) (*Milford*); *Alta Wind I, LLC*, 134 FERC ¶ 61,109, at P 16 (2011)).

¹⁸ CalWind Protest at 3.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 14 (citing *Standardization of Small Generator Interconnection Agreements and Procedures*, Order No. 2006, FERC Stats. & Regs. ¶ 31,180, at P 541, *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)).

²¹ *Id.* at 12.

LGIA and require SoCal Edison to file the 1985 IFA Appendix with a time-value of money refund calculation.²²

C. CAISO's Comments

19. CAISO contends that a QF seeking interconnection under section 25 of the CAISO Tariff to commence wholesale sales may not receive more interconnection service than that associated with the generator's existing net generating capacity, without submitting a new interconnection request. Therefore, CAISO agrees with SoCal Edison that the maximum amount of interconnection service reflected in the LGIA should be based on the Project's net generating capacity, or 21.795 MW.²³

20. CAISO further agrees with SoCal Edison that the CAISO Tariff reflects the policy set forth in Order No. 2003 that "the owner of the QF need not submit an Interconnection Request if it represents that the output of the generating facility will be substantially the same as before."²⁴ According to CAISO, an increase in the Project's capacity by greater than 50 percent would substantially change the total capability and electrical characteristics of the facility. For this reason, CAISO asserts that in order to increase the generating capacity of the Project, CalWind would need to submit a new interconnection request for the additional capacity and undergo the study process to determine if upgrades would be required to provide 37.5 MW of interconnection service and how much capacity should be reflected in the LGIA.²⁵

D. SoCal Edison's Answer

21. In its answer, SoCal Edison asserts that CalWind has unilaterally posited that future power sales are not considered "in the wholesale market," thus exempting the Project from section 25.1.²⁶ SoCal Edison dismisses CalWind's assertion that

²² *Id.* at 13.

²³ CAISO April 22, 2013 Motion to Intervene and Comments (CAISO Comments) at 3.

²⁴ CAISO Comments at 2 (citing SoCal Edison Filing at 9 (quoting Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 815)).

²⁵ CAISO Comments at 3-4.

²⁶ SoCal Edison May 7, 2013 Motion for Leave to Answer and Answer at 3-4.

section 25.1 does not apply because CalWind is not “relinquishing its QF status” and is not selling into the “wholesale spot power markets.”²⁷

22. Next, SoCal Edison disputes CalWind’s statement that SoCal Edison did not appropriately file a Commission-jurisdictional interconnection agreement. Unlike CalWind, SoCal Edison asserts that the Project became Commission-jurisdictional on March 28, 2013, the date the Project was no longer obligated to sell its power to the host utility.²⁸

23. Finally, SoCal Edison insists that under the principles of open access, SoCal Edison had no obligation to prevent others from using the 15 MW of capacity that CalWind claims it has reserved.²⁹ As a result, SoCal Edison states that it and CAISO were justified in treating the Project as a 21.795 MW generator throughout the Project’s operation and during the conversion process, because of the integrated nature of the 1991 PPA and its appendix IFA.³⁰

III. Discussion

A. Procedural Matters

24. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

25. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or answer 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 CalWind’s May 22, 2013 reply and will, therefore, reject it.

B. Commission Determination

26. We find that SoCal Edison’s unexecuted LGIA raises issues of material fact that cannot be resolved based on the record before us. Specifically, SoCal Edison, CalWind and CAISO present conflicting arguments regarding the amount of interconnection

²⁷ *Id.* at 4.

²⁸ *Id.* at 11-14.

²⁹ *Id.* at 19.

³⁰ *Id.* at 14-20.

service that should be reflected in the LGIA that require further evidence to support. These arguments are more appropriately addressed in the hearing and settlement judge procedures ordered below.

27. We note that the electric power industry and corresponding regulatory environment have undergone a myriad of changes over the past 30 years.³¹ Indeed, agreements entered into by QFs in the 1980s were shaped by markedly different regulatory and market circumstances than are currently extant. In recent years, we have observed that QF conversion can raise a variety of challenges due to the changes that have occurred in the regulatory environment since QF owners entered into initial agreements.

28. Given the complex, disputed contractual history of CalWind's Project and the differing perspectives of CalWind, SoCal Edison and CAISO regarding the factual and legal premises of this unexecuted LGIA, we do not find the record before us provides enough information to determine whether the amount of interconnection service reflected in the unexecuted LGIA is appropriate, or whether this agreement is just and reasonable. Therefore, we will accept the unexecuted LGIA, effective March 29, 2013, as requested, subject to refund, and set it for hearing and settlement judge procedures, as ordered below. The issue to be examined at hearing is the amount of interconnection capacity that should be reflected in the unexecuted LGIA, including all additional related issues.

29. While we are setting this matter 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.³² If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding;

³¹ See, e.g., *New PURPA Section 210(m) Regulations Applicable to Small Power Production and Cogeneration Facilities*, Order No. 688, FERC Stats. & Regs. ¶ 31,233 (2006), *order on reh'g*, Order No. 688-A, FERC Stats. & Regs. ¶ 31,250 (2007), *aff'd sub nom. Am. Forest & Paper Ass'n v. FERC*, 550 F.3d 1179 (D.C. Cir. 2008) (in which the Commission revised its regulations governing utilities' obligations to purchase electric energy produced by QFs and implemented PURPA section 210(m), which provides for termination of the requirement that an electric utility enter into new power purchase obligations or contracts to purchase electric energy from QFs, if the Commission finds that the QFs have nondiscriminatory access to markets).

³² 18 C.F.R. § 385.603 (2012).

otherwise, the Chief Judge will select a judge for this purpose.³³ The settlement judge shall report to the Chief Judge and the Commission within 30 days 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 unexecuted LGIA is hereby accepted for filing, effective March 29, 2013, as requested, 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 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 the amount of interconnection service that should be reflected in the unexecuted LGIA and any additional related issues. However, the hearing will 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 (2012), 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 in writing or by telephone 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

³³ If the parties decide to request a specific judge, they may make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days 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 convene a prehearing conference in these proceedings in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Such 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)

Kimberly D. Bose,
Secretary.