

134 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company	Docket Nos. ER11-2316-000
California Independent System	ER11-2318-000
Operator Corporation	ER11-2329-000

ORDER CONDITIONALLY ACCEPTING NON-CONFORMING LARGE
GENERATOR INTERCONNECTION AGREEMENT AND DENYING MOTIONS TO
CONSOLIDATE

(Issued February 4, 2011)

1. On December 8, 2010, Southern California Edison Company (SoCal Edison) filed under its transmission tariff, a non-conforming Large Generator Interconnection Agreement (LGIA) among itself as transmission operator, Palo Verde Solar II, LLC (Palo Verde) as interconnection customer, and the California Independent System Operator Corporation (CAISO). CAISO contemporaneously filed the identical LGIA, as a non-conforming service agreement under its tariff in Docket No. ER11-2318-000. In this order, we conditionally accept the LGIA under both SoCal Edison and CAISO's tariffs, effective December 9, 2010. We also deny the motions to consolidate this proceeding with certain other proceedings, as discussed herein.

I. The SoCal Edison and CAISO Filings

2. Palo Verde proposes to interconnect a 1,000 MW solar thermal generating facility, to be located in Riverside County, California (Blythe Solar Power Project), to SoCal Edison's transmission system at the proposed Colorado River 220 kV Substation via a customer-owned 220 kV generation tie-line, and to transmit energy and/or ancillary services to the CAISO-controlled grid.

3. The Blythe Solar Power Project consists of four electric generating units, each rated at 250 MW. Studies performed in accordance with CAISO's large generator interconnection procedures for requests in a queue cluster window identified the electrical system modifications and additions necessary to interconnect this new generation resource to SoCal Edison's electrical system. Palo Verde intends the project to achieve full capacity deliverability status with a commercial operation date of May 1, 2013; however, the electrical system modifications and additions will not be complete

until 2017. In order to facilitate interconnection at an earlier date, the parties have agreed to coordinate construction of the generating units with the requisite transmission system upgrades. As a result, construction of the Blythe Solar Power Project will be sequenced where generating units 1 and 2 will be built during the first sequence, and units 3 and 4 during the second sequence.

4. SoCal Edison states that the LGIA is based on CAISO's *pro forma* LGIA. It specifies the terms and conditions pursuant to which SoCal Edison and CAISO will provide, and Palo Verde will pay for, interconnection service. SoCal Edison will design, procure, construct, install, own, operate, and maintain the interconnection facilities and reliability network upgrades required to interconnect the Blythe Solar Power Project to SoCal Edison's transmission system.

5. SoCal Edison states that Appendix A of the LGIA identifies the interconnection facilities, network upgrades, and distribution upgrades of the LGIA. SoCal Edison states that it has committed to up-front finance reliability network upgrades and the distribution upgrades, as specifically identified in Appendix A to the LGIA, subject to the following conditions: (1) SoCal Edison has received a Commission order granting its recovery of 100 percent of its prudently incurred costs for these facilities if the Blythe Solar Power Project is abandoned due to circumstances outside of SoCal Edison's control (abandoned plant approval);¹ and (2) Palo Verde's achievement of the development milestones set forth in Appendix A to the LGIA.

6. SoCal Edison identifies the following provisions in Appendix A to the LGIA as possibly being interpreted as differing from the *pro forma* LGIA: (1) definition of abandoned plant approval;² (2) its commitment to up-front finance the cost of the reliability network upgrades and distribution upgrades; (3) the development milestones, including actions to be taken following completion of or failure to complete milestones in sections 14(d), (e), (g), and (j) of Appendix A; (4) limits on SoCal Edison's commitment

¹ CAISO notes that on December 9, 2010, SoCal Edison filed in Docket No. EL11-10-000 a Petition for Declaratory Order seeking incentives, including assurance from the Commission that it may recover 100 percent of its prudently incurred costs for the network upgrades and distribution upgrades that SoCal Edison has agreed to up front fund in the Palo Verde LGIA if these facilities are abandoned due to circumstances beyond SoCal Edison's control.

² Appendix A to the LGIA defines abandoned plant approval as a FERC final order, not subject to rehearing or appeal, unconditionally granting the Participating Transmission Owner (TO) request for a declaratory order that the Participating TO can recover 100 percent of its prudently incurred costs for the Network Upgrades in such facilities abandoned due to circumstances outside of the Participating TO's control.

to finance the network upgrades required for the Blythe Solar Project in section 14(f) of Appendix A; (5) SoCal Edison's commitment to file for abandoned plant approval within sixty (60) calendar days of the execution and filing of the LGIA; and (6) partial termination of the LGIA with respect to individual generating units. SoCal Edison anticipates that, to the extent these provisions are non-conforming to the CAISO's *pro forma* LGIA, CAISO will make a filing of this LGIA with the Commission and request that the Commission consolidate our review of CAISO's filing with our review in this docket.

7. SoCal Edison states that, in compliance with the *BrightSource* order, the LGIA contains Article 2.4 providing for the payment of termination charges by Palo Verde in the event that CAISO or SoCal Edison receives a notice of termination in accordance with Article 2.3.³ According to SoCal Edison, the amount of the termination charges is related to the cost incurred by SoCal Edison regarding the construction of electrical system upgrades associated with the LGIA. SoCal Edison states that it seeks to eliminate any ambiguity between the applicability of the termination charges and abandoned plant approval. Article 2.4 now includes language that states, assuming Commission approval of its petition for abandoned plant approval, that any costs incurred by SoCal Edison that are covered by abandoned plant approval shall not be the subject of termination charges.

8. Another non-conforming provision included in the LGIA by SoCal Edison is the ability of Palo Verde to partially terminate the LGIA. Under CAISO's existing *pro forma* LGIA, a failure to complete any portion of the project results in the customer's default of the LGIA, along with the forfeiture of some or all of the interconnection financial security posted by the customer and potential termination of the entire LGIA with loss of interconnection service for the entire project. In this LGIA, however, SoCal Edison incorporates a partial termination provision in Article 2.4.4 that permits Palo Verde to terminate the LGIA solely related to the generating unit(s) that cannot achieve commercial operation. The partial termination provision will be available to Palo Verde upon the satisfaction of certain conditions and payment of a partial termination charge.

9. As justification for the partial termination provision, SoCal Edison cites the fact that the transmission system upgrades that can be completed by the commercial operation date of May 2013 will support only 500 MW of the 1000 MW, with the remaining transmission system upgrades having an estimated completion date in 2017. According to SoCal Edison, Palo Verde is concerned about its ability to maintain the appropriate financing, given the amount of time between the commercial operation date of facilities and the transmission upgrades. SoCal Edison also asserts that the partial termination provisions are reasonable insofar as they provide protection to ratepayers that might otherwise suffer financial consequences as a result of "under-utilized transmission

³ *Southern Cal. Edison Co.*, 132 FERC ¶ 61,150 (2010).

upgrades” in the event of the Interconnection Customer electing to terminate a portion of its project. Further, SoCal Edison cites to California’s Renewable Portfolio Standard (RPS) as another reason to allow for partial termination because, SoCal Edison states, the Blythe Solar Power Project is an important contributor toward this goal. Accordingly, SoCal Edison argues that the fact that one or more of the separate generating units will not be constructed should not void the LGIA for the remaining units that can or will contribute to meeting the RPS.

10. Additionally, CAISO states that the partial termination provision should be approved to help facilitate financing through the American Recovery and Reinvestment Act of 2009 (ARRA). CAISO argues that the ARRA funds can be practically used by only those interconnection customers that have a project in the queue such as Blythe. These customers face the difficult task of financing their projects and many rely on ARRA for funding. Without ARRA funding, many projects may never be realized. CAISO urges the Commission to allow the use of a partial termination provision to give these interconnection customers the flexibility to use the available financing to the greatest extent possible.

11. SoCal Edison states that as a prerequisite to being eligible to exercise partial termination, Palo Verde agreed to post \$6,136,025 per unit of financial security to cover the full amount of the partial termination charge for each generating unit that it wishes to be eligible for termination.⁴ The charge is equal to ten percent of Palo Verde’s share of the cost of transmission system upgrades as calculated by CAISO’s cluster LGIA.⁵ This value is then multiplied by the ratio of terminated generating capacity to the total generating capacity of the entire facility as originally intended. The product of these two values equals the partial termination charge.

12. Partial termination may be exercised solely by Palo Verde if the requisite security and charge are satisfied, or it may be exercised mutually by CAISO and SoCal Edison if certain project development milestones as found in Appendix A are not met. Upon exercise of the option, CAISO will liquidate the financial security posted by Palo Verde for the applicable generating unit, and cause a credit to accrue for this amount to SoCal Edison’s transmission revenue balancing account. This credit will decrease SoCal Edison’s transmission revenue requirement and in turn benefit CAISO customers through lower transmission rates. In the event that SoCal Edison does not commence construction of transmission network upgrades (West of Devers upgrades) for the second

⁴ Palo Verde may reserve the partial termination provision for up to three generating units, resulting in a financial security requirement of \$18,408,075.

⁵ The cost of the upgrades is calculated before any adjustment is made for upfront financing by SoCal Edison.

sequence of generating units within 72 months of the execution of the LGIA, Palo Verde may exercise its option to partially terminate, with the partial termination charge reverting back to Palo Verde.

13. SoCal Edison states that, in accordance with Appendix A to the LGIA, Palo Verde will be responsible for an interconnection facilities payment of \$11,830,000 for the first construction sequence and \$1,241,000 for the second construction sequence. Following the completion date of the interconnection facilities, Palo Verde will also pay SoCal Edison a monthly interconnection facilities charge to recover the ongoing revenue requirement for SoCal Edison'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.⁶ The monthly interconnection facilities charge will be \$44,954 (0.38 percent x \$11,830,000) for the first sequence and \$4,715.80 (0.38 percent x \$1,241,000) for the second sequence.

14. SoCal Edison and CAISO request waiver of the 60-day prior notice requirement⁷ so that the LGIA can become effective December 9, 2010.⁸ SoCal Edison states that the waiver would be consistent with the Commission's policy set forth in *Central Hudson Gas & Electric Corporation*.⁹ SoCal Edison claims that good cause exists because granting such waiver will enable SoCal Edison to commence engineering, design, and procurement of the facilities necessary to connect the project to the CAISO-controlled grid by Palo Verde's requested commercial operation date of May 1, 2013.

⁶ 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 prior large generator interconnection agreement dockets. SoCal Edison states that it provided cost justification for this rate in Docket No. ER10-1435-000.

⁷ 16 U.S.C. § 824d(d) (2006); 18 C.F.R. § 35.3 (2010).

⁸ CAISO filed an errata on December 9, 2010, in Docket No. ER11-2329-000, adjusting its requested effective date from December 8, 2010 to December 9, 2010, to match SoCal Edison's filing in ER11-2316-000. Additionally, the errata contains a revised version of Attachment B. Attachment B is a blacklined version of the Palo Verde LGIA against the current pro forma LGIA. After CAISO submitted its December 8, 2010 filing in Docket No. ER11-2318-00, CAISO discovered that the Attachment B it had submitted was incorrect, in that Attachment B was not blacklined against the correct form of pro forma. The errata filing was made to correct this error. Modesto Irrigation District filed a motion to intervene in Docket No. ER11-2329-000.

⁹ 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

15. Separately, CAISO filed the same LGIA as SoCal Edison to have it accepted as a non-conforming service agreement under the CAISO tariff and to enter it into CAISO's eTariff system consistent with SoCal Edison's filing. CAISO requests that the Commission consolidate the review of its filing with the review of SoCal Edison's filing of the same LGIA, designated by SoCal Edison as Service Agreement No. 97 under its Transmission Owner Tariff in Docket No. ER11-2316-000. CAISO states that the provisions in the LGIA that may be interpreted as differing from the CAISO *pro forma* LGIA are justified by the unique circumstances and novel legal issues associated with the Blythe Solar Power Project.¹⁰

II. Notices of Filings and Responsive Pleadings

16. Notice of SoCal Edison's and CAISO's filings was published in the *Federal Register*, 75 Fed. Reg. 79365 (2010), with interventions due on or before December 29, 2010. Timely motions to intervene were filed by the Modesto Irrigation District (MID), California Municipal Utilities Association (CMUA), Sacramento Municipal Utility District (SMUD), Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside (Six Cities), Northern California Power Agency, and Transmission Agency of Northern California (TANC). A timely motion to intervene, request for hearing, and protest was filed by the Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (collectively, Cities/M-S-R).

17. On December 23, 2010, CAISO submitted an errata filing under Docket No. ER11-2318-000 that included a missing Appendix A referenced by the declaration of Yi Zhang. Notice of CAISO's errata filing was published in the *Federal Register*, 76 Fed. Reg. 349 (2011), with interventions due on or before January 13, 2011. None was filed.

18. In addition to interventions that are directly related to this proceeding, CMUA and SMUD filed motions to consolidate in this and certain other proceedings (collectively, Motions to Consolidate).¹¹

¹⁰ See *PJM Interconnection, LLC*, 111 FERC ¶ 61,098, at P 8-9 (2005) (noting that the Commission expected there would be a certain number of interconnections "where reliability concerns, novel legal issues or other unique factors would call for the filing of a non-conforming agreement").

¹¹ Specifically, the dockets for which CMUA and SMUD seeks to consolidate are: (1) Docket No. ER11-2204-000; (2) Docket No. ER11-2177-000; (3) Docket No. ER11-2316-000; (4) Docket No. ER11-2322-000; (5) Docket No. ER11-2411-000; (6) Docket No. EL11-10-000; (7) Docket No. ER11-2318-000; (8) Docket No. ER11-2368-000; and (9) Docket No. ER11-2369-000. On December 23, 2010, TANC filed a motion to intervene out of time and answer in support of the Motions to Consolidate.

19. Letters supporting Commission approval of the Palo Verde LGIA were filed by Solar Millennium, LLC (Solar Millennium) and the governor of the State of California.

20. SoCal Edison and CAISO filed answers to the Motions to Consolidate on January 5, 2011.

21. SoCal Edison filed an answer to Cities/M-S-R's protest on January 13, 2011.

A. Motions to Consolidate

22. The Motions to Consolidate explain that the Commission is presently considering a number of large generator interconnection agreements between SoCal Edison and generators, including the Palo Verde LGIA, that involve network upgrades to the SoCal Edison transmission system. The Motions to Consolidate state that each of the interconnection agreements relates to facilities proposed for rate incentive treatment by SoCal Edison in Docket No. EL11-10-000, and that the relief requested by SoCal Edison in that proceeding is mirrored in these non-conforming interconnection agreements. Therefore, the Motions to Consolidate argue, there is a direct and necessary link between the terms of the interconnection agreements and the relief requested by SoCal Edison in Docket No. EL11-10-000. Accordingly, they request that the Commission consolidate these proceedings to facilitate a complete evaluation of all relevant facts, and requests that the Commission establish the comment date of January 10, 2011 for all relevant dockets to further administrative efficiency and which would allow parties to fully assess the recent Commission order regarding CAISO's revised transmission planning process.

B. Cities/M-S-R's Protest

23. Cities/M-S-R argue that the Palo Verde LGIA raises significant concerns regarding the imposition of unreasonable costs on transmission customers, as well as potential issues regarding SoCal Edison's decision to fund what it deems to be network upgrade costs with an entity from which SoCal Edison is purchasing renewable generation output.

24. Cities/M-S-R explain that the Palo Verde LGIA proposes to treat \$200 million in projected interconnection facility costs as network upgrades, and that SoCal Edison proposes to finance these upgrades and charge the costs to transmission customers. Cities/M-S-R further note that the facilities will serve SoCal Edison's purpose of obtaining access to the planned 1000 MW of renewable generation. However, Cities/M-S-R assert, there is no perceivable benefit to SoCal Edison's transmission customers. Cities/M-S-R understand that it is SoCal Edison's prerogative to contract for higher-cost renewable generation, and they cite their own contracts for such higher-cost generation; however, Cities/M-S-R note that they do not allocate those increased costs to third parties that do not benefit from those resources. In this case, Cities/M-S-R argue, SoCal Edison

is inappropriately allocating the costs of the purported network upgrades to its transmission customers.

25. Moreover, Cities/M-S-R argue, the Palo Verde LGIA is only one in a series of interconnection agreements between SoCal Edison and renewable generators that unfairly allocate the purported network upgrade costs to SoCal Edison's transmission customers.¹² Cities/M-S-R state that the total cost associated with the series of four interconnection agreements appears to be approximately \$770 million. Cities/M-S-R state that SoCal Edison is offering to fund these \$770 million of upgrades on the condition that the Commission grant it 100 percent abandoned plant recovery as a transmission incentive that it requested in its petition for declaratory order in Docket No. EL11-10-000. Cities/M-S-R contend that SoCal Edison seeks to shift to its transmission customers the risk of generation project failures, at the same time it is contracting to purchase most of the renewable energy produced by the generators to benefit SoCal Edison and its retail load service obligations.

26. Cities/M-S-R assert there is a link between SoCal Edison's agreement to fund network upgrades and the price that generators will charge for the renewable energy purchased by SoCal Edison for its retail customers. Accordingly, Cities/M-S-R argue, SoCal Edison's decision to treat the interconnections as network facilities at transmission customers' expense must be scrutinized with any eye towards the deals SoCal Edison is making to purchase the renewable generation.

27. Cities/M-S-R further argue that SoCal Edison's agreement to finance interconnection costs it deems to be network upgrades unreasonably shifts costs and risks from SoCal Edison's retail generation procurement to transmission customers. Cities/M-S-R assert that SoCal Edison receives a return on costs, paid by transmission customers, which would otherwise be financed by generators, who would then pass the costs on to SoCal Edison via higher wholesale power costs. According to Cities/M-S-R, such an arrangement inappropriately shifts costs from generators to transmission customers, when the two parties that actually receive a benefit from the interconnection are Palo Verde (which will benefit from access to the CAISO grid) and SoCal Edison (which will benefit from ease of compliance with California's RPS requirements). Cities/M-S-R recognize that SoCal Edison's offer to pay the up-front costs of the interconnection facilities removes an obstacle for the renewable generators, but argue that SoCal Edison's "generosity should not extend to the pocketbooks of its wholesale transmission customers."¹³ Cities/M-S-R contend that, if SoCal Edison wants to fund these costs, it

¹² Cities/M-S-R point to interconnection agreements in Docket Nos. ER11-2177-000, ER11-2204-000, and ER11-2322.

¹³ Protest at 15.

should do so at the risk of its retail service function and not by shifting cost responsibility to SoCal Edison's transmission customers, which Cities/M-S-R believe is an unjust and unreasonable cost allocation.

28. Next, Cities/M-S-R assert that there is no indication that the costs of the Project have been subject to any scrutiny or that lower cost options were considered. According to Cities/M-S-R, the Commission itself has stated that the large generator interconnection process that produced the Palo Verde LGIA is not an open and transparent transmission planning process. Cities/M-S-R suggest that "[t]he proposed interconnection could be riddled with the sort of gold-plating transmission and excessive capacity expansion that would far exceed the minimum facilities necessary to accommodate the interconnection."¹⁴ Cities/M-S-R state that transmission customers cannot be certain that costs were evaluated as part of the CAISO process. They also assert that SoCal Edison's self-serving finding that the facilities should be treated as network upgrades has not been subject to review.

29. Cities/M-S-R contend that SoCal Edison's filing here raises concerns that they have previously raised in earlier, similar proceedings.¹⁵ Cities/M-S-R explain that they had argued in those earlier proceedings that the interconnection agreements at issue were the product of unduly discriminatory treatment of generation interconnection customers that had negotiated a power purchase agreement with SoCal Edison, and that SoCal Edison had engaged in a pattern of anti-competitive and discriminatory conduct, contrary to Order No. 2003. Cities/M-S-R had asserted that SoCal Edison provided interconnection customers building desirable renewable generation with preferential treatment by agreeing to provide up-front financing of network upgrades. Cities/M-S-R had also raised the possibility that the interconnection agreements in those cases could be the product of a violation of the Commission's standards of conduct, because of the potential for collusion between SoCal Edison's load-serving function (which negotiates power purchase agreements) and its transmission function (which negotiates the interconnection agreements).¹⁶

30. Cities/M-S-R state that the Palo Verde LGIA raises these same concerns. They argue that further evidence of potential unduly discriminatory and anti-competitive

¹⁴ *Id.* at 16.

¹⁵ Cities/M-S-R specifically refer to Docket Nos. ER10-796-000 and ER10-2169-000.

¹⁶ Cities/M-S-R note that, while the Commission had denied the protests in those earlier cases based on insufficient evidence, it acknowledged that the option of providing up-front financing of network upgrades cannot be based on unduly discriminatory or anti-competitive practices.

conduct has surfaced, citing a December 8, 2010 letter in this proceeding filed by Solar Millennium. Cities/M-S-R state that Solar Millennium's letter explained that, if SoCal Edison did not receive the abandoned plant incentive it requested in its petition in Docket No. EL11-10-000, then "the economics of the project will have to be restructured to account for the financing of an additional \$122,126,000 of network upgrade costs and a price increase would be sought" and that, if the price increase were not approved, the project would not be able to move forward on account of lack of financing.¹⁷ According to Cities/M-S-R, this letter provides evidence that the cost of the output of the facility is tied to SoCal Edison's commitment to provide up-front financing of network upgrades.

31. Next, Cities/M-S-R argue that when SoCal Edison is in the position of being both the transmission provider and the purchaser of the generation output, it is in the position of being able to negotiate a better deal in return for funding the portions of the interconnection facilities that it deems to be network upgrades. Cities/M-S-R contend that, in such circumstances, SoCal Edison would gain an unfair competitive advantage in the market for renewable generation through its ability to choose which generators it will provide with favorable terms.

32. Additionally, Cities/M-S-R argue that, notwithstanding standardized agreements and common definitions that are part of the Commission's generator interconnection policies, transmission providers can still wield significant negotiating power with generators over the terms of an interconnection, as evidenced by Solar Millennium's letter. Cities/M-S-R assert that the decision to provide up-front financing is a decision of significant importance to project developers, in addition to the relatively greater power transmission providers have regarding what facilities constitutes distribution upgrades versus network upgrades.

33. According to Cities/M-S-R, Solar Millennium's letter also highlights concerns that the Commission's standards of conduct could be violated if a transmission function is encouraged to make decisions to benefit the retail load service function or if interconnection agreement negotiations overlap with power purchase agreement negotiations. While Cities/M-S-R do not allege direct evidence of a violation by SoCal Edison, based on the public record, it argues that more scrutiny is warranted of the non-transparent process that resulted in the Palo Verde LGIA, as well as increased scrutiny of characterization of the costs as network upgrades and the level of costs associated with the planned interconnection facilities.

¹⁷ Solar Millennium Letter to the Commission, Docket No. ER11-2316-000 (Dec. 8, 2010).

34. Finally, Cities/M-S-R urge the Commission to ensure that generation interconnection costs are not unjustly characterized as network upgrades and that transmission projects are thoroughly examined to ensure that lower cost alternatives are vetted. According to Cities/M-S-R, requiring transmission customers to fund \$200 million for every 1000 MW of renewable energy procured by SoCal Edison for its RPS obligations will result in unsustainable transmission rates.

C. SoCal Edison's Answer

35. In response to Cities/M-S-R's protest, SoCal Edison argues that the facilities in question are network upgrades. SoCal Edison notes that CAISO executed the Palo Verde LGIA, thereby signaling its agreement that the facilities identified as network upgrades were properly designated. SoCal Edison also asserts that the facilities will be part of the integrated transmission system because energy is expected to flow in both directions, CAISO will be able to use the available capacity for multiple purposes, the facilities will provide transfer capability and reliability benefits to the transmission grid and will be relied upon for coordinated operation of the grid, and an outage on the facilities would affect the transmission system as a whole. Additionally, SoCal Edison notes that Cities/M-S-R failed to provide any analysis as to why those facilities should not be considered network upgrades.

36. SoCal Edison also argues that, regardless of who provides up-front financing for network facilities, any network upgrade is ultimately included in transmission rates. SoCal Edison further contends that the protest incorrectly implies that SoCal Edison is the entity that determines whether a transmission upgrade should be treated as a network upgrade or a generator interconnection facility. However, SoCal Edison states, it is CAISO that makes that determination through its interconnection planning process.

37. Moreover, SoCal Edison asserts that the Palo Verde LGIA is not unduly discriminatory, and that Cities/M-S-R's allegations to the contrary are grounded in unfounded speculation. SoCal Edison argues that its decision to provide up-front financing of the network upgrades contingent on receiving the abandoned plant incentive was not based on the fact that Palo Verde has a power purchase agreement with SoCal Edison. SoCal Edison cites the Commission's recent findings that SoCal Edison has reasonably exercised its authority to elect to up-front finance network upgrades in approving multiple interconnection agreements with similar provisions.¹⁸

¹⁸ SoCal Edison Answer at 6 (citing *Southern Cal. Edison Co.*, 132 FERC ¶ 61,150, at P 30 (2010); *Southern Cal. Edison Co.*, 133 FERC ¶ 61,019 (2010); *Southern Cal. Edison Co.*, 133 FERC ¶ 61,200 (2010)).

38. SoCal Edison also asserts that the protest incorrectly states that SoCal Edison can provide benefits to the generator at the expense of its transmission customers because it will earn a return on equity on the network upgrades as a result of its choice to provide up-front financing. SoCal Edison argues that the network upgrades are part of its transmission system, so it earns a return on equity regardless of who finances those facilities. Moreover, SoCal Edison argues that once a generator goes into commercial service, all transmission ratepayers pay for the costs of the network upgrades, regardless of who finances them.

39. Finally, SoCal Edison contends that Cities/M-S-R's arguments regarding SoCal Edison's potential violation of the standards of conduct is a bad faith allegation. SoCal Edison notes that Cities/M-S-R has raised this argument in earlier cases and the Commission has rejected it.¹⁹

III. Discussion

A. Procedural Matters

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁰ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. The Cities/M-S-R Parties 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 Procedure²¹ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept SoCal Edison's answer because it provided information that assisted us in our decision-making process.

41. We deny the motions to consolidate these two dockets with the other SoCal Edison LGIA dockets. Previously, we denied motions to consolidate these same proceedings in the order addressing the Granite Wind LGIA.²²

B. Commission Determination

42. As discussed below, we will conditionally accept the non-conforming LGIA with Palo Verde, subject to the outcome of the proceeding in Docket No. EL11-10-000 regarding SoCal Edison's request for incentives and abandoned plant approval.

¹⁹ SoCal Edison Answer at 7 (citing *Southern Cal. Edison Co.*, 133 FERC ¶ 61,019 (2010)).

²⁰ 18 C.F.R. § 385.214 (2010).

²¹ *Id.* § 385.213(a)(2).

²² *Southern Cal. Edison Co.*, 134 FERC ¶ 61,032, at P 41 (2011).

According to the application, SoCal Edison will up-front finance the network upgrades and distribution upgrades if Palo Verde achieves certain development milestones set forth in Appendix A to the LGIA and SoCal Edison receives abandoned plant approval.

43. We will grant the requested waivers of the 60-day notice requirement for good cause shown and conditionally accept the LGIA subject to the Commission's decision regarding SoCal Edison's request for abandoned plant approval under Docket No. EL11-10-000, effective December 9, 2010.²³ We agree with SoCal Edison that good cause exists because granting waiver will enable it to commence engineering, design and procurement of the facilities necessary to connect the project to the CAISO-controlled grid by Palo Verde's requested in-service date.

44. The Commission does not find sufficient evidence to conclude that this LGIA involves anti-competitive or discriminatory behavior as alleged by Cities/M-S-R.²⁴ In addressing Cities/M-S-R's protest to the Commission first notes that Cities/M-S-R proffer no convincing evidence in support of their allegations of potentially anti-competitive or discriminatory behavior on the part of SoCal Edison. Rather, Cities/M-S-R's protest is based largely on assumptions drawn by Cities/M-S-R as a result of SoCal Edison's choice to up-front finance network upgrades for the Blythe Project while also entering into a purchase power agreement with Palo Verde.

45. Moreover, as we have previously explained, both Order No. 2003 and CAISO's *pro forma* LGIA contemplate that Transmission Owners may choose to up-front fund network upgrades associated with an interconnection customer's project.²⁵ Additionally, there are no specified standards which must be applied in deciding whether to up-front fund network upgrades. Nevertheless, the Commission would not sanction undue discrimination or anti-competitive practices in connection with the option to provide up-front funding for network upgrades. In the absence of evidence to the contrary, we find just and reasonable SoCal Edison's decision to provide up-front financing of network upgrades in the Palo Verde LGIA.

²³ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, at 61,338-39, *order on reh'g*, 61 FERC ¶ 61,089 (1992); see also *Prior Notice and Filing Requirements under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,984, *order on reh'g*, 65 FERC ¶ 61,081 (1993) (waiver of prior notice will be granted if service agreements are filed within 30 days after service commences).

²⁴ The Commission notes that differing treatment of two or more entities does not automatically result in a *prima facie* case of unduly discriminatory or preferential conduct. See *Southern Cal. Edison Co.*, 38 FERC ¶ 61,040, at 61,113 (1987) (citing *Philadelphia Elec. Co.*, Opinion No. 791, 58 FPC 88, at 37-38 (1977)).

²⁵ *Southern Cal. Edison Co.*, 133 FERC ¶ 61,019, at P 34 (2010).

46. We find unavailing Cities/M-S-R's assertion that Solar Millennium's December 8, 2010 letter to the Commission demonstrates the link between the cost of the output of the facility and SoCal Edison's commitment to provide up-front financing of network upgrades. We do not find that the letter by itself establishes evidence of unduly discriminatory or anti-competitive conduct by SoCal Edison, and there is no indication that there is any such conduct in this proceeding. Furthermore, as we note above, nothing in Order No. 2003 or CAISO's *pro forma* LGIA prohibits SoCal Edison from providing up-front financing for network upgrades, an arrangement with which all parties to the Palo Verde LGIA agreed. For these reasons, we conclude that Solar Millennium's December 8, 2010 letter does not provide evidence of unduly discriminatory or anti-competitive conduct.

47. We also agree with SoCal Edison that there is no evidence presented on this record from which we could conclude that SoCal Edison's agreement to provide up-front funding of network upgrades, subject to conditions, is violative of our standards of conduct. Cities/M-S-R provide no evidence of collusion between SoCal Edison's transmission and marketing arms. Nor do we find evidence that this LGIA was negotiated in an inequitable manner. Palo Verde is an independent entity without corporate ties to SoCal Edison. Based on these facts we are unable to conclude that any impropriety has occurred in the negotiation of this LGIA.

48. We do not find that the mere existence of a power purchase agreement between SoCal Edison and Palo Verde creates in SoCal Edison an interest that is akin to an ownership interest. As discussed above, both Order No. 2003 and CAISO's *pro forma* LGIA permit Transmission Owners to provide up-front funding of network upgrades. We find no evidence in this instance that SoCal Edison has agreed to up-front fund network upgrades for any reason other than to facilitate the opportunity to complete the Blythe Project and assist SoCal Edison in meeting the renewable portfolio standards required by the State of California.

49. With respect to the protesters' argument that the facilities in question may be inappropriately classified as network upgrades, we note that the determination of network upgrades is an aspect of CAISO's generator interconnection procedures, the M-S-R Parties have failed to provide any evidence that the facilities should not be classified as network upgrades, and our review of the Palo Verde LGIA indicates that the facilities in question are network upgrades. Specifically, we concur with SoCal Edison that the facilities identified as Network Upgrades will be part of the integrated transmission system as follows: energy is expected to flow in both directions; CAISO will be able to use the available capacity for multiple purposes; the facilities will provide transfer capability and reliability benefits to the transmission grid and will be relied upon for coordinated operation of the grid; and an outage on the facilities would affect the

transmission system as a whole. According to the definition of Network Upgrades²⁶ in the CAISO OATT, the determination of whether facilities are network facilities or not largely depends on where the facilities are being implemented, i.e. at or beyond the point of interconnection. The facilities in question are all being constructed at or beyond the point of interconnection, making them by definition Network Upgrades.

50. The Commission finds that based upon the unique facts and circumstances in this case, the partial termination provision provides both parties some protection against significant adverse results if some portion of the Blythe Solar Power Project cannot achieve commercial operation. We agree with SoCal Edison and CAISO that the protracted time period that would elapse before completion of all the transmission upgrades necessary to achieve full capacity deliverability status, combined with the termination provisions of CAISO's pro forma LGIA, creates a risk that could jeopardize the ability of even the first phases of the Blythe Solar Power Project to achieve commercial operation. The Commission agrees that the partial termination charge would help to mitigate any stranded costs caused by unused network upgrades.

51. Consistent with the discussion in the prior section, we accept CAISO's version of the Palo Verde LGIA, which it filed to comply with the Commission's eTariff requirements but is identical to SoCal Edison's filing in all material respects. We note that CAISO's filing in Docket No. ER11-2318-000 is uncontested.

52. We deny the Motions to Consolidate.²⁷ While we agree that there may be common issues of fact and law in the various proceedings for which movants seek consolidation, we conclude that administrative efficiency would not be served by consolidation. The various proceedings which are sought to be consolidated were submitted at differing times and are subject to review and decision based upon the Commission's conduct of our business. As a result, we are concerned that consolidation could unreasonably truncate and complicate the Commission's review of the interconnection agreements in other proceedings, as well as SoCal Edison's petition for declaratory order in Docket No. EL11-10-000. In addition, we find that the approach taken here, where we have conditionally accepted the Palo Verde LGIA subject to the outcome of Docket No. EL11-10-000, is reasonable. As discussed above, this approach

²⁶ Network Upgrades include the additions, modifications, and upgrades to the CAISO Controlled Grid required at or beyond the Point of Interconnection to accommodate the interconnection of the Generating Facility to the CAISO Controlled Grid. Network Upgrades shall consist of Delivery Network Upgrades and Reliability Network Upgrades. Network Upgrades do not include Distribution Upgrades.

²⁷ Previously, we denied motions to consolidate these same proceedings in the order addressing the Granite Wind LGIA. *See Southern Cal. Edison Co.*, 134 FERC ¶ 61,032, at P 43 (2011).

is consistent with the approach we have taken in similar proceedings.²⁸ Finally, we note that Commission precedent establishes that the Commission retains control over the scope of its proceedings.²⁹ For these reasons, we deny the Motions to Consolidate.

The Commission orders:

(A) SoCal Edison and CAISO's LGIA is conditionally accepted subject to the Commission decision regarding SoCal Edison's requested abandoned plant approval incentive in Docket No. EL11-10-000, effective December 9, 2010, as discussed in the body of this order.

(B) The Motions to Consolidate are denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁸ *Southern Cal. Edison Co.*, 134 FERC ¶ 61,032, at P 35 (2011).

²⁹ *See, e.g., State of Cal. ex rel. Lockyer v. British Columbia Power Exchange Corp., et al.*, 125 FERC ¶ 61,016, at P 32 (2008).

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