

134 FERC ¶ 61,108
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
California Independent System Operator Corporation

Docket Nos. ER11-2455-000
ER11-2451-000

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

(Issued February 17, 2011)

1. On December 21, 2010, Southern California Edison Company (SoCal Edison) filed under its transmission tariff, a non-conforming Large Generator Interconnection Agreement (LGIA) between itself as transmission operator, Palen Solar II, LLC (Palen) 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. ER11-2451-000. In this order, we conditionally accept the LGIA under both SoCal Edison and CAISO's tariffs, effective, December 22, 2010. We also deny the motion to consolidate this proceeding with certain other proceedings, as discussed herein.

I. The SoCal Edison and CAISO Filings

2. Palen applied to CAISO to interconnect its proposed 500 MW solar thermal generating facility ("Palen Solar Project") to SoCal Edison's planned Red Bluff 500/220kV substation. The Palen Solar Project will consist of two 250 MW electric generating units. According to SoCal Edison, studies were performed which identified the system modifications and/or additions to SoCal Edison's electrical system that are necessary to interconnect the Palen Solar Project. While Palen has elected for the Palen Solar Project to have full capacity deliverability status, construction of the transmission facilities necessary to provide full deliverability will not be completed until 2017. In light of this fact, Palen and SoCal Edison agreed to permit Palen to construct the two generating units in a manner that matches the construction of the anticipated transmission upgrades and the corresponding availability of transmission necessary for each unit.

3. 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 Palen will pay for, interconnection service. SoCal Edison will design, procure, construct, install, own, operate, and maintain the interconnection facilities and reliability and delivery network upgrades required to interconnect the Palen Solar Project to SoCal Edison's transmission system. Palen will finance approximately \$6 million for Interconnection Facilities costs.¹

4. SoCal Edison states that it has committed to up-front finance reliability network upgrades of approximately \$7.5 million, and delivery network upgrades of approximately \$120.5 million, as specifically identified in Appendix A to the LGIA, subject to the following conditions: (1) receipt of assurance from the Commission that SoCal Edison may recover 100 percent of its prudently-incurred costs for these facilities if the project is abandoned due to circumstances out of SoCal Edison's control (abandoned plant approval);² and (2) continued achievement of the development milestones by Palen.³

5. According to SoCal Edison, in order to effectuate these contingencies, SoCal Edison's proposed LGIA contains some alterations of the *pro forma* LGIA contained in CAISO's tariff.⁴ These altered terms and conditions include: (1) the definition of abandoned plant approval;⁵ (2) SoCal Edison's commitment to up-front the cost of delivery network upgrades;⁶ (3) the inclusion of development milestones, including

¹ These facilities and upgrades are described in Sections 1(b), 2(b)(i), and 2(b)(ii) of Appendix A to the LGIA.

² On December 9, 2010, SoCal Edison filed in Docket No. EL11-10-000 a petition for declaratory order seeking certain rate incentives, including that it may recover 100 percent of its prudently incurred costs for the network upgrades and delivery upgrades that SoCal Edison has agreed to up front fund in the Palen LGIA if these facilities are abandoned due to circumstances beyond SoCal Edison's control.

³ These milestones are set forth in Section 14(d) of Appendix A to the LGIA.

⁴ SoCal Edison asserts that these alterations to the LGIA have been agreed to by the parties.

⁵ Appendix A to the LGIA defines abandoned plant approval as a Commission final order, not subject to rehearing or appeal, unconditionally granting the Participating Transmission Operator's (TO) request for a declaratory order that the Participating TO can recover 100 percent of its prudently incurred costs for the Network Upgrades if such facilities are abandoned due to circumstances outside of the Participating TO's control.

⁶ LGIA, Appendix A, Section 14(d).

actions to be taken following completion or failure to complete the milestones;⁷ (4) limits on SoCal Edison's commitment to finance the delivery network upgrades necessary for the Palen Solar Project;⁸ and (5) SoCal Edison's commitment to file for abandoned plant approval within 60 calendar days of the execution and filing of the LGIA.⁹

6. SoCal Edison contends that financing network upgrades is inherently risky.¹⁰ SoCal Edison claims that it faces licensing risks as well as the risk that the generator could cancel the project at any time. Because of this risk, SoCal Edison avers that it must have unconditional cost recovery assurance in the event that the network upgrade project is abandoned for reasons outside of SoCal Edison's control. SoCal Edison argues that the provisions added to the *pro forma* LGIA ensure that SoCal Edison is being prudent in up-front financing the delivery network upgrades while at the same time giving the parties the flexibility to develop their respective projects. According to SoCal Edison, its ability to discontinue funding the delivery network upgrades if Palen does not make progress towards commercial operation of the Palen Solar Project ensures that transmission rates will not incur excessive costs if the delivery network upgrades ultimately prove unnecessary. SoCal Edison argues that the non-conforming provisions of the proposed LGIA are necessary due to the unique circumstances surrounding the interconnection of the Palen Solar Project.

7. SoCal Edison also states that Palen will be responsible for the interconnection facilities payment. According to SoCal Edison, this payment compensates SoCal Edison for the capitalized costs associated with the engineering, design, procurement construction and installation of the Palen interconnection facilities, including any non-capitalized costs associated with the facilities.¹¹

8. According to SoCal Edison, after the completion of the interconnection facilities, Palen will pay SoCal Edison a monthly interconnection facilities charge of \$22,853.20

⁷ The milestones appear in Sections 14(d), (e), (g), and (j) of Appendix A to the LGIA.

⁸ LGIA, Appendix A, Section 14(f).

⁹ LGIA, Appendix A, Section 14(i).

¹⁰ SoCal Edison also contends that the financing of these upgrades is traditionally the responsibility of the generator.

¹¹ The interconnection facilities payment is estimated to be \$6,199,000 and is set forth in Appendix A, Section 18 of the LGIA.

per month to recover the on-going revenue requirements for those facilities.¹² SoCal Edison has provided a table showing the estimated revenues it will collect under the LGIA during the first 12 billing months.¹³

9. SoCal Edison states that, in compliance with the *BrightSource* order,¹⁴ the LGIA contains Article 2.4 providing for the payment of termination charges by Palen in the event that CAISO or SoCal Edison receives a notice of termination in accordance with Article 2.3. 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 seeks to eliminate any ambiguity between the applicability of the termination charges and abandoned plant approval. Thus, according to SoCal Edison, 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.

10. Another non-conforming provision included in the LGIA is the ability of Palen, upon payment of a partial termination charge, to partially terminate the LGIA with respect to the second generating unit. 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.

11. In this LGIA, however, SoCal Edison incorporated a partial termination provision in Section 2.4.4 that permits Palen to terminate the second of its two generating units of a facility being constructed in multiple phases without the termination of the LGIA with respect to the first constructed generating unit. Under this provision, Palen will have the contractual right to terminate interconnection service with respect to one of the two planned generating units, while the remaining unit remains connected and continues to obtain interconnection service pursuant to the terms of the LGIA.

¹² According to SoCal Edison, the interconnection facilities charge is a product of the customer-financed monthly rate and the interconnection facilities cost (0.38% x \$6,014,000). SoCal Edison states that the customer-financed monthly rate is the rate most recently adopted by the California Public Utilities Commission for application to SoCal Edison's retail electric customers for customer-financed added facilities.

¹³ See Appendix A of the Transmittal Letter.

¹⁴ *Southern Cal. Edison Co.*, 132 FERC ¶ 61,150 (2010) (*BrightSource*).

12. As justification for the partial termination provision, SoCal Edison submits that these provisions are necessary due to the unique circumstances surrounding the interconnection of the Palen Solar Project. According to SoCal Edison, Palen requested a commercial operating date of July 1, 2013 for the entire 500 MW facility. However, the transmission system upgrades necessary to support the full output cannot be completed until 2017. In light of this fact, Palen is concerned about its ability to develop the entire generating facility, given the amount of time that could potentially elapse between the requested commercial operating date and the estimated completion date for all transmission upgrades. SoCal Edison asserts that as a result of the inclusion of the partial termination provisions, Palen is comfortable that it should be able to achieve commercial operation with respect to at least the first unit of the Palen Solar Project.

13. 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 upgrades” in the event Palen elects to terminate a portion of its project. SoCal Edison states that ratepayers are protected by requiring payment of a partial termination charge.¹⁵

14. Further, SoCal Edison also cites to California’s Renewable Portfolio Standard (RPS) as another reason to allow for partial termination. According to SoCal Edison, the RPS has a goal of meeting 33 percent of California’s retail energy demand from renewable energy sources by 2020. According to SoCal Edison, the Palen Solar Project represents a substantial addition of renewable capacity in California. Accordingly, the fact that one of the separate generating units may not be constructed should not void the LGIA for the remaining unit that can or will contribute to satisfying the RPS. Finally, SoCal Edison contends that the partial termination provisions have the added benefit of enabling SoCal Edison and CAISO to release transmission capacity associated with Palen’s queue position if it becomes clear that a portion of the Palen Solar Project will not be completed in a timely manner.

15. CAISO similarly avers that the partial termination provisions address the unique issues surrounding the Palen Solar Project. Furthermore, according to CAISO, the provisions balance multiple objectives including encouraging the viability of critical renewable generation in a timely manner to meet California’s renewable energy goals, protecting ratepayers against the risk of stranded investment, and creating an incentive to avoid abandonment of projects.

¹⁵ According to SoCal Edison the partial termination charge will be \$5,740,600 and this amount should represent a substantial portion of the potential pre-construction costs for the network upgrades.

16. 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. 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 furthest extent possible.

17. CAISO states that as a prerequisite to being eligible to exercise partial termination, Palen agreed to post \$5,740,000 to cover the full amount of the partial termination charge for the second generating unit that it wishes to be eligible for termination. CAISO further explains that the charge is equal to ten percent of Palen's share of the cost of transmission system upgrades as calculated by CAISO's cluster LGIA. 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.

18. CAISO states that partial termination may be exercised solely by Palen 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. CAISO also explains that upon exercise of the option, CAISO will liquidate the financial security posted by Palen 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 within 72 months of the execution of the LGIA or make reasonable efforts to provide an alternative solution, Palen may exercise its option to partially terminate, with the partial termination charge reverting back to Palen.

19. SoCal Edison and CAISO request waiver of the 60-day prior notice requirement¹⁶ so that the LGIA can become effective December 22, 2010, which is one day after the date of the SoCal Edison and CAISO filings. SoCal Edison states that the waiver would be consistent with the Commission's policy set forth in *Central Hudson Gas & Electric Corporation*.¹⁷ SoCal Edison claims that good cause exists because granting such waiver will enable SoCal Edison to commence engineering, design, and procurement of the

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

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

facilities necessary to connect the Palen Solar Project to the CAISO-controlled grid by Palen's requested date, thus facilitating the availability of power to California customers. Finally, to the extent necessary, SoCal Edison requests that the Commission waive the filing requirements contained in Sections 35.5 and 35.13 of the Commission's regulations.¹⁸

20. 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. 98 under its Transmission Owner Tariff in Docket No. ER11-2455-000. CAISO requests that the LGIA be accepted as a Non-Conforming Service Agreement No. 1828 under its Open Access Transmission Tariff (OATT) effective December 22, 2010.

III. Notices of Filings

21. Notice of SoCal Edison's filing was published in the *Federal Register*,¹⁹ with interventions and protests due on or before January 11, 2011. Timely motions to intervene were filed by the Transmission Agency of Northern California (TANC), the Modesto Irrigation District (MID) and by the cities of Anaheim, Azusa, Banning, Colton, Pasadena and Riverside, California (collectively, Six Cities). A timely motion to intervene and protest was filed by M-S-R Public Power Agency and the cities of Redding and Santa Clara, California (collectively, the M-S-R Parties). A timely motion to intervene and to consolidate was filed by and the Sacramento Municipal Utility District (SMUD).

22. Notice of the CAISO's filing in Docket No. ER11-2451-000 was published in the *Federal Register*,²⁰ with interventions and protests also due on or before January 11, 2011. Timely motions to intervene were filed by MID, Six Cities and by the M-S-R Parties.

23. On January 10, 2011 Solar Millennium, LLC filed a letter requesting prompt approval of the Palen LGIA.

24. SoCal Edison filed an answer to the protest of M-S-R Parties on January 26, 2011.

¹⁸ See 18 C.F.R. § 35.5 and § 35.13 (2010).

¹⁹ 76 *Fed. Reg.* 358 (2011).

²⁰ 76 *Fed. Reg.* 356 (2011).

IV. SMUD Motion to Consolidate

25. SMUD moved to consolidate this docket with several other dockets.²¹ SMUD contends that the LGIA under consideration in this docket is inextricably linked with the petition for declaratory order submitted by SoCal Edison in Docket No. EL11-10-000, seeking rate guidance from the Commission with respect to several proposed network upgrades.²² SMUD also contends that the LGIA shares common facts with other non-conforming LGIAs filed in other dockets.²³ SMUD moves for consolidation of all of these dockets to ensure comprehensive and efficient consideration of common issues.

V. M-S-R Parties Protest

26. The M-S-R Parties contend that the LGIA raises significant concerns with regard to the imposition of unreasonable costs on transmission customers and cost causation issues regarding SoCal Edison's decision to fund what it deems to be network upgrade costs with an entity whose renewable generation output is already committed to a single entity.²⁴ M-S-R Parties object to the treatment of what they contend are interconnection facility costs as network upgrades, and SoCal Edison's decision to finance these network upgrades and then charge the costs to transmission customers.²⁵

27. Moreover, M-S-R Parties argue, the Palen 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.²⁶ M-S-R Parties state that the total cost associated with the series of six interconnection agreements appears to be approximately \$926 million. M-S-R Parties state that SoCal Edison is offering to fund these \$926 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. M-S-R

²¹ SMUD January 11, 2011 Motion to Consolidate at 2 and footnotes 1 and 2.

²² *Id.*

²³ *Id.* at 2. The other dockets are: ER11-2177-000; ER11-2316-000; ER11-2318-000; ER11-2322-000; ER11-2368-000; ER11-2369-000; ER11-2204-000; and ER11-2411-000.

²⁴ M-S-R Parties January 11, 2011 Motion to Intervene and Protest at 7.

²⁵ *Id.* at 7-8.

²⁶ The M-S-R Parties point to interconnection agreements in Docket Nos. ER11-2177-000, ER11-2204-000, ER11-2316, ER11-2322, and ER11-2411.

Parties 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.²⁷

28. M-S-R Parties 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, M-S-R Parties argue that SoCal Edison's decision to treat the interconnections as network facilities at transmission customers' expense must be scrutinized with an eye towards the deals SoCal Edison is making to purchase the renewable generation.²⁸

29. According to M-S-R Parties, these facilities provide no benefit to transmission customers. M-S-R Parties argue that SoCal Edison's approach inappropriately shifts costs and risks to transmission customers by treating a generation interconnection as a network upgrade. M-S-R Parties contend that these costs should be borne by the generator or a customer of the generator. M-S-R Parties aver that the transmission customers should neither carry the costs of interconnection nor the risk of the generation not being built. According to M-S-R Parties, if SoCal Edison wants to fund the cost of interconnecting the generation as part of its acquisition of renewable resources, it should do so at the risk of its retail service function.²⁹

30. M-S-R Parties also contend that the costs of the project were not subject to any scrutiny and lower cost options were not considered. M-S-R Parties also are concerned that the costs were not evaluated as part of the CAISO process. Finally, M-S-R Parties object to the fact that SoCal Edison's conclusion that the facilities should be treated as network upgrades rather than interconnection facilities was not reviewed.³⁰

31. M-S-R Parties assert that SoCal Edison's filing here raises concerns that they have previously raised in earlier, similar proceedings.³¹ M-S-R Parties 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

²⁷ M-S-R Parties Protest at 8.

²⁸ *Id.* at 8.

²⁹ *Id.* at 9-10.

³⁰ *Id.* at 10.

³¹ M-S-R Parties specifically refer to Docket Nos. ER10-796-000 and ER10-2169-000.

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. M-S-R Parties 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.³² M-S-R Parties 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).³³

32. M-S-R Parties contend that there is now public confirmation that their concern is not theoretical. They argue that further evidence of potential unduly discriminatory and anti-competitive conduct has surfaced, citing a letter to the Commission filed by one project developer, Solar Millennium, LLC (Solar Millennium) in Docket No. ER11-2316-000, on December 8, 2010. M-S-R Parties 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 addition \$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 due to lack of financing.³⁴ According to M-S-R Parties, 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.³⁵

33. Next, M-S-R Parties 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 SoCal Edison deems to be network upgrades. M-S-R Parties contend that, in such circumstances, SoCal Edison would gain an unfair

³² M-S-R Parties Protest at 11.

³³ *Id.* at 11-12. M-S-R Parties 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.

³⁴ Solar Millennium Letter to the Commission, Docket No. ER11-2316-000 (Dec. 8, 2010).

³⁵ M-S-R Parties Protest at 13-15.

competitive advantage in the market for renewable generation through its ability to choose which generators it will provide with favorable terms.³⁶

34. Additionally, M-S-R Parties assert 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. M-S-R Parties 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 constitute distribution upgrades versus network upgrades.

35. According to M-S-R Parties, Solar Millennium's letter also highlights concerns that the 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 M-S-R Parties do not allege direct evidence of a violation by SoCal Edison, based on the public record, they argue that more scrutiny is warranted of the non-transparent process that resulted in the Palen 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.³⁷

36. Finally, M-S-R Parties 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 M-S-R Parties, requiring transmission customers to fund millions of dollars for every California load serving entity to procure sufficient renewable resources to meet their RPS obligations will result in unsustainable transmission rates.

VI. SoCal Edison's Response

37. In response to M-S-R Parties' protest, SoCal Edison argues that the facilities in question are network upgrades. SoCal Edison notes that CAISO executed the Palen 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

³⁶ *Id.* at 15.

³⁷ *Id.* at 16.

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 M-S-R Parties failed to provide any analysis as to why those facilities should not be considered network upgrades.³⁸

38. 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.³⁹

39. Moreover, SoCal Edison asserts that the Palen LGIA is not unduly discriminatory, and that M-S-R Parties' 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 Palen 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.⁴⁰

40. 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.

41. Finally, SoCal Edison contends that M-S-R Parties argument regarding SoCal Edison's potential violation of the standards of conduct is a bad faith allegation. SoCal Edison notes that M-S-R Parties has raised this argument in earlier cases and the Commission has rejected it.⁴¹

³⁸ SoCal Edison Response to Protest at 3-4.

³⁹ *Id.* at 4-5.

⁴⁰ *Id.* at 6 (citing *BrightSource*, 132 FERC ¶ 61,150 at P 30; *Southern Cal. Edison Co.*, 133 FERC ¶ 61,019 (2010); *Southern Cal. Edison Co.*, 133 FERC ¶ 61,200 (2010)).

⁴¹ *Id.* at 7 (citing *Southern Cal. Edison Co.*, 133 FERC ¶ 61,019).

VII. Discussion

A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁴² the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁴³ 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.

B. Substantive Matters

43. As discussed below, we will conditionally accept the non-conforming LGIA with Palen, subject to the outcome of the proceeding in Docket No. EL11-10-000 regarding SoCal Edison's request for incentives and abandoned plant approval, effective December 22, 2010. According to SoCal Edison, it will up-front finance the delivery network upgrades if Palen achieves certain development milestones set forth in Appendix A to the LGIA and if SoCal Edison receives abandoned plant approval.

44. We will grant the requested waivers of the 60-day notice requirement for good cause shown.⁴⁴ 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 Palen's requested in-service date.

45. The Commission does not find sufficient evidence to conclude that this LGIA involves anti-competitive or discriminatory behavior as alleged by M-S-R Parties. In addressing M-S-R Parties' protest the Commission first notes that M-S-R Parties proffer no convincing evidence in support of their allegations of potentially anti-competitive or discriminatory behavior on the part of SoCal Edison. Rather, M-S-R Parties' protest is based largely on assumptions drawn by M-S-R Parties as a result of SoCal Edison's

⁴²18 C.F.R. § 385.214 (2010).

⁴³*Id.* § 385.213(a)(2).

⁴⁴ See *Central Hudson Gas & Electric Corp.*, 60 FERC at 61,338-39, *order on reh'g*, 61 FERC ¶ 61,089; 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).

choice to up-front finance network upgrades for the Palen Solar Project while also entering into a purchase power agreement with Palen.

46. 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.⁴⁵ 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. Finally, 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 Palen LGIA agreed. 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 Palen LGIA.

47. We find unavailing M-S-R Parties assertion that Solar Millennium's December 8, 2010 letter to the Commission demonstrates a link between the cost of the output of the facility and SoCal Edison's commitment to provide up-front financing of network upgrades. Regardless of whether there is such a link, we do not find that the letter by itself establishes evidence of unduly discriminatory or anti-competitive conduct by SoCal Edison, and there is certainly 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 Palen LGIA agreed. For these reasons, we conclude that Solar Millennium's December 8, 2010 letter does not demonstrate the presence of unduly discriminatory or anti-competitive conduct.

48. 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. M-S-R Parties provide no evidence of collusion between SoCal Edison's transmission and marketing arms or a violation of the standards of conduct. Nor do we find evidence that this LGIA was negotiated in an inequitable manner. Palen 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.

49. We do not find that the mere existence of a power purchase agreement between SoCal Edison and Palen creates in SoCal Edison an interest that is akin to an ownership interest. As discussed above, both order No. 2003 and the CAISO's *pro forma* LGIA permit Transmission Owners to provide up-front funding of network upgrades. We find

⁴⁵ *Southern Cal. Edison Co.*, 133 FERC ¶ 61,019 at P 34.

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 Palen Solar Project and assist SoCal Edison in meeting the renewable portfolio standards required by the state of California.

50. 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 Palen 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 Upgrades⁴⁶ in the CAISO OATT, the determination of whether facilities are network facilities or not largely depends on where the facilities are being implemented, 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.

51. 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 Palen Solar 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 Palen to complete even the first generation unit. The Commission agrees that the partial termination charge would help to mitigate any stranded costs caused by unused network upgrades.⁴⁷

⁴⁶Under Appendix A of the CAISO OATT, network upgrades are defined as 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. *See, e.g.*, Conformed Fifth Replacement CAISO Tariff, Appendix A, at P 64.

⁴⁷ We note that the partial termination charge was uncontested.

52. Finally, we conclude that our acceptance of the Palen LGIA, subject to the outcome of Docket No. EL11-10-000 is consistent with similar orders in which we conditionally accepted interconnection agreements among SoCal Edison, CAISO, and interconnection customers, pursuant to which SoCal Edison agreed to provide up-front financing of network upgrades subject to it receiving abandoned plant recovery.⁴⁸

53. Consistent with the discussion in the prior section, we conditionally accept CAISO's version of the Palen LGIA effective as of December 22, 2010, 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. ER11-2251-000 is uncontested.

54. We deny the Motion to Consolidate.⁴⁹ 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 Palen LGIA subject to the outcome of Docket No. EL11-10-000, is reasonable. As discussed above, this approach is consistent with the approach we have taken in similar proceedings.⁵⁰ Finally, we note that Commission precedent establishes that the Commission retains control over the scope of its proceedings.⁵¹ For these reasons, we deny the Motion to Consolidate.

⁴⁸ See *BrightSource*, 132 FERC ¶ 61,150 at P 30; *Southern Cal. Edison Co.*, 133 FERC ¶ 61,200; *Southern California Edison Company*, 134 FERC ¶ 61,032 (2011).

⁴⁹ 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).

⁵⁰ *Southern Cal. Edison Co.*, 134 FERC ¶ 61,032 at P 35.

⁵¹ 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).

Docket Nos. ER11-2451-000 and ER11- 2455-000

- 17 -

The Commission orders:

(A) SoCal Edison and CAISO's LGIA is conditionally accepted subject to the Commission decision in Docket No. EL11-10-000, effective December 22, 2010, as discussed in the body of this order.

(B) The motion to consolidate is denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

Document Content(s)

ER11-2455-000.DOC.....1-17