

134 FERC ¶ 61,107
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. ER11-2411-000
ER11-2572-000

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

(Issued February 17, 2011)

1. On December 20, 2010, Southern California Edison Company (SoCal Edison) filed under its transmission tariff, a non-conforming Large Generator Interconnection Agreement (LGIA or AV Solar LGIA) among itself, AV Solar Ranch 1, LLC (AV Solar) as interconnection customer, and the California Independent System Operator Corporation (CAISO). On December 29, 2010, CAISO filed the identical LGIA as a non-conforming service agreement under its tariff in Docket No. ER11-2572-000. In this order, we conditionally accept the LGIA under both SoCal Edison and CAISO's tariffs, effective December 21, 2010. We also deny motions to consolidate this proceeding with certain other proceedings, as discussed herein.

I. Background

2. AV Solar, a subsidiary of First Solar, Inc., proposes to interconnect a 250 MW solar photovoltaic generating facility, to be located in Kern County, California (Project or AV Solar Project), to SoCal Edison's transmission system at the proposed Whirlwind Substation via a generation tie-line, and to transmit energy and/or ancillary services to the CAISO-controlled grid. The output of the AV Solar Project is committed to Pacific Gas & Electric Company (PG&E) pursuant to a power purchase agreement between AV Solar and PG&E.

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 AV Solar 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 AV Solar Project to SoCal Edison's transmission system.

4. SoCal Edison states that Appendix A of the LGIA identifies the interconnection facilities, and reliability and delivery network upgrades of the LGIA. SoCal Edison states that it has committed to up-front finance reliability and delivery network upgrades, as specifically identified in Appendix A to the LGIA, subject to the following conditions: (1) SoCal Edison has received a Commission order granting it recovery of 100 percent of its prudently incurred costs for these facilities if the AV Solar Project is abandoned due to circumstances outside of SoCal Edison's control (abandoned plant approval), which request is the subject of SoCal Edison's filing in Docket No. EL11-10-000;¹ and (2) AV Solar's achievement of the development milestones set forth in Appendix A to the LGIA.

5. SoCal Edison identifies the following provisions in Appendix A to the LGIA as possibly being interpreted as differing from the *pro forma* CAISO LGIA: (1) definition of abandoned plant approval;² (2) its commitment to up-front finance the cost of the network upgrades and associated one-time cost identified in section 2 of the Appendix A to the LGIA; (3) the development milestones, including actions to be taken following completion of or failure to complete milestones in sections 13(d), (e), (g), (h), (i), and (m) of Appendix A; (4) limits on SoCal Edison's commitment to finance the network upgrades required for the AV Solar Project in section 13(f) of Appendix A; (5) SoCal Edison's commitment to file for abandoned plant approval within (60) calendar days of the execution and filing of the LGIA; and (6) an option for AV Solar to finance its portion of the network upgrades if unconditional acceptance of the LGIA is not received by March 31, 2011. SoCal Edison anticipates that, to the extent these provisions are non-conforming to 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.

¹ 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 that SoCal Edison has agreed to up front fund in the AV Solar 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 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. SoCal Edison states that, in accordance with Appendix A to the LGIA, AV Solar is to be responsible for an interconnection facilities payment of \$5,973,000.³ Following the completion date of the interconnection facilities, AV Solar will 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.⁴ The monthly interconnection facilities charge will be \$22,697.40 (0.38 percent x \$5,973,000).

7. SoCal Edison and CAISO request waiver of the 60-day prior notice requirement⁵ so that the LGIA can become effective December 21, 2010. SoCal Edison states that the waiver would be consistent with the Commission's policy set forth in *Central Hudson Gas & Electric Corporation*.⁶ 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 AV Solar's requested in-service date of March 2012.

8. 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. 96 under its Transmission Owner Tariff in Docket No. ER11-2411-000. CAISO requests that the LGIA be accepted as a Non-Conforming ISO Service Agreement No. 1805 under its Open Access Transmission Tariff (OATT), effective December 21, 2010. CAISO states

³ SoCal Edison states that the interconnection facilities payment compensates SoCal Edison for the capitalized costs incurred by SoCal Edison associated with the engineering, design, procurement, construction and installation of the Participating TO's interconnection facilities, including any non-capitalized costs associated with such facilities.

⁴ 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.

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

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

that the provisions in the LGIA that may be interpreted as differing from its *pro forma* LGIA were justified by SoCal Edison in its December 20, 2010 filing.

II. Notices of Filings and Responsive Pleadings

9. Notice of SoCal Edison's filing in Docket No. ER11-2411-000 was published in the *Federal Register*, 75 Fed. Reg. 81599 (Dec. 28, 2010), with interventions due on or before January 10, 2011. Timely motions to intervene were filed by Sacramento Municipal Utility District (SMUD), California Municipal Utilities Association (CMUA), Transmission Agency of Northern California (TANC), and Modesto Irrigation District (Modesto). 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, the M-S-R Parties). The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities), filed a motion to intervene out of time on January 11, 2010.

10. Notice of CAISO's filing in Docket No. ER11-2572-000 was published in the *Federal Register*, 76 Fed. Reg. 1416 (Jan. 10, 2011), with interventions due on or before January 19, 2011. Modesto, Six Cities, and the M-S-R Parties filed timely motions to intervene. AV Solar filed a timely motion to intervene and comments in support. SMUD filed a timely motion to intervene and a motion to consolidate.⁷

11. In addition, CMUA and SMUD filed motions to consolidate in this and certain other proceedings on December 21, 2010 (collectively, Motions to Consolidate).⁸ On December 23, 2010, TANC filed a motion to intervene and answer in support of the Motions to Consolidate. On December 27, 2010, AV Solar filed a motion to intervene and answer in opposition to Motions to Consolidate.

12. SoCal Edison filed an answer to the M-S-R Parties' protest on January 25, 2011. SoCal Edison and CAISO filed answers in opposition to the Motions to Consolidate on January 5, 2011.

⁷ SMUD's motion to consolidate in Docket No. ER11-2572-000 is related to the motion to consolidate it filed on December 21, 2010 in other dockets. That motion is discussed below.

⁸ Specifically, the dockets which CMUA and SMUD seek 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.

A. Motions to Consolidate

13. 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 AV Solar 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 request that the Commission establish the comment date of January 10, 2011 as the date for all relevant dockets. The Motions to Consolidate argue that this will further administrative efficiency and would allow parties to fully assess the recent Commission order regarding CAISO's revised transmission planning process.

B. M-S-R Parties' Protest

14. The M-S-R Parties argue that the AV Solar 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 on behalf of an entity whose renewable generation output is already committed to a single entity, PG&E.

15. The M-S-R Parties explain that the AV Solar LGIA proposes to treat \$26 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. The M-S-R Parties claim that the facilities will provide access to the grid to AV Solar's planned 250 MW of renewable generation with no benefit to transmission customers. The M-S-R Parties understand that it is the prerogative of load serving entities to contract for higher cost renewable generation, noting their own contracts for such higher cost generation; however, the M-S-R Parties state that they do not allocate those increased costs to third parties that do not benefit from those resources. In this case, the M-S-R Parties argue, SoCal Edison is inappropriately allocating the costs of the purported network upgrades to its transmission customers. The 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.⁹ The M-S-R Parties argue that the costs should be allocated to the entity purchasing the output from the generator, and not to all transmission customers. Thus, the M-S-R Parties argue, the costs associated with the LGIA should be recorded into a generation interconnection account, which can then be recovered from the entities purchasing the output of the connected generators.

16. Moreover, the M-S-R Parties argue, the AV Solar LGIA is only one in a series of interconnection agreements between SoCal Edison and renewable generators that unfairly allocate purported network upgrade costs to SoCal Edison's transmission customers.¹⁰ The M-S-R Parties state that the total cost associated with the series of four interconnection agreements appears to be approximately \$926 million. The 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. Although the M-S-R Parties state that the potential discrimination and standards of conduct issues that they raised in similar proceedings do not pose as much of a concern in this case, as the power generated from the Project is committed to PG&E, they object to the allocation of costs to SoCal Edison's transmission customers.

17. The M-S-R Parties contend that SoCal Edison's agreement to finance interconnection costs it deems to be network upgrades unreasonably shifts costs and risks from generators and the entities that use the generation to meet Renewable Portfolio Standard (RPS) requirements to transmission customers. The M-S-R Parties 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 the purchasers of the generation via higher wholesale power costs. According to the M-S-R Parties, such an arrangement inappropriately shifts costs from generators to transmission customers, when the two parties that actually receive a benefit from the interconnection are AV Solar (which will benefit from access to the CAISO grid) and PG&E (which will benefit from ease of compliance with California's RPS requirements). The M-S-R

⁹ The M-S-R Parties argue that the cost of the output of the facility is tied to SoCal Edison's commitment to provide up-front financing of network upgrades. According to the M-S-R Parties, 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 supports its claim. The M-S-R Parties state that Solar Millennium's letter explained that, if SoCal Edison did not receive the abandoned plant incentive it requested, it would be required to seek a price increase for the output of the generation.

¹⁰ The M-S-R Parties point to interconnection agreements filed by SoCal Edison in Docket Nos. ER11-2177-000, ER11-2204-000, ER11-2316-000, ER11-2322-000, and ER11-2455-000.

Parties 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."¹¹ The M-S-R Parties contend that, if SoCal Edison wants to fund these costs, it should do so at the risk of its retail service function and not by shifting cost responsibility to its transmission customers, which they believe is an unjust and unreasonable cost allocation.

18. Next, the M-S-R Parties 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 the M-S-R Parties, the Commission itself has stated that the large generator interconnection process that produced the AV Solar LGIA is not an open and transparent transmission planning process. The M-S-R Parties state that transmission customers cannot be certain that costs were evaluated as part of the CAISO process. They also assert that SoCal Edison's finding that the facilities should be treated as network upgrades has not been subject to open review.

19. Finally, the 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.

C. AV Solar's Comments

20. AV Solar filed comments urging the Commission to unconditionally accept the LGIA, confirm that the abandoned plant approval had already been granted by the Commission, and deny the Motions to Consolidate. In support of its request that the Commission unconditionally accept the LGIA, AV Solar raises three separate points: (1) the abandoned plant approval associated with the expansion of the Whirlwind Substation had already been approved in the Tehachapi Incentives Order in Docket No. EL07-62;¹² (2) unconditional acceptance of the LGIA is appropriate as a policy matter; and (3) to the extent that there is any doubt regarding whether the abandoned plant approval had already been granted, the Commission should apply a rebuttable presumption that the incentive is appropriate based on prior decisions of CAISO and the CPUC.¹³

¹¹ M-S-R Parties' Protest at 9.

¹² *Southern Cal. Edison Co.*, 121 FERC ¶ 61,168 (2007) (Tehachapi Incentives Order).

¹³ AV Solar requests that, if the Commission conditionally accepts the LGIA, it should issue an order granting abandoned plant approval for the network upgrades

21. With respect to the issue of whether the Commission had already granted the abandoned plant incentive in the Tehachapi Incentives Order, AV Solar cites to SoCal Edison's petition for rate incentives in that proceeding. Specifically, AV Solar points to Appendix H, which described the Whirlwind Substation and included a notation that "[a]dditional equipment will be added as wind generation develops in the region."¹⁴ According to AV Solar, such statements in the 2007 petition and accompanying exhibits made clear that facilities were being planned to accommodate additional interconnection requests. AV Solar argues that the Commission has never required applicants for rate incentives to identify with exact specificity all components of a proposed transmission project, and that there must be limits to the scope of the Commission's incentives decisions. AV Solar asserts that it is clear that elements of Whirlwind Substation expansion at issue here are "integrally related and were inherently a part of the" Tehachapi Incentives Order.¹⁵

22. Additionally, AV Solar argues that it would be appropriate as a matter of policy to unconditionally accept the LGIA. AV Solar notes that prompt, unconditional acceptance of the LGIA is necessary to enable it to meet development deadlines. AV Solar explains that it has applied for a loan guarantee from the Department of Energy (DOE) under a program funded by the American Recovery and Reinvestment Act of 2009 (ARRA), and that rules governing certain benefits related to this loan guarantee require that construction start prior to September 30, 2011. AV Solar further relates that it has informed DOE that it will finance the Project in the second quarter of 2011, and argues that effort will be simplified if the Commission's acceptance of the LGIA is unconditional and no longer subject to rehearing. AV Solar asserts that conditional acceptance of the LGIA increases uncertainty and a perceived increased risk from the perspective of DOE and the project finance community. AV Solar contends that there would be indirect undesirable consequences as well, including failure to attain ARRA goals, compromise attainment of California's environmental goals, and adversely impact PG&E, which is relying on the output of the Project to meet RPS requirements. AV Solar argues that unconditional acceptance of the LGIA would be consistent with recent decisions granting rate incentives to SoCal Edison under section 205 of the Federal Power Act (FPA) because in those cases the Commission recognized the important public policy issues associated with meeting ARRA deadlines.¹⁶

included in the LGIA by no later than March 31, 2011.

¹⁴ AV Solar Comments at 7 (quoting SoCal Edison's Petition For Declaratory Order in Docket No. EL07-62-000, Appendix H at 20).

¹⁵ *Id.* at 8.

¹⁶ *Id.* (citing *Southern Cal. Edison Co.*, 133 FERC ¶ 61,107, at P 64 (2010); *Southern Cal. Edison Co.*, 133 FERC ¶ 61,108 (2010)).

23. Next, AV Solar suggests that, should there be any doubt as to whether the expansion of the Whirlwind Substation was already covered by the abandoned plant approval granted in the Tehachapi Incentives Order, the Commission should apply Order No. 679's¹⁷ rebuttable presumption and find that granting such an incentive is appropriate in this case given certain actions by CAISO and CPUC. AV Solar cites to CAISO's *Report on Preliminary Renewable Transmission Plans*, which discussed available options to meet California's RPS goals, including adding 764 MW of solar generation projects to the Whirlwind Substation. While AV Solar acknowledges that the Commission has found that execution of interconnection agreements are not, by themselves, sufficient to establish a rebuttable presumption that CAISO has found that network upgrades are needed to enhance reliability or reduce congestion, it argues that CAISO's report should be considered as further evidence that the network upgrades identified in the LGIA are so needed. In addition, AV Solar cites to CPUC decisions, including the issuance of a Certificate of Public Convenience and Necessity for the Tehachapi project, arguing that the CPUC's decision provided SoCal Edison with flexibility in developing the Whirlwind Substation to enhance its ability to accommodate renewable generation. AV Solar states that the Commission should support the planning efforts of CAISO and the CPUC with respect to the Tehachapi project.

24. Finally, AV Solar opposes the Motions to Consolidate, arguing that consolidation was not appropriate because this proceeding, unlike others, involve a project that has been approved by CAISO and the CPUC and is under construction. Moreover, AV Solar believes that consolidating the proceedings could cause material hardship to AV Solar and the Project.

¹⁷ *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222 (2006), *order on reh'g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236, *order on reh'g*, 119 FERC ¶ 61,062 (2007). Order No. 679 established a rebuttable presumption that a transmission project satisfies the requirements for transmission rate incentives if it: (1) results from a fair and open regional planning process that considers and evaluates projects for reliability and/or congestion and is found to be acceptable by the Commission; or (2) has received construction approval from an appropriate state commission or state siting authority. Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 57-58. Order No. 679-A clarified that the authorities or processes on which the rebuttable presumption is based must consider whether the project ensures reliability or reduces the cost of delivered power by reducing congestion. Order No. 679-A, FERC Stats. & Regs. ¶ 61,236 at P 49.

D. SoCal Edison's Answer

25. In response to the M-S-R Parties' protest, SoCal Edison argues that the facilities in question are network upgrades. SoCal Edison notes that CAISO executed the AV Solar 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 the M-S-R Parties failed to provide any analysis explaining why those facilities should not be considered network upgrades.

26. 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.

27. 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.

III. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁹ the Commission will grant the late-filed motion to intervene filed by Six

¹⁸ 18 C.F.R. § 385.214 (2010).

¹⁹ *Id.* § 385.214(d) (2010).

Cities given Six Cities' interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²⁰ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SoCal Edison's answer because it provided information that assisted us in our decision-making process.

B. Commission Determination

1. AV Solar LGIA

30. As discussed below, we will conditionally accept the LGIA with AV Solar, subject to the outcome of the proceeding in Docket No. EL11-10-000 regarding SoCal Edison's request for incentives, including abandoned plant approval. According to SoCal Edison's filing, it will up-front finance the reliability and delivery network upgrades if AV Solar achieves certain development milestones set forth in Appendix A to the LGIA and SoCal Edison receives abandoned plant approval.

31. We will grant waiver 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 21, 2010.²¹ 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 AV Solar's requested in-service date of March 2012.

a. M-S-R Parties' Protest

32. With respect to the M-S-R Parties' 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 AV Solar LGIA indicates that the facilities in question are network upgrades. Specifically, we concur with SoCal Edison that the

²⁰ *Id.* § 385.213(a)(2) (2010).

²¹ *See Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, 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).

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 Upgrades²² in CAISO's open access transmission tariff, 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. In addition, we note that the estimated costs of these facilities in the AV Solar LGIA are a product of CAISO's large generator interconnection process,²³ and the prudence of these costs will be evaluated as part of a future rate case under section 205 of the FPA.

33. With respect to the M-S-R Parties' objection to SoCal Edison providing up-front funding for network upgrades, as we have previously explained, both Order No. 2003 and CAISO's *pro forma* LGIA²⁴ 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 AV Solar LGIA.

²² 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. *See* Conformed Fifth CAISO Replacement Tariff, Appendix A, Master Definitions Supplement.

²³ *See* Conformed Fifth CAISO Replacement Tariff, Appendix U.

²⁴ *See id.* § 3.4.1 ("Unless the Participating TO elects to fund the capital for Reliability and Delivery Network Upgrades, they shall be solely funded by the Interconnection Customer"); *see also* Conformed Fifth Replacement CAISO Tariff, Appendix V, § 11.3.

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

34. We are not persuaded by the M-S-R Parties' assertion that Solar Millennium's December 8, 2010 letter to the Commission in Docket No. ER11-2316 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. The Solar Millennium letter does not refer to the AV Solar LGIA, but to a separate interconnection agreement in a different proceeding. We view Solar Millennium's concern as relating to its inability to provide the up-front financing. However, regardless of which party provides up-front financing, the end result for the generator is the same. As we explained in Order No. 2003, the costs of network upgrades will ultimately not be borne by the interconnection customers. If an interconnection customer agrees to finance the costs of those facilities, it will receive that investment back in the form of transmission credits over time.²⁶ This is the mechanism set forth in CAISO's large generator interconnection procedures.²⁷ Finally, 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 AV Solar LGIA agreed. For these reasons, we conclude that Solar Millennium's December 8, 2010 letter does not provide evidence that SoCal Edison's decision to up-front fund network upgrades is directly related to the price charged for the output of the generation.

35. Finally, we conclude that our acceptance of the AV Solar 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 approval.²⁸

b. AV Solar's Comments

36. As discussed above, AV Solar urges the Commission to accept the LGIA unconditionally. However, for the reasons discussed herein, we decline to unconditionally accept the LGIA as requested.

²⁶ See, e.g., Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 696 (“[T]he Commission continues in this Final Rule its current policy, as modified below, of requiring a Transmission Provider that is not an independent entity to provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection.”) Although an independent entity, CAISO chose to conform to the policy applicable to non-independent entities.

²⁷ See, e.g., Conformed Fifth Replacement CAISO Tariff, Appendix U, § 3.4.

²⁸ See *Southern Cal. Edison Co.*, 134 FERC ¶ 61,032 (2011); *Southern Cal. Edison Co.*, 132 FERC ¶ 61,150, at P 30 (2010); *Southern Cal. Edison Co.*, 133 FERC ¶ 61,200 (2010).

37. First, AV Solar has not provided sufficient evidence from which we can conclude that the Tehachapi Incentives Order effectively granted rate incentives, including abandoned plant approval, for the Whirlwind Substation expansion that is necessary to accommodate AV Solar's interconnection to the transmission grid. Regardless of whether SoCal Edison's petition in that proceeding indicated that there could be further expansion of the Whirlwind Substation as wind generation in the region grew, that bare statement does not, without more, lead us to the conclusion that our order granting the abandoned plant approval was intended to cover the network facilities needed to interconnect the AV Solar Project. Additionally, SoCal Edison has expressly raised this issue for decision in its requested rate incentive proceeding, Docket No. EL11-10-000, but has not done so here and, as such, the parties have not had an opportunity to comment on this issue as part of this proceeding. Accordingly, the issue of whether the Tehachapi Incentives Order should apply to SoCal Edison's planned expansion of the Whirlwind Substation will be addressed in SoCal Edison's pending incentives case in Docket No. EL11-10-000.

38. Second, we are not persuaded to unconditionally accept the AV Solar LGIA on policy grounds. While we have on a limited number of occasions granted transmission rate incentives, including the abandoned plant incentive, under section 205 of the FPA for compelling public policy reasons, our approach has been to do so in the context of a specific filing seeking rate incentives, not in proceedings involving interconnection agreements.²⁹ We have not done so in connection with a specific LGIA and decline to do so here. Moreover, while AV Solar argues that ARRA deadlines are fast approaching, we conclude that under the facts of this case, those arguments are not as compelling as in other situations. As AV Solar notes, the ARRA-imposed deadline for construction is that AV Solar must commence construction by September 30, 2011. Moreover, AV Solar has informed the DOE that it will finance the Project in the second quarter of 2011. While the deadlines are indeed approaching, we do not find that they are so imminent or that the Project would be placed in such jeopardy to justify making a finding that we should unconditionally accept the LGIA on the basis of public policy alone when such a finding would be inconsistent with our prior precedent.³⁰ We are mindful of the requirements imposed by the ARRA funding process; however, this process should not convert a proceeding to consider whether to accept an interconnection agreement into a *de facto* rate incentives petition.

²⁹ See, e.g., *Southern Cal. Edison Co.*, 133 FERC ¶ 61,107 at P 64; *Southern Cal. Edison Co.*, 133 FERC ¶ 61,108.

³⁰ See, e.g., *Southern Cal. Edison Co.*, 134 FERC ¶ 61,032 (conditionally accepting LGIA under similar circumstances).

39. Third, we cannot in this proceeding make a finding that it is appropriate for us to unconditionally approve the AV Solar LGIA on the basis that the expansion of the Whirlwind Substation satisfies Order No. 679's rebuttable presumption. Again, this is not an incentives case, and we find that it is inappropriate for the Commission to make Order No. 679 findings in the context of deciding whether to accept an interconnection agreement.³¹ Whether the expansion of the Whirlwind Substation should receive the abandoned plant approval will be fully considered in the pending incentives proceeding in Docket No. EL11-10-000.

40. For these reasons, we reject AV Solar's request that we unconditionally accept the LGIA. As discussed herein, we will conditionally accept the LGIA, subject to the outcome of Docket No. EL11-10-000.

2. CAISO's Version of the AV Solar LGIA

41. Consistent with the discussion in the prior section, we conditionally accept CAISO's version of the AV Solar LGIA effective as of December 21, 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. ER11-2572-000 is uncontested.

3. Motions to Consolidate

42. We deny the Motions to Consolidate. 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 AV Solar 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.³² Finally, we note

³¹ Similarly, as AV Solar recognizes, the Commission has held that execution of an interconnection agreement by itself is not enough to establish Order No. 679's rebuttable presumption that a transmission project is necessary to reduce congestion or enhance reliability. *See, e.g., Southern Cal. Edison Co.*, 133 FERC ¶ 61,107 at P 43-45.

³² *See, e.g., Southern Cal. Edison Co.*, 133 FERC ¶ 61,019 at P 31.

that Commission precedent establishes that the Commission retains control over the scope of its proceedings.³³ 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 in Docket No. EL11-10-000, effective December 21, 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.

³³ 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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