

162 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
Robert F. Powelson, and Richard Glick.

Southern California Edison Company

Docket Nos. ER18-156-000
ER18-156-001

ORDER ACCEPTING AND SUSPENDING AMENDED
LARGE GENERATOR INTERCONNECTION AGREEMENT
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE
PROCEDURES

(Issued March 16, 2018)

1. On October 25, 2017, Southern California Edison Company (SoCal Edison) filed, pursuant to section 205 of the Federal Power Act (FPA),¹ an amended Large Generator Interconnection Agreement (Second Amended LGIA) between AltaGas Sonoran Energy Inc. (AltaGas), California Independent System Operator Corporation (CAISO), and SoCal Edison (collectively, the Parties). In this order, we accept the Second Amended LGIA for filing, suspend it for a nominal period, to become effective December 25, 2017, subject to refund, and establish hearing and settlement judge procedures.

I. Background

A. Project Q17 and CAISO's Interconnection Processes

2. On March 17, 2003, AltaGas submitted an interconnection request for a 520 megawatt (MW) natural gas-fired combined-cycle generator with a proposed commercial operation date of January 1, 2006.² Like all valid interconnection requests, it received a

¹ 16 U.S.C. § 824d (2012).

² CAISO Answer at 2; CAISO Answer, Attachment 1, Decl. of Deborah Le Vine, at P 4 (Le Vine Decl.); CAISO, Resource Interconnection Management System, *Public Generator Project Report*, <https://rimspub.caiso.com/rims5/logon.do#> (declaring the interconnection request was submitted on March 17, 2003 and received on March 18, 2003).

unique interconnection queue number: Q17 or Project Q17.³ However, because of Project Q17's significant capacity and associated network upgrades, the Parties agreed to postpone negotiating an LGIA (Initial LGIA) until after SoCal Edison received incentive rate treatment and abandoned plant recovery of certain transmission system projects that have pertinent impact on Project Q17's interconnection.⁴ Project Q17 missed its original commercial operation date,⁵ and, on May 23, 2007, CAISO received an expanded interconnection request from AltaGas, seeking to add an additional 50 MW output from the same generation units.⁶ AltaGas's expansion request was deemed complete and, on February 27, 2008, it was combined with Project Q17, bringing the total size of the facility to approximately 570 MW.

3. In July 2008, CAISO began reforming its generator interconnection procedures. Specifically, CAISO developed its current deliverability designations—Full Capacity Deliverability Status and Energy-Only.⁷ CAISO also implemented revisions to move from a serial study process to a cluster study process.⁸ In doing so, preexisting projects—known as the “serial group” and including Project Q17—were incorporated into the new procedures and were deemed to have Full Capacity Deliverability Status without being subject to additional studies or increased financial commitments.⁹ At the time, the Commission noted that the serial group had relied on previous procedures in developing

³ LeVine Decl. P 4.

⁴ *Id.* P 7.

⁵ See EDF Renewable Protest at 4 (alleging the original commercial operation date was January 1, 2006).

⁶ SoCal Edison and CAISO Joint Response to Deficiency Notice at 3 (Joint Deficiency Response).

⁷ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292, at PP 94, 108-112 (2008). Full Capacity Deliverability Status allows a resource to be eligible to provide Resource Adequacy capacity through a power purchase agreement (PPA) with a load serving entity and represents that CAISO has planned for the generator to be able to deliver its output during peak conditions. CAISO Answer at 2. Generators that ineligible or elect not to have Full Capacity Deliverability Status are designated Energy-Only and are ineligible to provide Resource Adequacy. *Id.*

⁸ *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,292 at PP 7, 17-34.

⁹ Joint Deficiency Response at 8-9.

their projects and subjecting them to new financial requirements later in the interconnection process would be unreasonably and significantly disruptive.¹⁰

4. On December 9, 2010, SoCal Edison filed with the Commission a petition seeking the transmission rate incentives mentioned above,¹¹ including those needed for Project Q17.¹² The Commission approved SoCal Edison's request on March 11, 2011.¹³ And three years later, on November 10, 2014, the Parties executed Project Q17's Initial LGIA, with a commercial operation date of January 2, 2018.¹⁴

5. Soon thereafter, CAISO filed further reforms to its interconnection procedures. Specifically, in March 2016,¹⁵ the Commission approved additional reforms in Docket No. ER16-693-000, including as relevant here, CAISO's proposed commercial viability criteria (CVC) to improve queue efficiency.¹⁶ The problem, as CAISO presented it, was that the preexisting tariff provisions failed to deter generation projects from lingering in the interconnection queue beyond seven years, if studied in a cluster process, or ten years, if studied in a serial process.¹⁷ CAISO asserted that those lingering projects undermine its ability to administer the interconnection process efficiently, and they can have significant cascading effects for newer projects that are likely to be more viable.¹⁸

6. CAISO's proposed solution was the CVC, which requires interconnection customers holding deliverability capacity to meet and maintain certain criteria before

¹⁰ *Id.* at 9 (citing *Cal. Indep. Sys. Operator Corp.*, 124 FERC ¶ 61,031 at PP 77-78).

¹¹ *Id.* at 9-10. *See also S. Cal. Edison Co.*, 134 FERC ¶ 61,181 (2011) (granting in part and denying in part SoCal Edison's petition for a declaratory order).

¹² *Supra* note 4 & accompanying text.

¹³ *S. Cal. Edison Co.*, 134 FERC ¶ 61,181.

¹⁴ Le Vine Decl. P 7.

¹⁵ *Cal. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,169 (2016).

¹⁶ *Id.* PP 10-12, 58.

¹⁷ *Id.* P 10.

¹⁸ *Id.*

extending their commercial operation dates beyond the seven- and ten-year timeframes.¹⁹ For a project to maintain its deliverability capacity allocation beyond the ten-year timeframe, CAISO proposed that the project must: (1) attest to having, at a minimum, applied for the necessary governmental permits or authorizations, and that the permitting authority has deemed such documentation as data adequate for the authority to initiate its review process; (2) have an executed, regulator-approved power purchase agreement, attest that the project will be balance-sheet financed, or otherwise receive a binding commitment of project financing; (3) demonstrate site exclusivity for 100 percent of the property (in lieu of a site exclusivity deposit); (4) execute a LGIA; and (5) be in good standing with the LGIA, such that neither the transmission owner nor CAISO has provided the interconnection customer with a notice of breach of the LGIA (where the breach has not been cured or the interconnection customer has not commenced sufficient curative actions).²⁰ CAISO stated that it would also perform an annual review to ensure that interconnection customers maintain their commercial viability.²¹ The Commission accepted CAISO's revisions.

7. On May 20, 2016, Project Q17 submitted a material modification assessment requesting that CAISO postpone the commercial operation date²² to January 2, 2021 and the in-service date²³ to March 1, 2020.²⁴ Under its recently approved tariff, CAISO

¹⁹*Id.* P 11. *See also* CAISO Fifth Replacement Electronic Tariff, app. U § 4.4.7 (CAISO Tariff) (providing the currently effective tariff language).

²⁰ If a project failed to meet the CVC but desired to remain in the queue, the project will lose its deliverability capacity allocation and become an Energy-Only project. *Cal. Indep. Sys. Operator Corp.*, 154 FERC ¶ 61,169 at PP 11, 12.

²¹ *Id.* P 12.

²² CAISO's tariff defines the Commercial Operation Date as "[t]he date on which a Generating Unit . . . commences Commercial Operation as agreed to by the applicable Participating [Transmission Owner], the CAISO, and the Interconnection Customer" CAISO Tariff, app. A.

²³ CAISO's tariff defines the In-Service Date as "[t]he date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Participating [Transmission Owner] Interconnection Facilities to obtain feedback power." *Id.*

²⁴ *See* Joint Deficiency Response at 4, 6, 10-11 (stating that the material modification assessment request sought to extend the commercial operation date); Le Vine Decl. PP 8-9 (stating that the material modification assessment requested to extend the in-service date and commercial operation date); SoCal Edison Filing, Docket

required Project Q17 to submit documentation demonstrating that it satisfied the CVC to retain its Full Capacity Deliverability Status.²⁵ CAISO asserts that it and SoCal Edison evaluated the extension request and determined that it would not have a material impact on any interconnection customer.²⁶ As such, CAISO and SoCal Edison approved the modification, amended the commercial operation date to January 2, 2021 and the in-service date to March 1, 2020,²⁷ and filed the amended LGIA (First Amended LGIA) with the Commission on January 12, 2017. On February 27, 2017, the First Amended LGIA was accepted through a delegated letter order.²⁸

8. On February 16, 2017, Project Q17 submitted another request for a material modification assessment.²⁹ This time, Project Q17 wanted to convert from a natural gas-fired combined-cycle generator to a solar photovoltaic facility and to extend the in-service date.³⁰ CAISO asserts that, although Project Q17 was not required to submit documentation demonstrating that it still satisfied the CVC as a solar facility under the CAISO Tariff,³¹ Project Q17 submitted new documentation making such a demonstration. CAISO and SoCal Edison again determined that Project Q17's proposed modification would not have a material impact on the costs or timing of any other interconnection customer's project and approved the modification without need for a restudy. The Parties executed the Second Amended LGIA on October 13, 2017,³² which serves as the basis for this filing.

No. ER17-785-000, Attachment A, Ex. A (showing in redline revisions to both the commercial operation date and the in-service date).

²⁵ Le Vine Decl. PP 8-9.

²⁶ Joint Deficiency Response at 10-11.

²⁷ *Supra* note 24.

²⁸ *S. Cal. Edison Co.*, Docket No. ER17-785-000, at 1-2 (2017) (delegated letter order).

²⁹ SoCal Edison Transmittal Letter at 2.

³⁰ Le Vine Decl. P 10; SoCal Edison Transmittal Letter at 2.

³¹ Le Vine Decl. P 10; Joint Deficiency Response at 7.

³² *Id.* at 5.

B. The Second Amended LGIA

9. On October 25, 2017, SoCal Edison filed the Second Amended LGIA. SoCal Edison states that the Second Amended LGIA reflects CAISO's and SoCal Edison's approval of Project Q17's desire to convert to a solar photovoltaic generating facility and extend the in-service date.³³ As a result, the Second Amended LGIA specifies the terms and conditions pursuant to which SoCal Edison will design, procure, construct, own, operate, and maintain the interconnection facilities, network upgrades, and distribution upgrades, and AltaGas will pay for such facilities, as applicable, and by which SoCal Edison and CAISO will provide interconnection service.³⁴ Specifically, the Second Amended LGIA reflects, among other things: (1) modifications to the AltaGas' interconnection facilities; (2) modifications to the SoCal Edison's interconnection facilities and network upgrades; (3) revised interconnection facilities cost, reliability network upgrades and one-time cost; (4) revised interconnection facilities charge; (5) revised interconnection facilities payment and reliability network upgrades payment; (6) revised security amount and income tax component of contribution; (7) revised milestones; (8) added requirements limiting devices or generating facility controls and sub-synchronous interaction analysis as a result of the generating facility technology change to solar photovoltaic; and (9) other ministerial changes.³⁵ In addition, SoCal Edison notes that the costs of the interconnection facilities and reliability network upgrades have been reduced, and the related payments and charges have been revised accordingly.³⁶

10. Lastly, SoCal Edison requests that the Commission waive its 60-day prior notice requirement and requests an effective date of October 26, 2017, one day after the instant filing.³⁷

³³ SoCal Edison Transmittal Letter at 2. Even though the Parties propose extending the in-service date, the commercial operation date remains January 2, 2021.

³⁴ *Id.*

³⁵ *Id.* at 3.

³⁶ *Id.* at 3-4.

³⁷ *Id.* at 5 (citing *Cent. Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992)).

II. Notice, Responsive Pleadings, and Staff's Deficiency Letter

11. Notice of SoCal Edison's filing was published in the *Federal Register*, 82 Fed. Reg. 50,647 (2017), with interventions and protests due on or before November 15, 2017.

12. EDF Renewable Energy, Inc. (EDF Renewable) submitted a timely notice of intervention and protest. On November 30, 2017, CAISO filed a motion to intervene out-of-time and answer to EDF Renewable's protest, arguing that it has a significant interest in this proceeding as a party to the Second Amended LGIA and the administrator of its tariff. On December 1, 2017, AltaGas filed a motion to intervene out-of-time, arguing intervention is appropriate given the early stage of the proceeding and lack of prejudice to any party.³⁸ AltaGas further states that it did not intervene earlier because it did not anticipate a party protesting the Second Amended LGIA. On December 14, 2017, EDF Renewable filed an answer to CAISO's answer.

13. On December 18, 2017, Commission Staff issued a deficiency letter requesting that the Parties provide additional information. On January 17, 2018, SoCal Edison and CAISO filed a Joint Deficiency Response. Notice of the Joint Deficiency Response was published in the *Federal Register*, 83 Fed. Reg. 3339 (2018), with comments due on or before February 7, 2018.³⁹ EDF Renewable submitted timely comments and a renewed request for hearing. On February 22, 2018, CAISO filed an answer to EDF Renewable's comments. On March 6, 2018, EDF Renewable submitted an answer to CAISO's answer.

A. EDF Renewable's Protest

14. EDF Renewable argues that the terms of the Second Amended LGIA are unjust and unreasonable, unduly discriminatory and preferential, and should be rejected by the Commission or further amended to modify Project Q17's deliverability status to Energy-Only.⁴⁰ EDF Renewable first argues that CAISO's tariff does not allow for Project Q17 to retain Full Capacity Deliverability Status when converting resource fuel-type. EDF Renewables states that when Project Q17 sought to delay its in-service date in June 2016, Project Q17 was still a natural gas-fired combined-cycle facility and it apparently demonstrated compliance with the CVC to allow an extension to 2021. EDF states that no tariff provision allows existing CVC satisfactions to be grandfathered and re-

³⁸ AltaGas Motion to Intervene Out-of-Time at 1-2.

³⁹ See Errata, Docket No. ER18-156-001 (issued Jan. 22, 2018) (correcting a *Notice Rescinding Prior Notice* and *Combined Notice of Filing #2*).

⁴⁰ EDF Renewable Protest at 1.

appropriated to a new reconstituted project that has changed fuel type, and allowing CAISO to do so would be a violation of the filed-rate doctrine.⁴¹ EDF Renewable asserts that, unless CAISO can demonstrate that Project Q17 was in full compliance with the CVC as of the date the solar photovoltaic conversion was approved, the proper course is to convert the Second Amended LGIA to Energy-Only.⁴² EDF Renewable further asserts that it is highly unlikely that Project Q17 can meet the CVC requirements at the time it sought to amend the currently effective First Amended LGIA or even now. Specifically, EDF Renewable asserts that the permitting and site exclusivity requirements of the CVC are entirely different for a solar facility as compared to a natural gas-fired combined cycle facility.

15. EDF Renewable also argues that CAISO's failure to re-verify CVC compliance for Project Q17 as a solar facility before agreeing to amend the currently effective First Amended LGIA is contrary to the reasons why it adopted the CVC requirement and to longstanding Commission precedent.⁴³ EDF Renewable explains that CAISO instituted the CVC tariff provisions to deter projects from lingering in the interconnection queue so that CAISO could administer the interconnection process more efficiently. EDF Renewable argues that CAISO's failure to follow the CVC compliance is inconsistent with the reasons for making the changes in its tariff to incorporate such requirements in the first place.

16. EDF Renewable further argues that CAISO's tariff and the currently effective First Amended LGIA provide that Project Q17 should have automatically converted to Energy-Only when Project Q17 failed to maintain CVC compliance. EDF Renewable explains that Appendices U and DD of the CAISO Tariff, and the associated Business Practice Manual, require the interconnection customer to "maintain" CVC compliance.⁴⁴ This requirement, EDF Renewable states, is also memorialized in Appendix C, section 5(f) of Project Q17's currently effective First Amended LGIA for a natural gas-fired facility. EDF Renewable argues that "maintain" is a verb meaning "to keep in an existing state," and thus, Project Q17 must continue to meet the criteria of the CVC or, if it fails to do so, be immediately relegated to Energy-Only.⁴⁵ EDF Renewable does not believe that

⁴¹ *Id.* at 8.

⁴² *Id.*

⁴³ *Id.* at 9, 17.

⁴⁴ *Id.* at 14.

⁴⁵ *Id.*

waiting for the annual review appropriate here because Project Q17 is now a significantly different project, having reinvented itself as a solar facility.

17. EDF Renewable then argues that CAISO's attempt to shoe-horn the previous CVC demonstration to this Second Amended LGIA is unjust and unreasonable because a solar facility is significantly different than a natural gas-fired combined-cycle generator. Specifically, EDF Renewable argues that Project Q17 will unlikely be able to meet the permitting and site exclusivity requirements as a solar facility,⁴⁶ and that Project Q17 is taking advantage of its prior CVC determination as a natural gas-fired facility to now reinvent itself as a solar facility.⁴⁷ EDF Renewable asserts that these provisions are indicia of a proposed project is not ready to proceed, but rather is scrambling to be afforded enough time to develop its project.

18. EDF Renewable further argues that CAISO's continued grant of Full Capacity Deliverability Status has a direct impact on lower-queued projects and CAISO ratepayers and adds uncertainty. Specifically, EDF Renewable cites to its two projects (Project Q365, the Almasol Project, and Project Q643AE, the Desert Harvest Project) as two examples of projects that have been adversely affected by Project Q17's continuation in CAISO's queue with Full Capacity Deliverability Status.⁴⁸ EDF Renewable states that the Commission has issued numerous orders in the context of extensions to the commercial operation date or missed milestones and has explained that, in such cases, the Commission must assess whether the continuance "would harm generators lower in the interconnection queue and any uncertainty that speculative projects may present to other projects in the queue."⁴⁹

B. CAISO's Answer

19. CAISO argues that EDF Renewable's protest should be rejected for failing to provide any evidentiary support.⁵⁰ CAISO asserts that EDF Renewable fails to attach any

⁴⁶ *Id.* at 19-20.

⁴⁷ *Id.* at 24-25.

⁴⁸ *Id.* at 20-21.

⁴⁹ *Id.* at 21 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 147 FERC ¶ 61,198 (2014)).

⁵⁰ CAISO Answer at 1, 6-7 (citing *Cities of Anaheim, Azusa, Banning, Colton, & Riverside, California v. Cal. Indep. Sys. Operator Corp.*, 95 FERC ¶ 61,197 (2001); *Eric S. Morris v. Sw. Power Pool, Inc.*, 149 FERC ¶ 61,207 (2014)).

exhibits, declarations, or even reference public documents that supports its positions, instead relying on vague claims and speculation. CAISO claims that such information cannot constitute evidentiary support under the Commission rules and CAISO, SoCal Edison, and Project Q17 cannot be imposed with the burden of proof.⁵¹

20. CAISO then argues that EDF Renewable misunderstands the material modification analysis. CAISO notes that EDF Renewable is not a party to the Second Amended LGIA and that it can only benefit from this proceeding if Project Q17 withdraws or is converted to Energy-Only so as to free up capacity and/or make later-queued projects assigned network upgrades unnecessary.⁵² However, CAISO explains that this is not to say that EDF Renewable is correct in arguing that Project Q17 retaining deliverability capacity harms EDF Renewable. Instead, CAISO states that when it considers a material impact based on a proposed modification it looks to increased costs and development timelines for later-queued projects; it does not evaluate whether the modification will decrease other projects' costs or accelerate their development timelines.⁵³ With this understanding in mind, CAISO asserts that EDF Renewable's projects will not experience increased costs or delays due to Project Q17's modification.

21. With regard to the merits of EDF Renewable's protests, CAISO states that Project Q17 met the CVC at the time it converted to a solar photovoltaic generation facility even though it was not required to do so.⁵⁴ CAISO argues that EDF both misinterprets and overemphasizes the phrase: "Interconnection Customers will be converted to Energy-Only Deliverability Status if they exceed ten (10) years from the date the Interconnection Request is received by the CAISO, unless the Interconnection Customer demonstrates that it is commercially viable."⁵⁵ CAISO explains that, when taken in the full context of the tariff, CAISO never intended for that sentence to apply as broadly as EDF Renewable argues. CAISO states that its tariff provides two circumstances that trigger evaluation of an interconnection customer's compliance with the CVC: (1) requests to extend an in-service date; and (2) CAISO's annual verification for customers that are subject to the commercial viability criteria. CAISO states that it never intended to reevaluate the CVC for every modification an interconnection customer may make while in queue.⁵⁶ CAISO

⁵¹ *Id.* at 7.

⁵² *Id.*

⁵³ *Id.* at 8.

⁵⁴ *Id.* at 9-10.

⁵⁵ *Id.* at 11.

⁵⁶ *Id.* at 12.

then explains why it is imprudent to reevaluate the CVC for every modification, stating that it would be burdensome to require developers to obtain the necessary government permits and secure financing and land before CAISO has even approved the change in technology. Furthermore, CAISO states that many or most modifications have little impact on a project's viability or its in-service date. Moreover, CAISO explains, there is no risk that a project will neglect its need to comply with the CVC after its technology change has been approved because of its annual review process.

C. EDF Renewable's Answer

22. EDF Renewable filed an answer to CAISO's answer arguing that the Parties to the Second Amended LGIA have the burden to establish that their filing is just and reasonable, not EDF Renewable. EDF Renewable notes that it is a protestor and CAISO cites to Commission proceedings involving complaints under section 206 of the FPA.⁵⁷

23. EDF Renewable further argues that CAISO's focus on the material modification assessment process is irrelevant to the CVC analysis. EDF Renewable states that when Project Q17 submitted a material modification assessment in 2016 to obtain an extension to the commercial operation date for its natural gas-fired combined cycle facility, CAISO required Project Q17 to demonstrate that it met the CVC in the CAISO Tariff. However, EDF Renewable states that CAISO did not take the same approach when Project Q17 submitted a subsequent material modification request to reconstitute itself as a solar facility.⁵⁸

24. EDF Renewable also contends that CAISO provides differing stories as to what happened when Project Q17 sought a material modification assessment to convert to a solar facility. Specifically, EDF Renewable contends that it is unclear whether: (1) Project Q17 satisfied the CVC as a natural gas-fired combined cycle facility or a solar facility; (2) whether Project Q17 will demonstrate that it meets CVC compliance as a solar facility when CAISO conducts its annual review; or (3) whether Project Q17 demonstrated CVC compliance as a solar facility when it submitted its material modification assessment request in February 2017.⁵⁹ EDF Renewable is also concerned

⁵⁷ EDF Renewable Answer at 3-7.

⁵⁸ *Id.* at 7.

⁵⁹ *Id.* at 17.

that CAISO has not submitted any documentation to demonstrate that Project Q17 satisfies the CVC.⁶⁰

25. Lastly, EDF Renewable argues that the annual review process is irrelevant to this situation because Project Q17 was required to maintain compliance.⁶¹

D. Joint Response to Staff's Deficiency Letter

26. CAISO and SoCal Edison filed a joint response to Staff's deficiency letter explaining in greater detail: (1) Project Q17's development timeline;⁶² (2) Project Q17's demonstration to comply with the CVC; and (3) how CAISO has applied its Tariff to Project Q17 over this time. First, CAISO and SoCal Edison provided a detailed timeline of the interconnection study activities, most of which is detailed above.⁶³

27. With regard to the Project Q17's satisfaction of the CVC, CAISO confirms that Project Q17 complied with the annual review process required under section 4.4.7.1 of Appendix U of the CAISO Tariff.⁶⁴ CAISO explains that it provides all interconnection customers subject to the CVC with detailed guidelines on submitting documentation and affidavits affirming compliance with each criterion. CAISO states that the CVC were designed to mirror the Transmission Plan Deliverability (TP Deliverability) retention criteria and so, interconnection customers frequently use the TP Deliverability retention affidavit as a template for their CVC compliance. However, neither CAISO nor SoCal Edison thought it was prudent to provide the actual documentation because competitors would be able to review them and they contain confidential and commercially sensitive information.⁶⁵

28. The parties explain that Project Q17 first satisfied the CVC in May 2016 as a natural gas-fired combined-cycle facility when it requested to extend its commercial operation date from July 2019 to January 2021. For site exclusivity, the parties state that Project Q17 provided legal documentation demonstrating control of real property

⁶⁰ *Id.* at 16.

⁶¹ *Id.* at 17-20.

⁶² The timeline is summarized above. *Supra* § I.A.

⁶³ *See id.*

⁶⁴ Joint Deficiency Response at 5.

⁶⁵ *Id.* at 6.

sufficient to construct a combined-cycle generator. For permitting, the parties state that Project Q17 provided CAISO staff with documentation demonstrating that it had applied for the necessary permits from the California Energy Commission.⁶⁶ Project Q17 did not provide documentation regarding financing, instead choosing to use the one-year safe harbor provision for interconnection customers that are in compliance with all other commercial viability criteria. One year later, the parties explain, Project Q17 provided an executed affidavit stating that it wished to continue as balance-sheet financed.

29. CAISO then states that Project Q17 provided documentation demonstrating that it satisfied the CVC as a solar project on February 16, 2017 when it requested a material modification assessment to convert to a solar project.⁶⁷ The parties state that this documentation included new legal documents demonstrating real property rights expressly stating the right to construct and operate the proposed solar facility, and documentation from the relevant permitting authority demonstrating that Project Q17 was authorized to construct and operate the proposed solar facility.⁶⁸ CAISO reiterates that it does not believe such documentation was necessary at the time under its tariff, but this information was provided with the material modification assessment request. CAISO explains that this documentation was again provided on November 30, 2017 when Project Q17 was required to satisfy the CVC as part of the annual review.⁶⁹ CAISO states that Project Q17 provided a new affidavit at this time, stating that it will proceed with balance-sheet financing, and it will continue to rely on the permitting and site exclusivity documents from February 16, 2017. The parties then explain how CAISO's tariff apply to Project Q17 since it entered the queue in March 2003.⁷⁰

E. EDF Renewable's Comments

30. In its comments on CAISO's and SoCal Edison's response to the deficiency letter, EDF Renewable argues that CAISO clearly violated its tariff and the FPA. Accordingly, EDF Renewable renews its request for a hearing to resolve the issues of material fact.⁷¹ EDF Renewable first argues that CAISO's unsubstantiated claim that Project Q17

⁶⁶ *Id.*

⁶⁷ *Id.* at 7.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See supra* § I.A.

⁷¹ EDF Renewable Comments at 1-2.

satisfied the CVC as a solar facility in February 2017 is highly suspect.⁷² Specifically, EDF Renewable reiterates arguments that the land needed for a solar facility is much greater than the land needed for a natural gas-fired combined-cycle facility.

31. EDF Renewable further argues that Project Q17 is abusing CAISO's interconnection processes and is gaming the CVC system.⁷³ EDF Renewable also argues that CAISO's answer reveals that it improperly granted extensions to Project Q17's commercial operation date in the past because the delays that led to those extensions are not of the type permitted under section 3.5.1 of Appendix U of the CAISO Tariff. Specifically, EDF Renewable argues that CAISO's tariff only allows for extensions when the delays relate to the "engineering, permitting and construction of the new Large Generating Facility"⁷⁴ Because the delays that led to the previously granted extensions of the commercial operation date were not due to the engineering, permitting, or construction of Project Q17, EDF Renewable asserts that CAISO should not have granted such requests. EDF Renewable further asserts that, in granting these requests, CAISO has granted an improper preference to Project Q17, which, in turn has caused harm to other generation developers and competitors in the CAISO market.⁷⁵

32. Lastly, EDF Renewable argues that if the Commission does not find the proposed Second Amended LGIA and retention of Full Capacity Deliverability Status is unjust and unreasonable from a policy and tariff perspective, then the Commission must provide for an opportunity to review the CVC documentation.⁷⁶

F. CAISO's Answer

33. CAISO responds to EDF Renewable's comments by reiterating its arguments that EDF Renewable fails to offer any evidence to support its allegations and misinterprets CAISO's tariff. Specifically, CAISO argues that the Commission should disregard EDF Renewable's arguments relating site exclusivity and permitting as speculative and unsupported.⁷⁷ CAISO argues that EDF Renewable's allegations regarding Project Q17's

⁷² *Id.* at 2-8.

⁷³ *Id.* at 9-13.

⁷⁴ *Id.* at 13-15 (quoting CAISO Tariff, app. U§ 3.5.1).

⁷⁵ *Id.* at 20-21.

⁷⁶ *Id.* at 22-23.

⁷⁷ CAISO Answer to EDF Renewable's Comments at 2-5.

potential compliance are based on several false premises, including alleged inconsistencies in CAISO's story and general statements of "prudent developer behavior."

34. CAISO then argues that EDF Renewable misrepresents Project Q17's prior extensions requests and the bases for their approval.⁷⁸ Specifically, CAISO argues that EDF Renewable misinterprets section 3.5.1 of Appendix U in that this section provides more discretion than EDF Renewable claims. Lastly, CAISO asserts that the Commission has enough documentation to decide the case based on the pleadings to date and need not set the matter for hearing.⁷⁹

G. EDF Renewable Answer

35. In its answer, EDF Renewable reiterates prior arguments, responds to certain factual information presented by CAISO, and states that the record is full of contradictory and unsubstantiated claims. EDF Renewable concludes that, under these circumstances, the Commission must either issue another deficiency letter or set the matter for hearing and settlement judge procedures.⁸⁰

III. Discussion

A. Procedural Matters

36. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2017), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. In addition, pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2017), we grant CAISO's and AltaGas's unopposed motions to intervene out-of-time, given their interest in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

37. Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2017), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept all answers filed by the parties because they assisted us in our decision-making process.

⁷⁸ *Id.* at 5-9.

⁷⁹ *Id.* at 9-11.

⁸⁰ EDF Renewable Answer to CAISO's Answer at 15.

B. Substantive Matters

38. Our preliminary analysis indicates that the Second Amended LGIA has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. We find that the filing raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. We also deny SoCal Edison's request for a waiver of the prior notice requirement, and accept the Second Amended LGIA for filing effective December 25, 2017, the 61st day from the date of filing.⁸¹ Therefore, we accept the Second Amended LGIA for filing, suspend it for a nominal period, effective December 25, 2017, subject to refund, and establish hearing and settlement judge procedures.

39. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁸² If the parties desire, they may, by mutual agreement, request a specific judge as the Settlement Judge in the proceeding. The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability.⁸³ The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The Second Amended LGIA between AltaGas, SoCal Edison, and CAISO is hereby accepted for filing, suspended for a nominal period to become effective December 25, 2017, subject to refund, as discussed in the body of this order.

⁸¹ See *ISO New Eng. Inc.*, 162 FERC ¶ 61,058, at P 67 (2018) (denying waiver of 60-day prior notice requirement for "fail[ure] to provide good cause").

⁸² 18 C.F.R. § 385.603 (2017).

⁸³ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

(B) The Parties' request for waiver of the notice period is hereby denied, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. ER18-156-000 concerning the Second Amended LGIA, as discussed in the body of this order. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (D) and (E) below.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2017), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(E) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(F) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and

to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.