

approval of the abandoned plant provisions in the EITP Incentives Order, if SCE were also permitted to include a backstop provision for abandoned plant cost recovery in the LGIA, then SCE’s “risks associated with the up-front financing will be totally mitigated.”³ Therefore, the Commission conditioned approval of the LGIA upon SCE submitting a compliance filing that (1) modifies the termination cost provision of the LGIA to eliminate any cost recovery associated with abandoned plant regarding Network Upgrades and Distribution Upgrades, and (2) identifies and justifies other portions of the LGIA that differ from the CAISO’s *pro forma* LGIA.⁴

As discussed below, the LGIA termination provision addresses the treatment of abandoned plant costs under different circumstances than the EITP Incentives Order, has been agreed to by the Interconnection Customer, and exists to facilitate the EITP’s progress prior to SCE obtaining final approval. In the LGIA Order, the Commission erred by failing to recognize that SCE conditionally agreed to upfront finance the EITP and by treating SCE’s petition for incentives as an unconditional commitment. In that circumstance, it is appropriate to default to the standard customer financing rules established by the Commission in Order No. 2003. It was likewise error for the Commission to force SCE to forego those regulatory protections, regardless of whether the conditions in the EITP incentive petition have been met. SCE requests clarification or, in the alternative, rehearing finding that the LGIA is consistent with the EITP Incentives Order and approving the LGIA as filed.

³ LGIA Order at P 25.

⁴ *Id.* at P 26. SCE does not seek clarification or rehearing on the second part of the condition requiring a compliance filing that identifies and justifies other portions of the LGIA that differ from the CAISO’s *pro forma* LGIA.

I.

SPECIFICATION OF ERRORS/STATEMENT OF ISSUES

The following concise Specification of Errors in the LGIA Order and Statement of Issues for consideration on rehearing is provided in accordance with Rule 713(c)(1) of the Commission's Rules of Practice and Procedure:

- The Commission incorrectly interpreted the Termination Provision in Appendix A, section 12(a)(vii) to mean that SCE would recover 50 percent of termination charges from the transmission customers and 50 percent of termination charges from the Interconnection Customer if SCE did not receive Abandoned Plant Approval.
- By ruling that the LGIA Order is inconsistent with the EITP Incentives Order, the Commission incorrectly applied Order 679⁵ and Section 219 of the Federal Power Act.⁶

II.

REQUEST FOR CLARIFICATION OR IN THE ALTERNATIVE

REQUEST FOR REHEARING

A. The Commission Incorrectly Interpreted the LGIA's Termination Provision

As SCE stated in its Petition for Declaratory Order in Docket EL10-1-000,⁷ and its filing letter that accompanied the LGIA, SCE has agreed to finance the cost of the

⁵ See *Promoting Transmission Investment Through Pricing Reform*, 2006-2007 FERC Stats. & Regs ¶ 31,222 (2006) ("Order 679").

⁶ 16 U.S.C. § 824s.

⁷ Petition of Southern California Edison for Declaratory Order, Docket No. EL10-1-000 ("Incentives Petition").

Network Upgrades needed to interconnect the DPT 1 Project only on the condition that SCE receives Commission approval for 100 percent recovery of the cost of abandonment if the EITP is abandoned for reasons outside SCE’s control.⁸ This conditional upfront financing offer is made clear in the LGIA. SCE’s offer to finance these upgrades is consistent with the language of Order 679, which specifies that existing cost-based recovery mechanisms have been insufficient to stimulate investment in infrastructure and that giving an entity assurance of cost recovery would incentivize the development of transmission infrastructure.⁹ The language in the LGIA describing SCE’s commitment to finance the Network Upgrades conditioned upon Abandoned Plant Approval recognized that final approval had not yet been obtained by SCE and that, simultaneously, the generator was requesting to move its project forward to meet its proposed online date and financing requirements for the generation project.

Under the *pro forma* LGIA, the generator is responsible for upfront financing Network Upgrades.¹⁰ In that situation, the cost of abandonment is borne entirely by the generator rather than transmission ratepayers or utility shareholders. SCE has offered to finance the Network Upgrades required for the DPT1 Project only if SCE receives cost recovery assurance for abandonment costs if the Project must be abandoned for reasons outside of SCE’s control. It is SCE’s belief that this upfront financing offer will increase generation project viability for the renewable generator(s) connecting to the EITP and will be an important step in helping California meet its renewables goals.

⁸ EITP Incentives Order at P 58 (acknowledging that “SoCal Edison argues that its ability to provide upfront financing for the EITP is dependent upon the Commission’s assurance to SoCal Edison that it will be able to recover abandonment costs of the EITP.”).

⁹ Order 679 at P 10.

¹⁰ Conformed Fourth Replacement CAISO Tariff, Appendix U, § 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* Appendix V, § 11.3.

Appendix A, section 12(a)(vii) of the LGIA provides that the Interconnection Customer will pay termination charges pursuant to Article 2.4 of the LGIA in the event that the LGIA is terminated (“Termination Provision”). Importantly, the generator would not be responsible for such charges associated with Network Upgrades to the extent that the costs associated with termination of the LGIA are subject to Abandoned Plant Approval. Thus, the parties’ intent regarding the Termination Provision is that if SCE does not obtain final approval of the abandoned plant incentive, SCE would not be willing to finance the costs of Network Upgrades. As described below, the agreement was structured such that in the event that SCE did not obtain such final approval, SCE would not attempt to recover any termination or abandonment charges from transmission ratepayers. Rather, these costs would be borne entirely by the Interconnection Customer, consistent with the standard cost responsibility requirements of the *pro forma* CAISO LGIA.

In Paragraph 24 of the LGIA Order, the Commission incorrectly states that the Termination Provision would allow SCE to obtain full cost recovery from its transmission customers through the Commission’s current 50 percent policy and allocate the remaining 50 percent to the interconnection customer. However, SCE is either going to finance the Project upon full approval of the abandoned plant incentive or, if it does not meet the conditions set forth in the EITP Incentives Order, decline to upfront finance this Project. The Commission’s apparent misunderstanding of the intent of the Termination Provision leads to the incorrect conclusion that it is inconsistent with the EITP Incentives Order. In fact, the EITP Incentives Order recognized that SCE’s “ability to provide upfront financing for the EITP is dependent upon the Commission’s assurance

to SoCal Edison that it will be able to recover abandonment costs of the EITP.”¹¹ Thus, the *pro forma* Termination Provision assignment of the risk of abandonment to the generator until such time as SCE receives final approval of 100 percent abandonment costs is entirely consistent with the EITP Incentives Order.¹² It is that assignment of risk that creates the very “chicken-and-egg” problem described in the Incentive Petition. If the generators are required to bear these risks and the costs of Network Upgrades, it increases the risk to SCE that the generation projects (and hence the EITP) will not be built at all.

Alternatively, SCE could mitigate the risk of abandonment pending final resolution of the abandoned plant incentive issue if SCE were to cease any further activity on the EITP until SCE obtains final approval of its Incentives Petition. However, the developer of the DPT1 Project stated that it needed SCE to move forward with licensing, engineering and early procurement now, before SCE has final Commission approval of the Incentives Petition. Any delay in the Project schedule would lead to a delay in the online date of the generating facility and might impede the generator’s ability to obtain American Recovery and Reinvestment Act stimulus funding.

In the absence of a Termination Provision allocating responsibility of abandonment to the generator, SCE would not be willing to incur the expense, in order to meet the generator’s request to SCE to accelerate licensing, engineering and procurement activities prior to receiving final approval of the 100 percent abandoned plant incentive.

¹¹ EITP Incentives Order at P 58.

¹² Indeed, the LGIA Order presumes the novel scenario where SCE agrees to deviate from the standard risk allocation under the *pro forma* LGIA Termination Provision in order to accept more risk only for the case where the nonstandard abandoned plant recovery language is not approved and made effective. SCE is not aware that the Commission has ever required an applicant to abandon the *pro forma* LGIA Termination Provision in order to qualify for abandoned plant recovery rate incentives.

Thus, the generator fully expects to bear the risk of abandonment costs until such time as the condition precedent to SCE financing the Project becomes effective (i.e., upon obtaining final approval of the 100 percent abandoned plant incentive). Further, even if SCE obtains final approval of the abandoned plant incentive, this would only apply to Network Upgrades. Thus, the generator would not be absolved of its obligation to bear the termination charges for the Participating TO's Interconnection Facilities, which makes the *pro forma* Termination Provision essential to the LGIA regardless of final outcome on the EITP Incentives Order. Accordingly, the Termination Provision in the LGIA, as written, is entirely appropriate and consistent with the parties' intent and the Commission's EITP Incentives Order.

SCE requests the Commission confirm the Termination Provision as consistent with the EITP Incentives Order and find that that it properly allocates risk of abandonment costs, whereby until and unless SCE receives a final order approving its EITP Incentives Petition, the risk will be borne entirely by the Interconnection Customer and after final approval of the Incentives Petition, these risks would be allocated according to the EITP Incentives Order.

B. It is Appropriate for Solar Partners I to Bear the Cost of Termination Until SCE Receives Final Commission Approval of its Incentives Petition

As noted above, under the *pro forma* LGIA, the generator is responsible for upfront financing the cost of Network Upgrades.¹³ Thus, at the outset, it is important to note that for such interconnection projects, the utility does not have the risk of

¹³ Conformed Fourth Replacement CAISO Tariff, Appendix U, § 3.4.1.

abandonment, as that risk is borne by the generation developer. In agreeing to upfront finance the cost of the EITP, SCE has agreed to forego other opportunities for which to use its capital and has agreed to bear some degree of risk, e.g., prudence and risk factors that are within the control of utility management. But SCE has not agreed to assume “the significant risk associated with factors beyond [its] control, such as generation developers’ decisions to develop or terminate the development of potential resources or difficulty obtaining state or local siting approvals.”¹⁴ Under no circumstances – either prior to or after final resolution of the incentives issue – can or should SCE’s shareholders take on the risk to be responsible for the costs of abandonment due to the generation failing to materialize or other similar factors outside of SCE’s control. Yet, the LGIA Order seems to suggest that taking on a risk of abandoned plant was part of the basis for the conditional abandoned plant incentive.¹⁵ This is circular logic which defies reasoning and is not consistent with the EITP Incentives Order or Order 679.

In Order 679, the Commission clarified that receiving a cost of abandonment incentive does not mean that a transmission project should not also receive other incentives.¹⁶ The Commission stated clearly that the risk which the abandonment incentive is protecting is that of the utility’s risk of abandonment beyond the utility’s control, and recognized that an abandoned plant incentive is a way to “reduce” the risk associated with higher risk projects.¹⁷ Thus, Order 679 recognizes that allowing recovery of 100 percent of prudently-incurred costs of facilities abandoned due to factors beyond the control of the utility would reduce – but not eliminate – the risk associated with

¹⁴ Order 679 at P 155.

¹⁵ LGIA Order at P 25.

¹⁶ Order 679 at P 167.

¹⁷ *Id.* at P 155.

transmission development. The risk that the renewable generation project fails to materialize is a risk that is outside of SCE's control. However, there are also other Project risks, including the capital investment and licensing risks, which made the Commission recognize that the package of incentives SCE conditionally received was appropriate.¹⁸ SCE is unwilling to cover the financing costs or termination charges until it has final approval of the Incentives Petition. Therefore, it is entirely reasonable for SCE to obligate the Interconnection Customer to bear the risks of abandonment pending the final order.

As SCE stated in its Incentives Petition, there are many risks associated with the EITP Project: requiring approvals from California and Nevada regulators as well as Federal agencies; significant capital outlay; and the risk that the renewable generation never materializes. All of these risks were recognized by the Commission in the EITP Incentives Order¹⁹ and they are not eliminated by requiring the generator to bear the risk of abandonment of the Project before SCE receives final Commission approval of its Incentives Petition. Therefore, the terms of the LGIA are consistent with the EITP Incentives Order and the package of incentives that the Commission adopted in that order.

In furtherance of SCE's contentions herein, the Commission is reminded that its proposal to allow 100 percent abandoned plant in Order 679 was an extension of the Commission's decision to allow SCE to recover all prudently-incurred costs related to certain transmission facilities for the Tehachapi Project if those facilities were later cancelled or abandoned.²⁰ The Commission noted that for the Tehachapi Project, the

¹⁸ EITP Incentives Order at PP 67-68, 79-84.

¹⁹ *Id.* at P 68.

²⁰ Order 679 at P 156.

company's management did not control the decision to develop or cancel the wind farm generation project and that the company's shareholders did not share in the earnings associated with the generation project.²¹ The Commission further determined that the company might be at a higher risk in developing the project because of factors beyond its control.²² The Commission further noted that SCE was not a wind farm developer and therefore would not directly benefit from the facilities.²³ Thus, the Commission concluded that SCE should not shoulder the abandonment risk of that project.²⁴ This same reasoning applies to the basis for SCE's requirement that it must have final approval of the 100 percent abandoned plant incentive prior to financing the EITP Network Upgrades; until such time, it is appropriate for the Interconnection Customer (i.e., generation developer) to bear the risk of abandonment in the interim.

III.

THE COMMISSION SHOULD ACT EXPEDITIOUSLY ON THIS REQUEST

As explained above and in SCE's Incentives Petition, unconditional approval of the incentives, in particular the abandoned plant incentive, is a critical component to the completion of the 1,400 MW of planned solar generation in the Ivanpah Dry Lake area. Such approval is required as soon as possible due to the financing requirements of the planned generation projects. The EITP is needed initially to interconnect three large solar generation projects that will deliver over 400 MW of solar-powered electricity to two different utilities beginning in 2012, and will provide further transmission capability for

²¹ Order 679 at P 156. (citing to *SCE*, 112 FERC ¶ 61,014, *reh'g denied*, 113 FERC ¶ 61,143 at P 9-15).

²² *Id.*

²³ *Id.*

²⁴ *Id.*

additional renewable generation resources in furtherance of both California's important renewable energy goals and the goals of the American Reinvestment and Recovery Act of 2009. Indeed, the generator constructing the first three solar generation projects was recently awarded a loan guarantee from the Department of Energy under the ARRA.

As an ARRA funding recipient, the generator has specific deadlines for actions to maintain its eligibility for the funding. Until such time as this issue on the present LGIA is resolved – as well as a second and third LGIA which are anticipated to be signed imminently and which will form the basis of demonstrating satisfaction of the condition of approval of the EITP by the CAISO – an unsatisfied contingency currently exists that has the potential to significantly affect the Interconnection Customer's ability to perfect the generation project financing needed prior to the commencement of construction activities. The uncertainty caused by the Commission's LGIA Order could delay the execution of the second and third LGIAs with the Interconnection Customer. If FERC does not act expeditiously to approve the LGIA without the required modification concerning the Termination Provision, the lack of clarity on the contingent financing liability has the significant potential to cloud the Interconnection Customer's ability to perfect its project financing, and thus to meet its obligations to commence construction under the terms of ARRA deadlines.

IV.

CONCLUSION

For the foregoing reasons, SCE respectfully requests that the Commission confirm that the LGIA is consistent with the EITP Incentives Order and that SCE is not required to modify the language of the LGIA.

Respectfully submitted,

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Dated: May 13, 2010

CERTIFICATE OF SERVICE

I hereby certify that in accordance with Rule 2010 of the Commission's Rules of Practice and Procedure, I hereby certify that I have, this day, served a copy of the foregoing document, on all persons designated on the official service list compiled by the Secretary in this proceeding.

Dated at Rosemead, California, this 13th day of May, 2010.

/s/ Rodger Torres

Rodger Torres