EXHIBIT 400

STATE OF CALIFORNIA
California Energy Commission

In the Matter of: The Application for Certification for the **CALICO SOLAR PROJECT** (formerly SES Solar One)	Docket No. 08-AFC-13

OPENING TESTIMONY OF DAVID MARCUS ON BEHALF OF CALIFORNIA UNIONS FOR RELIABLE ENERGY ON TRANSMISSION FOR THE CALICO SOLAR PROJECT

July 23, 2010

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TESTIMONY OF DAVID MARCUS
ON BEHALF OF THE
CALIFORNIA UNIONS FOR RELIABLE ENERGY
ON THE CALICO SOLAR ENERGY PROJECT

July 16, 2010

I. Introduction

I have been working for the California Unions for Reliable Energy ("CURE") as a consultant reviewing the Application for the Calico Solar Energy Project ("Calico" or "Project") since the data adequacy phase. I have reviewed the Draft Environmental Impact Statement / Staff Assessment (DEIS/SA) issued by the CEC staff on March 30, 2010, and a July 15, 2010 advance copy of section D.5 of the Supplemental Staff Assessment (SSA).[1]

My testimony is based on the activities described above and the knowledge and experience I have acquired during more than 25 years of working as an energy consultant, including a dozen years working on power plant siting cases on behalf of CURE. A summary of my education and experience is attached to this testimony.

II. Summary of Conclusions

A number of transmission upgrades will be needed for the Calico Project to operate. Many of these upgrades were not adequately identified in the DEIS/SA or SSA. Notably, environmental impacts from these upgrades were not identified, analyzed or mitigated. Additionally, transmission upgrades that were identified were not properly analyzed or mitigated. The DEIS/SA overtly concludes that some impacts of upgrades needed for the Calico Project to operate will be analyzed in a future EIR/EIS. Finally, standard conditions of approval for California power plant projects were omitted from the DEIS/SA and SSA.

The DEIS/SA and/or SSA should be revised to include a complete discussion of the impacts and mitigation associated with all transmission upgrades required for Calico operation and should analyze the economic impacts associated with the LGIA needed for the Project and subsequently rejected by FERC. The

[1] Circulated as an attachment to an e-mail from Christopher Meyer of the CEC, sent at 9:18 pm on 7/15/2010.

advance copy of Section D.5 of the SSA provided on July 15, 2010 was not substantively different from the corresponding section of the DEIS/SA.

III. Issues

a. DEIS/SA and SSA Fail to Analyze Potential Pre Project Upgrade Requirements

To ensure grid reliability once Calico is constructed, the DEIS/SA and SSA identify a number of transmission upgrades that would need to be constructed prior to the operation of the Project. Six transmission upgrade projects are identified that would need environmental review prior to Calico operations that were not studied in the DEIS/SA or SSA:

1. Upgrade of the Inyo 115kV Phase-Shift transformer;
2. Inyokern substation conversion to 230kV;
3. New Lugo-Kramer Transmission Line project;
4. Construction of a third Lugo 500/230kV Transformer Bank;
5. Mountain Pass-El Dorado 115kV line reconductor; and
6. El Dorado 230/115kV transformer Bank.[2]

The DEIS/SA and SSA acknowledge that it is reasonably foreseeable that some or all of these transmission projects may become part of the Calico Solar Project if higher-queued projects withdraw their applications.[3] However, the DEIS/SA and SSA do not include any environmental analysis for any of these Projects. Further, the DEIS/SA and SSA do not provide any analysis of the likelihood of these other interconnection Projects being approved, nor identify where any environmental analysis of these projects has been performed. These six transmission upgrade Projects are reasonably foreseeable interdependent parts of this Project, without which the Calico Project could not operate.

b. 300 MVar of Dynamic Reactive Support Facilities Are Not Analyzed in the DEIS/SA or SSA

The DEIS/SA and SSA conclude that "the project will need to provide 300 MVAR of dynamic reactive support."[4] However, the DEIS/SA and SSA do not identify where these dynamic reactive support projects would be located, or provide any description of them, or describe what the environmental impacts of

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[2] DEIS, p. D.5-7; SSA, p. D.5-7.
[3] *Id*.
[4] DEIS/SA, p. D.5-9; SSA, p. D.5-9.

these projects would be. The DEIS/SA and SSA must provide a description of these projects, which are necessary for the Calico Project to function.

c. 350 MVar of [Static] Reactive Support Facilities Are Not Analyzed in the DEIS or SSA

The DEIS/SA and SSA suggest that the Project will need 350 MVar of Reactive Support Facilities.[5] I can only assume that the DEIS/SA and SSA intended this to mean "Static" Reactive Support Facilities since the DEIS/SA and SSA separately identified a need for 300 MVar of "Dynamic" Reactive Support Facilities.[6] Dynamic and static reactive support are not the same, and are supplied by different kinds of devices. Although not clearly described, the DEIS/SA and SSA appear to identify some of the facilities to supply the Static Reactive Support as part of the Project. The DEIS/SA and SSA identifies six 45 MVar capacitor banks onsite, which adds up to 270 MVar, not 350 MVar.[7] Therefore, the DEIS/SA and SSA should identify where the facilities to provide the remaining 80 MVar of Static Reactive Support will be located and any environmental impacts that will result from the construction and/or operation of these facilities for the Project.

d. Downstream Transmission Upgrades Not Studied in DEIS/SA and SSA

The DEIS/SA and SSA concludes that environmental impacts of downstream transmission facilities associated with the Project will be evaluated in a future EIR/EIS to be prepared by the BLM and CPUC.

> Under the 275 MW Early Interconnection option, Pisgah Substation would be expanded adjacent to the existing substation, one to two new 220 kV structures would be constructed to support the transmissions interconnection (gen-tie) from the Calico Solar Project into Pisgah Substation, and new telecommunication facilities would be installed within existing SCE Right of Ways (ROWs).
>
> The 850 MW Full Build-Out Option would include replacement of a 67-mile 220 kV SCE transmission line with a new 500 kV line, expansion of the Pisgah Substation at a new location and other telecommunication upgrades to allow for additional transmission

[5] DEIS/SA, pp. D.5-10 and -11; SSA, p. D.5-10.
[6] DEIS/SA, p. D.5-9; SSA, p. D.5-9.
[7] DEIS/SA, pp. D.5-4 and -5; SSA, p. D.5-4. Six "segments," each with two breakers connecting to 45 MVar of capacitor banks.

system capacity to support the operation of the full Calico Solar Project.[8]

These upgrades needed for the Calico Solar Project to operate will require significant ground disturbance. This is especially true for the "Full Build-Out Option." The DEIS/SA and SSA omit environmental analysis of these upgrades as a part of the Calico Project.

e. Mitigation Requirements in the DEIS/SA and SSA Omit Discussion of Reactive Support Facilities

The DEIS/SA and SSA include Condition of Certification TSE-5 to ensure that the design, construction, and operation of the proposed transmission facilities is in full compliance with federal, state and local laws and regulations.[9] This condition lays out equipment requirements at the on-site substation, but does not include either the 300 MVar of dynamic reactive power capability required for the Project,[10] or the 270 MVar[11] - 350 MVar[12] of static reactive support facilities required for the Project.

f. Signed Large Generator Interconnection Agreement Should be a Condition of Project Approval

Neither the DEIS/SA nor the SSA includes a Condition of Certification requiring the Applicant to provide a FERC-approved Large Generator Interconnection Agreement ("LGIA"). An LGIA is an agreement necessary to facilitate the lawful and reliable interconnection of a large generating facility with the transmission system. Similarly, the DEIS/SA and SSA transmission Conditions of Certification do not require environmental approval of the lines and other facilities required by such an LGIA as a condition of construction, transmission construction, or project operation.

It is typical with the siting of power plants in California for the Energy Commission to require a signed LGIA as a condition of certification. This project's Conditions of Certification should likewise require a signed LGIA as a condition of Project approval. Furthermore, the CEC should require environmental review and approval of all facilities identified in the LGIA as a condition of Project approval since these facilities must be approved and built before the Calico Project can reliably operate.

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[8] DEIS/SA, p. D.5-15; SSA, p. D.5-14.
[9] DEIS/SA, pp. D.5-20 to -22; SSA, pp. D.5-19 and -20.
[10] DEIS/SA, p. D.5-9; SSA, p. D.5-9.
[11] DEIS/SA, pp. D.5-4 and -5; SSA, pp. D.5-4 and -5.
[12] DEIS/SA, pp. D.5-10 and -11; SSA, p. D.5-10.

The requirement for a signed LGIA is particularly important in light of the recent Federal Energy Regulatory Commission decision to deny in part the Large Generator Interconnection Agreement filed by the Applicant and Southern California Edison. Building the Project and the connected transmission line will have significant economic impacts on CAISO transmission customers. CAISO customers protested the large financial risk accruing to them as a result of the LGIA that was submitted to the FERC for approval. The protest was based in part on the fact that the LGIA departed from standard processes. FERC granted approval for an LGIA that included ONLY 275 Mw of the 850 Mw Project.[13] Thus the Condition of Certification in this proceeding should require not just a signed LGIA, but one that has been approved by FERC.

Unless and until there is an approved LGIA for the proposed Phase 2 expansion of the Calico project beyond 275 Mw, there is no reason to believe Calico will be able to obtain financing for more than 275 Mw, and no certainty regarding what transmission facilities will be required to interconnect more than 275 Mw, or when they may be built. Thus, the environmental consequences of the interconnection facilities required to expand beyond 275 Mw cannot be known, and no permit should issue.

g. The DEIS/SA and SSA Fail to Include a Condition Requiring the Project Design to Compensate for Onsite Var Consumption

The DEIS/SA and SSA conclude that the Project "should be designed and constructed with adequate reactive power resources to compensate [for] the consumption of Var by the generator step-up transformers, distribution feeders and generator tie-lines."[14] The DEIS/SA and SSA fail to include a corresponding condition of certification for this DEIS-required mitigation.

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[13] 131 FERC 61,071, Docket ER10-796, order issued April 26, 2010, paragraph 24: "We will reject without prejudice the provisions of the LGIA pertaining to the Phase 2 network upgrades."

[14] DEIS/SA, p. D-23; SSA, p. D.5-22.

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I swear under penalty of perjury that this testimony is true and correct to the best of my knowledge.

7/16/10 David Marcus

Date David Marcus

EXHIBIT 402

RESUME

DAVID I. MARCUS **June 2010**
P.O. Box 1287
Berkeley, CA 94701-1287

Employment

Self-employed, March 1981 - Present

Consultant on energy and electricity issues. Clients have included Imperial Irrigation District, the cities of Albuquerque and Boulder, the Rural Electrification Administration (REA), BPA, EPA, the Attorney Generals of California and New Mexico, alternative energy and cogeneration developers, environmental groups, labor unions, other energy consultants, and the Navajo Nation. Projects have included economic analyses of utility resource options and power contracts, utility restructuring, utility bankruptcy, nuclear power plants, non-utility cogeneration plants, and offshore oil and hydroelectric projects. Experienced user of production cost models to evaluate utility economics. Very familiar with western U.S. grid (WSCC) electric resources and transmission systems and their operation and economics. Have also performed EIS reviews, need analyses of proposed coal, gas and hydro powerplants, transmission lines, and coal mines. Have presented expert testimony before FERC, the California Energy Commission, the Public Utility Commissions of California, New Mexico, and Colorado, the Interstate Commerce Commission, and the U.S. Congress.

Environmental Defense Fund (EDF), October 1983 - April 1985

Economic analyst, employed half time at EDF's Berkeley, CA office. Analyzed nuclear power plant economics and coal plant sulfur emissions in New York state, using ELFIN model. Wrote critique of Federal coal leasing proposals for New Mexico and analysis of southwest U.S. markets for proposed New Mexico coal-fired power plants.

California Energy Commission (CEC), January 1980 - February 1981

Advisor to Commissioner. Wrote "California Electricity Needs," Chapter 1 of Electricity Tomorrow, part of the CEC's 1980 Biennial Report. Testified before California PUC and coauthored CEC staff brief on alternatives to the proposed 2500 megawatt Allen-Warner Valley coal project.

CEC, October 1977 - December 1979

Worked for CEC's Policy and Program Evaluation Office. Analyzed supply-side alternatives to the proposed Sundesert nuclear power plant and the proposed Point Concepcion LNG terminal. Was the CEC's technical expert in PG&E et. al. vs. CEC lawsuit, in which the U.S. Supreme Court ultimately upheld the CEC's authority to regulate nuclear powerplant siting.

Energy and Resources Group, U.C. Berkeley, Summer 1976

Developed a computer program to estimate the number of fatalities in the first month after a major meltdown accident at a nuclear power plant.

Federal Energy Agency (FEA), April- May 1976

Consultant on North Slope Crude. Where To? How?, a study by FEA's San Francisco office on the disposition of Alaskan oil.

Angeles Chapter, Sierra Club, September 1974 - August 1975

Reviewed EIRs and EISs. Chaired EIR Subcommittee of the Conservation Committee of the Angeles Chapter, January - August 1975.

Bechtel Power Corporation (BPC), June 1973 - April 1974

Planning and Scheduling Engineer at BPC's Norwalk, California office. Worked on construction planning for the Vogtle nuclear power plant (in Georgia).

Education

Energy and Resources Group, U.C. Berkeley, 1975 - 1977

M.A. in Energy and Resources. Two year master's degree program, with course work ranging from economics to engineering, law to public policy. Master's thesis on the causes of the 1972-77 boom in the price of yellowcake (uranium ore). Fully supported by scholarship from National Science Foundation.

University of California, San Diego, 1969 - 1973

B.A. in Mathematics. Graduated with honors. Junior year abroad at Trinity College, Dublin, Ireland.

Professional Publications

"Rate Making for Sales of Power to Public Utilities," with Michael D. Yokell, in Public Utilities Fortnightly, August 2, 1984.

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131 FERC ¶ 61,071
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company Docket No. ER10-796-000

ORDER CONDITIONALLY ACCEPTING IN PART AND REJECTING IN PART NON-CONFORMING LARGE GENERATOR INTERCONNECTION AGREEMENT

(Issued April 26, 2010)

1. On February 25, 2010, Southern California Edison Company (SoCal Edison) filed a Large Generator Interconnection Agreement (LGIA) among itself as transmission provider, SES Solar One, LLC (Solar One) as interconnection customer, and the California Independent System Operator Corporation (CAISO). In this order, we will accept in part and reject in part SoCal Edison's LGIA to become effective February 26, 2010, subject to a compliance filing.

I. Background

2. Solar One proposes to interconnect an 850 MW solar generating facility, to be located in Newberry Springs, San Bernardino County, California (the Project), to SoCal Edison's electric system at the Pisgah 220 kV switchyard, and to transmit energy and/or ancillary services to the CAISO-controlled grid.

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

4. SoCal Edison states that Appendix A of the LGIA identifies the interconnection facilities, network upgrades, and distribution upgrades of the LGIA. It states that the reliability network upgrades will be constructed in two phases: Phase 1 will provide interconnection service for up to 275 MW connected to the existing Pisgah 220 kV switchyard, and Phase 2 will provide interconnection service for the full output of the Project. SoCal Edison states that it has committed to up-front finance the Phase 2 network upgrades, as specifically identified in Appendix A to the LGIA, subject to the following conditions: (1) Solar One has paid for the Phase 1 network upgrades; (2) Solar

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One has achieved commercial operation of 275 MW of generating capability from the Project; (3) SoCal Edison has received a Commission order granting its recovery of 100 percent of its prudently incurred costs for the Phase 2 network upgrades if the Project is abandoned due to circumstances outside of SoCal Edison's control (abandoned plant approval); and (4) Solar One's achievement of the development milestones set forth in Appendix A to the LGIA. SoCal Edison states that if these conditions are not met, then the LGIA will be amended, and Solar One will be responsible to pay the up-front finance costs associated with the Phase 2 network upgrades and will potentially receive transmission credits for such costs in accordance with the LGIA.

5. SoCal Edison states that, in accordance with Appendix A to the LGIA, Solar One is to be responsible for an interconnection facilities payment of $1,771,000, a distribution upgrades payment of $250,000, and a reliability network upgrades payment of $45,971,320 related to Phase 1 of the Project. Following the completion date of the interconnection facilities, Solar One will also pay SoCal Edison a monthly interconnection facilities charge to recover the ongoing revenue requirement for SoCal Edison's interconnection facilities. This monthly charge is calculated as the product of the customer-financed monthly rate and the interconnection facilities cost. The customer-financed monthly rate is 0.38 percent.[1] The monthly interconnection facilities charge will be $6,729.80 (0.38 percent x $1,771,000).

6. SoCal Edison requests waiver of the 60-day prior notice requirement[2] so that the LGIA can become effective February 26, 2010. It argues that the waiver would be consistent with the Commission's policy set forth in *Central Hudson Gas & Electric Corp.*[3] 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 Solar One's requested in-service date.

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[1] 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 Docket No. ER10-223-000. SoCal Edison states that it provided cost justification for this rate in Docket No. ER09-1345-000.

[2] 16 U.S.C. § 824d(d) (2006); 18 C.F.R. § 35.3 (2010).

[3] 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

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II. Notices of Filings and Responsive Pleadings

7. Notice of this filing was published in the *Federal Register*, 75 Fed. Reg. 11161 (2010), with interventions and protests due on or before March 18, 2010. Timely motions to intervene and protest were filed by the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (collectively, Six Cities) and the M-S-R Public Power Agency, the City of Redding, California, and the City of Santa Clara, California (collectively, the M-S-R Parties) (all collectively, Protesters). Solar One filed an out-of-time motion to intervene. SoCal Edison filed an answer.

A. Protests

8. Protesters object to SoCal Edison's commitment to provide up-front financing for the Phase 2 network upgrades contained in Appendix A of the LGIA. Specifically, they argue that SoCal Edison's decision to make such financing contingent upon the Commission granting abandoned plant approval deviates from CAISO's *pro forma* LGIA as approved by the Commission, and is not consistent with or superior to the *pro forma* terms. Six Cities request that the Commission require SoCal Edison to make a compliance filing to remove the inconsistent terms. The M-S-R Parties state that the Commission should require SoCal Edison to resubmit with this LGIA, a discussion justifying the deviations from the *pro forma* LGIA.[4]

9. Six Cities argue that the Commission should reject the abandoned plant approval provisions in the LGIA, because they have discriminatory implications for other load-serving entities and renewable resource suppliers.[5] Six Cities concede that CAISO's Large Generator Interconnection Procedures permit Participating Transmission Owners to provide capital funding for network upgrades. However, they state that these procedures do not allow abandoned plant approval as a pre-condition to Participating Transmission Owner funding.

10. Protesters also argue that SoCal Edison appears to only offer up-front funding to interconnecting generators when it is in its interest to do so.[6] Six Cities contend that SoCal Edison has done so here because it wants to purchase the output from Solar One and it can shift the abandonment risk to the CAISO transmission customers. Six Cities also claims that there is no standard established for up-front funding by SoCal Edison and therefore no means to ensure that SoCal Edison is treating all interconnection requests equally.

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[4] M-S-R Parties Protest at P 28.

[5] Six Cities Protest at 7.

[6] *Id*. at 5; M-S-R Parties Protest at P 13, 16-19.

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11. Additionally, Protesters are concerned that if SoCal Edison is allowed to favor renewable generators of its choosing over others, it can gain unfair competitive advantage in the renewable generation market.[7] Six Cities consider it discriminatory to permit SoCal Edison to "cherry pick" among interconnection requests and to only offer risk-free financing to interconnection customers with which it has entered into supply arrangements. They state that other load-serving entities subject to Renewable Portfolio Standards, who lack the ability to fund the upgrades required by their selected suppliers, are left with limited renewable procurement options.

12. The M-S-R Parties request that the Commission reject the Solar One LGIA as filed. They state that the LGIA is emblematic of a pattern of activity by SoCal Edison that potentially involves the type of anti-competitive and discriminatory behavior that the Commission denounced in Order No. 2003.[8] They argue that SoCal Edison's preferential treatment of particular renewable generators violates Commission policy and harms transmission customers. Specifically, they contend that because SoCal Edison has executed a power purchase agreement with Solar One and also must meet Renewable Portfolio Standard benchmarks, it has a vested interest in the Project that is akin to an ownership interest.[9] They argue that SoCal Edison has contravened the Commission's interconnection policies because it agreed to provide up-front financing to Solar One pursuant to a potentially discriminatory application of an LGIA provision.

13. The M-S-R Parties state that Order No. 2003 described and rectified the problem of Transmission Providers providing favorable and discriminatory treatment for interconnection of their own generation. They argue that SoCal Edison's interest in the Project has created a situation mirroring the one addressed in Order No. 2003.[10] Moreover, they claim that SoCal Edison has only agreed to front the network upgrade costs for three of the six interconnection agreements for projects SoCal Edison filed in the last year, because it has executed power purchase agreements with the developers of these three projects.

14. Additionally, the M-S-R Parties assert that by agreeing to pay for $102 million in costs that Solar One would otherwise front, SoCal Edison has wielded significant negotiating power at the expense of its ratepayers. They state that the Commission must

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[7] *Id.* at 6-7; M-S-R Parties Protest at P 14, 21.

[8] M-S-R Parties Protest at P 12.

[9] *Id*. P 15, 17.

[10] *Id*. P 17.

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ensure that these costs are not being incurred and charged to customers under discriminatory, potentially anti-competitive practices.

15. The M-S-R Parties raise the concern that SoCal Edison's LGIA might run afoul of the Commission's requirement that a transmission provider separate its transmission and marketing arms in order to ensure that it is not providing unduly preferential or discriminatory treatment.[11] They point to Order No. 717's separation of function requirements and the prohibition on a transmission provider and its employees, contractors, consultants, and agents from disclosing non-public transmission function information to marketing function employees.[12]

16. The M-S-R Parties contend that the Solar One LGIA and other SoCal Edison LGIAs raise the question of whether SoCal Edison has breached the Commission's Standards of Conduct.[13] They request that the Commission require SoCal Edison to demonstrate that it has maintained the Standards of Conduct to ensure that it cannot skirt regulations in order to provide itself a competitive advantage.

B. SoCal Edison's Answer

17. In its answer, SoCal Edison explains its plan to file a petition for declaratory order with the Commission requesting incentive rate treatment for its planned Lugo-Pisgah Project, including abandoned plant approval.[14] SoCal Edison states that the protesters' arguments represent an attack on an incentives request that it has not yet filed and that the Commission should refrain from ruling upon these arguments at this time.

18. SoCal Edison disagrees with the Protesters' arguments that Appendix A of the LGIA contains material deviations from the CAISO *pro forma* LGIA; it claims that because the Protesters' arguments do not provide any basis for modification of the LGIA, these arguments should be rejected.[15] SoCal Edison states that the Commission's and CAISO's *pro forma* LGIAs explicitly provide for up-front financing of network upgrades by transmission owners. Additionally, SoCal Edison asserts that neither the CAISO tariff nor Commission precedent imposes conditions addressing when transmission owners can exercise this option or limit conditions that transmission owners may impose on

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[11] *Id*. P 22.

[12] *Id.* P 23.

[13] *Id*. P 24.

[14] SoCal Edison Answer at 3.

[15] *Id*. at 4.

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exercising it. SoCal Edison contends that if the Commission believed that any conditions or restriction of this sort needed to be imposed on transmission owners, it would have included them in Order No. 2003.

19. SoCal Edison also argues that if the Commission believes that the abandoned plant approval condition deviates materially from the *pro forma* LGIA, it should approve it as superior to the *pro forma* LGIA.[16] It argues that the Commission should make this finding, because the condition increases the likelihood that generation will be constructed, and, thus, able to interconnect to the CAISO grid.

20. SoCal Edison disagrees that the abandoned plant approval condition is discriminatory and provides SoCal Edison with a competitive advantage.[17] It maintains that its choice to make up-front funding of network upgrades contingent upon the receipt of abandoned plant incentives is not based upon whether it has a power purchase agreement with the interconnection customer. Instead, SoCal Edison claims that its decisions reflect its effort to determine the optimum network upgrades within its service territory that will need to be constructed or financed for California to reach its Renewable Portfolio Standard goals. It claims that "the fact that there is a Power Purchase Agreement . . . with [SoCal Edison] is not the only factor" used to determine whether to up-front finance network upgrades.[18] To demonstrate this point, SoCal Edison cites the up-front funding it has agreed to provide for the Eldorado-Ivanpah project triggered by solar generation in the area.[19] It explains that it decided to fund these network upgrades up-front despite the fact that Pacific Gas and Electric Company executed power purchase agreements for "significant amounts" of this generation. For these reasons, SoCal Edison contends that its selection of which network upgrades to up-front fund does not inhibit an open, transparent renewable generation procurement process.

21. SoCal Edison addresses the M-S-R Parties' specific allegation that it agreed to up-front finance network upgrades for three of the six LGIAs SoCal Edison filed this year, because it executed power purchase agreements with those three generators (Solar

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[16] *Id.*

[17] *Id.*

[18] *Id*. at 6.

[19] *Id.* We note that the Commission granted SoCal Edison's petition for declaratory order for the Eldorado-Ivanpah project. *Southern California Edison Co*., 129 FERC ¶ 61,246 (2009). It also accepted the related LGIA with Solar Partners. *Southern California Edison* Co., 131 FERC ¶ 61,016 (2010).

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Partners, Solar One, and Alta Wind).[20] It points out that there are no network upgrades associated with the remaining three generator interconnections–Brea Power II, Dagget Ridge and Western Wind Energy. It also states that it had already received CAISO and Commission approval to up-front fund the Tehachapi Project, which Alta Wind will utilize to facilitate its interconnection to the CAISO grid.

22. SoCal Edison dismisses as incorrect the M-S-R Parties' claim that SoCal Edison provides benefits to generators at the expense of transmission customers because it earns a return on equity on the network upgrades it has chosen to fund up-front.[21] SoCal Edison states that because network upgrades are part of its transmission system, it will earn a return on this investment regardless of who provides the funding. Finally, SoCal Edison dismisses the M-S-R Parties' allegation that it may have violated the Standards of Conduct as a bad faith allegation to intimidate it by suggesting to the Commission that there should be an investigation. SoCal Edison claims that exercising its option to up-front finance these network upgrades does not involve impropriety.

III. Discussion

A. Procedural Matters

23. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.[22] Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, the Commission will grant Solar One's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.[23] Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.[24] We will accept SoCal Edison's answer, because it has provided information that assisted us in our decision-making process.

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[20] *Id.*

[21] *Id.* at 7.

[22] 18 C.F.R. § 385.214 (2010).

[23] 18 C.F.R. § 385.214(d) (2010).

[24] 18 C.F.R. § 385.213(a)(2) (2010).

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B. Commission Determination

24. As discussed below, we will conditionally accept in part and reject in part the LGIA with Solar One. We will conditionally accept the provisions of the LGIA that pertain to Phase 1. We will reject without prejudice the provisions of the LGIA pertaining to the Phase 2 network upgrades. According to the application, SoCal Edison will up-front finance the Phase 2 network upgrades if Solar One meets certain conditions including, among other things, the commercial operation of 275 MW of generating capability for the Project and a Commission order granting it abandoned plant approval. Although SoCal Edison has voiced its intention to do so, it has not yet filed a petition for declaratory order requesting that the Commission grant abandoned plant approval for the Phase 2 upgrades. We therefore find that including an abandoned plant approval provision in the LGIA is premature. Additionally, SoCal Edison has not clearly indicated the need for an LGIA for Phase 2 upgrades to be on file at this time, given the conditions stipulated for funding by SoCal Edison. Because the issues raised by protesters address SoCal Edison's treatment of the Phase 2 upgrades and we are rejecting those provisions, we need not address those issues in this proceeding.

25. We will grant waiver of the 60-day notice requirement for good cause shown and conditionally accept those provisions of the LGIA that pertain to Phase 1, effective February 26, 2010.[25] Within 60 days of the date of this order, SoCal Edison must make a compliance filing that removes those provisions related to the Phase 2 network upgrades.

26. If SoCal Edison later files an amended LGIA that includes the Phase 2 network upgrades, it will need to support its deviations from the CAISO *pro forma* LGIA in accordance with Commission precedent. In Order No. 2003, the Commission required Transmission Providers to file *pro forma* interconnection documents and to offer their customers interconnection service consistent with these documents.[26] At the same time, the Commission recognized that there would be a small number of extraordinary interconnections where reliability concerns, novel legal issues, or other unique factors would call for non-conforming agreements.[27] The Commission made clear that the filing

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

[26] *Florida Power & Light Co.*, 118 FERC ¶ 61,176, at P 10 (2007) (*FP&L*).

[27] Order No. 2003 at P 913-915; *FP&L* at P 11.

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party must clearly identify the portions of the interconnection agreement that differ from its *pro forma* agreement and explain why the circumstances require a non-conforming interconnection agreement.[28]

27. The Commission analyzes such non-conforming filings to ensure that reliability concerns, novel legal issues, or other unique factors necessitate the non-conforming provisions.[29] A party seeking a case-specific deviation from an approved *pro forma* interconnection agreement bears a burden to explain what makes the interconnection unique and why its changes are operationally necessary (not merely "consistent with or superior to" to the *pro forma* LGIA).[30]

The Commission orders:

(A) SoCal Edison's LGIA is conditionally accepted in part, effective February 26, 2010, and rejected in part, subject to the conditions set forth in the body of this order.

(B) SoCal Edison is directed to make a compliance filing within 60 days of the date of this order, as discussed in the body of the order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[28] Order No. 2003-B at P 140 ("[E]ach Transmission Provider submitting a non-conforming agreement for Commission approval must explain is justification for each nonconforming provisions and provide a redline document comparing the nonconforming agreement to the effective pro forma[Interconnection Agreement]."); *FP&L* at P 11.

[29] *See PJM Interconnection, L.L.C.*, 111 FERC ¶ 61,098, at P 9 (2005) (*PJM*); *Southern Company Servs., Inc*., 116 FERC ¶ 61,231, at P 14 (2006) (*Southern*).

[30] *PJM* at P 9; *Southern* at P 14.

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