169 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

Harbor Cogeneration Company, LLC
v.
Southern California Edison Company

Docket No. EL19-82-000

ORDER DENYING COMPLAINT

(Issued October 24, 2019)

1. On June 24, 2019, Harbor Cogeneration Company, LLC (Harbor) filed a complaint pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)[1] against Southern California Edison Company (SoCal Edison) alleging that SoCal Edison violated provisions of its Transmission Owner Tariff (TO Tariff). Harbor alleges that, beginning on June 10, 1999 and continuing through December 21, 2018, SoCal Edison violated the TO Tariff by assessing and collecting charges from Harbor related to network facilities. Harbor seeks refunds with interest for the charges collected in violation of the TO Tariff.[2] For the reasons discussed below, we deny the complaint.

I. Background and Complaint

2. Harbor states that it owns a natural gas-fired generation facility (Harbor Facility) that is interconnected with the SoCal Edison transmission system via a .22 mile radial tie-line terminating at the point of interconnection on a three-breaker ring bus at SoCal Edison's Harborgen substation.[3] Harbor explains that, pursuant to a California Public Utilities Commission (CPUC) jurisdictional power purchase agreement and associated interconnection agreement dated April 12, 1985, it paid for the cost of constructing the SoCal Edison Harborgen substation facilities, three-breaker ring bus, and radial tie-line,

[1] 16 U.S.C. §§ 824e, 825e, 825h (2018).

[2] Harbor Complaint at 1-2.

[3] *Id*. at 6.

and sold capacity and energy from the Harbor Facility to SoCal Edison. The Harbor Facility was a Public Utility Regulatory Policies Act (PURPA) Qualifying Facility (QF), a designation which Harbor states it relinquished in 1999. Harbor states that it is now an Exempt Wholesale Generator with market-based rate authority.[4]

3. Harbor states that in June 1999, SoCal Edison and Harbor entered into a Commission jurisdictional short-term interconnection agreement under which SoCal Edison effectively classified the SoCal Edison Harborgen substation facilities as interconnection facilities and directly assigned the costs associated with the Harborgen substation to Harbor.[5] Harbor states that it paid SoCal Edison a monthly interconnection facilities charge applied against the capital costs of constructing network facilities that should have been recovered in transmission rates for service over the network rather than as directly assigned costs.[6] Harbor continues that it entered into two subsequent short-term interconnection agreements with SoCal Edison, with the last of those interconnection agreements being in effect until November 30, 2003.[7] Each of these interconnection agreements provided Harbor with 80 megawatts (MW) of interconnection capacity and each was filed with the Commission. The first 1999 short-term interconnection agreement was unexecuted, the remainder of the interconnection agreements were executed, and each contained similar provisions directly assigning certain facilities costs to Harbor.[8]

4. Next, Harbor states that on November 26, 2003, it entered into a long-term interconnection agreement (2003 long-term interconnection agreement) with SoCal Edison that provided Harbor with 110 MW of interconnection capacity for 20 years. Harbor states that in the 2003 long-term interconnection agreement, SoCal Edison continued to assess Harbor a monthly interconnection facilities charge at a rate applied to the capital costs that SoCal Edison had previously incurred, and Harbor had reimbursed, in constructing the Harborgen substation and the radial tie-in line. Harbor also complains that the 2003 long-term interconnection agreement required Harbor to

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[4] *Id*. at 6-8.

[5] *Id*. at 9-10.

[6] *Id*. at 5; Harbor Ex. 1 at 1.

[7] According to Harbor, SoCal Edison and Harbor executed a series of letter agreements extending the termination date of the third short-term interconnection agreement to November 30, 2003. Harbor Ex. 1 at 1.

[8] *Id*. This order terms the short-term interconnection agreements between the parties from June 1999 to November 2003 the "short-term interconnection agreements."

fund the replacement of circuit breakers on the three-breaker ring bus at the Harborgen substation at an estimated cost of $970,000, and to pay a monthly interconnection facilities charge at a rate applied to the capital component of these costs as well.[9] Harbor states that the 2003 long-term interconnection agreement was filed with the Commission on December 24, 2003, with a requested effective date of November 30, 2003, but that it is unclear if the Commission issued an order accepting the agreement for filing.[10] Harbor states that while the 2003 long-term interconnection agreement has been amended several times, the provisions assessing monthly interconnection facilities charges based on capital investments in and expenses associated with network facilities remained in place until Harbor and SoCal Edison executed a replacement agreement on December 1, 2018 (December 2018 replacement agreement).[11]

5. Harbor asserts that, beginning in 1999 with the short-term interconnection agreements and continuing in the 2003 long-term interconnection agreement (collectively, interconnection agreements), Harbor was assessed $65,482 in monthly interconnection facilities charges, which were incrementally reduced on several occasions until the monthly interconnection facilities charges were set at $9,394.38 in the December 2018 replacement agreement.[12] In this complaint, Harbor challenges SoCal Edison's assessment of two disputed charges in the interconnection agreements: (1) SoCal Edison's assessment of monthly interconnection facilities charges in the short-term interconnection agreements and 2003 long-term interconnection agreement, and (2) the requirement that Harbor pay for the circuit breaker replacement in the 2003 long-term interconnection agreement, which Harbor alleges is in violation of SoCal Edison's TO Tariff.[13]

6. With regard to the monthly interconnection facilities charges, Harbor alleges that they were improper because SoCal Edison directly assigned the costs without obtaining

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[9] *Id*. at 2, 10.

[10] *Id*. at 3 n.4. In its answer, SoCal Edison includes the Commission delegated letter order accepting the 2003 long-term interconnection agreement for filing. SoCal Edison Answer, Attachment 1.

[11] *Id*. at 2-3. The December 2018 replacement agreement was accepted by delegated letter order, effective December 21, 2018. *S. Cal. Edison Co.*, Docket No. ER19-688-001 (Apr. 23, 2019) (delegated order).

[12] Harbor Complaint at 9.

[13] *Id*. at 2.

Commission approval, in violation of the TO Tariff.[14] Further, Harbor complains that the interconnection agreements incorrectly classified the Harborgen substation facilities as interconnection facilities, rather than network facilities, and directly assigned the cost of operating and maintaining network facilities to an interconnection customer. Harbor also alleges that the interconnection agreements applied a higher SoCal Edison-funded interconnection facilities charge to facilities funded by Harbor and should have assessed the lower customer-funded rate.[15]

7. According to Harbor, with the exception of the radial tie-line, the Harborgen substation facilities are network facilities under Commission policy because they are "at or beyond" the point of interconnection.[16] Harbor states that when Harbor and SoCal Edison transitioned from PURPA agreements to the interconnection agreements in 1999, SoCal Edison improperly duplicated the PURPA arrangements for the facilities in the interconnection agreements, rather than classifying the facilities as network facilities.[17]

8. Harbor asserts that Order No. 2003 memorialized the "at-or-beyond" rule for network facilities, "consistent with established Commission precedent,"[18] meaning that

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[14] The TO Tariff states that "Direct Assignment Facilities shall be specified in the Interconnection Agreement that governs service to such party and shall be subject to FERC approval." Harbor Response, Ex. 7.

[15] Harbor Complaint at 2.

[16] *Id*. at 11 (noting that SoCal Edison acknowledged that the Harborgen substation is a network facility in its December 26, 2018 filing); *see also id*. at 13-14. According to Harbor, the Harborgen substation facilities are part of SoCal Edison's transmission network, situated on SoCal Edison's 220kV transmission line connecting SoCal Edison's Longbeach substation to its Hinson substation. Harbor states that the Harborgen substation three-breaker ring bus interrupts this transmission line and that SoCal Edison owns and operates the .22 mile 220kV tie-line connecting the Harbor Facility to Harborgen substation. Harbor states that the point of interconnection is at the ring bus in the Harborgen substation, the point of change of ownership is at Harbor's Facility, and that the radial tie-line is the only SoCal Edison facility properly classified as an interconnection facility. *Id*. at 10.

[17] *Id*. at 12-15. Harbor states that the Commission's PURPA rules obligated the interconnection customer to pay for the cost of interconnection. *Id*. at 12.

[18] *Id*. at 15 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 104 FERC ¶ 61,103, at P 65 (2003), *order on reh'g*, Order No. 2003-A, 106 FERC ¶ 61,220, *order on reh'g*, Order No. 2003-B, 109 FERC ¶ 61,287 (2004), *order on reh'g*, Order No. 2003-C, 111 FERC ¶ 61,401 (2005), *aff'd sub nom.*

the short-term interconnection agreements violated the Commission's "at-or-beyond" rule for network facilities in 1999. Harbor continues that the TO Tariff that was in effect at the time of the 2003 long-term interconnection agreement defined "direct assignment facilities" consistent with the Commission's "at-or-beyond" rule, further demonstrating that it was incorrect for the 2003 long-term interconnection agreement to directly assign the cost of network facilities to Harbor.[19]

9. Harbor further contends that the direct assignment of charges related to network facilities violated the Commission's "and" pricing policy.[20] Harbor states that Order No. 2003 continued the Commission policy of "requiring refunds to be paid to an Interconnection Customer for the cost of Network Upgrades constructed on its behalf,"[21] and required transmission providers to "provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection."[22] Harbor thus argues that when the short-term interconnection agreements and 2003 long-term interconnection agreement were entered into, the Commission's refund policy for network facility funding was established and the Commission's policy prohibiting "and" pricing was in effect.[23]

10. Harbor also argues that the monthly interconnection facilities charges were incorrect in the short-term and 2003 long-term interconnection agreements because the charges included the SoCal Edison-financed interconnection facilities charges, rather than the correct customer-financed charges since Harbor had paid the Harborgen substation construction costs. Harbor alleges that at the time of the 2003 long-term interconnection agreement, the monthly SoCal Edison-financed interconnection facilities charge was

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Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

[19] *Id*. at 19-20.

[20] *Id.* at 16-18. Harbor states that the Commission's "and" pricing policy prohibits utilities from collecting both an incremental rate and a rolled-in rate for service over the same facilities. Harbor Complaint at 5-6.

[21] *Id*. at 16 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 694).

[22] *Id*. at 16-17 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 696).

[23] *Id*. at 18.

more than 3.5 times higher than the amount that Harbor would have owed by applying the customer-financed interconnection facilities charge.[24]

11. With regard to its complaint regarding the replacement circuit-breakers, Harbor contends that in the 2003 long-term interconnection agreement, SoCal Edison improperly required Harbor to pay for the repair of circuit breakers at the Harborgen substation in violation of the TO Tariff. Harbor states that the TO Tariff in effect at the time of the 2003 long-term interconnection agreement defined "direct assignment facilities" as:

> Facilities or portions of facilities that are owned by the participating TO necessary to physically and electrically interconnect a particular party requesting Interconnection under this TO Tariff to the ISO controlled Grid at the point of interconnection. Direct Assignment Facilities shall be specified in the Interconnection Agreement that governs Interconnection service to such party and shall be subject to approval by FERC.[25]

12. Harbor alleges that SoCal Edison violated its TO Tariff by not receiving Commission approval to directly assign the costs of the replacement circuit breakers, and because the replacement breaker repair costs were not necessary to interconnect the Harbor Facility since the Harbor Facility was already interconnected and SoCal Edison needed to replace the breakers because they were obsolete. Harbor contends that, by requiring Harbor to fund the replacement of the circuit breakers without providing refunds, transmission service credits, or other compensation, SoCal Edison violated the TO Tariff.[26]

13. Harbor requests that the Commission require SoCal Edison to pay refunds with interest for the costs of network facilities directly assigned Harbor that Harbor alleges were in violation of the filed rate, i.e., the TO Tariff. Harbor's refund request is based on the monthly interconnection facilities charges assessed against the capital cost of network facilities that Harbor claims SoCal Edison should have recovered in transmission rates for service over its network. Harbor also seeks a return of its capital contribution,

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[24] *Id*. at 21-22.

[25] *Id*. at 19-20; 2001 TO Tariff, § 3.17 (filed Apr. 2, 2001).

[26] Harbor Complaint at 20.

plus interest, related to the $970,000 it paid for the replacement circuit breakers because the breakers are network facilities for which Harbor is entitled to a return of its capital contribution.[27]

14. Harbor alleges that the Commission's authority under FPA section 309 authorizes the Commission to exercise remedial authority and "require that entities violating the FPA pay restitution for profits gained as a result of a statutory or tariff violation."[28] Furthermore, Harbor asserts that, unlike section 206 refund authority, no time limits apply to remedial actions under section 309.[29] Harbor contends that refunds are appropriate because SoCal Edison violated its TO Tariff and Commission policy since June 10, 1999 by assigning Harbor the disputed costs without Commission approval.[30] Specifically, Harbor asserts that SoCal Edison violated the TO Tariff and Commission policy in the interconnection agreements by directly assigning costs of operating and maintaining SoCal Edison transmission facilities located beyond the point of interconnection; failing to obtain Commission approval before directly assigning costs; requiring Harbor to fund the cost of constructing network facilities without providing credits, refunds or other compensation; requiring Harbor to fund costs of constructing network facilities due to obsolescence, rather than a new interconnection; and assessing a higher SoCal Edison funded interconnection facilities charge rate against the facilities paid for by Harbor.[31] Harbor seeks $22,824,560.09 in refunds for the disputed charges.[32]

15. Harbor asks that the Commission issue an order finding that SoCal Edison assessed interconnection facilities charges against the book value of network facilities and required that Harbor fund the capital cost of replacing network facilities without a return of capital and interest, inconsistent with the filed rate schedule and Commission policy; direct SoCal Edison to refund all such disputed charges; establish a June 10, 1999 refund effective date for relief to be afforded in this proceeding; direct SoCal Edison to

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[27] *Id*. at 4-5.

[28] *Id*. at 22 (citing *Pub. Util. Comm'n of the State of Cal. v. FERC*, 462 F.3d 1027, 1047-48 (9th Cir. 2006)).

[29] *Id*. (citing *San Diego Gas & Elec. Co. v. Sellers of Energy & Ancillary Servs.*, 158 FERC ¶ 61,076, at PP 17-19 (2017)).

[30] *Id*. at 22-23.

[31] *Id*. at 22-23.

[32] Harbor Complaint, Ex. 2.

include interest in its refund calculation pursuant to 18 C.F.R. § 35.19a; and grant other such relief that the Commission may deem appropriate.[33]

II. Notice of Complaint and Responsive Pleadings

16. Notice of the Complaint was published in the *Federal Register*, 84 Fed. Reg. 31,313 (2019) with interventions and protests due on or before July 15, 2019. On June 26, 2019, SoCal Edison filed a motion to intervene and also sought a fifteen day extension to the deadline to file an answer, which Harbor opposed in a June 28, 2019 filing. On July 3, 2019, the Commission issued a notice extending the deadline to file to July 22, 2019.

17. On July 18, 2019, SoCal Edison filed an answer to the Complaint (SoCal Edison Answer). On August 2, 2019, Harbor filed a motion for leave to answer and answer (Harbor Response).

A. SoCal Edison Answer

18. SoCal Edison argues that the complaint should be dismissed. According to SoCal Edison, the short-term interconnection agreements and 2003 long-term interconnection agreement are the filed rate and thus it lawfully assessed Harbor the charges stated in those agreements. Contrary to Harbor's assertion, SoCal Edison also argues that it received Commission approval to characterize facilities whose costs were directly assigned to Harbor as direct assignment facilities and notes that Harbor did not submit a claim disputing the charges when the interconnection agreements were filed.[34]

19. SoCal Edison further argues that the TO Tariff in effect when the short-term interconnection agreements and 2003 long-term interconnection agreement were filed required transmission customers to fund network upgrades and ongoing operation and maintenance and therefore, there was no violation of the TO Tariff.[35] Specifically, SoCal Edison states that the initial 1999 short-term interconnection agreement continued contractual arrangements that had been in place for nearly fourteen years, and these arrangements required Harbor to fund the costs related to the Harborgen substation facilities. SoCal Edison contends that it was not required by the TO Tariff to alter this

[33] Harbor Complaint at 27.

[34] SoCal Edison Answer at 21, 23.

[35] *Id*. at 4-5.

prior cost allocation when the 1999 short-term interconnection agreement was filed.[36] SoCal Edison further argues that the Commission's policy of defining network facilities as those "at or beyond" the point of interconnection neither existed until 2002, nor was it implemented by CAISO until July 1, 2005 when Order No. 2003 became effective, well after the short-term interconnection agreements and 2003 long-term interconnection agreement were filed with the Commission.[37]

20. SoCal Edison contends that the Commission permitted transmission owners to require customer funding of network upgrades caused by the generator's interconnection. SoCal Edison states that its original TO Tariff in effect in 1999 required that direct assignment facilities "constructed pursuant to this section shall be borne by the party requesting Interconnection."[38] SoCal Edison continues that the original TO Tariff defined direct assignment facilities as "facilities or portions of facilities that are constructed by the Participating TO for the sole use or benefit of the particular party requesting Interconnection under this TO Tariff."[39] Thus, in 1999, SoCal Edison contends, it was consistent with the TO Tariff for SoCal Edison to directly assign the Harborgen substation facility costs to Harbor.

21. SoCal Edison next states that the TO Tariff in effect from June 1, 2001 to July 4, 2005 included a provision that the party "requesting Interconnection shall pay the costs of planning, installing, owning, operating, and maintaining any Direct Assignment Facilities, and, if applicable, any Reliability Upgrades required to provide the requested Interconnection."[40] SoCal Edison contends that under the TO Tariff, the customer was responsible for the costs associated with Direct Assignment Facilities and Reliability

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[36] *Id*. at 9-10. SoCal Edison states that the Harborgen substation was constructed for the sole purpose of accommodating the interconnection of Harbor's generating facility, which was certified as a QF under PURPA. SoCal Edison states that it purchased capacity and energy from Harbor under a CPUC purchase power agreement dated April 12, 1985 and that Harbor paid the costs of SoCal Edison's ownership, operation and maintenance of the Harborgen substation pursuant to the purchase power agreement. *Id*. at 10.

[37] *Id*. at 10-14.

[38] *Id*. at 16 (citing Original TO Tariff, § 8.1.2 (filed March 31, 1997)).

[39] *Id*. (citing Original TO Tariff, § 3.17).

[40] *Id*. at 18 (citing 2001 TO Tariff, § 8.1.2).

Upgrades, which it argues includes the Harborgen substation facilities built when Harbor was interconnected and the circuit breakers that were replaced.[41]

22. SoCal Edison contends that it was not until CAISO implemented Order No. 2003, effective July 1, 2005, that CAISO applied the policy of interconnection customers up-front funding facilities "at or beyond" the point of interconnection with repayment over five years. And, according to SoCal Edison, the Commission determined that "any executed or unexecuted agreement submitted for Commission approval before [] January 5, 2005… need not comply with Order No. 2003."[42] Thus, SoCal Edison argues it had no obligation to modify the 2003 long-term interconnection agreement then in place and appropriately required Harbor to pay the costs of the replacement circuit breakers.

23. SoCal Edison also responds that it assessed Harbor the correct monthly interconnection facilities charges. According to SoCal Edison, the interconnection agreements cover three sets of facilities: the radial tie-line, the substation breakers (which were upgraded pursuant to the 2003 long-term interconnection agreement), and other Harborgen substation facilities. The SoCal Edison-financed facilities rate was applied to all the facilities except the replacement circuit breakers, which were charged at the lower customer-financed facilities rate. SoCal Edison contends that prior to the December 2018 replacement agreement, applying the SoCal Edison-financed facilities charge to the radial tie-line and Harborgen substation was based on a prior interconnection facilities agreement that required Harbor to pay for the non-removable portion of facilities, of which there were none. Thus, SoCal Edison asserts that there were no Harbor-financed facilities in the short-term interconnection agreements and the 2003 interconnection agreement made clear that only the replaced circuit breakers were customer funded.[43]

24. Moreover, SoCal Edison states that Harbor paid a monthly service charge for the Harborgen substation facilities, original circuit breakers, and radial tie-lie, which was routine for many interconnection customers. SoCal Edison continues that Harbor disputed this monthly interconnection charge in the original 1999 short-term interconnection agreement arguing that the facilities rate was too high, but later withdrew the protest. The 1999 interconnection agreement was then accepted by the Commission.[44]

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[41] *Id*. at 19.

[42] *Id*. at 20 (citing *S. Cal. Edison Co.*, 109 FERC ¶ 61,375, at P 10 (2004)).

[43] *Id*. at 28.

[44] *Id*. at 29.

25. SoCal Edison also argues that Harbor does not have standing to complain that Harbor is a victim of "and" pricing because Harbor never alleged it purchased CAISO transmission service. Further, SoCal Edison states that "and" pricing is acceptable in an ISO, and the Commission does not have hard policy that directly assigning ongoing operation and maintenance costs for network upgrades is illegal.[45]

26. SoCal Edison then argues that the rule against retroactive ratemaking prohibits the relief sought by Harbor. SoCal Edison contends that even if it had misclassified the facilities and erroneously assessed Harbor charges for the facilities in the interconnection agreements in violation of the TO Tariff, reclassifying the facilities can only be done prospectively, pursuant to section 206 of the FPA and Commission precedent.[46] Thus, SoCal Edison argues that even if it had violated the TO Tariff, retroactive relief is not available and prospective relief has been already granted in Docket No. ER19-688, where the Commission approved the December 2018 replacement agreement.[47] SoCal Edison further insists that the equities do not favor refunds because Harbor has sold power for the past two decades and presumably bid into the CAISO market or entered into bilateral contracts, such that its interconnection and other operating costs were covered.[48]

27. Finally, SoCal Edison contends that relief is not available under section 309 of the FPA, arguing that section 309 provides for remedies that are consistent with the FPA, and that such remedies may not predate a complaint under section 206; and, in any event, that section 309 permits the Commission to order refunds for tariff violations, which did not occur here. According to SoCal Edison, the equities do not favor refunds since the interconnection agreements were submitted in good faith, accepted by the Commission, and SoCal Edison charged the filed rate.[49] SoCal Edison requests that the Commission

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[45] *Id*. at 24-25.

[46] *Id*. at 6-8 (citing *Duke Energy Hinds, LLC v. Entergy Servs., Inc.*, 117 FERC ¶ 61,210 (2006); *Tenaska Frontier Partners, Ltd. v. Entergy Gulf States, Inc.*, 120 FERC ¶ 61,282 (2007)).

[47] *Id*. at 8.

[48] *Id*. at 8-9.

[49] *Id*. at 30. SoCal Edison also asserts that Harbor waived its right to challenge the cost allocation in the interconnection agreements because the original TO Tariff provided that a market participant must seek to resolve disputes in accordance with the ISO alternative dispute resolution procedures or be deemed to have waived claims. *Id*. at 24.

summarily dismiss the complaint and confirm that SoCal Edison did not violate the TO Tariff in the manner complained by Harbor.

B. Harbor's Response

28. Harbor requests that the Commission either summarily grant the complaint or set the matter for hearing. Harbor reiterates that, as required by the TO Tariff, SoCal Edison did not get Commission approval prior to assessing the direct assignment costs in the short-term interconnection agreements and 2003 long-term interconnection agreement.[50] Rather, Harbor alleges that the interconnection agreements were accepted for filing by the Commission by a delegated letter order, which according to Harbor, expressly state that they do not constitute approval.[51]

29. Further, according to Harbor, the Harborgen substation facilities were network facilities throughout the relevant time period and that Commission precedent at that time required network facilities costs to be rolled into transmission rates and not directly assigned interconnection customers.[52] Harbor argues that when determining whether costs of a particular facility should be rolled in or directly assigned, it does not matter whether the facilities were installed to meet a particular customer's request for service or that the facilities would not have been built "but for" the interconnection request. Thus, Harbor argues that, contrary to SoCal Edison's claim, it cannot be assumed that the Commission indirectly approved the direct assignment of costs because the treatment of the facilities was purportedly consistent with the TO Tariff's beneficiary pays test.[53]

30. Moreover, Harbor responds that the TO Tariff in effect at the time the 2003 long-term interconnection agreement was entered into defined direct assignment facilities as those "at or beyond" the point of interconnection, and thus the replacement circuit breakers should have been excluded from direct assignment. Harbor contends, contrary to SoCal Edison's claim, that the replacement breakers are not reliability upgrades appropriate for customer funding because the Harbor Facility was not a *new* facility, a

[50] Harbor Response at 2-3.

[51] Harbor Response, Ex. 9.

[52] Harbor Response at 3-4, 10-11.

[53] *Id*. at 12.

prerequisite for customer funding of reliability upgrades under the then-effective TO Tariff.[54]

31. Harbor responds to SoCal Edison's claim that Harbor cannot be a victim of "and" pricing because Harbor did not submit evidence that it pays for transmission service. On the contrary, Harbor argues that there is no Commission requirement that the interconnection customer show that it directly pays for transmission service from CAISO in order to be entitled to full repayment of costs of customer-funded network upgrades.[55]

32. Harbor also contends that SoCal Edison is incorrect in arguing that Order No. 2003 allowed participating transmission owners to adopt policies under which generators pay network upgrades. Harbor argues that Order No. 2003 clarified that individual transmission owners that compete with generators, like SoCal Edison, may not directly assign costs of network facilities to interconnection customers.[56]

33. Harbor states that it is not seeking to reclassify facilities and thus the Commission's retroactive ratemaking precedent is inapposite, especially because Harbor seeks relief under FPA section 309, rather than section 206.[57] Harbor also contests SoCal Edison's claim that section 309 does not permit the relief sought by Harbor, arguing that the Commission's section 309 remedial authority to correct violations of the filed rate is extensive, not time-limited, and appropriate in this instance to remedy SoCal Edison's TO Tariff violation of not obtaining Commission approval prior to directly assigning costs to Harbor.[58]

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[54] *Id*. at 8-9; *see* SoCal Edison Answer at 18-19.

[55] Harbor Response at 12.

[56] *Id*. at 13 (citing Order No. 2003, 104 FERC ¶ 61,103 at P 696 (noting that independent transmission owners have the ability and incentive to exploit customers under the "but for" approach)).

[57] *Id*. at 14. Harbor also responds that it did not waive its rights by failing to follow the alternative dispute resolution procedures because the dispute resolution procedures apply when "a proposed transmission addition or upgrade is needed" and not when, as here, there is a dispute about direct assignment of costs without Commission approval. *Id*. at 14-15.

[58] *Id*. at 16.

III. Discussion

A. Procedural Matters

34. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), SoCal Edison's timely, unopposed motion to intervene serves to make it a party to this proceeding.

35. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to an answer unless otherwise ordered by decisional authority. We accept Harbor's answer because it provided information that assisted us in our decision-making process.

B. Commission Determination

36. For the reasons discussed below, we deny the complaint. Harbor does not allege that SoCal Edison violated the terms of the short-term interconnection agreements and 2003 long-term interconnection agreement between SoCal Edison and Harbor. Rather, Harbor seeks a refund of charges paid pursuant to those agreements by claiming that the charges reflect a direct assignment of costs that the Commission never "approved" and that such direct assignment was inconsistent with the TO Tariff and Commission policy in effect during the relevant period (1999 - 2018).[59] None of Harbor's arguments, however, controvert the dispositive fact that the interconnection agreements were properly filed with the Commission under section 205 of the FPA, were accepted under FPA section 205, and thus under section 205 of the FPA constitute filed rates carrying the force of law.[60] As such, SoCal Edison properly charged the rate reflected in those agreements.

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[59] We note that, except for an initial protest of the 1999 short-term interconnection agreement that it later withdrew, Harbor did not contest any of the other short-term interconnection agreements or the 2003 long-term interconnection agreement (and, indeed, executed those subsequent agreements). Further, notwithstanding Harbor now argues the Commission never "approved" the direct assignment of costs in the delegated letter orders, Harbor never sought rehearing of the delegated letter orders that "accepted" the filings.

[60] *Montana-Dakota Utilities Co. v. Northwestern Pub. Serv. Co.*, 341 U.S. 246, 251 (1951); *Cal. ex. rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 853 (9th Cir. 2004); *Boston Edison Co. v. FERC*, 856 F.2d 361, 368 (1st Cir. 1988); *Me. Pub. Serv. Co. v. FPC*, 579 F.2d 659, 666 (1st Cir. 1978).

37. While Harbor does not directly dispute that the interconnection agreements constitute the filed rate, it seeks to undermine the validity of the terms of those agreements providing for the direct assignment of costs to Harbor. To that end, Harbor makes much of the fact that the TO Tariff in effect when the interconnection agreements were filed stated that "Direct Assignment Facilities . . . shall be subject to FERC approval," but that the delegated letter orders acting on those agreements indicated that the agreements were accepted for filing and that acceptance of the agreements does not constitute "approval." [61]

38. Regardless of whether interconnection agreements submitted under FPA section 205 are accepted or approved, or whether made effective via delegated letter order or by Commission-voted order, they constitute the filed rate.[62] We see no basis on the record to interpret the TO Tariff's provision that "Direct Assignment Facilities . . . shall be subject to FERC approval" as requiring anything beyond what happened here: SoCal Edison filed the interconnection agreements with the Commission under section 205 of the FPA and the agreements were timely acted upon via delegated letter orders, which caused the interconnection agreements to become the filed rate.

39. The language in the delegated letter orders stating that acceptance of the interconnection agreements "does not constitute approval of any service, rate, charge, . . ." does not render SoCal Edison's filings accepted by those delegated letter orders to be something other than the filed rate. In any event, the fact here is that SoCal Edison filed the interconnection agreements with the Commission as required under section 205 of the FPA and in that way they were "subject to FERC approval." Harbor has not shown that the TO Tariff was intended to require the Commission to explicitly use the term "approve" in acting upon SoCal Edison's filings to make them filed rate. Indeed, the Commission has wide discretion on how it chooses to process its filings.[63]

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[61] Harbor Complaint at 1, 2, 18-19; Harbor Response, Exs. 7, 9.

[62] *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,368, at P 19 (2004) (stating that agreements and rates accepted by delegated letter order are binding under the filed rate doctrine); *see also* 18 C.F.R. § 375.307(a)(1) (delegated authority regulations).

[63] *See Vt. Yankee Nuclear Power Corp. v. Natural Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (agencies have broad discretion over the formulation of their procedures); *Superior Oil Co. v. FERC*, 563 F.2d 191, 201 (5th Cir. 1977) ("We ordinarily will defer to an agency's choices concerning its procedures because in making such choices agencies are best situated to determine how they should allocate their finite resources.").

40. Because we conclude that SoCal Edison acted consistent with the filed rate – the interconnection agreements – as discussed above, we need not address the parties' conflicting interpretations concerning the substance and timing of the Commission's interconnection pricing policies or alleged inconsistencies between the policies and the TO Tariff. As stated, the interconnection agreements, once on file with the Commission, were binding, regardless of any alleged conflicts with the Commission's interconnection pricing policies.[64]

The Commission orders:

Harbor's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

[64] *See, e.g.*, *Williston Basin Interstate Pipeline Co. v. FERC*, 874 F.2d 834, 837 (D.C. Cir. 1989) (finding that the Commission is bound by the terms of accepted rate schedules). We note that the 2003 long-term interconnection agreement has been replaced by the December 2018 replacement agreement, which reduced the interconnection facilities charges complained of by Harbor. Harbor Complaint at 4; *supra* n.11.