

171 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company	Docket Nos. ER20-1189-000
Ralph Laks	EL20-38-000

v.

Southern California Edison Company

Southern California Edison Company	ER20-1787-000 (consolidated)
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ORDER ACCEPTING NOTICES OF CANCELLATION, DENYING COMPLAINT,
AND CONSOLIDATING PROCEEDINGS

(Issued June 2, 2020)

1. On March 4, 2020,¹ Southern California Edison Company (SoCal Edison) filed, pursuant to sections 35.13 and 35.15 of the Federal Energy Regulatory Commission's (Commission) regulations² and Order No. 2001,³ notices of cancellation in Docket

¹ SoCal Edison submitted the March 4, 2020 filing via eFiling because the service agreements were reported on its Electric Quarterly Report (EQR) and lacked an eTariff record.

² 18 C.F.R. §§ 35.13 & 35.15 (2019).

³ *Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107, *reh'g denied*, Order No. 2001-A, 100 FERC ¶ 61,074, *reh'g denied*, Order No. 2001-B, 100 FERC ¶ 61,342, *order directing filing*, Order No. 2001-C, 101 FERC ¶ 61,314 (2002), *order directing filing*, Order No. 2001-D, 102 FERC ¶ 61,334, *order refining filing requirements*, Order No. 2001-E, 105 FERC ¶ 61,352 (2003), *order on clarification*, Order No. 2001-F, 106 FERC ¶ 61,060 (2004), *order revising filing requirements*, Order

No. ER20-1189-000 (Cancellation Filing) terminating a Generator Interconnection Agreement for Generating Facilities Interconnection Under the Fast Track Process (Interconnection Agreement) and a Service Agreement for Wholesale Distribution Service (Service Agreement) (collectively, Agreements)⁴ between SoCal Edison and Ralph Laks (Mr. Laks or Interconnection Customer). SoCal Edison proposes to terminate the Agreements for default on a unilateral basis without Mr. Laks' consent.

2. Subsequently, on April 1, 2020, Mr. Laks filed, pursuant to section 206 of the Federal Power Act (FPA)⁵ and Rule 206 of the Commission's Rules of Practice and Procedure,⁶ a complaint (Complaint) against SoCal Edison alleging that SoCal Edison's termination of the Agreements is not legitimate, and that the Cancellation Filing in Docket No. ER20-1189-000 should be rejected. Mr. Laks asserts that there is a discrepancy regarding SoCal Edison's existing easement for distribution facilities on Mr. Laks' property that could substantially reduce the amount of land available for Mr. Laks' solar generation project that is the subject of the Agreements. According to Mr. Laks, the easement issue is clouding title, thereby preventing him from meeting the financial obligations under the Interconnection Agreement. Mr. Laks seeks a Commission order mandating that SoCal Edison enter into mediation with Mr. Laks to seek a mutually agreeable resolution of SoCal Edison's termination of the Agreements and the distribution easement issues.

3. On May 8, 2020, pursuant to section 205(d) of the FPA,⁷ SoCal Edison resubmitted the Cancellation Filing via eTariff in Docket No. ER20-1787-000 (Second Cancellation Filing) in order to establish a 60-day clock for Commission action on the filing. SoCal Edison also moved to consolidate the Cancellation Filing, Complaint, and Second Cancellation Filing proceedings.

No. 2001-G, 120 FERC ¶ 61,270, *order on reh'g and clarification*, Order No. 2001-H, 121 FERC ¶ 61,289 (2007), *order revising filing requirements*, Order No. 2001-I, 125 FERC ¶ 61,103 (2008).

⁴ SoCal Edison designated the Interconnection Agreement and Service Agreement as Service Agreement Nos. 1070 and 1071, respectively, under SoCal Edison's Wholesale Distribution Access Tariff, FERC Electric Tariff, Volume No. 5 (WDAT). The Agreements were included in SoCal Edison's EQR for the first quarter of 2019.

⁵ 16 U.S.C. § 824e (2018).

⁶ 18 C.F.R. § 385.206 (2019).

⁷ 16 U.S.C. § 824d.

4. As discussed below, we accept SoCal Edison's Cancellation Filing, effective May 4, 2020, as requested, and deny the Complaint. We also consolidate the proceedings in Docket Nos. ER20-1189-000, EL20-38-000, and ER20-1787-000, and reject the Second Cancellation Filing as moot, as discussed below.

I. Background and Instant Filings

A. Background

5. Mr. Laks is developing a three MW solar photovoltaic generating facility (Solar 66 Project) in Daggett, California for which he entered into the Interconnection Agreement and Service Agreement with SoCal Edison.⁸ SoCal Edison and Mr. Laks entered into the Interconnection Agreement under the Fast Track Process set forth in section 6 of the Generator Interconnection Procedures in SoCal Edison's WDAT.⁹ The Fast Track Process provides an accelerated process for interconnecting small generators that meet specified size limits and satisfy other qualification criteria. In relevant part, the Fast Track Process requires SoCal Edison to tender a draft generator interconnection agreement to the interconnection customer within 15 days of its determination that the interconnection is feasible.¹⁰ Unless otherwise agreed by the parties, if an interconnection customer has not executed the interconnection agreement, requested filing of an unexecuted interconnection agreement, or initiated dispute resolution procedures pursuant to section 11.2 of the interconnection agreement within 90 calendar days after SoCal Edison tenders the draft interconnection agreement to the interconnection customer, the interconnection customer shall be deemed to have withdrawn its interconnection request.¹¹

6. The Interconnection Agreement provides the terms and conditions pursuant to which: (a) SoCal Edison will provide interconnection service for the Solar 66 Project; (b) SoCal Edison will design, procure, construct, own, operate and maintain the distribution provider's interconnection facilities and distribution upgrades; and (c) Mr. Laks will pay for such services and facilities.¹² The Service Agreement sets forth

⁸ Cancellation Filing at 1.

⁹ SoCal Edison, WDAT, Attachment I, Generator Interconnection Procedures GIP (16.0.0).

¹⁰ *Id.* § 6.6, 6.7.

¹¹ *Id.* § 6.13.2.

¹² Cancellation Filing at 1-2.

SoCal Edison's agreement to provide distribution service for the Solar 66 Project's generation.

7. Termination of the Interconnection Agreement is controlled by Articles 3.3.2 and 7.6.2 of the Interconnection Agreement, and the provisions governing milestones are set forth in Article 6.2 of the Interconnection Agreement. Article 3.3.2 provides that either party may terminate the Interconnection Agreement after default pursuant to Article 7.6 of the Interconnection Agreement. Termination of the Service Agreement is controlled by section 4 of that agreement, which provides, among other things, that service under the Service Agreement shall terminate upon the termination date of the Interconnection Agreement.

8. Article 7.6.1 of the Interconnection Agreement sets forth the requirement for notice of default, and provides that, except as provided in Article 7.6.2, the defaulting party shall have 60 calendar days from receipt of the default notice to cure the default, unless the default is not capable of cure within 60 calendar days, in which case the defaulting party shall commence cure within 20 calendar days after notice and complete such cure within six months from receipt of the default notice. If cured within this time, Article 7.6.1 provides that the default shall cease to exist. Article 7.6.2 of the Interconnection Agreement provides that, if a default is not cured or is not capable of being cured within the time period provided, the non-defaulting party has the right to terminate the Interconnection Agreement by written notice at any time until cure occurs.

9. Article 6.2 of the Interconnection Agreement addresses milestones and states:

The Parties shall agree on milestones for which each Party is responsible and list them in Attachment 4 of this Agreement. A Party's obligations under this provision may be extended by agreement. If a Party anticipates that it will be unable to meet a milestone for any reason other than an Uncontrollable Force Event, it shall immediately notify the other Party of the reason(s) for not meeting the milestone and (1) propose the earliest reasonable alternate day by which it can attain this and future milestones, and (2) requesting appropriate amendments to Attachment 4. The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is intentional or unwarranted notwithstanding the circumstances explained by the Party proposing the amendment.

10. Finally, as relevant to these proceedings, the Interconnection Agreement requires that Mr. Laks: (1) pay a number of specified costs to SoCal Edison; (2) post financial security for SoCal Edison's interconnection facilities and distribution upgrades; and (3) provide tax security for SoCal Edison's interconnection facilities and distribution upgrades. The deadline for these payments was July 1, 2019.¹³

B. Cancellation Filing

11. In its Cancellation Filing, SoCal Edison seeks to terminate the Agreements for default, effective May 4, 2020. SoCal Edison states that Mr. Laks failed to make the payments required by the Interconnection Agreement by the milestone deadline of July 1, 2019. SoCal Edison explains that it issued a notice of default on August 1, 2019 to Mr. Laks requesting a cure of such failure by September 30, 2019, which was 60 calendar days from the date of the notice.¹⁴ According to SoCal Edison, Mr. Laks commenced cure within 20 calendar days of the notice of default by providing tax security payment for the distribution upgrades. Although Mr. Laks gave no indication of why the default – which was a payment of money obligation – was not capable of being cured within 60 calendar days, SoCal Edison states that it gave Mr. Laks an additional six months from the notice of default to cure the default in accordance with Article 7.6.1 of the Interconnection Agreement.¹⁵

12. According to SoCal Edison, as of February 1, 2020, Mr. Laks had failed to cure the default. Pursuant to Article 7.6.2 of the Interconnection Agreement, SoCal Edison issued a notice of termination to Mr. Laks on February 2, 2020, indicating SoCal Edison's intent to terminate the Agreements. SoCal Edison asserts that, as of the date of its Cancellation Filing, Mr. Laks still had not provided payment, totaling nearly \$500,000, of the required costs, posted financial security, or completed tax security payments as required by the Interconnection Agreement.¹⁶ SoCal Edison contends that the Commission has not required a utility to extend milestone deadlines when the party requesting such extensions is in breach for failure to provide required financial security and has found termination in such a case to be just and reasonable.¹⁷ SoCal Edison notes

¹³ Cancellation Filing at 2; Interconnection Agreement, Art. 7.6, Attachment 2 § 6(b) Payment No. 1, 6(d)(i)1, 6(d)(i)2, 6(d)(ii)1, and 6(d)(ii)2.

¹⁴ Cancellation Filing at 2.

¹⁵ *Id.* at 2-3.

¹⁶ *Id.*, Attachment A

¹⁷ *Id.* at 3 (citing *Pac. Gas & Elec. Co.*, 146 FERC ¶ 61,120, at PP 22-23 (2014) (*PG&E*)). In *PG&E*, the Commission accepted PG&E's notice of termination of an interconnection agreement. In doing so, the Commission found that the interconnection

that it is submitting the Cancellation Filing to the Commission unilaterally, rather than entering the termination date for the Agreements on its EQR, because Mr. Laks does not consent to cancellation.¹⁸

C. Complaint

13. In the Complaint, Mr. Laks seeks rejection of the Cancellation Filing in Docket No. ER20-1189-000 as illegitimate and requests a Commission order directing SoCal Edison to enter into mediation with Mr. Laks to arrive at a mutually agreeable resolution of the dispute within 30 days of the order. Mr. Laks' Complaint centers around what he states is an unresolved easement issue on his property that is the intended site for the Solar 66 Project., and he contends that he expressed his reservations to SoCal Edison regarding executing the Interconnection Agreement in light of his easement concerns, but was pressured by SoCal Edison into signing the Interconnection Agreement anyway.¹⁹

14. Mr. Laks contends that SoCal Edison's termination of the Agreements is unjust and unreasonable and inconsistent with Commission precedent.²⁰ According to Mr. Laks, the termination is also inconsistent with SoCal Edison's assurances that it would not find Mr. Laks in default while easement negotiations were ongoing.²¹ Mr. Laks also expresses concerns regarding delays in SoCal Edison's Fast Track Process,²² and asserts that SoCal Edison unreasonably refused to further extend the Interconnection Agreement milestones, despite assurances from SoCal Edison staff that he could seek and obtain

customer breached its interconnection agreement with PG&E by failing to provide required financial security, and that PG&E had followed the required steps under the interconnection agreement to terminate the agreement. The Commission also rejected the interconnection customer's claim that PG&E breached the agreement by refusing to extend milestones, finding that the conditions cited by the interconnection customer as the only bases upon which PG&E could decline to extend milestones do not apply when the party requesting milestone extension is in breach of the interconnection agreement. *PG&E*, 146 FERC ¶ 61,120, at P 22.

¹⁸ Cancellation Filing at 3.

¹⁹ Complaint at 1.

²⁰ *Id.* at 4-5 (citing *Duke Energy LLC*, 165 FERC ¶ 61,230 (2018) (*Duke Energy*)).

²¹ *Id.* at 4-5.

²² *Id.* at 1, 4.

such extensions.²³ In the Complaint, Mr. Laks quantifies the financial impact of the termination at approximately \$1-2 million.²⁴

D. Second Cancellation Filing and Motion to Consolidate

15. On March 8, 2020, SoCal Edison filed the Second Cancellation Filing in which it resubmitted via eTariff in Docket No. ER20-1787-000 the same notices of cancellation that were included in the Cancellation Filing for the sole purpose of establishing a 60-day clock for Commission action. SoCal Edison seeks an effective date of May 11, 2020 for the Second Cancellation Filing.²⁵

16. On March 8, 2020, SoCal Edison also filed a motion to consolidate Docket Nos. ER20-1189-000, EL20-38-000 and ER20-1787-000. SoCal Edison explains that it submitted the Cancellation Filing in Docket No. ER20-1189-000 via eFiling because the Agreements were reported in its EQR and lacked an eTariff record. According to SoCal Edison, it now understands that in order to receive statutory action pursuant to FPA section 205(d), it must instead file in eTariff; accordingly, it refiled the same notices of cancellation in eTariff in Docket No. ER20-1787-000.²⁶ SoCal Edison contends that the Cancellation Filing, Complaint proceedings, and Second Cancellation Filing should be consolidated. According to SoCal Edison, the Commission has, in similar circumstances, consolidated proceedings where an FPA section 206 proceeding and an FPA section 205 filing raise common issues of law and fact, and for administrative efficiency.²⁷ Here, SoCal Edison contends, the issues of law and fact are identical. SoCal Edison avers that consolidation of the proceedings at this time would not prejudice any party and would not have a negative impact on or disrupt an ongoing proceeding.²⁸

²³ *Id.* at 3.

²⁴ *Id.* at 5-6. We note that Mr. Laks' protest of SoCal Edison's Cancellation Filing, described below, quantifies the financial impact of the termination at approximately \$3-5 million. Protest at 5. Mr. Laks does not provide an explanation for the decrease in the financial impact between his filing of the protest and his filing of the Complaint.

²⁵ Second Cancellation Filing at 1-2.

²⁶ Motion to Consolidate at 2-3.

²⁷ *Id.* at 3 (citing *Cities of Anaheim v. Trans Bay Cable L.L.C.*, 146 FERC ¶ 61,100 at P 19 n.19 (2014)).

²⁸ *Id.* at 4.

II. Notice and Responsive Pleadings

17. Notice of SoCal Edison's March 4, 2020 Cancellation Filing was published in the *Federal Register*, 85 Fed. Reg. 14,469 (March 12, 2020), with interventions and protests due on or before March 25, 2020. On March 25, 2020, Mr. Laks filed a timely protest (Protest).²⁹ On April 9, 2020, SoCal Edison filed a motion for leave to answer and answer to Mr. Laks' Protest (Protest Answer). Mr. Laks filed an answer to SoCal Edison's motion for leave to answer on April 24, 2020, requesting that the Commission deny the motion.

18. Notice of Mr. Laks' April 1, 2020 Complaint was published in the *Federal Register*, 85 Fed. Reg. 19,936 (April 9, 2020), with interventions, answers, and protests due on or before May 1, 2020. On May 1, 2020, SoCal filed a timely answer and motion to dismiss the Complaint (Complaint Answer).

19. Notice of SoCal Edison's May 8, 2020 Second Cancellation Filing was published in the *Federal Register*, 85 Fed. Reg. 28,942 ((May 14, 2020), with interventions and protests due on or before May 29, 2020. None was filed.

20. The issues raised in Mr. Laks' Protest are in most respects identical to the issues raised in the Complaint.³⁰ Similarly, SoCal Edison's Protest Answer is in most respects identical to its Complaint Answer. To avoid unnecessary repetition, we provide below consolidated summaries of each party's position with regard to each issue.

III. Discussion

A. Procedural Matters

21. 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 the decisional authority. We accept SoCal Edison's answer to Mr. Laks' Protest because it has provided information that assisted us in our decision-making process.

²⁹ We note that Mr. Laks did not move to intervene in Docket No. ER20-1189-000 and, as a result, Mr. Laks is not a party to that proceeding.

³⁰ Mr. Laks sets forth two new arguments regarding the financial impact of SoCal Edison's termination of the Agreements in the Complaint that were not included in the Protest. These arguments are addressed in detail, below.

B. Substantive Matters

22. We grant SoCal Edison's motion to consolidate. We find that there are common issues of law and fact regarding SoCal Edison's termination of the Agreements. We find that consolidation of these proceedings will promote administrative efficiency by addressing overlapping issues comprehensively and consistently.

23. As discussed below, we find that SoCal Edison's termination of the Agreements is consistent with the terms of those Agreements, and we therefore accept the notices of cancellation, effective May 4, 2020, as requested. Further, we find that Mr. Laks has not met his burden of proof under section 206 of the FPA and, therefore, we deny Mr. Laks' Complaint against SoCal Edison. We address each of the disputed issues below.

1. Distribution Easement Dispute**a. Laks Protest and Complaint**

24. Mr. Laks' objections to SoCal Edison's termination of the Agreements center around what he states is an unresolved easement issue on his property that is the intended site for the Solar 66 Project. Mr. Laks asserts that SoCal Edison has existing distribution poles that infringe upon the area available to construct the Solar 66 Project and are inconsistently placed with respect to the deed to the property. According to Mr. Laks, if SoCal Edison's easement is found to stand, it would quite substantially reduce the amount of land available for the Solar 66 Project. Mr. Laks contends that this easement issue creates a "cloud on title," which prevents the parties from fulfilling their respective obligations under the Interconnection Agreement and impacts Mr. Laks' ability to finance buildout of the Solar 66 Project.³¹

25. Without resolution of these easement concerns, Mr. Laks explains that he was not comfortable making the large financial security payments required by the Interconnection Agreement. He also asserts that he expressed strong objections to SoCal Edison regarding executing the Interconnection Agreement in light of his easement concerns, but was pressured by SoCal Edison into signing the Interconnection Agreement anyway.³²

26. After executing the Agreements, Mr. Laks states that he continued to work in good faith to resolve the easement issue and was given assurance by SoCal Edison that he would not be found in default of contract while easement negotiations were ongoing.³³

³¹ Complaint at 2; Protest at 2.

³² Complaint at 2; Protest at 2.

³³ Complaint at 4-5; Protest at 3-4.

Mr. Laks claims that SoCal Edison was unresponsive to many of his attempts at resolution and requests for documentation of the easement and therefore the notice of default came as a surprise to him. Mr. Laks asserts that he continued his efforts through the cure period to negotiate the easement, but his efforts were rebuffed by SoCal Edison.³⁴

b. SoCal Edison Answers

27. SoCal Edison contends that Mr. Laks has been using the easement issue since prior to contract execution to delay a project that is not ready to be interconnected, while continuing to maintain a queue position and consume SoCal Edison staff's time. SoCal Edison explains that the easement on Mr. Laks' property has been in place since 1927, predating Mr. Laks' purchase of the property, and that SoCal Edison maintains a distribution line on the property that was installed in 1954.³⁵ SoCal Edison contends that its rights to the distribution line were neither uncertain or unknown, and that the distribution lines are not an encroachment on Mr. Laks' property, nor is SoCal Edison's easement a cloud on title. SoCal Edison asserts that it would maintain such long-standing systems pursuant to either the easement or to an easement by prescription, which is an easement created by operation of law given the passage of multiple decades. SoCal Edison also asserts that Mr. Laks has never been able to produce evidence from the San Bernardino County or any other government agency to demonstrate this title issue, despite SoCal Edison asking for such evidence over a year ago.³⁶

28. Nevertheless, SoCal Edison states that on multiple occasions it expressed to Mr. Laks that, following SoCal Edison's approval of a defined plan for its facilities, SoCal Edison would be agreeable to amending the easement to accommodate installation of the generating facilities associated with the Solar 66 Project and would further quitclaim easement rights it no longer needed. According to SoCal Edison, Mr. Laks, for reasons unknown, failed to meet project milestone deadlines, including submission of Mr. Laks' plans for review.³⁷ SoCal Edison states that the parties met and conferred on this issue on January 8, 2020, and while Mr. Laks proposed modifications to SoCal Edison's easement on February 28, 2020, he has yet to submit final plans. However, SoCal Edison emphasizes that this amendment process is outside the context of the

³⁴ Complaint at 4; Protest at 4.

³⁵ SoCal Edison Protest Answer at 3-4; SoCal Edison Complaint Answer at 4.

³⁶ SoCal Edison Protest Answer at 4; SoCal Edison Complaint Answer at 4.

³⁷ SoCal Edison Protest Answer at 4; SoCal Edison Complaint Answer at 5.

Interconnection Agreement and is neither necessary nor a condition precedent to Mr. Laks' obligations under the Interconnection Agreement.³⁸

29. In response to Mr. Laks' claims that he was pressured into signing the Interconnection Agreement, SoCal Edison maintains that Mr. Laks willingly executed the contract.³⁹ SoCal Edison further explains that the negotiation process for Fast Track interconnection is designed to be twice as fast as for non-Fast Track projects so that negotiations are not burdensomely long and non-legitimate projects are not incentivized to enter the queue. According to SoCal Edison, Mr. Laks could have requested filing of an unexecuted Interconnection Agreement that expressly conditioned the milestone deadlines on SoCal Edison clearing encumbrances or included milestone deadlines that Mr. Laks could actually meet. Alternatively, Mr. Laks could have withdrawn the Solar 66 Project until the easement issue was resolved. SoCal Edison points out that Mr. Laks declined both options.⁴⁰

c. Commission Determination

30. As an initial matter, we find that the validity of an easement for distribution facilities is a matter subject to the jurisdiction of the state in which the easement is located – here, the state of California. Accordingly, the Commission does not have the jurisdiction to provide Mr. Laks' requested relief by directing SoCal Edison to work with Mr. Laks to resolve the easement issue. As the easement dispute itself is not within our jurisdiction, our evaluation of the easement issue below is limited to whether Mr. Laks' obligations to meet the milestones set forth in the jurisdictional Interconnection Agreement are conditioned upon resolution of the easement dispute.

31. We find that the validity of SoCal Edison's existing distribution easement on Mr. Laks' property is beyond the scope of the Interconnection Agreement. SoCal Edison's and Mr. Laks' rights and obligations under the Agreements are limited to the terms of those Agreements. As relevant here, the Interconnection Agreement sets forth a series of milestones that the parties must meet and outlines the options available to either party in the event those milestones are missed. Nothing in the Interconnection Agreement conditions Mr. Laks' obligations to meet the specified milestones on resolution of his easement concerns.

32. Moreover, we are not persuaded by Mr. Laks' assertions that SoCal Edison pressured him into executing the Interconnection Agreement despite the ongoing easement dispute. Mr. Laks has provided no record evidence to support a finding of

³⁸ SoCal Edison Protest Answer at 5; SoCal Edison Complaint Answer at 5.

³⁹ SoCal Edison Protest Answer at 7; SoCal Edison Complaint Answer at 7-8.

⁴⁰ SoCal Edison Protest Answer at 7-8; SoCal Edison Complaint Answer at 8.

coercion or duress. As SoCal Edison explains, the WDAT sets forth a process for negotiating interconnection agreements for Fast Track projects. That process includes timelines for tendering drafts and allows either party to declare an impasse, invoke mediation, or submit an unsigned version of the Interconnection Agreement to the Commission.⁴¹ Section 6.13.2 of the generator interconnection procedures in SoCal Edison's WDAT also provides that, unless otherwise agreed by the parties, if an interconnection customer has not executed the interconnection agreement, requested filing of an unexecuted interconnection agreement, or initiated dispute resolution procedures within 90 calendar days after SoCal Edison tenders the draft interconnection agreement to the interconnection customer, the interconnection customer shall be deemed to have withdrawn its interconnection request.⁴² The purpose of these provisions is to prevent negotiations from continuing indefinitely, which could render study results stale and allow unlikely interconnection requests to remain in the queue. Nothing in the record here supports a finding that SoCal Edison's actions were inconsistent with these provisions of the WDAT.

33. To the extent Mr. Laks believed the easement dispute threatened the viability of the Solar 66 Project and gave him reservations about executing the Interconnection Agreement, he had the option of requesting that SoCal Edison file an unexecuted version of the Interconnection Agreement that included later milestone deadlines or expressly conditioned the milestone deadlines on SoCal Edison clearing encumbrances. Alternatively, Mr. Laks could have withdrawn the Solar 66 Project from the interconnection queue until the easement issue was resolved.⁴³ Mr. Laks did neither. His failure to avail himself of these options does not absolve him of his financial obligations under the Interconnection Agreement.

2. **Justness and Reasonableness of SoCal Edison's Termination of the Agreements**

34. Mr. Laks contends that SoCal Edison's termination of the Agreements is unjust, unreasonable, inconsistent with the terms of the Agreements, and contrary to Commission precedent. As discussed below, we find that the record does not support such a finding.

⁴¹ SoCal Edison, WDAT, Attachment I, Generator Interconnection Procedures GIP (16.0.0), § 6.13.2.

⁴² *Id.*

⁴³ *See id.*

a. **Extension of Interconnection Agreement Milestones**

i. **Laks Protest and Complaint**

35. Mr. Laks asserts that SoCal Edison's refusal to extend the deadline for the Interconnection Agreement milestones was unjust, unreasonable, and contrary to the terms of the Interconnection Agreement. Mr. Laks contends that SoCal Edison represented to him that he would be able to request and be granted extensions of milestones associated with payments in order resolve the easement issue.⁴⁴ In support, Mr. Laks includes as Attachment A to the Complaint and to the Protest a series of emails among Mr. Laks, his representative Tam Hunt, and various SoCal Edison staff that purports to show to SoCal Edison made these representations.⁴⁵

36. Mr. Laks also asserts that SoCal Edison's refusal to extend milestones is a "pattern of behavior" by SoCal Edison, noting that SoCal Edison has also refused to extend milestones on his second solar project (the Solar 33 Project). Mr. Laks states that he has issued a notice of default to SoCal Edison regarding the Solar 33 Project because he believes SoCal Edison's refusal to extend the milestones for that project is a violation of the terms of the Solar 33 Project interconnection agreement.⁴⁶

37. Mr. Laks contends that Commission precedent supports a finding that SoCal Edison's refusal to extend milestones is unjust and unreasonable and that the Cancellation Filing should be rejected.⁴⁷ Mr. Laks asserts that the *PG&E* precedent cited by SoCal Edison is readily distinguishable from this case because Mr. Laks received numerous assurances directly from SoCal Edison representatives that SoCal Edison would not find Mr. Laks in default while easement negotiations were ongoing. Mr. Laks contends that *Duke Energy*, where an interconnection customer did not make the required security deposits because the interconnection costs had been increased from \$1.72 million to over \$6 million over a two-year period, is more relevant. In that case, the Commission found that Duke Energy's actions in increasing costs so substantially were not just and reasonable and rejected Duke Energy's termination of the associated interconnection

⁴⁴ Protest at 3; Complaint at 3-4.

⁴⁵ Complaint, Attachment A; Protest, Attachment A.

⁴⁶ Complaint at 4.

⁴⁷ *Id.* at 4-5; Protest at 4 (citing *Duke Energy*, 165 FERC ¶ 61,230).

agreement.⁴⁸ Mr. Laks claims that, as in *Duke Energy*, SoCal Edison's actions here are patently not just and reasonable and the Cancellation Filing should be rejected.⁴⁹

ii. SoCal Edison Answers

38. SoCal Edison asserts that it never waived its right to declare a default, and that it provided Mr. Laks substantial notice in advance of issuing the formal notice of default. According to SoCal Edison, Mr. Laks' claims that SoCal Edison provided assurance that a default would not be asserted during easement negotiations, and that Mr. Laks would be able to seek and obtain milestone extensions without risking default, are not supported by the emails included in Attachment A to the Complaint and Protest. Moreover, SoCal Edison points out that there is not an amendment to the Interconnection Agreement providing for such an extension. SoCal Edison contends that it has always taken the position that the purported easement issue would need to be addressed outside of the Interconnection Agreement context.⁵⁰ SoCal Edison maintains that its actions were consistent with the Interconnection Agreement terms, and that the default should not have come as a surprise to Mr. Laks given the number of times SoCal Edison contacted him with respect to the need to provide payment and the consequences of failure to do so.⁵¹

39. SoCal Edison contends that it followed the steps outlined in the Interconnection Agreement regarding termination. SoCal Edison asserts that it gave Mr. Laks the contractual 60 days to cure default after it issued the notice of default on August 1, 2019.⁵² SoCal Edison explains that Mr. Laks commenced cure within 20 calendar days by posting tax security that had been due on July 1, 2019 for distribution upgrades. SoCal Edison states that, although Mr. Laks gave no indication of why the default was not capable of being cured within 60 calendar days, SoCal Edison gave Mr. Laks an additional six months from the notice of default to cure the default in accordance with Article 7.6.1 of the Interconnection Agreement. According to SoCal Edison, when six months passed and Mr. Laks still had not cured, it issued a notice of termination.⁵³

⁴⁸ Complaint at 4-5; Protest at 4.

⁴⁹ Complaint at 5; Protest at 4.

⁵⁰ SoCal Edison Complaint Answer at 8-9; SoCal Edison Protest Answer at 8-9.

⁵¹ SoCal Edison Protest Answer at 9-10; SoCal Edison Complaint Answer at 10.

⁵² SoCal Edison Protest Answer at 10; SoCal Edison Complaint Answer at 10; *see* Interconnection Agreement, Article 7.6.1.

⁵³ SoCal Edison Protest Answer at 10; SoCal Edison Complaint Answer at 10.

40. Addressing Mr. Laks' claim that SoCal Edison unreasonably refused to extend milestones, SoCal Edison refers to the executed Interconnection Agreement and the nature of the Fast Track interconnection process. SoCal Edison explains that, unlike non-Fast Track interconnection agreements, the Fast Track Process does not have a provision for project suspension. SoCal Edison contends that Mr. Laks seeking to extend project milestones and his financial obligations is akin to trying to suspend the Solar 66 Project as if the Interconnection Agreement was not made under the Fast Track Process.⁵⁴ SoCal Edison argues that this "quasi-suspension" is unreasonable, unfair, and discriminatory to other Fast Track customers who must comply with suspension provisions, and possibly to customers later in the interconnection queue.⁵⁵

41. SoCal Edison contends that, per section 6.2 of the Interconnection Agreement, there are three scenarios in which SoCal Edison can decline to extend milestones, and all three are applicable here.⁵⁶ Specifically, SoCal Edison asserts that (1) it is concerned the delay will result in studies becoming stale and unfairness to later queued interconnection customers, (2) several milestones had previously been delayed and have yet to be attained, and (3) it emphatically believes Mr. Laks' delay is intentional and unwarranted.⁵⁷

42. SoCal Edison disagrees with Mr. Laks' assertion that the *Duke Energy* order is more relevant precedent than the *PG&E* order. SoCal Edison explains that the *Duke Energy* order addresses Duke Energy's cancellation of an interconnection agreement after substantially increasing interconnection costs. SoCal Edison maintains that, in this case, it has not increased interconnection costs at all. According to SoCal Edison, its actions in insisting that Mr. Laks continue to meet the construction payment and financial security obligations under the Interconnection Agreement, which have not changed at all since execution, are just and reasonable and consistent with both the *PG&E* and *Duke Energy* precedent.⁵⁸

⁵⁴ SoCal Edison Protest Answer at 11; SoCal Edison Complaint Answer at 12.

⁵⁵ SoCal Edison Complaint Answer at 11-12; SoCal Edison Protest Answer at 11.

⁵⁶ In relevant part, section 6.2 of the Interconnection Agreement provides that parties shall not unreasonably withhold agreement to extend milestones "unless (1) they will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) they have reason to believe in meeting the milestone is intentional or unwarranted. . . ."

⁵⁷ SoCal Edison Complaint Answer at 12-13; SoCal Edison Protest Answer at 12.

⁵⁸ SoCal Edison Complaint Answer at 11; SoCal Edison Protest Answer at 10-11.

iii. Commission Determination

43. We agree with SoCal Edison that Mr. Laks breached the Interconnection Agreement by failing to provide the required payments and security. We also find that SoCal Edison followed the required steps in the Interconnection Agreement to terminate the agreement, and thus we accept SoCal Edison's Cancellation Filing, effective May 4, 2020, as requested. Specifically, we find that SoCal Edison's actions were consistent with the Interconnection Agreement's provisions governing termination (Article 3.3.2), milestone extension (Article 6.2), and default (Article 7.6). Pursuant to Article 7.6.1, SoCal Edison provided written notice of default to Mr. Laks when he failed to meet the financial obligation milestones in the Interconnection Agreement. SoCal Edison provided an opportunity to cure within 60 calendar days, and when Mr. Laks commenced cure within 20 calendar days, SoCal Edison provided an additional six months to complete the cure.⁵⁹ When Mr. Laks failed to fully cure the default within the additional six months provided, SoCal Edison terminated the Interconnection Agreement pursuant to its rights under Article 7.6.2. Mr. Laks does not dispute these facts.

44. We reject Mr. Laks' claim that SoCal Edison's refusal to extend the Interconnection Agreement's milestones is a breach of the Interconnection Agreement. Consistent with the Commission's finding in *PG&E*,⁶⁰ we find that the limitations set forth in Article 6.2 of the Interconnection Agreement regarding the independent bases upon which SoCal Edison can decline to extend milestones do not apply when the party requesting milestone extension is in breach of the Interconnection Agreement.

45. Moreover, even if we concluded that the requirements of Article 6.2 did apply here, we are not persuaded that SoCal Edison's refusal to extend the milestone deadlines set forth in the Interconnection Agreement was unjust or unreasonable. Article 6.2 of the Interconnection Agreement provides three independent bases upon which SoCal Edison can decline to extend milestones. Specifically, Article 6.2 provides that:

The Party affected by the failure to meet a milestone shall not unreasonably withhold agreement to such an amendment unless [(1)] it will suffer significant uncompensated economic or operational harm from the delay, (2) attainment of the same milestone has previously been delayed, or (3) it has reason to believe that the delay in meeting the milestone is

⁵⁹ We note that Article 7.6.1 only requires a six-month extension if the default is not capable of cure within 60 calendar days, which Mr. Laks did not show.

⁶⁰ *PG&E*, 146 FERC ¶ 61,120 at P 22.

intentional or unwarranted notwithstanding the circumstances explained by the party proposing the amendment.⁶¹

In this case, SoCal Edison has already provided Mr. Laks an additional seven months beyond the July 1, 2019 deadline to make the required payments and provide financial security and, consequently, “attainment of the same milestone has previously been delayed.” We also agree with SoCal Edison that extension of the milestones for an additional unspecified period of time is likely to result in studies becoming stale and unfairness to later queued interconnection customers, which is contrary to the intent of the Fast Track Process. Finally, we find reasonable SoCal Edison’s assertion that it had reason to believe that the delay was intentional or unwarranted because, as discussed above, the easement dispute is beyond the scope of the Interconnection Agreement.

46. Moreover, we find no evidence in the record – including the emails in Attachment A to Mr. Laks’ Complaint and Protest – that supports a finding that SoCal Edison (1) made assurances to Mr. Laks that he would be able to seek and obtain, without controversy and without risking default, extension of time for the required milestone payments, or (2) provided assurances that Mr. Laks would not be found in default for failure to meet the milestones while easement negotiations continued. In fact, the record shows that SoCal Edison explicitly represented to Mr. Laks that *despite* the ongoing easement issues, Mr. Laks was still obligated to meet milestones under the Interconnection Agreement.⁶²

47. Finally, we find that the *Duke Energy*⁶³ order cited by Mr. Laks is inapposite to the present situation. The Commission’s rejection of the notice of termination in *Duke Energy* was predicated on the fact that Duke Energy had increased the interconnection costs for a project from \$1.72 million to over \$6 million without providing adequate support for the increase. The Commission found that, while the interconnection customer was in breach of the interconnection agreement, the record was insufficient to determine the appropriate amount of the interconnection costs. As a result, the Commission could not determine whether Duke Energy had satisfied its section 205 burden to show that the notice of termination was just and reasonable, and the Commission therefore established hearing and settlement procedures. That is not the case in the instant proceeding. Here, Mr. Laks’ financial obligations under the Interconnection Agreement have not changed since the Interconnection Agreement was executed.

⁶¹ Interconnection Agreement, Article 6.2 (Milestones).

⁶² See SoCal Edison Complaint Answer, Attachments A-D.

⁶³ *Duke Energy*, 165 FERC ¶ 61,230 at PP 27-29.

b. Delay of Fast Track Process

i. Laks Protest and Complaint

48. Mr. Laks also expresses concerns regarding the Fast Track Process timeline, and what he describes as a “pattern of non-responsiveness” and delay by SoCal Edison. Mr. Laks states that he first applied for the Fast Track Process to interconnect the Solar 66 Project on December 15, 2017. After what Mr. Laks describes as a “lengthy process that belied the ‘fast track’ nature of this interconnection process,” he and SoCal Edison executed the Agreements on March 14, 2019.⁶⁴ He also contends that SoCal Edison was not responsive to his communications expressing his concerns about executing the Interconnection Agreement,⁶⁵ and that SoCal Edison continues to delay and “often simply ignore” Mr. Laks’ efforts to resolve the issues and requests for documents.⁶⁶

49. Mr. Laks’ Complaint also contends that SoCal Edison’s termination of the Agreements and the delays in the interconnection process have resulted in significant financial impacts for Mr. Laks. Specifically, Mr. Laks contends that SoCal Edison’s termination and delays have put his project at risk for not qualifying for the federal investment tax credit, which requires that projects start construction within a given timeframe. He specifies that the investment tax credit fell from 30% in 2019 to 26% in 2020, and that it will drop to 10% over the coming three years.⁶⁷ He also contends that “if the [Interconnection Agreement] termination is allowed to stand,” interconnection costs may be shifted to the Solar 33 Project, rendering that project economically unviable. In addition, Mr. Laks asserts that termination of the Interconnection Agreement puts the viability of the whole Solar 66 Project at risk, eliminating the potential 30-year revenue from the project for the entire term of the executed Interconnection Agreement.⁶⁸

ii. SoCal Edison Answers

50. SoCal Edison disagrees with Mr. Laks’ claim that the Fast Track Process for interconnection is lengthy. SoCal Edison explains that, on the contrary, its Fast Track

⁶⁴ Protest at 1-2; Complaint at 1-2.

⁶⁵ Protest at 3; Complaint at 3.

⁶⁶ Protest at 4; Complaint at 4.

⁶⁷ Complaint at 5-6; *see* Protest at 5.

⁶⁸ Protest at 5.

Process provides for an expedited schedule for interconnecting small projects. According to SoCal Edison, while Mr. Laks accepts that the Fast Track Process is for interconnecting projects expeditiously, his actions demonstrate a “clear intent to delay negotiations, contract execution and every milestone and deadline, all while expending as little money as possible to maintain a queue position.”⁶⁹ SoCal Edison explains that under the Fast Track Process, customers usually seek to interconnect as soon as possible and that projects typically have a commercial operation date of 12 months from the date of the interconnection request. In contrast, Mr. Laks initially requested a commercial operation date that was 22 months after the receipt of his application.⁷⁰ SoCal Edison states that it later agreed to a commercial operation date of 32 months after receipt of Mr. Laks application in response to requests from Mr. Laks to extend the milestone dates, despite this schedule being inconsistent with the Fast Track Process and despite SoCal Edison’s concerns of the impact this would have on future interconnections and study results becoming stale.⁷¹

51. SoCal Edison also denies Mr. Laks’ assertions that SoCal Edison was unresponsive and delayed providing requested information to Mr. Laks. SoCal Edison contends that its staff has expended inordinate amounts of time responding to Mr. Laks’ and his representative’s questions, demands, and extension requests and have been extremely responsive. According to SoCal Edison, the only sense in which its staff failed to respond was at the direction of SoCal Edison counsel in response to communications that violated California’s legal ethics rules.⁷²

52. In response to Mr. Laks’ assertions that SoCal Edison delayed and failed to respond to his requests for easement documents, SoCal Edison contends that no easement amendment was necessary to move forward, and per the milestone schedule in the Interconnection Agreement, there was nothing that SoCal Edison needed to provide regarding easement documents. SoCal Edison argues that it is Mr. Laks who was dilatory in providing final plans, which were due on July 30, 2019 and would have facilitated an easement amendment. SoCal Edison notes that Mr. Laks submitted incomplete first draft plans on August 15, 2019 and has yet to submit final plans.⁷³

⁶⁹ SoCal Edison Complaint Answer at 6; SoCal Edison Protest Answer at 6.

⁷⁰ SoCal Edison Complaint Answer at 6; SoCal Edison Protest Answer at 6.

⁷¹ SoCal Edison Complaint Answer at 7; SoCal Edison Protest Answer at 7.

⁷² SoCal Edison Complaint Answer at 7 & n.5.

⁷³ *Id.* at 15-16.

53. SoCal Edison denies that any financial impacts Mr. Laks stands to incur by upholding the contract terminations are the result of SoCal Edison's actions. SoCal Edison contends that delays to the Solar 66 Project that jeopardize Mr. Laks' recovery of the federal investment tax credit are solely the result of Mr. Laks pushing to delay negotiations, contract execution, and the milestone schedule on a project that already far exceeded the typical timeline for Fast Track interconnection. SoCal Edison rejects Mr. Laks' assertion that the termination of the Agreements caused costs to be shifted to Mr. Laks' Solar 33 Project and asserts that the cost shift is due to Mr. Laks' failure to meet his obligations under the Agreements executed for the Solar 66 Project, which is queued ahead of the Solar 33 Project.⁷⁴

iii. Commission Determination

54. We are not persuaded that any delays in the Fast Track Process for the Solar 66 Project render SoCal Edison's termination of the Agreements unjust and unreasonable. As SoCal Edison explained, the Fast Track Process is intended to facilitate the rapid interconnection of small projects⁷⁵, and most Fast Track projects under SoCal Edison's WDAT enter commercial operation within 12 months of their interconnection request. In this case, the milestones and commercial operation date requested by Mr. Laks for the Solar 66 Project made such a rapid interconnection impossible from the start. Nothing in the record in these proceedings supports a claim that SoCal Edison intentionally delayed the interconnection process for the Solar 66 Project.

55. Moreover, we are not persuaded that SoCal Edison's actions caused Mr. Laks to be at risk of incurring financial damages. As discussed above, we find that SoCal Edison has acted consistently within the terms of the Interconnection Agreement and that the delays Mr. Laks claims jeopardize the viability of his project and the associated federal investment tax credit were within his power to amend. As we find above, the easement dispute does not impact Mr. Laks' obligations under the Agreements. As also discussed above, Mr. Laks' failure to make the required payments put him in default of the Interconnection Agreement, and SoCal Edison followed the processes set forth in the WDAT and the Interconnection Agreement prior to exercising its rights to terminate the

⁷⁴ *Id.* at 16.

⁷⁵ *See, e.g., Small Generator Interconnection Agreements and Procedures*, Order No. 792, 145 FERC ¶ 61,159, at P 117 (2013) (explaining that the revised *pro forma* Fast Track Process “best balances the benefits of interconnecting Small Generating Facilities under the quicker, less costly Fast Track Process with the needs of Transmission Providers to protect the safety and reliability of their systems.”), *clarifying*, Order No. 792-A, 146 FERC ¶ 61,214 (2014).

Interconnection Agreement. Accordingly, SoCal Edison is not responsible for the consequences of such termination, including any potential shifting of costs to another project, or the potential loss of revenue or the investment tax credit.

56. For the reasons discussed above, we accept the Cancellation Filing, effective May 4, 2020, as requested, and deny the Complaint. We find that SoCal Edison's Second Cancellation Filing is not necessary in light of our acceptance of the initial Cancellation Filing, effective May 4, 2020. Accordingly, we reject the Second Cancellation Filing as moot.

The Commission orders:

(A) SoCal Edison's Cancellation Filing is hereby accepted, effective May 4, 2020, as discussed in the body of this order.

(B) The Complaint is hereby denied, as discussed in the body of this order.

(C) SoCal Edison's Second Cancellation Filing is hereby rejected, as discussed in the body of this order.

(D) Docket Nos. ER20-1189-000, EL20-38-000, and ER20-1787-000 are hereby consolidated, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.