

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

ENERGY DIVISION

RESOLUTION E-4305  
December 17, 2009

**R E S O L U T I O N**

**Resolution.** Southern California Edison (SCE) requests authority to establish an Eldorado-Ivanpah Transmission Project Memorandum Account (EITPMA) consistent with CPUC Commission Decision No. 06-06-034, and in particular, this Decision's Findings of Fact 10 and 11.

**PROPOSED OUTCOME:** Approves, with modifications and defers reasonableness analysis of the magnitude of backstop recovery costs to the Public Utilities Code §399.2.5 (§399.2.5) application review (Application 09-05-027) associated with this project.

**ESTIMATED COST:** None at this time.

By Advice Letter 2345-E filed on May 27, 2009.

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**SUMMARY**

This Resolution approves, with modifications, Southern California Edison's (SCE's) May 27, 2009 request to establish an Eldorado-Ivanpah Transmission Project Memorandum Account (EITPMA) consistent with CPUC Commission Decision No. 06-06-034, and in particular, this Decision's Findings of Facts 10 and 11. SCE may record investment-related costs associated with Eldorado-Ivanpah Transmission Project (EITP) studies and pre-construction project development activities for future potential §399.2.5 cost recovery. SCE estimates that the direct costs for EITP study and project development is approximately \$37 million. This Resolution defers reasonableness analysis of the amount estimated for the EITPMA to the Commission review of the CPCN application for EITP, which includes a request for §399.2.5 cost recovery. This Resolution does not approve SCE's request to record Operations and Maintenance (O&M) cost to the EITPMA if they are not associated with pre-constructions studies and pre-construction

project development, as this is not consistent with D.06-06-034 Finding of Fact 10 and 11. Eligibility for recording non-preconstruction O&M costs is to be requested through the formal 399.2.5 application process. No costs recorded in the EITPMA may be recovered from or refunded to ratepayers until the Commission completes its reasonableness review of SCE's §399.2.5 cost recovery application for EITP.

## **BACKGROUND**

Public Utilities Code § 399.2.5 (§ 399.2.5) was enacted on September 12, 2002, as part of Senate Bill (SB) 1078 (2002), and is intended to facilitate California's use of renewable energy resources. Towards this effort, §399.2.5 provides a "backstop recovery mechanism" to allow utilities to recover costs associated with the development of transmission facilities that facilitate achievement of the State's renewable energy goals, specifically the California Renewables Portfolio Standard (RPS) Program established in Senate Bill 1078. The RPS Program originally required each electrical corporation to procure at least 20% of its total retail electricity sales from eligible renewable energy resources by 2017. This target year was later changed to 2010 by the Energy Action Plan. Costs related to the construction of transmission facilities that access eligible renewable generation projects are to be recovered through CPUC-jurisdictional retail rates only in the rare case that the Federal Energy Regulatory Commission (FERC) does not approve their recovery through transmission rates. In essence, the backstop recovery mechanism in § 399.2.5 exists to minimize the risk associated with the development of new renewable-accessing transmission projects in order to remove the impediments to simultaneous, coordinated development of both renewable generation and required transmission.

Commission Decision D.06-06-034 adopts principles for applying the backstop cost recovery mechanism created in §399.2.5. D.06-06-034 defines eligible facilities as those that are either (1) "high-voltage, bulk-transfer, multi-user transmission facilities, whether classified as network or gen-tie [generator-tie],

that are designed to serve multiple RPS-eligible projects<sup>1</sup> where it has been established that the amount of added transmission capacity will likely be utilized by RPS-eligible generation projects within a reasonable period of time, or (2) transmission network upgrades that are required to connect an RPS-eligible resource that is necessary for the achievement of RPS goals and that has an approved RPS-eligible power purchase contract” (Interim Order, pp. 40). New network transmission facilities needed to interconnect an RPS-eligible resource whose developer has entered into a Commission-approved power purchase agreement are eligible for § 399.2.5 cost recovery (pp. 38, Findings of Fact #4).

Gen-ties that interconnect a single generation project with the grid are not eligible for §399.2.5 cost recovery. The Commission’s intent in granting backstop recover to utilities “is to facilitate up-front funding of economically sized upgrades... to ensure that sufficient transmission exists to meet the RPS [Renewable Portfolio Standard] goals (Cost Allocation, pp. 4).

D.06-06-034 further authorizes utilities to file an Advice Letter seeking approval to record and recover *certain* study and project development costs prior to filing an application for §399.2.5 cost recovery (Findings of Fact 10). SCE Advice Letter 2345-E evaluated in this Resolution seeks such approval for the EITP. The Decision requires these Advice Letters to “clearly identify the environmental, engineering, and permitting studies necessary to the determination of project viability, as well as the estimated cost of those studies (Findings of Fact 11). These Advice Letters should demonstrate that the facilities are needed to meet RPS goals.

The Division of Ratepayer Advocates (DRA) of the CPUC filed a timely protest on June 16, 2009 as described in the Protest section of this Resolution. SCE was unable to respond to DRA’s protest by June 23, 2009, the deadline for responding to protests per General Order (GO) 96-B, Rule 7.4.3, and requested an extension to file a response from the Commission’s Executive Director. This request was

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<sup>1</sup> Section 399.12 (a) of Article 16 defines an “Eligible renewable energy resource” as a facility that meets the definition of “in-state” renewable electricity generation facility in Section 25741 of the Public Resources Code.

not approved because it was filed at the close of business the day the reply was due. Nevertheless, SCE filed a response to DRA's protest on June 30, 2009.

Following SCE's response, the CPUC's Energy Division issued a series of data requests on July 28, 2009 and September 3, 2009 requesting further clarification and details supporting SCE's Engineering, Environmental, and Permitting study costs listed in Appendix A of the Advice Letter in accordance with D. 06-06-034 Finding of Facts 11. SCE responded on August 11, 2009 and October 6, 2009.

### **NOTICE**

Notice of AL 2345-E was made by publication in the Commission's Daily Calendar. SCE states that copies of the Advice Letter were distributed to interested parties listed on the General Order (GO) 96-B service list and the Order Instituting Investigation (OII) 05-09-005 service list.

### **PROTESTS**

There is one protest to SCE Advice Letter 2345-E filed by the Division of Ratepayer Advocates (DRA) of the CPUC on June 16, 2009. DRA recommends in their protest the rejection of SCE's Advice Letter on the grounds that (1) the timing of the Advice Letter "does not comport with the Commission's directives" in D. 06-06-034, (2) the Advice Letter does not meet D. 06-06-034 requirement that Advice Letters clearly identify and estimate the costs of environmental, engineering, and permitting studies necessary to determine project viability, (3) there is no clear correspondence between the cost of the studies cited in the Advice Letter and those that support the related CPCN application, and (4) the Advice Letter does not demonstrate that EITP facilities meet the three-prong test for need as defined in D. 07-03-012. Additionally, DRA expressed the concern that the §399.2.5 procedure may present the opportunity for double recovery of costs through both FERC- and CPUC-rates.

On June 30, 2009, SCE filed a late response to DRA's protest, a violation of General Order 96B Rule 7.4.3, which requires that utilities filing advice letters reply to each protest within five business days after the end of the protest period. SCE's response directly replies to DRA's first two concerns in addition to explaining the accounting mechanism for recording pre-construction costs and outlining related language from D. 06-06-034, presumably in response to DRA's third and fourth concern, as listed above.

SCE contends that the timing of its Advice Letter filing complies with D.06-06-034, as Finding of Fact No. 10 in this Decision "simply provides... that the 'utilities are authorized to file an Advice Letter seeking approval to record and recover certain study and project development costs prior to the filing of an application for Section 399.2.5...' and that the period of time between the advice letter filing and the CPCN application (which contains the 399.2.5 application) "is of no consequence". Further, the D.06-06-34 "expressly permit[s]" a utility to file an advice letter concurrently with the CPCN application.

On DRA's second protest point, as listed above, SCE responds that the level of detail and identification of studies provided in AL 2345-E "sufficiently complies with Finding of Fact 11 of D.06-06-034. They add that "this level of cost information was accepted by the Commission in two prior advice filings..."

In response to DRA's fourth concern, as listed above, SCE contends that, as the types of studies and permitting activities included in AL 2345-E are typical, they did not view it necessary to explain the *need* for these studies.

As to DRA's concern with the potential for "double recovery" of EITPMA-recorded costs in FERC- and CPUC- jurisdictional proceedings, SCE explained that the mechanism for §399.2.5 backstop cost recovery is only triggered when and *if* FERC does not authorize recovery of all prudently-incurred EITP costs in FERC-jurisdictional rates.

SCE's response contained no apparent reply to DRA's third concern, as listed above, that states that there is no clear correspondence between the cost of the studies cited in the Advice Letter and those that support the related CPCN application.

## **DISCUSSION**

### **Justification for Approval of SCE AL 2345-E based on D. 06-06-034 Eligibility Requirements**

In order to determine whether this project is fit for establishing a Memorandum Account, it must first be determined that the project is eligible for a §399.2.5 cost recovery request from the CPUC. The EITP is eligible for §399.2.5 cost recovery only if it meets one of the following eligibility requirements:

- (1) that the transmission facilities that require cost recovery are new, high-voltage, bulk-transfer transmission facilities... that are designed to serve multiple RPS-eligible projects where it has been established that the amount of added transmission capacity will likely be utilized by RPS-eligible generation projects to meet the state-mandated RPS goal, or
- (2) transmission network upgrades that are required to connect an RPS-eligible resource that is necessary for the achievement of RPS goals and that has an approved RPS-eligible power purchase contract.

SCE's EITP fulfills both of these requirements. Proposed EITP facilities include an upgrade from a single circuit 115kV circuit to 230kV double circuit lines that are designed to serve several solar and wind projects. According to the applicant's PEA and the CAISO's transition queue, these upgrades are specifically being made to accommodate renewables generation in the Ivanpah Dry Lakes area. New facilities of EITP include a proposed substation in the Ivanpah Dry Lakes area that will be within the footprint of BrightSource's Solar Electric Generation System (ISEGS). If approved, this new facility and the transmission upgrade will likely be utilized by ISEGS, which has three RPS-eligible power purchase contracts approved by the CPUC. This meets the second eligibility requirement listed above for §399.2.5. Furthermore, there are several solar and wind generation projects in development that intend to access EITP. Over 1600 MW of generation, including over 400 MW of generation from ISEGS, are currently in the California Independent System Operator (CAISO) interconnection request queue for consideration in the EITP planning process (pers. comm. and the CAISO's *2020 Renewable Transmission Conceptual Plan Based on Inputs from the RETI Process Study Results*). The capacity of the existing 115 kV line is 90 MW (SCE). The upgrade will allow 1400 MW capacity within NERC and WECC reliability constraints. The additional capacity is primarily intended to access renewable generation projects, collectively amounting to over 1600 MW, according to the CAISO's *2020 Renewable Transmission Conceptual Plan Based on Inputs from the RETI Process Study Results*, released in September 2009 (pp. 24). Not all generation in the CAISO queue may be realized; however, CAISO's Plan states that 97% of the commercial interests in the Ivanpah Dry Lakes area that will access the EITP project (RETI Mountain Pass area) are solar resources (ibid, pp. 24).

**Justification for Approval of SCE AL 2345-E based on D.06-06-034 Findings of Facts 10 and 11.**

D. 06-06-034 Findings of Facts 10 and 11 provide the *specific guidelines for filing an Advice Letter* seeking approval to record and recover §399.2.5 eligible *project study and development costs*. Thus, AL-2345-E must meet the requirements of Findings of Facts 10 and 11.

Findings of Facts 10 authorizes the utility to file an Advice Letter to record and recover certain study and project development costs prior to the filing of an application for Section 399.2.5 for identified transmission facilities that fall into the first category of eligible facilities set forth in this decision. Findings of Facts 11 requires the Advice Letter to clearly identify the environmental, engineering, and permitting studies necessary to the determination of project viability and the estimated cost of those studies. It also requires that the Advice Letter clearly demonstrate that the facilities to be studied are needed to meet the RPS goals. The CPUC approves recording "investment-related costs associated with [EITP] studies and project development activities" (SCE AL 2345-E, pp. 1) to the EITPMA. However, the CPUC does not approve at this time recording Operation and Maintenance (O&M) expenses to this account unless the O&M costs are associated with "certain study and project development costs" as required by Findings of Fact 10. Other O&M cost recovery should be requested through the §399.2.5 application. As with all costs associated with §399.2.5 recovery, review or audit of costs recorded to EITPMA "should occur in the utility's general rate case," (D. 06-06-034, pp. 32), but "should not be recovered through distribution rates, and should instead be recovered through a separate §399.2.5 rate component" (D. 06-06-034, pp. 35). D. 06-06-034 invites utilities "to file an application for allocation of renewable transmission costs when facilities subject to §399.2.5 cost recovery are placed in service," (pp. 35).

While the Commission approves *recording* pre-construction project development and study costs, the Commission does not approve *recovery* of the magnitude of the costs requested in AL-2345-E. SCE's advice letter. AL-2345-E and the original CPCN application filing for EITP (Application 09-05-027) do not provide sufficient information on project study costs. Therefore, the Commission defers the reasonableness analysis of pre-construction study and project development costs to the formal proceeding for Application 09-05-027, which includes the §399.2.5 recovery request. This is the appropriate proceeding for gathering necessary cost information to evaluate both project permitting and the §399.2.5 backstop recovery request.

### **Compliance with Existing Policy, Procedures, and Ratemaking at FERC**

This Resolution complies with existing policy and procedures at the Federal Energy Regulatory Commission, which has authority over interstate transmission wholesale energy sales per §824 of the Federal Power Act. This authority preempts state (CPUC) regulation over transmission financing. Therefore, the CPUC does not have the authority to require transmission owners to fund the up-front costs of transmission construction (Decision 06-06-034, pp. 9). However, to increase utility willingness to volunteer in providing up-front funding for transmission projects accessing renewable energy, the Public Utilities Code §399.2.5 and Decision 06-06-034 provide a mechanism whereby utilities can be guaranteed cost recovery for eligible transmission projects in the rare cases that the FERC, in accordance with its existing rules, is unable to approve cost recovery through the FERC-regulated Transmission Access Charge (TAC).

In the past, the kinds of cost recovery the FERC may not have been able to approve are those associated with non-network projects - these typically access remote renewable generation - and proposed network upgrades that would expand capacity to support additional projects that have yet to manifest. These types of transmission projects were not contemplated in the development of existing FERC and CPUC policies.

In the past, FERC evaluated transmission projects for cost-recovery based on their ability to meet energy demand needs, their ability to provide reliability benefits to the transmission system, and their ability to reduce the costs of providing energy to the retail market. In the new RPS-goal oriented regime, many generation projects and renewables technologies are speculative, yet the target timeframe for their development and interconnection to the transmission grid is short and firm. The FERC has since introduced new policies to address these policy gaps; however, this process is not yet complete. There remains a need to foster the simultaneous and coordinated development of both renewable generation and transmission through the assured cost recovery of transmission development. Section 399.2.5 addresses this need.

Findings of Facts 10 and 11 provide for the assurance of cost recovery strictly of the preliminary pre-construction costs related to eligible transmission development in the case that these become stranded costs resulting from abandoned interconnecting renewable generation project(s). These costs can be recovered through §399.2.5 only in the case that the FERC denies cost recovery through transmission rates. SCE should first, or concurrently, seek cost recovery

at the FERC before or when SCE files an application for §399.2.5 backstop cost recovery.

If EITP costs are granted rolled-in rate treatment at the FERC, the costs recorded to EITPMA should be removed from the memorandum account and included in SCE's Transmission Revenue Requirement at the FERC (Decision 06-06-034, pp. 32). If EITP costs are not granted rolled-in rate treatment at the FERC, the costs recorded in the memorandum account "should be included as part of the rate base, costs, and capital-related revenue requirement request to be reviewed in the utility's next general rate case. Costs would be offset by the revenue received from generators who take service on the subject facilities

Costs recorded to EITPMA should be allocated to retail customers of all three investor-owned utilities consistent with FERC's existing cost recovery policies for the CAISO control area (Decision 06-06-034, pp. 33). ... Review or audit of the costs should occur in [SCE's general rate case, not [SCE's Energy Resource Recovery Account (ERRA) Forecast of Operations Proceeding]" (Decision 06-06-034, pp. 31).

DRA expressed concerns that §399.2.5 may result in an opportunity for double recovery of EITPMA-recorded costs through both FERC- and CPUC-jurisdictional rates. We agree with SCE that these costs can only be considered for CPUC approval *if* FERC does not authorize cost recovery in FERC-jurisdictional rates. We do not believe it is necessary to serve notice of FERC proceedings related to this project to the CPUC service list for the EITP CPCN proceeding (A. 09-05-027). Not only is this not CPUC's jurisdictional area, it would not serve in the best interest of CPUC's entire service list for Application 09-05-027, the members of which may only be interested in this proceeding. We do, however, encourage interested parties to join FERC's service list for SCE current Transmission Owner Rate Filing 5, Docket No. ER09-1534-000.

### **Response to DRA Protest Issue (1) Regarding Timing of the Advice Letter**

DRA protested SCE AL 2345-E partly on the grounds that SCE's advice letter one day before their §399.2.5 application left "no practical opportunity to review the reasonableness of the [advice letter] request". On this count, the Commission agrees with SCE that, in this case, SCE followed Commission-established protocol for the timing of the Advice Letter filing per D. 06-06-034, Findings of Facts No. 10. The instructions provided by this Finding states that utilities "are

authorized to file an Advice Letter seeking approval to record and recover certain study and project development costs *prior* to the filing of an application for Section 399.2.5 cost recovery for identified transmission facilities that fall into the first category of eligible facilities set forth in this decision,” (emphasis added).

### **Response to DRA Protest Issue (2) Regarding Identifying Study Costs**

DRA further protested SCE’s AL 2345-E on the grounds that there are no pre-application study costs because of the concurrence of the AL and application filings and that SCE has not presented actual studies for review and detailed study costs.

The Commission does not understand DRA’s point that there have been no pre-application study costs. An application, which includes the Proponent’s Environmental Assessment, must describe in detail the technical aspects of the project, explore alternatives, defend project feasibility, and explain its environmental impacts, *inter alia*. The studies required to produce the application and continue through the application review until the beginning of construction are substantial and have costs associated with them.

To DRA’s point that SCE has not sufficiently identified the “environmental, engineering, and permitting studies” and detailed study costs as required by Findings of Fact No. 10 and 11 of D. 06-06-034, the Commission agrees. It is true that SCE did not provide adequate details to justify the high cost estimate stated in their advice letter. The Commission is concerned that the cost estimate is significantly high, but does not pass judgment on the costs at this moment. Instead, the Commission defers reasonableness analysis of the costs to a more suitable proceeding assessing backstop recovery costs, either in the §399.2.5 proceeding or at the time the costs are requested for recovery. The Commission acknowledges that there *are* costs related to these studies and allows *actual* study costs to be *recorded* in the EITPMA.

### **Response to DRA Protest Issue (3) Regarding Cost Information Consistency with CPCN Application**

DRA notes that there is a lack of clarity as to whether the line items in Appendix A of AL 2345-E, listing study costs, correspond to the cost of studies performed to support the CPCN application. Again, the Commission defers all reasonableness analysis cost magnitude and consistency to the §399.2.5 process.

### **Response to DRA Protest Issue (4) Regarding Demonstration of Need**

Lastly, DRA states that AL 2345-E does not meet the “three-prong test for *need* as defined in D.07-03-012”. The Commission notes that D. 07-03-012 relates to a CPCN application, where there are more stringent and focused requirements for assessing need. This kind of evaluation will similarly be made in EITP’s CPCN application process. The criteria for evaluating §399.2.5 backstop recovery eligibility is more broad and is defined in D. 06-06-034 as explained in this Resolution’s Discussion Section “Justification for Approval of SCE AL 2345-E based on D. 06-06-034 Eligibility Requirements”. This project meets the eligibility requirements for §399.2.5 backstop recovery consideration.

### **FINDINGS AND CONCLUSIONS**

1. Decision No. 06-06-034, Findings of Fact 10 authorizes utilities to file an Advice Letter seeking approval to record and recover certain study and project development costs prior to filing an application for §399.2.5 cost recovery. Findings of Fact 11 requires utilities to clearly identify and estimate the costs for the environmental, engineering, and permitting studies necessary to determine project viability for the RPS-targeting facility.
2. In SCE’s Advice Letter 2345-E filed on May 27, 2009, SCE requested authority to establish an Eldorado-Ivanpah Transmission Project Memorandum Account (EITPMA) consistent with CPUC Commission Decision No. 06-06-034, and in particular, this Decision's Findings of Fact 10 and 11, to record Operation and Maintenance (O&M) expenses and investment-related costs associated with Eldorado-Ivanpah Transmission Project (EITP) studies and project development activities. SCE’s estimate for such costs is approximately \$37 million.
3. On May 28, 2009, SCE filed a §399.2.5 cost recovery application with SCE’s CPCN application A. 09-05-027 to construct EITP.

4. SCE has adequately demonstrated that EITP facilities, for which the EITPMA is being requested, are designed to serve multiple RPS projects to meet state RPS goals per Decision 06-06-034.
5. SCE's Advice Letter 2345-E and subsequent data responses do not adequately justify the high cost estimates for environmental, engineering, and permitting studies.
6. The terms "project study" and "project development activities" in Decision 06-06-034, Findings of Fact 10 do not include construction or post-construction studies or activities.
7. Decision 06-06-034 requires that review or audit of costs associated with §399.2.5 recovery mechanism "should occur in the utility's general rate case," (D. 06-06-034, pp. 32), but "should not be recovered through distribution rates, and should instead be recovered through a separate §399.2.5 rate component" (D. 06-06-034, pp. 35). D. 06-06-034 invites utilities "to file an application for allocation of renewable transmission costs when facilities subject to §399.2.5 cost recovery are placed in service," (pp. 35).
8. Recovery of all prudently-incurred costs associated with §399.2.5 can only be authorized in the case that the Federal Energy Regulatory Commission does not approve their recovery in transmission rates.
9. The comment period for this Resolution has been shortened to 27 days per Rule 14.6(C)(9) as the public interest for the Commission to adopt a decision before the expiration of the 30-day comment period outweighs the public interest in having the full 30-day period for review and comment. The parties have agreed to this shortened comment period. Furthermore, this change may have little affect on the comment period as the end of the initial 20-day protest period falls on a non-business day, resulting in a similarly shortened reply comment period.

**THEREFORE IT IS ORDERED THAT:**

1. SCE AL-2345-E requesting to establish an Eldorado-Ivanpah Project Memorandum Account (EITPMA) **is approved, with modifications and**

**defers reasonableness analysis of the magnitude of backstop recovery costs to the §399.2.5 application review (Application 09-05-027) associated with this project.**

2. While the Commission approves *recording* pre-construction project development and study costs to EITPMA, the Commission does not approve *recovery* of the magnitude of the costs requested in AL-2345-E. The Commission defers analysis for reasonableness of pre-construction study and project development costs to the formal proceeding for Application 09-05-027, which includes the §399.2.5 recovery request for the EITP project.
3. As with all costs associated with §399.2.5 recovery, review or audit of costs approved in this Resolution to be recorded to EITPMA "should occur in the utility's general rate case," (D. 06-06-034, pp. 32), but "should not be recovered through distribution rates, and should instead be recovered through a separate §399.2.5 rate component" (D. 06-06-034, pp. 35). D. 06-06-034 invites utilities "to file an application for allocation of renewable transmission costs when facilities subject to §399.2.5 cost recovery are placed in service," (pp. 35).
4. This Resolution does not approve SCE's request to record Operations and Maintenance expenses and investment costs to the EITPMA if they are not associated with pre-construction studies and pre-construction project development activities, as this is not consistent with D.06-06-034, Findings of Fact 10 and 11.
5. *Recovery* of study and project development costs to be recorded to EITPMA can only be made with this Commission's approval and only in the case that the FERC does not authorize recovery of prudently-incurred EITP costs in FERC-jurisdictional rates.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on December 17, 2009; the following Commissioners voting favorably thereon:

/s/ Paul Clanon

Paul Clanon  
Executive Director

MICHAEL R. PEEVEY  
PRESIDENT

DIAN M. GRUENEICH

JOHN A. BOHN

RACHELLE B. CHONG

TIMOTHY ALAN SIMON

Commissioners