

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL ENERGY REGULATORY COMMISSION**

Southern California Edison Company.

Docket No. EL22-55-000

**MOTION TO INTERVENE AND PROTEST OF THE CALIFORNIA ENERGY
STORAGE ALLIANCE**

Jin Noh
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May 31, 2022

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Pursuant to Rules 211 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or Commission”), the California Energy Storage Alliance (“CESA”) respectfully moves to intervene and submit this protest to the *Petition for Declaratory Order of Southern California Edison Company* (“Petition”), filed by Southern California Edison Company (“SCE”) on April 28, 2022.

I. BACKGROUND.

Founded in 2009, CESA is a non-profit membership-based advocacy group committed to advancing the role of energy storage in the electric power sector through policy, education, outreach, and research. CESA’s mission is to make energy storage a mainstream energy resource, which accelerates the adoption of renewable energy and promotes a more efficient, reliable, affordable, and secure electric power system. As a technology-neutral group that supports all business models for deployment of energy storage resources, CESA membership includes technology manufacturers, project developers, systems integrators, consulting firms, and other clean-tech industry leaders.

II. COMMUNICATIONS AND CORRESPONDENCE.

Address all communications and correspondence concerning this proceeding to:

Jin Noh
Policy Director
California Energy Storage Alliance
2150 Allston Way, Suite 400
Berkeley, CA 94704
Telephone: (510) 665-7811
Email: cesa_regulatory@storagealliance.org

III. MOTION TO INTERVENE IN THIS PROCEEDING.

CESA represents over 110 members in the energy storage ecosystem, and our intervention in this proceeding is in the public interest. CESA's interests will not be adequately reflected by any other party, particularly given CESA's role in representing a wide range of companies that seek to develop and interconnect energy storage projects to SCE's distribution grid and participate in the California Independent System Operator ("CAISO") market, which are subject to SCE's requests in its filed Petition. CESA therefore has a substantial interest in the instant proceeding and respectfully requests that this motion to intervene be granted.

IV. PROTEST.

On April 28, 2022 SCE filed a Petition for Declaratory Order seeking confirmation from the Commission that the prohibition against consequential damages set forth in Article 18.2 of the large generator interconnection agreement ("LGIA") applies to any dispute arising during the interconnection process, not the limitation of liability in the Open Access Transmission Tariff ("OATT"). SCE seeks this determination from the Commission to any dispute that occurs during the interconnection process, including prior to interconnection and receipt of transmission or

distribution service.¹ In support of this request, SCE asserts that interconnection is distinct from transmission service, or distribution service in the case of SCE's Wholesale Distribution Access Tariff ("WDAT"), citing Order No. 2003 that the Commission established a uniform federal limitation on liability for interconnection disputes. As a result of the Commission's different approaches to limitation of liability standards in the OATT and LGIA, the limitation of liability provisions in SCE's WDAT and GIA differ. Importantly, SCE defined any dispute that arises prior to the provision of transmission service (or distribution service under SCE's WDAT), whether that be prior to or after execution of a generator interconnection agreement, must be an interconnection dispute as there could not yet have been a disruption in service that caused harm to the generator.

CESA has major concerns with SCE's request. CESA has no comments on the ongoing dispute between SCE and R&L Capital, Inc., nor is in a position to do so, and even as SCE is not requesting that the Commission rule on this bilateral dispute, the actions taken through this Petition and the urgent requests submitted therein are overly broad and unreasonable to define and draw lines for what constitutes an "interconnection dispute" that would determine whether the provisions for limitations of liability for the OATT or LGIA apply. As such, CESA submits this protest requesting that the Commission dismiss or reject the Petition.

First, and foremost, CESA believes that SCE's request to the Commission to revise the language in the LGIA should only be done through a rulemaking, not through a Petition. A re-writing or re-interpretation of the *pro forma* LGIA's plain language provisions would impact every generator interconnected under or planning to interconnect under an LGIA. Such a blanket policy would be precedential and should be appropriately addressed in a formal rulemaking by the Commission.

¹ SCE Petition at 1.

Second, CESA contends with SCE's request for the blanket applicability of all interconnection-related disputes to the LGIA's provisions for limitations of liability since: (1) the LGIA can only be binding to parties who have executed the LGIA, not to those proceeding through the interconnection process and prior to LGIA execution; and (2) interconnection-related disputes can stem from other agreements, such as SCE's WDAT, which clearly address generator interconnection procedures and various other interconnection-related matters (*e.g.*, charging distribution service). The LGIA's limitation of liability can and should only apply to claims under the LGIA. In fact, the LGIA limitation of liability provision (section 18.2) specifically states that "[T]he limitation on damages in Article 18.2 does not preclude a party to an LGIA from recovering lost profits or revenues from an LGIA counterparty *for breaches of an agreement other than the LGIA.*"²

Third, the Commission has already provided certainty and uniformity in including the limitation of liability in the LGIA, not the OATT. If SCE were permitted to apply the LGIA limitation to any interconnection-related dispute, including one arising due to a breach of a provision in SCE's WDAT, the Commission's intent in creating a different standard in the OATT would be undermined.

Finally, if the Commission granted the request it would lead to more litigation over whether a dispute was sufficiently "interconnection-related" such that the LGIA's limitation of liability should apply. Not only would the application of the LGIA provisions be narrower despite reasonable claims to the applicability of other agreements (*e.g.*, OATT/WDAT), but it would also lead to additional confusion and dispute over definitions and interpretations of interconnection

² See, *e.g.*, Commission's Order in *Alta Wind*, 151 FERC 61,273 (2015).

matters, counter to SCE's claims that the requests in the Petition would protect against excessive utility rates and reduce litigation.

V. **CONCLUSION**

CESA appreciates the Commission's considerations of this protest and looks forward to working with the Commission, SCE, and other stakeholders on this matter.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jin Noh', written in a cursive style.

Jin Noh
Policy Director
CALIFORNIA ENERGY STORAGE ALLIANCE

May 31, 2022

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of *Motion to Intervene and Protest of the California Energy Storage Alliance* on the official service list in the proceeding EL22-55-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure.

Executed on May 31, 2022 at Berkeley, California

Service List for EL22-55-000 Southern California Edison Company

Party	Primary Person or Counsel of Record to be Served	Other Contact to be Served
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