

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

Southern California Edison Company

Docket No. EL05-80-001

ORDER DENYING REHEARING

(Issued November 10, 2005)

1. On August 1, 2005, Transmission Agency of Northern California (TANC) and City of Redding, California, the City of Santa Clara, and the M-S-R Public Power Agency (collectively Cities/M-S-R)¹ sought rehearing of the Commission's July 1, 2005 order² that granted in part and denied in part Southern California Edison Company's (SCE's) petition for a declaratory order. In particular, TANC challenges the Commission's decision to allow SCE to fully recover its prudent costs for Segments 1 and 2 of the Antelope Project (described below in P 3) in the event the facilities are abandoned or cancelled. This order denies the requests for rehearing.

Background

2. On March 24, 2005, SCE filed a petition for declaratory order seeking Commission approval for: (1) rolled in rate treatment for costs incurred for the three segments it proposed to construct to interconnect and accommodate energy and capacity from future wind projects (Antelope Project); (2) full recovery of prudently incurred costs for the three segments, in the event SCE abandons or cancels one or more of the segments; (3) the creation of a new category of transmission facilities (trunk facilities)³ that would encompass Segment 3 of the Antelope Project; and (4) placing the proposed

¹ Cities/M-S-R adopt TANC's rehearing request and make no additional arguments.

² *Southern California Edison Co.*, 112 FERC ¶ 61,014 (2005) (July Order).

³ SCE proposed that these "trunk facilities" would be new high voltage trunk transmission facilities needed to interconnect large concentrations of renewable generation resources located a reasonable distance from the existing grid.

trunk facilities under the operational control of the California Independent System Operator Corporation (CAISO).

3. The Antelope Project consists of three segments.⁴ Segment 1 is a proposed Antelope to Pardee 500 kilovolt (kV) transmission project that includes a new 25.6 mile 500 kV transmission line between the existing Antelope and Pardee Substations, interconnections at the existing Antelope and Pardee Substations and an initial expansion at the Antelope Substation. Segment 1 will interconnect a potential 201 megawatt (MW) wind generation project and accommodate generation north of the Antelope Substation. Segment 2 is a proposed Antelope to Vincent transmission project that consists of a new 17.8 mile 500 kV transmission line between SCE's existing 220 kV Antelope and Vincent Substations and upgrades such as transformers, circuit breakers, and disconnect switches at both substations to terminate the new transmission line. The proposed Segment 3 consists of two new substations (a 500/220/66 kV substation to be located near the Cal Cement Substation (Substation One) and a 220/66 kV substation to be located east of the City of Tehachapi), a new approximately 25-mile long 500 kV transmission line between the Antelope Project and Substation One and a new 9.4 miles, 200 kV transmission line between the two new substations.

4. SCE proposed to build the Antelope Project in response to the State of California's Renewable Portfolio Standard Program.⁵ The California Energy Resources Conservation and Development Commission and the California Public Utilities Commission (CPUC) have determined that the Antelope Valley/Tehachapi region in SCE's service territory is likely to offer a large and concentrated supply of wind generation that, if developed, will "significantly" contribute to the achievement of the state's renewable energy goals.⁶ According to the California legislature and the California state energy agencies, adequate transmission infrastructure is needed to deliver power from remotely sited renewable resources to California's load centers.⁷ SCE requested that the Commission allow the inclusion of the costs of the Antelope Project in its transmission revenue requirement to be recovered through the CAISO's transmission access charge. SCE claimed that it was pursuing the Antelope Project to implement a state policy, *i.e.*, access a large source of

⁴ July Order at P 16-19.

⁵ Senate Bill 1078 (Stats. 2002, Ch. 516), adding Article 16 (California Renewables Portfolio Standard Program) to the Cal.Pub.Util.Code § 399.11, *et seq.* (2004) (SB 1078).

⁶ California Public Utilities Commission, Interim Opinion on the Transmission Needs in the Tehachapi Wind Resource Area, Decision 04-06-010 at 5-6, Finding of Fact No. 3 at 39 (2004).

⁷ See July Order at P 5 and n.6.

renewable energy, and that all users of the CAISO grid would benefit from this project. Therefore, SCE argued that it was appropriate to recover the cost of the Antelope Project from all users of the grid.

5. The July Order found that the proposed Segments 1 and 2 were network upgrades and granted SCE's request for rolled in rate treatment for these segments.⁸ It deferred ruling on SCE's request for an advance prudence determination, without prejudice to SCE's right to seek this recovery when, and if, SCE received the necessary certificate(s) of public convenience and necessity.⁹ In addition, the Commission granted SCE's request to recover all of its prudent costs, if these facilities were abandoned or cancelled.¹⁰ However, we denied SCE's request to create a new category of transmission facilities and found that Segment 3 was not a network upgrade.¹¹ Accordingly, with regard to Segment 3, all of SCE's requests -- for rolled in rate treatment, for an advance prudence determination, for recovery of all prudent costs in the case of abandonment or cancellation, and to place Segment 3 under the operational control of the CAISO -- were denied.

Request for Rehearing and Other Pleadings

6. On August 1, 2005, TANC and the Cities/M-S-R filed requests for rehearing of the July Order.¹² TANC argues that the Commission erred in finding that SCE may recover 100 percent of its prudent costs for Segments 1 and 2 of the Antelope Project if these facilities are abandoned or cancelled. For the most part, TANC reiterates arguments from its protest.

7. On August 16, 2005, SCE filed an answer to TANC's request for rehearing. On August 30, 2005, TANC filed an answer to SCE's answer.

⁸ *Id.* at P 36-38.

⁹ *Id.* at P 57.

¹⁰ *Id.* at P 38.

¹¹ *Id.* at P 42.

¹² As noted earlier, Cities/M-S-R adopt TANC's rehearing request and make no additional arguments.

Discussion

8. Rule 713(d) of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.713(d) (2005), prohibits an answer to a request for rehearing. We will accordingly reject SCE's answer, and thus, TANC's answer as well.

Fifty/Fifty Percent Sharing of Prudent Cost Recovery Between Shareholders and Ratepayers

9. TANC argues that, in its July Order, the Commission departed from its precedent by allowing SCE to recover 100 percent of the prudent costs of the Segments 1 and 2, if these facilities are abandoned or cancelled. The July Order not only discussed the Commission's precedent on abandoned and cancelled plants,¹³ it also found that the facts and the record in this case provided a justification for the Commission's decision with regard to abandoned or cancelled facilities.¹⁴ We found that SCE should not shoulder the risk of Segments 1 and 2 of the Antelope Project because there were several factors at play that were beyond SCE's control. SCE is undertaking the Antelope Project pursuant to a CPUC order to increase the delivery of supply to the grid. It is developing transmission to interconnect wind generation based on a forecast of approximately 4,000 MW rather than on signed interconnection agreements for wind projects with a

¹³ July Order at P 59-61. *See New England Power Co.*, Opinion No. 295, 42 FERC ¶ 61,016 at 61,068 (*Opinion No. 295*), *order on reh'g*, 43 FERC ¶ 61,285 (1988) (*Opinion No. 295-A*) (upholding and refining the Commission's policy that ratepayers and shareholders are to equally share the prudently incurred investments in an abandoned or cancelled plant amortized over the life of the plant); *Public Service Co. of New Mexico*, 75 FERC ¶ 61,266 at 61,859 (1996) (*PSNM*) (applying the 50 percent recovery rule to transmission facilities as well as generation facilities, but disallowing PSNM's request for the full recovery of the costs of its abandoned transmission project because project was not a consequence of an open access transmission obligation to expand transmission facilities); *California Independent System Operator Corp. and Southern California Edison Co.*, 82 FERC ¶ 61,174 at 61,623 (1998) (denying SCE's request to recover all of its costs related to an abandoned transmission project because the project was initiated before SCE offered open access transmission service and may have been designed to import SCE's generation); and *San Diego Gas & Electric Co.*, 98 FERC ¶ 61,332 at 62,408, *reh'g denied*, 100 FERC ¶ 61,073 (2002) (*SDG&E*) (denying SDG&E's request for full recovery for costs if transmission facilities were abandoned or cancelled because the Commission did not have a specific record before it, but noting that there may be situations where full recovery was warranted and that the Commission had the discretion to review such requests on a case-specific basis).

¹⁴ *See* July Order at P 61.

specified generation output. SCE is building this project in order to access the wind-rich Tehachapi area that is located in SCE's service territory. Also, the CPUC, not SCE, makes the decisions regarding the ultimate design of the Antelope Project. Furthermore, we noted that SCE's management does not control the decision to develop or abandon the generation and the company's shareholders would not share the earnings associated with these projects because SCE was not a wind developer.

10. TANC asserts that the Commission's reliance on SCE's statement that SCE's management does not control the decision to develop or abandon the wind projects does not warrant a departure from the Commission's precedent. TANC asserts that in *Opinion No. 295*, New England Power Company (NEPCO) did not have full control of the decision to develop or abandon a plant,¹⁵ and similarly, SCE does not have control over whether independent power producers will proceed with, or abandon, generation plants for which SCE has planned transmission.¹⁶ Furthermore, TANC argues that the risk that anticipated generation may not develop is common to all transmission developers because transmission is increasingly built for third party generation.¹⁷

11. We disagree with TANC that this proceeding is indistinguishable from *Opinion No. 295*. The July Order, as discussed above, provided various reasons why it granted SCE's request. We provided guidance in this case to encourage SCE to build network upgrades to benefit the existing transmission system and all the users of the grid, with the added benefit of enabling California's ratepayers to reap the benefits of the development of the Tehachapi wind resources for the state. As discussed in the July Order, in *Opinion No. 295*, the Commission chose to impose the risk of abandonment on the utility, to provide an incentive for utility decisionmakers to carefully weigh the risk of cancellation before beginning a construction project. NEPCO voluntarily chose to enter into a business arrangement where it was a minority interest and where the utilities chose to

¹⁵ TANC's rehearing request at P 13. It cites generally to *Opinion No. 295 and Opinion No. 295-A* for this argument and notably, hypothesizes what the Commission intended in that order without providing specific cites or support for its statements.

¹⁶ TANC's rehearing request at P 14.

¹⁷ TANC cites to the *Western Area Power Administration*, 99 FERC ¶ 61,306 at 62,280, *reh'g denied*, 100 FERC ¶ 61,331 (2002), *aff'd sub nom. Public Utilities Commission of the State of California v. FERC*, 367 F.3d 925 (D.C. Cir. 2004)., for this assertion, but the case does not support its assertion. In fact, the Commission's order approved certain rate principles prescribed in a letter agreement for the treatment of costs associated with transmission upgrades to promote the prompt construction of much needed transmission upgrades to Path 15. 100 FERC at P 2.

build the Seabrook project.¹⁸ Further, even though NEPCO's share of the project was approximately 10 percent, it was a joint owner that participated in the cancellation of the Seabrook 2 project.¹⁹ SCE's circumstances are different from a situation where a transmission owner builds transmission pursuant to an interconnection agreement that contains a specified generation output. Generally, a generator funds the network upgrades and then receives transmission credits for such costs plus interest once transmission service commences.²⁰ Here, SCE is building the Antelope Project at the behest of the California state agencies to encourage the interconnection of wind projects based on a forecast of how much wind generation will be developed in this region and the interconnection applications it has received to date, rather than on signed interconnection agreements for wind projects with a specified generation output. Accordingly, we believe that there is a clear distinction between the two proceedings that justified our finding in the present proceeding.

12. TANC also claims that the July Order creates an "unjust shift in risk" by allowing SCE's shareholders to benefit from the development of this transmission project, yet reduces its risk if the transmission project fails. It goes on to argue that the Commission's decision is inconsistent with the principle in *Opinion No. 295-A* that investors make "efficient production and consumption decisions." In *Opinion No. 295*, the Commission stated that its existing policy provided "precisely the types of signals that the utility, its investors, and its customers should face to ensure efficient production and consumption decisions."²¹ However, consistent with our statement in *SDG&E*²² that we would consider requests for full recovery of abandoned projects on a case-by-case

¹⁸ *Opinion No. 295*, 42 FERC at 61,069 ("NEPCO's share of the project remained at approximately 10 percent throughout the course of its investment in Seabrook . . .").

¹⁹ *Id.* at 61,068-69 (noting that "the joint owners of Seabrook 2 took formal action canceling Seabrook 2" and "the joint owners of Seabrook 2 issued a resolution formally canceling Seabrook 2").

²⁰ Article 11.3 *pro forma* Large Generator Interconnection Agreement in *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, 68 Fed. Reg. 49,845 (Aug. 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

²¹ *Opinion No. 295-A*, 43 FERC at 61,780.

²² *SDG&E*, 98 FERC at 62,408.

basis and that in certain cases full recovery may be appropriate, we find that the facts of this case and the reasons we have already discussed in detail above, justify our decision to grant SCE full recovery of its prudent costs, if Segments 1 or 2 are abandoned or cancelled. The following factors provide further support for our decision. Allowing full recovery of SCE's prudent costs, if Segments 1 and 2 are abandoned, encourages the development of much-needed transmission facilities,²³ improves the performance of the CAISO-controlled grid by increasing the transfer capability of the grid and providing reliability benefits to the grid,²⁴ and is intended to increase the supply of energy to the grid. In addition, the State of California's adoption of the Renewable Portfolio Standard Program²⁵ is an indication that the state, on behalf of the electricity customers in this state, is willing to bear a higher risk to build transmission to access renewable energy. In fact, the California legislation requires the CPUC to allow SCE to recover the reasonable transmission costs in retail rates, if the Commission did not allow recovery of the cost of the Antelope Project in wholesale transmission rates.²⁶ Given the facts of this

²³See *U.S. Department of Energy, National Transmission Grid Study* at 5-8 (May 2002 (providing that there is a need for investment in new transmission); *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 94 FERC ¶ 61,272, *reh'g denied*, 95 FERC ¶ 61,225, *order on requests for reh'g and clarification*, 96 FERC ¶ 61,155, *further order on requests for reh'g and clarification*, 97 FERC ¶ 61,024 (2001) (Removing Obstacles Orders) (discussing the actions the Commission was taking to help increase electric generation supply and delivery in the Western United States); *Western Area Power Administration*, 99 FERC at 62 (stating that “[t]he need for additional transmission facilities in California, particularly along Path 15, has not abated since the issuance of the Removing Obstacles Orders,[] which sought, among other things . . . to promote the timely construction of additional transmission facilities.”); *Sierra Pacific Resources Operating Companies*, 105 FERC ¶ 61,178 (2003), *order on reh'g*, 106 FERC ¶ 61,096 (2004) (providing the company with economic incentives for proposed facilities designed to relieve congestion, increase the transfer capability of electricity to other markets, enhance regional reliability and connect new merchant generation supply throughout the region); and *U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, Recommendation 4 at 145 (April 2004) (recommending a clarification “that prudent expenditures and investments for bulk system reliability . . . will be recoverable through transmission rates”).

²⁴ July Order at P 38.

²⁵ See SB 1078.

²⁶ Cal.Pub.Util.Code § 395.25(b)(2).

case, we do not consider this assignment of risk responsibility to be unjust and unreasonable.

13. TANC further argues that the Commission's determination is inconsistent with *PSNM*, which found that "Opinion No. 295's policy of equally sharing prudently incurred cancelled plant costs between ratepayers and shareholders was generally applicable to all such cancelled plant costs [and] is not limited . . . to generation facilities only, or to facilities that had no customer support, or cancellations that are a result of economics."²⁷ TANC is correct in that this is the general policy; however, in this situation where SCE is developing transmission facilities to access a large supply of generation pursuant to a state program without signed interconnection agreements for wind projects with a specified generation output, we uphold our conclusion in the July Order. It is also important to note that if Segments 1 and 2 are abandoned or cancelled, SCE will be allowed to recover only its prudent costs for these network upgrades. The determination of "prudent costs" will be part of a later proceeding, in which entities such as TANC can participate.

14. TANC contends that the Commission improperly cited to *SDG&E*²⁸ as support for its decision to allow SCE full recovery of its prudent costs for abandoned or cancelled plants. TANC is wrong. The July Order cited to *SDG&E* for the proposition that the Commission has the discretion to permit a utility to recover more than 50 percent of the costs of abandoned or cancelled plant, not, as TANC claims, for the proposition that SCE is allowed full recovery of abandoned or cancelled plant costs.²⁹ TANC argues that in *SDG&E*, the Commission deferred ruling on the utility's request for 100 percent recovery of its prudent costs despite *SDG&E*'s argument that "Opinion No. 295 should not be applied in a post-open access marketplace, where the transmission provider no longer controls the development of new generation."³⁰ In *SDG&E*, the Commission deferred addressing the assured cost recovery for cancelled projects because it did not have a specific record before it. But we also stated that in certain cases, "full recovery of the costs associated with an abandoned transmission project may be appropriate," and "claims for full recovery of any infrastructure projects that are ultimately cancelled will be addressed by the Commission on a case-specific basis."³¹ As explained above, in this

²⁷ *Citing to PSNM*, 75 FERC at 61,860.

²⁸ 98 FERC ¶ 61,332.

²⁹ July Order at P 60 and n.46.

³⁰ *SDG&E*, 98 FERC at 62,408.

³¹ *Id.*

case we have an adequate record and see no reason to defer our decision on SCE's request.

15. TANC points out that SCE is subject to a CPUC order to build the Antelope Project and, therefore, does not need any additional incentive to complete this project. Thus, TANC argues that the Commission erred in relying on the CPUC order as justification for granting SCE's request for 100 percent cost recovery of abandoned or cancelled facilities. By granting SCE's request to recover 100 percent of its prudent costs if Segments 1 or 2 are abandoned or cancelled, we do not intend to provide SCE with an incentive. Also, the CPUC order was just one of several factors we considered in finding that it was appropriate to allow SCE to recover 100 percent of its prudent costs if Segments 1 or 2 were abandoned or cancelled. For instance, we recognized that SCE was faced with an obligation, not of its own making, to undertake the Antelope Project to implement California's legislation without first entering into signed interconnection agreements for wind projects with a specified generation output. We deny TANC's rehearing request that the Commission erred in allowing SCE to recover 100 percent of its prudent costs of Segments 1 or 2, if abandoned or cancelled.

Determination of Return on Equity

16. TANC also argues that the July Order is in error because SCE is already compensated for its risk of building transmission through its return on equity. It suggests that if SCE believes its return is inadequate, it should file for an increase. TANC notes that the July Order indicated that allowing the full recovery of the prudent costs of Segments 1 and 2, if abandoned or cancelled, may lower SCE's risk and therefore, may warrant a lower return on equity for SCE. TANC asserts that the Commission's decision to allow 100 percent recovery without investigating the proper return on equity for SCE failed to ensure that SCE's rates are just and reasonable.

17. We deny TANC's request for rehearing for two reasons. SCE's existing return on equity determination did not contemplate this particular situation in which SCE would have to develop transmission at the state's request and for the benefit of the state's ratepayers and without signing interconnection agreements with wind generators for a specified generation output. Moreover, we find that it would be premature to decide these issues at this time because the Segments 1 and 2 have not been built or abandoned, and no application has been filed seeking recovery of specific costs or allocation of costs to customers. In addition, it would be inappropriate to initiate an investigation to examine only the return on equity component of SCE's transmission rates, in isolation, without also addressing other SCE cost of service items. We note also that such a broad study may result in a rate increase rather than a rate decrease. The issue of whether the return on equity accurately reflects SCE's level of risk can be addressed after SCE builds

the facilities and makes a section 205 filing under the Federal Power Act³² to include the cost of these facilities in its transmission revenue requirement.

Beneficiaries of Segments 1 and 2 of the Antelope Project

18. TANC next asserts that the Commission made contradictory findings by stating that the Antelope Project benefits the transmission grid while also stating that SCE is not a wind developer and therefore will not directly benefit from these facilities. TANC argues that SCE's shareholders will benefit from the development of the wind farms since it will allow SCE to earn a return on the Antelope Project.

19. We disagree with TANC on the benefit issue. To the extent that the wind generation facilities are built and the Antelope Project facilities are constructed, SCE may recognize additional transmission revenues and earn a return on these facilities. TANC misunderstands our July Order. In the July Order, the Commission stated SCE's shareholders would not share the earnings associated with these new wind resources. Here the Commission was referring only to earnings from generation of energy from the wind farms, and not benefits accruing to SCE from the transmission system. The Commission was merely indicating that SCE's proposal for cost recovery on the Antelope Projects was not connected to any intent on SCE's part to develop wind farms in the Tehachapi region.

Regulatory Approvals

20. Finally, TANC states that the Commission did not address its concern that the 50 percent abandoned or cancelled plant policy should apply in the event SCE fails to obtain the requisite regulatory approvals for construction of the Antelope Project. It notes that in *PSNM*,³³ the Commission determined that lack of necessary regulatory approvals is not a valid basis for deviating from existing policy. TANC requests that the Commission find consistent with *PSNM* that the 50 percent recovery will apply to Segments 1 and 2 in the event SCE seeks recovery of abandoned or cancelled plant costs due to lack of regulatory approvals.

21. SCE made a single statement in its petition that it be permitted to recover all of its prudent costs for the Antelope Project if it had to cancel them because all necessary regulatory approvals were not granted without further discussion or mention in its list of requested relief items. We treated SCE's statement, which would have required a departure from *PSNM*, as an extraneous unsupported comment that did not require

³² 16 U.S.C. § 824d (2000).

³³ 75 FERC ¶ 61,266.

Commission action.³⁴ The Commission is not obligated to address a position in a pleading when no basis in fact or law is provided for such a position.³⁵ Moreover, the July Order deferred ruling on SCE's request for an advance prudence determination, without prejudice to SCE's right to seek this recovery when, and if, SCE receives the necessary certificate(s) of public convenience and necessity.³⁶ While it is unlikely that SCE will proceed with the Antelope Project without state approvals, it may be imprudent to incur costs without the necessary approvals. Therefore, we dismiss TANC's rehearing request on this issue.

The Commission orders:

Requests for rehearing are hereby denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

³⁴ We also note that SCE requested this as an apparent afterthought without explaining its request at Page 19 of its transmittal letter.

³⁵ 18 C.F.R. § 385.203(a)(7).

³⁶ July Order at P 57.