

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. ER05-1357-001

ORDER DENYING REHEARING

(Issued April 24, 2006)

1. On November 10, 2005, Southern California Edison Company (SCE) filed a request for rehearing of the Commission's October 11, 2005 Order in this proceeding.¹ In that order, the Commission rejected SCE's revised rate sheets to the Interconnection Facilities Agreement (Facilities Agreement) with the City of Corona (Corona). SCE had proposed to collect additional interconnection "true-up" costs from Corona, twenty months after the contractual deadline for collecting such costs. As discussed below, the Commission denies SCE's request for rehearing.

I. Background

2. The Facilities Agreement specifies the terms and conditions for SCE to install and maintain and for Corona to pay for facilities that are necessary to interconnect SCE's distribution system to Corona's wholesale distribution load. As provided for in the Facilities Agreement, Corona made a payment based on SCE's cost estimate. The Facilities Agreement provides that SCE is to determine the actual costs and bill Corona (the true-up) within a certain amount of time if the actual costs turn out to be more than the estimated costs.² On August 17, 2005, SCE made a true-up filing under SCE's Wholesale Distribution Access Tariff to collect from Corona an additional \$17,957.13.

¹ *Southern California Edison Co.*, 113 FERC ¶ 61,018 (2005) (October 2005 Order).

² The Facilities Agreement under section 13.1.8 provides that within twelve months following the Interconnection Facilities In-Service date, SCE shall determine the actual recorded Interconnection Facilities Cost, including the associated One-Time Cost and the Income Tax Component of Contribution, and provide Corona with a final invoice

(continued...)

3. Corona requested that the Commission reject SCE's filing, arguing that SCE had failed to provide a final invoice within the twelve month deadline, as required by the Facilities Agreement. The facilities had an in-service date of January 4, 2003, and under the Facilities Agreement, SCE was required to bill Corona for any true-up by January 4, 2004. Corona stated that on May 7, 2004, it received a letter from SCE indicating that the actual costs had exceeded the estimated costs. However, Corona asserts that the letter did not qualify as an invoice, and furthermore, was received 16 months after the in-service date. Corona argued that since SCE did not comply with the Facilities Agreement, it has forfeited its ability to seek additional cost recovery from Corona.

4. SCE admitted that it had missed the deadline due to an administrative billing error. However, SCE argued that under the just and reasonable rate precedent and basic contract law, Corona could not be excused from paying the actual costs of the facilities. SCE argued that Commission precedent establishes that utilities are not required to provide interconnection facilities at a loss. SCE asserted that in this instance, the appropriate remedy would be for SCE to forgo only the time value of the money for the period it failed to bill Corona for the interconnection costs. SCE argued that to do otherwise would unjustly enrich Corona.

5. In the October 2005 Order, the Commission rejected SCE's position. The Commission found that SCE's filing was inconsistent with the contract, and therefore, impermissible. Furthermore, we stated that since SCE failed to comply with the contract, denying SCE the additional interconnection cost did not *unjustly* enrich Corona.

II. Rehearing Request

6. SCE argues that the Commission failed to provide sufficient rationale for effectively excusing Corona from paying the actual costs of the interconnection facilities. SCE asserts that the Commission's decision was punitive and not legally supportable. First, the Commission should have analyzed the Facilities Agreement under California law, as the contract requires.³ SCE argues that under California law, SCE's failure to provide a timely invoice is not a material breach and therefore, Corona would be required

for the difference between the estimated and final costs. SCE invoiced Corona for \$17,957.13, which is the difference between the estimated cost for the Interconnection Facilities and the actual recorded costs for the Interconnection Facilities.

³ Section 23 of the Facilities Agreement provides that the agreement "shall be governed by, and construed in accordance, with the laws of the state of California, except as otherwise provided by federal law."

to pay the additional costs. Second, SCE asserts that Corona's remedy should be limited to any actual damages it suffered due to SCE's delay in invoicing.

7. SCE also argues that Commission precedent provides that utilities that fail to timely file a rate under section 205 of the Federal Power Act (FPA)⁴ are required to refund only the time value of the money collected during the period the rate was not filed. SCE argues that based on this precedent, the appropriate penalty for SCE's failure to timely provide Corona with an invoice is for SCE to forgo the time value of the money Corona owes it.

III. Discussion

8. SCE's request for rehearing is denied. This case involves a simple question: whether SCE can collect a true-up payment from Corona when the contract between them says it cannot. Corona and SCE were free to make any contractual arrangement they chose, file the contract under section 205 and once the contract was accepted, expect the Commission to respect and enforce the agreed-to deal. This is the clear teaching of the Supreme Court's decisions in the *Sierra* and *Mobile* cases;⁵ the contract between the parties governs the legality of SCE's rate filing.⁶ Rate filings consistent with the contractual obligations are valid; rate filings inconsistent with contractual obligations are invalid.⁷ The FPA also obligates the Commission to enforce parties' agreements.⁸

⁴ 16 U.S.C. § 824d (2000).

⁵ *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 345 (1956) (*Mobile*); and *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 355 (1956) (*Sierra*).

⁶ *Richmond Power and Light, Richmond, Indiana, v. FERC*, 481 F. 490, 493 (D.C. Cir. 1973).

⁷ *Id.*

⁸ *Cleveland Electric Illuminating Co., Cleveland Public Power of the City of Cleveland, Ohio v. Cleveland Electric Illuminating Co., Ohio Power Co.*, 76 FERC ¶ 61,115 (1996), *reh'g denied*, 82 FERC ¶ 61,254 (1998), *citing Yankee Atomic Electric Co., Opinion No. 390*, 67 FERC ¶ 61,318 (1994) (Commission has an obligation under the FPA to enforce the provisions of parties' contracts, *citing, e.g., Mobile-Sierra*); *see also City of Lebanon, Ohio v. Cincinnati Gas & Electric Co.*, 64 FERC ¶ 61,341 (1993) (Commission will hold parties to the language to which they agreed).

9. Moreover, there is no exception for contracts that involve interconnection service. Interconnection or facility service agreements are regularly filed with and reviewed by the Commission. Provisions requiring timely billing if actual costs of interconnection facilities exceed estimated costs are commonly included in such agreements. In this instance, Corona was entitled to receive a timely true-up bill. Section 13.1.8 of the contract states:

Within twelve (12) months following the Interconnection Facilities In-Service Date, the Distribution System Facilities In-Service Date, or the in service date of any Capital additions, as the case may be, SCE shall determine the actual recorded Interconnection Facilities Cost, Distribution System Facilities Cost or Capital Additions Cost, including the Associated One-Time Cost and ITTC, and provide Corona with a final invoice.

SCE admittedly failed to invoice Corona for the additional costs within the 12 months following the in-service date, as it was required to do by the contract. Consequently, SCE forfeited its ability to collect the additional costs.⁹ A utility is not guaranteed that it will recover all its costs regardless of its own administrative error.¹⁰ The contractual language quoted above establishes a condition precedent for SCE to recover true-up costs. SCE failed to meet that condition precedent.

10. With regard to SCE's argument that the Commission should have applied state law, we note that first the Facilities Agreement provides that the agreement "shall be governed by, and construed in accordance, with the laws of the state of California, *except*

⁹ See *Virginia Electric and Power Company*, 15 FERC ¶ 61,052 at 61,113 (1981). There is an obligation for a regulated company "to include the costs in its cost-of-service for ratemaking purposes as soon after their incurrence as possible, in order that a decision could be made whether the current body of ratepayers should be charged for their recovery. A regulated company is not permitted to "sit" on costs, delaying their inclusion in the claimed cost-of-service, until it believes the time is auspicious to seek their recovery."

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,192 at P 27 n.47 (2003). It is well-established that while regulated companies must have a reasonable opportunity to recover their costs, they enjoy no guarantee that they will necessarily do so. See also *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 603 (1944); *Jersey Central Power & Light Co. v. FERC*, 810 F.2d 1168, 1180-81 & n.3 (D.C. Cir. 1987).

as otherwise provided by federal law.”¹¹ SCE’s arguments focus on an outcome based on California law. However, SCE sought to collect these additional costs by filing its amended rate sheets with the Commission. SCE’s request involves interpreting a jurisdictional agreement that is on file with the Commission and that contains rates, terms, and conditions of service by a public utility. Accordingly, it was appropriate for the Commission to review SCE’s filing to collect the additional costs and the Facilities Agreement based on Commission precedent.

11. Moreover, SCE’s argument regarding applying state law is a red herring. SCE says that California law does not treat its failure to meet the deadline in the contract as a material breach, but the issue here is not whether the contract has been breached. Corona does not want to get out of the contract or to collect damages from SCE; it simply wants to enforce the terms of the contract, which specifically provide that SCE cannot collect a true-up payment unless it bills Corona by the deadline in the contract. Thus, SCE’s argument that Corona should be limited to its actual damages is simply irrelevant.

12. SCE also argues that the Commission should apply our precedent involving utilities not making timely filings under FPA section 205. SCE contends that based on this precedent, it should only have forfeited the time value of the money for its late billing, not the entire amount. However, that precedent involves a different situation. In those cases, a utility had collected rates without prior Commission approval,¹² as section 205 requires, and the issue was what remedy to impose for this violation of the statute. Those cases impose a remedy that is designed to ensure that rates and contracts are timely filed with the Commission; they do not involve what we have here, namely, a filing to collect a true-up charge that is not within the deadline established under the terms of the agreement between the parties.

¹¹ Facilities Agreement, section 23, *emphasis added*.

¹² See *Carolina Power & Light Company*, 87 FERC ¶ 61,083 (1999).

The Commission orders:

SCE's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.