

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. ER02-2119-001

ORDER GRANTING PARTIAL REHEARING

(Issued May 31, 2006)

1. In this order, the Commission partially grants a request by Coral Power, LLC and Wildflower Energy, LP (collectively, Wildflower) seeking rehearing or clarification of an August 16, 2002 Commission order.¹ Wildflower argues that Southern California Edison Company (SoCal Edison) is required to refund to Wildflower money advanced by Wildflower to pay for upgrades to SoCal Edison's transmission system needed because of the interconnection of Wildflower's generating facility to SoCal Edison's transmission system.

I. Background

2. On November 7, 2001, the Commission conditionally accepted an Interconnection Agreement (Original Interconnection Agreement) between SoCal Edison and Wildflower.² Because California was projecting an energy shortage for the summer of 2001, the interconnection process was expedited and the Original Interconnection Agreement was filed with the Commission before the completion of a facilities study.³ The Original Interconnection Agreement was filed as an unexecuted agreement because SoCal Edison and Wildflower could not agree on a variety of issues, including the cost responsibility for any upgrades required by the yet-to-be-completed facilities study; that is, whether SoCal Edison would be required to refund to Wildflower any money spent on network upgrades (called system upgrades in the Original Interconnection Agreement). The Commission conditionally accepted the Original Interconnection Agreement, subject to the outcome of the ongoing generator interconnection rulemaking that later became

¹ *Southern California Edison Co.*, 100 FERC ¶ 61,193 (2002) (Order on Revised Interconnection Agreement) (Docket No. ER01-2609-000).

² *Southern California Edison Co.*, 97 FERC ¶ 61,148 (2001) (Order on Original Interconnection Agreement).

³ A facilities study determines the upgrades necessary to interconnect a generator to the transmission network safely. The facilities study describes the upgrades and the cost of the upgrades.

Order No. 2003, which was at the Notice of Proposed Rulemaking stage at the time.⁴ The Order on Original Interconnection Agreement stated that “[c]onsistent with Commission policy, we direct [SoCal Edison] to modify the [interconnection agreement] to provide for Wildflower to receive credits with interest, for *relevant* costs pursuant to the crediting mechanism that [SoCal Edison] and the [California Independent System Operator] will develop.”⁵

3. On June 19, 2002, SoCal Edison filed the Revised Interconnection Agreement that is at issue here. The Revised Interconnection Agreement amended the Original Interconnection Agreement to include the specific costs of the various upgrades, as determined in the completed facilities study. The Revised Interconnection Agreement was filed unexecuted, and Wildflower filed a protest. Wildflower argued that the upgrades involved were network upgrades because they were at or beyond the point of interconnection. Thus, argued Wildflower, SoCal Edison was required to provide Wildflower with transmission credits in the amount of the network upgrades.⁶ SoCal Edison maintained that the upgrades were direct assignment upgrades, and, alternatively, that the Commission had already accepted them as direct assignment upgrades in the Order on Original Interconnection Agreement.

4. The Commission conditionally accepted the Revised Interconnection Agreement. Again, the Commission made the outcome of the case subject to Order No. 2003, which was still not final.⁷ On the issue of whether SoCal Edison was required to provide credits to Wildflower, the Commission held that:

In a similar case presenting the same issue, the Commission held that it would not ‘reopen’ an executed interconnection agreement that it had

⁴ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005). For convenience, we will refer to all these orders as “Order No. 2003.”

⁵ Order on Original Interconnection Agreement, 97 FERC at 61,645 (emphasis added).

⁶ Wildflower also raised issues relating to the tax gross-up required by SoCal Edison. Wildflower argues that the Commission erred to the extent it ruled that Wildflower was required to obtain a private letter ruling from the Internal Revenue Service before it can be relieved of any responsibility to pay the income tax on contribution in aid of construction and receive refunds for amounts already paid. Wildflower Rehearing Request at 11-12. This issue is moot, as Order No. 2003 imposed comprehensive rules regarding the proper tax treatment of upgrades. *See, e.g.*, Order No. 2003-A at PP 324-388.

⁷ Order on Revised Interconnection Agreement at P 7.

already accepted to consider the issue of whether transmission credits were appropriate. Therefore, consistent with our precedent in *Duke Hinds*, we will accept the Revised IA, without modification.^[8]

5. The Order on Revised Interconnection Agreement also directed SoCal Edison to include a crediting mechanism in the interconnection agreement to credit back to Wildflower the network upgrade costs that had been included in the Initial Interconnection Agreement.⁹

II. Wildflower's Request for Rehearing and Additional Pleadings

6. Wildflower requests rehearing of the Commission's Order on Revised Interconnection Agreement. It asserts that the Commission erred in applying the *Duke Hinds*¹⁰ precedent, since, unlike in *Duke Hinds*, the interconnection agreement here is unexecuted and protested. Wildflower says that it argued that it was entitled to transmission credits in each proceeding before the Commission relating to this interconnection, and unlike the *Duke Hinds* parties, did not "willingly" enter into the interconnection agreement. Additionally, Wildflower notes that this case is unlike *Duke Hinds* in that both the Commission's Order on Original Interconnection Agreement and the Order on Revised Interconnection Agreement explicitly stated that the Commission accepted the interconnection agreement subject to the outcome of Order No. 2003.

7. Subsequently, Wildflower submitted a request for expedited action, noting that many of the issues it raised in its rehearing request (including the tax issue) have been resolved by Order No. 2003. It says that the only outstanding issue is whether Wildflower is entitled to transmission credits from SoCal Edison. SoCal Edison filed an answer to Wildflower's request for expedited action, and Wildflower filed a response to SoCal Edison's answer.

III. Discussion

A. Procedural Matters

8. The Commission's rules of practice and procedure do not generally allow for parties to file answers to requests for rehearing, unless otherwise ordered by the decisional authority.¹¹ SoCal Edison's answer to Wildflower's motion for expedited

⁸ Order on Revised Interconnection Agreement at P 9 (footnote omitted).

⁹ On January 3, 2003, the Commission accepted via delegated letter order revisions to the interconnection agreement filed by SoCal Edison in compliance with the Order on Revised Interconnection Agreement.

¹⁰ *Entergy Services, Inc.*, 98 FERC ¶ 61,290 (2002) (*Duke Hinds I*), order on reh'g, *Duke Hinds, LLC*, 102 FERC ¶ 61,068 (2003) (*Duke Hinds II*), reh'g pending.

¹¹ See 18 C.F.R. § 385.213(a)(2) (2005).

action is really an answer to Wildflower's request for rehearing, as it discusses the substantive issues in the case rather than whether the motion for expedited action should be granted. Therefore, we will not accept either that filing or Wildflower's response to it.

B. Wildflower's Request for Rehearing

9. We agree with Wildflower that the Commission erred in applying the *Duke Hinds* precedent to Wildflower's situation and will grant its request for rehearing. In the August 16 Order, the Commission stated that the *Duke Hinds* precedent prohibited the Commission from "reopening" an executed interconnection agreement that the Commission had already accepted in order to reclassify direct assignment upgrades as network upgrades.¹² While this is a correct statement of the *Duke Hinds* case as it stood at that time, the situation here is very different from the situation in *Duke Hinds*. In *Duke Hinds*, the parties filed and the Commission accepted *executed* interconnection agreements in which they agreed that the generator would pay for what the Commission would now refer to as network upgrades without receiving transmission credits.¹³ When the transmission provider in *Duke Hinds* amended the underlying interconnection agreement, the Commission held that the generator could not then ask for a reclassification of upgrades that the generator had already agreed to fund as network upgrades for which it not would receive credits.¹⁴

10. We agree with Wildflower that the factual situation here is different and that *Duke Hinds* should not be applied under these facts. Wildflower never executed the Original Interconnection Agreement or the Revised Interconnection Agreement. Unlike the generator in *Duke Hinds*, Wildflower objected to SoCal Edison's characterization of the facilities at *every* stage of the proceeding.¹⁵

¹² Order on Revised Interconnection Agreement at P 8-9.

¹³ See *Duke Hinds I*, 98 FERC at 62,260-1 (noting that the interconnection agreement in the *Duke Hinds* proceeding had been executed and was not protested). Moreover, the Commission reversed *Duke Hinds* on rehearing, and rehearing of that order is currently pending.

¹⁴ *Id.* at 62,261-2.

¹⁵ For instance, in Wildflower's August 8, 2001 protest to SoCal Edison's July 17, 2001 filing at p. 8, Wildflower states that "[SoCal Edison] again indicates that existing generators would have priority over new entrants and that it will charge only Wildflower and other new entrants for 'system upgrades' beyond the first point of interconnection. As described above, Wildflower believes this would be discriminatory and is inconsistent with prior Commission orders." See also Wildflower's July 17, 2002 protest to SoCal Edison's June 19, 2002 filing *passim*; Order on Original Interconnection Agreement at 61,644 ("Section 4.18 defines System Facilities as transmission facilities beyond the first point of interconnection necessary to interconnect the Wildflower . . . which would not have been necessary 'but for' this interconnection with Wildflower Wildflower argues that this is discriminatory and inconsistent with Commission orders.")

11. In addition, the Commission conditioned its acceptance of the Original Interconnection Agreement and Revised Interconnection Agreement on the outcome of Order No. 2003.¹⁶ Order No. 2003 held that generators are entitled to transmission credits in exchange for funding network upgrades, since such upgrades benefit all users of the transmission system.¹⁷ Order No. 2003 also continued the Commission's policy of defining network upgrades as those upgrades "required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System."¹⁸ Thus, we will direct SoCal Edison to provide transmission credits for any upgrades funded by Wildflower that are located at or beyond the point of interconnection, as required by Order No. 2003. Further, within 30 days of the date of this order, SoCal Edison is directed to pay credits for network upgrades to Wildflower, with interest, for transmission service taken since July 18, 2001, for which credits were not otherwise provided and file a refund report 15 days thereafter with the Commission.¹⁹

12. Since the Commission applied *Duke Hinds* in the Order on Revised Interconnection, we did not address the parties' arguments over the location of the point of interconnection. We find that the point of interconnection is where Wildflower's radial line interconnects with SoCal Edison's Devers-Garnet line, which is at pole 607.²⁰ We further direct SoCal Edison to submit a compliance filing revising its Interconnection Facilities Agreement to separate network upgrades from interconnection facilities based on the point of interconnection identified above. SoCal Edison must also submit an accounting of credits or cash payments that it owes to Wildflower for transmission service taken. We direct SoCal Edison to submit its compliance filing within 30 days of the date of this order.

13. We reject Wildflower's contention that the Commission erred in accepting SoCal Edison's August 1, 2002, answer to Wildflower's protest. The Commission found that

¹⁶ See Order on Initial Interconnection Agreement at 61,645; Order on Revised Interconnection Agreement at P 7 ("We stated in our [Order on Initial Interconnection Agreement] that this [Revised Interconnection Agreement] will be subject to the outcome of [Order No. 2003]").

¹⁷ Order No. 2003 at P 693-702.

¹⁸ Article 1 of the *pro forma* Large Generator Interconnection Agreement.

¹⁹ July 18, 2001, is effective date of the Interconnection Agreement established by the Order on Initial Interconnection Agreement.

²⁰ The factual situation here is analogous to a prior interconnection case where the Commission made the same determination. See *Progress Energy Carolinas, Inc.*, 105 FERC ¶ 61,231 (2003) (granting rehearing and finding that the point of interconnection was where the radial line intersected the transmission provider's transmission system).

SoCal Edison's answer aided the Commission's understanding of the issues and accepted it.²¹ The Commission has discretion to accept an answer to a protest if the answer aids the Commission in its decision-making process.²²

The Commission orders:

(A) Wildflower's request for rehearing of the Commission's Order on Revised Interconnection Agreement is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) Within 30 days of the date of this order, SoCal Edison must file a revised Interconnection Agreement properly identifying network upgrades and interconnection facilities as discussed in the body of this order.

(C) Within 30 days of the date of this order, SoCal Edison shall provide credits for network upgrades to Wildflower, with interest, for transmission service taken since July 18, 2001, for which credits were not otherwise provided and file a refund report with the Commission 15 days thereafter, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²¹ Order on Revised Interconnection Agreement at P 6.

²² 18 C.F.R. § 385.213(a)(2) (2005) (Rule 213(a)(2) states that "an answer may not be made to a protest . . . *unless* otherwise ordered" (emphasis added)). *Cf. Town of Norwood v. FERC*, 217 F.3d 24, 30 (D.C. Circuit 2000) (rejecting an argument that the Commission denied due process by not accepting an answer to a protest).