UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Southern California Edison Company Docket No. ER06-186-001

ORDER DENYING REHEARING

(Issued July 31, 2006)

1. On January 9, 2006, the Commission accepted for filing and suspended proposed revisions to Southern California Edison Company's (SCE) Transmission Owner Tariff (TO Tariff).[1] As relevant here, the Commission ordered a five-month suspension of the proposed rates and made them effective, subject to refund, on June 10, 2006. On February 8, 2006, SCE filed a request for rehearing. In this order, we deny rehearing.[2]

Background

2. In March 1997, SCE filed its original TO Tariff in Docket No. ER97-2355-000 for utility-specific rates for transmission service under the operational control of the California Independent System Operator Corporation (ISO). In December 1997, the Commission accepted SCE's TO Tariff for filing, suspended it, and permitted it to

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[1] *Southern California Edison Co.*, 114 FERC ¶ 61,018 (2006) (January 9 Order).

[2] By order dated May 30, 2006, the Commission granted SCE's request for a revision of the effective date from June 10, 2006 to June 4, 2006. *See Southern California Edison Co.*, 115 FERC ¶ 61,265 (2006).

SCE also argued on rehearing that the Commission erred by denying SCE's request for an incentive adder to its return on equity of 0.5 percent (*i.e.*, a 50 basis point adder). Request for Rehearing at 1-2. This issue has been rendered moot. *See Southern California Edison Co.*, 116 FERC ¶ 61,010 (2006). On July 21, 2006, SCE withdrew that portion of its request for rehearing.

become effective, subject to refund, on the date that the ISO began operation (April 1, 1998).[3] In January 2002, SCE filed its first proposed revisions to its TO Tariff. The revisions were accepted for filing, suspended and made effective subject to refund, and set for hearing and settlement judge procedures.[4] That proceeding was subsequently settled.[5]

3. On November 10, 2005, in the instant matter, SCE filed its second proposed revisions to its TO Tariff, reflecting proposed changes to its transmission revenue requirement and transmission rates for customers taking service over its transmission facilities.

4. SCE requested that the proposed rates be accepted and made effective on January 10, 2006, without further investigation or hearing. SCE also asked that, in the event that the Commission determined that the filing required further investigation and a hearing was ordered, any suspension be nominal.

5. In the January 9 Order, the Commission found that the proposed revisions had not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. The Commission also explained that its preliminary analysis indicated that the proposed rate increases may be substantially excessive, thus warranting imposition of the maximum suspension period (*i.e.*, five months).[6]

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[3] *See Pacific Gas & Elec. Co.*, 81 FERC ¶ 61,323 (1997), *order on reh'g*, 82 FERC ¶ 61,324 (1998).

[4] *Southern California Edison Co.*, 99 FERC ¶ 61,032 (2002).

[5] *Southern California Edison Co.*, 101 FERC ¶ 61,364 (2002).

[6] January 9 Order at P 14 (*citing West Texas Utils. Co.*, 18 FERC ¶ 61,189 at 61,374-75 (1982) (*West Texas*) (explaining that the Commission will suspend a proposed rate for the maximum period, five-months, if the proposed rate increase is found to be "substantially excessive"); *accord Tucson Elec. Co.*, 76 FERC ¶ 61,235 at 62,147 & nn.25-26 (1996).

Request for Rehearing of Five-Month Suspension

6. On February 8, 2005, SCE filed the instant request for rehearing, in which SCE argues that the Commission erred by suspending SCE's proposed rates for five months.

7. SCE argues that the Commission did not explain what assumptions it used or how it arrived at its conclusion that the proposed rates were substantially excessive.[7] SCE further argues that a five-month suspension in this case would lead to "harsh and inequitable" results.[8] SCE contends that the five-month suspension effectively results in a 258 basis point reduction of SCE's return on equity this year, thus "dwarf[ing] the incentives proposed by SCE in this case and serves as a disincentive to construction of transmission infrastructure."[9]

Discussion

8. Section 205(e) of the Federal Power Act (FPA) authorizes the Commission to suspend proposed rates for up to five months,[10] and here, consistent with that statutory authorization, the Commission has done just that. Here, based on its preliminary analysis of the proposed rates and a determination that they may be "substantially excessive," the Commission suspended them for five months.[11]

9. The Commission does not, as a general rule, reconsider its decisions regarding the length of suspension periods.[12] The Commission's decision to suspend and set a

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[7] Request for Rehearing at 19, 20-22.

[8] *Id*. at 19-20, 22-25.

[9] *Id.* at 4.

[10] 16 U.S.C. § 824e(e) (2000).

[11] January 9 Order at P 14.

[12] *Pennsylvania Elec. Co.*, 20 FERC ¶ 61,401 at 61,817 (1982); *Gulf States Utils. Co.*, 37 FERC ¶ 61,174 at 61,422 (1986); *Northern States Power Co.*, 53 FERC ¶ 61,236 at 61,976 (1990); *Jersey Central Power & Light Co.*, 56 FERC ¶ 61,376 at 62,435-36 (1991); *Appalachian Power Co.*, 59 FERC ¶ 61,313 at 62,158 (1992); *Southern California Edison Co.*, 112 FERC ¶ 61,045 at P 16 (2005); *Midwest Independent Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,208 at P 14-18 (2005).

proposed rate for hearing is based upon: (1) a review of the company's rate filing and that review, due to the need to act within a statutorily-mandated, limited time, is without the benefit of discovery or cross-examination or responsive testimony which may identify the underlying details which support the filing or which may demonstrate errors or other flaws in the filing; (2) an evaluation of the arguments and supporting documents filed by the intervenors, also necessarily without the benefit of discovery, cross-examination or responsive testimony; and (3) a preliminary analysis developed by the Commission's advisory staff. Moreover, this preliminary analysis must typically be made within, as in this case, sixty days.[13] The Commission therefore does not, as a general rule, open its preliminary analysis of the proposed rates – which it uses in evaluating the proposed rates – to review and challenge.[14]

10. SCE has not identified any facts or made any arguments which would warrant our granting rehearing of the January 9 Order. Accordingly, we will deny rehearing.

11. The Commission finds no merit in SCE's argument that the January 9 Order did not provide the assumptions or a detailed rationale for a five-month suspension. The Commission is not required to do so. As courts have long recognized, at this very early stage of a proceeding and given the circumstances and timeframe within which the Commission must act (discussed above), it is unreasonable to expect the Commission to provide the kind of detailed explanation of its assumptions and analysis that SCE seeks.[15] Rather, here, the Commission employed the kind of rough, first-cut review that it typically employs and concluded on the basis of this preliminary review that the proposed rates may produce excess revenues greater than the 10 percent threshold adopted in *West Texas*. On this basis, the Commission ordered a five-month suspension.

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[13] *Xcel Energy Servs., Inc.*, 111 FERC ¶ 61,084 at P 15 & n.3 (2005) (*citing West Texas*, 18 FERC ¶ 61,189 at 61,374); *accord, e.g., Pennsylvania Elec.*, 20 FERC ¶ 61,401 at 61,817; *Southern California Edison Co.*, 20 FERC 61,129 at 61,285 (1982).

[14] *Pennsylvania Elec.*, 20 FERC ¶ 61,401 at 61,817; *Southern California Edison*, 20 FERC ¶ 61,129 at 61,285; *New England Power Co.*, 53 FERC ¶ 61,268 at 62,057 & n.15 (1990); *Boston Edison Co.*, 55 FERC ¶ 61,087 at 61,265-66 (1991); *Jersey Central*, 56 FERC ¶ 61,376 at 62,435-36; *Appalachian Power*, 59 FERC ¶ 61,313 at 62,158.

[15] *See, e.g., Boroughs of Ellwood City*, 701 F.2d 266, 271 (3d Cir. 1983); *Cities of Anaheim v. FERC*, 723 F2d 656, 661-62 (9th Cir. 1984); *Otter Tail Power Co. v. FERC*, 583 F.2d 399, 408 n.38 (8th Cir. 1978), *cert. denied*, 440 U.S. 950 (1979); *Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 243 (D.C. Cir. 1980).

12. Further, the Commission does not typically and will not here endeavor to identify each factor underlying the evaluation of a filing. The Commission has previously explained that to do so not only would encumber the administrative process by subjecting its preliminary findings to fruitless debate but also could inject an unwarranted appearance of prejudgment into the hearing process. In *Southern California Edison Co.*, 20 FERC ¶ 61,129 (1982), the Commission stated:

> In clarifying our suspension policy [in *West Texas*], we expressed no intention to open up the Commission's preliminary analysis to debate. As recognized by the courts, the Commission's preliminary analysis of a rate filing is a rough first cut review performed within a limited statutory period on the basis of then available information. This analysis takes into account factors deemed relevant by the Commission in determining whether to proceed to hearing and for how long to suspend. These issues involve numerous questions of judgment regarding which experts may reasonably differ. Moreover, an extended discussion of this analysis would involve an inappropriate prejudgment of the merits of these issues. . . .*We therefore shall not, now or in the future, debate the merits [of the Commission's analysis]*.

(Footnotes omitted; Emphasis added.)

13. SCE's arguments that the Commission should reverse its five-month suspension of SCE's proposed rates because a five-month suspension has the effect of discouraging, rather than promoting, transmission infrastructure and will cost SCE money are equally without merit. First, we note that, in response to Congress' directive in section 1241 of the Energy Policy Act of 2005 (EPAct 2005)[16] to promote investment in transmission, we initiated a separate proceeding in Docket No. RM06-4-000[17] to do just that – to provide incentives to promote investment in transmission. Moreover, in that proceeding, in Order No. 679, we adopted a number of such incentives, but we also rejected essentially the same arguments that SCE makes here and we expressly declined to revise our suspension policy.[18] As we explained in Order No. 679, we have opted not to revise our suspension

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[16] Pub. L. No. 109-58, § 1241, 119 Stat. 594, 961-62 (2005).

[17] *Promoting Transmission Investment through Pricing Reform*, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,593 (2005).

[18] *Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ ----- at P 389 (2006).

policy, and instead have preserved our right to suspend proposed rates for up to five months when warranted; we noted that there are other options open to public utilities to ensure that there are no unnecessary delays in their recovery of prudent costs. Congress, we add, could have changed section 205 of the FPA to limit suspension of filings like SCE's, but did not do so. Rather, Congress passed section 1241 of EPAct 2005 and, as noted, the Commission has undertaken a separate proceeding culminating in Order No. 679 to carry out that mandate.

14. Second, it is important to bear in mind that suspension of proposed rates is *not* a rejection of those rates. Rather, it merely defers the date that a utility may begin collecting those rates.

15. Third, it is equally important to bear in mind that SCE has been subject to the FPA for many years, and has filed and had its proposed rates suspended many times over the years – sometimes for five months[19] and sometimes for shorter periods. Its experience in this proceeding is hardly new or unique.

16. In this regard, SCE's logic underlying its request for rehearing would, in fact, equally justify never suspending any proposed rate for five months, and effectively write the Commission's authority to suspend proposed rates for five months out of the FPA entirely. The Commission does not have the ability to do that, though, and while Congress over the years and as recently as EPAct 2005 could have done that, Congress did not, in fact, do so.

17. To the extent that public utilities are concerned that the Commission's suspension policy unnecessarily delays recovery of prudent costs, there are alternative means to ensure such recovery. For example, formula rates enhance cost recovery certainty. Further, public utilities that are concerned that a particular rate increase may be deemed "excessive" under our suspension policy may use our pre-filing meeting process to discuss those concerns before they file and then revise their filing accordingly before they file.[20]

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[19] *E.g.*, *Southern California Edison Co*., 24 FERC ¶ 61,003 at 61,004-05 (1984) (five-month suspension of proposed rates); *Southern California Edison Co*., 6 FERC ¶ 61,237 at 61,581-82, *reconsid. denied*, 7 FERC ¶ 61,219 at 61,410 (1979)(five-month suspension of proposed rates); *Southern California Edison Co*., 45 FPC 1021, 1021-23, *reconsid. denied*, 46 FPC 238, 239 (1971)(five-month suspension of proposed rates).

[20] *See* 18 C.F.R. § 35.6 (2005); *accord Promoting Transmission Investment through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ ----- at P 389 (2006).

18. Finally, while SCE does note in passing that it will be deprived of that portion of its proposed rates that is not substantially excessive, that is a risk a utility can avoid by proposing rates that are not substantially excessive. When a utility proposes rates that are substantially excessive, the Commission suspends the proposed rate, and not just part of it.[21]

The Commission orders:

SCE's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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[21] Even when a public utility files a phased rate increase, with a smaller Phase I rate increase and a larger Phase II rate increase, in hopes of the Commission suspending the Phase I increase for a nominal period and the larger Phase II increase for five months so as to avoid the suspension of the total increase for five months, the Commission's policy for the last 20 years has been generally to determine the appropriate suspension period based on the total increase. 18 C.F.R. § 2.18(a) (2005); *Phased Electric Rate Filings*, Statement of Policy, FERC Stats. & Regs. ¶ 30,721 (1986); *accord*, *e.g.*, *Arizona Pub. Serv. Co.*, 48 FERC ¶ 61,075 at 61,351 n.17 ("With respect to phased rate increase, our policy is to generally decide the appropriate period to suspend by evaluating such filings based upon the total increase."), *reh'g denied*, 49 FERC ¶ 61,138 (1989). The Commission explained that proposed phased rate increases, and the evaluation of such increases for suspension purposes as essentially two separate and independent increases, create a disincentive for utilities to limit their proposed increases to cost-justified increases. The Commission went on to note that its goal is to encourage the filing of cost-justified rates so that such rates are in effect to the maximum extent possible, and the fact that customers eventually will receive refunds of amounts found not just and reasonable is not a sufficient answer. *Phased Electric Rate Filings*, FERC Stats. & Regs. ¶ 30,721 at 30,471-72.

Here, we note, SCE did not even propose a formal, phased rate increase, but rather makes a comparable claim on rehearing after its proposed rate increase has already been suspended for five months. As we would not allow SCE two separate suspension periods had SCE filed a formal, phased rate increase, we see no reason to allow two separate suspension periods in response to a belated claim made on rehearing.