

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket No. TS07-3-000

ORDER ON REQUEST FOR PARTIAL EXEMPTION
FROM THE STANDARDS OF CONDUCT

(Issued June 11, 2007)

1. In this order the Commission grants Southern California Edison Company's (SCE's) request for a partial exemption to allow its affiliated transmission customer (energy affiliate) to consent to have SCE share the energy affiliate's non-public information with SCE's marketing affiliate for purposes of having the marketing affiliate evaluate bids for SCE's procurement of power. Section 358.5(b)(4) of the Commission's regulations states that non-affiliated customers may consent to have a transmission provider share their non-public information with the transmission provider's marketing affiliate.¹ However, section 358.5(b)(4) is silent on whether affiliated customers can consent to have their non-public information shared with the transmission provider's marketing affiliate. On February 26, 2007, SCE filed a request (SCE's Request) for a partial exemption from section 358.5(b)(4) to extend the voluntary consent provision to SCE's energy affiliate in the context of competitive solicitations conducted by SCE's marketing affiliate. Because SCE's requested exemption is consistent with the purpose of the voluntary consent provision, the Commission grants SCE's request.

Background

2. SCE states that it is an energy service provider and a transmission provider in California and a Participating Transmission Owner in the California Independent System Operator (CAISO) market. SCE states that the California Public Utilities Commission (CPUC) regulates SCE's retail rates, including all aspects of SCE's energy procurement functions and integrated resource planning activities. SCE states that it procures long-term resources through competitive solicitations, in the form of Requests for Offers

¹ 18 C.F.R. § 358.5(b)(4) (2006) (voluntary consent provision).

(RFOs). According to SCE, the CPUC allows SCE's energy affiliate to be a bidder in the RFOs and requires SCE to review affiliate bids in the same manner as non-affiliate bids.² SCE states that the CPUC also requires SCE to use an independent evaluator to monitor the RFO process when there are affiliate bidders. SCE notes that the independent evaluator has impressed upon SCE the need to evaluate transmission costs of all bidders to ensure proper bid evaluation.³

3. SCE states that its Energy Supply & Management (ES&M) department conducts SCE's procurement functions, including the RFOs. However, SCE states that ES&M also conducts sales of incidental sales of excess power into the CAISO's market, after retail and CPUC Resource Adequacy requirements are met.⁴ As acknowledged by SCE, ES&M is a marketing affiliate because its incidental sales fall under the definition of "marketing" in section 358.3(e) of the Commission's regulations.⁵

4. Sections 358.5(b)(1) and (2) of the Commission's regulations prohibit a transmission provider from sharing with its marketing affiliate non-public information of customers, whether the customers are affiliated or non-affiliated.⁶ Section 358.5(b)(4) of the Commission's regulations allows non-affiliated customers to consent, in writing, to have their information shared with the transmission provider's marketing affiliate.⁷ Non-affiliated customers of SCE have used this voluntary consent provision to allow SCE to share their non-public information with ES&M for purposes of participating in SCE's RFOs. As codified, section 358.5(b)(4) is silent on whether an affiliated customer can consent, in writing, to have its information shared with SCE's marketing affiliate.

5. Accordingly, SCE requested a partial exemption from section 358.5(b)(4) to allow SCE's energy affiliate to consent to have its information shared with SCE's marketing affiliate, strictly for purposes of allowing SCE's energy affiliate to participate in SCE's

² See SCE's Request at p. 5, *citing* CPUC Decision 04-12-048 at pp. 128-9.

³ See SCE's Request at p. 8.

⁴ SCE describes the process used to procure energy in California. The effect of the standards of conduct on the competitive solicitation process, and possible changes to that process, are the subject of the standards of conduct rulemaking proceeding, *Standards of Conduct for Transmission Providers*, in Docket No. RM07-1-000.

⁵ 18 C.F.R. § 358.3(e)(2006). SCE states that none of the employees in ES&M engages in trading activity *per se*.

⁶ 18 C.F.R. §§ 358.5(b)(1) and (2)(2006).

⁷ 18 C.F.R. § 358.5(b)(4)(2006).

RFOs. SCE notes that the transmission information is shared only among ES&M employees working on bid evaluations in the RFO and that precautions are taken to ensure that traders do not receive the information.⁸ SCE also notes that in the case of any inadvertent disclosure, SCE would post notice of the disclosure on its website pursuant to section 358.5(b)(3) of the Commission's regulations.⁹

6. SCE argues that without information from the energy affiliate, ES&M would be required to unfairly disqualify the affiliate, removing a potentially competitive lower-cost project from consideration. SCE also claims that if the Commission does not grant the waiver, SCE's energy affiliates will be unable to participate in the RFO process, which would be an undue hardship for the energy affiliate and an undue hardship for SCE, which is under state mandate to obtain 1500 MW of generation to serve its load through a competitive RFO process. SCE further argues that preventing the energy affiliate from taking advantage of the voluntary consent provision that non-affiliated bidders may use, would constitute discrimination against the energy affiliate.

Notice and Pleadings

7. Notice of SCE's request for a partial exemption from the standards of conduct was published in the *Federal Register* on March 14, 2007.¹⁰ Protests and interventions were due by March 28, 2007. San Diego Gas & Electric Company (SDGE) and Pacific Gas and Electric Company (PG&E) filed timely motions to intervene. No oppositions to these motions were filed within 15 days of the due date for protests and interventions. Therefore, SDGE's and PG&E's motions to intervene are granted by operation of section 385.214(c)(1) of the Commission's regulations.¹¹ No protests were filed.

Discussion

8. In creating the voluntary consent provision in section 358.5(b)(4) of the Commission's regulations, the Commission provided non-affiliated customers with the option to consent voluntarily to have their information shared with the transmission provider's marketing affiliate so long as notice of the consent is posted on the transmission provider's OASIS and no preference is given to the bidder in exchange for that consent. Consistent with that exception, allowing affiliated customers the same

⁸ See SCE's Request at p. 6.

⁹ *Id.*

¹⁰ 72 Fed. Reg. 11857 (Mar. 14, 2007).

¹¹ 18 C.F.R. § 385.214(c)(1)(2006).

opportunity does not violate the purpose or spirit of the standards of conduct since express consent is provided and posted. To do otherwise, would put the energy affiliate at a disadvantage with respect to non-affiliated customers as it relates to the RFOs. The Commission will allow SCE's energy affiliate to take advantage of the voluntary consent provision in section 358.5(b)(4) under the limited circumstance of SCE's RFOs.¹² ES&M employees are prohibited from being a conduit to share non-public information with SCE's marketing affiliates and energy affiliates.¹³ In the event of an inadvertent disclosure, SCE will post notice of the disclosure, as required by section 358.5(b)(2) of the Commission's regulations.¹⁴

The Commission orders:

SCE's request for a partial exemption from section 358.5(b)(4) of the Commission's regulations is hereby granted, as described in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹² The Commission notes that SCE has raised this issue in the standards of conduct rulemaking proceeding in Docket No. RM07-1-000. The partial exemption granted herein is subject to the Commission's final determination in that rulemaking proceeding.

¹³ 18 C.F.R. § 358.5(b)(7)(2006).

¹⁴ 18 C.F.R. § 358.5(b)(3)(2006).