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. ER05-1357-000

ORDER REJECTING REVISED RATE SHEETS

(Issued October 11, 2005)

1. In this order we reject Southern California Edison Company's (SCE) filing to revise certain rate sheets to the Interconnection Facilities Agreement (Facilities Agreement) with the City of Corona (Corona). SCE seeks approval to collect $17,957 of additional interconnection costs from Corona, twenty months after the contractual deadline for collecting such costs. This amount is the difference between the estimated costs that Corona paid and the actual costs incurred.

2. The Facilities Agreement specifies the terms and conditions for SCE to install and maintain the interconnection facilities and for Corona to pay for such facilities that are necessary to interconnect SCE's distribution system to Corona's wholesale distribution load. As provided for in the Facilities Agreement, Corona paid $36,089 for the estimated interconnection costs and $18,152.37 for the Income Tax Component of Contribution (Tax Component).[1] This one-time payment was based on SCE's cost estimate. Within twelve months of the in-service date of the interconnection facilities, the Facilities Agreements provides that SCE is to determine the actual costs and bill Corona if the estimated costs were less than the actual costs.[2]

I. Description of Filing

3. On August 17, 2005, SCE made this filing under SCE's Wholesale Distribution Access Tariff to collect from Corona $17,957.13, which SCE states is the amount by which the actual costs exceeded the estimated costs Corona paid. The revised rate sheets would increase the Monthly Interconnection Facilities Charge to reflect the use of the higher actual interconnection cost rather than the estimated amount. SCE states that these

[1] Section 13.1.2.

[2] Section 13.1.8.

revised rate sheets reflect the actual cost to engineer, design, construct and install the interconnection facilities and the corresponding Tax Component. SCE requests an October 16, 2005 effective date.

II. Notice and Further Pleadings

4. Notice of SCE's filing was published in the *Federal Register*, 70 Fed. Reg. 50,312 (2005), with interventions or protests due on or before September 7, 2005. Corona filed a timely motion to intervene and protest and SCE filed an answer.

5. Corona asserts that SCE failed to provide a final invoice within the twelve month deadline in the Facilities Agreement, and therefore, requests that the Commission reject SCE's filing. The facilities had an in-service date of January 4, 2003, and under the Facilities Agreement, SCE was required to bill Corona for any cost overages by January 4, 2004. Corona states that on May 7, 2004, it did receive a letter from SCE indicating that there were cost overruns, but asserts that the letter did not qualify as an invoice, and furthermore, was received 16 months after the in-service date. Corona argues that the twelve month time frame provided for in the Facilities Agreement exists to protect the parties, ensure timely payment, and provide finality with respect to the financial obligations under the Facilities Agreement. Corona argues that since SCE did not comply with the Facilities Agreement, it has forfeited its ability to seek additional cost recovery from Corona.

6. In its answer, SCE states that it had finalized the true-up initially in December 2003, had informed Corona of the difference between actual and estimated costs around that time, but had missed the January 4, 2004 deadline due to an administrative billing error. Furthermore, SCE argues that under the just and reasonable rate precedent and basic contract law, Corona cannot be excused from paying the actual costs of the facilities. Commission precedent establishes that utilities are not required to provide interconnection facilities at a loss and that the appropriate remedy is for SCE to forgo the time value of the money for the period it failed to bill Corona for the interconnection costs. SCE argues that to do otherwise would unjustly enrich Corona.

7. SCE also argues that under contract law, Corona is not excused from performing under the contract unless the other party committed a material breach. SCE argues since there is no "time is of the essence" provision in the Facilities Agreement, the late invoice is not a material breach. It notes that Corona never requested an invoice. Consequently, SCE argues that Corona is still obligated to perform under the contract and is, therefore, required to pay the $17,957.13 difference between the estimated costs Corona already paid and the actual costs of the facilities. In the alternative, SCE argues that even if this was a material breach, Corona cannot refuse to pay and continue to take service under the contract.

III. Discussion

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R § 385.214 (2005), the timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SCE's answer because it has provided information that assisted us in our decision-making process.

9. SCE's revised rate sheets are rejected as contrary to the contract. Under the Facilities Agreement, SCE was required to provide Corona with a final invoice within twelve months of the interconnection facilities' in-service date. This provision protects both parties, ensuring that Corona receives timely notice of any cost overruns and that SCE has an opportunity to be fully reimbursed. SCE failed to use that opportunity by complying with this provision. As stated above, the facilities' in-service date was January 4, 2003, so SCE was required to provide the invoice by January 4, 2004. SCE did not submit the final invoice through this filing until August 17, 2005, 20 months after the deadline.

10. We note that although SCE will not be fully reimbursed, there is nothing unfair about this result. The letter SCE sent Corona in May 2004, four months after the deadline and 16 months before this filing, demonstrates that SCE was aware that there were cost overruns and that it had not yet billed Corona. While this letter informed Corona of the additional costs, it was not the invoice, and Corona was under no obligation to request the invoice from SCE. SCE slept on its rights and thus forfeited the additional payment under the contract. Furthermore, denying SCE the additional interconnection cost does not *unjustly* enrich Corona, because SCE failed to comply with the contract. It would be unjust and unreasonable to permit SCE to recover these costs 20 months after the deadline and 16 months after it knew it missed the contractually required deadline.

11. Finally, as specified in the contract, SCE is providing interconnection service, for which Corona is paying; Corona is not requesting to be excused from performance under the contract. Whether or not Corona is required to pay these additional interconnection costs does not alter the service provided or received. Under the contract, Corona timely paid the estimated interconnection costs as requested by SCE, and SCE failed to provide Corona with an invoice within the time provided for in the contract.

12. Consequently, as discussed above, SCE's proposed rate sheets are rejected.

The Commission orders:

SCE's proposed rate sheets are hereby rejected.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.