

124 FERC ¶ 61,005  
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.

City of Vernon, California

Docket No. EL08-54-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued July 2, 2008)

1. On April 4, 2008, as amended on May 20, 2008, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure,<sup>1</sup> the City of Vernon, California (Vernon) submitted a petition seeking a declaratory order (Petition) finding that, among other things, its revised "interim" and "final" transmission revenue requirements (TRRs), when incorporated into and reviewed as a component of the California Independent System Operator Corporation (CAISO) transmission access charge (TAC), will not affect the TAC's status as a just and reasonable rate. For the reasons discussed below, we grant Vernon's Petition.

**I. Background**

2. Vernon is a municipality adjacent to East Los Angeles in the Los Angeles basin, with ownership interests in electric, natural gas, and water distribution utilities. The peak load of Vernon's electric customers is approximately 200 MW. Vernon is part of Southern California Edison Company's (SoCal Edison) service territory and a scheduling coordinator under the CAISO Open Access Transmission Tariff (CAISO Tariff). Vernon has been a Participating Transmission Owner (PTO) in the CAISO since 2001, when Vernon turned over operational control of its transmission facilities and transmission entitlements to the CAISO.<sup>2</sup>

3. Because Vernon is a municipal utility, it is not subject to the Commission's jurisdiction under section 205 of the Federal Power Act (FPA).<sup>3</sup> Nonetheless, the

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<sup>1</sup> 18 C.F.R. § 385.207 (2008).

<sup>2</sup> See *City of Vernon*, 94 FERC ¶ 61,344 (2001).

<sup>3</sup> 16 U.S.C. § 824d (2006). *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 673 (D.C. Cir. 2007) (*TANC*); see also *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 4 (2008).

Commission may review Vernon's TRR because it is a component of the jurisdictional CAISO TAC.<sup>4</sup> Therefore, Vernon is contractually obligated to file its TRR with the Commission. CAISO Tariff section 26.1 provides that TRR filings should be made according to the Commission's procedures. While the Commission has not set forth a preferred method for non-jurisdictional PTOs to submit TRR changes, the Commission has accepted non-jurisdictional CAISO PTOs' TRR filings in the form of petitions for declaratory orders.<sup>5</sup>

4. Prior to April 3, 2008, Vernon owned interests in three transmission assets: (1) the Mead-Adelanto Project (MAP); (2) the Mead-Phoenix Project (MPP) (with MAP, collectively referred to herein as the Mead Projects); and (3) the California Oregon Transmission Project (COTP).<sup>6</sup> Vernon also had transmission entitlements pursuant to long-term electric transmission contracts (ETCs).<sup>7</sup> On April 3, 2008, Vernon disposed of its interest in COTP.<sup>8</sup> At the time Vernon filed its Petition, on April 4, 2008, it continued to have ownership interests in the Mead Projects,<sup>9</sup> two long-term ETCs with SoCal Edison, and one long-term ETC with the Los Angeles Department of Water and Power (LADWP).<sup>10</sup> The Mead Projects and Vernon's ETCs were part of the CAISO transmission network.<sup>11</sup> Therefore, as a PTO in the CAISO, Vernon collected revenue for the CAISO customers' use of these transmission facilities.<sup>12</sup>

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<sup>4</sup> *TANC*, 495 F.3d 663, 671-73.

<sup>5</sup> *See City of Anaheim*, 112 FERC ¶ 61,208 (2005); *see also City of Azusa*, 101 FERC ¶ 61,352 (2002). *See also City of Vernon*, 93 FERC ¶ 61,103 (2000).

<sup>6</sup> *See Vernon Petition* at 1-2.

<sup>7</sup> *Id.* at 2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> On April 22, 2008, Vernon filed a Notice of Closing notifying the Commission that the transaction disposing of the Mead Projects would close on April 22, 2008. *See Vernon Notice of Closing*, Docket No. EL08-54-000 (Apr. 22, 2008).

<sup>10</sup> *See Vernon Petition* at 4.

<sup>11</sup> *Id.* at 4.

<sup>12</sup> *Id.*

## II. Vernon Petition

### A. April 4, 2008 Petition

5. On April 4, 2008, Vernon filed its Petition seeking a Commission finding that: (1) its revised interim and final TRRs, when incorporated into and reviewed as a component of the CAISO TAC, will not affect the TAC's status as a just and reasonable rate; (2) to the extent necessary, Vernon's "interim" and "final" Transmission Owner Tariff (TO Tariff) provisions remain consistent with the TO Tariff provisions of other PTOs; (3) the filing fee for Vernon's petition could be waived; and (4) any waivers necessary to accept Vernon's interim and final TRRs and TO Tariff could be granted. Vernon filed interim and final TRRs to reflect Vernon's disposition of its ownership interests in the COTP transmission assets on April 3, 2008 and the Mead Projects on April 22, 2008.<sup>13</sup> Vernon explains that, because the two transactions did not close simultaneously, it submits (1) an interim TRR to become effective on April 4, 2008 that would cover the period April 4, 2008 through April 22, 2008; and (2) a final TRR to become effective on April 23, 2008.<sup>14</sup> Vernon states that, upon disposition of the Mead Projects and COTP transmission assets, its transmission assets will consist of its long-term ETC transmission entitlements.<sup>15</sup>

### B. May 20, 2008 Amended Petition

6. On May 20, 2008, Vernon filed an amendment to its Petition (Amended Petition)<sup>16</sup> modifying the gross MWhs associated with its entitlements. Specifically, Vernon revised Appendix I to the TO Tariff<sup>17</sup> to report the gross load used in developing the CAISO

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<sup>13</sup> The Vernon City Council approved the instant interim and final TRRs on March 24, 2008. *See* Vernon Petition at 1; *see also* Vernon Petition, Att. 1, Vernon City Council Res. 9562.

<sup>14</sup> *See* Vernon Petition at 2.

<sup>15</sup> *Id.*

<sup>16</sup> Although Vernon submitted its filing as an "Answer to the Motion to Intervene and Comments of Pacific Gas and Electric Company," based on the modifications included therein, we treated it as an amendment to the Petition. *See* Notice of Filing, Docket No. EL08-54-000 (May 23, 2008).

<sup>17</sup> *See* Vernon Amended Petition at 3.

TAC.<sup>18</sup> In addition, Vernon provides a chart indicating the monthly gross load in 2007 that Vernon relied upon to calculate its overall gross load.<sup>19</sup> Vernon did not otherwise modify its previously-filed TRR calculation.

### **III. Notice of Filing**

7. Notice of Vernon's filing was published in the *Federal Register*, 73 Fed. Reg. 20,621 and 31,453 (2008), with interventions and protests due on or before June 6, 2008. Modesto Irrigation District; StarTrans IO, L.L.C.; the Northern California Power Agency; San Diego Gas and Electric Company (SDG&E), SoCal Edison; Pacific Gas and Electric Company (PG&E); and the City of Santa Clara, California, the City of Redding, California, and the M-S-R Public Power Agency filed timely motions to intervene. SDG&E, SoCal Edison and PG&E filed comments to the Petition. No comments to the Amended Petition were filed.

### **IV. Discussion**

#### **A. Procedural Matters**

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

#### **B. Substantive Matters**

##### **1. Vernon's Interim and Final TRR**

9. Vernon states that it is submitting its interim TRR to be operative from April 4, 2008 (the day after the closing of the sale of COTP) to April 22, 2008 (the day of the closing of the sale of the Mead Projects).<sup>20</sup> Vernon adds that, given the short period of time during which the interim TRR will be in effect, Vernon has calculated its interim

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<sup>18</sup> *Id.*

<sup>19</sup> *See* Vernon Amended Petition at 3; *see also* Vernon Amended Petition, Exhibit C.

<sup>20</sup> According to Vernon, the interim TRR (as well as the interim TO Tariff) reflect the sale of COTP but not the sale of the Mead Projects. *See* Vernon Petition at 10.

TRR using the economic parameters set forth in the CAISO's proposed TRR.<sup>21</sup> Therefore, Vernon contends that the inclusion of its interim TRR in the CAISO TAC will not affect the TAC's status as a just and reasonable rate.<sup>22</sup>

10. Vernon states that the calculated interim TRR, which includes the Mead Projects and the ETCs, is \$3,131,282 and should be made effective as of April 4, 2008 or the day following the closing of the COTP transaction. Vernon's interim TRR was derived through calculations described in the testimony of Philip Hanser and Greg Basheda (Hanser-Basheda Testimony).<sup>23</sup>

11. Vernon asserts that its final TRR will be significantly reduced after the removal of the Mead Projects and COTP facilities from its rate base.<sup>24</sup> However, Vernon reiterates that it will continue to maintain three ETCs (two with SoCal Edison and one with LADWP) and that the entitlements in these contracts will remain under the CAISO's control. Vernon also claims that it is entitled to recover the costs associated with its ETCs, which consist of: (1) the cost of transmission services purchased under the three long-term ETCs; (2) administrative and general (A&G) expenses allocable to transmission services under the ETCs; and (3) regulatory expenses (i.e., the cost of Commission filings and monitoring CAISO proceedings) allocable to transmission services.

12. According to the Hanser-Basheda Testimony, the annual transmission services expense was calculated to be \$670,399.<sup>25</sup> Vernon states that, after supplying estimates of its A&G expenses, Messrs. Hanser and Basheda calculated the total salary and overhead cost driven by ETCs to be \$4,738 per year.<sup>26</sup> Lastly, Vernon states that it provided Messrs. Hanser and Basheda with historical and projected budgets for regulatory expenses in the amount of \$243,000 that resulted in a final TRR value of \$918,137.<sup>27</sup> Because the sale of Mead Projects closed on April 22, 2008, Vernon requests an effective date of April 23, 2008 for its final TRR.

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<sup>21</sup> *See id.* at 7.

<sup>22</sup> *Id.* at 10.

<sup>23</sup> *See* Vernon Petition, Att. 3, Hanser-Basheda Test. at 10-12.

<sup>24</sup> *See* Vernon Petition at 9.

<sup>25</sup> *See* Vernon Petition, Att. 3, Hanser-Basheda Test. at 6.

<sup>26</sup> *See* Vernon Petition at 9-10.

<sup>27</sup> *Id.*

13. None of the commenters challenge Vernon's interim or final TRR calculation methodology, or the interim or final TRR values. However, PG&E, SoCal Edison and SDG&E (the Parties) protest Vernon's actions in disposing of the COTP. Specifically, the Parties contend that, contrary to the terms of the TCA, Vernon did not obtain the required CAISO consent for the transfer of the COTP to the Transmission Agency of Northern California (TANC) and did not wait the necessary length of time for the CAISO's written approval of the transaction prior to proceeding with the transfer. PG&E and SDG&E further assert that Vernon's revised TO Tariff violates the CAISO Tariff because it did not include gross load data, which the CAISO uses to calculate its grid-wide TAC rates.

14. While the Commission lacks jurisdiction over Vernon's transmission rates under FPA section 205, we have authority to review Vernon's TRR because it is a component of the jurisdictional CAISO TAC.<sup>28</sup> We find that, when incorporated into and reviewed as a component of the CAISO TAC, Vernon's interim and final TRR values are reasonable and, therefore, do not affect the TAC's status as a just and reasonable rate. Therefore, we accept the interim and final TRR values filed by Vernon to be effective April 4, 2008 and April 23, 2008, respectively. We also find that Vernon's revised TO Tariff reflecting an updated gross load calculation is consistent with other PTO TO Tariffs and, therefore, accept it.

15. We find that the Parties' concern that Vernon did not obtain the required CAISO consent for the transfer of the COTP to the TANC is beyond the scope of this proceeding. Further, we find that, in its Amended Petition, Vernon has sufficiently addressed PG&E and SDG&E's concern whether Vernon's revised TO Tariff violates the CAISO Tariff if it fails to include gross load data.

## 2. Filing Fee

16. Vernon requests an exemption from the filing fee applicable to petitions for declaratory orders<sup>29</sup> because, under 18 C.F.R. § 381.108(a) (2008), municipalities are exempt from such filing fees. Vernon notes that it is a municipality organized under the laws of the State of California. We agree and, accordingly, grant the exemption.

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<sup>28</sup> *TANC*, 495 F.3d 663, 671-73.

<sup>29</sup> *See* 18 C.F.R. § 385.207(c) (2008).

The Commission orders:

(A) Vernon's petition for declaratory order is hereby granted, and its interim transmission revenue requirement of \$3,131,282, as reflected in its interim Transmission Owner Tariff and corresponding revised tariff sheets, is accepted, to become effective on April 4, 2008, as discussed in the body of this order.

(B) Vernon's final transmission revenue requirement of \$918,137, as reflected in its final Transmission Owner Tariff and corresponding tariff sheets, as amended, is accepted, to become effective on April 23, 2008, as discussed in the body of this order.

(C) Vernon's request for waiver of the filing fee for its petition for declaratory order is hereby granted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.