

125 FERC ¶ 61,014
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company

Docket Nos. ER08-1343-000
ER08-1353-000
(consolidated)

(Issued October 3, 2008)

Attached is the statement by Commissioner Moeller dissenting in part with a separate statement, to an order issued on September 30, 2008, in the above-referenced proceeding, *Southern California Edison Company*, 124 FERC ¶ 61,308 (2008).

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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MOELLER, Commissioner *dissenting in part*:

I agree with the majority that Southern California Edison Company's (SCE's) proposed transmission rates and its proposed revisions to certain path-specific Existing Transmission Contracts should be set for hearing and settlement judge procedures to determine their justness and reasonableness under section 205 of the Federal Power Act, subject to refund.¹ However, I disagree with the decision to suspend SCE's proposed transmission rates for five months. As I explain below I am concerned that imposing a five-month suspension negates the incentive adders previously granted by the Commission to SCE for making significant investments in transmission facilities.²

Initially, I would note that ratepayers, regardless of the length of the suspension period are fully protected because the Commission can establish refunds with interest from the date the rates go into effect if the Commission ultimately finds that the utility's rates were unjust and unreasonable.³

It is well established that the nation is in desperate need of additional electric transmission facilities. Transmission development is also critical in delivering renewable

¹ 16 U.S.C. 824d (2000).

² *Southern California Edison Company*, 121 FERC ¶ 61,168 (2007), *reh'g denied* 123 FERC ¶ 61,293 (2008) (FERC granted SCE incentives for its proposed investment of \$2.5 billion dollars in order to construct three transmission projects: (1) Devers-Palo Verde II Project; (2) Tehachapi Transmission Project (Tehachapi Project); and (3) Rancho Vista Transmission Substation Project).

³ *See* 16 U.S.C. 824d(e).

power to customers, which is often located far from load.⁴ This need is especially acute in states such as California that have enacted aggressive renewable energy requirements⁵ and are also contemplating programs to reduce their greenhouse gas emissions.⁶

In addition to the challenges of siting new transmission facilities, the cost of constructing this new infrastructure is rising dramatically. Although the nation's overall inflation rate remains relatively low, the cost of needed components of the electric system has and continues to rise disproportionately, including the costs of inputs such as copper,

⁴ U.S. Dept. of Energy, *20% Wind Energy by 2030: Increasing Wind Energy's Contribution to U.S. Electricity Supply* at 93 (May 2008) ("If the considerable wind resources of the United States are to be utilized, a significant amount of new transmission will be required. Transmission must be recognized as a critical infrastructure element needed to enable regional delivery and trade of energy resources, much as the interstate highway system does for the nation's transportation needs."); California Independent System Operator Corporation, *Integration of Renewable Resources: Transmission and Operating Issues and Recommendations for Integrating Renewable Resources on the California ISO-controlled Grid* at 15 (November 2007) ("Renewable resources can be built much faster than the required transmission upgrades can be designed, approved and built. New transmission and transmission upgrades are essential to link these locational constrained renewable facilities to the backbone power grid."); and Porter, K. and Intermittency Analysis Project Team, *Intermittency Analysis Project: Summary of Final Results* at 6, (California Energy Commission, PIER Research Development & Demonstration Program 2007). Report No. CEC-500-2007-081 ("Significant transmission investments are necessary to meet the 2010 and 2020 renewable targets.").

⁵ California's Renewables Portfolio Standard (RPS) program requires retail sellers of electricity to increase their sales of eligible renewable-energy resources by at least 1 percent of retail sales per year, so that 20 percent of their retail sales are served with eligible renewable energy resources by 2010. Governor Schwarzenegger has set a longer-term state goal of 33 percent by 2020, and currently the California Public Utilities Commission (CPUC) and the California Energy Commission are considering ways to achieve that goal. California's RPS was established in 2002 under California State Senate Bill 1078 and accelerated in 2006 under California State Senate Bill 107.

⁶ California Public Utilities Commission Press Release in Docket #: R.06-04-009, *CPUC Makes Recommendations to Air Resources Board to Reduce GHG Emissions*, (October 2, 2008), http://docs.cpuc.ca.gov/PUBLISHED/NEWS_RELEASE/80131.htm.

steel, cement and skilled labor.⁷ Because of the rising costs, it is more important than ever that transmission projects are completed promptly and without regulatory lag. Suspending rates for five months serves to greatly penalize the developer of these needed projects when the time value of money is unusually high. In light of these economic facts and public policy considerations, I believe this Commission should reexamine its suspension policy.

The statutory language of FPA section 205 gives this Commission discretion to suspend a proceeding for a period less than five months.⁸ Even in *West Texas*, the Commission acknowledged that “shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results.” It also recognized that the ten percent margin of increased revenues was only a “reasonable allowance for error or imprecision” and that “some suspension decisions will necessarily be close questions due to the fact that our preliminary analyses involve a number of judgment factors.” The Commission continued that “[w]here a small deviation in a highly judgmental factor within our preliminary analysis, such as return on common

⁷ The price of steel has increased approximately 60 percent since 2003. Price of cement has increased about 30 percent between 2004 and 2006. Costs of skilled and unskilled labor costs are a significant component of utility construction costs. Since 2001 and 2007, the general inflation rate increased about 15 percent, while the cost of skilled labor increased about 26 percent, while common labor increased 27 percent. Mark Chupka & Gregory Basheda, *Rising Utility Construction Costs: Sources and Impacts* at 13-20 (Prepared by The Brattle Group for The Edison Foundation, September 2007). See also *Impacts of Uncertainty in Energy Project Costs*, a report issued by the Energy Information Administration in its 2008 Annual Energy Outlook Analyses, available at http://www.eia.doe.gov/oiaf/aeo/otheranalysis/aeo_2008analysispapers/epc.html.

⁸ The Commission has the authority

“upon reasonable notice to enter upon a hearing concerning the lawfulness of such rate, charge, classification, or service; and pending such hearing and the decision thereon the Commission, upon filing with such schedules and delivering to the public utility affected thereby a statement in writing of its reasons for such suspension, may suspend the operation of such schedule and defer the use of such rate, charge, classification, or service, but not for a longer period than five months beyond the time when it would otherwise go into effect...” (*emphasis added*)

16 U.S.C. 824d(e).

equity, would constitute the difference between a one day or a five-month suspension, we shall retain the administrative flexibility to take this into account.”⁹

In the instant case, a five-month suspension would effectively eliminate the ROE project incentives for the Rancho Vista project¹⁰ and the portion of the Tehachapi project entering into service in 2009. This is because SCE’s inability to establish new rates in a timely manner will prevent SCE from earning a reasonable return on its transmission investment by forcing it to absorb the cost of the new facilities during the suspension period. Testimony presented by SCE indicates that an imposition of a five-month suspension would result in the loss of approximately \$88 million in annualized transmission revenues for SCE and in effect reduce SCE’s proposed 12.7 percent ROE to 6.76 percent.¹¹

Undertaking a reexamination of our suspension decision in light of public policy and economic considerations, including allowing phased proceedings, will encourage, in my opinion, the investment by SCE and others in new transmission facilities and therefore, I respectfully dissent in part.

Philip D. Moeller
Commissioner

⁹ *West Texas Utilities Company*, 18 FERC ¶ 61,189, 61,374 (1982).

¹⁰ The Rancho Vista will provide increased capability for SCE to interconnect and deliver to load centers renewable generation proposed to be constructed in California and Nevada. *See* SCE’s May 18, 2007 Transmittal Letter, Docket No. EL07-62-000 at 3, 19. The Tehachapi project is an integrated transmission development project that will make possible interconnection of 4,500 MW of generating resources expected to be located in the wind-rich Tehachapi region. *See id.* at 2.

¹¹ SCE’s Transmittal Letter at 14 citing to Mr. Allstun’s testimony in Exhibit SCE-2.