

128 FERC ¶ 61,235
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

City of Vernon, California

Docket No. EL09-64-000

ORDER CONDITIONALLY GRANTING PETITION FOR DECLARATORY ORDER

(Issued September 11, 2009)

1. On July 15, 2009, the City of Vernon, California (Vernon) filed a petition for declaratory order requesting an effective date of August 1, 2009 for its revised Transmission Revenue Requirement (TRR). Vernon also requests that the Commission accept the calculation of its TRR for the years 2010 through 2012.¹ Vernon's proposal implements the rate structure and timeline agreed to in the settlement filed in Docket Nos. ER08-1343-000 and ER08-1353-000, where Southern California Edison Company (SoCal Edison) proposed to increase its TRR and transition its remaining existing transmission contracts (ETCs) from "path-specific" rates to a "postage stamp" rate methodology based on SoCal Edison's High Voltage Existing Contracts Access Charge (HVECAC).² In its petition, Vernon also requests approval of an ETC Adjustment Clause, effective August 1, 2009, to automatically adjust and update the costs Vernon incurs under its ETCs with SoCal Edison as SoCal Edison's HVECAC costs change. Additionally, Vernon requests that the Commission grant any waivers necessary to accept its revised TRR and associated Transmission Owner (TO) Tariff sheets, to become effective as proposed and discussed herein.

2. For the reasons discussed below, we will conditionally grant Vernon's petition, subject to future TRR filings made in a timely manner with the effective dates discussed below.

¹ Vernon's current TRR was accepted by the Commission on July 2, 2008 in *City of Vernon, California*, 124 FERC ¶ 61,005 (2008).

² Southern California Edison Co., Explanatory Statement and Offer of Settlement, Docket No. ER08-1343, *et al.* (filed July 1, 2009) (SoCal Edison Settlement).

I. Background

3. Vernon's transmission assets consist of transmission entitlements pursuant to two long-term ETCs with SoCal Edison and one ETC with the Los Angeles Department of Water and Power (LADWP). While Vernon is no longer an owner of transmission facilities, and not a public utility, these entitlements enable it to maintain Participating Transmission Owner (Participating TO) status in the California Independent System Operator Corporation (CAISO).³ Vernon is reimbursed for its TRR through the CAISO's Transmission Access Charge (TAC) rate, which is a formula rate based on the High Voltage TRRs of all Participating TOs. Rate changes that impact the CAISO TAC require a section 205 filing under the Federal Power Act (FPA)⁴ and a full review by the Commission to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charged by the CAISO.⁵

4. On August 1, 2008, SoCal Edison filed proposed revisions to transition its seven remaining ETCs with path-specific rates, including the two SoCal Edison ETCs with Vernon, to a postage stamp rate methodology based on SoCal Edison's updated TRR.⁶ A concurrent filing was made by SoCal Edison to revise its Base TRR, Transmission Revenue Balancing Account Adjustment (TRBAA), and HVECAC.⁷ SoCal Edison requested the same effective date for both filings and, therefore, the proposed postage stamp rate would be based on the latest revised SoCal Edison HVECAC.

5. On September 30, 2008, the Commission accepted SoCal Edison's proposed revisions, suspended them for five months to become effective on March 1, 2009, subject

³ See *City of Vernon, California*, 94 FERC ¶ 61,344 (2001).

⁴ 16 U.S.C. § 824d (2006).

⁵ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, at P 42-44, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006). See also *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 673 (D.C. Cir. 2007) (*TANC*) and *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 4 (2008).

⁶ Petition at 5 (citing *Southern California Edison Co.*, Existing Transmission Contracts Rate Filing, Docket No. ER08-1353-000 (filed Aug. 1, 2008)).

⁷ See *Southern California Edison Co.*, Revision to Transmission Owner Tariff to Reflect Changes to its Revenue Requirements, Docket No. ER08-1343-000 (filed Aug. 1, 2008).

to refund, and established hearing and settlement judge proceedings.⁸ As part of the SoCal Edison Settlement reached in that proceeding,⁹ Vernon agreed to fully transition its path-specific rates to postage stamp rates, based on SoCal Edison's HVECAC rate, over a four-year period or by January 1, 2013. In an order being issued concurrently with the instant order, the Commission approves the SoCal Edison Settlement, which also resolves SoCal Edison's most recent TO Tariff rate proceeding and the conversion of its remaining ETCs to postage stamp rates.¹⁰

II. Description of Petition

6. Vernon's petition seeks a Commission determination that its proposed TRRs for the current year and subsequent three years are just and reasonable, when reviewed as a component of the CAISO TAC. Specifically, Vernon proposes to increase its TRR from \$918,137 to \$944,348 for the current year, to become effective August 1, 2009.¹¹ Vernon states that the increased TRR principally reflects the increase in costs it pays to SoCal Edison under its two ETCs with SoCal Edison, i.e., the Victorville-Lugo and Mead ETCs. Additionally, in the SoCal Edison Settlement, Vernon and SoCal Edison agree on a schedule of rate increases for each of Vernon's ETCs with SoCal Edison for the years 2010 to 2012. Accordingly, Vernon derived its TRRs for these three years, based on the agreed-to settlement rates with SoCal Edison and the inclusion of its LADWP ETC expenses, and Administrative & General (A&G) and regulatory expenses, to arrive at the following TRRs for the next three calendar years: \$1,218,960 for 2010; \$1,275,480 for 2011; and \$1,346,520 for 2012.¹² Vernon requests a January 1 effective date for the TRRs proposed for each of these three years.¹³

⁸ *Southern California Edison Co.*, 124 FERC ¶ 61,308, at P 8 (2008).

⁹ The Settlement Judge in that proceeding certified the SoCal Edison Settlement to the Commission as uncontested on July 30, 2009. *Southern California Edison Co.*, 128 FERC ¶ 63,004 (2009).

¹⁰ *Southern California Edison Co.*, 128 FERC ¶ 61,237 (2009).

¹¹ See Petition, Attachment 1, Ex. 2, Prepared Direct Testimony of Philip Q. Hanser and Judy W. Chang on behalf of the City of Vernon (July 6, 2009) at 6.

¹² See *id.* at 11.

¹³ Vernon notes that its revised TRR, as reflected in the SoCal Edison Settlement, was approved by the Vernon City Council on July 13, 2009. See Petition at Attachment 1, Vernon City Council Resolution No. 10005 (July 13, 2009) (Resolution No. 10005).

7. Vernon also proposes an ETC Adjustment Clause that will allow Vernon to automatically adjust the portion of its TRR that is directly impacted by changes to SoCal Edison's HVECAC. Specifically, Vernon explains that as a result of its transition to SoCal Edison's postage stamp rate methodology, the costs under its ETCs with SoCal Edison will change each time SoCal Edison's TRR is modified. Vernon states that changes to SoCal Edison's TRR may occur several times per year as SoCal Edison revises its TRBAA, TRR, or the TRR associated with SoCal Edison's Commission-approved mechanism to recover Construction Work In Progress (CWIP) costs.¹⁴ Thus, Vernon alleges, frequent Vernon TRR filings will significantly increase its A&G and regulatory expenses, which will be passed on to CAISO customers through Vernon's TRR.¹⁵

8. To avoid the administrative burden and cost associated with multiple TRR filings by Vernon in a given year, Vernon proposes to implement the ETC Adjustment Clause as a transparent mechanism that will automatically adjust annually to reflect changes in SoCal Edison's TRR.¹⁶ Vernon's proposed ETC Adjustment Clause will function in a manner similar to the CAISO's TRBAA mechanism, as it will be derived by combining actual prior year SoCal Edison ETC costs with a projection of future year SoCal Edison ETC costs, which will then be trued-up annually.¹⁷

9. Further, Vernon states, if the SoCal Edison Settlement is approved by the Commission in Docket Nos. ER08-1353, *et al.*, Vernon's rates under the SoCal Edison ETCs are fixed through 2012.¹⁸ Vernon proposes that the ETC Adjustment Clause will implement the SoCal Edison Settlement rates for the period August 1, 2009 through December 31, 2012. In essence, since the settlement rates for ETC costs are fixed for this period, the true-up amounts for these periods will be zero. To the extent that the Commission does not accept Vernon's proposed ETC Adjustment Clause, Vernon requests that the Commission accept its TRR calculation for each year 2010 through 2012

¹⁴ Petition at 8-9.

¹⁵ Vernon states that because it does not own any transmission facilities, Vernon's A&G and regulatory expenses are directly related to its ETCs.

¹⁶ Petition at 10.

¹⁷ *See id.* at 11-12 (citing *Pacific Gas & Elec. Co.*, 88 FERC ¶ 63,007, at 65,051 (1999) *aff'd*, 100 FERC ¶ 61,156, *reh'g denied*, 101 FERC ¶ 61,151 (2002)).

¹⁸ *See* SoCal Edison Settlement at ¶ II.A.5.a-c.

and allow Vernon to file the appropriate tariff sheets to implement those TRRs at the appropriate time. Vernon requests an effective date of August 1, 2009 for its ETC Adjustment Clause as reflected in its proposed tariff sheets.

10. Vernon also requests waiver of the filing fee and any waivers necessary to accept its TRR and TO Tariff.

III. Notice and Responsive Pleadings

11. Notice of Vernon's petition was published in the *Federal Register*, 74 Fed. Reg. 37700 (2009), with interventions or protests due on or before August 14, 2009.

12. Timely motions to intervene with no substantive comments were filed by Pacific Gas and Electric Company; the Northern California Power Agency; the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California; and the City of Santa Clara, California and the M-S-R Public Power Agency.

13. Timely motions to intervene and comments were filed by San Diego Gas & Electric Company (SDG&E); Transmission Agency of Northern California (TANC); Modesto Irrigation District (Modesto);¹⁹ the California Department of Water Resources State Water Project (SWP); and SoCal Edison.

14. TANC's primary concern is that Vernon's ETC Adjustment Clause proposal, which seeks formula rate treatment for one category of its transmission costs, may set a precedent for other utilities with much larger costs who may rely upon Vernon's filing when seeking cost recovery through an automatic adjustment clause. Accordingly, TANC states that the Commission should limit any affirmative ruling on the ETC Adjustment Clause to the narrow facts presented in Vernon's petition.²⁰

15. TANC explains that by creating a rate design that allows for changes to a single cost component and combining a stated and a formula rate, Vernon's proposal ignores potential offsetting cost changes that may reduce its overall rates.²¹ TANC asserts that automatic recovery of costs of credits is contrary to the Commission's long-standing

¹⁹ Modesto, a member of TANC, adopts TANC's comments and requests by reference, and urges the Commission to adopt them.

²⁰ TANC Comments at 1, 11.

²¹ *Id.* at 9.

policy concerning single-issue rate adjustments.²² TANC argues further that automatic cost recovery could cause a mismatch with other costs that may also have changed but will not be adjusted until the fixed part of the rate is adjusted.

16. TANC also claims that the automatic nature of Vernon's proposal may result in less regulatory scrutiny than if the relevant costs were considered in the context of a filed rate case, where the filing utility has the burden of proving the justness and reasonableness of costs.²³ Moreover, it states, transmission customers will have the burden of filing a complaint to obtain corrections that ensure the justness and reasonableness of rate recovery of such costs.

17. Finally, TANC states that it is unclear whether Vernon's proposal will yield the desired administrative efficiencies it seeks or whether ETC costs are even appropriately addressed through a formula rate.²⁴ TANC explains that automatic recovery mechanisms are typically only allowed when the costs included in the clause are volatile. However, it argues that because Vernon's costs of SoCal Edison ETCs are known and identified until 2013, i.e., not volatile, Vernon's request is premature and unnecessary at this time.

18. SDG&E comments that it agrees Vernon should not have to make a section 205 filing each time it updates its TRR to include revised ETC rates billed to it by SoCal Edison. However, SDG&E recommends that Vernon, in its annual CAISO TRBAA, be required to show the details supporting the new ETC rates that it wants to recover in its TRR. This approach, SDG&E states, avoids a section 205 filing while providing CAISO transmission users with an opportunity to review the annual ETC rates Vernon uses to update its TRR.

19. SoCal Edison and SWP filed comments in support of Vernon's proposed ETC Adjustment Clause.

²² *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 766, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009).

²³ TANC Comments at 10.

²⁴ *Id.* at 11.

IV. Discussion

A. Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,²⁵ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Standard of Review

21. As recently discussed in *City of Riverside*,²⁶ the Commission addressed the standard of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing a previous TRR filing by Vernon.²⁷ In that opinion, Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to its section 205 jurisdiction. However, the Commission noted that because Vernon voluntarily submitted its TRR as a component of a jurisdictional rate, Vernon's TRR is "subject to a full and complete section 205 review as part of our section 205 review of that jurisdictional rate."²⁸ The Commission explained that, in *Pacific Gas & Elec. Co. v. FERC*, the court held that the Commission has statutory authority to review Vernon's TRR "to the extent necessary to ensure that the CAISO rates are just and reasonable."²⁹ Subsequently, the court upheld the Commission's decision that subjecting the TRRs of non-jurisdictional utilities (like Vernon) to a full section 205 review is "the only way to ensure that CAISO's rate is just and reasonable."³⁰

²⁵ 18 C.F.R. § 385.214 (2009).

²⁶ 128 FERC ¶ 61,207, at P 23 (2009).

²⁷ *City of Vernon, California*, Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC ¶ 61,207 (2005), *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297 (2006).

²⁸ Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

²⁹ *Id.* at P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

³⁰ *TANC*, 495 F.3d at 672.

22. Therefore, while Vernon is not within the Commission's jurisdiction under FPA section 205, we find that, based on the court's rulings, it is appropriate for review purposes to apply the just and reasonable standard of section 205 to Vernon's TO Tariff rates.

C. Revised TRRs

23. We will accept for filing Vernon's revised TRR for the current year, effective August 1, 2009, as requested. This proposed TRR reflects the settlement rates that Vernon and SoCal Edison have agreed to³¹ along with its ETC expenses to LADWP, and specified A&G and regulatory expenses. Our analysis indicates that Vernon's proposed TRR appears to be just and reasonable and no party has objected to it.

24. With respect to Vernon's proposed TRRs for the period from January 1, 2010 through December 31, 2012, Vernon has similarly derived these TRRs by using the agreed-to phase-in of SoCal Edison ETC costs to which Vernon has added the LADWP ETC expenses and A&G expenses and regulatory expenses to arrive at an annual TRR for these years. Our review indicates that these TRRs also appear to be just and reasonable and no party has objected to them. As such, we find that, when incorporated into and reviewed as a component of the CAISO TAC, Vernon's revised TRR values for the years 2010 through 2012 will not adversely affect the CAISO TAC's status as a just and reasonable rate. Accordingly, we will accept the proposed TRR values for 2009 through 2012 to become effective as requested. However, our approach on these future TRRs is conditioned on Vernon submitting annual filings to reflect the revised TRRs for years 2010, 2011 and 2012, effective January 1, 2010, January 1, 2011 and January 1, 2012, respectively. Vernon's revised rate sheets to reflect the annual modifications to the base TRR and SoCal Edison ETC as set forth in the SoCal Edison Settlement are due by November 1 for each of the three years.

³¹ As noted above, the Commission is approving the SoCal Edison Settlement that was filed on July 9, 2009 concurrently herewith. *Southern California Edison Co.*, 128 FERC ¶ 61,237 (2009). (SoCal Edison Settlement Order). The SoCal Edison Settlement Order, among other things, effectively revises Vernon's current TRR, as approved by the Commission on July 2, 2008, and allows the revision to become effective on August 1, 2009. See *City of Vernon*, 124 FERC ¶ 61,005 at P 14.

D. ETC Adjustment Clause

25. We will also grant Vernon's proposed ETC Adjustment Clause, effective August 1, 2009, which will automatically adjust annually Vernon's ETC rates charged by SoCal Edison when revisions to SoCal Edison's TRR are ultimately approved by the Commission. Vernon's ETC Adjustment Clause is simply a pass-through mechanism that allows Vernon to automatically adjust only the portion of its TRR that is directly impacted by changes to SoCal Edison's TRR and that impacts the rates charged to Vernon under its ETC contracts. Since we are accepting Vernon's ETC Adjustment Clause effective August 1, 2009, and the SoCal Edison Settlement sets out the SoCal Edison ETC rates to be paid by Vernon from August 1, 2009 through December 31, 2012, the need for adjustments during the period from 2009-2012 is eliminated. For the years 2013 and beyond, because the ETC Adjustment Clause only allows Vernon to automatically adjust the portion of its TRR that is directly impacted by changes to SoCal Edison's HVECAC, entities that have concerns regarding the appropriate costs included in Vernon's ETC will have the opportunity to review those costs in any FPA section 205 filings made by SoCal Edison to revise its TRR, including HVECAC. Moreover, Vernon will submit an annual adjustment filing to include a true-up of the prior period. Accordingly, in these circumstances, where a non-jurisdictional party such as Vernon seeks recovery of its TRR, approval of Vernon's ETC Adjustment Clause is reasonable in that Vernon will only recover the actual costs it incurs from SoCal Edison thus limiting disputes over refund liabilities. We also believe Vernon's proposed ETC Adjustment Clause is an appropriate mechanism to achieve Vernon's goals of reducing the number of rate filings in a given year necessitated by adjustments to SoCal Edison's HVECAC, thereby improving efficiency and reducing regulatory expenses. We also believe that the ETC adjustment clause is appropriate in these circumstances where Vernon's total set of costs is very limited. Thus, concerns raised regarding the use of a tracker for one set of costs among many cost components are not present in these circumstances. Accordingly, our acceptance of Vernon's proposed ETC Adjustment Clause is limited to the facts and circumstances of this case.

26. As such, we disagree with TANC's assertion that approval of Vernon's petition will lead to less regulatory scrutiny of Vernon's TRR. As noted above, revisions to SoCal Edison's TRR, including HVECAC, require Commission review under section 205 of the FPA and Vernon's ETC Adjustment Clause only reflects SoCal Edison's HVECAC rate once it has been approved by the Commission.

E. Waiver of Filing Fees

27. We will grant Vernon's petition for waiver of the filing fee. Section 381.108 of the Commission's regulations provides that municipalities are exempt from the filing fees required in Part 381.³² Vernon explains that it is a municipality organized under the laws of the State of California.³³ Accordingly, Vernon is exempt from the filing fee required for a petition for declaratory order.

The Commission orders:

(A) Vernon's petition for declaratory order is hereby conditionally granted, as discussed in the body of this order.

(B) Vernon's proposed TRR and ETC Adjustment Clause, as reflected in its revised TO Tariff and corresponding revised tariff sheets are accepted for filing, effective August 1, 2009, as requested and discussed in the body of this order.

(C) Vernon is hereby directed to submit annual filings by November 1 to reflect the revised TRRs for years 2010, 2011 and 2012, to be effective January 1, 2010, January 1, 2011 and January 1, 2012, respectively, as discussed in the body of this order.

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

³² 18 C.F.R. § 381.108 (2009).

³³ Petition at 13.