

135 FERC ¶ 61, 074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Marc Spitzer, Philip D. Moeller,
John R. Norris, and Cheryl A. LaFleur.

City of Riverside, California

Docket No. NJ11-7-000

ORDER GRANTING PETITION FOR DECLARATORY ORDER

(Issued April 26, 2011)

1. On December 20, 2010, the City of Riverside, California (Riverside) filed a petition for declaratory order (Petition) requesting that the Commission approve: (1) Riverside's annual update to the costs of its Existing Transmission Contracts (ETCs) with Southern California Edison Company (SoCal Edison) for purposes of recovering these costs through a pass-through clause (ETC Pass-Through Clause) contained in Riverside's Transmission Owner Tariff (Tariff); (2) a revised version of Appendix I to the Tariff that reflects Riverside's forecasted 2011 ETC costs; (3) the ETC Pass-Through Clause true-up for the period of October 2009 through September 2010; and (4) an updated base Transmission Revenue Requirement (TRR). Riverside also requests that the Commission grant waiver of the Commission's 60-day prior notice requirement¹ to allow for an effective date of January 1, 2011. As discussed below, the Commission accepts Riverside's 2011 ETC costs and revised Appendix I effective January 1, 2011.

I. Background

2. Riverside is not a public utility but is a Participating Transmission Owner (PTO) in the California Independent System Operator Corporation (CAISO). Riverside is reimbursed for its TRR by CAISO through CAISO's collection of a Transmission Access Charge (TAC) from all users of the CAISO grid. The TAC rate is a formula rate based on all the TRRs of all PTOs. Rate changes that impact the CAISO TAC require a filing under section 205 of the Federal Power Act (FPA)² and full review by this Commission

¹ See 18 C.F.R. § 35.11 (2010).

² 16 U.S.C. § 824d (2006).

to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charges by CAISO.³

3. Riverside states that, in Docket No. EL09-52-000, it proposed, among other things, an ETC Pass-Through Clause pursuant to which Riverside would recover through its TRR its actual costs of ETCs with SoCal Edison. The Commission conditionally accepted Riverside's proposed ETC Pass-Through Clause, subject to hearing and settlement judge procedures on August 28, 2009.⁴ Riverside states that it later submitted a settlement agreement (Riverside Settlement) that resolved all issues set for hearing in Docket No. EL09-52-000, including issues related to the design of the ETC Pass-Through Clause. The Commission approved the Riverside Settlement on February 5, 2010.⁵

4. According to Riverside, the ETC Pass-Through Clause adjusts Riverside's TRR by considering the sum of (1) Riverside's projected annual ETC costs for the next calendar year, based on SoCal Edison's High Voltage Existing Contract Access Charge (HVECAC) rate in effect at the time of filing, and (2) the positive or negative true-up of the prior year's actual ETC costs as compared with the projected costs, during the period of October through September, including interest.

5. In the instant filing, Riverside proposes to recover ETC costs totaling \$9,614,941.43 through the ETC Pass-Through Clause for calendar year 2011. Of that amount, Riverside explains that its projected ETC costs for 2011, based on the currently-effective HVECAC rate at the time of filing, are \$8,038,908.00. Riverside states that the remaining amount reflects the true-up of prior ETC costs during October 2009 through September 2010 because Riverside undercollected its ETC costs by \$1,576,033.43. Riverside states that, consistent with the terms of its Tariff, it has submitted a revised version of Appendix I of the Tariff,⁶ which lists the projected 2011 ETC costs and the true-up amount as separate components, resulting in a proposed TRR of \$25,514,941.43.

³ *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).

⁴ *City of Riverside, California*, 128 FERC ¶ 61,207 (2009).

⁵ *City of Riverside, California*, 130 FERC ¶ 61,094 (2010).

⁶ Appendix I of the Tariff lists Riverside's TRR and Transmission Revenue Balancing Account Adjustment (TRBAA). Riverside states that it has included two alternate versions of Appendix I in this filing; one version reflects Riverside's calendar year 2011 TRBAA, which was pending in Docket No. NJ11-5-000 at the time of this

6. Additionally, Riverside asks the Commission to: (1) waive the 60-day prior notice requirement to allow for an effective date of January 1, 2011;⁷ (2) waive the filing fee associated with this petition; and (3) grant any other relief or waivers necessary or appropriate for Commission approval and implementation of Riverside's revised TRR.

II. Notice of Filing and Responsive Pleadings

7. Notice of Riverside's Petition was published in the *Federal Register*, 76 Fed. Reg. 1150 (2011), with answers, interventions, and protests due on or before January 19, 2011. The Transmission Agency of Northern California filed a timely motion to intervene. The Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (collectively, Cities/M-S-R) filed a timely motion to intervene and comments. Riverside filed an answer.

8. Cities/M-S-R state that, in Docket No. ER09-1534-000, SoCal Edison proposed revisions to the HVECAC rate used in the ETC Pass-Through Clause, which the Commission accepted and suspended, subject to refund, and set for hearing.⁸ According to Cities/M-S-R, SoCal Edison later filed a settlement agreement (SoCal Edison Settlement), which is pending before the Commission,⁹ that reduced the HVECAC rate (Settlement HVECAC Rate) below the rate filed by SoCal Edison in its initial filing (Initial HVECAC Rate).

9. Cities/M-S-R state that Riverside correctly based the instant filing on the Initial HVECAC Rate but notes that that rate is subject to refund and is expected to be reduced

filing, while the second version reflects the then currently-effective (i.e., calendar year 2010) TRBAA. The 2011 TRBAA was accepted for filing, effective January 1, 2011, in *City of Riverside, California*, Docket No. NJ11-5-000 (Jan. 7, 2011) (delegated letter order).

⁷ Riverside states that the Riverside Settlement specifies that the true-up amount and forecasted ETC costs shall be reflected in Riverside's TRR effective January 1st of each year. Petition at 8.

⁸ Cities/M-S-R Comments at P 3 (citing *Southern California Edison Co.*, 128 FERC ¶ 61,287 (2009)).

⁹ The SoCal Edison Settlement was pending the Commission's approval at the time that Cities/M-S-R submitted its comments in this proceeding. The Commission has since approved the SoCal Edison Settlement in *Southern California Edison Co.*, 134 FERC ¶ 61,098 (2011).

to the Settlement HVECAC Rate beginning March 1, 2010.¹⁰ Cities/M-S-R state that Riverside will receive a refund from SoCal Edison of some ETC charges, due to the reduced HVECAC rate for the period of March 1, 2010 through September 30, 2010.¹¹ Cities/M-S-R argue that it is not apparent how Riverside's customers, which pay Riverside's ETC charges through the ETC Pass-Through Clause, will receive a credit to reflect such refunds. Cities/M-S-R emphasize that they do not object to the information or calculations found in the Petition but only seek clarification with respect to this issue.

10. Riverside answers that it calculated the under-collected balance of \$1,576,033.43 for the period of October 2009 through September 2010 using the HVECAC rates that Riverside actually paid to SoCal Edison, as it is obligated to do under the terms of its Tariff. Riverside states that the SoCal Edison Settlement provides that refunds will be issued to ETC customers within twenty business days following a final Commission order approving the SoCal Edison Settlement without material modification. Riverside states that, once it receives this refund, Riverside will re-calculate its ETC costs for the period of March 1, 2010 through September 30, 2010 and will reflect its adjusted ETC costs, with interest, in a future filing. Riverside anticipates that such future filing will consist either of Riverside's ETC Pass-Through Clause filing for calendar year 2012 or a separate TRR filing that Riverside is obligated to submit, pursuant to the terms of the Settlement filed in Docket No. EL09-52-000, no later than December 31, 2011.¹²

III. Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2010), the timely, unopposed motions to intervene serve to make

¹⁰ More specifically, Riverside has calculated its current true-up based on the Initial HVECAC rate of \$2.75 per kW of billing demand from March 1, 2010 through May 30, 2010 and \$2.79 per kW for June 1, 2010 through September 30, 2010. The Settlement HVECAC rate is \$2.43 per kW of billing demand from March 1, 2010 through May 30, 2010 and \$2.47 per kW effective June 1, 2010. Cities/M-S-R argue that it is not apparent how Riverside's mechanism will address that change. Cities/M-S-R Comments at P 19-20.

¹¹ Cities/M-S-R note that Riverside can account for changes in the HVECAC rate that occur after October 1, 2010 in its next true-up filing, which will encompass the period between October 1, 2010 and September 30, 2011. *Id.* P 19. Riverside agrees that its next true-up filing should adjust the difference between actual and projected costs for the time period extending from October 1, 2010 through September 30, 2011.

¹² This filing would be a new comprehensive TRR filing.

the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2010), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept Riverside's answer because it has provided information that assisted us in our decision-making process.

12. The Commission addressed the issue of review to be applied to petitions involving non-jurisdictional TRRs in an opinion reviewing the TRR filed by the City of Vernon, California (Vernon).¹³ In Opinion No. 479, the Commission recognized that, as a municipally-owned utility, Vernon was not subject to the Commission's FPA 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."¹⁴ 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."¹⁵ 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."¹⁶ Therefore, while Riverside 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 FPA section 205.

13. We find that Riverside's forecasted 2011 ETC costs and revisions to Appendix I¹⁷ that reflect the ETC Pass-Through Clause true-up for the period of October 2009 through September 2010 and updated TRR have been shown to be just and reasonable and accept

¹³ Opinion No. 479, 111 FERC ¶ 61,092, *order on reh'g*, Opinion No. 479-A, 112 FERC 61,207, *reh'g denied*, Opinion No. 479-B, 115 FERC ¶ 61,297.

¹⁴ Opinion No. 479, 111 FERC ¶ 61,092 at P 44.

¹⁵ *Id.* at P 43 (quoting *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112, 1117 (D.C. Cir. 2002)).

¹⁶ *Transmission Agency of Northern California v. FERC*, 495 F.3d 663, 672 (D.C. Cir. 2007).

¹⁷ We will accept the version of Appendix I that reflects Riverside's calendar year 2011 TRBAA, which was accepted for filing and made effective January 1, 2011. *See supra* note 6.

them, effective January 1, 2011.¹⁸ We find that Riverside's commitment to re-calculate its ETC costs for the period of March 1, 2010 through September 30, 2010 and reflect its adjusted ETC costs, with interest, in a future filing, after Riverside receives refunds from SoCal Edison pursuant to the SoCal Edison Settlement, will address the concern raised by Cities/M-S-R.

14. We also grant Riverside'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. Riverside explains that it is a municipal utility organized under the laws of California. Riverside is therefore exempt from the filing fee required for a petition for declaratory order.

The Commission orders:

(A) Riverside's proposed 2011 ETC costs and proposed revisions to Appendix I of the Tariff are hereby accepted, effective January 1, 2011, as discussed in the body of this order.

(B) Riverside's alternative Appendix I, based on calendar year 2010 data is rejected as moot.

(C) Riverside's petition for waiver of the filing fee and for waiver of the 60-day notice is hereby granted.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

¹⁸ *Central Hudson Gas and Electric Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh'g*, 61 FERC ¶ 61,089 (1992) (finding that an applicant can obtain waiver for a proposed rate increase where the effective date is prescribed by a settlement agreement, accepted by the Commission, that specifies the effective date for the service at issue).