

143 FERC ¶ 61,224  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Sycamore Cogeneration Co.	Docket Nos.	ER13-558-000
Kern River Cogeneration Co.		ER13-559-000

ORDER DISMISSING FILINGS

(Issued June 7, 2013)

1. On December 14, 2012, Sycamore Cogeneration Co. (Sycamore) and Kern River Cogeneration Co. (Kern River) (collectively, Applicants) submitted separate requests for authorization to make sales of wholesale power and capacity at market-based rates to their franchised public utility affiliate Southern California Edison Company (SoCal Edison) pursuant to transition power purchase agreements (Transition Agreements). In this order, the Commission dismisses Applicants' filings and finds that the Transition Agreements are exempt from the requirements of section 205 of the Federal Power Act,<sup>1</sup> (FPA) as discussed below.

**Background**

2. Applicants both state that they are owned 50 percent by an indirect wholly-owned subsidiary of Edison Mission Group, Inc., an affiliate of SoCal Edison, and 50 percent by an indirect wholly-owned subsidiary of Chevron Corporation.<sup>2</sup> Applicants state that they

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> Sycamore and Kern River Applications at 4. Specifically, Sycamore states that its ownership is split evenly under a general partnership between Chevron Sycamore Cogeneration Company, a wholly-owned indirect subsidiary of Chevron Corporation, and Western Sierra Energy Company, a wholly-owned indirect subsidiary of Edison Mission Group. Similarly, Kern River states that its ownership is split evenly under a general partnership between Chevron Kern River Company, a wholly-owned indirect subsidiary

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each own a 300 MW combined heat and power (CHP) facility, and each is authorized to sell electric energy, capacity, and ancillary services at market-based rates.<sup>3</sup>

3. Applicants state that SoCal Edison is a wholly-owned subsidiary of Edison International and is a public utility engaged in the transmission, distribution, and sale of energy services under the jurisdiction of the Commission and the California Public Utilities Commission (California Commission). Applicants note that SoCal Edison is authorized to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.<sup>4</sup>

4. Applicants state that the Transition Agreements were negotiated under the settlement approved by the California Commission to transition qualifying facilities from expiring Public Utility Regulatory Policies Act of 1978 (PURPA) power purchase agreements to competitively procured contracts.<sup>5</sup>

5. Applicants explain that, in the early 1980s, the California Commission implemented PURPA by adopting four standard form contracts that were made available to QFs, and establishing energy and capacity prices to be paid under these contracts. Applicants state that many of the original PURPA contracts began to expire in the 2000s and that such expirations led to disputes and litigation over the terms of replacement contracts and the setting of an avoided cost price for such contracts. Applicants explain that the California investor-owned utilities, CHP QF representatives, and statewide consumer and ratepayer groups entered into extensive settlement negotiations to address and resolve their numerous existing disputes and forestall additional litigation.<sup>6</sup> Applicants state that, on October 8, 2010, the participants entered into a settlement

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of Chevron Corporation, and Southern Sierra Energy Company, a wholly-owned indirect subsidiary of Edison Mission Group.

<sup>3</sup> Sycamore and Kern River Applications at 4 (citing *Coalinga Cogeneration Co.*, Docket No. ER10-607-000, *et al.* (unpublished letter order dated Apr. 21, 2010)). By letter order, the Commission accepted Applicants' Order No. 714 compliance filing in Docket No. ER10-2363-000. *See Lower Mount Bethel Energy, LLC*, Docket No. ER10-1959-000, *et al.* (unpublished letter order dated Oct. 13, 2010)).

<sup>4</sup> Sycamore and Kern River Applications at 5. *See Southern California Edison Co.*, Docket No. ER02-2263-000 (Aug. 29, 2002) (delegated letter order).

<sup>5</sup> Sycamore and Kern River Applications at 1-2.

<sup>6</sup> *Id.* at 6.

agreement (QF/CHP Settlement) establishing a California CHP Program. Applicants note that the QF/CHP Settlement was approved by the California Commission in December 2010.<sup>7</sup>

6. Applicants state that one element of the QF/CHP Settlement related to QFs with expiring PURPA contracts and to PURPA contracts that would have expired but for the fact that the contracts had their terms extended by the California Commission during the pendency of various disputes. Applicants note that the QF/CHP Settlement established a “Transition Period,” during which a CHP QF may obtain a new Power Purchase Agreement (PPA) with the same investor-owned utility it currently sells to, sell into the wholesale market, or cease to export to the grid, beginning on the QF/CHP Settlement Effective Date (November 23, 2011) and extending to July 1, 2015.<sup>8</sup>

7. More specifically, Applicants explain that, under the QF/CHP Settlement, a CHP QF currently selling to an investor-owned utility under an existing CHP QF contract (Legacy PPA), or an extension thereof that will expire during the Transition Period, may sign a Transition PPA with the same investor-owned utility, to begin upon the expiration of the Legacy PPA and end at the election of the seller but no later than the last day of the Transition Period.<sup>9</sup> Applicants state that the Transition Agreements are comprised of the (1) Transition PPAs pursuant to which Applicants will supply capacity and energy from certain generating units operating in baseload mode and (2) the Dispatchable Agreements consisting of (a) the Resource Adequacy Confirmation (RA Confirm) pursuant to which Applicants will provide SoCal Edison capacity from dispatchable units and (b) a Unit Contingent Toll Confirmation (Toll Confirm) pursuant to which Applicants will sell dispatchable capacity, energy and other products to SoCal Edison.<sup>10</sup> Applicants further state that SoCal Edison used *pro forma* Transition PPAs adopted by the California

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<sup>7</sup> *Id.* at 6-7 (citing *Application of S. Cal. Edison Co. (U338E) for Applying the Market Index Formula & As-Available Capacity Prices Adopted in D.07-09-040 to Calculate Short-Run Avoided Costs for Payments to Qualifying Facilities Beginning July 2003 & Associated Relief*, Cal. Pub. Utils. Comm’n D.10-12-035, Application No. 08-11-001 (Dec. 21, 2010), available at [http://docs.cpuc.ca.gov/word\\_pdf/FINAL\\_DECISION/128624.pdf](http://docs.cpuc.ca.gov/word_pdf/FINAL_DECISION/128624.pdf)).

<sup>8</sup> Sycamore and Kern River Applications at 7-8.

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 2 n.3.

Commission as the basis for the Transition Agreements, and note that Applicants requested some changes to the *pro forma* Transition PPAs.<sup>11</sup>

8. Applicants further note that the starting point for the parties' negotiations of the Dispatchable Agreements was a number of *pro forma* agreements SoCal Edison previously had used, including the EEI Master Purchase and Sale Agreement (EEI Master), Paragraph 10 of the Collateral Annex, the Toll Confirm, and the RA Confirm.<sup>12</sup> According to Applicants, the product and non-price terms are standardized in the Dispatchable Agreements.<sup>13</sup> The parties negotiated substantive modification to six standard terms of the *pro forma* Dispatchable Agreements, including two changes to the RA Confirm, three changes in the Toll Confirm and one in the EEI Master.<sup>14</sup> Applicants note that, unlike the price in the Transition PPA, the QF/CHP Settlement did not establish a price for dispatchable capacity; therefore, Applicants each negotiated the price for dispatchable capacity with SoCal Edison.<sup>15</sup>

### **Notice of Filing and Responsive Pleadings**

9. Notice of Applicants' filings was published in the *Federal Register*,<sup>16</sup> with interventions or protests due on or before January 4, 2013. None was filed.

### **Discussion**

10. Under the Commission's regulations, no wholesale sale of electric energy may be made between a franchised public utility with captive customers and a market-regulated

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<sup>11</sup> Sycamore Application at 10; Kern River Application at 9-10. Specifically, because each Applicant's facility is comprised of two baseload and two dispatchable generating units governed by different documents, SoCal Edison and each Applicant agreed to modify several sections of the Transition PPA to create one integrated contract. In addition, requirements for certain regulatory approvals (from the Commission and the California Commission) were added to each Transition Agreement. Sycamore Application at 16; Kern River Application at 15-16.

<sup>12</sup> Sycamore and Kern River Applications at 11.

<sup>13</sup> *Id.* at 18.

<sup>14</sup> *Id.* at 16-17.

<sup>15</sup> *Id.* at 18.

<sup>16</sup> 77 Fed. Reg. 76,023 (2012).

power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the FPA.<sup>17</sup> At issue here is whether Commission authorization is required for sales pursuant to the Transition Agreements.

11. Under section 292.601(c)(1) of the Commission's regulations,<sup>18</sup> some QFs are exempt from most provisions of the FPA. As relevant in the context of this proceeding, a cogeneration QF making sales pursuant to a state regulatory authority's implementation of section 210 of PURPA<sup>19</sup> is exempt from most provisions of the FPA, including section 205.

12. In *Southern California Edison Co.*, 143 FERC ¶ 61,222 (2013) (*S. Cal. Edison*), which we are issuing concurrently with this order, we determine that a similar transition agreement entered into as part of the QF/CHP Settlement is exempt from section 205 of the FPA because it is part of a continuing obligation to purchase pursuant to PURPA and was entered into pursuant to a state regulatory authority's implementation of PURPA.<sup>20</sup> Applicants' Transition Agreements share the same attributes. For example, some of the energy products that will be sold pursuant to Applicants' Transition Agreements are priced at an avoided-cost rate established by the California Commission and were approved by the California Commission.<sup>21</sup> In addition, the QF/CHP Settlement pursuant

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<sup>17</sup> 18 C.F.R. § 35.39(b) (2012); *see also Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, FERC Stats. & Regs. ¶ 31,252, at P 467, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268, *clarified*, 124 FERC ¶ 61,055, *order on reh'g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh'g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh'g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied*, 133 S. Ct. 26 (2012).

<sup>18</sup> 18 C.F.R. § 292.601(c)(1) (2012).

<sup>19</sup> 16 U.S.C. § 824a-3 (2006).

<sup>20</sup> Specifically, the Commission notes that: (1) the Transition PPAs are contracts priced at an avoided-cost rate established by the California Commission and are approved by the California Commission and (2) the QF/CHP Settlement pursuant to which the agreement was established is one of the California Commission's procurement programs established pursuant to PURPA. *S. Cal. Edison*, 143 FERC ¶ 61,222 at PP 17-18.

<sup>21</sup> We note that the QF/CHP Settlement provides for the sale of additional dispatchable capacity beyond the Transition PPA capacity product for a few CHP facilities with unique operational constraints and provides for a negotiated rate. *See* CHP

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to which the Transition PPAs were established is one of the California Commission's procurement programs established pursuant to PURPA. Therefore, because the sales made pursuant to the Applicants' Transition Agreements are pursuant to a California Commission implementation of section 210 of PURPA and the QF/CHP Settlement, our approval of the affiliate transaction is unnecessary, and the Applications are dismissed.

The Commission orders:

Applicants' December 14, 2012 filings are hereby dismissed, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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Program Settlement Agreement Term Sheet § 3.4.1.2 (Oct. 8, 2010) ("In addition to these standard products, a Seller may elect to sell a Buyer under a Transition PPA Additional Dispatchable Capacity above the standard contract capacity set forth in the Transition PPA (Additional Dispatchable Capacity). Buyer must negotiate in good faith for 120 days to amend the Transition PPA to incorporate a competitive market price for the Additional Dispatchable Capacity."). The terms of the QF/CHP Settlement (*see supra* n.7) are embodied in the attached "CHP Program Settlement Agreement Term Sheet," available at <http://docs.cpuc.ca.gov/PUBLISHED/GRAPHICS/124875.PDF>). Pursuant to the Commission's regulations, a negotiated rate, such as the negotiated rate for the Additional Dispatchable Capacity, is consistent with the avoided cost rate for purchases from QFs otherwise required by our regulations. 18 C.F.R. § 292.301(b) (2012).