

145 FERC ¶ 61,026  
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.

The City of Colton, California

Docket No. ER13-207-001

ORDER GRANTING REQUEST FOR CLARIFICATION

(Issued October 8, 2013)

1. On January 10, 2013, the City of Colton (Colton) filed a request for clarification of the Commission's December 20, 2012, order accepting Colton's Transmission Owner Tariff (TO Tariff) and Transmission Revenue Requirement (TRR) for filing and setting the matter for hearing and settlement judge procedures.<sup>1</sup> In the December 20 Order, the Commission stated that Colton's petition was filed under section 205 of the Federal Power Act.<sup>2</sup> Colton requests that the Commission clarify that the Commission's December 20 Order did not find that Colton itself is subject to jurisdiction under section 205 of the Federal Power Act. In this order, we grant Colton's request for clarification.

**I. Background**

2. Colton, a municipality located in southern California, is regulated by the Colton City Council, not the Commission.<sup>3</sup> With a peak load of approximately 86 MW, Colton provides electricity to approximately 18,000 residential, commercial, and industrial customers within its city limits. While Colton generates electricity internally, it also purchases power from a variety of resources outside of its system and is dependent upon Southern California Edison (SoCal Edison) and California Independent System Operator (CAISO) for the delivery of those resources.<sup>4</sup>

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<sup>1</sup> *City of Colton, Cal.*, 141 FERC ¶ 61,217 (2012) (December 20 Order).

<sup>2</sup> December 20 Order at P1 n.1.

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

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

3. In 2012, Colton initiated efforts to become a Participating Transmission Owner (PTO) in the CAISO-controlled grid. On June 19, 2012, the Council approved Colton's request to transfer its transmission entitlements to CAISO's Operational Control for the purposes of becoming a PTO.<sup>5</sup> The entitlements consist of rights to capacity on two transmission projects through agreements with the Southern California Public Power Authority (SCPPA) and to transmission capacity pursuant to the Adelanto-Lugo/Victorville Firm Service Agreement with the Los Angeles Department of Water and Power.<sup>6</sup> Colton also has contractual entitlements to transmission capacity pursuant to four agreements with SoCal Edison.<sup>7</sup>

4. Colton is compensated for the use of its entitlements and transmission facilities through CAISO's collection of a Transmission Access Charge (TAC) from its transmission customers.<sup>8</sup> Rate changes that affect the CAISO TAC require a section 205 filing under the Federal Power Act to ensure that the inclusion of these rate revisions will result in a just and reasonable TAC rate charged by CAISO.<sup>9</sup> Accordingly, pursuant to the Tariff, on October 26, 2012, Colton filed a petition asking the Commission to approve its TRR and TO Tariff.<sup>10</sup>

5. In its Petition, Colton states that the filing was made "[p]ursuant to Rule 205 of the Commission's rules of Practice and Procedure."<sup>11</sup> As such, Colton conceded that the Petition would be subject to the Commission's jurisdiction under section 205 of the Federal Power Act.<sup>12</sup> Colton explained that in *Vernon*<sup>13</sup> the Commission determined that

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<sup>5</sup> *Id.*

<sup>6</sup> The two SCPPA agreements (Mead-Adelanto and Mead Phoenix) entitle Colton to a total of 27 MW of firm bi-directional service. The Adelanto-Lugo/Victorville Firm Transmission Service Agreement entitles Colton to 23MW of firm, bi-directional transmission service. *Id.* at 3-4.

<sup>7</sup> The SoCal Edison agreements entitle Colton to approximately 34.04 MW of firm, uni-directional transmission service. *Id.* at 4.

<sup>8</sup> December 20 Order at 2.

<sup>9</sup> *Id.* at 2-3.

<sup>10</sup> The City of Colton, California, October 26, 2012, Petition for Approval of Transmission Revenue Requirement and Transmission Owner Tariff and Conditional Request for Waiver of Filing Fee (Petition).

<sup>11</sup> Petition at 1.

<sup>12</sup> *Id.* 5-7.

it does not have jurisdiction over municipal entities under sections 205 and 206 of the Federal Power Act, but that it is authorized to review the TRRs of non-jurisdictional entities under section 205 when those TRRs are included as rates charged by CAISO, a Commission-jurisdictional entity.<sup>14</sup> Further, while the Commission has authority to apply the just and reasonable standard of review, it may not subject non-jurisdictional entities to other aspects of its section 205 authority, such as rate suspension or refund obligations.<sup>15</sup>

6. On December 20, 2012, the Commission accepted Colton's Petition for filing and set it for settlement judge and hearing procedures. In the December 20 Order, the Commission determined that the Petition should be reviewed under the just and reasonable standard of section 205 of the Federal Power Act. The Commission explained that, because Colton's TO Tariff rates will contribute to CAISO's jurisdictional rate, Colton's TRR is subject to a section 205 review.<sup>16</sup>

## II. Request for Clarification

7. Colton requests that the Commission clarify its position in the December 20 Order to specifically recognize that Colton's Petition did not invoke section 205 of the Federal Power Act, and that Colton is not subject to the Commission's jurisdiction under Federal Power Act sections 205 and 206.<sup>17</sup>

8. Colton's concern is derived from the Commission's statements that "[t]he petition was filed under section 205 of the Federal Power Act," and that rate changes of the type filed by Colton "require a section 205 filing under the Federal Power Act."<sup>18</sup> Colton explains that by making those statements, the Commission inaccurately suggests that Colton's Petition was filed pursuant to section 205 of the Federal Power Act. In addition,

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<sup>13</sup> *City of Vernon, Cal.*, 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).

<sup>14</sup> Petition at 6 (citing *City of Vernon, Cal.*, 111 FERC ¶ 61,092 at PP 42, 44).

<sup>15</sup> *Id.* at 7.

<sup>16</sup> December 20 Order at 9-10.

<sup>17</sup> Colton Request for Clarification at 1.

<sup>18</sup> *Id.* (citing December 20 Order at 2).

Colton contends that the aforementioned statements are contrary to the purpose of the Petition, which was to comply with the terms of the CAISO Tariff.<sup>19</sup>

9. Colton concedes that the Commission has the authority to review the TRRs of non-jurisdictional entities under section 205 of the Federal Power Act; however, it requests clarification that it did not invoke and is not generally subject to section 205 of the Federal Power Act through the filing of its Petition.

### **III. Discussion**

10. The Commission's intention in the December 20 Order was not to assert authority over Colton itself; Colton is an exempt public utility pursuant to section 201(f) of the Federal Power Act<sup>20</sup> and Colton's rates are thus not, as a general matter, subject to Commission review pursuant to sections 205 and 206 of the Federal Power Act.<sup>21</sup> Rather, as Colton concedes, the Commission has authority to review components of CAISO's TAC, which includes the TRR of each PTO, including Colton.

#### The Commission orders:

The request for clarification of the December 20 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.

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<sup>19</sup> *Id.* at 3.

<sup>20</sup> 16 U.S.C. § 824(f) (2006).

<sup>21</sup> 16 U.S.C. §§ 824d, 824e (2006).