

146 FERC 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket No. ER14-897-000

ORDER REJECTING AGREEMENT AND TARIFF

(Issued February 27, 2014)

1. In this order, we reject an Assignment and Assumption Agreement (Assignment Agreement) between Southern California Edison Company (SoCal Edison) and Arizona Public Service Company (APS) and SoCal Edison's Tariff for the Assignment of Transmission Rights Purchased Under the Edison-Arizona Transmission Agreement (Resale Tariff).

I. Background

2. In July 1966, SoCal Edison entered an agreement with APS (the Edison-Arizona Transmission Agreement) that provided that APS would build, own, operate, and maintain a 500 kV transmission line from the Four Corners Power Plant to the Arizona-Nevada border (Arizona Transmission Line). In return for the rights to all of the transmission capacity on that line for use in transmitting SoCal Edison's portion of the output from the Four Corners Power Plant to California, SoCal Edison agreed to pay APS a monthly transmission charge. The Edison-Arizona Transmission Agreement also provided that, in the event SoCal Edison decided to permanently dispose of its interest in the Four Corners Power Plant or permanently cease making beneficial use of the Four Corners Power Plant, SoCal Edison could give notice to terminate the Edison-Arizona Transmission Agreement.

3. SoCal Edison states that, in 2010, it decided to terminate its ownership interests in the Four Corners Power Plant Units 4 and 5, and APS later agreed to purchase those units. SoCal Edison adds that it and APS also entered into an agreement to terminate the Edison-Arizona Transmission Agreement that required APS to make a one-time payment to SoCal Edison of \$40 million. According to SoCal Edison, the payment would have been made and the cancellation effective upon the earlier of: (1) closing of the sale of

SoCal Edison's ownership interests in the Four Corners Power Plant to APS; or (2) July 6, 2016.

4. APS filed in Docket No. ER13-1402-000 for Commission approval of the termination of the Edison-Arizona Transmission Agreement and its recovery through its transmission rates of the \$40 million payment to SoCal Edison. In an order issued on September 13, 2013, the Commission denied APS's request to recover the \$40 million payment in its transmission rates, explaining that the request had not been adequately supported.¹

5. As a result, on December 30, 2013, SoCal Edison made the instant rate filing.² SoCal Edison requests an effective date of February 28, 2014 for both the Assignment Agreement and the Resale Tariff. In support, SoCal Edison states that it and APS have agreed that SoCal Edison will revoke the entitlement it gave the California Independent System Operator Corporation (CAISO) to operate and control the Arizona Transmission Line, with APS resuming operational control of that transmission line, and that SoCal Edison seeks Commission authority to assign 300 MW of SoCal Edison's transmission rights under the Edison-Arizona Transmission Agreement to APS's marketing function (APS Marketing). SoCal Edison states that under its proposal it will charge APS Marketing the undiscounted APS Open Access Transmission Tariff (OATT) rate for monthly delivery of long-term firm point-to-point service for the 300 MW.

6. As to the remaining capacity, SoCal Edison plans to periodically assign all or a portion of its rights to third parties through the Resale Tariff, using APS's transmission business function (APS Transmission) as its agent for marketing such transmission capacity. SoCal Edison states that APS Transmission will post the availability of such capacity on its Open Access Same-Time Information System (OASIS). SoCal Edison states that this will allow potential users of the Arizona Transmission Line to obtain long-term, firm physical service over the facilities.³

7. SoCal Edison asserts that, because transmission assignments are jurisdictional transactions, SoCal Edison must have a tariff or rate schedule on file to allow APS Transmission to effectuate such transactions.⁴ However, SoCal Edison explains that the Edison-Arizona Transmission Agreement is not an OATT service agreement because it

¹ *Arizona Public Service Co.*, 144 FERC ¶ 61,200 (2013) (September 2013 Order).

² SoCal Edison Filing at 2.

³ *Id.*

⁴ *Id.* at 3.

predates the APS OATT by about three decades. Thus, SoCal Edison asserts the assignment procedures in section 23 of the APS OATT are not applicable; section 23 of the APS OATT applies to service agreements, which the Edison-Arizona Transmission Agreement is not. SoCal Edison states that the Commission has allowed public utility customers holding rights on non-jurisdictional transmission provider's systems to file separate resale tariffs in order to transfer, sell, or reassign transmission capacity rights.⁵ SoCal Edison adds that it has filed such a tariff, but that tariff only governs reassignments of non-jurisdictional transmission capacity. SoCal Edison states that it used its Commission-approved non-jurisdictional resale tariff as a model for the Resale Tariff, which allows SoCal Edison to reassign its transmission capacity at a price mutually agreed to by SoCal Edison and the purchaser, with APS Transmission as its agent. SoCal Edison states that it has included a restriction of the price of the assignments at the price of transmission service of a comparable duration under the APS OATT. Under the Resale Tariff, SoCal Edison will report transactions on its Electric Quarterly Report (EQR).

8. SoCal Edison also explains that it and APS are among the parties to the Edison-Navajo Transmission Agreement, and under section 10.1.1 of that agreement, SoCal Edison is required to provide backup transmission service to certain entities when it is necessary to curtail service on the Navajo-McCullough 500 kV Transmission Line, due to restrictions in the capacity of such line. SoCal Edison states that such backup service is provided, in part, over the Arizona Transmission Line, and historically, such backup service is rarely required to be provided. However, SoCal Edison explains that assignees need to be aware of the possibility of curtailment in the event that SoCal Edison must meet its obligation under the Edison-Navajo Transmission Agreement. SoCal Edison states that section 5 of the Resale Tariff informs potential customers of this limitation, as well as the fact that the service being granted is subject to the terms and conditions governing the original grant of such transmission rights by APS under the Edison-Arizona Transmission Agreement. SoCal Edison adds that such service differs somewhat from OATT point-to-point service; for example, there would be no ability to redirect the service being provided.⁶

9. SoCal Edison states that the Assignment Agreement, the Resale Tariff, and the Edison-Arizona Transmission Agreement will remain in effect until the sum of the cumulative payments received by SoCal Edison under the Assignment Agreement and from assignments under the Resale Tariff equals the sum of the prospective payments

⁵ *Id.* at 4 (citing *U.S. Dep't of Energy - Bonneville Power Admin.*, 128 FERC ¶ 61,057, at P 24 (2009), *reh'g denied*, 135 FERC ¶ 61,023 (2011) (*Bonneville*)).

⁶ *Id.*

made by SoCal Edison to APS under the Edison-Arizona Transmission Agreement plus \$40 million.⁷

II. Notice and Responsive Pleadings

10. Notice of SoCal Edison's filing was published in the *Federal Register*, 79 Fed. Reg. 821 (2014), with interventions and protests due on or before January 21, 2014. Timely motions to intervene were filed by Public Service Company of New Mexico, the Navajo Tribal Utility Authority, and the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Six Cities). Timely motions to intervene and comments were filed by APS, California Department of Water Resources State Water Project (State Water Project), CAISO, and M-S-R Public Power Agency (M-S-R). Timely motions to intervene and protests were filed by Cargill Power Markets, LLC (Cargill), Iberdrola Renewables, LLC (Iberdrola), and Clean Line Energy Partners LLC and the Interwest Energy Alliance (Clean Line and Interwest). SoCal Edison and APS each filed an answer to the protests, and Clean Line and Interwest filed an answer to APS's comments. Iberdrola, Cargill, and Clean Line and Interwest filed answers to SoCal Edison's and APS's answers. Additionally, APS filed an answer to the answers by Iberdrola, Clean Line and Interwest and separately filed an additional answer to Cargill's answer.

11. APS contends that, as a result of its acquisition of SoCal Edison's interests in the Four Corners Power Plant, it needs additional transmission capacity in the Four Corners Power Plant area. APS notes that other entities may also have a need for transmission capacity in the Four Corners Power Plant area and/or on the Arizona Transmission Line that SoCal Edison no longer needs. APS asserts that, by making the transmission capacity available for reassignment to third parties, SoCal Edison is ensuring that the transmission capacity can be utilized by those who need and value it most.⁸

12. Iberdrola asserts that the instant filing is an attempt by SoCal Edison and APS to recover the \$40 million termination fee in the wake of the Commission's order denying rate recovery.⁹ Iberdrola contends that the instant proposal would, in effect, bilaterally assign the Edison-Arizona Transmission Agreement, which pre-dates Order Nos. 888 and

⁷ *Id.* at 2-3.

⁸ APS Comments at 7.

⁹ Iberdrola Protest at 10 (citing September 2013 Order).

889,¹⁰ to permit third parties to use the transmission service for purposes not contemplated when SoCal Edison and APS entered the agreement at rates unassociated with the contract charges or the cost of service of the Arizona Transmission Line.¹¹ Iberdrola also argues that there is a lack of clarity regarding the terms and conditions of service, how service under the Resale Tariff will sync up with OATT service, and whether and how available capacity will be posted on APS's OASIS.¹² Cargill contends that SoCal Edison is proposing to assign the same transmission capacity that was at issue in Docket No. ER13-1402-000, plus an additional 43 MW of capacity, and to extend the rights to a different point of delivery. Cargill asserts that it is not clear whether APS has followed its OATT procedures to designate network resources and/or whether the transmission capacity that APS is taking from SoCal Edison is necessary to serve APS's actual native load requirements. Cargill states that neither SoCal Edison nor APS have made any OASIS postings and/or posted any business practices that explain how SoCal Edison and APS plan to blend grandfathered transmission service under the Edison-Arizona Transmission Agreement, the Resale Tariff, and the APS OATT in a manner that is just, reasonable, and not unduly discriminatory.¹³

13. Iberdrola further argues that SoCal Edison fails to offer any Commission precedent demonstrating that its proposal to assign and market grandfathered transmission rights is consistent with the Commission's open access policies set forth in Order Nos. 888 and 889. Iberdrola claims that SoCal Edison's references to letter orders accepting tariffs for the sale, reassignment, or transfer of non-jurisdictional transmission differ from the Resale Tariff because they were created to offer non-jurisdictional transmission service not otherwise under an OATT, while APS-owned transmission is

¹⁰ *Id.* at 10 & n.37 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002); *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g*, Order No. 889-A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997)).

¹¹ *Id.* at 10-11.

¹² *Id.* at 13.

¹³ Cargill Protest at 7-8.

jurisdictional and subject to the Commission's open access regime. As such, Iberdrola argues that SoCal Edison has failed to provide support for the use of the Resale Tariff to circumvent the APS OATT.¹⁴

14. Clean Line and Interwest also assert that SoCal Edison's filing violates the anti-hoarding requirements of Order Nos. 888 and 890.¹⁵ Clean Line and Interwest argue that, in Order No. 890, the Commission concluded that, by establishing specific capacity reassignment provisions in the OATT and promoting competition for the reassignment of capacity, even transmission-owning public utilities would have a disincentive to hoard capacity.¹⁶ Clean Line and Interwest assert that the Commission established specific requirements to be applied to any reassignment of transmission capacity, requiring sales or assignments be conducted over the OASIS.¹⁷ Clean Line and Interwest contend that SoCal Edison's proposal is an attempt to hoard transmission capacity as collateral for the \$40 million payment APS owes SoCal Edison.¹⁸

15. Clean Line and Interwest state that no eligible customers were informed that the Arizona Transmission Line capacity, that should have been available on the OASIS for purchase, would instead be assigned to APS Marketing. Furthermore, Clean Line and Interwest state that neither Clean Line nor any other eligible customer was given an opportunity to compete with APS Marketing for transmission service. Clean Line and Interwest argue that, as one of the customers already in the queue for any newly-released capacity on the Arizona Transmission Line, Clean Line will be harmed by the instant filing's preferential treatment of APS.¹⁹ Similarly, Iberdrola asserts that APS Marketing and other third parties who successfully negotiate for the rights will be permitted to

¹⁴ Iberdrola Protest at 11-12.

¹⁵ Clean Line and Interwest Protest at 2.

¹⁶ *Id.* at 13 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, at P 811, *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), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

¹⁷ *Id.* (citing Order No. 890, *pro forma* OATT, section 23.3.).

¹⁸ *Id.* at 14.

¹⁹ *Id.*

“jump the queue” and obtain transmission rights that transmission customers expected to be made available through APS’s OATT process.²⁰

16. Cargill contends that SoCal Edison and APS must clarify how the existing position of customers in the APS queue for capacity over the Arizona Transmission Line will be affected by the terms of this filing.²¹ Cargill also requests that the Commission require that SoCal Edison and APS explain whether any resold transmission capacity will be converted into APS network service in the future. Cargill argues that, if APS’s merchant function improperly claims a priority right to the Arizona Transmission Line’s transmission capacity without having timely designated a network resource(s) pursuant to the APS OATT, then the APS merchant function will have effectively bumped prior-queued transmission service requests in violation of the APS OATT.²² Cargill also requests that, if the transmission capacity that APS’s merchant function proposes to receive is not being used to serve native load, then the Commission should still require that SoCal Edison and/or APS clarify that Cargill’s and other transmission customers’ queue priority will be honored.²³

17. Cargill also requests that the Commission should require that SoCal Edison and APS clarify that transmission customers will not be required to pay “pancaked” rates under both the APS OATT and the Resale Tariff in order to gain access over the Arizona Transmission System.²⁴ Iberdrola also is concerned with pancaking because of the payments transmission customers will make to gain access over the Arizona Transmission Line. Iberdrola suggests that a party that delivers power to the APS system at Four Corners and takes service under the Resale Tariff to move power to California will be required to pay the APS Schedule 7 rate (reflecting use of the entire APS transmission system) for the very limited APS Four Corners facilities involved, in addition to the rates it would pay to use the APS system reflected by the Resale Tariff.²⁵

²⁰ Iberdrola Protest at 14.

²¹ Cargill Protest at 2.

²² *Id.* at 8-9.

²³ *Id.* at 9.

²⁴ *Id.*

²⁵ Iberdrola Protest at 20-21.

18. Clean Line and Interwest raise several concerns related to the Commission's Standards of Conduct.²⁶ They argue that APS Transmission's negotiations to assign 300 MW of SoCal Edison's capacity to APS Marketing violate the Standard of Conduct's non-discrimination rule, which prohibits a transmission provider from giving undue preference to any person, including itself.²⁷ Clean Line and Interwest also argue that SoCal Edison's negotiated proposal with APS appears to have violated the Standards of Conduct prohibition on a transmission provider negotiating off-OASIS with its marketing department to provide transmission service.²⁸ Additionally, Clean Line and Interwest argue that the negotiations between SoCal Edison and APS Transmission improperly provided APS Marketing with non-public information regarding the availability of SoCal Edison's rights to transmission capacity before that information was made available to any non-affiliated potential customers.²⁹

19. M-S-R asserts that, because the Arizona Transmission Line is currently under CAISO control and the associated costs of SoCal Edison's rights to that capacity are

²⁶ Clean Line and Interwest Protest at 21 & n.70 (citing 18 C.F.R. § 358 (2013); *Standards of Conduct for Transmission Providers*, Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g*, Order No. 2004-A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g*, Order No. 2004-B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g*, Order No. 2004-C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g*, Order No. 2004-D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp. v. FERC*, 468 F.3d 831 (D.C. Cir. 2006); *Standards of Conduct for Transmission Providers*, Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g*, Order No. 690-A, FERC Stats. & Regs. ¶ 31,243 (2007); *Standards of Conduct for Transmission Providers*, Order No. 717, FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g*, Order No. 717-A, FERC Stats. & Regs. ¶ 31,297, *order on reh'g*, Order No. 717-B, 129 FERC ¶ 61,123 (2009), *order on reh'g*, Order No. 717-C, 131 FERC ¶ 61,045 (2010), *order on reh'g*, Order No. 717-D, 135 FERC ¶ 61,017 (2011)).

²⁷ *Id.* at 22 (citing 18 C.F.R. § 358.4).

²⁸ *Id.* at 23.

²⁹ Clean Line and Interwest argue that, if APS Transmission did not directly disclose non-public information to APS Marketing, then it might have violated the Commission's no-conduit rule by providing APS Marketing with the information through intermediaries. The "no conduit rule" prohibits a transmission provider from using anyone to indirectly disclose non-public transmission function information to the transmission provider's affiliated marketing function employees. Clean Line and Interwest Protest at 24 (citing 18 C.F.R. § 358.6).

included in the rates to transmission customers, the \$40 million that SoCal Edison seeks to recover from APS must be credited to SoCal Edison's transmission ratepayers, as it would have been under the prior agreement with APS in Docket No. ER13-1402-000.³⁰ Similarly, State Water Project states that it is unclear how the payments from APS to SoCal Edison will be treated in SoCal Edison's rates, and asserts that it anticipated that the \$40 million termination payment would be returned to SoCal Edison's jurisdictional customers through SoCal Edison's Transmission Owner Tariff.³¹ State Water Project is also concerned about payments that SoCal Edison would owe APS if it terminated the Edison-Arizona Transmission Agreement due to costs exceeding revenues for any calendar month, pursuant to section 3.2 of the Assignment Agreement.³² Finally, State Water Project states that the Commission should consider the potential effects on the California grid from removing SoCal Edison's entitlement from CAISO operational control.³³

20. CAISO states that it consents to the Assignment Agreement and believes that it can implement market system changes to account for the Assignment Agreement, with notice five business days in advance of the effective date; therefore, CAISO requests the Commission issue an order at least five business days in advance of the requested effective date to allow CAISO the opportunity to notify market participants and make the associated market software and operating procedure changes. If the Commission is not able to grant this request, CAISO requests that the Commission make the Assignment Agreement effective at least five business days after the date of its order.³⁴

21. Additionally, CAISO explains that, in October 2012, APS notified SoCal Edison that it had discovered inadvertent errors in the software that APS had used to calculate losses on the Arizona Transmission Line. CAISO states that the calculation omitted transmission schedules on one segment of the line, which as a result undercounted the total losses on the line.³⁵ CAISO states that APS asked SoCal Edison to adjust the repayment balance due to APS to include the losses that APS had missed in its calculations. CAISO contends that SoCal Edison and APS have asked CAISO to return

³⁰ M-S-R Comments at 5-6.

³¹ State Water Project Comments at 7.

³² *Id.* at 7.

³³ *Id.* at 8.

³⁴ CAISO Comments at 6-7.

³⁵ *Id.* at 3.

the transmission losses to APS until APS is fully compensated for the transmission loss obligation incurred during the time period transmission losses were undercollected.³⁶ CAISO states that it intends to proceed on the assumption that APS's claim survives assignment of the transmission capacity rights SoCal Edison receives from APS under the Edison-Arizona Transmission Agreement, and that the matter can be resolved in due course provided the Commission does not direct otherwise.³⁷

III. Discussion

A. Procedural Matters

22. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2013), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

23. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2013), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers by SoCal Edison, APS, Cargill, Clean Line and Interwest, and Iberdrola and will, therefore, reject them.

B. Substantive Matters

24. If a pre-Order No. 888 transmission agreement is modified, or otherwise expires by its own terms, Commission policy requires that the modified service be taken pursuant to the rates, terms, and conditions of an open access transmission tariff.³⁸ In the instant submittal, SoCal Edison seeks to add a rider to the existing Edison-Arizona Transmission Agreement in the form of the Assignment Agreement that would have the effect of modifying the Edison-Arizona Transmission Agreement to assign 300 MW of SoCal

³⁶ *Id.* at 3-4.

³⁷ CAISO states that it provides this information to notify the Commission of these circumstances and provide an opportunity for SoCal Edison and APS to answer. *Id.* at 4-5.

³⁸ In Order No. 888, the Commission found that a customer may continue to receive transmission service under its existing transmission agreement until the agreement is modified or expires. Once such an agreement is modified or expires, all such transmission service must be provided pursuant to the rates, terms and conditions of the applicable OATT. *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,665, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 at 30,178.

Edison's transmission rights under the Edison-Arizona Transmission Agreement to APS Marketing. We therefore conclude that assignment of 300 MW of SoCal Edison's transmission rights under the Edison-Arizona Transmission Agreement to APS Marketing would be a modification of the Edison-Arizona Transmission Agreement requiring related transmission service to be provided pursuant to APS's OATT.

25. Given our finding here that the assignment arrangement contemplated by the parties in the Assignment Agreement would require the transmission service currently provided pursuant to the Edison-Arizona Transmission Agreement to be provided under APS's OATT, we will reject the Assignment Agreement without prejudice to SoCal Edison or APS effectuating the assignment pursuant to the terms and conditions of APS's OATT, including as relevant the conversion of transmission service under the Edison-Arizona Transmission Agreement to a reservation for transmission service under APS's OATT.

26. We will also reject the Resale Tariff. The Commission has only allowed resale tariffs in the context of jurisdictional transmission providers reselling transmission rights on a non-jurisdictional transmission provider's facilities, where there is not a Commission-approved OATT under which the resale can be facilitated.³⁹ Here, the Arizona Transmission Line is owned by APS, a jurisdictional entity with a Commission-approved OATT.

27. In light of our decision to reject the Assignment Agreement and Resale Tariff, we decline to address protesters' additional arguments concerning SoCal Edison's proposal.

The Commission orders:

The Assignment Agreement and Resale Tariff are hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

³⁹ See, e.g., *Bonneville*, 128 FERC ¶ 61,057 at P 24.