

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket Nos. ER06-788-000
ER06-788-001

ORDER ACCEPTING REVISIONS TO TRANSMISSION OWNER TARIFF

(Issued August 14, 2006)

1. In response to the Commission's Order on Remand in Docket Nos. ER97-2355, *et al.*,¹ on March 27, 2006, as amended on June 15, 2006,² Southern California Edison Company (SoCal Edison) submitted for filing an amendment to its Transmission Owner Tariff (TO Tariff) in order to recover, through its Transmission Revenue Balancing Account Adjustment (TRBAA), the difference between the costs that SoCal Edison incurred as the Scheduling Coordinator (SC) for its Existing Transmission Contracts (ETCs) and the revenues it received from ETC customers (ETC Cost Differentials). As discussed below, the Commission accepts SoCal Edison's tariff revisions effective October 1, 2006, as requested, subject to SoCal Edison filing revised tariff sheets to remove costs associated with certain ETCs as discussed herein.³

¹ *Pacific Gas and Elec. Co.*, 113 FERC ¶ 61,296 (2005) (Remand Order).

² In response to a deficiency letter issued on May 26, 2006, SoCal Edison provided additional information on the charge types as well as narrative explanations and workpapers detailing the nature and calculation of specific "adjustments" listed on the workpapers of its March 27 filing.

³ SoCal Edison had originally requested an effective date of June 4, 2006, but revised its requested effective date to October 1, 2006 to coincide with the summer to winter seasonal rate change as defined in its retail tariffs.

Background

2. As a result of the restructuring of California's electric industry, SoCal Edison, Pacific Gas and Electric Company (PG&E), and San Diego Gas and Electric Company (SDG&E) (collectively, Companies) turned over the operation of their transmission systems to the California Independent System Operator (CAISO). The CAISO operates those facilities and provides transmission service pursuant to the CAISO Tariff, which is on file with the Commission. For a transitional period, the Companies have been providing service under pre-restructuring ETCs with certain wholesale customers, who pay transmission rates set by those contracts. At the same time, under the Responsible Transmission Ownership Agreement, these Companies were obligated to be the SC for their ETC Customers. Additionally, under the terms of the CAISO Tariff, the Companies filed individual TO Tariffs to determine the specific rates they would charge to recover their costs from their TO Tariff customers for services provided by the CAISO.

3. In 1998, the Companies filed with the Commission the non-rate terms and conditions of their TO Tariffs in the TRBAA Proceeding.⁴ The Companies pointed out in their TO Tariff filings that there are mismatches between their ETC charges under the existing contracts and the CAISO Tariff charges billed to them as the SC for the ETCs for ancillary services and transmission losses. The Companies argued that such cost shortfalls or surpluses (*i.e.*, ETC Cost Differentials), resulting from the difference between charges governed by the ETCs and charges under the CAISO Tariff, should be recovered or credited through the TRBAA of the TO Tariffs and billed to the TO Tariff customers. Thus, they sought the Commission's approval to recover the ETC Cost Differentials from their TO Tariff customers, rather than by attempting to charge their ETC customers. On the other hand, the TO Tariff customers maintained that those costs, arising as they do from the ETCs, should be billed to the ETC customers.

4. In Opinions Nos. 458 and 458-A,⁵ the Commission found that the CAISO Tariff provides no basis for the Companies to shift the costs in question from the ETC customers to the TO Tariff customers. The Commission went on to reject the Companies' contention that the plain meaning of the CAISO Tariff's provisions required the recovery of the costs at issue through the TO Tariffs' TRBAA.

5. On appeal of those orders, the D.C. Circuit found that the CAISO Tariff permits the use of the TRBAA to recover the ETC Cost Differentials and that the TO Tariffs

⁴ See Docket No. ER97-2358-000, *et al.*

⁵ *Pacific Gas and Elec. Co.*, 100 FERC ¶ 61,156 (Opinion No. 458), *reh'g denied*, 101 FERC 61,151 (2002) (Opinion No. 458-A).

conform with the CAISO Tariff.⁶ Accordingly, the court vacated Opinion Nos. 458 and 458-A and remanded the case to the Commission for further proceedings consistent with the CAISO Tariff.⁷

6. In the Remand Order, the Commission found that the TRBAA mechanism in the TO Tariffs is an appropriate mechanism for the recovery of the ETC Cost Differentials at issue and that the Companies could recover the ETC Cost Differentials through either bilateral negotiations between the parties to the ETCs or through the TRBAA in the TO Tariffs.⁸

Proposed Tariff Revisions

7. SoCal Edison has filed, consistent with the Commission's Order on Remand, an amendment to its TO Tariff to recover ETC Cost Differentials through its TRBAA. SoCal Edison notes that the TRBAA functions as a revenue crediting mechanism for revenues received from the CAISO for Firm Transmission Rate auction revenues, congestion revenues, and Wheeling through revenues. SoCal Edison proposes to recover the ETC Cost Differentials that were incurred prior to October 1, 2005 over a two-year period in rate surcharges to the TRBAA.⁹ Thus, the proposed surcharges will, in essence, reduce the applicable revenue credit for the two year amortization period. Additionally, under SoCal Edison's proposal, any ETC Cost Differentials paid by SoCal Edison on or after October 1, 2005 will be recovered in the TRBAA in the same manner as other Transmission Revenue Credits.

8. SoCal Edison states that the pre-October 1, 2005 ETC Cost Differentials for TO retail customers are \$76,371,190, excluding interest. To recover this cost plus interest, SoCal Edison proposes that, effective October 1, 2006, a surcharge of \$0.00063 per kWh be added to the otherwise-applicable retail customer TRBAA rate set forth in the TO

⁶ *Southern Cal. Edison Co. v. FERC*, 415 F.3d 17, 18 (D.C. Cir. 2005) (D.C. Circuit Remand).

⁷ *Id.* at 23.

⁸ *Pacific Gas and Elec. Co.*, 113 FERC ¶ 61,296 at P 18.

⁹ SoCal Edison states that the amount to be recovered from wholesale customers is lower than the retail customer amount because, consistent with the CAISO Tariff, Appendix F, Schedule 3, section 8.2., it has excluded from the wholesale calculation all ETC Cost Differentials for service prior to January 1, 2001. Thus the wholesale transmission rates include SoCal Edison's ETC cost differentials incurred from January 1, 2001 through September 30, 2005.

Tariff. This surcharge would remain in effect for two years, from October 1, 2006 until October 5, 2008. At that time, SoCal Edison will file to terminate this surcharge rate, and any remaining balance would be merged with the regular TRBAA balance.

9. The amount of pre-October 1, 2005 ETC Cost Differentials to be reflected in calculating wholesale transmission rates is \$23,811,006, plus accrued interest.¹⁰ SoCal Edison has calculated that an annualized revenue requirement surcharge amount of \$15,239,501 is necessary to recover this total cost over a two year period. ETC Cost Differentials paid by SoCal Edison after September 30, 2005, will be recovered through the normal operation of the TRBAA.

Notice of Filing and Responsive Pleadings

10. Notice of SoCal Edison's filings was published in the *Federal Register*, 71 Fed. Reg. 14,879 (2006), and 71 Fed. Reg. 37,064 (2006) with protests and interventions due on or before April 17, 2006 and July 6, 2006, respectively. The California Electricity Oversight Board, the Northern California Power Agency, Pacific Gas and Electric Company, Trans-Elect NTD Path 15, LLC, the Transmission Agency of Northern California, the Modesto Irrigation District, San Diego Gas & Electric Company, the Public Utilities Commission of the State of California, and the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency filed motions to intervene. Golden State Water Company and the City of Los Angeles Department of Water and Power (LADWP) filed motions to intervene and protests to the filing. The Cities of Azusa, Banning, Colton, and Riverside, California (Southern Cities) filed a motion to intervene and protest, and a response. The California Department of Water Resources State Water Project (SWP) filed a motion to intervene, supplemental comments and request for adjustment, and a response. SoCal Edison filed an answer to the protests and to SWP's supplemental comments.

Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make 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) (2006),

¹⁰ SoCal Edison states that since the wholesale rates do not have a separate TRBAA rate component, the wholesale amount will be reflected as an increase in the wholesale TRBAA, and thus, the Transmission Revenue Requirement.

prohibits answers to protests and answers to answers unless otherwise ordered by the decisional authority. We will accept SoCal Edison's answer filed May 2, 2006 and SWP's supplemental comments and request for adjustment because they have provided information that has assisted us in our decision-making process. We are not persuaded to accept Southern Cities' and SWP's answers and SoCal Edison's May 11, 2006 answer and will, therefore, reject them.

B. Restructuring (ETC) Agreements and the *Mobile-Sierra* Doctrine

12. In its protest, Southern Cities argue that SoCal Edison is contractually barred from imposing any surcharge on the Southern Cities for costs incurred prior to January 1, 2003, because the Southern Cities were not subject to the terms of the TO Tariff prior to that date. Southern Cities state that prior to the formation of the CAISO, SoCal Edison and each of the Southern Cities were parties to an Integrated Operations Agreement and to ETCs; however, in anticipation of the commencement of operations by the CAISO, SoCal Edison and the Southern Cities entered into Restructuring Agreements, which were filed and accepted by the Commission.¹¹ According to Southern Cities, the Restructuring Agreements provide for termination of the Integrated Operations Agreements as of the CAISO's commencement of operations and for modification of the ETCs. Southern Cities state that each of these Restructuring Agreements includes the following provision: "Neither party shall file with the Commission for a change in the transmission service rates set forth in the [modified ETCs] to be effective prior to January 1, 2003." In addition, the modified ETCs state that they are fixed-rate contracts and that changes to the ETCs are subject to the *Mobile-Sierra*¹² public interest standard.

13. Golden State states that SoCal Edison is barred under *Mobile-Sierra* from charging it for any surcharges incurred prior to January 1, 2002. According to Golden State, in 1997, SoCal Edison and Golden State executed a Restructuring Agreement to accommodate the anticipated start-up of the CAISO and California Power Exchange and to restructure the means by which SoCal Edison would provide transmission service to Golden State over the CAISO Controlled Grid.¹³ Golden State states that the

¹¹ The Commission's orders accepting the Restructuring Agreements were issued on January 30, 1998 in Docket Nos. ER98-920-000 (Colton), ER98-921-000 (Banning), ER98-922-000 (Azusa), and on May 22, 1998 in Docket No. ER98-2302-000 (Riverside).

¹² See *United Gas Pipeline Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956); *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra*)

¹³ The Commission accepted the 1997 Restructuring Agreement on January 30, 1998, in Docket No. ER98-1252-000.

Restructuring Agreement failed to change the previously existing December 31, 2001 termination date, provided that Golden State shall pay no additional transmission charges, and was protected from change by the *Mobile-Sierra* doctrine. Therefore, Golden State claims that SoCal Edison's attempt to recover ETC Cost Differentials from Golden State for the year 2001 should be rejected.

14. LADWP indicates that in 1999 it executed an amendment to its Exchange Agreement with SoCal Edison under which it would pay SoCal Edison a fixed rate for ETC transmission services from April 1, 1999 to December 31, 2002. LADWP states that the Commission determined that the agreement is subject to *Mobile-Sierra* protections. LADWP adopts the arguments raised in Southern Cities' protest and maintains that SoCal Edison is contractually barred from imposing any surcharges on LADWP for the ETC Cost Differentials incurred prior to January 1, 2003.

SoCal Edison's Answer

15. In its answer, SoCal Edison states that there are no facts in dispute. It does not deny that the surcharge consists of costs that were incurred during the period in which it had Restructuring Agreements in effect with each of the Southern Cities and with Golden State. SoCal Edison also admits that the agreements were fixed-rate contracts subject to the *Mobile-Sierra* standard and that under those agreements it was not permitted to file a change to the transmission rates in the ETCs prior to January 1, 2003. However, according to SoCal Edison, it is not seeking to change the transmission rates paid by Southern Cities during 2001-2002 and for Golden State for calendar year 2001, respectively. Instead, SoCal Edison argues, it is changing the rates that will be paid in a future period (*i.e.*, 2006-2008) and it is legally permitted to change its TRBAA level prospectively. SoCal Edison further maintains that the Commission and the courts have held that prospective surcharges do not violate the filed rate doctrine.

16. SoCal Edison also argues that its proposal does not violate the prohibition on retroactive ratemaking. It claims that "ignoring the *Mobile-Sierra* contractual limitation,"¹⁴ its proposal is a permissible recoupment of past losses of the type allowed by the court in *Public Utilities Commission of the State of California v. FERC*¹⁵ and by the Commission in *Panhandle Eastern Pipe Line Company*.¹⁶ SoCal Edison argues that these cases provide that where a failure to recover costs in a past period was caused by the Commission's own actions and customers were on notice that the costs were being

¹⁴ SoCal Edison May 2 Response at 6.

¹⁵ 988 F.2d 154 (D.C. Circuit 1993).

¹⁶ 67 FERC ¶61,404 (1994).

sought, the utility can recover the past costs in the future without violating the prohibition on retroactive ratemaking.

17. In addition, SoCal Edison states "...except for those customers paying transmission rates that were under *Mobile-Sierra* protection, it is clear that customers were on notice that the Companies were seeking to recover these costs by pursuing the matter at the Court of Appeals."¹⁷ Acknowledging that the notice requirement was probably not met for the protesting parties during the periods covered by the Restructuring Agreements (*i.e.*, 2001 for Golden State and 2001-2002 for Southern Cities), SoCal Edison states that if the Commission finds Southern Cities and Golden State are not liable for the costs during those periods, it should "order [SoCal Edison] to file a compliance filing to eliminate these costs from [SoCal Edison's] TRBAA charges applicable to these parties."¹⁸

Commission Determination

18. The *Mobile-Sierra* doctrine bars SoCal Edison from imposing surcharges on Southern Cities, Golden State and LADWP for costs SoCal Edison incurred prior to the termination dates of their respective Restructuring Agreements and ETCs.¹⁹ As agreed by all parties to the Restructuring Agreements, the Restructuring Agreements were fixed rate contracts subject to the *Mobile-Sierra* standard precluding SoCal Edison from filing changes to the transmission rates for Southern Cities and LADWP prior to January 1, 2003 and for Golden State prior to January 1, 2002. Accordingly, we find that SoCal Edison is contractually barred from imposing surcharges on the Southern Cities and on LADWP for the period from January 1, 2001 through December 31, 2002, and on Golden State for January 1, 2001 through December 31, 2001.

C. SWP's Supplemental Comments and Request for Adjustment

19. SWP, a wholesale customer under the TO Tariff, argues that SoCal Edison's proposal is inconsistent with the contractual arrangements SWP had with SoCal Edison, unfairly penalizes SWP, which voluntarily assumed responsibility for its own CAISO

¹⁷ SoCal Edison May 2 Response at 8.

¹⁸ *Id.* at 8-9.

¹⁹ Because the *Mobile-Sierra* doctrine guides our decision-making regarding recovery of the costs the protesting parties have questioned (*i.e.*, pre-2003 costs), we need not address SoCal Edison's arguments concerning the filed rate doctrine and the rule against retroactive ratemaking.

costs even when operating under an ETC, and would effectively result in SWP being double-charged for services and costs which SWP self-provided or paid. SWP explains that it operated under a Power Contract (ETC) dated October 11, 1979, until its contract with SoCal Edison was terminated on December 31, 2004. SWP explains further that it became its own scheduling coordinator on July 1, 1998 and paid its own SC-related costs directly to the CAISO thereafter. SWP maintains that during that term of the contract, SWP purchased, paid for, or self-provided its own scheduling services *vis-à-vis* the CAISO.

20. In addition, SWP argues that under its contract with SoCal Edison, the parties specifically agreed that SWP would pay for SWP's own scheduling coordinator costs, however, nowhere in the contractual arrangement was there any agreement that SWP would pay for other ETC customers' costs. Finally, SWP argues that SoCal Edison should be required to either issue a refund to SWP for the amount of increase in the CAISO's charges resulting from its proposal, or refund to SWP the actual charges it paid to SoCal Edison and the CAISO for the services at issue.

SoCal Edison's Response

21. SoCal Edison responds that SWP's primary argument – that it already paid the CAISO for the services at issue – illustrates that SWP does not understand that the TRBAA recovery mechanism gave the Companies the right to recover ETC Cost Differentials from transmission customers including those who would have had to pay their own Scheduling Coordinator costs. SoCal Edison maintains that whether or not a particular transmission customer caused the ETC Cost Differentials is irrelevant as to whether that customer must pay ETC Cost Differentials. SoCal Edison contends that SWP is attempting to mount a collateral attack on the D.C. Circuit Remand and the Remand Order.

22. In addition, SoCal Edison dismisses SWP's argument that under the ETC contract it never agreed to pay for other ETC customer's costs and that SoCal Edison is abrogating contractual agreements by recovering the ETC Cost Differentials. SoCal Edison claims that it is not changing the transmission rates paid by SWP under the ETC, which terminated in 2004, but is changing rates that SWP will pay during 2006-2008, a future period. SoCal Edison argues that the Commission and courts have held that such prospective surcharges do not violate the filed rate doctrine.

Commission Determination

23. As noted above, the D.C. Circuit determined that the CAISO Tariff explicitly permits the inclusion of an accounting mechanism in the TRBAA of the TO Tariffs for the recovery of ETC Cost Differentials.²⁰ In its order the court explains:

Because FERC has already approved the mechanism in the ISO Tariff for collecting the [ETC]Cost Differentials from the tariff customers, and cannot retroactively reverse that determination in considering individual TO Tariff filings, no argument concerning cost causation, regardless of how compelling, would permit the Commission to disregard the approved ISO Tariff.²¹

24. In its ruling, the court made it clear that the issue of cost causation was immaterial in the Commission's review of an individual TO Tariff filing where it had already approved the mechanism in the ISO Tariff for the recovery of the ETC Cost Differentials. In the Remand Order we held that the TRBAA mechanism in the TO Tariffs is an appropriate mechanism for the recovery of the ETC Cost Differentials at issue. In addition, on rehearing, the Commission clarified that when the Remand Order indicated that the Companies could allocate the ETC Cost Differentials at issue to their TO Tariff customers through the TRBAA, it meant that the Companies could recover all of the costs they incurred as the SC for ETCs.²² Neither the court's decision nor the Remand Order make any distinctions for instances where certain customers with ETCs paid for their own SC-related costs while receiving service under their ETCs. Thus, SWP's assertions that it already paid for or self-incurred SC-related costs, and that it did not agree to pay for other ETC customers' costs are immaterial.

25. For the reasons stated above, the Commission accepts SoCal Edison's revised tariff sheets for filing, effective October 1, 2006. However, consistent with our decision on the issue of restructuring agreements and *Mobile-Sierra* doctrine, SoCal Edison is directed to provide revised tariff sheets removing costs associated with certain ETC contracts as discussed above, within 30 days.

²⁰ *Southern Cal. Edison Co.*, 415 F.3d at 22.

²¹ *Id.* at 22.

²² *Pacific Gas and Elec. Co.*, 115 FERC ¶ 61,226, at P. 9 (2006).

The Commission orders:

(A) SoCal Edison's revisions to its TO Tariff are hereby accepted, effective October 1, 2006, as requested as discussed in the body of this order.

(B) SoCal Edison is directed to make a compliance filing to remove costs from its TRBAA surcharge associated with agreements subject to the *Mobile-Sierra* standard as discussed in the body of this order, within 30 days of the date of issuance of this Order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.