

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. ER06-788-002
ER06-788-003
ER06-186-002

ORDER ON REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued January 26, 2007)

1. On September 13, 2006, the California Department of Water Resources State Water Project (SWP) filed a request for rehearing of the Commission's August 14, 2006 order,¹ in which the Commission accepted Southern California Edison Company's (SoCal Edison) amendment to its Transmission Owner Tariff (TO Tariff) to recover certain costs related to its Existing Transmission Contracts (ETCs). In addition, on September 11, 2006, SoCal Edison filed revised tariff sheets to comply with the August 14, 2006 Order and to reflect the Commission's July 6, 2006 order, approving an offer of settlement in Docket No. ER06-186-000.² As discussed below, the Commission will deny the request for rehearing and accept the proposed tariff sheets, effective October 1, 2006.

I. Background

2. The August 14, 2006 Order provides a detailed account of the events that led to the issuance of that order. Briefly, as a result of restructuring of California's electric industry, SoCal Edison, Pacific Gas and Electric Company, and San Diego Gas and Electric Company (collectively, Companies) were obligated to serve, on a transitional basis, as the scheduling coordinators (SC) for certain wholesale customers under pre-

¹ *Southern Cal. Edison Co.*, 116 FERC ¶ 61,148 (2006) (August 14, 2006 Order).

² *Southern Cal. Edison Co.*, 116 FERC ¶ 61,010 (2006).

restructuring ETCs. In 1998, when the Companies filed the non-rate terms and conditions of their TO Tariffs they stated that there were mismatches between the ETC revenues they received under the ETCs and the charges that the CAISO billed to them as the SC for the ETCs.³ The Companies sought to recover these shortfalls (i.e., ETC Cost Differentials) through the Transmission Revenue Balancing Account Adjustment (TRBAA) of the TO Tariffs, which were billed to TO Tariff customers.

3. In Opinions Nos. 458 and 458-A, the Commission found that the CAISO Tariff provided no basis for the Companies to shift the costs in question from the ETC customers to the TO Tariff customers.⁴ On appeal, the D.C. Circuit found that the CAISO Tariff permits the Companies to recover the ETC Cost Differentials through their TO Tariffs⁵ and remanded the case to the Commission for further proceedings.⁶ On remand, the Commission found 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.⁷

4. In response to the Remand Order, on March 27, 2006, as amended on June 15, 2006, SoCal Edison submitted an amendment to its TO Tariff to recover the ETC Cost Differentials through its TRBAA. In the August 14, 2006 Order, the Commission accepted SoCal Edison's tariff revisions subject to SoCal Edison filing revised tariff sheets to remove costs associated with certain ETCs that were subject to the *Mobile-Sierra* public interest standard of review.⁸

³ See Docket No. ER97-2355-000, *et al.*

⁴ *Pacific Gas and Elec. Co.*, Opinion No. 458, 100 FERC ¶ 61,156, *reh'g denied*, Opinion No. 458-A, 101 FERC ¶ 61,151 (2002).

⁵ *Southern Cal. Edison Co. v. FERC*, 415 F.3d 17, 21 (D.C. Cir. 2005) (*SoCal Edison*).

⁶ *Id.* at 23.

⁷ *Pacific Gas and Elec. Co.*, 113 FERC ¶ 61,296 at P 18 (2005) (Remand Order).

⁸ 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).

II. Request for Rehearing

A. SWP's Arguments

5. On rehearing, SWP argues that the Commission failed to recognize that a 1998 amendment to its ETC with SoCal Edison constitutes a bilateral agreement under the CAISO Tariff and that SoCal Edison has already recovered ETC Cost Differentials from SWP through that agreement. SWP states that, under that agreement, it became its own SC on July 1, 1998, and paid its own SC-related costs directly to the CAISO from that time through the termination of its ETC on December 31, 2004. According to SWP, the ETC Cost Differentials consist of costs for the same services that the amendment provided SWP would pay directly to the CAISO. SWP argues that the amendment “constituted a bilateral agreement under the CAISO Tariff and resolved in full the matter of recovery of all relevant SC-related costs as to SWP for the period January 1, 2001 through December 31, 2004.”⁹

6. In addition, SWP argues that the Commission failed to observe applicable decision-making standards by disregarding SWP’s argument that the allocation to SWP of ETC Cost Differentials incurred by SoCal Edison prior to January 1, 2005, would allow SoCal Edison to violate its ETC with SWP. SWP claims that the August 14, 2006 Order’s sole response to its argument is a statement that neither the D.C. Court of Appeals or 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. SWP states that, even if this distinction had not been previously addressed, the Commission is not excused from addressing SWP’s argument.

7. Finally, SWP argues that the August 14, 2006 Order violates the prohibition against retroactive ratemaking. SWP claims that the August 14, 2006 Order raises the rates SWP agreed to pay for past services pursuant to its ETC with SoCal Edison. SWP also states that at no time did SoCal Edison put SWP on notice that it would seek further changes to the ETC in order to collect additional ETC Cost Differentials, and that the Commission cannot surprise SWP by telling it that it must now pay an increased price for past services which were subject to a valid ETC. SWP requests that the Commission reverse its approval of the allocation of ETC Cost Differentials as to SWP and direct SoCal Edison to refund or credit SWP for the increase in Wheeling Access Charges attributed to ETC Cost Differentials.

⁹ SWP Request for Rehearing at 10-11.

B. SoCal Edison Answer

8. On September 27, 2006, SoCal Edison filed a motion of leave to answer and an answer to SWP's request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits answers to requests for rehearing. Accordingly, we will reject SoCal Edison's answer.

C. Commission Determination

9. SWP asserts that the 1998 amendment to its ETC with SoCal Edison constitutes a bilateral agreement under the CAISO Tariff which precludes SoCal Edison from allocating ETC Cost Differentials to SWP through the TO Tariff. To the extent that the August 14, 2006 Order may have been unclear,¹⁰ we hereby clarify that the 1998 amendment to the ETC between SWP and SoCal Edison does not and could not constitute such a bilateral agreement under the CAISO Tariff.

10. As we have stated, the Companies can recover the ETC Cost Differentials through either bilateral negotiations between the parties to the ETCs or through the TRBAA in the TO Tariffs.¹¹ To recover the ETC Cost Differentials under the CAISO Tariff, such bilateral negotiations would have to address the ETC Cost Differentials. The 1998 agreement, as described by SWP, does not do so. SWP asserts that, the 1998 agreement resolved the recovery of all relevant SC-related costs as to SWP for the period January 1, 2001 through December 31, 2004.¹² We disagree. The ETC Cost Differentials are the mismatches between the charges that the CAISO billed to SoCal Edison as the SC for ETC customers and the ETC revenues SoCal Edison received under the ETCs (i.e., the amount by which charges billed to SoCal Edison exceeded the revenues received by SoCal Edison). The SC-related costs which were the subject of the 1998 agreement and which SWP agreed to pay directly to the CAISO, however, were not ETC Cost

¹⁰ In fact, as we explained, that certain customers paid for their own SC-related costs did not and does not warrant our reaching a different result, as that fact, the court has made clear, is immaterial. *See* August 14, 2006 Order, 116 FERC ¶ 61,148 at P 24.

¹¹ *Id.* at P 6 & n.8.

¹² *See* SWP Request for Rehearing at 10-11.

Differentials because they were not the mismatches paid by SoCal Edison as the SC for ETC customers.¹³

11. In addition, the allocation to SWP of ETC Cost Differentials incurred by SoCal Edison prior to January 1, 2005 does not violate the ETC between SoCal Edison and SWP. SWP argues that, as an ETC customer until December 31, 2004 it should not be assessed charges which, according to SWP, SoCal Edison and SWP agreed that SWP would pay directly to the CAISO.¹⁴ We note that the charges that SWP agreed to pay directly to the CAISO are not part of the ETC Cost Differentials. Further, as we explained in the August 14, 2006 Order, SWP's obligation to pay a portion of the ETC Cost Differentials is unrelated to its status as an ETC customer. Rather, SWP, like any wholesale customer who purchases service under the TO and CAISO Tariffs, is obligated to pay a portion of the ETC Cost Differentials based on its status as a TO and CAISO Tariff customer.

12. Finally, SWP argues that the August 14, 2006 Order violates the prohibition against retroactive ratemaking and that SoCal Edison did not put it on notice that SoCal Edison would seek "further changes" to the ETC to collect "additional" ETC Cost Differentials.¹⁵ First, contrary to SWP's assertions, the recovery of the ETC Cost Differentials through the TO Tariff (i.e., through the TO Tariff's TRBAA) does not change the rates the SWP agreed to pay under its ETC with SoCal Edison. Rather, SoCal Edison is collecting costs incurred by SoCal Edison (i.e., the ETC Cost Differentials) through its TO Tariff rates (i.e., through the TO Tariff TRBAA). Second, courts have previously recognized the Commission's authority to order retroactive rate adjustments when an earlier order disallowing a rate is reversed on appeal, i.e., a Commission order is later determined to be unlawful.¹⁶ Here, where an appeals court reversed and remanded

¹³ The SC-related costs under the 1998 agreement included the Grid Management Charge (which includes scheduling and dispatching) and other costs associated with the service provided by the CAISO to SWP (e.g., Ancillary Services and Losses). *See id.* at 6.

¹⁴ *See id.* at 11.

¹⁵ *See id.* at 15.

¹⁶ *See Pub. Utils. Comm'n of Cal. v. FERC*, 988 F.2d 154, 162 (D.C. Cir. 1993) (*Cal PUC*); *Natural Gas Clearinghouse v. FERC*, 965 F.2d 1066, 1074 (D.C. Cir. 1992) (*per curiam*); *Indiana & Michigan Elec. Co. v. FPC*, 502 F.2d 336, 339 n.8 (D.C. Cir. 1974), *cert. denied*, 420 U.S. 946, (1975).

the Commission's decision to reject SoCal Edison's tariff to recover the ETC Cost Differentials,¹⁷ and the Commission subsequently allowed the costs to be recovered under its remedial authority,¹⁸ the rule against retroactive ratemaking is not violated.¹⁹

13. With regard to notice, the issue of recovery of the ETC Cost Differentials has been in litigation since 1998 in Docket No. ER97-2355-000, *et al.* After the Commission rejected the Companies' proposals, the Commission's decision was challenged on rehearing and judicial review. SWP, an ETC customer at that time, could and should reasonably have known that the Commission's decision rejecting the cost recovery mechanism was therefore subject to later revision.²⁰

14. For the reasons stated above, we deny SWP's request for rehearing.

III. Compliance Filing

15. SoCal Edison, in a combined filing in Docket Nos. ER06-788-003 and ER06-186-002, revised its tariff to exclude from the TRBAA the wholesale calculation of all ETC Cost Differentials associated with service rendered prior to January 1, 2003. SoCal Edison states that due to the lag between the service rendered and the time the invoice for such service was paid, it excluded from the wholesale calculation of the surcharge ETC Cost Differentials paid by SoCal Edison prior to April 2003.

16. In addition, SoCal Edison included rate revisions to reflect the approval of SoCal Edison's offer of settlement in Docket No. ER06-186-000.²¹ As a result of the settlement, SoCal Edison is tendering revisions to reflect the final Base Transmission Revenue Requirement, TRBAA, and Standby revenues for wholesale and retail customers. SoCal Edison states that these revisions are purely ministerial and will not result in any change in revenue that has not already been authorized by the Commission.

¹⁷ *See SoCal Edison*, 415 F.3d at 21.

¹⁸ Remand Order, 113 FERC ¶ 61,296 at P 20.

¹⁹ *See Cal PUC*, 988 F.2d at 162.

²⁰ *See id.* at 164.

²¹ *Southern California Edison Co.*, 116 FERC ¶ 61,010 (2006).

17. Notice of the compliance filing was published in the *Federal Register*, 71 Fed. Reg. 56,516 (2006), with comments, protests and interventions due on or before October 2, 2006. None was filed.

18. Our review indicates that SoCal Edison's proposed tariff sheets submitted in the compliance filing satisfactorily comply with the Commission's directives. Additionally, the compliance filing is in compliance with Order No. 614. *See Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000). The tariff sheets are therefore accepted for filing and made effective October 1, 2006.

The Commission orders:

(A) SWP's request for rehearing of the August 14, 2006 Order is hereby denied, as discussed in the body of this order.

(B) SoCal Edison's revised tariff sheets filed in Docket Nos. ER06-788-003 and ER06-186-002, are hereby accepted, effective October 1, 2006, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.