

143 FERC ¶ 61,222
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.

Southern California Edison Company

Docket No. ER12-2397-000

ORDER DISMISSING FILING

(Issued June 7, 2013)

1. On August 3, 2012, Southern California Edison Company (SoCal Edison) submitted a request for authorization of an affiliate transaction whereby Watson Cogeneration Company (Watson Cogeneration), a market-regulated power sales entity, would sell electric capacity and energy to SoCal Edison, its franchised public utility affiliate, on a long-term basis pursuant to a power purchase agreement (Watson PPA). In this order, the Commission dismisses SoCal Edison's filing and finds that the Watson PPA is exempt from the requirements of section 205 of the Federal Power Act (FPA).¹

I. Background

2. SoCal Edison states that it is a wholly-owned subsidiary of Edison International and that Watson Cogeneration is a partially-owned indirect subsidiary of Edison International. SoCal Edison explains that Watson Cogeneration is owned by three general partners: Products Cogeneration Company; Carson Cogeneration Company; and Camino Energy Company (Camino), which is wholly-owned by Edison Mission Group, which in turn is a wholly-owned subsidiary of Edison International.

3. SoCal Edison states that it is engaged in the transmission, distribution, and sale of energy services under the jurisdiction of the Commission and the California Public Utilities Commission (California Commission). SoCal Edison is authorized to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.²

¹ 16 U.S.C. § 824d (2006).

² *Southern California Edison Co.*, Docket No. ER02-2263-000 (Aug. 29, 2002) (delegated letter order).

4. Watson Cogeneration is authorized to make wholesale sales of electric energy, capacity, and ancillary services at market-based rates.³ Watson Cogeneration owns a 385 megawatt (MW) combined heat and power (CHP) facility (Watson Facility) located in Los Angeles County, California. SoCal Edison states that the output of the Watson Facility, a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA),⁴ has been sold to SoCal Edison under a PURPA contract since the Watson Facility became operational in 1987.

5. SoCal Edison states that the Watson PPA was prepared under the process adopted by the California Commission to transition QFs from expiring standardized PURPA contracts to competitively-procured contracts.

6. SoCal Edison explains 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. SoCal Edison states 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. SoCal Edison explains 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. SoCal Edison states that, on October 8, 2010, the participants entered into a settlement agreement (QF/CHP Settlement) establishing a California CHP Program. The QF/CHP Settlement was approved by the California Commission in December 2010.⁵

7. SoCal Edison states 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. SoCal Edison notes that the QF/CHP Settlement established a "Transition Period," during which a CHP QF may obtain a new PPA with the same investor-owned utility it currently sells to, sell into the wholesale market, shut

³ *Watson Cogeneration Co.*, 122 FERC ¶ 61,125 (2008).

⁴ 16 U.S.C. § 824a-3 (2006).

⁵ *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.

down, or cease to export to the grid, beginning on the QF/CHP Settlement Effective Date (November 23, 2011) and extending to July 1, 2015.⁶

8. More specifically, SoCal Edison explains 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. SoCal Edison states that the capacity and energy that the CHP Facility may sell to the investor-owned utility under the Transition PPA are limited to amounts consistent with the historical deliveries of the QF under its Legacy PPA, but that the energy delivery may be lower, upon the election of the seller. SoCal Edison states that the Watson PPA is, with three limited exceptions for Watson Cogeneration's unique project requirements, the standard Transition PPA adopted in the QF/CHP Settlement.

II. Notice and Responsive Pleadings

9. Notice of the SoCal Edison's August 3, 2012 filing was published in the *Federal Register*, 77 Fed. Reg. 48,135 (2012), with interventions and comments due on or before August 24, 2012. On August 24, 2012, Watson Cogeneration filed a motion to intervene and protest. On November 30, 2012, Watson Cogeneration supplemented its protest (Supplement). On December 17, 2012, SoCal Edison filed a response to Watson Cogeneration's Supplement.

10. Watson Cogeneration states that the Watson PPA as submitted only covers the purchase of the Firm Contract Capacity and that the parties will continue to negotiate the terms by which Additional Dispatchable Capacity would be included in the Watson PPA at a future date. Watson Cogeneration requests that the Commission clarify that the Watson PPA does not currently include the sale of any Additional Dispatchable Capacity. In addition, Watson Cogeneration maintains that SoCal Edison mischaracterizes the Watson PPA as being subject to Watson Cogeneration's market-based rate authority rather than as a PURPA PPA for transition to a non-PURPA program. In response to this point, SoCal Edison argues that the Watson PPA is a Commission-jurisdictional contract entered into pursuant to Watson Cogeneration's market-based rate authority.

⁶ SoCal Edison's August 3, 2012 Filing at 10.

III. Discussion

A. Procedural Matters

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), Watson Cogeneration's timely, unopposed motion to intervene serves to make it a party to this proceeding.

12. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept SoCal Edison's answer because it has provided information that assisted us in our decision-making process.

B. Analysis

13. 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 power sales affiliate without first receiving Commission authorization for the transaction under section 205 of the FPA.⁷ At issue here is whether Commission authorization is required for sales by Watson Cogeneration to SoCal Edison pursuant to the Watson PPA.

14. Under section 292.601(c)(1) of the Commission's regulations,⁸ 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 PURPA⁹ is exempt from most provisions of the FPA, including section 205.

⁷ 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).

⁸ 18 C.F.R. § 292.601(c)(1) (2012).

⁹ 16 U.S.C. § 824a-3 (2006).

15. Watson Cogeneration contends that the Watson PPA constitutes a state's implementation of PURPA.¹⁰ In support, Watson Cogeneration states that the parties to the QF/CHP Settlement created the Transition PPAs for those QFs providing service under existing PURPA contracts, to preserve the QFs' rights under PURPA for the transition period under the QF/CHP Settlement. Watson Cogeneration notes that the pricing in the Watson PPA is the standard Short Run Avoided Cost pricing for QFs approved by the California Commission, based on avoided cost principles under PURPA.

16. SoCal Edison, on the other hand, argues that the Watson PPA is a Commission-jurisdictional contract entered into pursuant to Watson Cogeneration's market-based rate authority. SoCal Edison states that, in *Pacific Gas and Elec. Co.*, 135 FERC ¶ 61,234 (2011) (*PG&E*), the Commission removed the mandatory PURPA purchase obligation for QFs over 20 MW in the service territories of PG&E, SoCal Edison, and San Diego Gas & Electric Company (SDG&E). SoCal Edison states that, after the date that *PG&E* became effective (i.e., November 23, 2011), SoCal Edison no longer had an obligation to enter into PURPA PPAs with QFs over 20 MW. SoCal Edison also maintains that avoided-cost pricing does not necessarily imply a PURPA contract and that entities with market-based rate authority can determine appropriate pricing, including using avoided-cost pricing, based on arm's length negotiation. SoCal Edison also states that certain provisions in the Watson PPA demonstrate that the parties to the QF/CHP Settlement understood that the Transition PPAs would be Commission-jurisdictional PPAs. As an example, SoCal Edison notes that the PPA requires Watson Cogeneration to take a certain position regarding filings it would make under Commission Order Nos. 652¹¹ and 697, which are orders that relate to entities with market-based rate authority. SoCal Edison concludes that Watson Cogeneration has improperly raised its arguments here and that an entity seeking a disclaimer of jurisdiction must file a petition for declaratory order.

17. Upon consideration of the circumstances presented here, we find that the Transition PPAs, including the Watson PPA, are exempt from the requirements of section 205 of the FPA and, accordingly, that Commission approval for the affiliate transaction provided for in the Watson PPA is not required. We therefore will dismiss SoCal Edison's filing. While SoCal Edison is correct that the mandatory purchase obligation was terminated effective November 23, 2011, that does not mean that the transition PPAs, including the Watson PPA, were not approved pursuant to a state

¹⁰ Watson states that if, at some future date, the amendment associated with Additional Dispatchable Capacity provides for sales at market-based rates, that portion of the Watson PPA may or may not be subject to market-based rate authority.

¹¹ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

regulatory authority's implementation of section 210 of PURPA. When the Commission terminated the mandatory purchase obligation, it terminated the requirement that PG&E, SoCal Edison and SDG&E enter into *new* obligations or contracts to purchase electric energy and capacity from qualifying cogeneration and small power production QFs with net capacity in excess of 20 MW on a service territory-wide basis.¹² The QF/CHP Settlement, however, also established an obligation for PG&E, SoCal Edison and SDG&E to transition from a PURPA regime to a non-PURPA regime. This obligation was established prior to November 23, 2011, and is part of a continuing obligation to buy from QFs that the Commission relied on in terminating PG&E's, SoCal Edison's and SDG&E's mandatory purchase obligation, i.e., the requirement to enter into *new* obligations or contracts. The Transition PPAs are a part of that continuing PURPA obligation during the transition from PURPA to the market, and are not new obligations incurred after termination of the PURPA obligation.

18. We thus find that the Transition PPAs were approved pursuant to the California Commission's implementation of section 210 of PURPA. In this regard, we further note, the Transition PPAs, including the Watson PPA, possess a number of attributes that are characteristic of PPAs entered into pursuant to a state regulatory authority's implementation of PURPA; these attributes include the fact that the contracts are priced at an avoided-cost rate established by the California Commission, and are approved by the California Commission. And, as noted above, the QF/CHP Settlement pursuant to which the Watson PPA was established is one of the California Commission's procurement programs established pursuant to PURPA. Therefore, because the sales made pursuant to the Watson PPA are pursuant to the California Commission's implementation of section 210 of PURPA and the QF/CHP Settlement, our approval of the affiliate transaction in this proceeding is unnecessary. Although the arguments raised by SoCal Edison suggest that certain provisions of the Transition PPAs arguably could be read to indicate the California Commission did not intend the Transition PPAs to represent a continuation of the California Commission's implementation of PURPA, those arguments are not necessarily conclusive. For instance, the fact that the Transition PPAs include provisions that govern the parties' filings before the Commission suggests that the parties were concerned at that time that the agreements could be subject to the Commission's jurisdiction. However, that fact does not, in and of itself, demonstrate that the Transition PPAs at issue were not entered into pursuant to the California Commission's implementation of PURPA.

19. In light of our determination to dismiss SoCal Edison's filing, we will also dismiss as moot Watson Cogeneration's request that the Commission clarify that the Watson PPA does not currently include sale of any Additional Dispatchable Capacity.

¹² *PG&E*, 135 FERC ¶ 61,234 at P 1.

The Commission orders:

(A) SoCal Edison's August 3, 2012 filing is hereby dismissed, as discussed in the body of this order.

(B) Watson Cogeneration's request for clarification is hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.