

144 FERC ¶ 61,108
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. ER12-2397-001

ORDER DENYING REHEARING

(Issued August 6, 2013)

1. On July 8, 2013, Watson Cogeneration Company (Watson Cogeneration) filed a request for clarification or rehearing of the Commission's June 7, 2013 order dismissing a filing by its affiliate, Southern California Edison Company (SoCal Edison), concerning a power purchase agreement between Watson Cogeneration and SoCal Edison (Watson PPA).¹ Watson Cogeneration also requests a stay of the June Order pending the resolution of the rehearing. As discussed below, we will deny Watson Cogeneration's request for clarification and rehearing and dismiss as moot its request for a stay.

I. Background

2. The Watson PPA provides for Watson Cogeneration to sell the output of its 385 megawatt (MW) combined heat and power (CHP) facility (Watson Facility) to SoCal Edison. The output of the Watson Facility, a qualifying facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA),² had been sold to SoCal Edison under a PURPA contract since the Watson Facility became operational in 1987. The Watson PPA was prepared under a process adopted by the California Public Utilities Commission

¹ *Southern California Edison Co.*, 143 FERC ¶ 61,222 (2013) (June Order).

² 16 U.S.C. § 824a-3 (2006).

(California Commission) to transition QFs from expiring standardized PURPA contracts to competitively-procured contracts (QF/CHP Settlement).³

3. In the June Order, the Commission found that, because the sales under the Watson PPA are pursuant to the California Commission's implementation of section 210 of PURPA and the QF/CHP Settlement, Commission approval of the affiliate transaction is exempt from section 205 of the Federal Power Act (FPA) pursuant to section 292.601 of the Commission's regulations,⁴ and thus unnecessary. Accordingly, the Commission dismissed SoCal Edison's filing. Additionally, in light of the dismissal, the Commission dismissed as moot a filing submitted by Watson Cogeneration in which Watson Cogeneration requested that the Commission clarify that the Watson PPA does not include the sale of any additional dispatchable capacity.

4. On rehearing, Watson Cogeneration states that the June Order resolves an important issue related to the jurisdictional status of certain "Transition" Power Purchase Agreements (Transition PPAs) under the QF/CHP Settlement, and agrees that the Commission appropriately found that the Transition PPAs, and the QF/CHP Settlement, are part of the California Commission's authority to implement PURPA. However, Watson Cogeneration contends that the June Order raises several questions of interpretation relative to the California Commission's implementation of PURPA and the applicability of its jurisdiction to other QF/CHP Settlement-mandated procurement contracts.

5. Specifically, Watson Cogeneration asks the Commission to clarify that certain changes prompted by section 210(m) of PURPA did not repeal all other PURPA rights and obligations. It asserts that the Commission should expressly recognize that any contract approved by the California Commission as part of the QF/CHP Settlement is a contract entered into as part of the California Commission's implementation of PURPA and is thus exempt from the FPA pursuant to section 292.601 of the Commission's regulations.⁵ Additionally, Watson Cogeneration requests that the Commission clarify that any additional dispatchable capacity amendment to the Transition PPA is subject to

³ *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.

⁴ 18 C.F.R. § 292.601 (2012).

⁵ *Id.*

PURPA jurisdiction as a state program implementation of the QF/CHP Settlement and that such additional dispatchable capacity amendment is not subject to Commission jurisdiction under the FPA.

6. Finally, Watson Cogeneration requests a stay of the June Order pending the resolution of the rehearing request. Watson Cogeneration argues that a stay would allow the parties to continue operating under the existing extension agreement while providing additional time to finalize their commercial arrangements. Watson Cogeneration states that this additional time would provide the Commission the opportunity to clarify the full scope of authority under PURPA, particularly as it applies to the necessity of the additional dispatchable capacity amendment in ensuring that existing QF/CHP capacity is not stranded.

7. On July 23, 2013, SoCal Edison submitted a motion to dismiss or, in the alternative, motion for leave to answer and answer to Watson Cogeneration's request for rehearing. SoCal Edison contends that Watson Cogeneration's rehearing request raises new issues that were not before the Commission or addressed in the June Order. SoCal Edison maintains that there is no need for a stay.

8. Also on July 23, 2013, San Diego Gas & Electric Company (SDG&E) and Pacific Gas and Electric Company (PG&E) submitted separate motions to intervene out-of-time. They state that they support SoCal Edison's July 23, 2013 motion to dismiss and answer.

II. Discussion

9. When late intervention is sought after the issuance of a dispositive order, the prejudice to other parties and burden upon the Commission of granting the late intervention may be substantial. Thus, movants bear a higher burden to demonstrate good cause for granting such late intervention. We find that SDG&E and PG&E have not met this higher burden. As such, we deny their motions for late intervention.

10. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2012), prohibits an answer to a request for rehearing. Thus, we will reject SoCal Edison's answer to the rehearing request.

11. We find that Watson Cogeneration's request for rehearing and clarification raises new issues that are beyond the scope of this proceeding. Accordingly, we will deny Watson Cogeneration's request for rehearing and clarification. Further, in light of our determination to deny rehearing, we will dismiss as moot Watson Cogeneration's request for a stay of the effectiveness of the June Order. As such, SoCal Edison's response to Watson Cogeneration's request for a stay is likewise rendered moot.

The Commission orders:

(A) Watson Cogeneration's request for rehearing and clarification is denied, as discussed in the body of this order.

(B) Watson Cogeneration's motion for a stay is dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.