

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Southern California Edison Co.

Docket Nos. ER04-1209-001
and
EL05-29-000

ORDER DENYING REHEARING, INSTITUTING AN
INVESTIGATION, AND ESTABLISHING HEARING PROCEDURES

(Issued December 10, 2004)

1. On September 9, 2004, Southern California Edison Company (SoCal Edison) filed to revise its Transmission Owner Tariff (TO Tariff) to reflect a new category of Reliability Services costs to be incurred by SoCal Edison as a Participating Transmission Owner (September 9 Filing). On November 8, 2004, SoCal Edison's filing was accepted by operation of law, and then, erroneously "accepted" in a delegated letter order that was issued four days later. In this order, we deny the request for rehearing of the delegated letter order, institute an investigation of, and set for hearing, the allocation of costs. This action benefits customers because it allows the parties to participate in a hearing to resolve their disputes and determine just and reasonable rates.

I. Background

2. This proceeding springs from California Public Utilities Commission's (CPUC) August 19, 2004 resolution approving CAISO Operating Procedure M-438 (Operating Procedure). This procedure directs SoCal Edison to procure levels of capacity that increase with SoCal Edison Service Area Peak-Hour Load. SoCal Edison is to procure this generation in the following area: South of Path 26, South of Lugo, and North of Miguel.

3. On September 9, 2004, SoCal Edison filed to change its TO Tariff to provide definitions related to the Operating Procedure, enumerate the steps SoCal Edison will take in implementing the procedure, and include a mechanism by which it will recover

costs associated with the procedure.¹ Further, it mentioned in its filing that if the Commission will not allow recovery of such costs, then the CPUC has indicated that it will allow SoCal Edison to seek cost recovery in the appropriate Energy Resource Recovery Account (ERRA) proceeding.

4. Specifically, the proposed TO Tariff includes the actions that SoCal Edison will take to implement Operating Procedure M-438 and the costs associated with implementation. By this procedure SoCal Edison will revise its day-ahead schedules to incorporate any additional units that are needed to maintain reliable grid operation and local area reliability, consistent with M-438 and the ISO's Capacity Commitment Table, which states the megawatt quantity of on-line generation from designated units required to maintain reliable grid operations.

5. For those hours in which the Operating Procedure is effective, SoCal Edison indicated that it will determine which of the designated units under its operational or contractual control that are not committed and scheduled in its least-cost schedule that it needs to commit. SoCal Edison stated that it will compute the cost attributable to the Operating Procedure by comparing the operating and start-up costs of each unit with the market value of capacity and energy produced by these units during these hours. SoCal Edison will determine the operating and start-up cost of each unit based on unit-specific start-up and operating heat-rate information and the delivered price of gas on the Southern California Gas Company system for the date in question. The market value of energy shall be based on published on-peak and off-peak South of Path 15 energy prices that are converted to hourly prices using fixed hourly weights. The market value of capacity, according to SoCal Edison, will be based on the ISO market clearing price of any ancillary services that the unit was scheduled to provide to the ISO, times the number of megawatts of ancillary services sold to the ISO.

6. SoCal Edison proposes to recover the cost of these new Reliability Services in the same manner it now recovers the cost of Reliability Services under its TO Tariff, i.e., from all SoCal Edison transmission customers. The TO Tariff has stated rates for four customers/types of customers that, according to the tariff, were in effect since January 1, 2004. SoCal Edison in the instant filing does not propose to modify these rates to reflect the new costs. It states, however, that it expects to update the costs in a filing to be made later this year.

¹ Notice of the September 9 Filing was published in the *Federal Register*, 69 Fed. Reg. 56,215 (2004), with comments, interventions and protests due on or before September 30, 2004.

7. The California Department of Water Resources State Water Project (State Water Project) filed a timely motion to intervene, a protest and request to reject the filing, and a supplemental protest. State Water Project argued that if not rejected as violating principles of Order No. 888 concerning unbundling, cost causation and just and reasonable ratemaking, the filing should be set for hearing and suspended for the maximum period. Specifically, State Water Project stated that SoCal Edison's proposed "reliability" power purchases would go into transmission rates – with no visible means of regulatory analysis whether they constitute just and reasonable wholesale rates (neither market discipline through customer choice nor cost-based rate regulation is present). Furthermore, State Water Project argued that SoCal Edison's proposal violates Order No. 888 since SoCal Edison – a transmission owner not even accountable for transmission reliability, which is the ISO's responsibility – would rebundle generation and transmission costs. With regard to cost causation, State Water Project asserts that their pump loads operate in off-peak periods and do not contribute to the local reliability problem this procedure addresses. Therefore, it concludes, the costs of the Operating Procedure should be allocated only to on peak loads that are within the identified local reliability areas.

8. The Metropolitan Water District of Southern California (Metropolitan) filed a motion to intervene, protest, and motion to reject the September 9 Filing, citing similar grounds as those identified by State Water Project. CAISO filed a timely motion to intervene and comments in support of the September 9 Filing. CAISO agreed with SoCal Edison that actions taken by SoCal Edison to implement the Reliability Procedure constitute Reliability Services, and, as such, the associated costs incurred by SoCal Edison should be recovered in SoCal Edison's Reliability Services rates.² On October 15, 2004, SoCal Edison filed an answer to State Water Project's and Metropolitan's protests.

9. On November 8, 2004, SoCal Edison's September 9 Filing was accepted, to be effective September 10, 2004, by operation of law since the Commission did not act before the end of the 60-day prior notice period.³ The subsequent November 12 Letter Order accepting SoCal Edison's filing thus was issued in error.

² M-S-R Public Power Agency filed a timely motion to intervene, and San Diego Gas & Electric Company and the California Electricity Oversight Board filed motions to intervene out-of-time.

³ 16 U.S.C. § 824d (2000).

10. On November 15, 2004, State Water Project filed a request for expedited rehearing of the November 12 Letter Order. On November 19, 2004, SoCal Edison filed an answer to State Water Project's request for rehearing. On November 24, 2004, State Water Project filed an answer opposing SoCal Edison's answer.

II. Discussion

A. Procedural Matters

11. We note that pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene served to make the entities that filed them parties to this proceeding. We will grant the motions to intervene out-of-time given those entities' interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by decisional authority. We are not persuaded to accept SoCal Edison's answer to the protests and will, therefore, reject it.

12. Under Rule 713(d) of the Commission's Rules of Practice and Procedure, an answer may not be made to a request for rehearing.⁴ Accordingly, we will reject SoCal Edison's answer to the request for rehearing, as well as State Water Project's answer to SoCal's answer.

B. Request for Rehearing in Docket No. ER04-1209-001

13. In its request for rehearing, State Water Project argues that the Commission should immediately revoke the November 12 Letter Order and reject SoCal Edison's September 9 Filing. State Water Project states that the letter order was an *ultra vires* act, and violated fundamentals of regulatory due process, the FPA, and reasoned decisionmaking by accepting SoCal Edison's representations without discussion, and without acknowledging or addressing State Water Project's and Metropolitan's protests. In the alternative, State Water Project requests that the Commission order a full hearing of issues of "disputed facts," which include essentially the same issues it raised in its protest.

⁴ 18 C.F.R. § 385.713(d) (2004).

14. As noted above, on November 8, 2004, SoCal Edison's September 9 Filing was accepted, to be effective September 10, 2004, by operation of law since the Commission did not act before the end of the 60-day prior notice period.⁵ The subsequent November 12 Letter Order accepting SoCal Edison's filing thus was issued in error. Accordingly, revocation of the November 12 Letter Order would be inconsequential since SoCal Edison's proposed tariff revision was already in effect prior to the issuance of the November 12 Letter order. Therefore, State Water Project's request for rehearing is denied. However, as explained below, with the exception of the cost allocation issue, we disagree with the arguments raised in the protests and request for rehearing.

15. State Water Project argues that there is no mechanism by which the Commission can determine whether the rates associated with SoCal Edison's new Reliability Service are just and reasonable. We disagree. Section 5 of SoCal Edison's proposed TO Tariff includes what is basically a formula rate for the computation of these Reliability Costs. In short, section 5 provides that the cost of the Reliability Service, which amounts to running otherwise uneconomic units, will be computed as the difference between (1) the total start-up and operating costs of a unit using the specific start-up and heat rate information for that unit and the price of delivered gas on the Southern California Gas Company system on the date the unit was started; and (2) the market value of energy and capacity based on published peak and off-peak SP15 energy prices and CAISO clearing prices for ancillary services sold to the CAISO. Exhibit No. SCE-10 provides a numeric example of how this formula rate would work in practice. These Reliability Services costs are one aspect of the Reliability Revenue Requirement; Reliability Services costs are also subject to the Reliability Services Balancing Account which ensures neither over- or under-recovery of the Reliability Services costs. Thus, contrary to State Water Project's argument, the Commission does have the mechanism to determine whether rates are just and reasonable, and we conclude that the formula rate is just and reasonable.

16. We disagree with State Water Project that SoCal Edison's filing amounts to re-bundling of rates for transmission and generation. The services provided here are generation services in support of transmission reliability. Power and transmission costs have not been rebundled. Further, we disagree with State Water Project's assertions that the proposal is anticompetitive and impinges upon the CAISO's "exclusive responsibility" over transmission. State Water Project fails to acknowledge that the CAISO initiated and designed the reliability procedure, not SoCal Edison. SoCal Edison is acting as an agent on behalf of the CAISO with respect to the Operating Procedure. It will procure energy pursuant to the CAISO's local area capacity commitment tables, not

⁵ 16 U.S.C. § 824d (2000).

by its own initiative. Moreover, the CAISO, not SoCal Edison, is responsible for updating this table to reflect changing circumstances. Therefore, we find that the proposal is not anticompetitive and does not impinge upon the CAISO's exclusive responsibility over transmission. We remind State Water Project that SoCal Edison entered into this cooperative effort with the CAISO at the direction of the State of California, approved and initiated by the CPUC, which instructed SoCal Edison to use a comprehensive approach to scheduling and procuring resources that reasonably minimizes the need for reliability must-run contracts.

C. Section 206 Investigation in Docket No. EL05-29-000

17. State Water Project argues that SoCal Edison's cost allocation violates recent Commission orders.⁶ Our analysis indicates that SoCal Edison's cost allocation may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Therefore, pursuant to section 206 of the FPA,⁷ we will initiate an investigation of, and institute a trial-type evidentiary hearing on the allocation of costs. Where, as here, the Commission initiates a section 206 investigation on its own motion, section 206(b) requires that the Commission establish a refund effective date anywhere from 60 days after publication in the *Federal Register* of notice of its intent to initiate a proceeding to 5 months after the expiration of the 60-day period. In order to give maximum protection to customers, and consistent with our precedent,⁸ we will establish the refund date at the earliest date allowed. This date will be 60 days from the date on which notice of the initiation of the investigation is published in the *Federal Register*.

18. Section 206(b) also requires that if no final decision is rendered in the Commission's investigation by the refund effective date or by the conclusion of the 180-day period commencing upon the initiation of a proceeding pursuant to section 206, whichever is earliest, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonable expects to make such a decision. Therefore, we will direct the presiding judge to provide a report to the Commission no later than 15 days in advance of the refund effective date in the event the presiding judge has not by that date issued an initial decision or certified to the Commission a settlement

⁶ See Request for Rehearing at 12 n. 15 (citing *PJM Interconnection, LLC*, 107 FERC ¶ 61,112 (2004)).

⁷ 16 U.S.C. § 824e (2000).

⁸ See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

which, if accepted would dispose of the proceeding. The judge's report, if required, shall advise the Commission of the status of the investigation and provide an estimate of the expected date of issuance of an initial decision or certification of a settlement. This, in turn, will allow the Commission, on or before the refund effective date, to estimate the date when it expects to render its decision.

The Commission orders:

(A) State Water Project's request for rehearing is hereby denied, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning the allocation of costs.

(C) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(D) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the proceeding in Docket No. EL05-29-000.

(E) The refund effective date in Docket No. EL05-29-000, established pursuant to section 206(b) of the FPA, shall be 60 days following publication in the *Federal Register* of the notice discussed in ordering paragraph (D) above.

(F) The presiding judge shall advise the Commission, no later than 15 days prior to the refund effective date established in Docket No. EL05-29-000, in the event that the presiding judge has not by that date certified to the Commission a settlement, which, if accepted, would dispose of the proceeding, or issued an initial decision, as to the status of the proceeding and a best estimate when the proceeding will be disposed of by the presiding judge.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.