

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company	Docket Nos. ER04-316-002
on behalf of Mountainview	ER04-316-003
Power Company, LLC	ER04-316-004

ORDER ON REHEARING AND COMPLIANCE

(Issued March 23, 2005)

1. On February 25, 2004, the Commission conditionally accepted a Power Purchase Agreement (PPA) between Southern California Edison Company (Edison) and Mountainview Power Company, LLC (Mountainview).¹ Mountainview owned a yet-to-be completed generating plant, and Edison sought to exercise an option to purchase the project by purchasing Mountainview. The order accepted the PPA and imposed conditions to minimize any impacts it could have on the competitive wholesale power market in California. On March 26, 2004, Edison, on behalf of Mountainview, submitted a revised PPA in compliance with the Commission's February 25 Order. In addition, several entities requested rehearing of the February 25 Order. On October 28, 2004, the Commission denied rehearing of the February 25 Order on all issues but one, as discussed below.² Edison submitted a second compliance filing on November 29, 2004, as directed by the October 28 Order. This order denies rehearing of the October 28 Order and accepts the compliance filings. These actions benefit customers by accommodating the construction of new generation in California while ensuring that Mountainview's rates are just and reasonable.

¹ *Southern California Edison Company, on Behalf of Mountainview Power Company, LLC*, 106 FERC ¶ 61,183 (2004) (February 25 Order).

² *Southern California Edison Company, on Behalf of Mountainview Power Company, LLC*, 109 FERC ¶ 61,086 (2004) (October 28 Order).

I. Background

2. On December 19, 2003, Edison filed the proposed PPA on behalf of Mountainview, its to-be-acquired subsidiary. Mountainview owned a yet-to-be completed 1,054 MW generating plant. Edison sought to exercise an option to purchase the project by purchasing Mountainview from its previous owner, Sequoia Generating LLC (Sequoia). Edison claimed that its purchase of Mountainview would restore stability to the marketplace, enhance reliability and provide substantial benefits to Edison's ratepayers, but Edison requested Commission approval of the PPA before it exercised its option. The PPA is a cost-based rate schedule which includes ratemaking features that give Mountainview incentives to control discretionary costs that it will incur and pass on to Edison.

3. Edison stated that it elected to use the subsidiary-PPA structure because it was just beginning to return to financial health, and because significant unresolved policy issues in California "demand the increased assurance of cost recovery that a FERC-filed, cost-based PPA provides."³ The utility asserted that the unique proposal was entered into because of the urgent need for new generating capacity in California. Edison noted that the California Public Utilities Commission (CPUC) found that the transaction is in the public interest and made other findings required by the Public Utility Holding Company Act of 1935 (PUHCA).

4. In the February 25 Order, the Commission found the proposed cost-based rate to be just and reasonable but conditioned its approval on Edison modifying the PPA in several areas, filing under section 205 when it seeks to recover decommissioning costs, making a section 205 filing prior to commercial operation to establish the rate of return to support the then-applicable cost of capital, and complying with Commission regulations applicable to traditional public utilities, including Mountainview maintaining its books in accordance with the Uniform System of Accounts, and filing a FERC Form No. 1 on an annual basis. In addition, the Commission conditioned its approval on the applicants agreeing that Mountainview be created and formed solely for the purpose of owning the Mountainview project and selling the output to Edison at cost-based rates under the PPA, on Mountainview not being eligible to sell at market-based rates, and not being entitled to any waivers typically granted under the Commission's market-based rate program.

5. On March 26, 2004, Edison, on behalf of Mountainview, submitted a compliance filing (March 26 Compliance Filing) in response to the conditions and modifications that the Commission directed in the February 25 Order.

³ Edison transmittal letter at 3.

6. Parties filed numerous requests for rehearing of the February 25 Order, challenging our findings on the terms of the PPA and our holdings related to affiliate transactions. In the October 28 Order, the Commission denied rehearing of the February 25 Order on all issues except with respect to prior claims by former Edison employees being included in Mountainview's cost-of-service. The Commission concluded that the Pre-Authorized Charge should not include the cost of claims against Mountainview by former Edison employees and therefore required Edison, on behalf of Mountainview, to revise the PPA to exclude such costs.

II. Request For Rehearing

7. Edison, on behalf of Mountainview, requests rehearing of the October 28 Order's decision to exclude these prior claims. Edison argues that the cost of the prior claims was a necessary cost of its acquisition of Mountainview and reasons that including the prior claims thus benefited ratepayers and should be included in the Pre-Authorized Charge. Edison further asserts that the prior claims costs are current period costs of acquiring Mountainview and that Edison is entitled to recover from customers pursuant to the Federal Power Act (FPA).

Commission Determination

8. Edison asserts that it provided ample support for the inclusion of the costs in its initial filing. However, there was no support for the inclusion of the costs, merely a definition of Prior Claims. The rehearing request for the first time provides background on the prior ownership and operations of the site and the genesis of the prior claims. Edison also explains on rehearing how it came to assume the risk of these claims when it negotiated the PPA and explains its position that the prior claims were a necessary cost of acquiring Mountainview.

9. The October 28 Order found that Edison failed to provide support for these costs in its filing. While Edison argues that support was included as part of its application to the CPUC and provided in its original submittal to the Commission,⁴ our review indicates that the submitted information was, at best, superficial. The rehearing request is the first instance in this proceeding where pertinent, detailed facts about the prior claims appear. Commission precedent does not allow parties to amend or augment their application on

⁴ The CPUC decision that purportedly addresses the prior claims (*see* Edison's rehearing request at 8 & n.9) does not include any background information or discussion regarding the inclusion of these costs.

rehearing, and we may reject evidence proffered for the first time on rehearing.⁵ This is because the notice and comment procedures which apply to amendments to applications do not apply to a request for rehearing. Further, intervenors are not permitted to respond to a request for rehearing.⁶ As we have stated in other orders, a request for rehearing provides the parties with a final opportunity to present arguments to the Commission, based on the record as it exists; we are reluctant to chase a moving target by considering new evidence or rationales presented for the first time at the rehearing stage of a proceeding.⁷ As we explained in a comparable section 205 proceeding,

Every time the Commission acted adversely on a utility's proposal, the utility could simply file at the rehearing stage an amendment or additional justification hoping that while its original justification for the proposed rates may have been unpersuasive maybe some new justification would be found persuasive. Moreover, opposing parties would be placed at an unfair disadvantage, because they could never be sure that the utility's initially offered proposal and rationale were, in fact, the proposal and rationale that the utility would ultimately rely on and would not be changed to some new proposal and rationale to which there be no chance to respond.[⁸]

10. Thus, we will summarily deny Edison's request for rehearing.

III. March 26 Compliance Filing

11. The February 25 Order accepted the PPA subject to two conditions. First, the Commission directed Edison to submit a compliance filing reflecting several modifications to the PPA. Second, the Commission directed Mountainview to comply with applicable Commission regulations including: (a) complying with the Commission's Uniform System of Accounts; (b) filing of an annual FERC Form 1; (c) making an annual informational filing by May 1 of each year detailing the prior calendar year's costs; and (d) submitting a section 205 filing if Mountainview seeks to include the

⁵ See, e.g., *Philadelphia Electric Company*, 58 FERC ¶ 61,060 at 61,133 & n.4 (1992) (holding that consideration of post-filing testimony, whatever its relevance, would upset the need for timely action and certainty in rate proceedings); *Cities and Villages of Albany and Hanover v. Interstate Power Company*, 61 FERC ¶ 61,362 at 62,451 & n.4 (1992) (holding that complainant cannot revise complaint on rehearing).

⁶ 18 C.F.R. § 385.713(d) (2004).

⁷ See, e.g., *Prairieland Energy, Inc.*, 87 FERC ¶ 61,096 (1999).

⁸ *Northern States Power Company*, 54 FERC ¶ 61,242 at 61,711 (1991).

recovery of decommissioning costs under the PPA. Edison states that this compliance filing fulfils the first condition in the Commission's order and that Mountainview will comply with the requirements of the second condition as well.

12. The specific modifications required by the February 25 Order were: (1) revising the PPA to reflect Edison's commitment to make a filing under section 205 of the Federal Power Act prior to commercial operation to support the then-applicable Cost of Capital; (2) modifying the formula rate to include the specific FERC Accounts in the Capital Charge and Pre-Authorization Charge sections of the PPA; (3) modifying the PPA to include a description of the method to be used to allocate Buyer Overhead Costs to Mountainview on a non-discriminatory basis; (4) requiring that Edison's decision to capitalize or expense the costs associated with Better Work, Compliance Work, Facility Refurbishment Work or Major Equipment Repair or Replacement Work must be in accordance with the requirements of the Commission's Uniform System of Accounts; (5) requiring Edison to make a section 205 filing in order to reclassify costs between the Pre-Authorized Charge and Operations and Maintenance (O&M) Charges; and (6) amending the PPA to include specific FERC Account Nos. for O&M Charges and to require a straight pass-through of the actual O&M costs. In response to the February 25 Order, Edison submitted the March 26 Compliance Filing.

Notice of Filing and Responsive Pleadings

13. Notice of the March 25 Compliance Filing was published in the *Federal Register*, 69 Fed. Reg. 18,070 (2004), with motions to intervene and protests due on or before April 16, 2004. A timely protest was filed by Calpine Corporation (Calpine). Edison subsequently filed an answer responding to Calpine's protest.

Procedural Matters

14. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Edison's answer because it has provided information that assisted us in our decision-making process.

Cost of Capital

15. In the February 25 Order, we directed Edison to revise the PPA to reflect Edison's commitment to make a filing under section 205 of the Federal Power Act prior to commercial operation to support the then-applicable Cost of Capital. In its compliance filing, Edison states that it has added new section 16.01(a) to the PPA containing this commitment.

16. Calpine protests that piecemeal section 205 filings such as that referenced in section 16.01(a) are a burden on parties and that all material elements of the contract should be reviewed by the Commission in a single filing.

17. Edison's new section 16.01(a) complies with the Commission's directive in its February 25 Order. Calpine's argument about multiple 205 filings was addressed in the October 28 Order on rehearing, and it is beyond the scope of this proceeding.

FERC Accounts

18. Our February 25 Order directed Edison to modify the formula rate to include the specific FERC Accounts in the Capital Charge and Pre-Authorization Charge sections of the PPA. In its compliance filing, Edison states that it has made this change to the PPA which will allow the Commission and interested parties to track changes to these charges under the formula rates.

19. Calpine states that Edison includes amounts from two Edison accounts (Account Nos. 928 and 930) which incorporate expenditures that Edison made on behalf of Mountainview to acquire the facility. Calpine notes that Account No. 928 includes various expenditures for services provided by third parties associated with obtaining regulatory approval of the Mountainview PPA and Account 930 includes payments that Edison made in 2003-2004 to maintain its option to acquire the facility. Calpine asserts that the inclusion of these accounts is outside the scope of what should be included in this compliance filing and that the nature of these two accounts appears to include amounts that would be deemed an "acquisition adjustment." Finally, Calpine argues that the costs included in these accounts are essentially Administrative and General (A&G) expenses which Edison proposes to be collected through the Capital Recovery Charge.

20. In its answer, Edison states that the Commission directed it to include the Account numbers for the costs that are contained in the Capital Cost section of the PPA, and it has done so, in compliance with the February 25 Order. Edison states that Calpine's objections are without merit and that Calpine offers no explanation as to why the inclusion of these costs (regulatory costs included in Account 928 and the option payments included in Account 930) is outside the scope of what should be included in this compliance filing. Edison also states that these costs do not constitute an acquisition adjustment, as that term is defined by the Commission. Responding to Calpine's argument that these costs are A&G expenses, Edison states that they are direct assignment costs, not overhead costs, and thus properly recovered in the Capital Recovery Charge. Finally, Edison states that Calpine's real dispute is not with Edison's compliance filing, but with the February 25 Order itself, which approved provisions that included these costs in Mountainview's rates. Edison therefore argues that since no petition for rehearing of these provisions was timely filed, they are not subject to challenge on compliance.

21. Our review indicates that Edison's revisions to section 7.02 and Schedules 7.01 and 7.02 of the PPA comply with the Commission's directive in the February 25 Order which required Edison to modify the formula rate for the recovery of these capital costs by including the specific FERC Accounts in the Capital Cost section of the PPA. Regarding Accounts 928 and 930 including payments that may constitute an "acquisition adjustment," we agree with Edison that it may include the routine administrative costs associated with the purchase of the Mountainview facility. These costs do not constitute an "acquisition adjustment" as that term has been used by this Commission. Additionally, these costs can be directly assigned without allocation.

Buyer Overhead Costs

22. Our February 25 Order directed Edison to modify the PPA to include a description of the method to be used to allocate Buyer Overhead Costs to Mountainview on a non-discriminatory basis. In its compliance filing, Edison states that it has added new section 16.01(b) to the PPA containing this commitment. However, because no such allocation has been made at this time, Mountainview will make a section 205 filing to allocate such costs in accordance with the PPA, in the event such allocation occurs.

23. Calpine argues that the compliance filing does not meet the requirements of the February 25 Order. Calpine states that Edison failed to file a description of the allocation methodology as required in the order. Calpine also states that Revised Schedule 7.02 has a line item for Buyer Overhead Costs which should not be allowed to flow through until an appropriate methodology has been filed. Calpine argues that Edison should therefore be required to either delete any reference to Buyer Overhead Costs or comply with the terms of the order. Additionally, Calpine states that while Mountainview will make a section 205 filing to allocate such costs in accordance with the PPA, no method has yet been specified in the PPA. Calpine argues that the allocation method should be established up front and not at some time in the future. Therefore, Calpine states that the section 205 approach proposed by Edison should be rejected.

24. In its answer, Edison states that Calpine has incorrectly concluded that Edison has not complied with the February 25 Order. Edison states that Calpine's position is that Buyer Overhead Costs must be eliminated from the PPA in order to comply with the February 25 Order. However, Edison argues that the Commission ruled that Buyer Overhead Costs could be included in the PPA, provided there was a specification of the methodology to be used to allocate such costs to Mountainview. Edison continues that the current Buyer Overhead Cost allocation method is to allocate no such costs to Mountainview, and, if such allocation changes, the section 205 filing that Edison would be required to make would give the Commission the ability to review the new allocation methodology to determine whether it is just and reasonable and non-discriminatory.

25. Given that Edison has not yet allocated any such Buyer Overhead Costs to Mountainview, we conclude that Edison's proposed language in section 16.01(b) provides sufficient protection from improper collection of such costs. In the event that Edison begins to allocate Buyer Overhead Costs to Mountainview, Edison's commitment to make a section 205 filing to include such costs and describe the methodology used to allocate such costs is reasonable. We therefore find that Edison's new section 16.01(b) complies with the Commission's directive in the February 25 Order.

Cost Classification of Certain Work Items

26. Our February 25 Order required that Edison's decision to capitalize or expense the costs associated with Better Work, Compliance Work, Facility Refurbishment Work or Major Equipment Repair or Replacement Work must be in accordance with the requirements of the Commission's Uniform System of Accounts. In its compliance filing, Edison states that it made a change to section 8.09 of the PPA, in compliance with the February 25 Order. No party protested this proposed change.

27. Our review indicates that Edison's revisions to section 8.09 of the PPA comply with the Commission's directive in the February 25 Order.

Reclassification of Costs

28. In the February 25 Order, we directed Edison to make a section 205 filing in order to reclassify costs between the Pre-Authorized Charge and O&M Charges. In its compliance filing, Edison states that it made a change to section 8.08(a) of the PPA, in compliance with the February 25 Order.

29. Calpine notes that while Edison appears to have complied with the February 25 Order, this is yet another section 205 filing that must be reviewed at some future time.

30. Our review indicates that Edison's revision to section 8.08(a) complies with the Commission's directive in its February 25 Order. Calpine's argument regarding future review was addressed in the October 28 Order, and it is beyond the scope of this proceeding.

O&M Costs

31. Our February 25 Order directed Edison to amend the PPA to include specific FERC Account Nos. for O&M Charges and to require a straight pass-through of the actual O&M costs. In its compliance filing, Edison states that it has modified the PPA to implement the Commission's requirements.

32. Calpine states that Edison should be required to provide an explanation as to how the amounts supporting the former stated rates for Fixed and Variable O&M will be reflected in the proposed formula rate for these O&M expenses. Calpine also argues that specific sub-accounts should be listed in the O&M Charge in order to avoid the potential to double-recover costs in the Pre-Authorized Charge. Finally, Calpine argues that Edison should be required to continue to separately track fixed and variable O&M costs to ensure that these costs are appropriately tracked through the charges imposed.

33. In its answer, Edison asserts that Calpine's protest reflects a misunderstanding of formula rates and of the changes ordered by the Commission in the February 25 Order. Edison states that it originally estimated the O&M costs and developed Fixed and Variable O&M Charges. However, those estimates are no longer relevant because the Commission directed Edison to substitute formula rates that recover all Fixed and Variable O&M expenses on an actual basis. Edison states that the proposed formula rate for the O&M Charge is intended to include all of Mountainview's Accounts that are classified by the Commission as O&M Accounts and that are relevant to Mountainview. Therefore, Edison states that Mountainview's rates properly recover its O&M costs on a formula basis, as ordered by the Commission. Regarding Calpine's arguments concerning sub-accounts and the potential for double-recovery, Edison states that listing sub-accounts would serve no purpose because the entirety of the cost in each Account is properly included in the O&M Charge.

34. We conclude that Edison's revisions to section 7.03 and Schedule 7.03 comply with the directives in the February 25 Order. In that order, the Commission required Mountainview to bill out, as part of the cost-based formula rate, the actual costs incurred, by FERC Account number, for Fixed and Variable O&M expenses. While Edison's compliance filing combines the Fixed and Variable O&M expenses into one O&M Charge, we find that the proposed formula rate includes all relevant O&M Accounts, and is therefore reasonable. We also find it unnecessary to list sub-accounts since the entirety of the cost in each Account is already included in the O&M Charge.

IV. November 29 Compliance Filing

35. Our October 28 Order, which granted rehearing on this one issue, directed Edison to exclude the cost of claims by former Edison employees from the Prior Claims provisions of the PPA. Edison has submitted this compliance filing in order to comply with the Commission's October 28 Order.

36. Notice of the November 29 Compliance Filing was published in the *Federal Register*, 69 Fed. Reg. 71,809 (2004), with motions to intervene and protests due on or before December 20, 2004. No responses were received.

37. Our review of the November 29 Compliance Filing indicates that Edison has properly excluded the cost of claims by former Edison employees from the Prior Claims provisions of the PPA as directed in the October 28 Order. Therefore, we will accept the November 29 Compliance filing as filed.

The Commission orders:

(A) Edison's request for rehearing of the October 28 Order is hereby denied, as discussed in the body of this order.

(B) Edison's March 26, 2004 Compliance Filing, submitted on behalf of Mountainview, is hereby accepted for filing, as discussed in the body of this order.

(C) Edison's November 29, 2004 Compliance Filing, submitted on behalf of Mountainview, is hereby accepted for filing, as discussed in the body of this order.

By the Commission. Commissioner Kelly not participating.

(S E A L)

Linda Mitry,
Deputy Secretary.