

112 FERC ¶ 61,045
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 Company Docket No. ER05-410-001

ORDER DENYING REHEARING

(Issued July 6, 2005)

1. The California Department of Water Resources State Water Project (CDWR) filed a request for rehearing of the Commission's order issued on February 28, 2005 accepting for filing Southern California Edison Company's (SoCal Edison) revisions to its Transmission Owner Tariff (TO Tariff), FERC Electric Tariff, Second Revised Volume No. 6, and certain Existing Transmission Contracts, suspending them, making them effective subject to refund and establishing hearing and settlement judge procedures.¹ In this order, we deny CDWR's request for rehearing. This order benefits customers because it ensures that a complete record is created to support SoCal Edison's Reliability Service Rates.

Background

2. On December 30, 2004, SoCal Edison filed increases in its Reliability Services Rates to be effective on January 1, 2005. SoCal Edison's filing included the proposed Reliability Services Rates to recover Reliability-Must-Run (RMR) and Local Out-of-Market (OOM) costs as reliability services costs from all customers with loads in SoCal Edison's historic control area taking service under the California Independent System Operator Corporation (CAISO) Tariff and SoCal Edison's TO Tariff. SoCal Edison's December 30, 2004 filing also proposed to revise its TO Tariff to increase the Reliability Service Rates charged to end-use customers, Existing Transmission Contract customers, and Wheeling customers. SoCal Edison also requested a waiver of the Commission's 60-day prior notice requirement to allow an effective date of January 1, 2005.

¹ *Southern California Edison Company*, 110 FERC ¶ 61,190 (2005) (February 28, 2005 Order).

3. In the February 28, 2005 Order, the Commission accepted the proposed Reliability Services Rates for filing, suspended them for a nominal period, made them effective January 1, 2005, subject to refund, and established hearing and settlement judge procedures.

Rehearing Request

4. On March 28, 2005, CDWR filed a request for rehearing alleging that the Commission's February 28, 2005 Order erred because it did not reflect reasoned decision making, was arbitrary and capricious, and that the only basis for accepting the filing was a finding that the proposed rates "have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful."² CDWR further asserts that the Commission erred because the February 28, 2005 Order failed the requirements of substantial evidence to the extent that it merely adopted, without discussion, SoCal Edison's view of disputed issues of fact and that the February 28, 2005 Order violated the Commission's own standards for suspension and content of rate filings.

5. CDWR asserts that the Commission, in its February 28, 2005 Order, failed to address OOM costs associated with Reliability Services, the fundamental problem of the lack of any authority or basis for SoCal Edison to charge and, thus, the decision to accept SoCal Edison's proposed Reliability Service Rates for filing, subject to refund, and establish hearing and settlement judge procedures did not meet the requirements for reasoned decision making.

6. CDWR argues that the reliability services that SoCal Edison seeks payment for are the exclusive province of the CAISO and asserts that SoCal Edison is seeking to recover costs for power purchases that are unrelated to transmission services. Furthermore, CDWR claims that there is no lawful basis for SoCal Edison to charge CDWR for transmission service since SoCal Edison is no longer authorized to provide transmission service to CDWR. CDWR claims that the Commission's failure to address this issue in the February 28, 2005 Order demonstrates the lack of reasoned decision making on the part of the Commission.

7. CDWR also argues that SoCal Edison did not provide any explanation for the increase in the Reliability Services Rates and that the Commission's February 28, 2005 Order allowed SoCal Edison to charge a rate that constituted a 500 percent increase over the rates charged just one year ago without holding any hearings and without any reasoning or justification. CDWR maintains that SoCal Edison's filing provided no meaningful cost support.

² CDWR Request for Rehearing at 2 (citing P 13 of the February 28, 2005 Order).

8. CDWR adds that the Commission improperly accepted, without question, all of SoCal Edison's representations when it accepted the proposed Reliability Services Rates.

9. Further, CDWR argues that a one-day suspension³ and waiver of the 60-day prior notice requirement cannot be justified in these circumstances because SoCal Edison's request represents an unjustified increase of 500 percent above levels for Reliability Services of one year ago.

10. On April 13, 2005, SoCal Edison filed a motion to leave to answer and answer to CDWR's request for rehearing. On April 28, 2005, CDWR filed an answer opposing SoCal Edison's motion to answer the request for rehearing.

Discussion

11. Pursuant to Rule 713(d) of the Commission's Rules of Practice and Procedure,⁴ answers to requests for rehearing are not permitted. Therefore, the Commission will reject SoCal Edison's answer to CDWR's request for rehearing.

12. We have substantial discretion to determine how we will process a case.⁵ Here, the Commission was unable to decide the issues on the record before it finding that issues of material fact exist and, accordingly, set the matter for hearing and settlement judge procedures. Contrary to CDWR's assertions, nowhere in the February 28, 2005 Order did the Commission accept the reasons presented by SoCal Edison in support of its proposed Reliability Service Rates. Rather, the Commission accepted the Reliability Services Rates for filing, suspended them for a nominal period and provided full refund protection to CDWR by making the rates effective January 1, 2005, subject to refund.

13. Regarding CDWR's argument that the reliability services that SoCal Edison seeks payment for are the exclusive province of the CAISO and that SoCal Edison is seeking to recover costs for power purchases unrelated to transmission service, our review indicates that these arguments were previously addressed by the Commission.⁶ The Commission stated that the services provided were generation services in support of transmission reliability. Also, the Commission found that CDWR failed to acknowledge that the

³ CDWR refers to the Commission's suspension for a nominal period as a one-day suspension.

⁴ 18 C.F.R. § 385.713(d) (2004).

⁵ See *Michigan Public Power Agency v. FERC*, 963 F.2d 1579 (D.C. Cir. 1992) (substantial deference accorded agencies in ordering their proceedings).

⁶ See *Southern California Edison Company*, 109 FERC ¶ 61,263 (2004) at P 15.

CAISO initiated and designed the reliability procedure, not SoCal, Edison and that SoCal Edison will be acting as an agent on behalf of the CAISO with respect to Operating Procedure M 438. Accordingly, we will deny CDWR's request for rehearing on this issue. Furthermore, the Commission notes that CDWR is served by SoCal Edison under a bilateral transmission agreement and thus, by definition, SoCal Edison is contractually obligated to provide transmission service to CDWR.

14. As to CDWR's argument concerning SoCal Edison's failure to file the mandatory substantive cost support for its proposed Reliability Service Rates, the Commission denies rehearing. By accepting and suspending the proposed rates and establishing hearing and settlement judge procedures, the Commission implicitly found that SoCal Edison's filing met the Commission's minimum threshold filing requirements. SoCal Edison's filing satisfies the Commission's minimum threshold filing requirements and CDWR has not shown that it is so patently deficient as to warrant rejection.

15. Contrary to CDWR's argument concerning waiver, the Commission properly granted waiver of the Commission's 60-day prior notice requirement. The Commission specifically noted that the proposed rate revisions are required to be made effective on January 1 of each year pursuant to section 5 of Appendix VI of the TO Tariff, and cited to *Central Hudson Gas & Electric Corp.* as support for allowing the January 1, 2005 effective date.⁷ We further note that the TO Tariff did not provide when the proposed rate revisions would have to be filed; only that they would be made effective on January 1 of each year.

16. We also reject CDWR's argument that the Commission should have suspended the rate filing for a full five-month period (citing *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982) (*West Texas*)). The Commission's decision to suspend and set a proposed rate for hearing is based on a preliminary analysis that is a rough, first-cut review performed within a statutorily-mandated limited time (typically within sixty days) on the basis of then-available information. A discussion of that analysis at that early date would involve an inappropriate prejudgment on the merits of the issues being set for hearing and settlement judge procedures. Moreover, the Commission is not making a final determination as to the reasonableness of the proposed rates, but is indicating that

⁷ See February 28, 2005 Order, 110 FERC ¶ 61,190 at P 13 n.3 (citing *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106, *reh'g denied*, 61 FERC ¶ 61,089 (1992)); *accord Florida Power Corp.*, 76 FERC ¶ 61,070 at 61,436 (1996) (waiver appropriate for filing that increases rates when the rate change and effective date are prescribed by prior agreement accepted by Commission). The Commission also notes that the Reliability Services Rates include a balancing account mechanism that ensures these rates neither over or under-collect Reliability Services costs by requiring SoCal Edison to incorporate any over or under-collections in the next year's annual filing.

the proposed rates require the development of an evidentiary record.⁸ In this case, the Commission performed that preliminary analysis and determined that a nominal suspension was appropriate, i.e., the proposed rates were not substantially excessive sufficient to warrant a five-month suspension. An explanation of the basis for the Commission's determination is not warranted. As the Courts of Appeals have recognized, the very purpose of the hearing is to allow the Commission the opportunity to determine whether the proposed rates are reasonable, and it is unreasonable to expect the Commission to provide at such an early stage of a proceeding a detailed explanation of its reasons for suspending a proposed rate change or of the various factors that lead to the choice of a particular suspension.⁹

17. CDWR will have a full opportunity to raise any issues it has with SoCal Edison's filing, including the level of SoCal Edison's proposed rates, in the hearing and settlement judge procedures established by the Commission in the February 28, 2005 Order. As discussed above, we will deny CDWR's request for rehearing.

The Commission orders:

CDWR's request for rehearing is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁸ See, e.g., *Jersey Central Power & Light Co.*, 56 FERC ¶ 61,3376 at 62,435 (1991); *Pennsylvania Electric Co.*, 20 FERC ¶ 61,401 at 61,817 (1982).

⁹ See, e.g., *Boroughs of Ellwood City*, 701 F.2d 266, 271 (3rd Cir. 1983); *Cities of Anaheim v. FERC*, 723 F.2d 656, 661-62 (9th Cir. 1984); *Otter Tail Power Co. v. FERC*, 583 F.2d 399, 408 n.38 (8th Cir. 1978), *cert. denied*, 440 U.S. 950 (1979); and *Papago Tribal Utility Authority v. FERC*, 628 F.2d 235, 243 (D.C. Cir. 1980).