

UNITED STATES OF AMERICA 93 FERC ¶ 61,103  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;  
William L. Massey, Linda Breathitt,  
and Curt Hébert, Jr.

City of Vernon, California

Docket No. EL00-105-000

ORDER ON PROPOSED TRANSMISSION REVENUE REQUIREMENT

(Issued October 27, 2000)

On August 30, 2000, as supplemented on August 31, 2000, the City of Vernon, California (Vernon) filed a petition for declaratory order requesting a determination by the Commission that Vernon's Transmission Revenue Requirement (TRR), as approved by its rate setting body, the Vernon City Council, is proper for purposes of Vernon becoming a Participating Transmission Owner (Participating TO) in the California System Operator Corporation (ISO). As a Participating TO, Vernon will turn over operational control of its transmission entitlements to the ISO and be reimbursed based upon its TRR by the ISO through the ISO's collection of a transmission access charge (TAC). Vernon requests that the Commission issue an order in this proceeding by October 31, 2000 to allow the ISO to make certain filings with the Commission by November 1, 2000, sixty days prior to January 1, 2001, the proposed effective date of Vernon becoming a Participating TO. As discussed below, the Commission finds that Vernon's proposed rate methodology and resulting high voltage TRR, as modified, are just and reasonable.

I. Background

On May 31, 2000, the Commission, in Docket No. ER00-2019-000, accepted for filing, suspended for a nominal period, and set for hearing the ISO's proposed TAC methodology and related tariff revisions (May 31 Order).<sup>1</sup>

Included in the ISO's TAC proposal is a requirement that non-public utility entities such as locally, publicly owned electric utilities (referred to as Governmental Entities) that are new Participating TOs submit their high voltage TRR to the ISO. The ISO proposed that if an objection were raised to a Governmental Entity's proposed TRR, then the justness

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<sup>1</sup>California Independent System Operator Corporation, 91 FERC ¶ 61,205 (2000).

and reasonableness of the TRR would be evaluated by a Revenue Review Panel (RRP) in accordance with the standards established by the Commission pursuant to the Federal Power Act (FPA) and, if applicable, the standards established by the ISO Governing Board. Furthermore, the ISO proposed that the decision of the RRP be final and not subject to further review.

The Commission's May 31 Order found that the regulatory review authority of the RRP of non-public utility entities that became Participating TOs was a complex and evolving question, and the Commission gave general guidance on this question. The May 31 Order, however, did find the ISO's proposal that the RRP's findings were final and non-appealable to be inconsistent with the Commission's statutory responsibilities. On August 3, 2000, the ISO made a compliance filing in Docket No. ER00-2019-002 to file revised tariff sheets, including revised RRP provisions, as required by the May 31 Order.<sup>1</sup>

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<sup>1</sup>The Commission is issuing a contemporaneous order on the ISO's compliance filing in Docket No. ER00-2019-002.

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The ISO, through its revised RRP provision submitted as part of its compliance filing to the Commission's May 31 Order in Docket No. ER00-2019-000, set forth revised filing options for Governmental Entities such as Vernon who wish to become Participating TOs. As provided for in the ISO's original submittal in Docket No. ER00-2019-000, Vernon could have filed its TRR with the ISO and, if challenged, go through the procedures established for review by the ISO's RRP. Alternatively, based on the procedures proposed by the ISO in its compliance filing, Vernon chose to file its TRR directly with the Commission. Vernon is the first Governmental Entity to apply for Participating TO status in the ISO. Vernon requests waiver of any requirements the Commission may impose on such filings, at least for purposes of accepting Vernon's TRR filing and allowing it to go into effect on January 1, 2001.<sup>1</sup>

Vernon states that its TRR is presented to the Commission as a finally approved rate by the body of state government responsible for setting the rate. Vernon notes that the nature of the Commission's jurisdiction to review the TRR of Governmental Entities such as Vernon and the criteria to be applied for such review are pending as an issue in Docket No. ER00-2019-000. Nonetheless, Vernon believes that it is clear that the Vernon City Council's determination of the TRR must be given appropriate deference by the Commission. Vernon also suggests, but does not explicitly request, that the Commission utilize its "NJ" standard as a possible basis upon which Vernon's TRR should be reviewed.

Vernon's TRR relates to high voltage transmission facilities that are jointly owned with other entities. As such, Vernon's TRR does not principally rely on costs that are solely related to its own operation of transmission facilities but rather are joint costs of a group of entities who own such facilities. Vernon asserts that because the Commission stated that the review of non-jurisdictional TRRs is a complex and evolving question, it has presented its TRR in a form designed to meet the Commission's ratemaking criteria. Vernon further contends that its filing is intended to meet any standard the Commission might apply, up to and including the FPA's just and reasonable standard. In recognition of this goal, Vernon's TRR utilizes proxy numbers for its rate of return on common equity and depreciation rates that are identical to those utilized by the IOU, in this case SCE, who is in the same TAC area. Additionally, Vernon utilizes the same methodology for developing A&G expenses, cash working capital allowance and regulatory commission expense as that utilized by SCE in its TRR proceedings before the Commission. Vernon's proposed annual TRR is approximately \$13.1 million based on historical 1999 calendar year data.

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<sup>1</sup>Vernon states that it has submitted its TRR filing in the form of a petition for declaratory order similar to the form and procedure provided under Order No. 888 for open access transmission filings by non-public utilities -- so-called Non-Jurisdictional or "NJ" filings.

## II. Notice of Filing and Responsive Pleadings

Notice of Vernon's filing was published in the Federal Register<sup>2</sup> with comments, protests and motions to intervene due on or before September 29, 2000. Timely motions to intervene raising no substantive issues were filed by California Department of Water Resources, Metropolitan Water District of Southern California, Sempra Energy, the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California, and jointly by Enron Energy Services, Inc. and Enron Power Marketing, Inc. Timely motions to intervene with protests or comments were filed by Southern California Edison (SCE), Pacific Gas and Electric Company (PG&E), Transmission Agency of Northern California (TANC), Modesto Irrigation District (Modesto), the ISO, California Electricity Oversight Board (CEOB) and jointly by the Cities of Redding, Santa Clara and Palo Alto and the M-S-R Public Power Agency (Cities/M-S-R). The Sacramento Municipal Utility District (SMUD) filed a motion to intervene out of time raising no substantive issues.

CPUC, in its protest, generally argues that Vernon should be required to file, under Section 205 of the FPA and in compliance with Part 35 of the Commission's Regulations, detailed cost of service data and requisite rate schedules. Specifically, CPUC identifies three problem areas: (1) the use of the 11.6 % return on equity granted to SCE that is used by Vernon as its overall cost of capital; (2) Vernon's proposed unused transmission capacity adjustment; and (3) the recovery of A&G expenses based on an internal labor ratio. CPUC requests the filing be suspended and set for hearing to allow parties to further review the issues present in Vernon's filing. CEOB, in its comments, supports CPUC's protest and request for hearing.

SCE, in its protest, opposes Vernon's submittal, in this docket and at this point, to become a Participating TO on two grounds. First, it argues that Vernon's potential membership cannot result in SCE's ratepayers being responsible for paying a share of Vernon's TRR, where such TRR has not been determined by the Commission to be just and reasonable under Commission ratemaking principles and policies. Second, it asserts that Vernon must join and participate in the ISO on a basis comparable to all other Participating TOs. More specifically, SCE argues that the Commission's May 31 Order concluded that the ISO's TAC cannot be implemented without all components of this rate being found just and reasonable. SCE asserts that Vernon's suggestion in its filing that its TRR may be reviewed either under the just and reasonable standard or under the comparability standard, which the Commission has applied to non-jurisdictional (NJ) open-access transmission tariff (OATT) filings, is incorrect. SCE contends that review under the NJ comparability standard is wholly unnecessary. In addition, SCE takes issue

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<sup>2</sup>65 Fed. Reg. 55,235 (2000).

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with a number of cost of service issues included in Vernon's TRR, including the proper rate of return. Finally, SCE argues that the Commission should require Vernon to adopt a TO Tariff that closely matches the TO Tariffs of the public utility Participating TOs.

PG&E submits that the central issue in this proceeding is whether the Commission should conduct a substantive review of Vernon's TRR to determine whether it is cost justified, thereby ensuring that customers who pay that TRR are not charged excessive rates. PG&E argues that Vernon's position that a substantive review is unnecessary because the Commission should defer to Vernon's City Council's adoption of the proposed TRR has no merit. PG&E echoes SCE's arguments regarding proper jurisdictional review, the appropriateness of the "NJ" standard and concerns regarding specific cost of service items. PG&E concludes that review must be a traditional cost of service review, that Vernon has not filed adequate support to permit such a review and that the filing should therefore be rejected.

The ISO, in its comments, requests that the Commission provide detailed guidance on the type of approval a Governmental Entity may request of the Commission for both the TRR and the TO Tariff, and the standard by which that request is to be evaluated. Specifically, the ISO seeks guidance on Vernon's calculation of its proposed TRR, including the following: the propriety of deferring portions of the costs of certain transmission facilities until they are fully utilized; the appropriateness of applying another TO's approved equity return to a Governmental Entity's TRR calculation; and the appropriateness of applying the depreciation factor of SCE in lieu of determining a depreciation allowance based on a review of Vernon's own facilities. With regard to Vernon's proposed TO Tariff, the ISO asserts that Vernon must provide more detail in its filing similar, although not identical, to that provided by public utilities.

Modesto, TANC and Cities/M-S-R assert that the Commission, in considering Vernon's petition, should take only those limited actions which are needed to permit Vernon to become a Participating TO. Moreover, Modesto, TANC and Cities/M-S-R contend that any actions that the Commission may take in this proceeding should not be precedential, and should be limited to the circumstances of Vernon's petition. Modesto, TANC and Cities/M-S-R submit that the issues of Commission jurisdiction, the development of the TRR and the role of the RRP should be determined in the ISO TAC matter in Docket No. ER00-2019-000. Modesto and TANC assert that should the Commission find it has jurisdiction in this proceeding, the Commission should indicate that it does not intend to establish rules for TRRs that restrict alternative formulations of TRRs submitted by other entities in the future.

Vernon filed an answer to certain points raised in the protests.

### III. Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2000), the timely, unopposed motions to intervene and the notice of intervention of the entities listed above serve to make them parties to this proceeding. We also find good cause to grant the untimely, unopposed motion to intervene of SMUD because of the early stage of the proceeding, the lack of undue prejudice or delay and SMUD's interest in the proceeding.

We will reject Vernon's answer as an impermissible answer to a protest. See 18 C.F.R. § 385.213(a)(2) (2000).

Proposed TRR

The Commission does not have jurisdiction under sections 205 and 206 of the Federal Power Act (FPA) over municipal entities such as Vernon.<sup>1</sup> However, the Commission does have the authority to evaluate non-jurisdictional activities to the extent they affect the Commission's jurisdictional activities.<sup>2</sup> Here, Vernon seeks to become a Participating TO in the ISO, which is subject to our jurisdiction, by turning over operational control of its transmission entitlements to the ISO and being reimbursed by the ISO through the ISO's collection of a TAC. Vernon voluntarily chose to file its TRR directly with the Commission and the purpose of our review is to determine whether Vernon's rate methodology, in the context of Vernon's participation in a Commission jurisdictional public utility ISO, will result in a just and reasonable component of the ISO's rates.

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<sup>1</sup>See Section 201 (f) of the FPA. The Commission does, however, have jurisdiction to order such entities to provide transmission service on a case-by-case basis under section 211 of the FPA, and to set just and reasonable rates for services ordered under section 211.

<sup>2</sup>See South Carolina Public Service Authority, 75 FERC ¶ 61,209 at 61,696 (1996).

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Under the circumstances here, we will accept Vernon's use of the rate methodology utilized by SCE (an IOU that has determined its TRR), which is a methodology familiar to this Commission. However, as discussed further below, we cannot conclude that Vernon's rate methodology and resulting TRR are just and reasonable unless Vernon modifies certain aspects of its proposal that are inconsistent with the methodology used by SCE.

While the Commission's review indicates that Vernon's proposed rate methodology, which utilizes ratemaking principles consistent with those utilized by IOUs in determining their TRRs, is just and reasonable, the Commission is not here determining or prescribing a single approach to the exclusion of other approaches. Rather, the Commission will consider each specific rate proposal put before it by Governmental Entities and rule on each specific proposal based on the facts presented therein.

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Modifications to Vernon's Proposed Transmission Revenue Requirement

Vernon proposes to adopt the 11.60% return on common equity granted to SCE by the Commission in Opinion No. 445, as its overall cost of capital. CPUC, PG&E and SCE argue that Vernon has submitted no explanation of its cost of funds, no justification for a return identical to the return on common equity for an investor-owned utility, and that it is unreasonable to impose the higher costs associated with an uneconomic capital structure on other Participating TOs. The Commission finds that in this specific instance, where Vernon will be a Participating TO in the same TAC area as SCE, it is acceptable to use the return on common equity granted to SCE as a proxy for the return on common equity for Vernon. Vernon, however, should also use SCE's capital structure so as to be consistent with SCE's cost of capital. Accordingly, the Commission finds Vernon's use of SCE's overall capital structure and the 11.60% return on common equity as the appropriate cost of capital for Vernon in this proceeding.<sup>3</sup>

Vernon's proposed TRR also includes an amortizable expense and a levelized unamortized balance in rate base related to "unused transmission capacity" for its transmission facilities that have previously been placed into service but not fully utilized by Vernon. CPUC, PG&E and SCE protest this inclusion as being inconsistent with Commission precedent on retroactive ratemaking and cost causation. The Commission

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<sup>3</sup>Based on the record in Docket No. ER97-2355-000, the overall cost of capital for Vernon will be 9.29%.

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finds Vernon's proposed inclusion of unused transmission capacity expense to be inconsistent with the costs that SCE includes in its TRR, and, as such, must be excluded from Vernon's TRR.

Proposed Tariff Amendment

Vernon has submitted a one-page tariff sheet in conjunction with its TRR which incorporates its proposed TRR as part of the ISO's Tariff. The ISO and SCE have commented on Vernon's tariff sheet. The ISO states that while Vernon may not have to file a TO Tariff that is identical in every respect to the TO Tariffs filed by public utilities, it must provide detailed tariff sheets to address certain fundamental issues such as eligibility, access charge, dispute resolution and the relationship to the ISO tariff. SCE argues that Participating TOs have several important responsibilities with regard to transmission service and particularly with regard to interconnection service. SCE argues, among other things, that the ISO cannot ensure that its service is non-discriminatory if Vernon does not have a conforming TO Tariff on file.

Vernon states explicitly that it intends to cooperate with the ISO as to procedures to effectuate its goal of becoming a Participating TO on January 1, 2001.<sup>4</sup> The Commission, consistent with this commitment, directs Vernon and the ISO to work together on the appropriate tariff necessary for Vernon to become a viable Participating TO as of January 1, 2001. Vernon is directed to submit the results of such negotiations with the Commission to ensure that the tariff provisions are consistent with those of other the Participating TOs and, to the extent differences exist, to support the need for such differences.

The Commission orders:

(A) Vernon's TRR, as modified, is hereby accepted, as discussed in the body of this order.

(B) Vernon is directed to submit a revised tariff with the Commission, as discussed in the body of this order.

By the Commission.

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<sup>4</sup>Direct Testimony of Vernon witness Clark, page 5.

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Linwood A. Watson, Jr.,  
Acting Secretary.