

105 FERC ¶ 61,276
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. EL03-214-000
ER03-1094-000 and
ER03-1094-001

ORDER DENYING PETITION FOR DECLATORY ORDER, ACCEPTING AND
SUSPENDING PROPOSED SCHEDULING COORDINATOR SERVICES TARIFF,
SUBJECT TO REFUND

(Issued December 9, 2003)

1. On July 21, 2003, Southern California Edison Company (SoCal Edison) filed a petition for declaratory order requesting the Commission to declare that SoCal Edison is not obligated under its Exchange Agreement¹ with the Department of Water and Power of the City of Los Angeles (LADWP) to serve as LADWP's Scheduling Coordinator. Alternatively, SoCal Edison requests that if the Commission finds that SoCal Edison is obligated to serve as a Scheduling Coordinator under the Exchange Agreement, the Commission accept for filing a proposed Scheduling Coordinator Services Tariff (SCS Tariff) allowing for a pass through of Scheduling Coordinator charges imposed by the California Independent System Operator (ISO) on SoCal Edison to LADWP.²
2. In this order, we deny SoCal Edison's petition for declaratory order. We find that SoCal Edison must continue providing Scheduling Coordinator services to LADWP under the Exchange Agreement. Additionally, we find the SCS Tariff may be unjust and unreasonable and therefore is accepted for filing and suspended for a nominal period, to

¹ The Exchange Agreement was accepted for filing by the Commission in Docket No. ER88-300-000.

² SoCal Edison's SCS Tariff was originally filed on July 21, 2003 concurrent with its petition for declaratory order. However, by letter dated September 22, 2003, Commission staff requested additional information regarding the charges SoCal Edison anticipates billing LADWP under the proposed SCS Tariff. SoCal Edison provided additional information on October 10, 2003.

be effective December 9, 2003, sixty days after completion of the filing, subject to refund.

3. This order allows SoCal Edison to recover ISO costs, subject to refund and further Commission order, and affords LADWP refund protection.

Background

4. Prior to the creation of the ISO, SoCal Edison served as both the transmission provider and the control area operator for SoCal Edison's service territory in central, coastal, and southern California. As the control area operator, SoCal Edison scheduled and balanced energy transactions for transmission service for the entire region.

5. The Exchange Agreement was entered into between SoCal Edison and LADWP in April 1987; thus, significantly predating the inception of the ISO. The Exchange Agreement provides for a long term exchange of transmission rights between these two parties on Pacific AC and DC transmission lines, and for firm transmission service for LADWP between the Palo Verde Nuclear Generating Station and the Sylmar Switching Station. Specifically, under the Exchange Agreement, SoCal Edison: (1) provides LADWP 368 MW of transmission service between its Devers and Sylmar substations and 100 MW of transmission service between Palo Verde and Sylmar, 320 MW of transmission capacity on the Extra High Voltage AC Lines; and (2) makes available other amounts of transmission capacity to LADWP, which can vary in both capacity and duration. In exchange, LADWP provides SoCal Edison 500 MW of transmission capacity on the Extra High Voltage DC Line between Sylmar and the Nevada-Oregon border and an additional 100 MW of transmission capacity on the Extra High Voltage DC Line.

6. With the creation of the ISO, SoCal Edison transferred operational control of its high voltage transmission facilities (facilities at 200 kV or above) to the ISO. As a result, the ISO now performs the control area functions necessary for the scheduling and dispatching of generation and transmission. The ISO developed the concept of a Scheduling Coordinator as part of the new industry structure. A Scheduling Coordinator serves as the only interface between the ISO and transmission customers, and as such, every entity that desires access to the ISO-controlled grid must utilize a Scheduling Coordinator. Under the ISO Tariff, Scheduling Coordinators are charged for ISO-provided control area services and related costs and the ISO will not look beyond the Scheduling Coordinator for payment of those ISO services.

Instant Filing

7. SoCal Edison petitions the Commission to declare that it has no obligation to act as a Scheduling Coordinator for LADWP under the Exchange Agreement. SoCal Edison argues that the Scheduling Coordinator service it now performs is a new service under the ISO regime, and that the Exchange Agreement does not specifically address the provision of the Scheduling Coordinator service.

8. In the alternative, if the Commission declines to make such a finding, SoCal Edison requests that the Commission accept for filing the SCS Tariff allowing SoCal Edison to pass through all of the ISO-imposed Scheduling Coordinator charges to LADWP. SoCal Edison states that the costs that will be passed through to LADWP under the proposed SCS Tariff have already been found by the Commission to be just and reasonable when the Commission approved the ISO Tariff. SoCal Edison's proposed SCS charge will be a monthly charge in the amount of the actual costs incurred by SoCal Edison from the ISO during the trade month for the provision of Scheduling Coordinator services by SoCal Edison, including any adjustments from previous months. In addition, to the extent charges assessed under this SCS Tariff are also provided for in the Exchange Agreement, LADWP's compliance with the Exchange Agreement provisions providing for recovery is waived to the extent such charges are recovered under the proposed SCS Tariff. Furthermore, SoCal Edison argues that the proposed SCS Tariff is not affected by the Mobile-Sierra doctrine³ because it provides for recovery of costs for a service different from the service provided under the Exchange Agreement. SoCal Edison requests an effective date of September 20, 2003 for the SCS Tariff.

9. As noted above, in response to the Commission staff's letter, SoCal Edison provided additional information regarding the types of charges⁴ and associated revenues that it will bill LADWP as a pass-through of ISO costs under the proposed SCS Tariff. SoCal Edison states that while these types of charges are representative of the charges to be levied upon LADWP, additional types of charges may be added as they are incurred by SoCal Edison in its role as a Scheduling Coordinator for LADWP.

³ See United Gas Pipe Line Co. v. Mobile Gas Serv. Corp., 350 U.S. 332 (1956) (Mobile) and FPC v. Sierra Pacific Power, 350 U.S. 348 (1956) (Sierra).

⁴ SoCal Edison summarizes the different types of Scheduling Coordinator charges into three groups: (1) Market Charges; (2) Grid Management Charges; and (3) FERC Fees.

Notice of the Filing and Responsive Pleadings

10. Notices of the filing were published in the Federal Register, 68 Fed. Reg. 45,809 and 65,261 (2003), with comments, protests, or interventions due on or before October 31, 2003. Timely motions to intervene were filed by entities listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.214 (2003), the filing of a timely motion to intervene that has not been opposed makes the movant a party to the proceeding.

11. The following parties filed comments and/or protests along with their interventions: LADWP; M-S-R Public Power Agency, the City of Santa Clara, California, and the City of Redding, California (collectively, Cities/M-S-R); and the ISO.

12. LADWP urges the Commission to decline jurisdiction and deny SoCal Edison's petition for declaratory order. Specifically, LADWP argues that because contract interpretation in this case will involve determination of the parties' intent, the proper forum for this issue is the state court. LADWP also informs the Commission that SoCal Edison filed a complaint against LADWP in the Superior Court of the State of California, seeking damages and court declaration that SoCal Edison is not obligated to perform Scheduling Coordinator services for LADWP under the Exchange Agreement.

13. LADWP further argues that SoCal Edison is obligated to perform Scheduling Coordinator services free of charge, as indicated by the Exchange Agreement and the parties' course of conduct. LADWP believes that there is no distinction between the Scheduling Coordinator functions SoCal Edison performed prior to and after the inception of the ISO. Therefore, LADWP argues that SoCal Edison's claim that the SCS Tariff is a "new service" is not valid. LADWP states that these charges are for the same type of activities that SoCal Edison performed under the Exchange Agreement before the ISO existed. LADWP contends that when SoCal Edison and LADWP amended the Exchange Agreement in 1999, after SoCal Edison had turned over operational control of its high voltage transmission facilities to the ISO, SoCal Edison knew that the ISO tariff provided for Scheduling Coordinator service, and that transmission owners, including SoCal Edison, would be charged for such services. Nevertheless, SoCal Edison and LADWP did not make any changes related to scheduling services in an amendment to the Exchange Agreement at that time.

14. In connection with this, LADWP argues that the proposed SCS Tariff is also barred by the Mobile-Sierra doctrine because the Exchange Agreement does not give SoCal Edison the ability to change the present rate (a rate with no charge), and the proposed tariff would change the rate, albeit outside the confines of the Exchange Agreement. In support, LADWP argues that there is no provision in the Exchange Agreement giving SoCal Edison the ability to change the Exchange Agreement to now charge for scheduling service that was previously provided free as part of the overall

negotiated exchange arrangement. LADWP concludes that since the Exchange Agreement does not permit unilateral rate changes by either SoCal Edison or LADWP, and because the SCS Tariff as proposed is not in the public interest, these changes violate the Mobile-Sierra doctrine.

15. In addition, LADWP contends that SoCal Edison's proposed SCS Tariff has many deficiencies and that, at the very least, the Commission should direct a compliance filing, while suspending the proposed filing for five months and setting it for hearing.

16. Finally, LADWP states that it operates its own control area for its load, so that, unlike the transmission and control area customers who are responsible for ISO's Grid Management Charge costs, the Commission cannot ascribe to LADWP a benefit from ISO operation of its control area.

17. Cities/M-S-R also identifies various deficiencies in the proposed SCS Tariff. In support of its position, Cities/M-S-R incorporates by reference its request for rehearing filed in Docket No. ER02-2107-001. In the Docket No. ER02-2107 proceeding, the Commission accepted for filing, subject to certain conditions, an amendment to the existing firm transmission service agreement between SoCal Edison and Cities/M-S-R, to provide for recovery of costs that SoCal Edison was incurring in connection with the provision of the Scheduling Coordinator services to Cities/M-S-R.⁵ Cities/M-S-R believes that SoCal Edison's proposed SCS Tariff herein has the same defects as the revised tariff sheets accepted in that proceeding. Specifically, in its rehearing request, Cities/M-S-R raises the following issues. First, in Cities/M-S-R's opinion, the pass-through of the ISO's costs is improper because at least a portion of these costs are recovered through SoCal Edison's existing agreements. Second, Cities/M-S-R believes that SoCal Edison's proposed SCS Tariff neither adequately describes nor provides justification and cost support for the proposed pass-through of the ISO costs.

18. ISO supports SoCal Edison's proposed recovery of Scheduling Coordinator charges. ISO also states that under Section 2.2.3 of the ISO Tariff, the ISO accepts schedules and bids for energy and ancillary services only from Scheduling Coordinators. Thus, ISO concludes that regardless of the Commission's decision in this proceeding, the Scheduling Coordinator service for LADWP in connection with the Exchange Agreement must be rendered by an ISO-certified Scheduling Coordinator.

⁵ Southern California Edison Co., 100 FERC ¶ 61,191 (2002).

19. SoCal Edison filed an answer to LADWP's protest. Answers to protests are generally not permitted pursuant to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,⁶ unless otherwise permitted by the decisional authority. We are not persuaded to allow SoCal Edison's answer to LADWP's protest.

Discussion

20. We disagree with LADWP's view that the Commission should not decide the issue of whether SoCal Edison should be permitted to terminate its role as a Scheduling Coordinator for LADWP under the Exchange Agreement. Generally, the Commission's decision whether to assert jurisdiction over contractual issues that could be litigated in state courts depends on three factors.⁷ These factors are: (1) whether the Commission possesses some special expertise which makes the case peculiarly appropriate for Commission decision; (2) whether there is a need for uniformity of interpretation of the type of question raised in the dispute; and (3) whether the case is important in relation to the regulatory responsibilities of the Commission.⁸

21. Interpretation of the Exchange Agreement involves examination of technical issues which are within the Commission's special expertise. Specifically, our determination of issues in this case will depend on whether the Scheduling Coordinator service that SoCal Edison is currently providing to LADWP can in fact be considered a new service not previously provided under the Exchange Agreement. Also, we believe that the issue in this case requires uniform interpretation. The question of whether certain service constitutes a new service under a system of regional independent operation is a recurring issue,⁹ and it is important that consistent criteria be applied. For the same reason, the issues in this case are important in relation to our regulatory responsibilities.

22. On the merits, we deny SoCal Edison's petition for declaratory order and decline to declare that SoCal Edison is not obligated to serve as LADWP's Scheduling Coordinator under the Exchange Agreement. SoCal Edison and the ISO entered into a Responsible Participating Transmission Owner Agreement (RPTO Agreement) in order

⁶ 18 C.F.R. § 385.213(a)(2) (2003).

⁷ See *Arkansas Louisiana Gas Company v. Hall, et al.*, 7 FERC ¶ 61,175 (1979).

⁸ Id. at 61,322.

⁹ See, e.g., *Pacific Gas and Electric Company, et al.*, 100 FERC ¶ 61,156 (Opinion 458), clarified and reh'g denied, 101 FERC ¶ 61,151 (2002); and *Pacific Gas and Electric Company, et al.*, 100 FERC ¶ 61,160 (Opinion 459), reh'g denied, 101 FERC ¶ 61,139 (2002).

to, among other things, implement provisions of the ISO Tariff as they relate to existing contracts that provide the terms by which the Responsible Participating Transmission Owner will act as a Scheduling Coordinator.¹⁰ The ISO informed SoCalEdison that it would not agree to SoCalEdison's discontinuance of scheduling service under the RPTO Agreement unless LADWP so agreed.¹¹ LADWP has not agreed to SoCal Edison's proposed discontinuance of Scheduling Coordinator service, nor has SoCal Edison demonstrated that its continued role as a Scheduling Coordinator is contrary to the public interest, as long as LADWP remains opposed.

23. The proposed SCS Tariff filed by SoCal Edison describes the mechanism of the pass-through of the Scheduling Coordinator charges billed by the ISO for transactions undertaken under the Exchange Agreement. As noted above, the additional data submitted by SoCal Edison in response to a Commission request for additional information clarifies which types of charges SoCal Edison proposes to pass through to LADWP under the proposed SCS Tariff. Issues regarding what costs may be passed through to existing transmission customers have been raised in other proceedings pending before the Commission. We find that the proposed SCS Tariff has not been shown to be just and reasonable and may be unjust and unreasonable, and therefore, we will accept it, effective December 9, 2003, subject to refund, and suspend it for a nominal period, subject to rehearing of Opinion 463¹² and further order in the instant proceeding.

¹⁰ The RPTO Agreement was negotiated as part of a settlement filed by the ISO, on March 12, 1999, in Docket No. ER98-1058-000, et al.

¹¹ See LADWP's Protest at Attachment 9.

¹² California Independent System Operator Corp., et al., Opinion 463, 103 FERC ¶ 61,114 (2002), reh'g pending, (whether a new tariff filed by PG&E that intended to pass through ISO Grid Management Charge costs to its Existing Transmission Contract customers is just and reasonable).

The Commission orders:

(A) SoCal Edison's petition for declaratory order is hereby denied for the reasons stated in this order.

(B) SoCal Edison's proposed SCS Tariff is hereby accepted and suspended pending rehearing of Opinion 463 and further Commission order in this proceeding, as discussed in the body of this order, effective December 9, 2003, 60 days after the completion of the filing, subject to refund.

By the Commission.

(S E A L)

Magalie R. Salas
Secretary

Appendix

List of Interveners
Docket Nos. EL03-214-000 and ER03-1094-000

Arizona Public Service Company

The California Independent System Operator Corporation*

The City of Los Angeles Department of Water and Power*

The Metropolitan Water District of Southern California

The Modesto Irrigation District

The M-S-R Public Power Agency and the Cities of Santa Clara and Redding, California*

Northern California Power Agency

Pacific Gas and Electric Company

San Diego Gas & Electric Company

* comments and/or protests