

UNITED STATES OF AMERICA 106 FERC ¶ 61,218
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern California Edison Company

Docket Nos. ER04-383-000
ER04-384-000
ER04-384-001
ER04-385-000
ER04-386-000

ORDER ACCEPTING AND SUSPENDING WHOLESALE
DISTRIBUTION AGREEMENTS AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(March 5, 2004)

1. In this order, the Commission accepts for filing and suspends for a nominal period, to become effective January 10, 2004, four executed interconnection facilities agreements (Interconnection Agreements)¹ and four executed service agreements (Service Agreements)² (collectively, Agreements) between Southern California Edison Company (SCE) and the City of Moreno Valley (Moreno Valley) for wholesale distribution service to be provided to Moreno Valley by SCE. The order also sets this matter for hearing, but holds the hearing in abeyance so that the parties may engage in settlement discussions. This order benefits customers because it allows SCE to provide service to Moreno Valley while encouraging the parties to resolve issues through direct settlement negotiations.

¹ The Interconnection Agreements specify the terms and conditions under which SCE will design, construct, install, and own the interconnection facilities and Moreno Valley will pay for such facilities.

² The Service Agreements set forth SCE's agreement to provide wholesale distribution service to Moreno Valley. SCE's wholesale distribution service provides for the transmission of power by SCE from the California Independent System Operator (CAISO) controlled grid to a customer's distribution system. See Pacific Gas & Elec. Co., 88 FERC ¶ 63,007 at 65,062 (1999), aff'd, 100 FERC ¶ 61,156 at 61,568 (2002).

I. Background

2. Moreno Valley applied to SCE for wholesale distribution service under SCE's Wholesale Distribution Access Tariff³ from the California Independent System Operator-controlled (CAISO) grid at SCE's Valley Substation to the proposed SCE-Moreno Valley interconnections. Under the Agreements, SCE will construct certain interconnection facilities and Moreno Valley will construct facilities to serve its end-use customers in four new development areas.⁴ In addition, SCE requests waiver of the Commission's 60-day prior notice requirement to permit an effective date for the Agreements of January 10, 2004. The Service Agreements provide that service shall begin on the later of: (1) April 11, 2004,⁵ with the exception of one that was amended to February 6, 2004;⁶ (2) the date on which construction of any direct assignment facilities and/or system upgrades is completed; or (3) such other effective date as is permitted by the Commission. The Interconnection Agreements provide that they shall become effective on the date allowed by the Commission.

II. Notice of Filings and Responsive Pleadings

3. Notice of SCE's filings was published in the Federal Register, 69 Fed. Reg. 33, 38-39, 3574 (2004), with interventions and protests due on or before January 30, 2004. Moreno Valley filed a motion to intervene and protest and SCE filed an answer in each docket.

III. Moreno Valley's Protest

4. Moreno Valley states that, since signing the Agreements, it has discovered that similarly situated municipalities have entered into agreements with SCE that include substantially different charges and different rate methodologies. For example, Moreno Valley asserts that the contract demand and the resulting demand charge in its Service Agreements are not based on the same methodology used by SCE in other service

³ FERC Electric Tariff, First Revised Volume No. 5

⁴ These points of service are: Moreno Beach (Docket No. ER04-383), Cactus Avenue (Docket No. ER04-384), Iris Avenue (Docket No. ER04-385), and Eucalyptus Avenue (Docket No. ER04-386).

⁵ See Docket Nos. ER04-383-000, ER04-385-000, and ER04-386-000.

⁶ See Docket No. ER04-384-001.

agreements on file with the Commission. Based on this disparate treatment, Moreno Valley states that it is being unduly discriminated against in violation of Section 205 of the Federal Power Act.⁷ Therefore, Moreno Valley requests that the Commission find that the proposed rates have not been shown to be just and reasonable, suspend the effective date of the Agreements nominally for one day, and set them for hearing.

IV. Discussion

A. Procedural Matters

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), Moreno Valley's timely, unopposed motion to intervene serves to make it a party to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept SCE's answer and will, therefore, reject it.

B. The Commission's Determination

6. Moreno Valley's concerns raise factual questions concerning the Agreements that we cannot summarily decide on the record before us. These concerns are best addressed in the hearing and settlement judge procedures that we order herein. In addition, based on our preliminary review of the Agreements, we find that they may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed Agreements for filing, suspend them for a nominal period, and set them for hearing, to become effective, subject to refund, on the effective date requested by SCE. We find good cause to grant SCE's request for waiver of the Commission's 60-day prior notice requirement to permit an effective date of January 10, 2004.⁸

⁷ Moreno Valley Protest at 2 (citing 16 U.S.C. §824(d) (2000)).

⁸ See 18 C.F.R. §35.11 (2003); see also Central Hudson Gas & Elec. Corp., et al., 60 FERC ¶ 61,106 at 61,338-39 (stating that the Commission generally will grant waiver for filings that provide for new service that is not pursuant to an accepted contract or settlement if good cause is shown and the agreement is filed prior to the commencement of service), reh'g denied, 61 FERC ¶ 61,089 (1992); accord, Cleveland Elec. Illuminating Co., 76 FERC ¶ 61,156 at 61,926 (1996).

7. While we are setting this proceeding for a trial-type, evidentiary hearing, we will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, in order to assist the parties in resolving this matter. If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.⁹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The proposed Agreements are hereby accepted for filing and suspended for a nominal period, to become effective January 10, 2004, subject to refund, as discussed in the body of this order.

(B) SCE's request for waiver of the Commission's 60-day prior notice requirement is hereby granted.

(C) 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 the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket Nos. ER04-383-000, ER04-384-000, ER04-384-001, ER04-385-000, and ER04-386-000, concerning the justness and reasonableness of the Agreements. As discussed in the body of this order, the hearing shall be held in abeyance to provide time for the parties to resolve the issues through settlement judge procedures.

(D) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2003), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

⁹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. FERC's website contains a listing of Commission Judges and a summary of their background and experience. (www.ferc.gov - click on Office of Administrative Law Judges.)

(E) Within 60 days of the date of this order, the settlement judge shall file a report with the Chief Judge and the Commission on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their efforts, or if appropriate, provide for a formal hearing by assigning the case to a presiding judge. If the parties are given additional time to continue their efforts, they shall file a report at least every 30 days thereafter informing the Commission and the Chief Judge of their progress toward resolving the outstanding issues.

(F) If the discussions between the parties fail, and a formal hearing is to be held, a presiding judge to be designated by the Chief Judge shall convene a conference in this proceeding to be held within approximately 15 days of the date the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., 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.

(G) The rate schedule designations are accepted, as designated, for filing.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.