

UNITED STATES OF AMERICA 103 FERC ¶ 61,003
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

City of Corona, California)
)
 v.) Docket No. EL02-126-000
)
Southern California Edison Company)

ORDER ESTABLISHING SETTLEMENT JUDGE PROCEDURES

(Issued April 1, 2003)

1. This order sets for settlement judge procedures the terms and conditions under which Southern California Edison Company's (SoCal Edison's) system will be physically interconnected with the City of Corona, California (Corona). This interconnection is in the public interest because it will allow increased competition.

I. Background

2. The background of this proceeding is discussed at length in the Proposed Order issued in this proceeding.¹ In brief, Corona sought to interconnect Corona's distribution substation (Substation), located at the Golden Cheese Company of California (Golden Cheese), to SoCal Edison's transmission lines.

3. On September 11, 2002, Corona filed a complaint against SoCal Edison alleging that SoCal Edison's refusal to interconnect the Substation to SoCal Edison's transmission

¹City of Corona, 101 FERC ¶ 61,240 (2002) (Proposed Order).

lines violated Sections 202,² 210³ and 212⁴ of the FPA and SoCal Edison's transmission tariff. Corona requested an order directing physical interconnection of the Substation and fast track treatment of its complaint pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.206 (2002).

4. On November 19, 2002, Edison Electric Institute (EEI) filed a motion to intervene out of time and comments.

5. On November 25, 2001, the Commission issued a Proposed Order that directed SoCal Edison to interconnect with Corona under Section 210 of the FPA.⁵ The Commission, among other things, made preliminary findings that the relevant statutory standards of Sections 210 and 212 of the FPA⁶ were met and directed SoCal Edison and Corona to negotiate appropriate rates, terms and conditions of interconnection.⁷

6. On January 24, 2003, SoCal Edison filed a motion for clarification and a brief. On that same date, Corona filed comments and a brief. On February 10, 2003, SoCal Edison and Corona filed responses.

²16 U.S.C. § 824a (2000).

³16 U.S.C. § 824i (2000).

⁴16 U.S.C. § 824k (2000).

⁵101 FERC ¶ 61,240.

⁶16 U.S.C. § § 824i, 824k (2000).

⁷Section 212(c)(1) of the FPA requires that the Commission issue a proposed order setting a reasonable time for the parties to agree to terms and conditions for carrying out the order, including the apportionment of and compensation for costs, before issuing a final order. Thus, the Proposed Order gave SoCal Edison and Corona 45 days to negotiate, with an additional 15 days to submit to the Commission all terms and conditions on which they have mutually agreed, accompanied by explanations. If matters were still in dispute, they were also directed to file briefs to support their final positions, accompanied by supporting data, at the end of the 15-day period. 101 FERC ¶ 61,240, P 35-36.

II. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), we will grant EEI's untimely motion to intervene, since we find that doing so at this early stage of this proceeding will not unduly disrupt the proceeding or place undue burdens on the parties.

B. Request for Stay

8. SoCal Edison requests that the Commission stay these proceedings until and unless the Commission grants a future request from Corona for wholesale distribution service pursuant to Sections 211 and 212 of the FPA. SoCal Edison argues that finalizing an Interconnection Agreement (IA) only would be a waste of the parties' time and resources since Corona desires not only an interconnection but also transmission service under SoCal Edison's wholesale distribution access tariff (WDAT).

9. We will deny this request. Corona's right to an interconnection can be determined independently of its right to wholesale distribution service, and SoCal Edison has not justified a stay of the former pending the latter.⁸

C. Wholesale Distribution Service

1. Corona's Argument

10. Corona requests that the Commission confirm that Corona is an "eligible customer" for wholesale distribution service and interconnection with SoCal Edison. It also requests that the Commission direct SoCal Edison to offer and execute both an IA and a WDAT form of service agreement consistent with the contract between SoCal Edison and Corona's Department of Water and Power or as provided in SoCal Edison's FERC tariff, as required by Section 6 of the SoCal Edison draft IA.

⁸Under an Order No. 888 Open Access Transmission Tariff, the Commission has stated that a customer can secure the interconnection component of transmission service separately from the delivery component. See Tennessee Power Company, 90 FERC ¶ 61,238, 61,761-2, reh'g denied, 91 FERC ¶ 61,271 (2000).

11. Corona argues that according to SoCal Edison's WDAT, specifically the section entitled "Applicability" and Section 2.8, interconnection is a necessary subcomponent of WDAT service, and, therefore, one cannot exist without the other. Corona asserts that in its complaint it requested both an interconnection and wholesale distribution service under Section 6.2 of the WDAT and contends that the Commission's Proposed Order intended to authorize WDAT service with the interconnection.

2. SoCal Edison's Response

12. SoCal Edison argues that, although Corona originally applied to SoCal Edison for both interconnection and wholesale distribution service under SoCal Edison's WDAT, Corona did not ask the Commission in its complaint to compel wholesale distribution service under Sections 211 and 212 of the FPA. SoCal notes that, in the Proposed Order, the Commission could not have found Corona eligible for service under the WDAT because the Commission did not perform an analysis under Section 212(h) of the FPA. SoCal Edison also seeks clarification that the Proposed Order did not rule on Corona's eligibility for wholesale distribution service under Section 212(h) of the FPA and/or SoCal Edison's WDAT. SoCal Edison also asks that the Commission indicate its preference for further proceedings regarding Corona's eligibility for wheeling pursuant to Section 211/212 of the FPA.

3. Commission Determination

13. The Proposed Order directed interconnection only. Corona did not seek in its complaint and we did not direct in the Proposed Order that transmission service of any sort be provided at this time. Corona repeatedly stated in its complaint that it only sought interconnection. Accordingly, the issue of Corona's eligibility for transmission service is not properly before us.

D. Rule 2 of SoCal Edison's Retail Tariff

1. SoCal Edison's Argument

14. SoCal Edison argues that, absent a deviation, its retail tariff will not permit Golden Cheese to retain a retail load point of interconnection with SoCal Edison if Golden Cheese becomes a retail customer of Corona. It states that, although the issue of whether Golden Cheese may remain interconnected to SoCal Edison is state-jurisdictional, the nature of the ultimate configuration of the Corona-SoCal Edison interconnection will depend on how the retail interconnection issue is addressed. It contends that a complicating factor is that a Qualifying Facility (QF) uses the Golden

Cheese-SoCal Edison interconnection to sell power first to Golden Cheese but also to SoCal Edison under a Power Purchase Agreement.

15. SoCal Edison proposes two solutions in Section 9.2 of the draft IA: (1) Corona would become the sole retail energy supplier to Golden Cheese for 100 percent of its load at all times, or (2) Corona would seek from the California Public Utilities Commission (California PUC) permission for a deviation from SoCal Edison's retail tariff. SoCal Edison states that it cannot knowingly enter into an IA that includes terms and conditions that appear to violate its retail tariff. While acknowledging that the resolution of the underlying retail issue is not the Commission's task, SoCal Edison requests that the Commission permit SoCal Edison to retain Section 9.2 of the draft IA, if and when the Section 212(h) issue is resolved.

2. Corona's Response

16. Corona asserts that SoCal Edison's argument is incorrect for two reasons: (1) the wholesale distribution access service and interconnection Corona has allegedly requested pursuant to a Commission-approved tariff would allow power to be transported in interstate commerce on ISO-controlled interstate transmission lines to SoCal Edison for WDAT wholesale distribution service to Corona as a distribution company for resale within its distribution service territory; and (2) Rule 2 only provides a general description of electrical service and does not preclude service from a competing distribution service provider. Corona contends that SoCal Edison has failed to note that: (1) its retail service is provided to the QF, (2) the customer SoCal Edison refers to (i.e., Golden Cheese) is not directly connected to SoCal Edison, and (3) the load Corona seeks to serve (i.e., Golden Cheese) is not fully served, even indirectly, by SoCal Edison.

17. Corona also argues that SoCal is effectively creating a situation in which parties must deal exclusively with SoCal Edison or exclusively with another party and have no customer choice or variation. Corona contends that this situation is inappropriate and that SoCal Edison has not pointed to any state or federal law, rule, order or regulation which supports its position. It notes that the Proposed Order specifically approved service to Corona because it would allow increased competition.

3. Commission Determination

18. Concerns regarding SoCal Edison's retail tariff are beyond the scope of the Commission's jurisdiction and, therefore, beyond the scope of this proceeding. The appropriate forum for raising retail tariff issues is the California PUC or other state forum. The only relevant issue in this proceeding is Corona's entitlement to an

interconnection and the rates, terms and conditions of an interconnection agreement. SoCal Edison is directed, therefore, to remove Section 9.2 from the draft IA.

E. Further Action

19. We are unable to issue a final order at this time. The parties have not reached agreement on the rates, terms and conditions of the interconnection and have not provided sufficient detail of the existing layout of the facilities and proposed structure of the interconnection for the Commission to approve the interconnection. Accordingly, we direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in this proceeding; otherwise, the Chief Administrative Law Judge will select a judge for this purpose.¹⁰ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the results of settlement discussions. At that time, the Commission will take appropriate action.

20. The parties shall provide the settlement judge with sufficient information to facilitate the development of a mutually agreeable interconnection. Such information should include detailed one line diagrams of the proposed Substation and optional proposed interconnection designs.

The Commission orders:

(A) EEI's motion to intervene is hereby granted.

(B) SoCal Edison's request for stay is hereby denied, as discussed in the body of this order.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2002), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge. Such settlement judge shall have all powers and duties

⁹18 C.F.R. § 385.603 (2002).

¹⁰If 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. The Commission's website contains a listing of the Commission's judges and a summary of their background and experience (www.ferc.gov - Click on Offices under Commission Matters).

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enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge.

(D) 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 results of the settlement discussions. At that time, the Commission will take appropriate action.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.