

107 FERC ¶ 61,017
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. ER02-2189-001

ORDER ON REQUESTS FOR REHEARING AND ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued April 15, 2004)

1. This order addresses the request for rehearing filed by Southern California Edison Company (SoCal Edison) and the request for clarification or, in the alternative, rehearing, filed by Whitewater Hill Wind Partners, LLC (Whitewater) of the Commission's order issued in this proceeding on August 27, 2002 (August 27 Order).¹ The August 27 Order conditionally accepted SoCal Edison's filing, suspended it and made it effective June 29, 2002, subject to refund, and set for hearing tax-related issues regarding the interconnection agreement (IA) between SoCal Edison and Whitewater. We will grant the requests for rehearing to a limited extent. As discussed below, upon further consideration of the issue of upgrades, we will set for hearing (and establish settlement judge procedures) whether the disputed upgrades are network upgrades, which may not be directly assigned, or "distribution"² upgrades, which may be directly assigned.

¹ Southern California Edison Company, 100 FERC & 61,219 at P 24-26 (2002).

² We note that the term "distribution" is often confused with "local distribution." As we explain in Standardization of Generator Interconnection Agreements and Procedures, Order No. 2003, 68 Fed. Reg. 49,846 (August 19, 2003), FERC Stats. & Regs. ¶ 31,146 (2003), order on reh'g, Order No. 2003-A, 106 FERC ¶ 61,220 (March 5, 2004), reh'g pending.

"Local distribution" is a legal term; under FPA section 201(b)(1), the Commission lacks jurisdiction over local distribution facilities.

"Distribution" is an unfortunately vague term, but it is usually used to refer
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2. This order will benefit customers by ensuring that the rates, terms and conditions for interconnection service are just and reasonable, thus encouraging more competitive markets.

I. Background

3. This proceeding arises from Whitewater's request that SoCal Edison interconnect Whitewater's proposed 66 MW wind generating facility (Whitewater Project) with SoCal Edison's Sanwind Substation so that Whitewater can deliver energy to the California Independent System Operator Inc. (CAISO) grid, at the Windpark Tap of the Devers-Garnet-Windpark-Banning-Zanja 115 kV line (Devers-Zanja line).³ SoCal Edison determined that, initially, 65 MW of capacity would be available for Whitewater, but that, in order to continue to accommodate Whitewater's request after a higher-queued generator came on line, a reconfiguration of the Devers-Zanja line would be required.⁴

4. SoCal Edison filed with the Commission three executed agreements between SoCal Edison and Whitewater: (1) the Service Agreement for Wholesale Distribution Service (Service Agreement); (2) the IA; and (3) the Reliability Agreement.⁵

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to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are "local distribution" facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

Id. at P 803-04 (footnotes and citations omitted). Therefore, in this order we will refer to the facilities that SoCal Edison calls distribution as "non-integrated facilities."

³ SoCal Edison provides transmission service under its "Wholesale Distribution Access" Tariff (WDAT). SoCal Edison states that this tariff governs wholesale service across Edison's non-integrated facilities for eligible wholesale customers; it does not provide service for retail sales or purchases. See SoCal Edison's proposed WDAT, Docket No. ER97-2355-000, filed March 31, 1997.

⁴ See SoCal Edison's System Impact Study and cover letter dated October 12, 2001 and SoCal Edison's Facilities Study and cover letter dated January 31, 2002.

⁵ These agreements will be referred to collectively as the "executed agreements."

5. In the August 27 Order, the Commission considered whether the cost of reconfiguring the Devers-Zanja line should be treated as a transmission network upgrade (in which case Whitewater would pay the cost up front, and then receive reimbursement, plus interest, through transmission credits) or as an upgrade to a non-integrated facility (in which case the cost would be directly assignable to Whitewater, without reimbursement). SoCal Edison argued that the Commission has already classified the Devers-Zanja line as “local distribution”⁶ and that, since required upgrades would be made to that system, the costs are properly assigned to Whitewater. Whitewater argued that the Devers-Zanja line performs a network function and that reconfiguring the line thus should be treated as a network upgrade, the costs of which are not directly assignable to Whitewater.

6. The Commission conditionally accepted the executed agreements for filing, suspended them for a nominal period, and made them effective subject to refund.⁷ We stated that the issue is not “whether the relevant SoCal Edison facilities are classified as distribution for some purposes; it is whether they function as part of the integrated transmission network.”⁸ We explained that facilities may have multiple uses that may change over time. The local distribution designations SoCal Edison cited were for the limited purpose of determining which of SoCal Edison’s facilities are under the jurisdiction of states and which are under the jurisdiction of the Commission for purposes of the state’s retail access initiative.⁹ We further stated that an “integrated transmission grid is a cohesive network moving energy in bulk that is in a dynamic state of development and that even remote facilities are part of the grid if they are merely the first step of what will eventually be a network loop.”¹⁰

7. In addition, the Commission reiterated its well-established policy that a utility’s transmission network facilities include all of its facilities “at or beyond the point” where

⁶ SoCal Edison cites Pacific Gas and Electric Co., et al., 77 FERC ¶ 61,077 (1996).

⁷ August 27 Order, 100 FERC ¶ 61,219 at P 25. We also set for hearing certain disputed tax-related issues, which the parties subsequently settled. Id. at P 24, 26; Southern California Edison Company, 103 FERC ¶ 61,196 (2003) (order approving settlement agreement).

⁸ August 27 Order, 100 FERC ¶ 61,219 at P 18.

⁹ Id.

¹⁰ Id.

the generator connects to the grid.¹¹ Noting that SoCal Edison described the disputed facilities as those required to ultimately deliver power to the CAISO grid, we found that “the point of interconnection is where the line from the Whitewater generating facility dead-ends into the Sanwind substation. Facilities that are at or beyond the point of interconnection, including the substation, are network facilities for which SoCal Edison is required to provide transmission credits.”¹²

8. Accordingly, we directed SoCal Edison to revise the IA to: (1) reflect that its facilities at or beyond the point of interconnection, *i.e.*, where the line from the Whitewater generating facility dead-ends into the Sanwind Substation, including the substation, are network facilities for which SoCal Edison is required to provide transmission credits with interest; and (2) provide a crediting mechanism for the transmission service credits.

II. Filings

A. SoCal Edison’s Request for Rehearing

9. On September 26, 2002, SoCal Edison filed a request for rehearing of the August 27 Order. SoCal Edison argues that the Commission committed either factual or legal error in finding that the facilities at issue are network transmission facilities. SoCal Edison maintains that the Commission failed to analyze whether the facilities are integrated. It states that, in various contexts, the Commission has adopted several tests for integration, and that under any of those tests, the facilities cannot be considered integrated.

10. Similarly, SoCal Edison contends that the Commission failed to sufficiently explain its finding that the point of interconnection is where the line from the Whitewater generating facility dead-ends into the Sanwind substation. It argues that, in prior cases, upgrades classified as network facilities were located at or beyond the generator’s interconnection to a transmission grid that the Commission had previously found to be integrated. SoCal Edison states that the Sanwind substation has never been classified as a network transmission facility and that no changes have occurred there that warrant such reclassification. Moreover, SoCal Edison states that under the Commission’s interpretation of the term grid, anything on the utility’s side of the location where generator-owned facilities meet utility-owned facilities would be designated as part of the integrated transmission network grid, regardless of whether it is truly integrated. SoCal Edison argues that the August 27 Order adopted a “point-of-ownership” test for

¹¹ Id. at P 19.

¹² Id.

integration that is unduly discriminatory and that should have been crafted through a rulemaking proceeding rather than an adjudicatory setting.

11. SoCal Edison further maintains that the August 27 Order is confiscatory, if it prevents SoCal Edison from directly assigning the costs of upgrades without providing SoCal Edison an opportunity to recover such costs in another manner.¹³ SoCal Edison asserts that the Commission should consider the upgrades at issue to be upgrades to non-integrated facilities for both interconnection and transmission ratemaking purposes, thus allowing SoCal Edison to recover the cost of these facilities via direct assignment.

12. Finally, SoCal Edison argues that the compliance filing directed in the August 27 Order should be stayed, pending SoCal Edison's rehearing request. Accordingly, SoCal Edison has not submitted a compliance filing.

B. Whitewater's Request for Rehearing

13. On September 26, 2002, Whitewater filed a request for clarification or, in the alternative, rehearing of the August 27 Order. Whitewater argues that using transmission credits to reimburse it for upgrades is ineffective; because it is not a transmission (delivery) customer of SoCal Edison, it does not pay for transmission service, and therefore cannot receive credits against transmission service. Whitewater states the transmission customer in this case is the California Department of Water Resources (CDWR). Moreover, according to Whitewater, SoCal Edison does not provide transmission service, and thus is not in a position to provide credits against transmission rates. Whitewater explains that, because the CAISO bills for transmission service, there is no direct link between SoCal Edison, transmission service, and the transmission customer to whom the credit would normally apply. Accordingly, Whitewater requests that the Commission require SoCal Edison to amend the IA to allow Whitewater to either: (1) sell the transmission credits to a third party¹⁴; or (2) receive cash from SoCal Edison. Whitewater further maintains that, in accordance with the Commission's notice

¹³ According to SoCal Edison, under the CAISO's tariff, SoCal Edison cannot place facilities classified as distribution facilities under the CAISO's operational control and cannot include the cost of such facilities in SoCal Edison's transmission rates.

¹⁴ Whitewater maintains that the third party should not be restricted to CDWR. Whitewater does not explain how it can sell credits if it has no way of receiving them. We assume that Whitewater means that it should be reimbursed in some other way, and that it should be able to sell the right to that reimbursement to others.

of proposed rulemaking on generation interconnection,¹⁵ any reimbursement should be full, with interest, and should occur within five years from the date network upgrades are in service.

C. SoCal Edison's "Motion to Lodge" and Whitewater's Response to the Motion

14. SoCal Edison also filed a motion seeking to "lodge" Order No. 2003 in this proceeding. SoCal Edison reiterates its position that the upgrades at issue are located at or beyond the point of interconnection with SoCal Edison's distribution system, not its transmission system.

15. On October 9, 2003, Whitewater submitted an answer to SoCal Edison's motion to lodge. Whitewater argues that SoCal Edison improperly injected substantive arguments into a procedural motion. Nevertheless, Whitewater responds to SoCal Edison's substantive arguments.

16. On October 11, 2002, Whitewater filed an answer to SoCal Edison's request for rehearing.

D. Whitewater's Motion to Enforce Compliance

17. On March 22, 2004, Whitewater filed a motion seeking to enforce SoCal Edison's compliance with the August 27 Order. Whitewater asserts that SoCal Edison's request for stay does not excuse its non-compliance. Whitewater asks the Commission to direct SoCal Edison to: (1) comply with the August 27 Order no later than April 4, 2004; (2) pay cash refunds, plus interest, to Whitewater for any payments or credits that SoCal Edison would have been obligated to provide under the August 27 Order; and (3) pay Whitewater's costs and attorney's fees for the preparation of this motion.

18. On April 6, 2004, SoCal Edison filed a response arguing that it is unable to make a compliance filing until after the Commission renders a determination regarding its rehearing request.

¹⁵ Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 Fed. Reg. 22,249 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 (2002) (now a Final Rule; see n.17).

III. Analysis

A. Procedural Matters

19. Rule 713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2003) prohibits answers to requests for rehearing. Accordingly, we will reject Whitewater's answer to SoCal Edison's rehearing request.

20. We will deny SoCal Edison's motion to "lodge" Order No. 2003. We note that SoCal Edison's request to lodge one of the Commission's orders is unnecessary. Furthermore, we will reject SoCal Edison's substantive arguments in that motion, which merely reiterate its arguments on rehearing. We will further reject Whitewater's responses to those substantive arguments.¹⁶

B. Commission Determination

21. We will grant the requests for rehearing to the extent discussed below. Upon further consideration of the issue of upgrades, we find that there are issues of material fact concerning whether the disputed upgrades are transmission facilities that function as part of the integrated transmission network. As it appears that SoCal Edison's treatment of the disputed upgrades may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful, we will set this matter for hearing and settlement judge procedures in order to determine whether the disputed upgrades are transmission network upgrades, which may not be directly assigned.

22. Ordinarily, for generator interconnections, there are only two categories of facilities: interconnection facilities and network upgrades. An interconnection facility is a facility on the generator's side of the point of interconnection to the transmission grid and its cost can be directly assigned to the generator without credits. Network upgrades are to the transmission grid which includes all facilities on the transmission provider's side of the point of interconnection. The cost of network upgrades cannot be directly assigned to the generator. We note that the facts in this case are different from those in most generator interconnection cases. Here, the facilities may belong to a third category: they may be upgrades to non-integrated facilities that can be directly assigned to the generator.¹⁷

¹⁶ See Duke/Louis Dreyfus L.L.C., 75 FERC ¶ 61,261 at 61,848 (1996); Midwest Independent System Operator, Inc., 100 FERC ¶ 61,292 at 62,311 (2002).

¹⁷ As stated above, in Order No. 2003, we explained that "Distribution Upgrades" are upgrades to the utility's jurisdictional "distribution system." Id. at ¶ 803-04.

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23. If the presiding judge finds that any of the upgrades at issue are network upgrades, then the judge must determine how Whitewater will receive the reimbursement, if any, to which it is entitled.¹⁸ We emphasize that, in Order No. 2003, we found that “distribution” (in this case, “non-integrated”) facilities may be directly assigned.¹⁹

24. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures commence. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.²⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²¹ 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 settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their

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Facilities in this system are generally lower voltage, are not networked, and carry power in one direction. Upgrades to such facilities can be directly assigned to the generator because they generally do not benefit other transmission customers. Id. at ¶ 697.

¹⁸ Pacific Gas and Electric Company (PG&E) pays the generator that funded network upgrades “credits” based on the cost of network upgrades funded by the generator, in monthly installments, to be amortized over a five-year period. (This does not appear to be a “credit” in the sense the Commission uses that term; it is simply a payment.) PG&E will pay this “credit” until the entire amount has been refunded or PG&E obtains permission from the Commission to terminate the “credit.” See Attachment 1 to PG&E’s compliance filing in Docket No. ER02-1330-003 filed December 9, 2002; see also Pacific Gas & Electric Company, 101 FERC ¶ 61,079 at 61,259-60 (2002).

¹⁹ Id.

²⁰ 18 C.F.R. § 385.603 (2003).

²¹ 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. The Commission’s website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov – click on Office of Administrative Law Judges).

settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

25. Given that we are setting this matter for hearing, we will dismiss as moot Whitewater's motion to enforce compliance. Accordingly, we will not consider SoCal Edison's response.

The Commission orders:

(A) 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I) a public hearing shall be held concerning the justness and reasonableness of SoCal Edison's treatment of the disputed upgrades. However, the hearing shall be held in abeyance pending settlement procedures, as provided in Paragraphs (B) and (C) below.

(B) 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 in this proceeding within fifteen (15) days of the date of this order. Such a 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. If the parties decide to request a specific judge, they must make their request to the Chief Judge in writing or by telephone within five (5) days of the date of this order.

(C) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on 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, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(D) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall within 15 days of the date of the presiding judge's designation convene a conference in this proceeding in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a

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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.

(E) The requests for rehearing are hereby granted to a limited extent, and Whitewater's motion to enforce compliance is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.