

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Southern California Edison Company

Docket No. ER05-1154-001

ORDER DENYING IN PART AND GRANTING IN PART REQUEST FOR
REHEARING AND DISMISSING REQUEST FOR REHEARING

(Issued September 25, 2006)

1. This order denies in part and grants in part Southern California Edison Company's (Edison) request for rehearing of the Commission's August 24, 2005 Order that: (1) denied waiver of our prior notice requirement and ordered refunds of the time value of the revenues collected before the August 28, 2005 effective date of Edison's filing; (2) disallowed Operating Procedure M-438 costs incurred before November 8, 2004; and (3) ordered refunds of the disallowed Operating Procedure M-438 costs and ordered Edison to modify its proposed rates to reflect exclusion of these costs.¹ This order also dismisses the Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California's (Southern Cities) request for rehearing as moot, and also notes that Edison's motion for a stay is effectively moot.

Background

Edison's Filing and August Order

2. In its June 28, 2005 filing, Edison explained that the California Independent System Operator Corporation (ISO) incurs reliability-related costs for transmission service provided by the ISO, and the ISO charges these costs to transmission owners, including Edison. Edison passes these charges through to its customers under its Transmission Owner (TO) Tariff through the Reliability Services rate schedule. Edison

¹ *Southern California Edison Company*, 112 FERC ¶ 61,216 (2005) (August Order).

further explained that effective November 8, 2004, as a result of a new Market Operating Procedure (Operating Procedure M-438) introduced by the ISO, Edison included a provision that would allow it to recover the costs of local area reliability capacity commitment through its Reliability Services rate. Edison stated that it passes the Reliability Services costs through to its customers and records the receipts from customers and invoices from the ISO in its Reliability Service Balancing Account (RSBA). Edison stated that its RSBA is a mechanism that ensures that Edison does not over- or under-collect costs it has to pay to the ISO from its ratepayers. Edison explained that each year it determines a Reliability Services revenue requirement, and develops rates to collect that amount from its customers.

3. In its filing, Edison proposed an out-of-period adjustment to its existing Reliability Services revenue requirement and rates, and asked for an effective date of June 1, 2005. Edison asserted that it had experienced higher Reliability Services costs than were forecast in its 2005 true-up filing, effective January 1, 2005, and that this resulted in an increased under-collected balance in its RSBA. Edison added that its Reliability Services revenue requirement, rates and Operating Procedure M-438 costs were before the Commission in Docket Nos. ER04-1209-001 and EL05-29-000, Docket No. ER05-410-000, and Docket No. ER05-763-000, which were set for hearing and settlement judge procedures and which were consolidated.²

4. In the August Order, the Commission addressed Edison's: (1) proposed modification to its TO Tariff which revised its revenue requirement and rates for its 2005 Reliability Services; and (2) revisions to two existing transmission contracts which reflected the proposed Reliability Services rates. In the August Order, the Commission accepted as modified and suspended the revised Reliability Services revenue requirement and rates, and made them effective subject to refund and subject to the outcome of the proceeding in Docket No. ER04-1209-001, *et al.* The Commission also denied waiver of the prior notice requirement, and allowed the revised Reliability Services revenue requirement and rates to become effective August 28, 2005, after sixty days from the date of Edison's filing.³

5. Specifically, in the August Order, the Commission agreed with the parties that any amounts included in the RSBA relating to costs associated with Operating Procedure M-438 for periods prior to November 8, 2004 must be removed from the proposed revenue

² *Southern California Edison Co.*, 109 FERC ¶ 61,263 (2004) (addressing Docket Nos. ER94-1209-001 and EL05-29-000); *Southern California Edison Co.*, 110 FERC ¶ 61,190 (2005) (consolidating Docket No. ER05-410-000); *Southern California Edison Co.*, 111 FERC ¶ 61,247 (2005) (consolidating Docket No. ER05-763-000) (May Order), *reh'g granted*, 113 FERC ¶ 61,058 (2005).

³ August Order, 112 FERC ¶ 61,216 at P 20-23.

requirement and rates. We explained that, although Edison filed proposed RSBA rates on September 8, 2004, and asked for a September 10, 2004 effective date, the Commission did not act on that request prior to the RSBA rates going into effect by operation of law. Accordingly, we stated that, under 16 U.S.C. § 824d(d) (2000), and 18 C.F.R. § 35.3 (2005), the rates could not go into effect sooner than after 60 days from the date of filing, *i.e.*, November 8, 2004. Prior to November 8, 2004, there was no provision to recover these costs. Therefore, we directed Edison to file revised rates within 30 days to remove any costs associated with the Operating Procedure M-438 amounts for the periods prior to November 8, 2004.⁴

6. In the August Order, we also found that the Reliability Services rates at issue in this proceeding were pass through rates and that the costs at issue were currently being examined in ongoing hearing and settlement judge procedures. Therefore, we accepted and suspended Edison's filing and made it effective subject to refund and subject to the outcome of the proceedings in Docket No. ER04-1209-001, *et al.*⁵

7. Finally, we denied waiver of our prior notice requirement and allowed the proposed Reliability Services rates to become effective August 28, 2005, after sixty days from the date of the filing. In this regard, we found that Edison had not presented any extraordinary circumstances that warranted waiver of our 60-day prior notice requirement in this instance.⁶ We added that Edison's TO Tariff provided for annual updates to the Reliability Services revenue requirement and rates to be made effective January 1 of each year, and that Edison's TO Tariff did not provide for an interim-period filing and a specific date on which that filing would be made effective. We also noted that, while Edison's forecast was premised on the increasing under-collected balance of its RSBA, Edison had not shown that the remaining months for the annual period would not sufficiently compensate Edison for Reliability Services costs charged by the ISO through the end of the year.⁷

8. Furthermore, we noted that under our precedent, if waiver of the prior notice requirement is denied and the proposed rate has been charged without Commission authorization, the utility should refund to its customers the time value of the revenue collected for the period that the rate was collected without Commission authorization. Therefore, we required Edison to refund the time value of the revenues actually collected for the time period that the rates were charged without Commission authorization until the date refunds are made.⁸

⁴ *Id.* at P 20 & n.7.

⁵ *Id.* at P 21.

⁶ *Id.* at P 22.

⁷ *Id.* at P 22 n.11.

⁸ *Id.* at P 23.

Settlement of Consolidated Dockets

9. On September 2, 2005, subsequent to the August Order, the Commission approved an uncontested partial settlement in Docket Nos. ER04-1209-001, ER05-410-000, EL05-29-000, and ER05-763-000. The Commission stated that the settlement reflected a comprehensive settlement of issues in Docket Nos. ER04-1209-001, ER05-410-000, and EL05-29-000 and placed into effect Edison's Reliability Services revenue requirement effective January 1, 2005, as well as Edison's Reliability Services rate. The Commission also terminated Docket Nos. ER04-1209-001, ER05-410-000, and EL05-29-000. However, the Commission added that the settlement did not resolve all issues in Docket No. ER05-763-005 because that proceeding involved modifications to Edison's TO tariff to implement the ISO's Operating Procedure M-438 that were not at issue in the other dockets that were settled.⁹

10. On November 16, 2005, Edison filed an offer of settlement in Docket No. ER05-763-000. On January 23, 2006, the Commission issued a letter order approving the settlement, and terminated Docket No. ER05-753-000. The Commission stated that the settlement reflected a comprehensive resolution of all issues in Docket No. ER05-763-000, which included modifications to Edison's TO Tariff to implement the ISO's Operating Procedure M-438. The Commission acknowledged, as well, that Docket No. ER05-763-000 also impacted the costs attributable to Operating Procedure M-438 contract capacity payments and contract energy payments for 2005 in Docket No. ER05-1154-000.¹⁰

Requests For Rehearing Of The August Order

11. On September 13, 2005, the Southern Cities filed a request for rehearing and consolidation. They argue that the Commission erred by failing to consolidate Docket No. ER05-1154-000 with Docket Nos. ER05-410-000, ER04-1209-001, EL05-29-000, and ER05-763-000, and ask that the Commission consolidate Docket ER05-1154-000 with the previously-consolidated dockets. They assert that the Commission denied the Southern Cities a forum to pursue the issues raised in their protest in this proceeding since Southern Cities are not intervenors in the other consolidated dockets and, thus, are unable to participate in the ongoing settlement proceedings.

12. On September 16, 2005, Edison filed a request for rehearing and motion for a stay of the August Order requiring Edison to issue refunds to customers within 30 days of the August Order. Edison argues that the Commission erred in: (1) denying waiver of its prior notice requirement and ordering refunds of the time value of the revenues collected

⁹ *Southern California Edison Company*, 112 FERC ¶ 61,245 (2005).

¹⁰ *Southern California Edison Company*, 114 FERC ¶ 61,062 (2006).

before the August 28, 2005 effective date; (2) disallowing M-438 services costs incurred before November 8, 2004; and (3) ordering refunds of the disallowed M-438 services costs and in ordering Edison to modify its proposed rates to reflect exclusion of these costs.

13. On September 20, 2005, Edison filed an answer to the Southern Cities' request for rehearing. Edison states that it opposes Southern Cities' request for consolidation, arguing that it will delay the settlement discussions underway in the consolidated dockets.

14. On September 20, 2005, Southern California Water Company (Water Company) filed an answer to Edison's motion for a stay. Water Company claims that Edison has not met the requirements for a stay and, thus, the Commission should deny Edison's motion.

15. On September 26, 2005, the State Water Project of the California Department of Water Resources (California Department) filed an untimely request for rehearing or, in the alternative, reconsideration. California Department asserts that the Commission erred in allowing Edison to recover costs incurred under Operating Procedure M-438 prior to February 9, 2005, in violation of Commission policy. California Department states that the Commission correctly reasoned that, because Edison's tariff filing in Docket No. ER04-1209-000 to recover M-438 costs became effective by operation of law on November 8, 2004, there was no provision to recover such costs prior to then. The California Department contends that in allowing recovery as of that date, the Commission erroneously did not take into account the harm to ratepayers caused by the Commission's failure to act on Edison's tariff filing in Docket No. ER04-1209-000 within the statutory time period.

16. On September 30, 2005, Edison filed an answer to the: (1) California Department's request for rehearing, or in the alternative, reconsideration; and (2) the answer to the Water Company's answer to the motion for a stay. Edison asks that the Commission reject California Department's request for rehearing because it was filed untimely, and also argues that the California Departments' request for rehearing is a collateral attack on an issue not in this proceeding. In addition, Edison asks that the Commission grant its request for a stay.

Discussion

Procedural Issues

17. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2006), prohibits an answer to a request for rehearing. Accordingly, we will reject the answers to the requests for rehearing. We will also reject the California

Department's untimely request for rehearing as statutorily barred; the courts have repeatedly recognized that the time period within which a party may file a request for rehearing of a Commission order is statutorily established at 30 days by section 313(a) of the Federal Power Act (FPA), 16 U.S.C. § 8251(a) (2000), and that the Commission has no discretion to extend that deadline. Accordingly, the Commission has long held that it lacks authority to consider requests for rehearing filed more than 30 days after issuance of a Commission order. We also decline to treat the request for rehearing as a request for reconsideration. Granting such a request would in effect treat the rehearing request as if it had been timely filed.¹¹

Southern Cities' Request for Rehearing

18. Southern Cities argue that the Commission erred by failing to consolidate Docket No. ER05-1154-000 with Docket Nos. ER05-410-000, ER04-1209-001, EL05-29-000, and ER05-763-000, and ask that the Commission consolidate Docket No. ER05-1154-000 with the previously-consolidated dockets. We find that Southern Cities' request for rehearing is moot. As we discussed above, on September 2, 2005, the Commission approved an uncontested settlement in Docket Nos. ER04-1209-001, ER05-410-000, EL05-29-000, and ER05-763-000, and terminated Docket Nos. ER04-1209-001, ER05-410-000, and EL05-29-000. In addition, as we discussed above, on January 23, 2006, the Commission approved Edison's offer of settlement in, and terminated, Docket No. ER05-753-000. Therefore, as the other dockets have now been settled and terminated, Southern Cities' request for rehearing is moot.

Edison's Request for Rehearing

19. In its request for rehearing of the August Order,¹² Edison first argues that the Commission erred in denying waiver of its 60-day prior notice requirement and ordering refunds of the time value of the revenues collected before the August 28, 2005 effective date. Edison maintains that the Commission should have granted waiver because, in making a mid-year filing, Edison was simply following the Commission's direction in recent Reliability Services cases.¹³ Edison also claims that, without an immediate increase, it will have a projected \$99.7 million under-recovery of Reliability Services costs by the end of 2005, and that it sought waiver of the Commission's prior notice requirement in order to begin addressing the under-collection as soon as possible. In

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 112 FERC ¶ 61,211 at P 10 (2005); *Golden Valley Power Company*, 114 FERC ¶ 61,212 at P 6 (2006).

¹² Edison's motion for stay is effectively moot.

¹³ Citing, *San Diego Gas & Electric Company*, 110 FERC ¶ 61,184 (2005) (*San Diego*), and *Southern California Edison Company*, 109 FERC ¶ 61,127 (2004) (*SoCal Ed*).

addition, Edison contends that refunds of the time value of any revenues collected before the August 28, 2005 effective date should be addressed in the RSBA since the RSBA is the Commission-approved mechanism for addressing under- and over-collections of Reliability Services costs, and using this mechanism will avoid the time and expense of developing and issuing revised billings to each of Edison's customers.

20. Edison has not persuaded us to change our decision on this issue. In denying waiver of prior notice and ordering refunds here we followed our precedent and Edison's tariff provisions on this issue. In the August Order, we found that Edison had not presented any extraordinary circumstances that warranted waiver of the 60-day prior notice requirement in this instance, citing *Central Hudson Gas & Electric Corporation*, 60 FERC ¶ 61,106 (*Central Hudson I*), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (*Central Hudson II*).¹⁴

21. Edison had a statutory obligation under sections 205(c) and (d) of the FPA, 16 U.S.C §§ 824d(c), (d) (2000), to provide the Commission and the public with at least 60 days' prior notice, which provides the Commission and the public the opportunity to examine proposed rates, terms, and conditions of jurisdictional service before that service commences.¹⁵ In *Central Hudson II*, we explained that, when a filing is made after the commencement of service (and thus the Commission typically would not have had the statutorily-directed prior notice), the filing utility must make a stronger showing of good cause than if the filing had been made prior to the commencement of service.¹⁶ Edison has not made such a showing.

22. Edison claims that, without an immediate increase, it will have a projected \$99.7 million under-recovery of Reliability Services costs by 2005, and that it sought waiver of the Commission's prior notice requirement in order to begin addressing the under-collection as soon as possible. However, in the August Order, we noted that while Edison's forecast was premised on the increasing under-collected balance of its RSBA, Edison had not demonstrated the accuracy of the forecast and that the remaining months for the annual period would not sufficiently compensate Edison for Reliability Services costs charged by the ISO through the end of the year.¹⁷ Edison still has not presented us with the requisite extraordinary circumstances that would warrant waiver of the 60-day prior notice requirement in this instance. In addition, Edison's rate under which its estimated shortfall is collected, *i.e.*, the RSBA, allows Edison ultimately to fully recover the costs. As discussed above, the RSBA is a mechanism through which Edison collects

¹⁴ August Order, 112 FERC ¶ 61,216 at P 22 & n.10.

¹⁵ *Xcel Energy Services Inc.*, 114 FERC ¶ 61,295 at P 9-11 (2006).

¹⁶ *Central Hudson II*, 61 FERC ¶ 61,089 at 61,355.

¹⁷ August Order, 112 FERC ¶ 61,216 at P 22 n.11.

from ratepayers the costs charged from the ISO, and under the RSBA Edison ultimately will neither be over-compensated nor under-compensated for Reliability Services costs passed through to Edison from the ISO.¹⁸

23. Moreover, we reject Edison's argument that the Commission should have granted waiver because in making a mid-year filing it was simply following the Commission's direction in recent Reliability Services cases. We find that the cases cited by Edison clearly do not support its position. In *San Diego*, San Diego Gas & Electric Company filed its annual forecast revenue requirement and proposed rates for the tariff year 2005 in December 2004. We accepted the filing and granted waiver of the Commission's 60-day prior notice requirement to permit the January 1, 2005 effective date because we found that the filing sought effective dates that were prescribed by a pre-existing agreement on file with and accepted by the Commission.¹⁹ In *SoCal Ed* we specifically found that the terms of a Commission-approved settlement allowed Edison to make a second calendar year adjustment, through a section 205 filing, to recover additional costs which were not included in the original forecast of costs approved by the Commission earlier that year.²⁰

24. Consequently, we find that unlike Edison's instant filing in this proceeding, the filing in *San Diego* was not an interim filing but was the required annual forecast, and the Commission granted waiver because the effective date was established by a pre-existing agreement accepted by the Commission. In addition, unlike in *SoCal Ed*, Edison's TO Tariff does not expressly provide for an interim-period filing and, particularly as relevant here, a specific date on which that filing would be made effective.²¹ Rather, we find that Edison's TO Tariff provides for annual updates to the Reliability Services revenue requirement and rates to be made effective January 1 of each year. Thus, Edison's TO

¹⁸ According to Appendix VI of the Edison's TO Tariff, RSBA rates consist of three components: (1) the principal balance in the RSBA from the prior year; (2) the interest amount associated with the balance; and (3) a forecast of Reliability Services costs in the coming year. Each month, Edison makes two entries to the RSBA. One entry equals the actual amount of Reliability Services cost billings from the ISO to Edison, and the other entry equals Reliability Services rate revenues billed to applicable customers during the month, adjusted for franchise fees and, if applicable, uncollectible accounts expense. Interest on the amounts accumulated in the RSBA is calculated based on the average RSBA principal balance each month, compounded quarterly, using the interest rate pursuant to section 35.19a of the Commission's regulations, 18 C.F.R. § 35.19a (2006).

¹⁹ *San Diego*, 110 FERC ¶ 61,184 at P 10-12.

²⁰ *SoCal Ed*, 109 FERC ¶ 61,127 at P 10.

²¹ August Order, 112 FERC ¶ 61,216 at P 22.

Tariff does not provide a basis to grant waiver of the statutory 60-day prior notice and allow an earlier effective date.²²

25. Edison also argues that the Commission erred in ordering refunds of the time value of the revenues collected before the August 28, 2005 effective date. In the August Order we noted that under our precedent, citing to *El Paso Electric Company*, 105 FERC ¶ 61,131 (2003) (*El Paso*), if waiver of the prior notice requirement is denied and the proposed rate has been charged without Commission authorization, we required the utility to refund to its customers the time value of the proposed revenues collected for the period that the proposed revenues were collected without Commission authorization. Therefore, we required Edison to refund the time value of the revenues actually collected for the time period that those rates were charged without Commission authorization until the date refunds are made.²³

26. We add that, as we found in *El Paso* in explaining our statutory authority to order time value refunds, the issue is whether Edison violated the FPA. Section 205 of the FPA required timely filing, and Edison did not timely file. The Commission has discretion in fashioning remedies. Under section 309 of the FPA, 16 U.S.C § 825h (2000), the Commission is authorized to issue such orders as it may be necessary or appropriate to carry out provisions of the FPA, and authorizes the Commission to use regulatory means not spelled out in detail in the FPA. Furthermore, the Commission's discretion is at its zenith when fashioning policies and remedies in order to effectuate the FPA's objectives.²⁴ Edison has not persuaded us as a matter of law or equity to depart from our precedent on this issue.

27. Edison next argues that the Commission erred in denying recovery of M-438 costs incurred by Edison before November 8, 2004. Edison claims that it should not be penalized by disallowing certain M-438 costs because the Commission's failed to act within the 60-day time period, and that it could not challenge the denial of the 60-day notice period waiver since Edison's filing was accepted by operation of law at the end of the 60-day prior notice period. Edison adds that the Commission's order to refund M-438 costs denies Edison reimbursement for costs that it actually incurred for the benefit of the reliability of the ISO grid and for costs that the Commission found were reasonable.

28. In the August Order, we found that any amounts included in the RSBA relating to costs associated with Operating Procedure M-438 for periods prior to November 8, 2004 must be removed from the proposed revenue requirement and rates. Since Edison's filing

²² See *Central Hudson I*, 60 FERC ¶ 61,106 at 61,338.

²³ August Order, 112 FERC ¶ 61,216 at P 23 & n.12.

²⁴ *El Paso Electric Company*, 105 FERC ¶ 61,131 at P 48 (2003).

to recover the Operating Procedure M-438 costs became effective by operation of law, it could not go into effect prior to November 8, 2004; that is no more and no less than what section 205 of the FPA dictates. Therefore, we directed Edison to file revised rates within 30 days to remove any costs associated with the Operating Procedure M-438 amounts for the periods prior to November 8, 2004.²⁵ Edison has not persuaded us to change our decision on this issue. Clearly, since Edison did not have a filed rate in effect prior to November 8, 2004, there was no provision to recover the costs at issue prior to November 8, 2004. Moreover, Edison cannot claim to have been penalized since its rates became effective by operation of law in compliance with section 205 of the FPA.²⁶

29. Edison next argues that the Commission erred in ordering refunds of disallowed M-438 costs. Edison claims that the small amount of pre-November 8, 2004 M-438 costs relative to the level of total retail rates does not justify the expense of issuing refunds. Edison asserts that rebilling each of Edison's over 4 million customers is a significant expense of time, resources, and money, and that such an expense is not justified given that the \$1.1 million of pre-November 8, 2004 M-438 costs amounts to just 0.01% of total retail customer revenues of \$9.85 billion. Edison argues that an adjustment to the RSBA is the appropriate mechanism for addressing the need for refunds, and will avoid the unnecessary time and expense of developing and issuing revised bills to Edison's over 4 million customers.

30. Edison has not persuaded us to change our decision to order refunds of disallowed M-438 costs. Edison must make refunds for the M-438 costs that were charged prior to the date they were made effective on November 8, 2004. It is well-settled that the FPA leaves the determination as to whether to order refunds to the Commission's expert judgment.²⁷

31. However, we agree with Edison that an adjustment to the RSBA is the appropriate mechanism for addressing the need for refunds of both the time value revenues and refunds of disallowed M-438 costs, and we will grant Edison's request for rehearing on this issue. We find, in this instance, that it would be more efficient to use the RSBA in Edison's next scheduled Reliability Services filing to distribute the refunds, given the relatively small amount of the refunds at issue in this proceeding and the large number of customers. In this future Reliability Services filing Edison should clearly indicate how the refunds are being distributed and that it is made in compliance with our decision in

²⁵ August Order, 112 FERC ¶ 61,216 at P 20 & nn.7-8.

²⁶ 16 U.S.C. § 824d (2000).

²⁷ *Towns of Concord, Norwood, and Wellesley, Massachusetts v. FERC*, 955 F.2d 67, 75 (D.C. Cir. 1992).

this proceeding. This will allow the Commission to ensure that the appropriate refunds have been distributed.

The Commission orders:

Edison's request for rehearing is hereby denied in part and granted in part, and Southern Cities' request for rehearing is hereby dismissed as moot, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.