108 FERC ¶ 61,085
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 Nos. ER97-2355-005,
ER98-1261-002, and ER98-1685-001

ORDER DENYING REQUESTS FOR REHEARING

(Issued July 29, 2004)

1. Southern California Edison Company (Edison), Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Cities) and the City of Vernon (Vernon) (collectively, Municipals), the Department of Water Resources of the State of California (Department of Water Resources), Metropolitan Water District of Southern California (Metropolitan), and Pacific Gas and Electric Company (PG&E) filed timely requests for rehearing of the Commission's Opinion No. 445.[1] This order denies rehearing, and reaffirms the Commission's finding in Opinion No. 445 that the transmission customers here should not receive credits for their customer-owned transmission facilities. This order also denies requests for rehearing, and reaffirms the Commission's decision in Opinion No. 445 to summarily affirm the Presiding Judge's ruling that rejected time-of-use transmission rates in this proceeding.

[1]Southern California Edison Company, Opinion No. 445, 92 FERC ¶ 61,070 (2000).

BACKGROUND

2. This proceeding arises from the restructuring of the electric utility industry in California, and specifically involves rate issues resulting from Edison's filing its proposed Transmission Owner (TO) Tariff (TO Tariff) and Wholesale Distribution Access Tariff (WDAT Tariff) in Docket No. ER97-2355-000.[2] On December 17, 1997, the Commission accepted these tariffs for filing, suspended them, and permitted them to become effective, subject to refund, on the date the California ISO began operations, and also set the proposed tariffs for hearing.[3] In subsequent orders the Commission addressed Edison's related filings in Docket Nos. ER98-1261-000 and ER98-1685-000. The Commission set these filings for hearing and consolidated Docket Nos. ER98-1261-000 and ER98-1685-000 with the pending proceeding in Docket No. ER97-2355-000.[4] After an evidentiary hearing and the filing of initial and reply briefs, on March 31, 1999, the Presiding Judge issued an Initial Decision in Docket Nos. ER97-2355-000, ER98-1261-000, and ER98-1685-000.[5]

3. On July 26, 2000, the Commission issued an opinion and order affirming in part, vacating in part, and reversing in part, the Initial Decision.[6] In Opinion No. 445, among other things, the Commission reversed the Presiding Judge's finding that the Cities' and Vernon's facilities provided substantial support to the California ISO-controlled grid and, thus, met the Commission's requirements for network customer credits; the Commission found that the transmission customers here were not entitled to credits.[7] The Commission also affirmed the Presiding Judge's determination on the allocation of A&G and G&I expenses, finding that the use of labor ratios to allocate A&G and G&I expenses was

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[2]On March 31, 1997, in Docket No. ER97-2355-000, Edison filed its TO Tariff for utility-specific rates to be charged for transmission service on its facilities under the operational control of the California Independent System Operator (ISO), and also submitted its WDAT Tariff for transmission service over its facilities that were not under the control of the California ISO.

[3]Pacific Gas and Electric Company, *et al.*, 81 FERC ¶ 61,323 (1997), *order on reh'g*, 82 FERC ¶ 61,324 (1998).

[4]California Independent System Operator Corporation, *et al.*, 82 FERC ¶ 61,174 (1998); San Diego Gas & Electric Company, *et al.*, 82 FERC ¶ 61,324 (1998).

[5]Southern California Edison Company, 86 FERC ¶ 63,014 (1999).

[6]*See supra* note 1.

[7]92 FERC at 61,254-56.

consistent with longstanding policy.[8] Furthermore, in Opinion No. 445, the Commission summarily affirmed the Presiding Judge's ruling that rejected the Department of Water Resources' proposal on time-of-use rates as unsupported by the record.[9]

REQUESTS FOR REHEARING

4. On August 24, 2000, the Cities filed a request for rehearing arguing, among other things, that Opinion No. 445 erred in concluding that a transmission customer is entitled to credits for the benefits conferred by customer-owned facilities only if the transmission customer has transferred operational control of its transmission facilities to the transmission provider. On August 24, 2000, the Department of Water Resources filed a request for rehearing arguing that the Commission erred by failing to adopt time-of-use transmission and wholesale distribution rates. On August 24, 2000, Metropolitan filed a request for rehearing asking that the Commission reverse Opinion No. 445 with respect to time-of-use rates, and order time-of-use rates in accordance with the proposal of the Department of Water Resources. On August 25, 2000, Vernon filed a request for rehearing, stating that it adopts the Cities' request for rehearing. On August 25, 2000, Edison and PG&E separately filed conditional requests for rehearing, arguing that the Commission incorrectly rejected Edison's allocation proposal in favor of the labor ratio method endorsed by the Presiding Judge.

WITHDRAWALS OF REQUESTS FOR REHEARING

5. On February 26, 2004, Edison filed a notice of withdrawal of its conditional request for rehearing, and on March 1, 2004, PG&E filed a notice of withdrawal of its conditional request for rehearing.

DISCUSSION

Withdrawals

6. Under Rule 216 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.216(b) (2004), the withdrawal of any pleading is effective 15 days from the date of filing of a notice of withdrawal, if no motion in opposition to the notice of withdrawal is

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[8] *Id*. at 61,267-68; *see* Minnesota Power and Light Co., Opinion No. 20, 4 FERC ¶ 61,116 at 61,267-68, *order on reh'g*, Opinion No. 20-A, 5 FERC ¶ 61,091 at 61,150-51 (1978).

[9] 92 FERC at 61,253.

filed and the decisional authority does not issue an order disallowing the withdrawal within that period. No motion in opposition was filed and the Commission did not disallow the withdrawals. Accordingly, Edison's and PG&E's withdrawals of their conditional requests for rehearing are effective. Consequently, we need not address their conditional requests for rehearing.

Credits for Non-Participating TOs' Customer-Owned Transmission Facilities

7. The Municipals argue that the Commission erred in reversing the Presiding Judge by concluding that a transmission customer that is also a transmission owner is entitled to credits for the benefits conferred by customer-owned facilities only if the transmission customer has transferred operational control of its facilities to the transmission provider.[10]

8. We will deny the Municipals' requests for rehearing. At the outset, though, we note that since all but one of the Municipals are now Participating TOs in the California ISO (Colton is the only city that has not joined) and thus essentially receive credits for their transmission facilities, their arguments on this issue are largely relevant for only a locked-in period. Turning to the Initial Decision and Opinion No. 445, while in the Initial Decision the Presiding Judge found that the Municipals were entitled to credits, in Opinion No. 445 the Commission explained that under its precedent the mere fact of physical interconnection was not enough for a transmission customer's facilities to be considered integrated, and that, for customer-owned facilities to be integrated and thus entitled to credits, the transmission provider must be able to provide transmission service to itself or other transmission customers over these facilities, *i.e.*, the transmission provider must have operational control over these facilities. We are not persuaded to change our determination, and accordingly will deny rehearing.

[10] The Municipals also argue that the Commission erred with respect to its discussion of certain pre-existing Transmission Service Agreements. There is confusion on this issue; we wish to make clear that we were not overturning the pre-existing Transmission Service Agreements nor finding that the rates in those Agreements were unreasonable or should be changed. Indeed, those Agreements were not themselves directly before the Commission for review, but rather what was before the Commission was Edison's TO Tariff and we found – and reaffirm here – that Edison need not provide credits to the Municipals under its TO Tariff.

9. The Commission's longstanding precedent – including decisions such as *Florida Municipal Power Agency v. Florida Power & Light Company*[11] and Order No. 888-A[12] -- requires that, for facilities to be considered integrated and thus entitled to credits as customer-owned facilities, the transmission provider must be able to provide transmission service to itself or other transmission customers over these facilities.[13] In short, the mere fact of physical interconnection was not enough.[14]

10. We add here that, on rehearing in *FMPA*, the Commission elaborated on the criteria necessary to meet this system integration test. The Commission stated

> [F]or a customer to be eligible for a credit, its facilities must not only be integrated with the transmission provider's system, but must also provide additional benefits to the transmission grid in terms of capability and reliability, and be relied upon for the coordinated operation of the grid . . . [T]he fact that a transmission customer's facilities may be interconnected with a transmission provider's system does not prove that the two systems

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[11]67 FERC ¶ 61,167 (1994) (*FMPA), reh'g denied*, 74 FERC ¶ 61,006 (1996), *reh'g dismissed and denied*, 96 FERC ¶ 61,130 (2001), *aff'd*, 315 F.3d 362, 367 (D.C. Cir. 2003). In *FMPA*, the Commission concluded that, although FMPA owned transmission facilities that were interconnected with Florida Power & Light Company's (Florida Power) facilities, the FMPA facilities were not integrated, *i.e.*, they were not used by Florida Power to provide transmission service to FMPA or any other party nor were they used by Florida Power to provide transmission service to its non-FMPA customers. Therefore, the Commission found that a credit was not appropriate. *See* 74 FERC at 61,010-11.

[12]Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888-A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 at 30,271 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part*, Transmission Access Policy Study Group, *et al*. v. FERC, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom*. New York v. FERC, 535 U.S. 1 (2002).

[13]92 FERC at 61,255. To a like effect is the recent decision in East Texas Electric Cooperative, Inc. v. FERC, 331 F.3d 131 (D.C. Cir. 2003).

[14] Order No. 888-A, FERC Stats. & Regs. at 30,271.

> comprise an integrated whole such that the transmission provider is able to provide transmission service to itself or other transmission customers over these facilities.[15]

11. Thus, we find that in Opinion No. 445 the Commission properly reversed the Presiding Judge's ruling on this issue, because the Municipals failed to demonstrate that their facilities met the system integration test. As of the start-up of the California ISO, Edison no longer served as the transmission provider and, consequently, until and unless the Municipals joined the California ISO and turned over control of their facilities to the California ISO, the California ISO would not have operational control over the Municipals' facilities. If the California ISO did not have operational control over these facilities, it could not use them to provide transmission service to its customers or, indeed, even transmit power over them to the Municipals. Therefore, the Commission properly found, consistent with longstanding Commission precedent, that, to receive credits for their facilities, the Municipals must join the California ISO and thereby allow scheduling and control of the facilities by the transmission provider.[16]

Proposal for Time-of-Use Transmission Rates

12. The Department of Water Resources and Metropolitan argue that the Commission erred in summarily affirming the Presiding Judge's ruling that rejected time-of-use transmission rates.

13. We will deny the Department of Water Resources' and Metropolitan's requests for rehearing. In the Initial Decision, the Presiding Judge found that the Department of Water Resources' proposal on this issue as developed in the record had not made the case for adoption of time-of-use rates in this proceeding, and that the Department of Water Resources had not shown a reasonable basis for departing from Edison's proposed rate methodology.[17] The Presiding Judge further noted that there were already adequate price signals in California to "divert transmission away from periods of congestion and increase[] use of the overall transmission system."[18] In Opinion No. 445, the

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[15] 96 FERC at 61,544-45, *citing* Order No. 888-A, FERC Stats. & Regs. at 30,271.

[16] 92 FERC at 61,255-56.

[17] 86 FERC at 65,154.

[18] *Id.*

Commission summarily affirmed the Presiding Judge's rejection of the Department of Water Resources' proposal for time-of-use rates.[19] We reiterate on rehearing that the Presiding Judge's ruling on this issue was well reasoned and fully supported by the record. Nothing presented on rehearing persuades us that the Presiding Judge erred given the record.

The Commission orders:

The requests for rehearing filed by the Municipals, the Department of Water Resources, and Metropolitan are hereby denied, as discussed in the body of this order.

By the Commission. Chairman Wood concurring with a separate statement attached.

(S E A L)

Magalie R. Salas,
Secretary.

[19] 92 FERC at 61,253.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern California Edison Company Docket Nos. ER97-2355-005,
ER98-261-002, and ER98-1685-001

(Issued July 29, 2004)

WOOD, Chairman, concurring:

This order concludes that the Municipals are not entitled to credits for customer-owned transmission facilities because the California ISO did not have operational control over the facilities. Because we have applied long-standing precedent regarding the integration standard to reach this conclusion, I support the order. However, I write separately to express misgivings about the integration standard. We have stated in other contexts that the transmission grid is a single piece of equipment such that system expansions are used by and benefit all users due to the integrated nature of the grid. See Entergy Gulf States, Inc. 99 FERC ¶ 61,095 at P 13 (2002). And, as I stated in my concurrence in Florida Power & Light Company, 105 FERC ¶ 61,287 (2003), if the parties were in a regional transmission organization (RTO) there would be no dispute because all transmission facilities within the RTO would have been treated comparably and the rates would have reflected such treatment. Indeed, as the order notes, all but one of the Municipals are now Participating TOs in the California ISO, so it is my expectation this issue will be resolved on a going-forward basis.

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Pat Wood, III
Chairman