

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE
STATE OF CALIFORNIA**

In the Matter of the Application of SOUTHERN
CALIFORNIA EDISON COMPANY (U 338-E)
for a Certificate of Public Convenience and
Necessity: Eldorado-Lugo-Mohave Series
Capacitor Project.

A.18-05-007

**SOUTHERN CALIFORNIA EDISON COMPANY (U 338-E) COMMENTS ON
THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE JUNGREIS
GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR
THE ELDORADO-LUGO-MOHAVE SERIES CAPACITOR PROJECT**

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Dated: **August 11, 2020**

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SUBJECT INDEX OF RECOMMENDED CHANGES

Pursuant to Rule 14.3(b) of the California Public Utilities Commission's ("CPUC" or "Commission") Rules of Practice and Procedure, and consistent with the comments herein, Southern California Edison Company ("SCE") hereby recommends the following changes to Administrative Law Judge ("ALJ") Jason Jungreis' Proposed Decision Granting Certificate of Public Convenience and Necessity for the Eldorado-Lugo-Mohave Series Capacitor Project ("Proposed Decision") served on July 22, 2020.

1. Revise the Proposed Decision to clarify that the Federal Energy Regulatory Commission ("FERC") has exclusive jurisdiction to determine the prudence of actual cost expenditures associated with transmission facilities for cost recovery. SCE recommends slight modifications to language on page 34 and Ordering Paragraph 5 of the Proposed Decision, as shown in Attachment A.

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I.

INTRODUCTION

Pursuant to Rule 14.3 of the Rules of Practice and Procedure of the California Public Utilities Commission (“CPUC” or “Commission”) and the July 22, 2020 Administrative Law Judge’s Proposed Decision Granting Certificate of Public Convenience and Necessity for the Eldorado-Lugo-Mohave Series Capacitor Project (“Proposed Decision”), Southern California Edison Company (“SCE”), hereby submits the following comments on the Proposed Decision in the matter of the Eldorado-Lugo-Mohave (“ELM”) Certificate of Public Convenience and Necessity (“CPCN”).

SCE appreciates the issuance of the Proposed Decision, and in particular, ALJ Jungreis’ thorough and well-supported evaluation of the issues raised in this proceeding. SCE agrees with the vast majority of the conclusions set forth in the Proposed Decision and urges the CPUC to promptly adopt the conclusions of the Proposed Decision with a slight clarification as to the role of Federal Energy Regulatory Commission (“FERC”), as described below and in Appendix A.

II.

COMMENTS

A. The Proposed Decision Should Be Modified to Clarify That Prudency Review For Purposes of Cost Recovery Of FERC-Jurisdictional Rates Falls Within The Exclusive Jurisdiction Of FERC

The Proposed Decision suggests that SCE may not seek to recover from FERC any costs associated with the ELM Project in excess of the CPUC established maximum reasonable and prudent cost (“MRPC”) unless SCE first files for *and receives approval from the CPUC* of a Petition for Modification (“PFM”) approving an increased MRPC.¹ SCE recommends that the CPUC modify this language to clarify that FERC has exclusive jurisdiction to determine the prudency of actual cost expenditures and to approve cost recovery associated with the ELM Project in its FERC-jurisdictional rates. SCE’s proposed revisions remove the language requiring SCE to obtain approval of a PFM seeking an increase to the MRPC prior to seeking cost recovery from FERC, and adds the CPUC’s language recognizing the CPUC’s ability to challenge any of SCE’s expenditures in excess of the Commission established MRPC in a FERC rate proceeding.

1. CPCN Maximum Cost Does Not Determine Prudency

Section 1005.5 of the California Public Utilities Code requires the Commission to consider the “maximum cost” of a project when determining whether that project serves the public’s convenience. The “maximum cost” is the maximum forecasted cost of the project at the time the CPUC issues the CPCN. The Commission’s role in establishing a maximum finding of cost associated with a transmission project is to determine whether the project is in the public interest, need, and convenience at the maximum cost. If the CPUC determines the project serves the public’s convenience and necessity at that forecasted maximum cost amount, that factor

¹ Proposed Decision p. 34; Ordering Paragraph (“OP”) 5.

weighs in favor of issuing the CPCN.² In some instances the actual cost of construction exceeds the maximum cost established in the CPCN. In this case, the Commission is authorized to increase the maximum cost estimate pursuant to Section 1005.5(b) of the California Public Utilities Code. The reason to adjust the Commission's estimate of "maximum cost" is to confirm that estimated costs have increased and to then affirm that the Commission still finds that the project is in the public's convenience and necessity despite the higher associated cost.

The Commission's role in assessing costs for FERC-jurisdictional transmission facilities is limited to evaluating whether the overall purpose, need and benefit of the transmission project outweighs any associated economic cost and/or environmental impacts. The CPUC-established maximum cost is not a determination of whether actual costs associated with transmission facilities are prudent; that determination lies solely with FERC.³ Indeed, the CPUC agrees that FERC has exclusive jurisdiction to ensure and establish just and reasonable rates, terms, and conditions of transmission service in interstate commerce.⁴

Section 205 of the Federal Power Act (16 U.S.C.A. § 824d) ("FPA") and the regulations promulgated by FERC to carry out that section provide a utility the right to file for its rates at FERC for those costs that are FERC-jurisdictional. The ELM project provides transmission service, therefore the vast majority of the costs associated with the ELM project, and the assessment of the prudence of those costs, are under the jurisdiction of FERC and are solely recoverable in SCE's FERC-jurisdictional rates. The CPUC is an active intervenor in SCE's

² See Cal. Pub. Util. Code §§ 1001-1005.5.

³ See D.17-06-009 at 9 ("Although the Commission must set a cost cap for transmission projects, recovery of those costs, including determination of the reasonableness of rates, is under FERC jurisdiction."); D.19-05-006 at 5 ("[W]hile the Commission has not determined anything over \$2.01 billion to be a reasonable maximum cost, under the applicable Federal Energy Regulatory Commission (FERC) authorities, SCE may seek to recover the amount of increase sought in the instant PFM (\$700 million) at FERC, in due course."). See *S. Cal. Edison Co. v. Pub. Util. Comm'n*, 121 Cal. App. 4th 1303 (2004), *modified and reh'g denied*, 2004 Cal. App. LEXIS 1609 (Cal. App. 2d Dist. Sept. 27, 2004), *review denied by So Cal. Edison Co. v. PUC*, 2005 Cal. LEXIS 592 (Cal. Jan. 19, 2005) (finding that an attempt by the Commission to dictate, control, or limit what costs SCE may seek to recover at FERC is preempted by federal law).

⁴ See *e.g.* D.17-06-009, p. 19.

FERC rate proceedings and thus has ample opportunity to review SCE's expenditures in that forum.

2. **SCE May Seek Recovery of Actual Construction Costs From FERC Independent of CPUC Approval of a PFM Seeking an Increase to the MRPC**

Given FERC's exclusive jurisdiction to determine the prudence of actual costs associated with transmission facilities for cost recovery purposes, the CPUC may not condition SCE's ability to seek cost recovery from FERC upon CPUC approval of a PFM seeking an increased MRPC. Under the applicable FERC authorities, SCE may seek to recover the actual cost of the project, including costs in excess of the MRPC, from FERC without the need for pre-approval from the CPUC.

As written, OP 5 could be interpreted as requiring SCE to obtain CPUC approval as a condition for seeking recovery of FERC jurisdictional costs. Such an interpretation would have the effect of regulating the "recovery of transmission costs" which the Commission has already clearly recognized to be the exclusive jurisdiction of FERC. While SCE agrees that the CPUC can require SCE to submit a PFM requesting that the CPUC authorize an increased MRPC, SCE proposes to revise the language of the Proposed Decision to make clear that it is FERC that authorizes rate recovery for transmission projects, and as a result, SCE need not obtain CPUC approval of an increase to the MRPC as a pre-condition to recovery from FERC.

Similarly, SCE recommends removing the language in the Proposed Decision stating that the CPUC will "presume" that any expenditures in excess of the MRPC are imprudent if incurred prior to approval of a PFM, as the prudence determination falls within the sole jurisdiction of FERC. If the CPUC seeks to challenge the prudence of SCE's expenditures, they may do so in a FERC rate proceeding.

SCE's proposed revisions clarify that only the FERC has the jurisdiction to determine whether SCE may recover transmission costs, while maintaining the CPUC's caveat that, should SCE seek to recover transmission costs from the FERC before obtaining approval of a PFM of

the MRPC from the CPUC, the CPUC may intervene in the FERC proceeding to challenge whether SCE's excess expenditures were prudent.

III.

CONCLUSION

SCE agrees with the conclusions in the Proposed Decision and supports the Commission's approval of the Proposed Decision as drafted, with the recommendation that the Proposed Decision be revised to clarify the role of the FERC in determining the ratemaking and revenue requirement associated with the ELM Project. SCE appreciates the opportunity comment and encourages the Commission to adopt the Proposed Decision, with the minor proposed clarifications described above and listed in Appendix A.

Respectfully submitted,

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/s/ Tammy Jones

By: Tammy Jones

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Dated: August 11, 2020

Appendix A

SCE's Recommended Changes to the Proposed Decision

SCE's Recommended Changes to the Proposed Decision

Proposed text deletions are in bold and strikethrough (~~abcd~~)

Proposed text additions are in bold and underlined (abcd)

| Reference | Proposed Modification |
|-----------------------------------|--|
| Proposed Decision, page 34. | Furthermore, if SCE seeks CPUC approval for additional expenditures for the ELM Project, SCE must file a Petition for Modification of the maximum reasonable and prudent cost determination <i>before</i> incurring any costs in excess of this decision's determination. and before attempting to recover any costs from ratepayers in excess of this decision's determination. |
| Proposed Decision, page 34, fn 75 | The Commission may challenge SCE in a FERC rate case if SCE fails to timely file and receive approval of a Petition for Modification prior to incurring costs or attempting ratepayer recovery of costs in excess of the maximum cost approved in this decision, presuming that any costs in excess of the maximum cost set in this decision were imprudent expenditures if incurred prior to approval of a Petition for Modification. |
| Ordering Paragraph 5 | Pursuant to Public Utilities Code Section 1005.5(b), at any point during the Eldorado-Lugo-Mohave Series Capacitor Project (Project), but prior to any expenditures in excess of the maximum reasonable and prudent cost determined in this decision, Southern California Edison Company (SCE) may file a formal Petition for Modification with the Commission for consideration of a revised determination of the reasonable and prudent maximum cost of the Project. SCE must receive approval of its Petition for Modification before attempting to recover any costs from ratepayers in excess of the maximum cost determined in this decision. <u>A failure to receive approval of its Petition for Modification prior to incurring costs or attempting ratepayer recovery of costs in excess of the maximum cost approved in this decision may lead to the Commission challenging SCE in its rate proceeding at FERC.</u> |

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CERTIFICATE OF SERVICE

I hereby certify that, pursuant to the Commission's Rules of Practice and Procedure, I have this day served a true copy of **SOUTHERN CALIFORNIA EDISON COMPANY'S (U 338-E) COMMENTS ON THE PROPOSED DECISION OF ADMINISTRATIVE LAW JUDGE JUNGREIS GRANTING A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ELDORADO-LUGO-MOHAVE SERIES CAPACITOR PROJECT**, on all parties identified on the attached service list(s) for A.18-05-007. Service was effected by one or more means indicated below:

- Transmitting the copies via e-mail to all parties who have provided an e-mail address.
- Placing the copies in sealed envelopes and causing such envelopes to be delivered by U.S. Mail OR UPS overnight delivery to the offices of the assigned ALJ or other addressee(s).

ALJ Jason Jungreis
CALIF PUBLIC UTILITIES COMMISSION
Administrative Law Judge Division,
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Executed this **August 11, 2020**, at Hacienda Heights, California.

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