

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

Order Instituting Investigation into	)	
Implementation of Assembly Bill 970 Regarding	)	Investigation 00-11-001
the Identification of Electric Transmission and	)	
Distribution Constraints, Actions to Resolve	)	(Filed November 2, 2001)
Those Constraints, and Related Matters Affecting	)	
the Reliability of Electric Supply.	)	
	)	
	)	
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**Response Of California Wind Energy Association (CalWEA) To Application Of Southern  
California Edison Company For Rehearing Of Decision No. 03-07-033**

In its Order of July 10, 2003 (Decision No. 03-07-033), the Commission concluded, among other things, that under certain circumstances interconnecting generators should not have to finance upfront the cost of "but for" facilities or upgrades. These facilities or upgrades are located at or beyond the point of interconnection of the generator with the grid, and therefore will benefit all transmission network users, but they would not have been added but for the generator's needs. Rather, the utility should take on financial responsibility for these facilities or upgrades, and recover the costs from general transmission ratepayers (with a backstop by retail ratepayers).

Southern California Edison Company (SCE) has filed an Application for Rehearing contesting the Commission's finding. The California Wind Energy Association (CalWEA) respectfully responds, and offers several suggestions aimed at fortifying the Commission's decision.

**1. The Commission should make clear that the FERC's rule is not mere "policy."**

SCE argues that the Commission incorrectly "dismisses" a FERC rule as mere "policy". SCE is correct that the FERC rule is a rule and thus cannot be "dismissed." The Commission must consider the FERC rule. Indeed, Public Utilities Code Section 399.25(b)(2) requires the Commission to ensure that its direction to the utility "is not preempted by federal law."<sup>1</sup> The Commission should acknowledge this point, but then explain that there is no preemption here, as discussed next.

**2. The Commission's directive is not preempted by federal law.**

The heading to Part III of SCE's Application refers to FERC's "REQUIREMENT THAT GENERATORS FUND NETWORK UPGRADES UPFRONT." There is no such FERC requirement. FERC instead makes generators' upfront funding an option available to the utility. Thus Section 11.3 of the Standard Large Generator Interconnection Agreement, attached to the Final Rule on Generator Interconnection, provides:

11.3 Network Upgrades and Distribution Upgrades. Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. ... Unless the Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by the Interconnection Customer.

(Section 11.4 then provides for reimbursement of the generator's upfront cost once the new generation is in operation.) SCE argues that the Commission's order is "inconsistent" with the

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<sup>1</sup> SCE also is correct that the term "rolled-in ratemaking," as generally used in the FERC context, refers generally to the notion of all ratepayers bearing the upgrade cost, without reference to whether the cost is borne initially by the generator.

FERC rule. SCE is incorrect. To say that the Commission's decision is inconsistent with the FERC rule is to say that the state has put the utility in a position of being unable to comply simultaneously with both the state commission order and the FERC rule. That is not the case here. The FERC rule does not require the utility to charge the upfront costs to the interconnecting generator. Rather, the FERC rule says it will accept either result – the utility charges the generator upfront or the utility pays the upfront costs itself. Here, the state commission, acting under its state law authority, is directing the utility to exercise its FERC-granted discretion in favor of paying the upfront costs itself. There is no inconsistency, since the utility's compliance with the state commission's order does not violate any FERC rule. The Commission's order would be clearer and stronger if it made this reasoning explicit.

Moreover, the state law, and the state Commission's action thereunder, leave the utility with no legitimate cause to complain. The state law requires the Commission to hold the utility harmless against insufficient FERC recovery of its prudent costs (and SCE is not asserting preemption of that state law provision). Assuming that FERC gave the utility the choice so that the utility could protect its cost recovery, the Commission's action takes nothing away because the state law binds the Commission to make the utility whole. Put another way, where the state has committed to hold the utility harmless, the utility derives no incremental benefit from the ability to make an election. Since the state law and the CPUC will hold the utility harmless for any FERC disallowance of prudent costs, the CPUC's order will cause the utility no dilution of any federal benefit.

**3. The Commission's July 10 Order is not an advisory opinion.**

SCE states (at 4) that, because FERC has exclusive jurisdiction over interconnection

agreements, "any determination this Commission makes regarding the terms of such an interconnection agreement - including requiring the utility to fund the transmission project upfront - is without effect and would be nothing more than an advisory opinion."

SCE is incorrect. SCE appears to base its "advisory opinion" view on the truism that a state Commission order cannot bind FERC, and therefore must be merely advisory. But the Commission's order does not purport to bind or advise the FERC; the order directs the utility to absorb the upgrade costs. To make matters clearer, the Commission on rehearing should state explicitly the mechanics: The Commission is directing the utility to (a) include in its interconnection agreements a commitment to bear the upfront costs; and (b) seek from FERC approval to recover the costs through general transmission rates. These utility filings, if FERC deems them in compliance with the FERC rule, will bind the utility to their terms. Specifically, those terms will preclude the utility from requiring upfront payment from the generator, while allowing the utility to recover the upgrade costs from all transmission customers. The Commission's directive to the utility is not an advisory opinion.

**4. The Commission should establish a backstop mechanism now.**

SCE seeks an explicit backstop by retail ratepayers. Public Utilities Code Section 399.25(b)(4) requires one; specifically, it requires the Commission to allow recovery in retail rates of any transmission costs resulting from construction of facilities that are not approved for recovery in transmission rates by the FERC. Because of the importance of the statutory backstop to the foregoing reasoning, CalWEA agrees with SCE that the Commission should address the backstop mechanism sooner rather than later. In its order on SCE's rehearing application, the Commission should acknowledge the issue's importance and commit to a schedule for evaluating

and selecting backstop mechanisms. Taking this step -- which the statute anticipates -- will make clear to any reviewing court that the Commission is sensitive to the issue.

**Conclusion**

WHEREFORE, for the foregoing reasons, CalWEA respectfully requests the Commission to clarify its Order of July 10, 2003, as discussed above.

Respectfully submitted,

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August 28, 2003

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