

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System)	Docket No. ER00-2019-015,
Operator Corporation)	ER01-819-008 and
)	ER03-608-005
)	

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), the California Independent System Operator Corporation ("ISO")¹ respectfully submits this Motion for Leave to File Answer and Answer to Requests for Clarification and Rehearing Requests of Opinion No. 478 in the above-identified dockets.

I. MOTION FOR LEAVE TO FILE ANSWER TO REHEARING REQUESTS

Although an answer is permitted to Requests for Clarification, the ISO recognizes that Rule 213(a)(2), 18 C.F.R. §385.213(a)(2), of the Commission's Rules of Practice and Procedures precludes, in the ordinary course of events, an answer to a Request for Rehearing. The ISO's Answer responds to filings by the City of Santa Clara, California, Silicon Valley Power ("SVP Request") regarding payment of the Transmission Access Charge by gross load; by the State Water Contractors and The Metropolitan Water District of Southern California ("SWC/MWD Request") regarding the Commission's consideration of their arguments; and by the City of Vernon ("Vernon Request") regarding the

disbursement of the transmission Access Charge revenues. In each case, the ISO's Answer provides additional information regarding the precise nature of the issues raised by the rehearing request. Despite Rule 213(a)(2), the Commission has accepted otherwise prohibited answers that clarify the issues in dispute, *Southwest Power Pool, Inc.*, 89 FERC ¶¶61,284 at 61,888 (2000); *Eagan Hub Partners, L.P.*, 73 FERC ¶¶ 61,334 at 61,929 (1995), or assist the Commission, *El Paso Electric Co.*, 72 FERC ¶¶ 61,292 at 62,256 (1995). Because this Answer clarifies the issues and thereby assists the Commission's evaluation of rehearing requests, the Commission should accept this Answer.

II. ANSWER

A. Request for Clarification or Rehearing of City of Santa Clara, California, Silicon Valley Power

The City of Santa Clara, California, Silicon Valley Power notes that the Commission initially concluded entities would pay for transmission based on gross load and later established a partial exception for behind-the-meter generation comparable to that established in Opinion No. 463 with regard to billing of the Control Area Services component of the ISO's Grid Management Charge to Control Area Gross Load. SVP Request at ¶¶ 3. The ISO and Modesto Irrigation District sought rehearing of that decision. *Id.* at ¶¶ 4-5. In Opinion No. 478, the Commission concluded that the exception was not supported by the evidence and deferred resolution of the issue until the resolution of the exceptions regarding the assessment of the Control Area Services Charge to

¹ Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

behind-the-meter load with regard to the Grid Management Charge. *Id.* at ¶ 7. The SVP Request seeks clarification that the outcome of the Grid Management Charge proceeding will not be determinative of the assessment of the transmission Access Charge to gross load.

The ISO wishes to clarify that the application of the transmission Access Charge to the “behind-the-meter” Loads of Governmental Entities that are not Participating Transmission Owners are not at issue in this proceeding. Loads of Entities that are not Participating Transmission Owners pay the *Wheeling Access Charge* not the transmission Access Charge. According to Section 7.1.4 of the ISO Tariff, “Any Scheduling Coordinator or other such entity scheduling a Wheeling transaction shall pay to the ISO the product of (i) the applicable Wheeling Access Charge, and (ii) the total hourly schedules of Wheeling in kilowatt-hours for each month **at each Scheduling Point associated with that transaction.**” (Emphasis added.)² In other words, Governmental Entities that are not Participating Transmission Owners do not pay the transmission Access Charge based on gross Load; they pay a Wheeling Access Charge based on use of the ISO Controlled Grid, *i.e.*, **net** Load.

The ISO stands by its rehearing request that the Commission reinstate its initial conclusion that the transmission Access Charge should be assessed to Participating Transmission Owners based on gross Load. The ISO wishes to stress, however, that regardless of whether the Commission grants that request,

² Wheeling refers to the use of the ISO Controlled Grid for the transmission of Energy from a Generating Unit located within the ISO Controlled Grid or from a resource located outside the ISO Controlled Grid to serve Load located outside the transmission and Distribution System of a Participating TO.

and regardless of whether the Commission ties its decision to the outcome of ongoing proceeding regarding the Grid Management Charge, Governmental Entities such as Modesto Irrigation District and the City of Santa Clara, California, Silicon Valley Power, unless they become Participating Transmission Owners, will continue to be assessed the Wheeling Access Charge based on their use of the ISO Controlled Grid (*i.e.*, net Load).

B. State Water Contractors and Metropolitan Water District of Southern California

In their rehearing request, the State Water Contractors and Metropolitan Water District of Southern California (“SWC/MWD”) asserts, *inter alia*, that the Commission failed to state a reasoned basis for concluding that SWC/MWD had not established that the ISO's proposed flat MWh-based rate as unjust, unreasonable and unduly discriminatory. In addition, SWC/MWD argue that the Commission's summary affirmation of the Initial Decision constituted an erroneously ruling that the Commission could not consider SWC/MWD's evidence allegedly demonstrating that the ISO's proposed volumetric rate design for the proposed uniform ISO Grid-wide replacement transmission Access Charge is not just and reasonable. See Sections IV.A.1 and IV.A.2 of SWC/MWD Request, relying on PP 304-05, 318-20 of the Initial Decision.

SWC/MWD's argument ignores the Initial Decision's extensive discussion early in the decision of the burden of proof, which provides the predicate for the Commission's rulings cited by SWC/MWD, and which the Commission should note in rejecting SWC/MWD's arguments here. In particular, the Initial Decision stated:

For the rate design proposal to be acceptable, it need be neither perfect nor even the most “desirable”; it need only be reasonable. See *New England Power Co.*, 52 FERC ¶ 61,090 at 61,336 (1990), *reh’g denied*, 54 FERC ¶ 61,055, *aff’d Town of Norwood v. FERC*, 962 F.2d 20 (D.C.Cir. 1992); *City of Bethany v. FERC*, 727 F.2d 1131, 1136 (D.C.Cir. 1984), *cert. denied*, 469 U.S. 917 (1984)(utility need establish that its proposed rate design is reasonable, not that it is superior to alternatives); *OXY USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C.Cir. 1995) (“[T]he Commission may approve the methodology proposed in the settlement agreement if it is ‘just and reasonable’; it need not be the only reasonable methodology or even the most accurate.”).

Initial Decision at P. 57. The Initial Decision further noted:

[A]bsent agreement by the filing utility, the ISO’s proposed TAC must be found to be unjust, unreasonable, or unduly discriminatory before alternative proposals are ripe for consideration. Further, if a party wishes to challenge a feature of the TAC that is unchanged from the previous rate that the Commission has approved as just and reasonable, then that party bears the burden of coming forward with evidence sufficient to establish that the feature in question is unjust or unreasonable. See *Public Serv. Comm’n of NY v. FERC*, 642 F.2d 1335, 1345 (D.C. Cir. 1980).

Initial Decision at P. 58.

Contrary to SWC/MWD’s assertion, nothing in the Initial Decision’s citation of the Commission’s previous approval of the ISO’s flat MWh-based rate design in paragraph 305 indicated a refusal to consider SWC/MWD’s evidence. It was a statement that the ISO rate design was a design that had already been shown to be just and reasonable and consistent with cost-causation. The Initial Decision concluded that, while SCW/MWD had presented evidence in favor of its methodology, it had not presented evidence **to meet its burden** that the existing methodology was inconsistent with cost causation or unjust or unreasonable.³ In

³ The Initial Decision included specific citations to the argument and evidence that supported its conclusion that the ISO Tariff methodology was just and reasonable. Initial Decision at P. 304.

sum, when the Initial Decision stated that "[t]he Commission has already approved the flat MWh-based rate methodology as just, reasonable, and not unduly discriminatory; thus, extended discussion of this issue is moot for the purposes of this proceeding at this time," the reason it found the issue moot was because the burden of proof as to the existing methodology had not been met. The transmission Access Charge hearing took place after the previously-approved flat MWh-based methodology had been in place for many years; despite this fact, SWC/MWD did not come forward with evidence sufficient to establish that the feature in question was unjust or unreasonable. *See Public Serv. Comm'n of NY v. FERC*, 642 F.2d 1335, 1345 (D.C. Cir. 1980). Because this burden was not met, the Commission had no reason to review SWC/MWD's evidence regarding their methodology. The Commission should reject SWC/MWD's Request on that basis.

C. City of Vernon Request

The City of Vernon ("Vernon") contends, *inter alia*, that the Commission erroneously affirmed, without discussion, the Presiding Judge's denial of Vernon's motion for leave to file supplemental testimony regarding methodology for disbursements of transmission Access Charge as revised in Amendment No. 34 and in not ruling that the revised disbursement is unjust, unreasonable, and unduly discriminatory. For the reasons stated by the Presiding Judge, the ISO believes that Vernon's Motion to file Supplemental Testimony was untimely and Vernon's Request should be denied. The ISO wishes to note, however, that the ISO has had no opportunity to respond to the arguments advance in Vernon's

Supplemental Testimony. Therefore, in the event that the Commission concludes that the Presiding Judge erred, the Commission should not rule on the merits of the revised disbursement methodology, but should remand the matter so that the ISO and Intervenors may respond.

Respectfully submitted,

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Counsel for the California Independent System Operator Corporation

Dated: February 7, 2005

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 7th day of February, 2005.

/s/ Anthony Ivancovich
Anthony Ivancovich