

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Cities of Anaheim, Azusa,)	
Banning, Colton, and)	
Riverside, California)	
)	
v.)	Docket No. EL00-111-000
)	
California Independent System)	
Operator Corporation)	

**ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION IN OPPOSITION TO
MOTION TO CONSOLIDATE OF
SOUTHERN CALIFORNIA EDISON COMPANY**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the California Independent System Operator Corporation ("ISO")¹ hereby submits its Answer in Opposition to the Motion to Consolidate of Southern California Edison Company ("SCE") filed in the above-captioned proceeding.

I. Summary

On September 25, 2000, SCE filed a motion to consolidate the complaint proceeding filed by Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California ("Southern Cities") on September 15, 2000, in the above-captioned

¹ Capitalized terms not otherwise defined herein shall have the meaning as defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.

docket, with the Commission investigation into the ISO and California Power Exchange Corporation (“PX”) markets in Docket Nos. EL00-95-000 and EL00-98-000. SCE asserts that the scope of the Commission’s investigation into markets encompasses the Southern Cities’ concerns regarding the improper exercise of market power in the context of out-of-market (“OOM”) purchases or calls by the ISO. Motion at 7.

The ISO disagrees that consolidation is warranted. While the pending investigation does indeed encompass issues regarding the exercise of market power when the ISO must procure energy out-of-market, those concerns were not the focus of Southern Cities’ complaint. Instead, the complaint focused on the allocation of costs of OOM purchases and on the level of neutrality adjustment changes. As the ISO explained in its Answer to the Complaint, filed September 25, 2000 (“Answer”), Southern Cities have failed to meet their burden under Section 206 of the Federal Power Act, 16 U.S.C. § 824e (2000). Answer at 7. Indeed, they even failed to mention that the OOM cost collection methodology at issue has been approved by the Commission. Answer at 5-6. An unfounded complaint should not be kept alive by consolidation with a proceeding to which it is, at best, tangentially related. Insofar as the Southern Cities complaint raises issues that are pending in proceedings other than the pending investigation (e.g., the neutrality issue that is before the Commission in the ISO’s transmission Access Charge filing, Docket No. ER00-2019-000), Commission precedent and public policy call for dismissal of the duplicative and unnecessary request for investigation. Thus, the ISO opposes consolidation with

Docket Nos. EL00-95-000 and EL00-98-000 and urges the Commission to deny SCE's motion.

II. The Complaint Should Not Be Consolidated with the Pending Investigation, but Should Be Dismissed

The ISO believes that Southern Cities' complaint must be dismissed rather than consolidated because the Southern Cities failed to establish a prima facie case that the existing cost methodology is unjust and unreasonable. The complaint challenges two aspects of the ISO Tariff: the allocation of costs of OOM calls in accordance with Section 11.2.4.2.1 and the level of neutrality adjustment charges under Section 11.2.9.1. As the ISO pointed out in its Answer, neither of these challenges has merit. With respect to the allocation of OOM purchase costs, Southern Cities have failed to carry their burden to demonstrate that the existing cost allocation methodology, which allocates to all loads the costs of OOM calls resulting from market shortages, is unjust and unreasonable. Answer at 5-6. See *Wholesale Customers of Ohio Edison Co. v. Ohio Edison Co.*, 22 FERC ¶ 61,314 (1983) (the party initiating the complaint carries the burden of proof to prove its allegations). In fact, contrary to Southern Cities' allegations, the cost methodology at issue was accepted by the Commission and became effective as requested without hearing or suspension. *California Independent System Operator Corporation*, 90 FERC ¶ 61,006 (2000), *reh'g denied*, 91 FERC ¶ 61,026 (2000). Moreover, the Commission has also approved such a cost allocation method in closely analogous circumstances. As the Commission stated in approving a similar mechanism for the allocation of

costs incurred by the ISO in connection with its Summer 2000 Demand Relief Program, “[W]e agree with the ISO that maintenance of grid reliability benefits *all* loads that rely on the ISO Controlled Grid and, therefore, that allocation of program costs on a system-wide basis (i.e., to all Scheduling Coordinators) is reasonable.” *California Independent System Operator Corporation*, 91 FERC ¶ 61,256, at 61,897 (2000) (emphasis in original). Similarly, the ISO issues OOM calls during market shortages to preserve system reliability. Southern Cities’ challenge to the reasonableness of the existing cost allocation methodology is therefore unfounded and should be dismissed.

The ISO also explained that there is no basis for Southern Cities’ attempt to construe the limitation on neutrality adjustment charges in ISO Tariff Section 11.2.9.1 as an hourly cap on those charges. The ISO explained in its Answer that as a not-for-profit, public benefit corporation, it designs its rates and charges for the sole purpose of recovering its costs. Answer at 8-9. See *Pacific Gas and Electric Co., et al.*, 81 FERC ¶ 61,122, at 61,446 (1997). It is authorized under California state code and Commission precedent to recover its costs from the Market Participants on whose behalf it operates the Ancillary Service and Imbalance Energy markets. See Cal. Pub. Util. Code § 365(a); *Pacific Gas and Electric Co.*, 81 FERC at 61,459. Where necessary, it also makes OOM purchases to maintain system reliability. The neutrality adjustment charge merely enables the ISO to recover particular costs that may not otherwise be recoverable through other provisions in the Tariff. As mentioned, the Commission has specifically endorsed the appropriateness of the ISO’s recovery

of these costs from Scheduling Coordinators. Southern Cities have not disputed this fact. Therefore, there is no basis to the complaint, and it must be dismissed.

SCE's motion disregards the thrust of Southern Cities' complaint to focus on the fact that it also mentions concerns regarding the level of shortage-related OOM costs (which are recovered through the neutrality adjustment charge) arising from the exercise of market power by Generators. While this issue is indeed the subject of a pending investigation,² the fact that the Southern Cities complaint mentions in passing an issue that is also the subject of a pending proceeding does not warrant the Commission's retention of Southern Cities' unsubstantiated complaint, let alone its consolidation with the pending proceeding. Consolidation is especially inappropriate where, as here, the cost allocation issues that are the subject of the Southern Cities complaint are not the principal issues involved in the pending proceeding. The procedural step of consolidation was never intended to resuscitate complaints that warrant dismissal or to interject new issues into pending proceedings.

III. Consolidation Would Violate Commission Precedent and Policy

Even if consolidation were appropriate here, SCE's motion focuses on the wrong case. The thrust of Southern Cities' complaint goes to issues raised in a different pending proceeding in which Southern Cities' concerns are being addressed: the transmission Access Charge proceeding. As the ISO explained

² *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange*, Docket Nos. EL00-95-000 and EL00-98-000.

in its Answer, as part of Amendment No. 27 to the ISO Tariff, which proposed a new method for the determination of transmission Access Charges, the ISO has proposed to add Section 11.2.9.1 to the ISO Tariff to place projected annual limits on the level of the neutrality adjustment charges assessed pursuant to Section 11.2.9 of the ISO Tariff, subject to adjustment of the limitation by the ISO Governing Board.³ The Commission accepted Amendment No. 27, including Section 11.2.9.1, effective June 1, 2000, subject to refunds, suspended it, and set it for hearing. It is now holding the hearing in abeyance pending efforts at settlement. *California Independent System Operator Corporation*, 91 FERC ¶ 61,205 (2000). The propriety and operation of the limitations on the neutrality adjustment charge is thus a live issue in that proceeding.

The Commission will dismiss a complaint if it focuses on issues raised in another pending proceeding that involves identical parties, rates, and issues. *Connecticut Municipal Electric Energy Coop.*, 40 FERC ¶ 61,133 (1987). This is the case for Southern Cities' complaint. Their objections to the allocation of OOM costs have been considered and rejected in the two cases discussed in the preceding section. Their concerns regarding the operation of the neutrality adjustment limits are current at issue in the Amendment No. 27 proceeding. If Southern Cities' complaint were consolidated with the pending *San Diego*

³ Section 11.2.9.1 of the Tariff reads:

The total charges levied under Section 11.2.9 shall not exceed \$0.095/MWh, applied to Gross Loads in the ISO Control Area and total exports from the ISO Controlled Grid, unless: (a) the ISO Governing Board reviews the basis for the charges above that level and approves the collection of charges above that level for a defined period; and (b) the ISO provides at least seven days' advance notice to Scheduling Coordinators of the determination of the ISO Governing

investigation, the result would be that the OOM cost allocation issues that the Commission has already resolved would be subject to reexamination and the neutrality adjustment charge limitation would be the subject of *two* pending proceedings. Nowhere does SCE explain why duplicative consideration of these Southern Cities' claims is necessary or appropriate.

IV. Consolidation Would Serve No Useful Purpose

The Commission will deny consolidation of proceedings where, among other things, such would not serve a useful purpose or would cause unnecessary delay. *United Gas Pipe Line Co.*, 34 FERC ¶ 61,282 (1986). Consolidation here would serve no useful purpose. As an initial matter and as described above, the complaint raises issues that have already been resolved by the Commission or are already before the Commission (albeit not in the proceeding with which SCE urges its consolidation).

Moreover, consolidating Southern Cities' complaint with the *San Diego* proceeding would serve no useful and appropriate purpose. With respect to the neutrality adjustment charge issue, the ISO Tariff modifications proposed in Amendment No. 27, including the annual limitation on neutrality adjustment charges, were accepted subject to refund.⁴ SCE does not and cannot claim that the Southern Cities complaint must be accepted and consolidated with the *San Diego* investigation to provide additional protection.

⁴ Board.
California Independent System Operator Corporation, 91 FERC at 61,730. A

With respect to the OOM cost allocation issue, the current allocation methodology was specifically accepted by the Commission. The ISO's implementation of an accepted allocation methodology should not expose it to potential refund exposure. The creation of such exposure would create uncertainty for the Market Participants whose responsibility for OOM costs would be redistributed if the ISO were directed to apply a different allocation methodology retroactively. This could further unsettle the wholesale power markets in California.

In short, consolidation in this case would not serve its usual and intended purpose of administrative economy by enabling the Commission to resolve like issues in a single proceeding. Instead, it would serve to keep alive a complaint that warrants dismissal and, with respect to one claim, create financial uncertainty for Market Participants where none is warranted.

V. Conclusion

WHEREFORE, for the reasons discussed above, the Commission should deny SCE's motion to consolidate.

Respectfully submitted,

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