

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

Salt River Project Agricultural Improvement and Power District)	
)	
v.)	Docket No. EL01-84-000
)	
California Independent System Operator Corporation)	

**ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM
OPERATOR CORPORATION TO COMPLAINT OF SALT RIVER PROJECT
AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**

I. INTRODUCTION

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. § 385.213, and the Commission's June 4, 2001 Notice of Complaint, the California Independent System Operator Corporation ("ISO" or "CAISO")¹ hereby submits its Answer to the Complaint filed against the ISO on June 1, 2001, in the above-referenced docket, by Salt River Project Agricultural Improvement and Power District ("SRP"). SRP requests that the Commission (i) grant SRP's Complaint and (ii) "direct the CAISO to refund all neutrality adjustment charges collected by the CAISO from SRP for the time period December 10-11, 2000, as well as any other neutrality adjustment charges collected by the CAISO from SRP, for the time period January 1, 2000 through December 31, 2000, in excess of the actual

hourly cap on neutrality adjustment charges contained in the CAISO's filed tariff, along with interest."² For the reasons described below, the Commission should find that the relief requested in the SRP Complaint should be denied.

II. ANSWER

A. The ISO Has Properly Allocated the Costs of Dispatches As Provided for in Section 11.2.4.2.1 of the ISO Tariff

On December 8, 2000, the ISO filed Amendment No. 33 to the ISO Tariff in Docket No. ER01-607-000. In relevant part, Amendment No. 33 modified Section 11.2.4.2.1 of the Tariff to provide that, effective December 12, 2000, in-Control Area out-of-market costs (which are not to be allocated to Participating Transmission Owners or "Participating TOs") will be allocated to each Scheduling Coordinator pro rata based upon the ratio of each Scheduling Coordinator's Net Negative Uninstructed Deviations (i.e., unscheduled Load) to the total Net Negative Uninstructed Deviations in each settlement interval.³ The ISO explained that it was requesting the December 12, 2000 effective date for the following reason:

Because the purpose of the revision of section 11.2.4.2.1 is to encourage scheduling in the forward markets, the ISO believes that it should not become effective before the first date, subsequent to this filing, when changes to scheduling practices can be implemented. Because bids were submitted to the [California Power Exchange] today for Trading Day December 11, the ISO believes December 12 is the earliest appropriate effective date.⁴

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

² SRP Complaint at 18.

³ Transmittal Letter for Amendment No. 33, Docket No. ER01-607-000 (Dec. 8, 2000), at 4, 10-11.

⁴ *Id.* at 11.

The Commission accepted Amendment No. 33 and specifically approved the proposed December 12, 2000 effective date for this Tariff change, stating that “[t]he ISO’s proposed tariff changes are hereby accepted for filing *to become effective as requested.*”⁵ Thus, the Commission *agreed* that the proper effective date for the change to the allocation method *was December 12.*

SRP misstates the Commission’s conclusion when it asserts that the change was made effective on December 10, 2000.⁶ The only place in the Amendment No. 33 Order that the date December 10 is mentioned is in the following sentence:

The ISO requests that the Commission allow Amendment No. 33 to become effective today, on December 8, 2000, as of the hour beginning 4:00 p.m., Pacific Standard Time, except for the provisions regarding cost allocation for out-of-market Dispatches, for which the ISO requests an effective date of December 10, 2000.⁷

As explained above, the ISO requested an effective date of December 12, not December 10, for the allocation provision. Thus, the only reasonable conclusion that can be reached is that the sentence just quoted from the Amendment No. 33 Order contains a misprint in the Amendment No. 33 Order as published by the Commission, and that the last several words were intended to read “December 12, 2000.” If the Commission had intended for some reason to require a December 10 effective date, the Commission would certainly have provided reasons why it was adopting a different effective date from the one proposed by the ISO, or at least would have acknowledged that it was adopting a different

⁵ *California Independent System Operator Corporation*, 93 FERC ¶ 61,239, at 61,774 (emphasis added) (“Amendment No. 33 Order”).

⁶ SRP Complaint at 6.

effective date. Thus, SRP should not have relied on this sentence in making its assertion as to the correct effective date for the allocation provision.

The ISO quickly saw that a misprint had crept into the Amendment No. 33 Order. On December 12, 2000, the ISO filed a limited motion and answer in the Amendment No. 33 docket. In this filing, the ISO noted the misprint described above, pointed out that the requested effective date was in fact December 12, and requested that the Commission confirm “that its December 8 Order accepted the proposed effective dates for Amendment No. 33, and that the cost allocation elements of the amendment should properly go into effect on December 12, 2000.”⁸

The Commission has not ruled on this motion, but it has acknowledged the error in another order. In its December 15, 2000 order concerning the California bulk power markets, the Commission noted that the “ISO requested an effective date of December 12, 2000” for the modification of the allocation provision proposed in Amendment No. 33.⁹ The Commission went on to explain that it had “approved the tariff revisions in an order issued December 8, 2000, with the effective dates requested by the ISO,” and cited the Amendment No. 33 Order.¹⁰

⁷ Amendment No. 33 Order at 61,774.

⁸ Limited Motion for Clarification of the California Independent System Operator Corporation and Answer to the California Power Exchange’s Motion for Emergency Expedited Modification of Amendment No. 33, Docket No. ER01-607-001 (Dec. 12, 2000), at 2, 6. SRP notes in its Complaint that the ISO made this filing. SRP Complaint at 6 n.6.

⁹ *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*, 93 FERC ¶ 61,294, at 61,991 (2000).

¹⁰ *Id.* & n.26.

SRP's attempt to base a complaint on the Commission's failure to act specifically on the ISO's request for clarification is groundless.¹¹ Without more, the absence of a Commission ruling on the ISO's December 12 filing would not indicate either the Commission's agreement or disagreement with that filing. Here, however, the discussion in the December 15, 2000 order described above plainly confirms the ISO's view that the reference in the Amendment No. 33 Order to a December 10 effective date was a clerical error. In any case, the Commission can put the question entirely to rest by taking action on the ISO's December 12, 2000 filing, and by clarifying that the effective date for the cost allocation elements of Amendment No. 33 is December 12, 2000. The ISO reiterates its request that the Commission do so.

SRP's position is not advanced by its statement that the Commission "recently reiterated," in another docket, that a December 10, 2000 effective date applied to the allocation provision.¹² This mention of the December 10 date in the other docket is easily explained as the result of the misprint in the Amendment No. 33 Order being inadvertently perpetuated in some but not all of the other related dockets before the Commission. As noted above, the Commission's December 15, 2000 order accurately describes the December 12 effective date proposed by the ISO and approved by the Commission. Critically, SRP fails to take note that the correct date is specified in the December 15, 2000 order.

¹¹ SRP Complaint at 6 n.6.

¹² *Id.* (citing *Cities of Anaheim, Azusa, Banning, Colton and Riverside, California v. California Independent System Operator Corporation*, 95 FERC ¶ 61,197, at 61,686 n.4 (2001) ("May 14 Southern Cities Order").

For the reasons described above, the effective date that the Commission approved for the allocation provision is December 12, 2000. SRP's attempt to take advantage of a clerical error in the Commission's Amendment No. 33 Order, which was implicitly acknowledged in an order issued the following week, is improper and unavailing. As a result, the ISO properly allocated out-of-market costs on December 10-11, 2000 (and at all other times) in accordance with the ISO Tariff.

B. SRP Should Not Be Refunded the Amounts That It Claims

SRP argues that "the CAISO violated the rate cap in the CAISO's filed tariff throughout the time period January 1, 2000 through December 31, 2000."¹³ SRP is incorrect in a number of respects. First, SRP has incorrectly included, in the amounts it alleges it was overcharged, types of charges that are collected by the ISO on the basis of Scheduling Coordinators' metered Demands, regardless of the Tariff provision under which they are levied. As the ISO noted in its Request for Rehearing, Motion for Clarification, and Petition for Reconsideration concerning the May 14 Southern Cities Order:

For billing purposes and administrative convenience, the ISO grouped together on Scheduling Coordinators' monthly invoices all of the ISO Tariff charges that are assessed on the basis of Scheduling Coordinators' metered Demands, and did sometimes use the shorthand "neutrality costs" to refer to all of the costs recoverable through the various charges. The aggregated billing line item, which was labeled as a "neutrality charge," includes items recoverable under Section 11.2.9 as well as items recoverable under other Tariff provisions.¹⁴

¹³ SRP Complaint at 7-11.

¹⁴ See Request for Rehearing, Motion for Clarification, and Petition for Reconsideration of the California Independent System Operator Corporation, Docket No. EL00-111-003 (June 13, 2001), at 6-7, 13-15, 19-28 ("June 13 Filing"), at 17-18. The ISO hereby incorporates the discussion in the June 13 Filing by reference into the present filing, and also includes the June 13 Filing as Attachment A to the present filing.

The ISO explained in the June 13 Filing that charges other than the five enumerated charges set forth in Section 11.2.9 are not subject to any neutrality limitation. Types of charges that do not come under any of the five categories of charges enumerated in Section 11.2.9 include the following:

- Costs incurred when Generating Units in the ISO Control Area are dispatched out-of-market to avert or manage System Emergencies, which are recovered under Section 11.2.4.2.1 of the ISO Tariff,
- Costs incurred under negotiated arrangements to secure Energy or Ancillary Services from other resources for the same purposes, which are recovered under Section 11.2.10 of the ISO Tariff (which in turn references Section 2.3.5.1); and
- Costs incurred with respect to Instructed Imbalance Energy procured to address real-time Zonal requirements, which are recovered under Section 11.2.4.1.1 of the ISO Tariff (which in turn references Section 2.5.23).¹⁵

The removal of amounts other than those incurred under Section 11.2.9 reduces the amounts that SRP can allege to be charged in excess of the neutrality limitation in Section 11.2.9.1.¹⁶

¹⁵ See June 13 Filing at 10-13, 17-19.

¹⁶ In the June 13 Filing, the ISO stated that, if the Commission were to decline to grant rehearing of the May 14 Southern Cities Order and to decline to modify the May 14 Southern Cities Order as requested by the ISO, the ISO will issue revised billing statements for the relevant period to identify separately items that may properly be charged under Tariff sections other than Section 11.2.9. *Id.* at 18-19. The ISO went on to state that:

If the Commission considers the approach described above to be inconsistent with the May 14 Order, the Commission should provide clarification or grant rehearing to confirm that under the ISO's "filed rate," the limitations set forth in Section 11.2.9.1 apply only to the five enumerated charges set forth in Section

A second flaw in SRP's argument is that it is based on the assumption that the neutrality limitation described in Section 11.2.9.1 of the Tariff was intended to operate as a hard hourly cap. As detailed in the June 13 Filing, the neutrality limitation was intended *only* as an annual indicator of neutrality charges for the budgeting purposes of Market Participants, as demonstrated by the vast weight of the evidence. Therefore, the neutrality limitation in Section 11.2.9.1 should properly be applied for the benefit of all Scheduling Coordinators on an annual rather than an hourly basis.¹⁷

Moreover, SRP is incorrect in stating that the neutrality limitation in Section 11.2.9.1 applies to the January 1, 2000 through December 31, 2000 time period.¹⁸ Section 11.2.9.1 has been effective only since June 1, 2000.¹⁹ Thus, only the time period from June 1, 2000 through December 31, 2000 may appropriately be the subject of this proceeding.

11.2.9 and not charges levied under other ISO Tariff provisions, including Sections 11.2.4.1.1, 11.2.4.2.1, and 11.2.10.

Id. at 19. If the Commission does not provide the clarification or grant the rehearing described above, and finds that an hourly hard cap should apply, one of the consequences would appear to be that all of the charges alleged by SRP to be overcharges would be subject to the neutrality limitation in Section 11.2.9.1. In that event, the ISO believes that the Commission should take action similar to that taken in regard to the California Power Exchange's chargeback provision, i.e., the Commission should find that, because the neutrality limitation was never intended to apply to the unanticipated and extraordinary events of late 2000, the neutrality limitation's application in those circumstances would be unjust and unreasonable. See *Pacific Gas and Electric Company v. California Power Exchange Corporation*, 95 FERC ¶ 61,020, at 61,045 (2001). It cannot be denied that the costs incurred in late 2000 were at an extraordinarily high level and beyond any costs that reasonably could be anticipated. For example, the costs for out-of-market Dispatches for the last three months of 2000 ballooned from \$737,322 in October to \$95 million in November to \$710 million in December.

¹⁷ See June 13 Filing at 6-7, 13-15, 19-28.

¹⁸ SRP Complaint at 7-8.

¹⁹ See *California Independent System Operator Corporation*, 90 FERC ¶ 61,205, at 61,730 (2000) (accepting Amendment No. 27 to the ISO Tariff, which included Section 11.2.9.1, effective June 1, 2000, suspending Amendment No. 27, and setting it for hearing, which hearing is being held in abeyance pending efforts at settlement).

Additionally, the ISO has already noted that if the Commission requires that a hard hourly cap apply, the ISO can “bank” any collection deficiency on a Scheduling Coordinator-by-Scheduling Coordinator basis, and can flow the deficiency through in subsequent hours to the extent that there is room below the neutrality limitation.²⁰ Further, to the extent that refunds may still be due to Scheduling Coordinators after the banking process described above, the ISO will attempt to collect the amounts to be refunded from Scheduling Coordinators who received the benefit of the higher neutrality charges. As provided for in the ISO Tariff, to the extent the ISO receives the amounts due from these Scheduling Coordinators, it will remit the amounts to those Scheduling Coordinators to which refunds are due. However, assuming that SRP and other Scheduling Coordinators were due to receive remittances, the ISO would not be permitted to remit to SRP an amount disproportionate to the amount that each of the other Scheduling Coordinators was due. If the ISO is not paid in full, the amounts remitted will be reduced accordingly.²¹

Taken together, these considerations fully address the concerns of SRP as to alleged overcharges. Therefore, SRP should not be refunded the amounts that it claims.

²⁰ See June 13 Filing at 29-31. If the Commission requires the application of a hard hourly cap, the ISO plans to “bank” as described above unless the Commission informs the ISO that the ISO’s actions are impermissible. See *id.* at 29.

²¹ See *id.* at 31-33.

C. The Commission Was Correct In Permitting the ISO Governing Board to Increase the Neutrality Limitation As Described In Section 11.2.9.1, and the ISO Provided Proper Notice of the Increase Approved by the ISO Governing Board in September 2000

SRP finds fault with the fact that Section 11.2.9.1 permits the ISO Governing Board to increase the neutrality limitation for a defined period without filing that increase with the Commission.²² There is nothing improper about the Governing Board's ability to do this. Over a year ago, the Commission accepted Section 11.2.9.1 without requiring modification of the section, thus indicating its approval of this Governing Board power.²³ Certainly, the time for SRP (or any other party) to protest or comment on the provisions in the Amendment No. 27 filing has long passed.

Additionally, SRP's argument that the filed rate doctrine precludes the ISO from increasing the neutrality limitation is inapposite. SRP states that the filed rate doctrine "prohibits a public utility from collecting *new* charges from its customers that have not been filed with FERC."²⁴ The ability of the ISO Governing Board to increase the neutrality limitation was made an explicit part of Section 11.2.9.1, a Tariff provision that *was* filed with the Commission. When the Governing Board increased the neutrality limitation effective as of September 15, 2000, it was not enacting a new rate, but was instead implementing the provisions of Section 11.2.9.1 as already accepted by the Commission. For all of these reasons, the concerns expressed by SRP about the Governing Board's discretion as described in Section 11.2.9.1 are misplaced.

²² See SRP Complaint at 11-13.

²³ See *California Independent System Operator Corporation*, 90 FERC at 61,730.

Finally, SRP asserts that it received no notice of the resolution of the ISO Governing Board to increase the neutrality limitation to \$0.35/MWh in September 2000.²⁵ This assertion is groundless. Section 11.2.9.1 requires the ISO to provide “at least seven days’ advance notice to Scheduling Coordinators of the determination of the ISO Governing Board.” The resolution of the ISO Governing Board was adopted on September 7, 2000, to be effective beginning on September 15, 2000. On September 8, 2000, Byron Woertz, Director of Client Relations for the ISO, circulated an e-mail to ISO Market Participants and Scheduling Coordinator Settlements Contacts that announced the Governing Board’s resolution and provided links to relevant information on the ISO Home Page.²⁶ This is a standard method of providing announcements to Market Participants and Scheduling Coordinators. The ISO thus fulfilled its responsibilities under Section 11.2.9.1, and provided timely notice of the Governing Board’s resolution to SRP.

Additionally, on September 1, 2000, the ISO posted on the ISO Home Page a public notice concerning the ISO Finance Committee Meeting scheduled for September 6, 2000. The public notice stated that “the Finance Committee will discuss and possibly take action on” a number of agenda items, including an

²⁴ SRP Complaint at 13 (emphasis added).

²⁵ *Id.* at 11. SRP does not state when it was notified of the resolution of the ISO Governing Board, but merely says that “SRP was unaware of any such change at the time SRP scheduled loads or initially reviewed its billing statements for the months of September through December 2000.” *Id.*

²⁶ This e-mailed announcement is included in the present filing as Attachment B. The resolution of the ISO Governing Board was posted on the ISO Home Page on September 7, 2000. As with many other Tariff implementation processes and in keeping with existing administrative practices, the ISO customarily provides information and updated practices and protocols on its Home Page. The benefits to the public and to Market Participants of the ISO’s routine posting of information and practices includes the provision of a single source of information that is both current and readily accessible by all interested parties and stakeholders.

increase in the neutrality limitation.²⁷ The ISO also posted on the ISO Home Page a public notice stating that, during the ISO Governing Board meeting scheduled for September 7, 2000, the Governing Board would “discuss and possibly take action on” agenda items that included the Finance Committee’s report concerning an increase in the neutrality limitation.²⁸ Thus, all interested parties, including SRP, were provided with notice, well before the Governing Board announced its resolution, that the issue of an increase in the neutrality limitation was on the agendas of the Finance Committee and of the Governing Board.

D. The ISO Is Applying Its Tariff In An Appropriate Manner

SRP argues that “the fact that the CAISO is structured as a non-profit corporation does not excuse the CAISO from refund liability or its obligations to comply with the law.”²⁹ The ISO understands that it must assume the responsibilities that are legally required of it, and certainly does not subscribe to the view that “a public utility could violate the law with impunity simply by changing its corporate form.”³⁰ Rather, as explained above, the ISO is applying its Tariff in an appropriate manner, and thus is not violating the law.

²⁷ This public notice is included in the present filing as Attachment C, and can be viewed on the ISO Home Page at <http://www.caiso.com/meetings/docs/000906noticeoffinancecommitteemtg.pdf>.

²⁸ This public notice is included in the present filing as Attachment D, and can be viewed on the ISO Home page at <http://www.caiso.com/meetings/docs/000906noticeofboardofgovernors.pdf>.

²⁹ SRP Complaint at 14.

³⁰ See *id.* at 14.

III. COMMUNICATIONS

Communications regarding this docket should be sent to the following individuals, whose names should be entered on the official service list established by the Secretary for this proceeding:

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IV. CONCLUSION

For the foregoing reasons, the ISO respectfully requests that the Commission deny the requests for relief contained in the SRP Complaint.

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