

California. Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company are Participating Transmission Owners (“Participating TOs”) that have placed transmission facilities under the operational control of the Cal ISO pursuant to Transmission Control Agreements on file with the Commission. These Participating TOs, like the Cal ISO, are public utilities subject to the Commission’s jurisdiction under the Federal Power Act.

B. The Current Methodology

The Federal Energy Regulatory Commission (“FERC” or the “Commission”) is authorized, under the Federal Power Act, to assess annual charges against regulated public utilities to recover the costs of administration of FERC's electric regulatory program. 18 C.F.R. Part 382. The regulations based on this principle were promulgated pursuant to the requirement of the Omnibus Budget Reconciliation Act of 1986 (42 U.S.C. 7178) that public utility assessments be based on methods determined by the Commission to be “fair and equitable.”² The Commission’s current regulations provide for the assessment of annual charges on a megawatt-hour basis, 18 C.F.R. § 382.201 (1999), and are assessed based on each utility's total annual "long-term firm sales for resale and transmission activities" and "short-term sales and transmission and exchange activities." NOPR at 33,917. This methodology has been both even-handed and relatively easy to apply with respect to conventional public utilities. As they were promulgated in 1987, however, the current annual

² 42 U.S.C. 7178(b).

charge regulations do not specify how such annual charges are to be assessed against new entities such as independent system operators or regional transmission organizations (“RTOs”).³

The Commission’s current annual charge regulations were designed to apportion costs among the public utilities regulated by the Commission in 1987 in an equitable manner.⁴ If the Commission were to leave these regulations unchanged in the current electric regulatory environment, however, depending on whether and how the Commission applied the provisions to ISOs and RTOs, it is not clear if an equitable apportionment would result for the public utilities regulated by the Commission in 2000. With the emergence of ISOs and the development of RTOs, there is an additional risk related to the assessment of annual charges. This risk is the possibility of duplicative assessment or “double-counting”.⁵ Double-counting would occur if both a transmission-owning public utility and either an RTO that does not own the transmission facilities it operates or the independent system operator of the region within which such transmission owner operates were assessed annual charges for the same transactions. If such double-counting were to take place, consumers in areas of the country in which ISOs or RTOs have been created necessarily would be at a disadvantage

³ The issue of how the annual charges should be assessed in light of changes in the industry was raised by the Automated Power Exchange, Enron Power Marketing, Inc., Coral Power, LLC, and others in their Petition for Rulemaking of August 12, 1998 in Docket No. RM98-14-000. In the Notice of Proposed Rulemaking discussed herein, the Commission notes that the current rulemaking proceeding moots that proposed in Docket No. RM98-14-000. NOPR at 33,916, n. 1.

⁴ FERC Stats. & Regs., Regulations Preambles 1986-1990 ¶ 30,746 (1987).

⁵ As discussed below, the Commission has recognized this risk in the instant proceeding. NOPR at 33,921.

as compared with energy consumers in regions without ISOs or RTOs. This outcome would inhibit realization of the Commission's goal to encourage the formation of and participation in RTOs or ISOs, and would not be "fair and equitable". For this reason, among others, the Commission properly has recognized that the existing annual charge methodology does not meet the needs of a changed industry.

Prior to the issuance of the NOPR, the Commission already had taken interim steps to address concerns with the fair application of the annual charge in light of the transformation of the electric industry in recent years. In an order issued In Docket No. EL98-71-000 on July 28, 1999⁶, the Commission stated that it would grant a waiver for the assessment of annual charges against independent system operators or power exchanges for 1999. In that order, the Commission recognized that assessing annual charges against independent system operators and/or power exchanges under the current annual charge regulations would effectively double the transactions that would be subject to annual charges in areas of the country that have established independent system operators and/or power exchanges, thereby placing a disproportionate financial burden on those parts of the country. In a subsequent order issued in that docket on November 1, 1999, in response to a Request for Rehearing of the July 28 Order by the California PX, the Commission stated that it would extend its waiver for the assessment of annual charges against independent system operators and/or power exchanges until such time as the Commission has

⁶ PJM Interconnection, LLC, 88 FERC ¶ 61,109 (1999).

completed a review of its annual charge assessments with respect to independent system operators, power exchanges, RTOs, and other entities.⁷ The Cal ISO was an intervenor in that proceeding and supported the Commission's determinations on those issues.

C. The Annual Charge NOPR

On January 28, 2000, the Commission issued its NOPR in the instant proceeding, in which it proposes to establish a new methodology for the assessment of annual charges to public utilities. The Commission explains that a new methodology is necessary because the electric industry has undergone sweeping changes since the prior annual charge methodology was promulgated. Specifically, the Commission proposes that annual charges be assessed to public utilities based on the volume (in megawatt hours) of electricity transmitted in interstate commerce by the public utilities. As noted above, this would be a departure from the currently effective method, by which the Commission assesses annual charges based on both jurisdictional power sales and transmission volumes.⁸ The Commission proposes to include the following transmission transactions in the volumes for which annual charges would be assessed: (1) unbundled wholesale transmission; (2) unbundled retail transmission⁹; and (3) bundled wholesale power sales which include a

⁷ PJM Interconnection, LLC, 89 FERC ¶ 61,133 (1999).

⁸ The Commission notes that assessing the charge for its electric regulatory program costs based on transmission volumes alone brings its electric annual charge methodology in line with FERC's method of assessing annual charges on natural gas companies. NOPR at 33,920, n. 35.

⁹ The possibility that the Commission might assess annual charges against public utilities based on unbundled retail transmission was the subject of a Request for Rehearing filed by

transmission component, where the transmission component is not separately reported as unbundled transmission.

With respect to independent system operators, as well as RTOs with members that retain ownership of transmission facilities, the Commission expresses concern in the NOPR regarding the danger of "double-counting" transmission transactions. The Commission solicited comments on two possible approaches to address this issue. One approach would be to charge "each transmission-owning public utility" for the transmission service provided on its facilities. NOPR at 33,921. The other approach would be for the independent system operator or RTO to pay the annual charges in its capacity as an agent for the individual transmission owners. The Commission also solicited comments on any other approach that would allow the Commission to collect annual charges for transmission transactions involving such entities in the most efficient manner. NOPR at 33,921.

III. SPECIFIC COMMENTS

A. Addressing the "Double-Counting" Issue.

For reasons noted above, the Cal ISO strongly supports FERC's intention to address the potential for double-counting of transmission transactions in the revision of its annual charge regulations. The Commission -- quite properly --

Pacific Gas and Electric Company, Southern California Edison Company, and San Diego Gas & Electric Company (the "California Companies") in Docket No. EL98-71, referenced above. The California Companies argued that assessing transmission owners for unbundled retail transactions would place a disproportionate cost burden on states that have adopted retail competition. The Commission decided that it did not need to address the issues raised by the California Companies in their Request for Rehearing in that proceeding, noting that it could address such issues in its separate review of annual charge assessments with respect to RTOs, ISOs, and power exchanges. 89 FERC ¶ 61,133 at 61,380.

has recognized that it would be inappropriate to count a single transaction “both to the transmission-owning public utility [*i.e.*, the transmission owner] and to the ISO or RTO public utility.” NOPR at 33,921. The Final Rule to be promulgated in this proceeding must therefore eliminate the risk of double-counting. As requested in the NOPR, the Cal ISO offers the following comments on what would be the best approach to resolve this issue.

1. Transmission Owners Should Be Assessed Annual Charges For Transactions Over Their Facilities.

Of the two options suggested by the Commission in the NOPR for addressing the concern that the assessment of annual charges could result in double-counting, the Cal ISO believes the first option, assessing transmission owning utilities based on the megawatt hours of transmission service provided on their lines, is the superior one.¹⁰ This approach is consistent with the Commission’s conclusion in the NOPR that it is fair and equitable to charge those public utilities that provide interstate transmission service directly, and would preserve existing mechanisms by which transmission owners can recover the costs of FERC annual charges. This approach would also avoid the need, when new ISOs and RTOs are formed, to develop mechanisms to transfer the responsibility for payment of FERC annual charges to the new organization and for that organization to recover those costs.

In the NOPR, the Commission recognizes that "the time and effort of our electric regulatory program is now increasingly devoted to assuring open and

¹⁰ As discussed below, the Cal ISO also believes that the Commission should consider exempting MWh associated with unbundled retail transmission from annual charge assessment.

equal access to public utilities' *transmission systems*." NOPR at 33,920. The Commission therefore finds that it is appropriate to assess the costs of this regulatory program solely on the MWh transmitted in interstate commerce over these systems. Moreover, even though only public utilities that provide transmission service will be assessed annual charges under the proposed methodology, the Commission states that it believes other public utilities, such as power sellers, will be contributing to the Commission's recovery of its electric regulatory program costs in that they will be using these transmission systems and, in the rates that they pay for transmission service, will pay a fair and equitable share of the Commission's regulatory costs. NOPR at 33,920-21. Under the approach outlined in the NOPR, the Cal ISO therefore believes it is wholly appropriate to assess the annual charges against the public utilities that *own* the transmission systems that are subject of the Commission's rationale for the new methodology.

While it is true that public utilities such as the Cal ISO and other independent system operators have reliability and scheduling responsibilities with respect to these transmission systems, it is important to remember that all such entities approved by the Commission to date are not-for-profit public utilities which have been created to further the Commission's goal of assuring open and equal access to the transmission systems owned by existing public utilities. In this regard, independent system operators, and the RTOs to be developed in accordance with the Commission's Order No. 2000¹¹, are as much the product of

¹¹ Regional Transmission Organizations, FERC Stats. & Reg. Regulations Preambles ¶ 31,089.

the Commission's electric regulatory program as they are the subjects of that program. Insofar as such independent system operators or RTOs do not own the transmission systems that are the focus of the Commission's revised annual charge methodology, it seems more appropriate to assess the annual charges against the transmission owners themselves.

The Commission has recognized that if transmission owners continue to be assessed annual charges for transactions over their facilities, they could continue to include the annual charges, as a cost element, in their transmission revenue requirement, which would be recovered by the independent system operator or RTO through its open access transmission tariff rates.¹²

As the transmission owners that own the transmission facilities operated by an ISO traditionally have been assessed annual charges for transmission transactions occurring on those facilities, they have mechanisms in place for accounting for annual charge costs and for passing through the costs to the appropriate parties. As well, the rates charged by such entities currently take into account the cost of FERC annual charges. An ISO or RTO, on the other hand, would have to develop new procedures and new mechanisms for paying the charge and passing through the costs to the appropriate entities. While such procedures and mechanisms could certainly be developed, it would be simpler to allow transmission owners to utilize the pass-through mechanisms that are already in place. In light of all this, administrative convenience alone would

¹² In this regard, the ISO notes that the rates for recovering the embedded costs of the transmission facilities operated by the ISO are recovered under individual tariffs filed by the public utility owners of those facilities. On March 31, 2000, the ISO made a filing with the Commission that presents a new Access Charge methodology.

dictate that continued assessment of annual charges to transmission owners would be beneficial and appropriate.¹³

In addition, other concerns would complicate the efforts independent system operators or RTOs would need to undertake if they were assessed annual charges. In Order No. 2000, the Commission expressed a preference that RTOs include transmission systems owned by municipalities and other utilities that are not "public utilities" under the Federal Power Act. The Cal ISO is currently engaged in efforts to facilitate the full participation of California municipalities in the Cal ISO. Under the NOPR, however, such entities are not subject to FERC annual charges. If annual charges were to be assessed against an independent system operator or RTO that operates the transmission systems of both jurisdictional and non-jurisdictional utilities, the ISO or RTO would be required to take steps to distinguish the MWh transmitted over purely non-jurisdictional transmission systems for purposes of reporting transactions subject to FERC annual charges. Again, the simpler approach would be for jurisdictional public utility transmission owners to report the transactions occurring over their systems and to be assessed the annual charges for such transactions.

2. If the Commission Elects to Assess Annual Charges Against Independent System Operators, the Commission's Regulations Should Specify That the Costs of Such Annual Charges Can Be Allocated to Transmission Owners.

¹³ The Cal ISO recognizes that independent system operators or RTOs could become transmission owners in the future. If this were to occur, such entities would be expected to pay any annual charges assessed to them as transmission owners, and would develop mechanisms and procedures appropriate thereto.

If the Commission decides to assess annual charges against independent system operators and/or RTOs that do not own their own transmission facilities under the new annual charge methodology, the Cal ISO urges the Commission to specify that the costs of such annual charges are recovered appropriately by the ISO or RTO from the transmission owners who otherwise would pay those charges. This would be consistent with the “agency” rationale for assessing annual charges against ISOs or RTOs discussed in the NOPR. That is to say, the Commission would assess annual charges from an ISO (or non-transmission owning RTO) merely in its role as agent for individual transmission owners. NOPR at 33,921. In that manner, an ISO can pass the costs through to the transmission owners themselves, who could recover these costs through their existing pass-through mechanisms.

The Commission has expressed a strong commitment to the concept of ISOs and encouraged the formation of ISOs as part of the restructuring process.¹⁴ The Commission should already be aware that, where an ISO or RTO is operated as a non-profit entity, as is the case in California, that ISO or RTO would be unable to pay an annual charge assessment unless it can pass the costs of such an assessment through to the appropriate parties. The NOPR establishes that, in states or regions that do not have an ISO or an RTO, the transmission owner is the appropriate party to be assessed annual charges.

¹⁴ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21540, FERC Stats. & Regs. ¶ 31,036 at 31,730 (1996), Order on Reh’g, Order No. 888-A, 62 Fed. Reg. 12274, FERC Stats. & Regs. ¶ 31,048 at 30,249 (1997), Order on Reh’g, Order No. 888-B, 62 Fed. Reg. 64688, Order on Reh’g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

Permitting an ISO or an RTO to recover annual charges from the transmission owners whose transactions led to the assessment of charges will permit that ISO or RTO to continue to operate while ensuring an equitable assignment of cost responsibility. Such an approach would also ensure that annual charge allocations would be the same in regions that have developed ISOs or RTOs as it is in regions that have not undertaken such restructuring efforts.

Therefore, if any FERC annual charges are to be assessed to ISOs and/or non-transmission owning RTOs under the new annual charge methodology, the Commission's Final Rule should also specify that RTOs and ISOs are authorized to recover the costs of such annual charges from the transmission owners based on the MWh of transmission service provided on their systems.

B. The Commission Should Consider Exempting Unbundled Retail Transmission From the Annual Charge Assessments

In the NOPR, the Commission states that it intends to assess annual charges based on all public utility interstate transmission, "with no distinction made between so-called unbundled retail and unbundled wholesale transmission." NOPR at 33,921, n. 36. The Cal ISO respectfully requests that the Commission revisit this issue in the Final Rule and consider exempting from annual charge assessment, at least on an interim basis, transmission that has become subject to the Commission's jurisdiction as a result of retail unbundling.

The basis for this request is similar to the basis for comments the Cal ISO filed in Docket No. EL98-71 concerning the "double-counting" issue. In those comments, the Cal ISO stated that, if consumers ultimately served through an ISO were to be subjected to duplicative assessment of FERC annual charges

(attributable separately to the ISO and to the Transmission Owners), those consumers necessarily would be at a disadvantage as compared with energy consumers in regions without ISOs. If the Commission were to assess such duplicative annual charges it would only have inhibited realization of the Commission's goal that the formation of and participation in ISOs be encouraged. As discussed above, in the NOPR, the Commission has quite properly indicated that it will take steps to avoid such duplicative annual charge assessments. The Cal ISO applauds and appreciates the Commission's recognition of this issue.

Similar concerns arise with respect to unbundled retail transmission. Assessing annual charges for unbundled retail transmission will require public utilities in states such as California, that have undergone electric industry restructuring, to report more transmission MWh for purposes of assessing annual charges than will be reported by public utilities in states that have not undergone such restructuring (and are otherwise providing the same quantities of transmission service). This result comes about because public utilities in the latter category of states will not have any unbundled retail transmission transactions to report. This impact will be felt by the energy consumers who ultimately bear the costs of FERC annual charges. Consumers in states that have undergone restructuring will pay more in overall FERC annual charges simply because a greater percentage of the total transmission transactions occurring in those states will be reported to FERC. This would have the presumably unintended effect of penalizing consumers in states that have unbundled retail transmission by requiring them to bear a greater portion of the

costs of the Commission's electric regulatory program. The Cal ISO does not believe that the Commission intended such a disincentive to the electric industry restructuring it has advocated in other initiatives¹⁵ even if the dollar impact on each individual consumer may be relatively small.

The ISO suggests that the Commission consider exempting unbundled retail transmission transactions from inclusion in annual charge assessments, at least until a greater proportion of the country has undergone restructuring. Once a substantial percentage of the country has undergone restructuring, the playing field will become more even, and energy consumers in states that have unbundled retail transmission will not be at risk of a penalty. Until then, imposing annual charges for unbundled retail transmission sales could saddle customers in restructured states with a disproportionate assessment of annual charges and could conflict with one of the intrinsic goals of electric restructuring: the reduction of energy costs for end-use consumers.

IV. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

Roger E. Smith
Michael Epstein
The California Independent System
Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630
Tele: (916) 608-7136
Fax: (916) 608-7296

Kenneth G. Jaffe
Sean A. Atkins
Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

¹⁵ See, e.g., Order No. 888; Order No. 2000.

V. CONCLUSION

The Cal ISO appreciates the opportunity to provide comments on the Commission's January 28, 2000 NOPR and respectfully requests that the Commission act in accordance with these comments as it proceeds to finalize the annual charge regulations.

Respectfully submitted,

Roger E. Smith
Senior Regulatory Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, CA 95630

Kenneth G. Jaffe
Sean A. Atkins
Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007-3851

April 3, 2000

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: Revision of Annual Charges Assessed to Public Utilities -
Notice of Proposed Rulemaking;
Docket No. RM00-7-000**

Dear Secretary Boergers:

Enclosed is an original and fourteen copies of the Comments of the California Independent System Operator Corporation on the Commission's January 28, 2000 Notice of Proposed Rulemaking in the above-captioned docket.

Also enclosed are two extra copies of the filing to be time/date stamped and returned to us by the messenger. Thank you for your assistance.

Respectfully submitted,

Kenneth G. Jaffe
Sean A. Atkins
Julia Moore
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington D.C. 20007

Counsel for the California Independent
System Operator Corporation