

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,058

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Independent
System Operator Corporation

Docket Nos. EC03-27-000 and EC03-27-
001

ORDER AUTHORIZING ACQUISITION OF FACILITIES,
GRANTING WAIVER, AND RESCINDING PRIOR ORDER

(Issued January 24, 2003)

1. On December 2, 2002, the California Independent System Operator Corporation (ISO or Applicant) filed an application pursuant to section 203 of the Federal Power Act (FPA)¹ seeking Commission authorization to acquire control of jurisdictional facilities (via the acquisition of scheduling rights on certain assets used for transmission in interstate commerce), from the Cities of Anaheim, California; Azusa, California; Banning, California; and Riverside, California (collectively, Southern Cities) to the ISO.
2. The Commission has reviewed the proposed transaction under the Commission's Merger Policy Statement² and its regulations implementing section 203 of the FPA (Order No. 642)³ and, as discussed below, we authorize it as consistent with the public

¹16 U.S.C. § 824b (2000).

² See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,044, at pp. 30,117 -18 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997).

³ Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶¶ 31,111 (2000), reh'g denied, Order No. 642-A, 94 FERC ¶ 61,289

(continued...)

interest. We also grant the requested waiver. Furthermore, we rescind the December 23, 2002 order (December 23 Order) issued by delegated authority, which authorized the proposed transaction, and dismiss rehearing of that order. This order benefits customers because it will expand the scope of the ISO, thereby enhancing the reliability and operation of the transmission grid.

I. Background

A. Description of the Parties

3. The ISO, a public utility within the meaning of the FPA,⁴ is a state chartered, nonprofit corporation established by the California electricity restructuring legislation in 1996. On November 6, 1996, the Commission conditionally approved the establishment of the ISO as an independent system operator meeting the requirements set forth in Order No. 888.⁵ The ISO commenced operations on March 31, 1998. The ISO is responsible for assuming Operational Control⁶ over the transmission facilities of California electric utilities, including investor-owned and government-owned utilities.

³(...continued)
(2001).

⁴ 16 U.S.C. §§ 796 *et seq.*

⁵ 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. 21,540, at 31,664-65 (1996), FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996 ¶ 31,036 (1996), order on reh'g, Order No. 888-A , 62 Fed. Reg. 12,274 (1997), FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶ 31,048 (1997), order on reh'g, Order No. 888-B , 81 FERC ¶ 61,248 (1997), order on reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part, remanded in part on other grounds sub nom. Transmission Access Policy Study Group, et al. v. FERC, 225 F. 3d 667 (D.C. Cir. 2000), aff'd, New York v. FERC, 122 S. Ct. 1012 (2002).

⁶Applicant defines the term Operational Control as the rights of the ISO to direct Participating Transmission Owners (Participating TOs) to operate their transmission lines and facilities and other electric plant affecting the reliability of those lines and facilities. See, ISO Tariff Appendix A, Masters Definitions Supplement.

4. The Southern Cities are municipally-owned electric and water utilities located near Los Angeles. Each municipality has separately filed an application with the ISO to become a Participating TO as of January 1, 2003, and has submitted to the Commission a Transmission Revenue Requirement petition, a proposed balance in the Transmission Revenue Balancing Account, and proposed Transmission Owner Tariff language for approval.⁷

B. Description of the Proposed Transfer

5. The Southern Cities propose to transfer to the ISO their scheduling rights to use their shares of the transfer capabilities of certain transmission facilities used for transmission in interstate commerce. Once the transfer is completed, the ISO will be able to provide transmission service using the transfer capability represented by the Southern Cities' interests in the jointly owned transmission projects. In return, the ISO will provide the Southern Cities with payments for their Transmission Revenue Requirements through the ISO's Transmission Access Charge.

II. Notice of Filing and Responsive Pleadings

6. Notice of the filing was published in the Federal Register, 67 Fed. Reg. 75,853 (2002), with comments, interventions, and protests due on or before December 20, 2002. The entities listed in the Appendix to this order filed timely, unopposed motions to intervene. Pursuant to Rule 214 of the Commission Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the filing of a timely, unopposed motion to intervene makes the movant a party to the proceeding.

7. The State Water Project of the California Department of Water Resources (SWP) and Southern California Edison Company (SoCal Edison) filed protests opposing the proposed transaction. In particular, SWP argues that the inclusion of certain facilities in the proposed transfer to ISO control will introduce significant additional costs into the ISO's transmission rate system, without providing benefits that would meet section 203 standards. SWP and SoCal Edison also argue that the Southern Cities' transmission facilities would not be usable by all ISO market participants, since the terminal points of these entitlements are not ISO scheduling points and the paths are not currently available for scheduling under the ISO's scheduling protocols.

⁷The Commission has acted on these filings in City of Azusa, California, et al., 101 FERC ¶ 61,352 (2003).

8. On January 14, 2003, the ISO filed an answer to the comments and protests filed by SWP and SoCal Edison. Rule 213 of the Commission's Rules of Practice and Procedure⁸ prohibits answers unless otherwise permitted by the decisional authority. We find that good cause exists to allow the ISO's answer as it provides additional information that assists the Commission in the decision-making process.

III. Discussion

A. Standard of Review

9. Section 203(a) of the FPA provides that the Commission must approve a proposed acquisition if it finds that the proposed transaction "will be consistent with the public interest." Consistent with the Merger Policy Statement, the Commission will generally consider the following three factors in analyzing proposed mergers, dispositions, consolidations or acquisitions: (1) the effect on competition, (2) the effect on rates, and (3) the effect on regulation.

B. Effect on Competition

10. Applicant states that the proposed transaction will not adversely affect competition. It explains that because the Southern Cities are not transferring any generation assets to the ISO, the proposed transaction raises no issues related to generation market power. Applicant also argues that the proposed transaction is pro-competitive, as it will expand the scope of the ISO's regional control over transmission facilities. No party alleges an adverse effect on competition.

11. We find that the proposed transfer will not adversely affect competition. The proposed transfer does not involve a change in ownership or control of generation facilities; rather it contemplates a transfer of control over entitlements to transmission facilities used in interstate commerce, from the Southern Cities to the ISO. The Commission believes that participation in regional organizations such as ISOs and Regional Transmission Organizations (RTOs) is pro-competitive and anticompetitive effects are unlikely to arise from such transactions.⁹

⁸18 C.F.R. § 385.213 (a) (2002).

⁹See Order No. 642 at 31,902-03. In addition, the Commission recognized the role of ISOs and RTOs in mitigating market power, eliminating rate pancaking and better managing grid congestion. *Id.* at 31,898 & n.72. See e.g., *Minnesota Power, Inc., et al.*, (continued...)

C. Effect on Rates

12. Applicant notes that the Transmission Access Charge will be affected by the inclusion of the Southern Cities as new Participating TOs and that the resulting changes have been filed with the Commission for approval in their respective Transmission Revenue Requirement petitions.

13. SWP and SoCal Edison argue that the Southern Cities' transmission facilities will introduce additional costs without providing any benefits since the Southern Cities' entitlements are not ISO scheduling points and therefore are not usable by all market participants. In the ISO's Answer, the ISO states that on December 16, 2002, a Market Notice was issued announcing the availability of scheduling rights on the Southern Cities' entitlements. Therefore, we find the issues raised by the parties to be sufficiently addressed.

14. To the extent that there are other rate issues, the Commission has said that even if rates increase for some customers, the transaction can still be consistent with the public interest if there are countervailing benefits from the transaction.¹⁰ While some transmission customers may incur a higher rate for service, the expansion of an ISO generally will result in a significant reduction, if not elimination, of rate pancaking for these same customers for transactions covering greater distances or traversing multiple transmission providers' systems. Their competitive options will also increase.¹¹ We also find that expanding the scope of the California ISO will enhance reliability and operation of the transmission grid, which is a benefit to all market participants.

15. Furthermore, the concerns raised by SWP and SoCal Edison are primarily rate issues that have also been raised in other ongoing proceedings (Docket No. EL03-14-000, et al., and Docket No. ER03-219-000). These issues are more properly addressed in Docket No. EL03-14-000, et al. In that docket, the Commission has initiated settlement

⁹(...continued)
96 FERC ¶ 61,153, at 61,661 (2001).

¹⁰ See generally Merger Policy Statement at 30,114 and TRANSLink Transmission Company, L.L.C., 99 FERC 61,106 at 61,474 (2002).

¹¹ See International Transmission Company, et al., 97 FERC ¶ 61,328, at 62,538 (2001).

judge proceedings and we refer the protesters to these proceedings for resolution of the issues raised.¹²

D. Effect on Regulation

16. Applicant states that the proposed transfer will not adversely affect either federal or state regulation. Applicant contends that the Commission's authority over the transmission rates charged pursuant to the ISO Tariff will not be impaired as a result of the proposed transfer. Furthermore, Applicant asserts that the authority of any California state agency over the Southern Cities will be unaffected by the proposed transfer.

17. As explained in the Merger Policy Statement, the Commission's primary concern with the effect on regulation of a proposed transfer of jurisdictional facilities involves possible changes in the Commission's jurisdiction and the effect on state regulation.¹³ We also note that no regulatory agency alleges an adverse effect on regulation. Based on the above, we find that the proposed transfer will not adversely affect either the Commission's authority or any authority of a California state agency.

E. Waiver

18. Applicant requests waiver of the requirement to file certain exhibits, as some of the information sought under Part 33 of the Commission's Regulations is not applicable in the instant case given the nature of the proposed transaction. Because the application as filed provides sufficient information to analyze the proposed transaction, we grant this request.

IV. Request for Rehearing

19. SWP filed a request for rehearing of the December 23 Order issued by delegated authority. The December 23 Order is hereby rescinded. For this reason, we dismiss SWP's request for rehearing as moot.

The Commission orders:

(A) Applicant's proposed transaction is authorized upon the terms and conditions and for the purposes set forth in the application.

¹²City of Azusa, California, et al., 101 FERC ¶ 61,352 (2003).

¹³See Merger Policy Statement at 30,124-25.

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(B) The waiver requested by the Applicant is hereby granted.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates, or determinations of cost or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost of any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicant shall notify the Commission within 10 days of the date on which the transaction is consummated.

(G) The December 23 Order is hereby rescinded.

(H) SWP's request for rehearing is hereby dismissed as moot.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

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Appendix

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Cities Of Redding And Santa Clara, California, and the M-S-R Public Power Agency
Modesto Irrigation District
Northern California Power Agency
Southern California Edison Company*
State Water Project of the California Department of Water Resources*

* comments/protests