

UNITED STATES OF AMERICA 94 FERC ¶ 61,268
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

Cities of Anaheim, Azusa, Banning,
Colton, and Riverside, California

v. Docket No. EL00-111-000

California Independent System
Operator Corporation

ORDER DISMISSING IN PART AND GRANTING IN PART COMPLAINT

(Issued March 14, 2001)

On September 15, 2000, the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (collectively, Southern Cities) filed a complaint against the California Independent System Operator Corporation (ISO). In their complaint, Southern Cities allege that (1) the ISO's collection from all Scheduling Coordinators of costs incurred in procuring energy through real-time out-of-market (OOM) dispatch instructions is unjust and unreasonable and (2) the ISO has violated certain provisions of its Tariff by recovering such costs through neutrality adjustment charges in excess of a limit established in a prior proceeding. In this order, we dismiss in part as moot and grant in part Southern Cities' complaint.

Background

Neutrality Adjustment Charge

In order to meet real-time energy needs, the ISO administers an imbalance energy market. If this market produces insufficient resources, the ISO must purchase the necessary energy through OOM dispatch calls. Under the relevant provisions of the ISO Tariff in effect at the time Southern Cities filed its complaint, costs for such dispatch

calls were charged to all Scheduling Coordinators through a mechanism known as the neutrality adjustment charge, which allocated OOM costs to all Scheduling Coordinators in proportion to their metered demand.¹

Complaint

According to Southern Cities, imbalance energy bids have been inadequate to meet real-time energy needs and, as a result, the ISO has been forced to increasingly rely on OOM calls. Further, the increased frequency of OOM dispatch has led to a corresponding increase in the OOM costs that the ISO must allocate to all Scheduling Coordinators through application of the neutrality adjustment charge.

Southern Cities' complaint consists of two primary allegations. First, Southern Cities allege that the ISO's mechanism for recovering OOM costs is unjust, unreasonable, and unduly discriminatory insofar as it violates the principle that rates generally should track cost causation, *i.e.*, it forces Scheduling Coordinators who have adequate supply resources to subsidize those who do not. Further, Southern Cities argue that such subsidization has the effect of encouraging inadequate supply.² Thus, Southern Cities contend, the ISO should be required to modify its Tariff so that it tracks OOM cost causation to the maximum extent possible.

Second, Southern Cities allege that the ISO has violated its Tariff on a number of occasions since June 1, 2000, by imposing neutrality adjustment charges in excess of the limits provided for under the Tariff. In support, Southern Cities contend that the relevant provision, as codified in section 11.2.9.1 of the ISO Tariff,³ states, in pertinent part, that

¹The neutrality adjustment charge (section 11.2.4.2.1 of the ISO Tariff) was previously accepted by the Commission in ISO Tariff Amendment No. 23. See California Independent System Operator Corp., 90 FERC ¶ 61,006 at 61,015 (2000), reh'g denied, 91 FERC ¶ 61,026 (2000) (Amendment No. 23 Order). The ISO's Amendment No. 33 modified the allocation mechanism, as described below. See California Independent System Operator Corp., 93 FERC ¶ 61,239 (2000), reh'g pending (December 8 Order).

²Southern Cities note that the Commission's August 23, 2000 order in Docket No. EL00-95-000, et al., recognizes that "the increasing level of market activity in the real-time market raises significant reliability and economic concerns." Southern Cities at 11, citing the San Diego Gas & Electric Co., et al., 92 FERC ¶ 61,172 at 61,607-08 (2000), reh'g pending.

³Section 11.2.9.1 of the ISO Tariff was accepted by the Commission in ISO Tariff Amendment No. 27, which was suspended for a nominal period, subject to refund, to

the neutrality adjustment charge "shall not exceed \$0.095/MWh . . . unless: (a) the ISO Governing Board . . . 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 Board." Southern Cities assert that despite the \$0.095/MWh limit set forth in section 11.2.9.1, the neutrality adjustment charges assessed to the City of Riverside, California (Riverside) repeatedly exceeded that limit on an hourly basis during its effective period of June 1, 2000, to September 15, 2000. Thus, Southern Cities request that the Commission require the ISO to (1) abide by the terms of section 11.2.9.1 of the ISO Tariff and (2) recalculate the neutrality adjustment charges assessed to Riverside during the period of June 1, 2000, to September 15, 2000.

Notice of Filing and Responses

Notice of the complaint was published in the Federal Register, 65 Fed. Reg. 57,328 (2000), with comments, protests, and motions to intervene due on or before September 25, 2000. The Public Utilities Commission of the State of California (California Commission) filed a notice of intervention raising no substantive issues. Motions to intervene also raising no substantive issues were filed by: California Power Exchange Corporation; PPL Montana, LLC, and PPL EnergyPlus, LLC (jointly); Turlock Irrigation District; and the Western Area Power Administration. In addition, Sacramento Municipal Utility District (SMUD) filed a motion to intervene out-of-time raising no substantive issues.

Motions to intervene with comments supporting the complaint were filed by: the California Department of Water Resources; the California Electricity Oversight Board; the Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency (jointly); the City of Vernon, California (Vernon); Metropolitan Water District of Southern California; Modesto Irrigation District; Northern California Power Agency; and the Transmission Agency of Northern California. In general, these intervenors agree with Southern Cities' contention that the ISO should be required to modify its cost allocation mechanism so that OOM costs are recovered from Scheduling Coordinators who are responsible for the creation of such costs rather than from all Scheduling Coordinators.

A motion to intervene and consolidate was filed by Southern California Edison Company (SoCal Edison). SoCal Edison asserts that because Southern Cities' criticism of OOM costs raises broader issues of market structure and exercise of market power, it

become effective on June 1, 2000, as requested by the ISO. See California Independent System Operator Corp., 91 FERC ¶ 61,205 (2000), reh'g pending.

would be more properly addressed in the Commission's investigation in Docket No. EL00-95-000, et al. Thus, SoCal Edison concludes, the instant complaint should be consolidated with that investigation and considered therein.

A motion to intervene with comments opposing the complaint was filed by Pacific Gas and Electric Company (PG&E). PG&E argues that the complaint is flawed insofar as the neutrality adjustment charge was approved by the Commission in the Amendment No. 23 Order and, thus, Southern Cities' request for relief is therefore nothing more than a collateral attack on that order. PG&E also argues that Southern Cities' concerns are already being addressed in the Commission investigation in Docket No. EL00-95-000, et al., and, as a result, there is no reason for the Commission to have a separate proceeding regarding the instant complaint.

On September 25, 2000, the ISO filed an answer urging the Commission to find that Southern Cities' complaint is unfounded. With respect to the complaint's challenge to section 11.2.4.2.1 of the Tariff, the ISO argues that Southern Cities improperly disregard the fact that the Commission accepted the neutrality adjustment charge in the Amendment No. 23 Order. The ISO also contends that the Commission accepted a similar approach in the ISO's Tariff Amendment No. 28, when the Commission approved the allocation of costs associated with the ISO's Summer Demand Relief Program to all Scheduling Coordinators in proportion to their metered demands.⁴ The ISO indicates that it is exploring alternative approaches to the allocation of OOM costs, and asserts that the potential for revision to the OOM cost allocation mechanism does not support Southern Cities' claim that the current approach is unjust and unreasonable.

In addition, with respect to the complaint's challenge to section 11.2.9.1 of the ISO Tariff, the ISO asserts that this challenge is unfounded for two reasons. First, the ISO states that the purpose of the neutrality adjustment charge is to ensure that, as a not-for-profit entity that operates Ancillary Service and real-time energy markets for the benefit of Scheduling Coordinators that rely on the ISO controlled grid, the ISO will remain in a cash-neutral position. The ISO acknowledges that the events of the past Summer have led to increased OOM purchases and costs; however, the ISO contends that there is no basis for requiring the ISO to absorb the costs it has incurred to maintain system reliability.

Second, the ISO argues that the \$0.095/MWh limit stated in section 11.2.9.1 is not intended to set an hourly limit and was included in Tariff Amendment No. 27 only in order to project neutrality adjustment charges over the course of a year, thereby

⁴ISO answer at 2, citing California Independent System Operator Corp., 91 FERC ¶ 61,256 at 61,897 (2000), reh'g pending (Amendment No. 28 Order).

enhancing the ability of market participants to budget for the costs of participation in the ISO. Further, the ISO indicates that although reference to the annual nature of the limit was omitted from the Amendment No. 27 filing, such omission was the result of an oversight and does not reflect a substantive change. Finally, the ISO argues that to the extent there is any ambiguity in the as-filed language, the ISO Board Memorandum concerning the limit,⁵ which is publicly posted in the ISO's web site, makes it clear that section 11.2.9.1 establishes only an annual limit which can be modified at the discretion of the ISO Governing Board.

On October 10, 2000, the ISO filed an answer to SoCal Edison's motion to intervene and consolidate arguing that consolidation of the complaint into another proceeding is unwarranted for several reasons. Subsequently, on October 13, 2000, Southern Cities filed a motion for summary disposition asserting that certain parties' opposing arguments are flawed and urging the Commission to issue an order directing the relief requested in the complaint. Finally, on October 25, 2000, SoCal Edison and the ISO filed answers requesting that the Commission deny Southern Cities' latter motion.

Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the California Commission's notice of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding.

Rule 213 of our Rules of Practice and Procedure prohibits an answer to an answer or to a protest unless otherwise ordered by the decisional authority.⁷ Insofar as Southern Cities' motion for summary disposition constitutes an answer to certain pleadings, we are not persuaded to allow it, and, accordingly, we will reject it, as well as SoCal Edison's and the ISO's further answers.

With respect to SoCal Edison's motion to consolidate the complaint in the proceeding in Docket No. EL00-95-000, et al., we find the motion to be moot due to our issuance of a final order in that proceeding.⁸

⁵See ISO answer at Attachment A.

⁶18 C.F.R. § 385.214 (2000).

⁷18 C.F.R. § 385.213(a)(2) (2000).

⁸See San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 (2000), reh'g pending (December 15 Order).

In view of the early stage of this proceeding, the interest of the party, and the absence of any undue prejudice or delay, we find good cause to grant the untimely, unopposed motion to intervene filed by SMUD.

Commission Determination

We will dismiss as moot the complaint with respect to Southern Cities' allegation that the ISO's allocation of OOM costs is unjust, unreasonable, and unduly discriminatory. The Commission recently accepted proposed ISO Tariff Amendment No. 33, which revised section 11.2.4.2.1 of the ISO Tariff so that OOM costs are allocated to demand that appears unscheduled in real-time (*i.e.*, to those Scheduling Coordinators who create the need for OOM dispatch calls).⁹ This revision provides the relief that Southern Cities request. Thus, this aspect of the complaint is moot.

We will, however, grant the complaint with respect to Southern Cities' allegation that the ISO violated its Tariff's stated neutrality adjustment charge limit on certain occasions during the period of June 1, 2000, to September 15, 2000. First, as discussed previously, the as-filed language in section 11.2.9.1 of the ISO Tariff, states, in pertinent part, that the neutrality adjustment charge "shall not exceed \$0.095/MWh," and, as the ISO itself acknowledges, the provision does not include language supporting the ISO's argument that the limit is stated solely for the purpose of projecting neutrality adjustment charges on an annualized basis. The provision also does not include language indicating that the limit – which, we note, is stated using a "per megawatt-hour" unit – is not intended for application on an hourly basis. Second, the ISO is attempting to apply an annual neutrality cap to a limited three and a half month period. Therefore, we reject the ISO's argument that the omitted language does not reflect a substantive change. Such a modification would clearly redefine the neutrality adjustment charge limit in a manner beyond that claimed by the ISO and, thus, we will not accept that modification herein for application on a retroactive basis.¹⁰

Consequently, we find that the ISO exceeded the Tariff's neutrality adjustment charge limit as alleged by Southern Cities, and we direct the ISO to (1) recalculate the

⁹December 8 Order, 93 FERC at 61,774.

¹⁰In fact, the ISO recently proposed to make this very modification in a separate filing. See ISO's December 29, 2000 filing in Docket No. ER01-836-000. In an order to be issued concurrently with this one, the Commission approves the ISO's proposal to add the word "annual" to Section 11.2.9.1 of the ISO Tariff, effective February 27, 2001.

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neutrality adjustment charges assessed to Riverside ¹¹ for the period of June 1, 2000, to September 15, 2000, using a \$0.095/MWh limit applied on an hourly basis and (2) abide by any such applicable limit from this point forward (pending Commission-approved modification in a separate proceeding).

Regarding the ISO's contention that there is no basis for requiring it to absorb the costs for maintaining system reliability, we agree. Accordingly, to the extent that the ISO must recalculate the neutrality adjustment charges as discussed above, we will allow the ISO to reallocate any credited charges to the remaining Scheduling Coordinators in proportion to their relevant metered demands (with the proviso that such reallocated charges may not exceed on an individual basis the limit stated in section 11.2.9.1 of the ISO Tariff).

The Commission orders:

(A) SoCal Edison's motion to consolidate is hereby denied.

(B) Southern Cities' complaint is hereby dismissed in part and granted in part, as discussed in the body of this order.

(C) The ISO is hereby directed to recalculate the neutrality adjustment charges assessed to Riverside for the period of June 1, 2000, to September 15, 2000, as discussed in the body of this order.

By the Commission.

(S E A L)

David P. Boergers,
Secretary.

¹¹We note that the complaint only alleged that the ISO exceeded the limit with respect to Riverside. No other parties indicated that they had been similarly overcharged.