

105 FERC ¶ 61,406
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

California Independent System Operator
Corporation

Docket Nos. ER04-115-000
EL04-47-000

ORDER ACCEPTING AND SUSPENDING TARIFF FILING AND ESTABLISHING
A HEARING AND SETTLEMENT PROCEEDINGS

(Issued December 31, 2003)

1. On October 31, 2003, the California Independent System Operator Corporation (CAISO) tendered for filing revisions to its Grid Management Charge (GMC). The GMC is the rate through which the CAISO recovers its administrative and operating costs, including the costs incurred in establishing the CAISO prior to the commencement of operations. The CAISO proposes to revise the GMC rate to further unbundle charges, increasing the number of service categories from three to seven, and to make yearly informational filings with the Commission. The CAISO requests an effective date of January 1, 2004.

2. As discussed below, the Commission accepts and suspends the proposed revisions to the CAISO's GMC formula, to become effective January 1, 2004, subject to refund and conditions, and sets the matter for a hearing. The Commission will also reject as premature the request for surcharge authority, which the CAISO seeks to the extent the Commission decreases charges to some customers and increases surcharges to others. In addition, the Commission initiates settlement proceedings and holds the hearing in abeyance pending the outcome of those proceedings. This order is in the public interest because it seeks to establish just and reasonable GMC rates.

CAISO's Filing

3. CAISO asserts that the 2004 GMC rate structure has been arrived at through a deliberative process in which the ISO has taken its current unbundled GMC rate and, in consultation with stakeholders and independent rate consultants, has redesigned and refined the GMC rate to better reflect cost causation and respond to stakeholder and Commission concerns. It contends that the redesign consists of seven distinct charges¹

¹ Presently, the GMC is allocated to three service charges.

that significantly improve the alignment between the cost responsibility of CAISO customers for GMC charges and the costs they cause the CAISO to incur.

4. CAISO asserts that the costs applied to the redesigned GMC rate formula to produce the rates contained in the filing were reviewed separately and approved by the Finance Committee and by the full Board through the budget process. It contends that the costs comprising the budget are prudent expenditures that will be incurred by the CAISO in the furtherance of its role as a non-profit, independent operator of the CAISO Controlled Grid.

5. The proposed seven GMC rate categories are as follows: Core Reliability Services (CRS); Energy Transmission Services (ETS), which consists of two charges, ETS Net Energy and ETS Uninstructed Deviations; Forward Scheduling; Congestion Management; Market Usage; and Settlements, Metering, and Client Relations. The CRS recovers costs associated with the reliable operation of a Control Area surrounded by other Control Areas and achieving minimal disruptions to system operation. The charge recovers costs the CAISO incurs to provide a stable grid that meets regional and national regulatory requirements.

6. The ETS charge represents the scalable portion of Grid Reliability Services, and is a function of the level of the use of the transmission system within the Control Area and the occurrence of system outages and disruptions. CAISO contends that there are two charges for ETS: ETS Net Energy and ETS Uninstructed Deviations. The two charges reflect two different cost drivers. The billing determinant for the ETS Net Energy charge is Metered Control Area Load. The billing determinant for the ETS Uninstructed Deviation charge is net uninstructed deviations by settlement interval.

7. The Forward Scheduling charge recovers costs associated with the CAISO's processing for forward Schedules for Energy and Ancillary Services submitted by Scheduling Coordinators (SC), including inter-SC trades, and the review and verification of those Schedules to ensure path ratings are not exceeded, that sufficient Ancillary Services have been procured, and that the SC portfolios are balanced. This charge also recovers costs associated with processing accepted Ancillary Service bids.

8. The Congestion Management charge recovers the costs the CAISO incurs in providing management and operation of inter-zonal congestion markets, using adjustment bids, taking Firm Transmission Rights and Existing Contracts into account, and determining the price for mitigating congestion for flows on congested paths. The Market Usage charge recovers the CAISO's costs of processing Supplemental Energy and Ancillary Service bids, maintaining and controlling the Open-Access Same-Time Information System, monitoring market performance, ensuring generator compliance with market protocols, and determining market clearing prices. The Settlements, Metering, and Client Relations charge recovers a portion of the CAISO's costs associated

with maintaining customer account data, providing account information to customers, calculating market charges, processing Settlement Statements, resolving customer disputes, responding to customer inquiries, and providing customer training.

9. CAISO asserts that the rates were determined by calculating the revenue requirement according to the formula contained in Part C of Appendix F, Schedule 1 of the CAISO Tariff and then applying the CAISO's revenue requirement to the proposed allocation percentages that have been inserted into the Tariff as proposed Part E of Appendix F, Schedule 1. Utilizing estimated billing determinant data, the billing determinants for each charge are then applied to the costs attributed to each of the seven charges in order to calculate the final rate for each charge.

10. CAISO contends that the rates for 2004 reflect a net revenue requirement (the revenue needed after the effect of any surplus from the prior year's Operating and Capital Reserves Account) of \$218 million, a decrease from \$237.6 million in 2003. The CAISO asserts that costs decreased on a gross basis as well, falling from \$246 million in 2003 to a projected \$236 million for 2004.

11. CAISO requests an effective date of January 1, 2004 for its 2004 GMC rate. It further requests that in the event the filing is set for hearing, the Commission grant it conditional surcharge authority to be exercised if the Commission determines that a different cost allocation should be applied retroactively, with the effect of lowering aggregate GMC charges to some customers and raising them to others. CAISO contends that because the CAISO is not-for-profit entity, with no invested equity, it must have the ability to surcharge the latter customers to enable it to pay refunds to the former. Finally, CAISO requests that, should the Commission set the filing for hearing, the hearing process be immediately suspended and a settlement judge appointed to determine whether parties can conclude a successful settlement.

Notice of Filing, Comments, Protests and Answer

12. Notice of CAISO's filing was published in the Federal Register, 68 FR 64,883 (2003), with comments, protests or interventions due on or before November 21, 2003. Protests were filed by Modesto Irrigation District (Modesto), State Water Project of the California Department of Water Resources (SWP), the Transmission Agency of Northern California (TANC), the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (collectively Cities/M-S-R), Southern California Edison Company (SCE), Powerex Corp. (Powerex), California Municipal Utilities Association (CMUA), and the Bonneville Power Administration (BPA). The Metropolitan Water District of Southern California (Metropolitan) filed a protest and comments. Pacific Gas and Electric Company filed comments. On December 8, 2003, the CAISO filed an answer addressing the issues raised in the protests. On December 18, 2003, CAISO filed an amended answer requesting that the revised GMC rates not be suspended for five months

as the rates are designed to collect a lower revenue requirement overall than the current GMC.

13. The protests and comments raised numerous issues regarding the filing, including, but not limited to, the following: the filing fails to include all of the necessary supporting documentation required by Section 18 C.F.R. Part 35; the CAISO failed to demonstrate that the revised GMC is just and reasonable; the new rate design fails to reflect cost causation as directed by the Commission's Opinion No. 463; and the CAISO has arbitrarily assigned and inappropriately allocated certain costs. Interveners also argue that the proposed Core Reliability Services Charge negatively impacts exporters, uses a non-coincident peak method pricing method which discourages efficient use of the grid, and improperly uses gross load in its billing determinants.

14. In addition, PG&E seeks clarification that it is not the CAISO's intent to assess Forward Scheduling Service Charges on schedules submitted by PG&E in its role as Path 15 Facilitator. Modesto and SCE also seek clarification regarding proposed revision to the CAISO Tariff.

15. Many interveners oppose the use of a formula rate for the GMC charges. They argue that with a formula rate, the CAISO ratepayers would no longer be able to challenge imprudently incurred expenses, such as software, communications systems or excessive employee incentive programs. In addition, a Section 205 filing provides an opportunity for the Commission to review the CAISO's expected costs in advance. They assert that with a formula, this opportunity is lost. Finally, various interveners also seek rejection of the ISO's request for surcharge authority stating that it is contrary to Commission precedent and lacks sufficient detail.

Discussion

Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. However, the Commission finds good cause to admit CAISO's answer since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act.

Analysis

17. Based upon a preliminary analysis of the filing, the Commission finds that the proposed tariff sheets have not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the proposed revisions to its GMC formula for filing and suspend their effectiveness for the period set forth below, subject to refund and the conditions set forth in this order, and set the matter for hearing. The Commission, however, will deny CAISO's proposal to make yearly informational filings with the Commission to describe adjustments that result automatically from the operation of the GMC formula. The CAISO therefore will be required to make Section 205 filings to implement any future GMC changes.

18. With respect to the ISO's request for surcharge authority, the Commission will deny that request as premature. Until a determination is made regarding the material issues of fact raised by interveners, it is premature to address whether the Commission will, in fact, order such refunds to certain customers and thus cause the ISO to seek to recover additional amounts from other customers.²

19. Modesto, SWP and TANC request that the Commission deny the CAISO's request for a stay and settlement judge proceedings because it is unlikely that a consensus or resolution all issues will be reached. The Commission will deny their request. Although consensus on all issues may be remote, holding the hearing in abeyance and directing settlement judge procedures serves a valuable purpose in narrowing the disputed issues while developing resolution by mutual agreement.

20. Should it be determined that CAISO's proposed GMC rates are unjust and unreasonable, and that lower GMC rates would be just and reasonable, the Commission would need to institute an investigation of the CAISO's proposed GMC rates pursuant to Section 206 of the FPA. Accordingly, the Commission will institute a proceeding in Docket No. EL04-47-000, and it will establish a refund effective date. When the Commission institutes a Section 206 proceeding on its own motion, Section 206(b) of the FPA requires the Commission to establish a refund effective date that is no earlier than sixty (60) days after the publication of notice of the Commission's intent to institute a proceeding, and no later than five (5) months subsequent to the expiration of the 60-day period. The Commission will establish a refund effective date of 60 days from the date this order issues.

21. Section 206(b) also requires that, if no final decision is rendered by the refund effective date or by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to Section 206, whichever is earlier, the Commission shall state the

² California Independent System Operator Corporation, 93 FERC ¶ 61,337 (2000).

reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such a decision. The CAISO's proposed GMC changes are subject to the outcome of settlement proceedings and a hearing. The Commission therefore expects to issue a final order in this proceeding no earlier than December 31, 2004.

Suspension

22. In West Texas Utilities Company,³ (West Texas), the Commission explained that when its preliminary examination indicates that the proposed rates may be unjust and unreasonable, and may be substantially excessive, as defined in West Texas, the Commission would generally impose a five-month suspension. It is recognized, however, that shorter suspensions may be warranted in circumstances where suspension for the maximum period may lead to harsh and inequitable results. Such circumstances exist here where the CAISO's filing indicates a GMC rate decrease over 2003. Accordingly, the Commission will exercise its discretion to suspend the revisions to the CAISO's GMC formula for a nominal period and permit the rates to become effective January 1, 2004, subject to refund, the conditions set forth herein, and the outcome of the hearing established in this order.

The Commission orders:

(A) The CAISO's proposed revisions to its GMC formula are accepted and suspended, to become effective January 1, 2004, subject to refund, the conditions set forth herein, and the outcome of the hearing established in this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held in Docket No. ER04-115-000 concerning the justness and reasonableness of the CAISO's proposed revisions to its GMC formula as discussed in the body of this order. However, the hearing will be held in abeyance while the parties attempt to settle, as discussed in the paragraphs below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. ' 385.603, the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. To the extent consistent with this order, the designated settlement judge shall have all the

³18 FERC & 61,189, at 61,374 (1982).

powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within sixty (60) days of the date of this order, the settlement judge shall issue a report to the Commission and the Chief Judge on the status of the settlement discussions. The settlement judge shall issue a report at least every sixty (60) days thereafter, apprising the Commission and the Chief Judge of the parties' progress towards settlement.

(E) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Judge, shall convene a prehearing conference in these proceedings, to be held within approximately fifteen (15) days of the date of the settlement judge's report to the Commission and the Chief Judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided for in the Commission's Rules of Practice and Procedure.

(F) The refund effective date established pursuant to § 206(b) of the FPA will be 60 days from the date this order issues.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.