

104 FERC ¶ 61,127
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket No. ER03-407-001

ORDER CLARIFYING PRIOR ORDER AND DENYING REHEARING

Issued July 25, 2003

I. Introduction

1. In this order, we clarify and deny requests for rehearing of the Commission's March 12 Order (March 12 Order).¹ This order benefits customers by clarifying the Commission's position and providing certainty to potential investors in transmission upgrades.

II. Background

2. On January 13, 2003, the CAISO filed Amendment No. 48 to amend the CAISO Tariff (Tariff) to provide congestion revenues, wheeling revenues, and firm transmission rights (FTRs)² auction revenues to entities other than Participating Transmission Owners (PTOs), if any such entities fund transmission facility upgrades on the CAISO-Controlled Grid. The CAISO's proposal applies only to projects in which the Project Sponsor does not anticipate becoming a PTO, which would then include the costs of the upgrade in its transmission revenue requirement. The CAISO proposed the Tariff amendment in order to allow FPL Energy, LLC (FPLE), which is not a PTO, to be compensated for a recent upgrade to Southern California Edison Company's (SoCal

¹California Independent System Operator Corp., 102 FERC ¶ 61,278 (2003).

²In the CAISO, a firm transmission right is a contractual right that entitles the FTR holder to receive, for each hour of the term of the FTR, a portion of any usage charges received by the CAISO from scheduling coordinators for the use of a specific congested inter-zonal interface during a given hour.

Edison) Blythe-Eagle Mountain transmission line.³ According to the CAISO, the existing Tariff did not expressly provide a means of compensation for any entity other than PTOs, who are able to recover their costs through the CAISO's usage charge and wheeling access charge, along with the proceeds from FTR auctions.

3. The CAISO proposed that, in each instance, the PTO whose facilities were upgraded and the Project Sponsor would negotiate and agree upon the shares of wheeling, congestion revenues and FTR auction revenues to be provided to the Project Sponsor. It further proposed that if, by the date the new capacity is placed in service, the PTO and the Project Sponsor could not agree upon the shares to be provided to the Project Sponsor, they would submit the dispute to arbitration.

4. The protesters did not oppose FPLE receiving compensation for its transmission upgrades, but they argued that the CAISO did not justify Amendment No. 48. Several protesters requested a number of modifications and clarifications to the proposal. Some protesters argued that the appropriate allocation methodology should be addressed in a technical conference in Docket No. ER03-407-000, or that it should be addressed in, or made subject to the outcome of, other proceedings.⁴

5. In the March 12 Order, the Commission agreed with protesters that the negotiation mechanism in the CAISO's proposal did not provide enough certainty to encourage investment in transmission upgrades. Instead, the Commission determined that "a Project Sponsor should receive FTRs associated with the full amount of capacity added to the system, as determined through the [Western Electricity Coordinating Council (WECC)] regional reliability process."⁵ The Commission conditionally accepted Amendment No. 48 for filing, subject to the modifications ordered therein, and granted waiver of the 60-day prior notice requirement to allow it to become effective on January 13, 2003.

6. Timely requests for rehearing of the March 12 Order were filed by the California Electricity Oversight Board (Oversight Board), the Metropolitan Water District of

³The upgrade increased the amount of FTRs on that path from 72 MW to 168 MW and was placed in service on December 14, 2002.

⁴See March 12 Order, 123 FERC ¶ 61,278 at P 11.

⁵March 12 Order, 123 FERC ¶ 61,278 at P 21. The CAISO submitted a compliance filing which we address in an order being issued concurrently. See California Independent System Operator Corp., 104 FERC ¶ 61,128 (2003).

Southern California (Metropolitan) and the California Department of Water Resources State Water Project (DWR).

III. Discussion

A. Oversight Board's and Metropolitan's Requests for Rehearing

7. Oversight Board argues that application of Amendment No. 48 is not limited to FPLE, but could apply to other non-PTO funded upgrades in the future. It reiterates its argument, made in its protest, that Amendment No. 48 should be consistent with the CAISO's pending Comprehensive Market Redesign (MD02) proposal in Docket No. ER02-1656, et al., in which the CAISO has proposed to continue the transitional allocation of FTRs to New PTOs and then reassign FTRs directly to Loads. It further contends that the March 12 Order is ambiguous regarding whether the Commission was ordering allocation of FTRs or allocation of auction revenues. It requests that the Commission clarify that going forward, non-PTOs who upgrade the CAISO Controlled Grid will be allocated FTRs in the amount of capacity added to the system.

8. Metropolitan states that the only access to the CAISO Controlled Grid from the Blyth-Eagle Mountain line is through Metropolitan's transmission system and that an existing transmission contract provides SoCal Edison residual use of Metropolitan's transmission system. Metropolitan argues that the March 12 Order implies that the WECC process is determinative of the allocation of FTRs, based on the WECC's path rating determinations, without regard to Metropolitan's contractual rights to use its transmission system. Metropolitan argues that the WECC merely makes the technical determination of the amount of additional capacity resulting from a transmission addition or upgrade, and the WECC does not make determinations concerning rights to commercial uses of a transmission addition or upgrade. Metropolitan further argues that the March 12 Order only specifically addresses allocation of FTRs, but it does not address allocation of wheeling revenues and congestion revenues not conveyed through FTRs. It contends that such allocation should be negotiated between the affected PTO and Project Sponsor. Further, if an existing interconnected transmission system is needed to complete the path, the owner of that system should be included in the negotiations.

9. We clarify that the intent of the March 12 Order, for the reasons stated therein, was to accept for filing, as modified, the CAISO's proposal to compensate non-PTO Project Sponsors for upgrades by providing them with wheeling revenues, congestion

revenues, and FTR auction revenues. We did not intend to order the allocation of FTRs themselves.

10. With respect to Oversight Board's arguments, it would be premature to require Amendment No. 48 to be consistent with the CAISO's MD02 proposal, because the Commission has made no final determination in the MD02 proceeding. Further, the CAISO proposed Amendment No. 48 only as interim measure, and the March 12 Order and this rehearing order are not intended to prejudge the proposed long-term measures at issue in the MD02 proceeding.

11. With respect to Metropolitan's concern about the role of the WECC process, we did not intend that the regional reliability council would determine the appropriate allocation of revenues. Rather, the Commission-determined methodology for allocation of revenues is based on the amount of capacity added to the system. For this purpose, we use the regional reliability council's path rating determination as the basis for establishing how much capacity the Project Sponsor's upgrade adds to the PTO's transmission system. That is, Commission-ordered methodology uses the regional reliability council's path rating determination as a data input. Further, nothing in the March 12 Order was intended to alter Metropolitan's rights to use its transmission system under its contract with SoCal Edison, which runs until 2017. As noted in our clarification above, the order was not intended to alter the allocation of FTRs.

B. DWR's Request for Rehearing

12. DWR argues that the March 12 Order does not discuss why the CAISO could not properly compensate FPLE through a reimbursement for the upgrade from the applicable PTO, which can collect the reimbursement through its regulated transmission rates. We will expand on the March 12 Order's summary of the CAISO's filing and clarify the prior order as follows. As noted in the CAISO's transmittal letter in Docket No. ER03-407-000, Section 3.2.7.3 of the pre-existing ISO Tariff provided for allocation of wheeling revenues and congestion revenues to non-PTO Project Sponsors. However, when the CAISO implemented the concept of FTRs in 1998, it did not provide a means for Project Sponsors other than PTOs to be compensated for providing additional transmission capacity, *i.e.*, additional FTRs. Thus, when FPLE provided the upgrades to SoCal Edison's transmission system, there was no mechanism providing for allocation of congestion revenues to non-PTO Project Sponsors as compensation.

13. DWR argues that the March 12 Order is unduly discriminatory toward DWR, arguing that the Commission's sole basis for approving Amendment No. 48 is to provide certainty to FPLE whereas DWR has yet to receive comparable certainty in determining

its FTR/CRR entitlements in other proceedings.⁶ DWR misreads the March 12 Order. Although the CAISO's intent in its proposal was to allow FPLE to be compensated for its upgrade, and the order granted waiver of the prior notice requirement in order to accomplish that goal, the order also "agree[d] with intervenors" that Amendment No. 48 had to be amended in order to "provide the certainty required to encourage investment in transmission upgrades."⁷ The intent of the order, as stated there and elsewhere in the order, was to provide certainty to "potential investors,"⁸ not just FPLE. Additionally, DWR does not allege that Amendment No. 48 itself is unduly discriminatory toward DWR as compared to any other party. Further, DWR's Remedial Action Scheme for Path 15 is not at issue in Amendment No. 48 and is beyond the scope of this proceeding.

14. DWR also argues that Amendment No. 48 is inconsistent with Pacific Gas & Electric Company's (PG&E) proposal in Docket No. ER03-409-000 to compensate transmission upgrade sponsors on its system through a crediting mechanism.⁹ This argument is unpersuasive. PG&E, which is a PTO, would provide the upgrades itself. As the CAISO points out, the pre-existing CAISO Tariff provided for allocation of FTR auction revenues to PTOs. Adoption of the PG&E approach would not address the issue of compensation for non-PTO Project Sponsors addressed by Amendment No. 48.

⁶DWR states that, since the inception of the CAISO, it has been attempting in various dockets to determine how its Remedial Action Scheme for Path 15 could be continued if the existing transmission contracts were converted to ISO control or expired. According to DWR, this is an Unresolved Issue, which has been pending for several years in Docket No. ER98-3760. DWR also cites the pending proceeding concerning the CAISO's proposed Amendment No. 27, Docket No. ER00-2019, in which the CAISO proposed New PTOs be given FTRs commensurate with their transmission rights for a ten-year transition period, after which they would be treated the same as the three original PTOs. See California Independent System Operator Corp., 91 FERC ¶ 61,205 (2000), order on reh'g, 104 FERC ¶ 61,062 (2003) (order accepting for filing and suspending Amendment No. 27 and establishing hearing and settlement judge procedures). The hearing in Docket No. ER00-2019 is scheduled to commence in September 2003.

⁷102 FERC ¶ 61,278 at P 21 (emphasis added).

⁸See also id. at P 1 ("This order benefits customers by providing certainty to potential investors in transmission upgrades.") (emphasis added).

⁹See Pacific Gas and Electric Co., 102 FERC ¶ 61,270 (2003) (order accepting for filing and suspending proposed rates, and establishing hearing procedures).

15. DWR argues that the March 12 Order does not comply with Federal Power Act requirements for just and reasonable, cost-based transmission rates, which must be publicly filed with the Commission. It contends that Project Sponsors would be granted unlimited and unregulated congestion revenues from transmission ratepayers. It suggests that the compensation to Project Sponsors can only be "regulated" by having their costs rolled-in to the PTO's transmission rates. It also argues that the Commission has not determined that competitive conditions warrant abandonment of cost-based rates for transmission service in California. DWR's argument is unpersuasive. Amendment No. 48 does not in itself change the PTO's transmission rate recovered from ratepayers. Rather, it concerns the allocation of revenues between the PTO and the non-PTO Project Sponsor.¹⁰ This process required a Tariff amendment, which the CAISO filed and the Commission addressed. Since the Commission has determined the Project Sponsor's allocation of the PTO's revenues in advance by a predetermined methodology, it is unnecessary for a Project Sponsor to make a separate rate filing. Finally, as clarified above, the allocation of FTRs, which are governed by the CAISO Tariff on file with the Commission, is unchanged by the March 12 Order.

16. DWR also argues that the March 12 Order failed to address its argument that FTRs/CRRs should be allocated to Load,¹¹ which it states is the method proposed in the Commission's Standard Market Design proposal and the CAISO's MD02 proposal. As clarified above, the allocation methodology adopted in the March 12 Order concerned FTR auction revenues, not FTRs. Further, it would be premature to require that Amendment No. 48 be consistent with the Standard Market Design proposal and MD02. Standard Market Design is not a final rule, and MD02 is a proposal that is the subject of an ongoing proceeding. Our acceptance of Amendment No. 48, as amended, is not intended to prejudge our consideration of Standard Market Design or MD02.

17. DWR also argues that Amendment No. 48 must be expected to impair the rights of other parties. It asserts that the CAISO lacks a comprehensive plan for FTR/CRR entitlements. It contends that the CAISO has allocated FTRs on Path 15 to certain new municipal PTOs with contemporaneous public notice and without guidelines or criteria, and it argues that Amendment No. 48 only makes this situation worse. We reject these arguments. DWR's concerns are beyond the scope of this proceeding, and its assertion that Amendment No. 48 only exacerbates the current situation is vague.

¹⁰Thus, we are not abandoning cost-based rates for transmission service in California.

¹¹Oversight Board also raises this issue.

18. DWR also argues that Amendment No. 48 gives merchant transmission or generators a profit motive to create artificial congestion by giving them (as opposed to Load) financial control over transmission. It argues that the auction process offers little protection from market manipulation by generators and power traders. It asserts that a Project Sponsor receiving auction revenues can offer extremely high auction bids, knowing that receipt of auction revenues will offset its bid. It claims that this tactic, combined with the single market-clearing price approach, can raise the costs of any other entity bidding for FTRs on the same path, including the FTRs that the sponsor does not specifically bid for. Thus, the generator effectively controls access to the transmission lines in times of constraint, according to DWR. We find this argument is unpersuasive. Amendment No. 48 does not give the Project Sponsor financial control over transmission. In the FTR auction, the Project Sponsor would receive the proceeds only from the auction of FTRs associated with an upgrade, not the total FTRs for the relevant path. Therefore, a Project Sponsor who bids for the FTRs associated with a path would still be exposed to risk, because it would have to pay for the portion of FTRs that it did not own. Thus, we do not believe that the Project Sponsor would have the incentive to bid extraordinarily high at the FTR auction. Further, the example of alleged congestion manipulation cited by DWR concerned intra-zonal congestion,¹² which is not relevant to Amendment No. 48 since FTRs are issued only on inter-zonal interfaces and pathways. Further, Amendment No. 48 encourages the creation of more capacity and thus more FTRs. This should benefit rather than harm ratepayers.

The Commission orders:

(A) The March 12 Order is hereby clarified, as discussed in the body of this order.

(B) The requests for rehearing of the March 12 Order are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

¹²See DWR Rehearing at 20 (discussing a November 2001 CAISO memorandum reporting on the frequency, magnitude and cost impact of intra-zonal congestion in areas where new generating units came on-line).

Docket No. ER03-407-001

- 8 -

Linda Mitry,
Acting Secretary.