UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California	)	
v.	)	**Docket No. EL00-111-000**
California Independent System Operator Corporation	)	

ANSWER OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION TO MOTION FOR SUMMARY DISPOSITION OF THE CITIES OF ANAHEIM, AZUSA, BANNING, COLTON, AND RIVERSIDE, CALIFORNIA

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2000), the California Independent System Operator Corporation ("ISO")[1] submits its Answer to the Motion for Summary Disposition of the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California ("Southern Cities Motion," filed by "Southern Cities") submitted in the above-captioned proceeding.

I. SUMMARY

On September 15, 2000, Southern Cities filed a complaint under Rule 206 of the Commission's Rules of Practice and Procedure[2] in the above-referenced

[1] Capitalized terms not otherwise defined herein shall have the meaning as defined in the Master Definitions Supplement, Appendix A to the ISO Tariff.
[2] 18 C.F.R. § 385.206 (2000).

docket ("Southern Cities Complaint"). The ISO filed an answer to the Southern Cites Complaint on September 25, 2000 ("ISO Answer"). On October 13, 2000, Southern Cities filed the Southern Cities Motion in the above-referenced proceeding, alleging that: (1) no party has presented any evidence to create any issue of material fact as to the Southern Cities Complaint; (2) the responses in the ISO Answer have no legal foundation; and (3) there is no justification for delaying implementation of the relief requested in the Southern Cities Complaint. Southern Cities asked the Commission to issue an immediate order directing the relief requested by Southern Cities in their Complaint.[3]

For the reasons discussed below, the ISO urges the Commission to find that the allegations in the Southern Cities Motion are unfounded, and that the relief requested should be denied.

Southern Cities inaccurately describe the applicable legal standard for summary disposition. They ignore the requirement that they must demonstrate that the legal issues in question are ripe for summary disposition. Moreover, the Southern Cites Motion constitutes an improper and unsupported answer to the ISO Answer. On the merits, Southern Cities have not sustained their burden of proof under Section 206 of the Federal Power Act to show that the existing cost allocation methodology – which the Commission has accepted – is unjust and unreasonable, and that their proposed methodology is just and reasonable. Southern Cities also raise an argument that is virtually identical to one that the Commission has already rejected in its order on Amendment No. 28. Additionally, Southern Cities' reading of Section 11.2.9.1 of the ISO Tariff is at

[3] Southern Cities Motion at 1.

odds with the clear purpose and the only reasonable construction of that provision. For these reasons, the relief requested by Southern Cities should be denied.

II. SOUTHERN CITIES' DESCRIPTION OF THE APPLICABLE LEGAL STANDARD FOR SUMMARY DISPOSITION IS INCORRECT

Southern Cities assert that "no party has identified any genuine issue of material fact," and thus the Commission should grant summary disposition in favor of Southern Cities in the present proceeding.[4] However, in describing the asserted legal test for summary disposition, Southern Cities exclude a necessary element – the nexus between the facts and the relevant legal issues. The full text of the paragraph from which Southern Cities draw their citation for the appropriate test reads as follows:

> Although the Commission's regulations clearly contemplate the use of summary disposition, the Commission has determined that summary disposition or rejection of an issue is appropriate only when there are no material facts in dispute and the filing contravenes valid and explicit Commission policy and regulations. The courts have also accepted the Commission's position that for summary disposition to be appropriate two conditions must be met: (1) the proponent must have been afforded a reasonable opportunity to present arguments and factual support (written and oral) and that evidence must be viewed in its most favorable light, and (2) the Commission must find that a hearing is unnecessary and would not affect the ultimate disposition of an issue because there are no material facts in dispute or because the facts presented by the proponent would have been accepted in reaching the decision.[5]

Thus, under the Commission's test, Southern Cities are unable to bear their burden to show that summary disposition is called for merely by establishing that

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[4] *Id.* at 2-5.

[5] *Columbia Gulf Transmission Company*, 79 FERC ¶ 61,351, at 62,501 (1997) (citations

certain facts are not in dispute. Southern Cities must also demonstrate that the relevant issues lend themselves to summary disposition, i.e., that there is only one proper way to dispose of the issues once the material facts are established. Indeed, what *makes* facts material is that their establishment indicates the proper resolution of the issues.[6] As explained below, Southern Cities have failed to show that the issues in the present proceeding should be resolved as Southern Cities assert.[7]

III. SOUTHERN CITIES ARE INCORRECT IN STATING THAT THE ISO'S RESPONSES TO THE SOUTHERN CITIES COMPLAINT HAVE NO LEGAL FOUNDATION

Southern Cities assert that the responses in the ISO Answer to the Southern Cities Complaint have no legal foundation.[8] As an initial matter, the ISO notes that the Southern Cities Motion raises arguments in opposition to the ISO Answer. These arguments thus constitute an answer to the ISO Answer in violation of Rule 213 of the Commission's Rules of Practice and Procedure, unless the Commission otherwise orders.[9] Southern Cities do not even attempt to demonstrate that there is sufficient reason for the Commission to accept their answer under Rule 213; additionally, Southern Cities for the most part simply

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omitted).

[6] "The 'material facts' of an issue of fact are such as are necessary to determine the issue. Material fact is one upon which outcome of litigation depends." BLACK'S LAW DICTIONARY 977 (6th ed. 1990).

[7] Moreover, as described below, Southern Cities fail to establish its set of "material facts." A number of these asserted facts are merely Southern Cities' positions on the issues in the present case. For example, Southern Cities claim it is a fact that "the ISO has billed SCs for Neutrality Adjustment Charges in excess of the limits on such charges in § 11.2.9.1 of the ISO's Tariff in effect from June 1, 2000 through September 15, 2000." Southern Cities Motion at 3. Southern Cities go on to say that the ISO did not dispute this contention. *Id.* As the ISO explains in the next section of this Answer, Southern Cities' contention is incorrect, and the ISO did (and does) dispute it.

[8] Southern Cities Motion at 5-11.

restate arguments made in their Complaint. For these reasons, the ISO urges the Commission not to accept Southern Cities' unjustified answer to an answer.[10]

Moreover, Southern Cities' arguments are unsupported. First, Southern Cities assert that the Commission's acceptance of the ISO Tariff method for allocating costs of OOM purchases for system reliability, as part of the Amendment No. 23 proceedings, provides no basis for rejecting the Southern Cities Complaint.[11] This is simply incorrect. As explained in the ISO Answer, Southern Cities have failed to sustain their burden of proof under Section 206 of the Federal Power Act[12] to demonstrate that the Commission-approved cost allocation methodology is unjust and unreasonable, and that Southern Cities' methodology is just and reasonable. Moreover, in the Amendment No. 28 proceedings the Commission rejected an argument virtually identical to the one made by Southern Cities.[13] Additionally, the ISO is exploring with stakeholders other possible cost allocation methodologies, as part of its ongoing Comprehensive Market Redesign initiative.[14]

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9 *See* 18 C.F.R. § 385.213(a)(2) (2000).

10 *See, e.g.*, *Wisconsin Power & Light Company*, 87 FERC ¶ 61,279, at 62,129 n.3 (1999); *City of San Diego, California v. San Diego Gas & Electric Company and Southern California Edison Company*, 51 FERC ¶ 61,058, at 61,128-29 (1990). The ISO recognizes that the present filing itself constitutes an answer to Southern Cities' answer. However, the ISO submits that it is justified in making this filing to respond to the assertions made in Southern Cities' answer.

11 Southern Cities Motion at 6-8.

12 16 U.S.C. § 824e (1994).

13 Southern Cities assert that the Commission's rejection of the argument in the Amendment No. 28 proceedings is inapposite, because the order approving Amendment No. 28 noted the temporary nature of the ISO program in question. Southern Cities at 8. Southern Cities do not accurately describe the Commission's reasons for approving the ISO program. In the Amendment No. 28 order, the Commission stated that "maintenance of grid reliability benefits *all* loads that rely on the ISO Controlled Grid and, therefore, that allocation of program costs on a system-wide basis (i.e., to all Scheduling Coordinators) is reasonable." *California Independent System Operator Corporation*, 91 FERC ¶ 61,256, at 61,897 (2000) (emphasis in original). In addition, the Commission cited the program's temporary nature as a separate and distinct rationale. *See id.* at 61,897-98.

14 ISO Answer at 4-7.

Second, Southern Cities assert that Section 11.2.9.1 of the ISO Tariff serves as an absolute limit on the ISO's recovery of costs from Scheduling Coordinators ("SCs") through neutrality adjustment charges, to be applied separately in each hour, rather than as an annual limit on such charges.[15] As the ISO explained in its Answer, the recovery of costs on an annual basis under Section 11.2.9.1 does the following: (1) ensures the ability of the ISO to recover costs which may not otherwise be recoverable through other provisions of the Tariff; (2) provides Market Participants with a measure of the projected costs; (3) provides an explicit means through which the ISO will monitor the amounts being billed through neutrality; and (4) is based on a proper understanding of that Tariff provision, Section 11.2.9 generally, the intent of the ISO Governing Board, and the cost recovery mechanisms provided for in the California electric industry restructuring legislation. Moreover, the Commission has specifically approved the ISO's recovery of these costs from SCs. In short, the only reasonable construction of Section 11.2.9.1 is that of the ISO. Southern Cities' interpretation, by contrast, is unjust, unreasonable, and unsupported by the facts.[16]

Because Southern Cities have failed to justify the positions taken in their Complaint and Answer, the relief requested by Southern Cities should be denied.[17]

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15 Southern Cities Motion at 9-11.

16 ISO Answer at 5-12.

IV. CONCLUSION

WHEREFORE, for the reasons discussed above, the Commission should deny Southern Cities' motion for summary disposition and the relief which Southern Cities have requested.

Respectfully submitted,

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[17] *See* Southern Cities Motion at 11-14.