

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

San Diego Gas & Electric Company
Complainant,

Docket No. EL00-95-065

v.

Sellers of Energy and Ancillary Services
Into Markets Operated by the California
Independent System Operator Corporation and the
California Power Exchange,
Respondents.

Investigation of Practices of the California
Independent System Operator Corporation and the
California Power Exchange

Docket No. EL00-98-054

ORDER GRANTING REHEARING

(Issued August 30, 2002)

1. In this order, we grant rehearing of an order issued June 4, 2002 (June 4 Order)¹ in which we accepted for filing and suspended for a nominal period, made subject to refund and to further Commission action,² proposed amendments filed by the California Independent System Operator Corporation (CAISO), Pacific Gas and Electric Company (PG&E), Southern California Edison Company (SoCal Edison) and San Diego Gas &

¹San Diego Gas & Electric Co., et al., 99 FERC ¶ 61,275 (2002).

²The Commission accepted for filing and suspended for a nominal period the proposed amendments subject to the findings in a pending Final Rule on interconnection policy in Docket No. RM02-1-000. See Standardization of Generation Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 99 FERC ¶ 61,086 (2002).

Electric Company (SDG&E) to their respective Open Access Transmission Tariffs (OATT). The proposed amendments each prescribed procedures for the interconnection of new generators and to increase the capacity of existing generators.³ This order benefits customers through the Commission's approval of a more practical effective date for the OATT amendments than was ordered in the June 4 Order.

Background

2. The CAISO seeks rehearing regarding the proposed effective date of the OATT amendments. Specifically, the CAISO requests that the Commission vacate its determination of the June 1, 2001 effective date and approve an effective date of June 4, 2002. The CAISO states that it is unfair and impractical to approve the amendments retroactively to June 1, 2001, because the CAISO, generators, and the Participating Transmission Owners, have relied on the pre-existing tariff provisions.

Discussion

3. We will grant the CAISO's request for rehearing concerning the effective date of the OATT amendments. In granting this rehearing request, the Commission follows the test the courts have established in determining whether a rule announced in an agency adjudication should be given retroactive effect. This test requires our consideration of the following relevant factors: (1) whether the rule is actually a departure from clear prior policy or is, instead, a new policy for a new situation (or a clarification of a prior policy); (2) whether retroactive application will be more likely to hinder than to further the operation of a new rule; and (3) whether retroactive application would produce substantial inequitable results, with particular reference to whether parties relied on the old standard.⁴

³All of the parties filed amendments to their respective OATTs in compliance with an order the Commission issued on December 15, 2000, *San Diego Gas & Electric Co., et al.*, 93 FERC ¶ 61,294 at 62,015-16 (2000).

⁴See *Southern Company Energy Marketing, et al.*, 86 FERC ¶ 61,131 at 61,457-58, citing e.g., *Williams Natural Gas Company v. FERC*, 3 F.3d 1544, 1553-1555 (D.C. Cir. 1993) (collecting cases); *District Lodge 64, Int'l Ass'n of Machinists & Aerospace v. NLRB*, 949 F.2d 441, 447 (D.C. Cir. 1991), citing *Chevron Oil Co. v. Hudson*, 404 U.S. 97 (1971); and *NLRB v. Bell Aerospace*, 416 U.S. 267, 295 (1974).

4. The CAISO states that it and the Participating Transmission Owners have processed interconnection requests in accordance with pre-existing tariff provisions, which differ from the amended provisions. Furthermore, the CAISO argues that many generators have based their commitments to interconnect to the CAISO-controlled grid on the belief that the pre-existing tariff provisions would apply to them. The CAISO contends that the June 4 Order would retroactively change the fundamental basis for these commitments and the basis upon which interconnection requests were processed. The CAISO states that if it and the Participating Transmission Owners are required to apply the amendments on a retroactive basis back to June 1, 2001, it would be necessary to reconstruct the interconnection queue to allow it to reallocate cost responsibilities among generators whose interconnection requests have been processed since that date. In fact, the CAISO points out that during the period from June 1, 2001 to June 1, 2002, it and the Participating Transmission Owners processed approximately 57 interconnection requests in accordance with pre-existing queuing and cost responsibility requirements.


5. Because the Participating Transmission Owners, the CAISO, and generators relied on pre-existing tariff provisions, and due to the consequences that will result from a June 1, 2001 effective date, we find that the CAISO has adequately demonstrated that retroactive application of the proposed tariff amendments has the potential to produce substantial inequitable results. Accordingly, we will grant rehearing and establish the effective date as of June 4, 2002.

The Commission orders:

We hereby grant rehearing of the June 4 Order, as discussed in the body of this order.

By the Commission.

(SEAL)


Magalie R. Salas,
Secretary.