

DRAFT

E-44
E-44

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

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

v.

Docket No. EL02-87-000

California Independent System Operator Corporation

ORDER GRANTING PETITION IN PART, AND DENYING PETITION IN PART

()

1. On May 17, 2002, the Cities of Anaheim, Azusa, Banning, Colton and Riverside, California (Southern Cities) and the City of Vernon, California (Vernon) (collectively, Petitioners) filed a petition asking the Commission to review an Award of Arbitrator that was issued on April 15, 2002 following dispute resolution proceedings before an Arbitrator appointed by the American Arbitration Association. As discussed below, we grant the petition in part, but refer the matter back for the parties to provide findings of fact and conclusions of law by the arbitrator.

Background

2. This proceeding stems from a dispute concerning costs incurred by the California Independent System Operator Corporation (ISO) from February 7, 2000 to March 22, 2000. The costs resulted from the dispatch of generating resources required to replace certain Reliability Must Run (RMR) units that were not available during this period. Originally, the ISO billed the costs for the dispatch to replace these unavailable units to Southern California Edison (SoCal Edison), as Out-of-Market (OOM) charges. SoCal Edison protested these charges, and the ISO, relying on Commission orders prohibiting the ISO from using its OOM dispatch authority when there are unaccepted bids in the market,¹ re-

¹California Independent System Operator Corporation, 90 FERC ¶ 61,006, reh'g
(continued...)

billed these costs as Intra-Zonal Congestion to all loads in the SP-15 Zone, including the Southern Cities and Vernon. This re-billing resulted in a \$1,552,883 allocation to the Southern Cities and a \$351,600 allocation to Vernon.

3. The Southern Cities initiated arbitration to resolve the dispute by filing a Statement of Claim against the ISO under Section 13.2.2 of the ISO tariff on October 30, 2000. Southern Cities claimed that the ISO's characterization of the disputed charges as Intra-Zonal Congestion costs was not valid under the ISO tariff and that, even if the characterization was valid, Intra-Zonal Congestion charges are not properly chargeable to Existing Transmission Contract (ETC) holders. Statements of Claim were subsequently filed by Vernon and SoCal Edison. Vernon asserted that the charges against Vernon should also be deemed improper, and SoCal Edison opposed the Southern Cities' reallocation of the disputed charges and proposed that the claims should be rejected outright because the claims were pending before the Commission as one of the unresolved issues in Docket No. ER98-3760-000.

4. Pursuant to Section 13.2.5 of the ISO's tariff, Southern Cities and Vernon sought commencement of the arbitration process. Following a period of discovery and testimony, a one-day hearing was conducted by an Arbitrator on January 28, 2002. After briefing, the Arbitrator issued a decision on April 15, 2002, which stated simply that all claims of the Southern Cities and Vernon are hereby denied.

Petition

5. The Petitioners state that they are entitled to Commission review under Section 13.4.1 of the ISO tariff, which provides that a party may appeal an Arbitrator's decision on the grounds that it is contrary to relevant ISO documents, federal law, including, without limitation, the Federal Power Act (FPA), and any Commission regulations and decisions. Section 13.4.1 provides in pertinent part: "A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant ISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court or competent jurisdiction, conform to the procedural limitations set forth in this Section 13.4."

¹(...continued)
denied, 91 FERC ¶ 61,026 (2000).

6. The Petitioners state that this appeal meets these criteria for the following reasons: (1) the Arbitrator erred in accepting the ISO's misapplication of its tariff; and (2) the Arbitrator erred by allowing the assessment of any Intra-Zonal Congestion charges against Southern Cities and Vernon. The Petitioners also ask the Commission to establish a procedural schedule for its review.

Notice, Interventions, Comments and Protests

7. Notice of the petition was published in the Federal Register, 67 Fed. Reg. 40,695 (2002), with motions to intervene or protests due on or before June 14, 2002. Timely motions to intervene were filed by the California Department of Water Resources (CDWR) and the Cities of Santa Clara and Redding, California, the Modesto Irrigation District and the M-S-R Public Power Agency (collectively, Cities/MID/M-S-R). Timely motions to intervene and comments supporting the Petitioners were filed by the California Electricity Oversight Board (CEOB) and the Metropolitan Water District of Southern California (Metropolitan). Timely motions to intervene and protests were filed by Southern California Edison Company (SoCal Edison) and the California Independent System Operator Corporation (ISO).

Discussion

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding.

9. Section 13.4 of the ISO's tariff outlines the basis of an appeal of an arbitration award. Section 13.4.1 provides: "A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant ISO Documents, United States federal law, including, without limitation, the FPA, and any FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this Section 13.4.1."

10. In addition, Section 13.4.2 of the ISO's tariff provides that: "The parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before the FERC or court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's

decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation."

11. The Petitioners state that the record evidence in this proceeding demonstrates that the disputed costs were incurred by the ISO for the provision of Voltage Support, not for Intra-Zonal Congestion, and that the ISO tariff provides that Voltage Support provided by RMR units or by OOM dispatch must be paid by the responsible Transmission Owner (TO). Petitioners argue that the Arbitrator erred in failing to remedy the ISO's improper characterization and allocation of these costs.

12. The Arbitrator's Award is inconsistent with the arbitration procedures set forth in the ISO tariff, which require the Arbitrator's decision to include findings of fact and conclusions of law. Section 13.3.11.1 of the ISO's tariff provides that: "Except as provided below with respect to "baseball" style arbitration, the arbitrator shall issue a written decision granting the relief requested by one of the parties, or such other remedy as is appropriate, if any, and shall include findings of fact and law." The Arbitrator's decision may well be sustainable, or it may not, but given that the Arbitrator has failed to include the findings of fact and conclusions of law required by the tariff, the Commission has nothing before it to review. The ISO's tariff provides a deferential standard of review, as it should, but before the Commission may undertake that review it requires that there be findings of fact and conclusions of law to review. Accordingly, we will remand this proceeding to the parties so that they may seek from the Arbitrator the necessary findings and conclusions. Thereafter, the Petitioners may file, in a new proceeding, a new appeal.

The Commission orders:

This matter is hereby remanded so that the parties may seek from the Arbitrator findings of fact and conclusions of law.

By the Commission.

Secretary