UNITED STATES OF AMERICA 90 FERC ¶ 61,086
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hébert, Jr.

California Independent System Operator Corporation — Docket No. ER99-3339-001

ORDER DENYING REHEARING

(Issued January 31, 2000)

On October 15, 1999, the California Independent System Operator Corporation (ISO), the Independent Energy Producers Association (IEP), and jointly Duke Energy Moss Landing LLC, Duke Energy Oakland LLC, Duke Energy South Bay LLC, and Duke Energy Morro Bay LLC (collectively, Duke), filed requests for rehearing or clarification of the Commission's order issued in this proceeding on September 15, 1999. [1] For the reasons given below, we deny rehearing.

Background

The ISO's Tariff Amendment No. 19, filed in this docket, proposed to establish application and cost responsibility rules for the interconnection of new generation (i.e., new generators and existing generators that increase capability) to the ISO grid where the market is not competitive. Under the proposal, also referred to as the NewGen Policy, certain new generators would have been required to mitigate intra-zonal congestion created when they interconnect to the grid. Specifically, new generators would have been required to mitigate intra-zonal congestion when the level of congestion (1) exceeded a specified threshold and (2) could not be mitigated through use of competitive adjustment bids. As proposed, a new generator would have options available for mitigation, including backing down its own generation, paying existing generators to redispatch, paying for system expansion, and paying the ISO's costs for intra-zonal congestion management.

[1] California Independent System Operator Corporation, 88 FERC ¶ 61,221 (1999) (September 15 Order).

Docket No. ER99-3339-001

Under current California policy, new generators are not required to mitigate any increased costs of inter-zonal congestion resulting from their projects. [2] Also, new generators are not required to mitigate increased costs of intra-zonal congestion if the generation market within the zone is competitive, i.e., if the congestion can be mitigated through use of competitive adjustment bids, with which generators specify the prices at which they will change their dispatch schedules. Amendment No. 19 would not have changed these policies. However, if the new generator located in an area where the generation market was not competitive, Amendment No. 19 would have required the new generator to bear the increased congestion mitigation costs.

The effect of Amendment No. 19 was to impose different intra-zonal congestion mitigation costs on a new generator depending on whether the generator located in a competitive or noncompetitive area. If the new generator located in a competitive area, the ISO proposed to continue existing practices. The new generator by itself would not have been required to mitigate all increased costs of intra-zonal congestion. [3] By contrast, if the new generator located in a noncompetitive area, the new generator by itself would have been required to mitigate all increased costs of intra-zonal congestion.

Numerous parties protested the ISO's proposal complaining, among other things, that the proposal did not treat existing and new generators comparably, was inefficient and uneconomic, created barriers to entry, and was inconsistent with the ISO's protocols for intra-zonal and inter-zonal congestion management. Others objected that the proposal did not go far enough in assigning mitigation costs to new generators. Still other intervenors supported the ISO's proposal as a reasonable means of integrating new generation into the ISO-controlled grid, consistent with existing market mechanisms.

The September 15 Order rejected Amendment No. 19 on the grounds that the proposal would require new generators to bear excessive mitigation costs, due to the lack of competition in the supply of adjustment bids. As we explained in the September 15 Order, one of the ways that a new generator could have effectuated redispatch was to have paid an existing generator to back down. However, under that scenario, a customer would be relying on a market-based bid for redispatch where there was not a competitive supply of redispatch bids, and as a consequence, the customer would be facing incorrect,

---

[2] However, new generators would face inter-zonal transmission congestion charges for transmission across congested transmission paths, just like all other market participants.

[3] Any intra-zonal congestion costs would be shared by all loads in the zone. If the costs became large, a new zone would be created, and congestion costs would be paid through usage charges assessed on parties who use the congested path and therefore create the congestion.

inflated prices for mitigating increased congestion. Thus, we did not approve the proposal.

ISO's Request for Rehearing

On rehearing, the ISO states that new generators would not bear excessive mitigation costs. Rather, under existing ISO procedures, where there is not a competitive market for adjustment bids, the ISO states that it would redispatch generation made available to it through cost-based RMR contracts. [4] In instances where an RMR contract is not available, the ISO states that it would use an Out-of-Market (OOM) call and settlement protocol to mitigate non-competitive intra-zonal congestion. Under those protocols, the cost of decrementing the generator is determined by the real-time Hourly Ex-post Price, which is not influenced by local market power of any generator. As a result, the ISO claims that the intra-zonal congestion mitigation costs borne by a new generator in a noncompetitive area would be similar to those that would result if the adjustment bid market were competitive. [5] Thus, the ISO asserts that the Commission should approve its NewGen Policy on rehearing. In the alternative, the ISO suggests that the Commission accept its NewGen Policy "without the offending option, allowing the policy to go into effect on the basis of the other options available to a new entrant." [6]

Southern California Edison Company (SoCal Edison), Calpine Corporation (Calpine), and the Coalition Supporting Pro-Competitive Interconnection Policies (Coalition) filed answers to the ISO's rehearing request.

Other Requests for Rehearing and Clarification

On rehearing, IEP explains that a significant aspect of the NewGen Policy was the six congestion mitigation options available to a new generator, and IEP asserts that the September 15 Order seems to be based on a misunderstanding of the interrelationship of the six options. IEP argues that the Commission's concern about bilateral redispatch agreements extracting elevated costs from new generators is misplaced because the six options "present a universe of costs which the developer can compare to discover its least-cost development plan." [7] Further, IEP asserts that this variety of costs provides cost discipline, serving to "limit any 'rent' which a potential counterparty to a bilateral

---

[4]ISO Rehearing Request at 8-9.

[5]Id., Attachment B at 1-2.

[6]Id. at 3.

[7]IEP Rehearing at 3.

arrangement could seek to extract from the project developer." [8] IEP also stresses the importance of the cost certainty that the NewGen Policy would have provided developers of new facilities.

Duke requests clarification, or, in the alternative, rehearing of another aspect of the September 15 Order. Duke asks the Commission to clarify whether the order intended to reject the principle that, when interconnection causes congestion, the interconnecting generator may be held responsible for the redispatch or other congestion-related costs that the existing generator would not have otherwise incurred. Duke argues that a clarification to this effect would be consistent with Commission policy and that "compensation of existing generators for their redispatch costs follows inexorably from the principles and provisions of the pro forma tariff." [9] If the Commission intended to reject this principle, then Duke requests rehearing of the September 15 Order.

Discussion

We will reject SoCal Edison's, Calpine's, and the Coalition's answers to the extent they represent answers to a rehearing request. [10]

We will deny the rehearing requests. The ISO's arguments on rehearing undercut its original rationale for Amendment No. 19. If the ISO's assertion is true that it can manage intra-zonal congestion in noncompetitive markets at a competitive cost, then there is no reason to create different interconnection policies for competitive and noncompetitive areas, and thus, no reason for Amendment No. 19. The rationale for Amendment No. 19 rested on the presumption that such mitigation costs would be higher in noncompetitive markets than in competitive markets. However, if the mitigation costs are similar in the two types of areas, then there is no rationale for creating a separate pricing policy for noncompetitive areas, and the present pricing policy should apply to all generators, i.e., congestion costs are shared by all loads in the zone until they become large enough to trigger creation of a new zone. Moreover, charging new generators intra-zonal congestion costs only when they build in noncompetitive areas will encourage generators to avoid those areas in favor of already-competitive areas, presumably not the result the ISO seeks.

Moreover, we are not persuaded that the ISO would be able to manage intra-zonal congestion at a competitive cost using the methods outlined in its rehearing request. The

---

[8] Id.

[9] Duke Rehearing at 4.

[10] See 18 C.F.R. § 213(a)(2) (1999).

ISO states that it would be able to mitigate inflated redispatch costs by calling on RMR units or making Out-of-Market calls at the hourly ex-post energy price. However, it is not clear that the ISO could mitigate this type of congestion with RMR units, for two reasons. First, RMR units may not be located in the relevant areas needed to mitigate the congestion, and, second, the ISO may not have authority to call upon them to reduce output to mitigate congestion. While new generators that create congestion would be located in export areas (where there is an excess of generation over load), RMR generators are typically located in constrained import areas where generation is in short supply relative to load. RMR contracts allow the ISO to call upon the RMR unit to increase its output. However, to mitigate intra-zonal congestion in the export area, the ISO must find a generator to reduce its energy output. The ISO has not addressed whether it has RMR contracts with units in areas where new generators would interconnect and where congestion must be managed with output reductions, and we note that in a document submitted in another proceeding, the ISO's Department of Market Analysis states that "[i]t is unlikely that an RMR unit would exist in a pocket with generation capacity far in excess of the local load, since RMR units are so designated to ensure an adequate level of generation to meet reliability needs, not for their ability to reduce supply." [11] The ISO also has not addressed whether its current RMR contracts provide it with authority to direct the RMR unit to reduce its output to manage intra-zonal congestion.

Further, the ISO cannot currently use an "Out-of-Market" (OOM) call to mitigate inflated redispatch costs. OOM calls refer to situations described in Section 5.6.1 of the ISO Tariff, which allows the ISO during system emergencies to instruct generators that have not submitted bids. Currently, OOM calls can be made only if the ISO has run out of bids or if a system emergency is imminent or threatened. However, the ISO has no authority currently to use OOM calls in other circumstances. Thus, the ISO currently does not have the authority to use an OOM call to mitigate inflated intra-zonal congestion costs arising from inflated bids submitted by a generator with market power. Although the ISO recently proposed in Docket No. ER00-555-000 to acquire the authority to use OOM calls to replace bids when the market is not competitive, the Commission rejected that aspect of the proposal. [12]

Finally, the ISO also states that if the Commission remains convinced that incumbent generators could use the bilateral negotiation option to extract undue

---

[11]ISO's Answer in Docket No. ER00-555-000, dated December 20, 1999, Attachment A at 2.

[12]See California Independent System Operator Corporation, 90 FERC ¶ 61,006 (2000), slip op. at 4-10.

compensation, then the Commission should accept Amendment No. 19 with the condition that the ISO exclude the bilateral negotiation mitigation option. The ISO's suggestion provides no remedy for the problem of inflated mitigation costs. As our September 15 Order made clear, the ability to negotiate a bilateral redispatch is not sufficient to mitigate excessive mitigation costs when the redispatch is being negotiated in a noncompetitive situation. Removing this flawed mitigation option does not change the fact that the new generator is being asked to bear by itself the excessive costs whenever it locates in a noncompetitive area.

This conclusion also responds to IEP's rehearing request. The argument that one of the six mitigation options may be expendable does not address the underlying problem, i.e., charging excessive redispatch costs to new generators based on the lack of a competitive generation market. There appears to be no mechanism among the proposed options for efficient redispatch between new and existing generators. Thus we will deny IEP's request.

Duke asks us to clarify our stance on the costs for which new generators are responsible. Initially, we note that the September 15 Order intended neither to create nor reject any principles of cost allocation. We clarify here that the Commission has never established the "principle" that Duke posits, i.e., that new generators must be responsible for the additional redispatch costs incurred by existing generators as a result of increased congestion. Rather, we have approved other types of congestion management schemes, for example, those that treat new and existing generators alike. [13] Also, in those circumstances where we have allowed transmission customers to be charged the higher of embedded or incremental costs, the latter are not measured as the ISO proposes here. Accordingly, we will deny Duke's rehearing request as well.

The Commission orders:

The requests for rehearing are hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

[13]For example, in the context of California's inter-zonal congestion management scheme, all participants, whether new or incumbent, pay increased congestion costs as a result of additional congestion. Further, under California's existing method of managing intra-zonal congestion, any increased congestion costs are shared pro-rata by all Scheduling Coordinators in a zone.

Docket No. ER99-3339-001

David P. Boergers,
Secretary.