UNITED STATES OF AMERICA 90 FERC ¶ 61,315
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation	Docket No. ER99-4545-002 Docket No. ER99-4545-003

ORDER ON REHEARING AND ACCEPTING COMPLIANCE FILING

(Issued March 29, 2000)

In this order, we grant in part and deny in part rehearing of our order issued November 24, 1999, [1] approving revisions to the California Independent System Operator Corporation's (ISO) tariff, and we accept for filing the compliance filing that the ISO submitted in Docket No. ER99-4545-003.

Background

The ISO's tariff Amendment No. 22, filed in this docket, proposed a number of revisions to its tariff and related protocols. The revisions involved, in pertinent part: implementing the ISO's creation of a new congestion management zone south of Path 15; requiring holders of firm transmission rights (FTRs) to provide certain information to the ISO; allocating costs for reliability-must-run (RMR) generation units located outside of the ISO control area to the "Responsible Utilities" contiguous to the RMR units; changing the allocation of transmission losses from a system-wide basis to an individual utility distribution company basis; establishing a process for disputing incremental changes appearing on final settlement statements compared to the preliminary statements; and allocating awards payable to or from the ISO arising from good faith negotiations or ADR procedures.

The November 24 Order conditionally accepted the ISO's Amendment No. 22. The Commission approved the ISO's proposals to allocate the costs of RMR units to the Responsible Utilities whose service areas are contiguous to the additional RMR units, and to create a new congestion management zone south of transmission Path 15, among

[1] California Independent System Operator Corporation, 89 FERC ¶ 61,229 (1999) (November 24 Order).

other things. To address issues raised in intervenors' comments, the Commission required the ISO to take the following steps: (1) file for Commission approval under Federal Power Act (FPA) section 205 [2] the allocation of costs of RMR generation among two or more Responsible Utilities; (2) post prices on its home page at which FTRs are sold, and amend its tariff to accurately reflect all information required to be posted on its home page; and (3) allocate pro-rata based on metered demand any awards payable to or from the ISO as a result of negotiations or an ADR process, when the ISO cannot identify a responsible party.

On December 22, 1999, the ISO submitted a compliance filing incorporating the required revisions. The ISO requests that the revisions in the compliance filing become effective as of February 1, 2000.

Requests for Rehearing

Four entities filed requests for rehearing and/or clarification of the November 24 Order: Pacific Gas & Electric Company (PG&E); the Cities of Santa Clara and Palo Alto, California (jointly, the Cities); Southern California Edison Company (SoCal Edison); and the Public Utilities Commission of the State of California (California Commission).

PG&E seeks rehearing of three aspects of the underlying order. First, PG&E argues that the Commission erred by failing to address key cost allocation issues for RMR units outside the ISO control area. Second, PG&E objects to the Commission's decision not to permit retroactive application of the ISO's new methodology for calculating transmission losses. And third, PG&E challenges the Commission's decision not to allow retroactive application of the ISO's mechanism for disputing final settlement statements.

The Cities request clarification that our approval of the new congestion management zone and the related discussion "are not precedential and will not prejudice any entity's ability to challenge those criteria in existing or future Commission proceedings." [3] If the Commission declines to grant clarification, the Cities seek rehearing.

SoCal Edison and the California Commission both argue that FPA section 205 filings should be required not only when RMR costs from non-jurisdictional sellers are allocated among Responsible Utilities, but also when such costs are charged to an

[2] 16 U.S.C. § 824d (1994).

[3] Cities rehearing at 5.

individual Responsible Utility. On January 5, 2000, the Northern California Power Agency (NCPA) filed a response in opposition to SoCal Edison's and the California Commission's requests.

Notice and Comments

Notice of the ISO's compliance filing was published in the Federal Register, 65 Fed. Reg. 448 (2000), with motions to intervene and protests due on or before January 11, 2000. Metropolitan Water District of Southern California (Metropolitan) filed timely comments regarding the filing, as described below. [4]

Discussion

Procedural Matters

Pursuant to Rules 213(a)(2) and 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.213(a)(2) and 385.713(d) (1999), answers to requests for rehearing are generally prohibited. However, we will accept NCPA's answer, since it has aided us in understanding and resolving the issues. [5]

Arguments on Rehearing

1. RMR Cost Allocation Issues

In the November 24 Order, the Commission approved the ISO's proposal to allocate costs for RMR generation units located outside of the ISO control area to utilities contiguous to the RMR units. These utilities, designated as Responsible Utilities, previously had been responsible only for the costs of RMR units located within their own service areas. PG&E has two primary arguments on rehearing. PG&E argues first that the November 24 Order incorrectly stated that the ISO's proposal was consistent with the manner in which it now recovers RMR costs within its control area, and second, that the proposal inequitably assigns all such costs to Responsible Utilities.

---

[4]On January 11, 2000, Sacramento Municipal Utility District (SMUD) filed a motion to intervene. As SMUD already had party status by virtue of its timely, unopposed motion to intervene in the underlying proceeding, we need not address this filing.

[5]See Sierra Pacific Power Co. and Nevada Power Co., 88 FERC ¶ 61,058 (1999).

We continue to believe that the ISO's proposed assignment of RMR costs is appropriate in the context of the existing RMR structure. The proposal does not alter the fundamental approach to these costs, which is to assign them to the Responsible Utility in whose service area the unit is located. The Responsible Utility remains the entity responsible for RMR costs, rather than some other entity such as a generation owner, which would represent a divergence from the current approach. It is also appropriate for the contiguous Responsible Utility(ies) to be assigned these costs because the benefits of RMR services are localized, [6] and a Responsible Utility is also in a position to take steps to avoid or reduce the need for RMR generation. [7] Stated another way, the users of a Responsible Utility's facilities receive the benefits of RMR units in contiguous service areas, and the ISO's proposal will allow the associated costs to be paid, ultimately, by the benefitting users.

PG&E argues that RMR units located outside of the ISO control area provide reliability benefits not only to the Responsible Utilities but also to "non-participating" utilities and even to the owners of these RMR units. PG&E asserts that part of the ISO's costs for these RMR units should be allocated to these non-participating utilities and unit owners. The ISO, however, is purchasing service from these RMR units only for its own customers, and PG&E does not assert that the ISO is purchasing more service than it needs for that purpose. The ISO is not providing service to the non-participating utilities and these RMR unit owners. Accordingly, we will deny this aspect of PG&E's rehearing request.

2. FPA Section 205 Filings for Additional RMR Units

One aspect of the ISO's proposal regarding additional RMR units was that, where there is more than one Responsible Utility whose service area is contiguous to the service area in which an RMR generating unit is located, the ISO would assign costs based on the proportion of benefits that each Responsible Utility receives from the unit, as determined by the ISO. While the Commission approved this concept, the order required the ISO to make a separate section 205 filing to allocate the costs among utilities.

SoCal Edison agrees with the Commission's decision to require the ISO to make a separate filing under section 205 in these circumstances. SoCal Edison requests

---

[6]The RMR designation indicates that that particular unit (when called upon for local reliability purposes) is the only one that can, because of system constraints, serve the demand in question.

[7]See ISO's Answer dated November 1, 1999, at 9-10.

clarification, however, that any RMR charges that the ISO passes through under its tariff (that are not reviewed by the Commission in another section 205 proceeding) must be filed under section 205. If the Commission declines to grant such clarification, then SoCal Edison alternatively requests rehearing. The California Commission requests rehearing on the same basis, i.e., that separate section 205 filings be "required in each instance in which the ISO seeks to pass through the costs of RMR contracts between the ISO and a non-FERC-jurisdictional entity to a Responsible Utility, and the ISO must file each such contract." [8]

If we decline to impose such a requirement, both SoCal Edison and the California Commission request that we determine whether the filed rate doctrine applies to the ISO's rates containing the RMR costs. SoCal Edison seeks assurance that the RMR costs are being charged pursuant to a filed rate and that the California Commission may not disallow recovery of the costs from its retail customers. The California Commission, on the other hand, argues that the filed rate doctrine does not apply and asserts that unreviewed wholesale costs as to which FERC has made no determination of reasonableness do not carry preemptive effect, because they were neither "file[d] nor fix[ed]" by FERC. [9] In its response, NCPA opines that the filed rate doctrine should apply, citing several Supreme Court rulings for the proposition that utilities are assured recovery of FERC-approved rates in the circumstances present here.

The recovery of RMR costs under the ISO's tariff is through a formula rate. The ISO purchases RMR services under the contracts and passes through the costs to Responsible Utilities under the formula rate. The filed rate in this circumstance is the formula. SoCal Edison, the California Commission, and others may challenge the costs recovered under this formula by filing a complaint under FPA section 206, and such challenges to costs recovered under a formula rate are not limited to prospective relief. [10] Accordingly, we see no purpose to also requiring the filing under FPA section 205 of each contract the ISO enters into with a non-jurisdictional entity.

3. Final Settlement Statement Disputes

---

[8]California Commission rehearing at 1.

[9]Id. at 5, citing Montana-Dakota Utility Co. v. Northwestern P.S.C., 341 U.S.246, 251-52 (1951).

[10]See Yankee Atomic Electric Co., 60 FERC ¶ 61,316 at 62,096 (1992), Montaup Electric Power Co., 55 FERC ¶ 61,174 at 61,561 (1991).

Docket Nos. ER99-4545-002 and
ER99-4545-003

The November 24 Order approved a proposal to implement a formal procedure to address charges or credits that appear for the first time on final settlement statements (incremental charges). Under the new procedure, the ISO allows market participants an opportunity to dispute incremental charges for 10 business days after issuance of final settlement statements. After 10 business days, a bill may only be reviewed by submitting a request to the ISO Governing Board. PG&E and another party requested that the provision be made retroactive because the ISO had not had a formal mechanism for disputing incremental charges since it commenced operations in April 1998. The Commission accepted the provision, as proposed, finding that retroactive application of the provision would be meaningless.

On rehearing, PG&E asserts that due process requires a period to permit the filing of disputes for which there was previously no dispute mechanism. PG&E asks the Commission to modify the November 24 Order to permit a one-time opportunity to raise such disputes. PG&E also refers to an order directing the California Power Exchange Corporation (PX) to address the same issue with respect to additional Settlement Statements that the PX issues. [11] PG&E reasons that the ISO has known of the Commission's position on the PX's Settlement Statements since June 1, 1998, and thus not allowing participants to dispute ISO incremental changes would be "permitting the ISO to escape responsibility for its failure to provide this basic due process right to parties." [12] PG&E further asserts that the Commission has acted inconsistently with respect to whether changes to the ISO's tariff will be made prospectively or retroactively, and without explaining the difference between the result in the November 24 Order and prior decisions.

We are not persuaded by PG&E's arguments on rehearing. Initially, we note that the June 1, 1998 Order addressed a filing submitted by the PX within two weeks after the PX began operations (presumably even before the PX had sent any final Settlement Statements to customers). Thus, our approval of the PX's proposal did not require the PX to change its treatment of additional Settlement Statements retroactively. PG&E's reliance on that decision is inapposite. More fundamentally, we emphasize that our general policy against retroactive ratemaking has been applied consistently with respect to the ISO's tariff changes, with minor exceptions that have been fully explained. [13] In the

[11]California Power Exchange Corp., 83 FERC ¶ 61,241 at 62,045 (1998) (June 1, 1998 Order).

[12]PG&E rehearing at 9.

[13]See California Independent System Operator Corporation, 86 FERC ¶ 61,122 at 61,423-24.

November 24 Order, there was no compelling reason to deviate from our general policy, and no such reason has been presented on rehearing. The fact that the ISO may have been aware of the June 1, 1998 Order, even if true, does not require refund rights for PG&E. As to PG&E's due process arguments, PG&E has not cited, and we are not aware of, any past restriction on PG&E's right to raise billing concerns with the ISO within a reasonable period after receipt of the bills, even absent the type of explicit, formal procedures now adopted by the ISO. In any event, PG&E could have filed a complaint under FPA section 206 to address its concerns over incremental changes.

4. Transmission Loss Methodology

Although PG&E supported the ISO's new method of calculating transmission losses proposed in Amendment No. 22, PG&E asked the Commission to make the proposed changes retroactive to the beginning of ISO operations. PG&E relies on the same arguments presented in the proceeding below, which the Commission considered and rejected.

On rehearing, PG&E again asserts that, because transmission loss calculations had been based on a "novel," interim method, the new loss methodology approved in the November 24 Order should be made retroactive. As we explained in the November 24 Order, however, although the previous method had been accepted as an interim measure, the Commission did not intend to apply a successor method retroactively. The Commission did not accept the interim method subject to refund or subject to future orders. [14] Moreover, while PG&E characterizes the amounts at issue as involving billing errors, PG&E is not complaining that the ISO had incorrectly applied its transmission loss methodology and was charging an incorrect rate; rather, it objects to the method of calculation, which was in fact the approved filed rate. Thus, there is no basis for requiring retroactive application of the new loss methodology. Our discussion of effective dates and retroactivity in the preceding section of this order applies here as well. Contrary to PG&E's assertion that this issue raises a fundamental legal question about what criteria should be used to decide when to apply proposed rate changes retroactively, no further inquiry is needed.

5. New Congestion Management Zone

In the proceeding below, the Cities commented that creation of the proposed new zone should not be precedential with respect to the creation of additional new zones. The Cities explained that the criterion for new zone creation was approved by the

[14] See Pacific Gas & Electric, et al., 81 FERC ¶ 61,122 at 61,522 (1997) (PG&E).

Commission subject to further review and hence argued that any action made on the basis of that criterion should not be precedential with respect to any criteria utilized in the future. The Commission did not address that comment in the November 24 Order.

The Cities now ask that the Commission clarify that our approval of the new congestion zone and our discussion of workable competition and other issues will not prejudice anyone's ability to challenge those criteria on other proceedings. The Cities note that the ISO submitted a study evaluating different criteria for creating and modifying congestion zones in Docket No. ER00-703-000, and argue that, as the Commission has not acted on that study, "the Commission should not be deemed to have approved, in the November 24 Order, the [current] criterion or other criteria for the establishment of new Congestion Zones on a substantive basis." [15] The Cities assert that the Commission should now clarify that the November 24 Order is subject to Commission action on the study filed in Docket No. ER00-703-000.

We clarify that the grounds on which we approved the new zone between Path 15 and Path 26 are specific to Amendment No. 22. Any consideration of the creation of future zones will be based on the criteria in effect at such time as a proposal is brought before the Commission. We did not intend the November 24 Order to imply that the current criteria are any more or less valid than when they were approved on an interim basis, subject to further review. [16] We will not clarify, however, that the November 24 Order is subject to Commission action on the zone creation criteria study. The new zone became effective as authorized in the November 24 Order without regard to future Commission action; we did not intend to reconsider the new zone at a future date.

[15]Cities rehearing at 5-6.

[16]See PG&E at 61,484.

Docket Nos. ER99-4545-002 and
ER99-4545-003
Compliance Filing

In its comments on the compliance filing, Metropolitan requests that the Commission require two additional revisions to the ISO's tariff, which, it contends, the November 24 Order required. First, Metropolitan comments that the description of information required to be posted about FTRs (including the identity of entities holding FTRs, the number of FTRs held by such entities at each interface, and the path rating of the interface) should be clarified as applying not only to secondary sales of FTRs, but also to the ISO's initial sale of FTRs. Metropolitan suggests revised language stating that the ISO will post the information at the conclusion of the primary auction. Second, with regard to RMR contracts, Metropolitan wants language added to the tariff stating that a filing under FPA section 205 must be made prior to the allocation of costs.

The ISO's compliance filing accurately reflects the Commission's directions in the November 24 Order. As Metropolitan does not allege that the proposed language is confusing or misleading, and we find the ISO's language consistent with our prior order and adequately clear, we will reject this comment as beyond the scope of this compliance filing. Accordingly, we will accept the ISO's submission for filing, effective February 1, 2000, as requested.

The Commission orders:

(A) The requests for rehearing and/or clarification are hereby granted in part and denied in part, as discussed in the body of this order.

(B) The ISO's compliance filing in Docket No. ER99-4545-003 is hereby accepted for filing, as discussed in the body of this order.

(C) The ISO is hereby informed that rate schedule designations will be supplied in a future order. Consistent with our prior orders, the ISO is hereby directed to promptly post the proposed tariff sheets as revised in this order on the Western Energy Network.

By the Commission.

Docket Nos. ER99-4545-002 and
ER99-4545-003

(S E A L)

David P. Boergers,
Secretary.