

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System)
Operator Corporation)
)

Docket No. ER00-2019-006,
ER01-819-002 and
ER03-608-001

**THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S
MOTION TO STRIKE TESTIMONY OF
THE TRANSMISSION AGENCY OF NORTHERN CALIFORNIA**

To: The Honorable Bobbie J. McCartney

1. Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, the California Independent System Operator Corporation ("ISO") respectfully submits this Motion to Strike Testimony of the Transmission Agency of Northern California ("TANC").

2. Specifically, by this motion, the ISO requests that the Presiding Judge strike the following portions of the Prepared Direct Testimony of Bryan W. Griess, TNC Exh. No. 10: Page 30, line 15 through Page 32, line 19.

I. BACKGROUND

3. In Amendment No. 49, the ISO made a number of changes to section 3.2 of the ISO Tariff, addressing Transmission Expansion. One change in section 3.2.1.1 concerned information to be provided to the ISO to enable it to determine whether a project is needed to promote economic efficiency.¹

¹ Amendment No. 49 also revised section 3.2.1.1.3.1 regarding proposals for transmission additions and upgrades; it included a requirement for an economic analysis that comports with ISO guidelines.

4. The Commission did not explicitly describe either of these provisions in its May 31, 2003, order on Amendment No. 49. It did, however, state that, except for issues set for hearing (which did not include the changes to section 3.2) and a proposed change to section 3.1, it would “accept the remaining parts of . . . Amendment No. 49.”

5. TANC’s testimony that is the subject of this motion challenges the revision to section 3.2.1.1, contending that the “proposed” economic efficiency test is vague and needs clarification. See Exh. TNC-10 at 30-32.

6. In its Motion to Limit Scope of Proceeding filed in these dockets on July 2, 2003, the ISO, based on the Commission’s order, asked the Presiding Judge to exclude from the proceeding arguments concerning the amendments to Section 3.2. The ISO also noted that the revision to section 3.2.1.1 did not institute the economic efficiency test, but merely addressed the information to be provided.

7. Following oral argument, the Presiding Judge ruled that the Commission had not approved the revisions to Section 3.2, and that they were properly within the scope of the proceeding. In response to inquiries by counsel, The Presiding Judge indicated that her ruling applied to the opposed revisions, and that if the ISO believed that TANC’s testimony went beyond the proposed revisions, the ISO’s appropriate remedy was a Motion to Strike.

II. DISCUSSION

8. Under section 206 of the FPA , the Commission has the authority to prescribe just and reasonable rates for the ISO. The Commission can only exercise that authority, however, following a finding that the rates proposed under section 205 are unjust, unreasonable, or unduly discriminatory. 16 U.S.C. § 824e; *Sierra Pacific Power Co. v. FPA*, 350 U.S. 348 (1956).

9. Thus, in a proceeding under section 205, if the utility does not propose changes to an existing tariff provision, testimony of other parties challenging that tariff provision or recommending alternative provisions is beyond the scope of the proceeding. See, e.g., *California Power Exchange Corp.*, 86 FERC ¶¶ 61,001 at 61,005 (1999); *California Ind. Sys. Oper. Corp.*, 85 FERC ¶¶ 61,061 at 61,200 (1998).

10. As noted above and as reflected in the black-lined tariff provisions submitted with Amendment No. 49, attached as Exhibit 1, the “economic efficiency” test for transmission additions and upgrades predates Amendment No. 49. It also predates Amendment No. 27. Because the ISO has not proposed to change the economic efficiency test, the question of whether the test is just and reasonable is not in issue. TANC’s testimony in that regard is therefore beyond the scope of the proceeding and must be stricken.

CONCLUSION

Accordingly, the ISO respectfully requests that the Presiding Judge strike the testimony of the Transmission Agency of Northern California as described above.

Respectfully submitted,

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EXHIBIT 1

3.2 Transmission Expansion.

3.2.1.1 Economically Driven Projects. The Participating TO and Market Participants shall provide the necessary assistance and information to the ISO.

as part of the coordinated planning process, to enable the ISO to determine that a project is needed to promote economic efficiency, including, at the ISO's discretion, studies comports with ISO guidelines that demonstrate whether the project will promote economic efficiency or the information the ISO requires to carry out its own studies for economically driven projects. The ISO shall treat market sensitive information provided to the ISO in accordance with this Section by Participating TOs, Project Sponsors and applicable Market Participants confidentially in accordance with Section 20.3 provided that such information is clearly marked "Confidential" at the time it is provided to the ISO. The determination that a transmission addition or upgrade is needed to promote economic efficiency shall be made in any of the following ways:

3.2.1.1.1 If the Participating TO or any party questions the economic need for the project (except where the Project Sponsor commits to pay the full cost of construction) the proposal will be submitted to the ISO ADR Procedures for resolution.

3.2.1.1.2 Where a Project Sponsor other than the Participating TO commits to pay the full cost of construction of a transmission addition or upgrade and its operation, and demonstrates to the ISO financial capability to pay those costs, such commitment and demonstration shall be sufficient to demonstrate need to the ISO. To ensure that the Project Sponsor is financially able to pay the costs of the project to be constructed by the Participating TO, the Participating TO may require (1) a demonstration of creditworthiness (e.g. an appropriate credit rating), or (2) sufficient security in the form of an unconditional and irrevocable letter of

credit or other similar security sufficient to meet its responsibilities and obligations for the full costs of the transmission addition or upgrade.

3.2.1.1.3 Where a Project Sponsor asserts that a transmission addition or upgrade is economically beneficial, but that Project Sponsor is unwilling to commit to pay the full cost of the addition or upgrade; where (1) the proposed transmission ~~expansion~~ addition or upgrade was submitted to the Participating TO but was not included in the transmission expansion plan of that Participating TO in accordance with Section 3.2.2 or (2) the operation date of the planned expansion is not acceptable to the ISO or the Project Sponsor or (3) the Participating TO unreasonably delays implementing or subsequently decides not to proceed with the project, the Project Sponsor may submit its proposal to the ISO ADR Procedure for determination of need. A determination of need shall be made as follows:

3.2.1.1.3.1 The Project Sponsor shall include in its proposal ~~a showing:~~ (1) a showing that the economic benefits of the proposed transmission addition or upgrade are expected to exceed its costs (giving consideration to any reasonable alternatives to the construction of transmission additions or upgrades) using an economic analysis that comports with ISO guidelines, and (2) a statement of the proposed pricing methodology for the transmission upgrades or additions that the Project Sponsor elects in accordance with Section 3.2.7 of the ISO Tariff, that, to the extent practicable, assigns the costs of the planned upgrades to the beneficiaries in proportion to their net benefits.

3.2.1.1.3.2 If neither any Market Participant nor the ISO disputes the Project Sponsor's showing, then the proposal is determined to be needed.

3.2.1.1.3.3 If any Market Participant or the ISO disputes the Project Sponsor's showing, ~~then if the proposed transmission addition or upgrade is determined to be needed,~~ the disputing Market Participant, the ISO, or the Project Sponsor may submit to resolution through the ISO ADR Procedure the issues of ~~(1) whether the transmission addition or upgrade is needed on the ground that its economic benefits exceed its costs, (2) whether the beneficiaries of the transmission addition or upgrade can reasonably be identified, and (3) if so, the identity of those beneficiaries and their respective net benefits.~~ If a Market Participant fails to raise through the ISO ADR Procedure a dispute as to whether a proposed transmission addition or upgrade is needed, ~~or as to the identity, if any, of the beneficiary,~~ then the Market Participant shall be deemed to have waived its right to raise such dispute at a later date. The determination under the ISO ADR Procedure as to whether the transmission addition or upgrade is needed, ~~and the identity, if any, of the beneficiaries,~~ including any determination by FERC or on appeal of a FERC determination in accordance with that process, shall be final.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the service list compiled by the Secretary in this proceeding.

Dated at Washington, D.C.

this 28th day of August, 2003

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