UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Revision of Annual Charges Assessed to Public Utilities	))))	Docket No. RM00-7-000

MOTION FOR CLARIFICATION OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2000), the California Independent System Operator Corporation ("Cal ISO") hereby moves for clarification of certain aspects of Order No. 641 issued by the Commission in the above-captioned docket on October 26, 2000.[1]

I. SUMMARY

Order No. 641 establishes a new regime under which the Commission will collect the costs of its electric regulatory program through annual charges to public utilities. Under this regime, public utilities such as independent system operators ("ISOs") and Regional Transmission Organizations ("RTOs") will be subject to annual charge assessments for the first time. Order No. 641 makes it clear that such annual charge assessments can be recovered by public utilities from transmission customers as a legitimate cost of providing transmission

[1] *Revision of Annual Charges Assessed to Public Utilities,* Order No. 641, 93 FERC ¶ 61,083 (October 26, 2000).

service, but leaves the specifics of such recovery to be addressed by the public utilities in case-by-case filings with the Commission.

The significant changes to the Commission's annual charge methodology and the resulting re-allocation of the costs of the Commission's electric regulatory program among public utilities leave significant uncertainty as to the level of annual charges to be assessed against the Cal ISO and other public utilities under the new regime. This uncertainty impedes the ability of the Cal ISO and other similarly-situated public utilities to develop appropriate mechanisms to recover annual charge costs. The Cal ISO therefore requests that the Commission either provide more information concerning the estimated annual charges to be assessed against public utilities under the new annual charge methodology or that the Commission clarify the appropriate steps that an ISO or RTO may undertake to recover annual charge costs from transmission customers during the first year the new methodology is in effect.

II. BACKGROUND

A. The Current Annual Charge Methodology

The Commission's current annual charge regulations, which will remain in effect for transactions occurring through the end of this year, provide for the assessment of annual charges against regulated public utilities based on each such utility's total annual "long-term firm sales for resale and transmission activities" and "short-term sales and transmission and exchange activities."

18 C.F.R. § 382.201 (2000).[2] Recent changes in the structure of the electric industry, including the Commission's policy of encouraging the formation of and participation in new entities such as ISOs and RTOs[3], have raised questions about how this annual charge methodology would apply to such new entities, especially where an ISO or RTO operates a transmission system owned by another public utility.

In an order issued in Docket No. EL98-71-000 on July 28, 1999,[4] the Commission recognized that assessment of annual charges against ISOs and power exchanges ("PXs") under the current annual charge regulations could result in double-counting of transactions already being charged to transmission owners, and stated that it would grant a waiver for the assessment of annual charges against ISOs or power exchanges ("PXs") for 1999. In a subsequent order issued in the same docket on November 1, 1999,[5] the Commission stated that it would extend its waiver of the assessment of annual charges against ISOs and PXs until such time as the Commission had completed a review of its annual charge regulations with respect to ISOs, PXs, RTOs and other entities.

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[2] Under the Federal Power Act, 16 U.S.C. §§ 803(e), 823(e), and the Omnibus Budget Reconciliation Act of 1986, 42 U.S.C. § 7178, the Commission is authorized to assess annual charges against regulated public utilities in order to recover the costs of administration of the Commission's electric regulatory program.

[3] *See Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), *order on reh'g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *petitions for review pending sub nom.*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, Nos. 00-1174, *et al.*

[4] *PJM Interconnection, LLC*, 88 FERC ¶ 61,109 (1999).

[5] *PJM Interconnection, LLC*, 89 FERC ¶ 61,133 (1999).

B. The Notice of Proposed Rulemaking

On January 28, 2000, the Commission issued a Notice of Proposed Rulemaking ("NOPR")[6] in the above-captioned proceeding, in which it proposed changes to its methodology for the assessment of annual charges to public utilities. The Commission stated that these changes were needed to reflect the sweeping changes that the electric industry had undergone since the current annual charge methodology had been promulgated. In the NOPR, the Commission proposed that annual charges be assessed to public utilities based only on the volume (in megawatt hours) of electricity transmitted in interstate commerce by public utilities. The Commission also expressed concern in the NOPR about the potential for double-counting of transmission transactions that might be reported both by a public utility transmission-owner and the ISO or RTO operating the facilities of that transmission owner. The Commission solicited comments on whether, in such circumstances, "each transmission-owning public utility" should be charged for the transmission service provided on its facilities or whether the applicable ISO or RTO should pay such annual charges in its capacity as an agent for the individual transmission owners.

C. The Final Rule

On October 26, 2000, the Commission issued Order No. 641, its Final Rule in this proceeding, adopting a new methodology for collecting annual charges from public utilities based on the volume of electricity transmitted, in megawatt hours, by those public utilities. Under Order No. 641, these volumes

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[6] *Revision of Annual Charges to Public Utilities*, 65 Fed. Reg. 5289 (Jan. 28, 2000), FERC Stats. & Regs. ¶ 32,550 (2000).

will include unbundled transmission service, both wholesale and retail, and bundled wholesale power sales, but will not include bundled retail service. Pursuant to Order No. 641, annual charges will be assessed under the new methodology for all transmission transactions occurring as of January 1, 2001. These transactions will be reported to the Commission in calendar year 2002, and annual charges for these transactions, calculated in accordance with the new methodology, will then be billed to and paid by public utilities in 2002.

As to the issue of what entities will be responsible for paying the annual charges, Order No. 641 provides that annual charges will be assessed to the public utility providing the regulated transmission service under a tariff or rate schedule on file with the Commission. Therefore, if an ISO or RTO has taken over the function of providing transmission service from a transmission owner, and that ISO or RTO has a tariff or rate schedule on file with the Commission for such service, then the ISO or RTO will be responsible for paying the annual charge under the new methodology.

In response to concerns raised by a number of public utilities about their ability to recover annual charge costs in their rates, Order No. 641 also addresses the issue of rate recovery for annual charges. In Order No. 641, the Commission states that "the issue of rate recovery of annual charges is not within the scope of this Final Rule," but notes that public utilities can seek to recover such costs in their rates through existing mechanisms, such as a rate filing under Part 35 of the Commission's regulations. Order No 641, 93 FERC ¶ 61,083, slip op. at 43-44. The Commission further states that:

> to allay the concerns of public utilities as to rate recovery, we will state here that we find that the annual charge assessments are costs that can be recovered in transmission rates as a legitimate cost of providing transmission service. We will otherwise leave this issue to be resolved in future rate change filings, as they may come before the Commission from time to time on a case-by-case basis; different public utilities may require different rate revisions to address this matter.

Id. at 44.

III. MOTION FOR CLARIFICATION

As noted in the Cal ISO's April 3, 2000 Comments on the NOPR in this proceeding, the Cal ISO, like a number of other ISOs, is a revenue-neutral, not-for-profit entity. The Cal ISO passes through all of its costs to the market participants that utilize the transmission system operated by the Cal ISO.

The Order contemplates that individual public utilities, including ISOs, will submit case-by-case rate revisions to the Commission to address the recovery of annual charge costs from transmission customers. The new annual charge regime is to go into effect for transactions beginning on January 1, 2001, slightly more than sixty days after the issuance of Order No. 641. Under the regulatory regime established by Order No. 641, the Cal ISO will be one of a number of ISOs (and/or RTOs) that will now be subject to assessment of annual charges for the first time.

There is significant uncertainty, in the first year that the new annual charge methodology is to be used, as to the total level of annual charges to be assessed against the Cal ISO and other individual public utilities. This is due to fact that Order No. 641 will fundamentally alter the methods the Commission will use to calculate annual charges in the future, but provides little information that can be used to estimate the annual charge rates under this new methodology.

A revenue-neutral, not-for-profit entity like the Cal ISO, that will be assessed annual charges for the first time under the new methodology, is faced with a decision between recovering annual charge costs concurrently with the transmission activity upon which such costs are based or seeking to recover such costs from transmission customers after the annual charges have been assessed by the Commission. If the Cal ISO were to do the latter, it may have to advance funds from its operating accounts, collected from the Cal ISO's Grid Management Charge revenues, until these costs are recovered are transmission customers. Although the Cal ISO will not be required to pay annual charges under the new methodology until calendar year 2002,[7] the Cal ISO believes that its is preferable to recover the costs of annual charges for transmission transactions occurring in year 2001 from those entities receiving transmission service in year 2001. The Cal ISO therefore intends to submit to the Commission by the end of this year a rate filing for recovery of annual charge costs from entities that utilize the transmission system operated by the Cal ISO.

Accordingly, the Cal ISO requests that the Commission either provide more information concerning the estimated annual charges to be assessed against public utilities under the new annual charge methodology or that the Commission clarify the appropriate steps that an ISO or RTO may undertake to

[7] Although not explicitly stated in Order No. 641, the temporary waiver from assessment of annual charges granted to all ISOs in Docket No. EL98-71-000, by its own terms, will remain in effect until the new methodology is implemented and will therefore apply to annual charges to be paid in calendar year 2001 for transactions occurring during the year 2000.

recover annual charge costs from transmission customers during the first year the new methodology is in effect.[8]

A. The Commission Should Provide Additional Information Concerning the Estimated Annual Charges To Be Assessed Against Public Utilities Under the New Annual Charge Methodology.

Order No. 641 does not provide enough information about the level of the annual charges that will be assessed against public utilities under the new methodology to permit utilities like the Cal ISO to determine the annual charge costs it will need to recover for the first year the new methodology is in effect. This information is also unavailable from other sources. Historical annual charge data (based on assessments to public utilities under the current methodology) will provide little indication of the annual charges that a public utility can expect to be assessed under the new methodology. For example, in California, annual charges have historically been assessed against California transmission owners based on their jurisdictional power sales and transmission volumes annually, as reported to the Commission in the Reporting Requirement No. 582's ("FERC-582's") filed by those transmission owners. Annual charges have also been assessed against other public utilities, such as power marketers, for jurisdictional sales and transactions in California. Because the FERC-582's filed by such public utilities do not break down public utility reporting on a state-by-state basis,

[8] The requested clarification is most critical for the first year that the new methodology is in effect. After the initial assessment of annual charges under the new methodology, the Cal ISO and other public utilities will have the data necessary to make annual adjustments in their recovery of annual charge costs, as needed.

it is impossible to determine what percentage of the Commission's historical assessment of annual charges is attributable to transactions in California.

Even if such historical information on California-specific annual charges could be collected, it would be of little use in predicting assessments of annual charges under the new annual charge methodology. Order No. 641 will fundamentally alter the basis on which such annual charges are calculated by the Commission. The Commission's annual charge regime will shift from one where both sales and transmission transactions have been subject to the assessment of annual charges, and where the rates for such charges have varied depending on whether such activities are "long-term" or "short-term," to one where the Commission will apparently calculate a single flat per MWh rate for all jurisdictional transmission activities, with no separate assessment of annual charges for sales activities. Public utilities such as power marketers will no longer be subject to direct assessments of annual charges under the new regime, while new public utilities such as ISOs and RTOs will be subject to such charges for the first time. The new regulations will therefore result in a significant redistribution of annual charge responsibility among the public utilities regulated by the Commission.

Order No. 641 does not provide any projections of the per MWh rates under this new annual charge regime. Based upon information provided to the Cal ISO by the Commission staff identified as technical and legal contacts in the Order, it appears that the first time the Commission intends to calculate the per MWh rates under the new methodology will be in 2002, after the Commission receives the FERC-582's from all public utilities for 2001 transmission transactions.[9] As noted above, the Cal ISO intends to begin recovering annual charge costs from transmission customers in 2001 and therefore must develop information about the total level of annual charge costs it must recover.

The rates under the new annual charge methodology will be calculated based on the "adjusted costs of administration of the [FERC] electric regulatory program" divided by "the sum of the megawatt-hours of all unbundled transmission and the megawatt-hours of all bundled wholesale power sales." 18 C.F.R. § 382.201, as modified by Order No. 641. Even without specific Commission projections of the per MWh rates under the new methodology, a public utility could estimate these rates if it had information on these costs and transmission volumes. Order No. 641, however, contains no approximation of the total United States transmission volumes that the Commission estimates will be subject to annual charge assessment under the new methodology. Presumably, information on such transmission volumes is within the Commission's possession and may have been examined in the course of developing the Final Rule in this proceeding.

The Order does provide a figure for the costs of the Commission's electric regulatory program recovered through annual charges in 1999, based on data reported for calendar year 1998. Order No 641, 93 FERC ¶ 61,083, slip op. at 29 n.60. This information, however, is somewhat out-of-date, as the Commission has already assessed annual charges against public utilities in 2000. More up-

[9] Commission staff were unable to provide the additional information requested in this motion.

to-date information, including any projections of FERC electric regulatory program costs to be recovered through annual charges in 2001 and 2002, would allow public utilities to more accurately predict the annual charges they may be subject to under the new regime.

The Cal ISO therefore requests that the Commission provide either: (1) a projection of the annual charge rates to be assessed under the first year that the new methodology is in effect; or (2) an estimate of the total transmission volumes that the Commission expects to be subject to annual charge assessment under the new methodology as well as the most current information available on its electric regulatory costs.

B. If the Commission Does Not Provide Such Additional Information, It Should Clarify That Public Utilities May Recover Annual Charge Costs From Transmission Customers Based On Reasonable Estimates of the Public Utility's Annual Charge Assessment.

If the Commission determines that it should not or cannot provide the information requested above, the Commission should clarify that public utilities are authorized to seek recovery of annual charge costs based on a reasonable estimate of the level of such costs developed from the best available information. As noted above, the Cal ISO is currently developing a rate filing for recovery of annual charge costs from entities that utilize the transmission system operated by the Cal ISO. The Cal ISO currently intends to submit this filing to the Commission by the end of this year. To the extent that the information requested in this motion is not available when the Cal ISO makes such a filing, the Commission should clarify that the Cal ISO and other similarly-situated public utilities may recover annual charge costs from transmission customers even if there is some uncertainty as to the total level of annual charges to be assessed against public utilities under the new methodology. Such assurances are necessary for a revenue-neutral entity such as the Cal ISO to obtain the funds necessary to pay the Commission's annual charges. The Cal ISO, in turn, commits to modify its annual charge cost recovery mechanism as needed to prevent over- or under-recovery of such costs once it receives the initial assessment of annual charges under the new methodology.

In the alternative, the Commission may determine that the Cal ISO and other similarly-situated public utilities should refrain from recovering annual charge costs until the first annual charge assessments under the new methodology are calculated in 2002. In such a case, the Commission should clarify that nothing will prevent the Cal ISO or any other public utility from seeking to recover annual charge costs in the year those charges are billed to the utility, even though the charges are based on transactions occurring during the preceding year.

IV. CONCLUSION

For the reasons set forth above, the Cal ISO respectfully moves that the Commission clarify the new annual charge regime established by Order No. 641 with respect to the estimated annual charges a public utility will be subject to under the new methodology or the appropriate steps that an ISO or RTO may undertake to recover annual charge costs from transmission customers of a transmission system operated by that ISO or RTO during the first year the new methodology is in effect.

Respectfully submitted,

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Dated: November 27, 2000

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 27th day of November, 2000.

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Sean A. Atkins