

91 FERC ¶ 61, 256
UNITED STATES OF AMERICA
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. ER00-2208-000

ORDER CONDITIONALLY ACCEPTING FOR FILING TARIFF REVISIONS

(Issued June 14, 2000)

In this order, we conditionally approve tariff revisions submitted by the California Independent System Operator Corporation (ISO) as tariff Amendment No. 28. Amendment No. 28 addresses the ISO's need to obtain additional resources to maintain adequate reserves during the summer of 2000 by encouraging greater participation from load resources in the ISO's markets.

Background

The ISO explains that it currently has the authority to develop market mechanisms to solicit additional load resources when it determines that projected resources are insufficient to ensure that it will meet reliability requirements. Amendment No. 28 presents two trial programs designed to obtain additional resources for the coming summer peak season: the Summer 2000 Market Participating Load Trial Program (also referred to as the Ancillary Service Load Program) and a Demand Relief Program. Moreover, in Amendment No. 28, the ISO seeks to modify its tariff to provide a mechanism for the recovery of costs in connection with the latter program.

Ancillary Service Load Program

According to the ISO, the Ancillary Service Load Program is designed to address concerns raised by various stakeholders that it is difficult for load resources to comply with certain technical requirements applicable to supplying Non-spinning Reserve, Replacement Reserve, and Supplemental Energy to the ISO's markets. The ISO indicates that it and the stakeholders have worked for several months on a set of "Technical Standards" for the Ancillary Service Load Program to facilitate load participation in those

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markets without compromising the ability of the ISO to rely on those resources to maintain reliability.

Further, the ISO states that in order to test the effectiveness of these revisions for these purposes, it will apply a set of Special Technical Standards to Participating Loads taking part in the trial program for June 15 to October 15, 2000. Under the proposed trial program, the ISO will relax various requirements including EMS telemetry standards and meter data requirements. In addition, load resources participating in the program will receive payment in accordance with the provisions of the ISO Tariff applicable to these products.

Demand Relief Program

The ISO states that during development of the Ancillary Service Load Program, several participants expressed interest in some form of load program, even though the nature of their business precluded the provision of Ancillary Services or Supplemental Energy, as those markets are currently structured. According to the ISO, the participants indicated that they could generally adjust their demands in accordance with the ISO's dispatch instructions; however, matching their responses to the frequency of those instructions (i.e., once every 10 minutes) may be difficult to achieve at times. Moreover, the participants expressed concern that once demand is curtailed by the ISO, it may be difficult to restore that demand in response to a decremental dispatch instruction from the ISO.¹ The participants indicated that they could, however, curtail demand for periods extending over several hours, upon request, thereby reducing the ISO's needs for additional Energy and Ancillary Services during peak hours.

The ISO states that to facilitate the participation of these resources in support of grid reliability, it developed, with active assistance from market participants, a trial Demand Relief Program for Summer 2000. The ISO indicates that the program seeks to enlist individuals or groups willing to provide a net demand reduction for a specified time upon request, and, consistent with the provisions of existing section 2.3.5.1.3 of the ISO Tariff, the ISO will not call on resources in the Demand Relief Program until all generation has been exhausted or when doing so will reduce the costs of satisfying Applicable Reliability Criteria. Thus, the ISO explains, the Demand Relief Program may only be implemented after the ISO's declaration of a Warning or Stage 1 Emergency Condition² and prior to the activation of the existing Utility Distribution Companies' (UDC) curtailable and interruptible load management programs.

Finally, the ISO indicates that under the proposed contract for Demand Relief service, load resources would be compensated for providing capacity to the ISO through a fixed monthly payment for each month in which the load commits to curtail demand upon dispatch by the ISO. Monthly capacity payments to the load would be reduced to

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the extent it fails to reduce demand when requested in accordance with the contract. Further, if the load is actually dispatched by the ISO, it will be compensated for Energy it provides through the Imbalance Energy market, but will not set the price for that market.

Proposed Tariff Revisions

According to the ISO, it is authorized under existing section 2.3.5.1 of the ISO Tariff to enter into contracts with resources that respond to market solicitations held by the ISO to provide resources necessary to ensure its ability to satisfy Applicable Reliability Criteria. The ISO states that where contracts provide for the supply of Ancillary Services and/or Supplemental Energy, the ISO will recover the costs from Scheduling Coordinators buying those products through the existing ISO Tariff provisions applicable to those markets. The ISO explains that costs incurred in the Ancillary Service Load Program will be recovered in this manner, and, therefore, it asserts that no revisions to the ISO Tariff are required to implement this program.

However, with respect to the Demand Relief Program, the ISO notes that it will not be procuring one of the established Ancillary Services; instead, it will be procuring the commitment of load resources to curtail demand upon notice by the ISO in accordance with the contract. For this reason, the ISO proposes to add new subsections to existing ISO Tariff sections 2.3.5.1 (i.e., section 2.3.5.1.8) and 11.2 (i.e., section 11.2.10) to provide that, when costs incurred under a contract entered into under section 2.3.5.1 are not recovered through an existing ISO Tariff provision, they will be charged to Scheduling Coordinators in proportion to their metered demands (including exports) during the hour in which the costs are incurred. In support of its proposal, the ISO asserts that its proposed cost allocation mechanism: (1) tracks the manner in which Scheduling Coordinators are assessed Operating Reserve and Regulation costs under existing section 2.5.20.1 of the ISO Tariff; and (2) appropriately recognizes that resources procured by the ISO to maintain grid reliability benefit all loads that rely on the ISO Controlled Grid.

Notice, Interventions, and Responsive Pleadings

Notice of the ISO's filing was published in the Federal Register, 65 Fed. Reg. 24,464 (2000), with motions to intervene and protests due on or before May 5, 2000. The Public Utilities Commission of the State of California (California Commission) filed a motion to intervene out-of-time. Timely motions to intervene, comments, and protests were filed by the California Department of Water Resources (DWR); California Electricity Oversight Board (Oversight Board); California Power Exchange Corporation (PX); Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities); Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (Cities/M-S-R); Los Angeles Department of Water and Power (LADWP); Metropolitan Water District of Southern California (Metropolitan); Modesto Irrigation

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District (Modesto); Northern California Power Agency (NCPA); Pacific Gas and Electric Company (PG&E); Sacramento Municipal Utility District (SMUD); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SoCal Edison); Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C., jointly (Southern); Transmission Agency of Northern California (TANC); Turlock Irrigation District; Western Area Power Administration (WAPA); and Williams Energy Marketing & Trading Company (Williams). In addition, Dynegy Power Marketing, Inc. (Dynegy) filed a motion to intervene out-of-time.

On May 23, 2000, the ISO filed an answer and a motion for leave to file its answer one day out-of-time. On June 5, SoCal Edison submitted a response to the ISO's answer.

Positions of the Parties

Numerous parties state their support for the concept of programs to enhance reliability in California.³ The California Commission and the Oversight Board explicitly offer their support for the proposed programs. Although the Oversight Board has concerns about the high cost of the programs,⁴ it nevertheless supports them for the summer 2000 trial period, because the continuing retail rate freeze will not allow customers' behavior to be influenced by high energy prices. PG&E limits its support based on the temporary nature of the trial programs and urges that in the future the ISO should assure that procurement of reliability-related services is done on a least-cost basis.

Most of the protesting intervenors object that the ISO's proposal improperly allocates program costs, as discussed in detail below. Another frequent argument is that the programs' criteria unreasonably preclude participation by municipal loads. Metropolitan alleges that the ISO has failed to comply with certain tariff sections, and several others assert that the ISO should be required to make certain filings with the Commission.

Finally, several intervenors assert that the ISO's filing has not been shown to be just and reasonable, and that it presents issues of material fact that cannot be decided on the basis of the written record. Intervenors therefore request that the filing be suspended for a nominal period and set for hearing if not otherwise modified or rejected by the Commission.⁵

Discussion

1. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶ the timely, unopposed motions to intervene serve to make DWR, the Oversight Board, the

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PX, Southern Cities, Cities/M-S-R, LADWP, Metropolitan, Modesto, NCPA, PG&E, SMUD, SDG&E, SoCal Edison, Southern, TANC, WAPA, and Williams parties to this proceeding. Although answers to protests generally are prohibited under 18 C.F.R. § 385.213 (a)(2), we nevertheless find good cause to allow the ISO's answer in this proceeding because it provides additional information that assists us in the decision-making process. SoCal Edison's reply does not provide additional information that aids us in our disposition of this proceeding; we will, therefore, reject it.

In view of the early stage of this proceeding and the absence of any undue prejudice or delay, we find good cause to grant the ISO's motion to file its untimely answer and the California Commission's and Dynegy's untimely, unopposed motions to intervene.

2. Commission Determination

The Commission's review indicates that the proposed Ancillary Service Load and Demand Relief Programs, as modified below, appear to be just and reasonable, and we will accept them and the proposed Tariff revisions for filing. As the Commission noted recently in New England Power Pool,⁷ demand side responses allow the market to resolve demand and supply imbalances more efficiently. The ISO's proposal is one of the kinds of short-term innovative approaches to reliability that the Commission envisioned when it issued its Notice of Interim Procedures to Support Industry Reliability Efforts and Request for Comments on May 17, 2000.⁸

3. Improper Allocation of Demand Relief Program Costs

Intervenors

Intervenors observe that under the ISO's proposal, Demand Relief Program costs are to be allocated to all Scheduling Coordinators based on their metered demand. Intervenors assert that the proposal violates fundamental cost causation principles insofar as it (1) fails to allocate costs to only those entities that do not have sufficient reserves and (2) results in a duplicative assessment of reliability costs to loads of Scheduling Coordinators that already self-provide and/or have acquired sufficient reserves. Other intervenors echo the above assertion, but they indicate that they will not oppose the programs if their duration is limited only to the initial trial period.⁹

In addition, Intervenors complain that the ISO's proposal is unclear as to whether the ISO plans to allocate capacity costs under its Demand Relief Agreement to all hourly demand for the month or just to the hourly demand during the peak hours when capacity is actually made available to the ISO.¹⁰ Intervenors contend that only demand in certain peak hours would be responsible for the need -- and the cost -- of the ISO's additional

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contracted capacity, and, therefore, an allocation of capacity costs to all hours of monthly demand (including off-peak hours) is inconsistent with fundamental cost causation principles.

Intervenors also note that the ISO's proposal applies to "all costs incurred by the ISO in any hour pursuant to any contract entered into under this section 2.3.5.1." Intervenors claim that this language is overly broad because it could apply to reliability must-run generation contracts, ancillary services arrangements, and other contracts that may or may not be appropriate for pro rata cost allocations.¹¹

Finally, Intervenors point out that an inconsistency exists in the ISO's proposal due to the fact that an individual Scheduling Coordinator's metered hourly demand is computed "including exports" while the total metered hourly demand is computed "excluding exports."¹²

ISO's Answer

The ISO argues that the majority of Intervenors' concerns regarding program cost allocation are without merit.¹³ First, with respect to the allocation of program costs to all Scheduling Coordinators, the ISO reiterates its assertions that its proposal (1) allocates costs on a similar basis as the ISO Tariff and (2) is intended to address system-wide reliability concerns. The ISO also argues that assessing the costs of the program to only certain Scheduling Coordinators (e.g., those who are unable to supply all or a portion of their Ancillary Service obligations) would require the ISO to maintain detailed settlement files for each, an undertaking that would be both excessively complex and expensive in the context of a limited trial program.

Second, with respect to Intervenors' concerns regarding the hours during which capacity costs will be allocated, the ISO states that consistent with the existing applicable Tariff provisions, the ISO will allocate the costs of the Demand Relief Program to Scheduling Coordinators based on their load during all hours that the service is provided, i.e., for all hours during the period June 15 through October 15, 2000. The ISO contends that such an approach is consistent with the existing methodology for allocating Ancillary Service capacity costs and with the design of the Demand Relief Program, which, according to the ISO, is intended to benefit all load.

Finally, with respect to Intervenors' concerns that proposed section 2.3.5.1.8 may improperly allocate costs to certain contracts, the ISO asserts that this section is sufficiently restrictive in nature because, by its terms, it applies "[e]xcept where and to the extent that such costs are recovered from Scheduling Coordinators pursuant to Section 2.5 . . ." (i.e., the section of the ISO Tariff concerning Ancillary Services). Moreover, the ISO again notes that proposed section 2.3.5.1.8 applies to all contracts

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entered into under the ISO's authority under existing section 2.3.5.1, excluding only those where compensation is provided under another ISO Tariff provision. Thus, the ISO contends, proposed section 2.3.5.1.8 does not apply universally but rather only in specific circumstances not otherwise covered by the ISO Tariff.¹⁴

Commission Response

We find the ISO's proposed Demand Relief Program cost allocation methodology to be reasonable. First, the proposed formula simply tracks the manner in which the obligations of each Scheduling Coordinator for Operating Reserve and Regulation are determined under the ISO Tariff. Thus, similar costs will be assessed in a similar fashion.

Second, we agree with the ISO that maintenance of grid reliability benefits all loads that rely on the ISO Controlled Grid and, therefore, that allocation of program costs on a system-wide basis (i.e., to all Scheduling Coordinators) is reasonable. In addition, the assessment of Demand Relief Program costs for all hours during the program period is reasonable insofar as it is consistent with the ISO's existing methodology for allocating Ancillary Service capacity costs. Accordingly, we dismiss Intervenors' concerns on these two issues.

Third, as the ISO points out, its proposal is the result of a collaborative effort between the ISO and various stakeholders,¹⁵ and is limited in duration to a trial period of four months. Thus, we believe that the ISO's proposal – including the Demand Relief Program's cost allocation mechanism – is a reasonable attempt to provide a temporary solution to potential capacity deficits for the upcoming peak demand season.

Finally, we are not convinced by Intervenors' arguments that the ISO's proposed Tariff section is overly broad with respect to certain contracts. That section contains language which we believe reasonably limits the assessment of program costs to specific circumstances not otherwise covered by the ISO Tariff, and, therefore, we agree with the ISO that the proposed section is not universally applicable as claimed by Intervenors.

Therefore, for all the above reasons, we will accept the ISO's proposed Demand Relief Program cost allocation mechanism, subject to the proviso that it be revised by the ISO as directed herein.

4. Need to Make Certain Filings with the Commission

Intervenors complain that it is unclear whether the ISO plans to file the pro forma Demand Relief Agreement for the Commission's review and acceptance.¹⁶ They assert that the Demand Relief Agreement is subject to the Commission's jurisdiction,

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particularly since the ISO intends to collect charges from Scheduling Coordinators to pay the relevant costs, and should be filed accordingly.¹⁷

Cities/M-S-R observe that the ISO indicates that the proposed programs are to be a trial program from June 15 to October 15, 2000, and assert that the ISO should be required to make a filing with the Commission regarding the efficacy of the trial program after October 15, 2000.

The ISO disagrees that the pro forma Demand Relief Agreement needs to be submitted for Commission review, explaining that the arrangement involved is not a sale of energy for resale, nor is the ISO otherwise providing a jurisdictional service; rather, the ISO explains, the Demand Relief Agreement procures a commitment to curtail demand at the ISO's direction. Regarding Cities/M-S-R's request for a future filing concerning the efficacy of the trial program, the ISO argues that such a filing is unnecessary, noting that a stakeholder report will be published for the benefit of the Governing Board and stakeholders, and that the ISO would need to make appropriate filings with this Commission in order to implement any future programs.

We will not require that the pro forma Demand Relief Agreement be filed under section 205 of the Federal Power Act.¹⁸ Given that the Demand Relief Program is very short-term and is instituted on a trial basis, under our rule of reason, we believe that the filed information is sufficient. We agree with the ISO's reasoning that a filing on the results of the trial program is unnecessary, and we will not require such a report.

5. Overly Restrictive Program Participation Criteria

Intervenors complain that the Ancillary Service Load and the Demand Relief Programs are subject to three criteria which unjustly and unreasonably preclude participation by municipal loads.¹⁹ First, load is excluded from participation if it is subject to "curtailment criteria established under existing retail tariffs, except under such conditions as may be specified in the ISO Tariff." Second, parties are required to comply with all applicable provisions of the ISO's Tariff. Third, the contracted load's Scheduling Coordinator must "schedule, meter and report Settlement Quality Meter Data . . . for Contracted Load separate from other Loads under the same timelines and standards as described in the ISO Tariff and Metering Protocol."

The ISO responds that these participation requirements are not proposed as part of Amendment No. 28, and that any objections are therefore not appropriately considered here. The ISO asserts, in any event, that the requirements are reasonable because interruptible loads are allowed to participate in the programs if certain conditions are met; thus, the ISO concludes, there is no blanket prohibition on their participation. In addition, the ISO contends that it is reasonable to condition participation on compliance

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with its Tariff and protocols because entities that do not or will not comply "are not entitled to the compensation that accrues to Market Participants that provide products meeting the qualifications for those markets." ²⁰

We will not require any modifications to the participation requirements. As the ISO explains, these pilot programs are intended to test certain concepts and thus will inform its decisions about future demand-based programs. We find the ISO's decision, at this juncture, to stress ensuring its ability to rely on the participating resources to maintain reliability is both prudent and reasonable. To the extent the ISO discovers it can or should be more flexible, this may be accomplished in the future. Furthermore, even if we were to require modifications permitting additional entities to participate, the summer would be nearly over before they could be implemented.

6. Failure to Comply with Certain Tariff Provisions

Metropolitan alleges that the ISO has failed to comply with the ISO Tariff's requirement in section 2.3.5.1.1 that a 12-month forecast of weekly generation capacity and peak demand on the ISO Controlled Grid be prepared in order to determine whether the grid will meet generation planning criteria. ²¹ In addition, Metropolitan complains that the ISO has presented no evidence to stakeholders or the Commission of its compliance with the condition precedent to the award of curtailment contracts in ISO Tariff section 2.3.5.1.3, to wit, a determination that the ISO cannot meet applicable WSCC/NERC reliability criteria during peak load periods.

In reply, the ISO contends that Metropolitan's concerns regarding the ISO Tariff's forecasting requirements are not valid. The ISO states that it did in fact file a report with the Commission which projected declining reserve margins over the next several years, based on existing generating capacity and import capacity. ²² Moreover, the ISO indicates that it provided stakeholders with a report issued in July 1999 by the staff of the California Energy Commission, which projected barely adequate reserve margins for Summer 1999, with projected demand growth outpacing planned capacity additions. ²³ Thus, the ISO concludes, it follows that the applicable WSCC/NERC reliability criteria cannot be met during peak load periods. ²⁴

We find Metropolitan's concerns to be without merit. The reports cited by the ISO are sufficient to satisfy the Tariff provisions cited by Metropolitan, for purposes of the ISO's Amendment No. 28. Moreover, simply because the ISO did not itself issue the California Energy Commission report does not detract from that report's conclusions.

The Commission orders:

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(A) The ISO is hereby directed to submit a compliance filing as discussed in the body of this order within 30 days of the date of this order.

(B) The ISO's proposed tariff changes, as modified in Ordering Paragraph (A), are hereby accepted for filing, without suspension or hearing, to become effective on June 15, 2000, as requested.

(C) The ISO is hereby informed that the 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.

(S E A L)

David P. Boergers,
Secretary.

¹The ISO states that pursuant to its current practice, once a resource has been "incremented," the bid associated with that resource is automatically placed in the ISO's "decremental" or "dec" merit order stack and must be available to respond to an ISO Dispatch instruction to decrement. Application at 4, n.9.

²According to the ISO, a Warning or Stage 1 Emergency occurs when the ISO has exhausted all available market generation, but prior to activation of the UDC load management programs. Application at 5, n.10.

³See, e.g., LADWP at 3; SoCal Edison at 2; SMUD at 1, 4; PG&E at 2.

⁴The ISO indicates that at its April 27, 2000 meeting, the ISO's Board of Directors approved the Demand Relief Program procurement with a total capacity of 180 MW at a cost of \$26 million. Answer, Attachment A at 1. We note that this equates to a total (i.e., unallocated) availability charge of approximately \$50 per MW-hour during the program's trial period, based on an average unit cost of \$36,125 per MW-month.

⁵Metropolitan at 10-11; TANC at 16-17; Cities/M-S-R at 13-14; Modesto at 16-17; Turlock at 5-6.

⁶18 C.F.R. § 385.214 (1999).

⁷91 FERC ¶ ____ (2000).

⁸65 Fed. Reg. 33, 537 (2000) (Docket No. EL00-75-000) (Notice of Interim Procedures).

⁹SMUD at 5-6.

¹⁰Metropolitan at 3, citing Application, Attachment A at First Revised Sheet No. 43, proposed section 2.3.5.1.8. See also, SoCal Edison at 3.

¹¹Cities/M-S-R at 11-12, citing Application, Attachment A at First Revised Sheet No. 43, proposed section 2.3.5.1.8. See also Modesto at 13; SMUD at 7-10; LADWP at 7; SoCal Edison at 2-4.

¹²Cities/M-S-R at 12-13, citing Application, Attachment A at First Revised Sheet No. 43, proposed section 2.3.5.1.8. See also TANC at 14; Modesto at 14; California PX at 3; LADWP at 8.

¹³However, with respect to Intervenors' concerns regarding the inclusion and exclusion of exports in the proposed allocation formula, the ISO acknowledges that its formula is incorrect due to a typographical error. The ISO commits to revise the proposed allocation formula in a compliance filing such that both the numerator and denominator read "including exports." ISO Answer at 7. Accordingly, we hereby direct the ISO to make such a filing.

¹⁴ISO Answer at 7-10, 12, and 16-17.

¹⁵Application at 3.

¹⁶Metropolitan at 10; TANC at 15-16; Cities/M-S-R at 14-15; Modesto at 15-16.

¹⁷The pro forma Participating Load Agreement was approved by the Commission as part of the ISO's Amendment No. 17. See California Independent System Operator Corporation, 88 FERC ¶ 61,182 at 61,590-91 (1999).

¹⁸16 U.S.C. § 824d (1994).

¹⁹See, e.g., TANC at 9-11; Cities/M-S-R at 8-9; Modesto at 9-12.

²⁰ISO Answer at 12.

²¹Metropolitan at 8-10.

²²ISO Answer at 13, citing Application at Attachment D, California ISO report, Assessment of Resource Adequacy of the Cal-ISO Control Area (March 2000).

²³ISO Answer at 13, citing California Energy Commission Staff report, High Temperatures & Electricity Demand: An Assessment of Supply Adequacy in California: Trends & Outlook (July 1999) (HEAT Report).

²⁴The ISO contends that although it did not issue the HEAT Report, the fact that an independent regulatory entity made the determination of reserve margins cuts in favor of the forecast's credibility. Furthermore, the ISO notes that the Commission itself cited the HEAT Report in its recently-issued Notice of Interim Procedures, as part of a demonstration that "other governmental and industry sources share a heightened awareness to current reliability issues." ISO Answer at 13, n.33, citing Notice of Interim Procedures.