UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Removing Obstacles To Increased Electric Generation And Natural Gas Supply In The Western United States	)	**Docket No. EL01-47-000** **EL01-47-001** **EL01-47-002**

REQUEST FOR CLARIFICATION OR, IN THE ALTERNATIVE, REHEARING OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Federal Power Act ("FPA") Section 313, 16 U.S.C. § 825l and Rules 212 and 713 of of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission" or "FERC"), 18 C.F.R. § 385.212 and 385.713 the California Independent System Operator Corporation ("CAISO") hereby requests clarification or, in the alternative, rehearing of the Commission's order, dated July 27, 2001, issued in the above-referenced docket.[1/] Specifically, the ISO seeks clarification (or a rehearing) with respect to the following issues:

- Does the July 27 Order require that only network upgrades associated with the interconnection of new generation be rolled into transmission rates or do these orders represent a tacit departure from existing Commission policy, and require that all network upgrade costs solely related to the transmission of power from a generator to load be rolled into rates as part of the interconnection process? Under proposed CAISO

1/ *See Further Order Removing Obstacles To Increased Energy Supply And Reduced Demand In The Western United States And Dismissing Petition For Rehearing,* 95 FERC ¶61,225 (May 16, 2001) ("May 16 Order") (citations to mimeo) and *Order On Requests For*

Tariff provisions, Delivery Upgrades concern facility additions or modifications that a generator *may* choose to put in place in order to avoid curtailment or the charges associated with the CAISO's Congestion Management protocols. The CAISO respectfully submits that the Commission erred if it intends to create an obligation on the part of transmission providers, as part of the interconnection process, to undertake and roll into transmission rates all Delivery Upgrades. Such a policy would inconsistent with the Commission's existing policy regarding such upgrades and would result in an inefficient expansion of the transmission system;

- Does the roll-in policy, as expressed in the July 27 Order, represent, as indicated by the Commission, an emergency measure intended to apply only during the period expressly prescribed by the Commission or does it provide dispositive guidance for the development of long-term interconnection policy? The CAISO respectfully submits that the Commission erred if intends to use the roll-in policy as a blueprint for a long-term interconnection policy.

I. BACKGROUND

On May 16, 2001, the Commission issued an order requiring that, for Western utilities, the costs of interconnecting new generation supplies to the transmission grid be rolled into transmission rates. The Commission also held that this "roll-in policy" would have a limited duration and would only apply to

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Clarification and Rehearing, 96 FERC ¶ 61,155 (July 27, 2001) ("July 27 Order") (citations to mimeo version) (jointly the "Roll-In Orders").

"projects that are in service by November 1, 2002."[2/] Numerous parties sought clarification and/or rehearing of the May 16 Order. In response, on July 27, 2001 the Commission issued an order clarifying and, in part, revising the May 16 Order.

In particular, in response to a request for clarification, or rehearing from Southern California Edison Company (Edison), the Commission stated that "delivery upgrade costs should be rolled into transmission rates".[3/] The Commission, however, also held that the roll-in of the "delivery upgrade costs" are essentially limited by the Commission's policy of rolling in only the costs "associated with interconnecting new supply."[4/]

On April 2, 2001, the CAISO filed a proposed New Facility Interconnection Policy (ISO Tariff Amendment No. 39).[5] Under proposed Amendment No. 39, the CAISO defined Delivery Upgrades as

> *The transmission facilities, other than Direct Assignment Facilities and Reliability Upgrades, necessary to relieve constraints on the ISO Controlled Grid and to ensure the delivery of energy from a New Facility to Load.*

These costs include the costs of facilities necessary to deliver energy from the point of interconnection of a new generator to load and would include such costs as the cost of upgrading a line to eliminate congestion. Consistent with the CAISO's interpretation of Commission precedent on this matter, the CAISO did not propose to require that New Facility Operators, as defined under proposed

2/ *Id.*

3/ June 27 Order at p. 22.

4/ *Id.*

Amendment No. 39, pay for the costs of Delivery Upgrades. As noted in Amendment No. 39, the ISO believes that such upgrades are appropriately addressed pursuant to the procedures set forth in Section 3.2 of the ISO Tariff, Transmission Expansion. Thus, the CAISO proposed to retain the Commission's long-held distinction between those facilities necessary to provide *interconnection* service (e.g., Direct Assignment Facilities and Reliability Upgrades, as defined under Amendment No. 39) and those facilities necessary for the provision of *transmission* service (e.g., Delivery Upgrades, as defined in Amendment No. 39).

Accordingly, the Commission's clarification that the costs of "delivery upgrades" be rolled into transmission rates is unclear. The Commission's language could be inappropriately interpreted to mean that a transmission provider must undertake, as well as roll into rates, any Delivery Upgrade requested by an interconnecting generator. Such an interpretation would inconsistent with established Commission precedent and cost-causation principles and could result in inefficient expansion of the transmission system.

II. DISCUSSION

A. The Commission Should Clarify Its Determination as to Delivery Upgrades

The CAISO is concerned that the July 27 Order confuses upgrades associated with the provision of interconnection service and upgrades related to the provision of transmission service, and that the language may be erroneously used by a generator (or another party) to argue that the Commission requires

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[5] Amendment No. 39 is currently pending before the Commission in Docket Nos. EL00-95-023, EL00-95-024, and EL00-95-025.

transmission providers to undertake and roll into rates all upgrades sought by a generator, including Delivery Upgrades which relate solely to the provision of transmission service. The ISO believes that such an interpretation is inconsistent with established Commission precedent on the matter, the overall thrust of the Commission's orders, and the congestion management and transmission expansion protocols currently in effect under the CAISO Tariff.

1. Delivery Upgrades Are Not Required For The Interconnection Of New Supply To The Transmission Grid And The Roll-In of Delivery Upgrade Costs is Contrary to Established FERC Policy And Will Result In An Inefficient Expansion Of The Transmission System.

    a. Roll-In of Delivery Upgrade Costs is Contrary to Established FERC Policy.

The Commission has long held that *interconnection* service is separate and distinct from *transmission* service. The Commission has made it clear that, although system upgrades can be associated with both requests for transmission service and requests for interconnection service, there is a strict line of demarcation between these types of upgrades and the associated costs.[6/] Specifically, the Commission has stated that "there are no transmission delivery rights, beyond the receipt point, conveyed by an interconnection."[7/] Indeed, the Commission has even held that "[i]nterconnection by itself conveys no right to delivery service."[8/] Therefore, under proposed Amendment No. 39 the CAISO

6/ *Entergy Services, Inc.*, 91 FERC ¶ 61,149(2000).

7/ *Id.* at p. 6 (citations to mimeo).

8/ *Tennessee Power Company*, 90 FERC ¶ 61,238 at p. 3 (2000) (citation to mimeo).

distinguished between three types of facilities: Direct Assignment Facilities, Reliability Upgrades and Delivery Upgrades. These are defined as follows[9/]:

- Direct Assignment Facility: The transmission facilities necessary to physically and electrically interconnect a New Facility Operator to the ISO Controlled Grid at the point of interconnection.
- Reliability Upgrade: The transmission facilities, other than Direct Assignment Facilities, beyond the first point of Interconnection necessary to interconnect a New Facility safely and reliably to the ISO Controlled Grid, which would not have been necessary but for the interconnection of a New Facility, including network upgrades necessary to remedy short circuit or stability problems resulting from the interconnection of a New Facility Operator to the ISO Controlled Grid. Reliability Upgrades also include, consistent with WSCC practice, the facilities necessary to mitigate any adverse impact a New Facility interconnection may have on a path's WSCC path rating.
- Delivery Upgrade: the transmission facilities, other than Direct Assignment Facilities and Reliability Upgrades, necessary to relieve constraints on the ISO Controlled Grid and to ensure the delivery of energy from a New Facility to Load.

Under Amendment No. 39, Direct Assignment Facilities and Reliability Upgrades are facilities directly related to the *interconnection* of a New Facility to the ISO Controlled Grid, whereas Delivery Upgrades are facilities necessary to

9/ See proposed CAISO Tariff Section 5.7.5(d).

deliver a New Facility's output to Load and thus are related to the provision of *transmission* service. Accordingly, under Amendment No. 39, the CAISO does not propose to make New Facility Operators responsible for any Delivery Upgrades in order to *interconnect* to the ISO Controlled Grid.

Under proposed Amendment No. 39, Delivery Upgrades only concern facility additions or modifications that a New Facility Operator may choose to put in place in order to avoid curtailment or the charges associated with the CAISO's Congestion Management protocols. Specifically, under the CAISO Tariff, Generators and other Market Participants compete for scarce transmission resources, and any Generator or Market Participant can "purchase" or use constrained transmission capacity (up to the amount of Available Transmission Capacity) by submitting an Adjustment Bid that indicates the value such participant places on the use of such constrained transmission capacity and paying the appropriate Congestion charges. However, to the extent that a Market Participant wishes to be exempt from the potential hourly fluctuations in Congestion charges, they can voluntarily undertake, under section 3.2 of the CAISO Tariff, to pay for Delivery Upgrades that would relieve certain transmission system constraints and receive the Firm Transmission Rights (FTRs) necessary to avoid Congestion charges. Thus, Delivery Upgrades – and their associated costs – are not part of the "costs of interconnecting new supply" to the ISO Controlled Grid but are related to the provision of transmission service.

In response to the Commission's May 16 Order in this proceeding, Edison filed a Request For Clarification asking that the Commission clarify that "delivery upgrades" were not intended to be rolled-into transmission rates. As stated by Edison, and as restated in the July 27 Order,[10] Edison was referring to upgrades "necessary to relieve constraints on the ISO Controlled Grid and to ensure the delivery of energy from New Facility to Load."[11] In response to Edison, the Commission stated that, "We clarify that delivery upgrade costs are to be rolled in consistent with our goal to roll in all system upgrade costs that are associated with *interconnecting* new supply." (emphasis added).[12]

Thus, while Edison requested clarification as to the treatment of Delivery Upgrade costs related to the provision of *transmission* service, the Commission, in the July 27 Order, refers to Delivery Upgrades in the context of interconnection service. It appears, therefore, that the Commission construed Delivery Upgrades (as defined in the CAISO's proposed New Facility Interconnection Policy) to correspond with the system upgrades directly related to interconnection (such as, for example, upgrades needed to relieve short-circuit or stability problems resulting from the connection of new Generation to the transmission network). In contrast, however, Delivery Upgrades under the CAISO's proposed New Facility Interconnection Policy are not related to remedying electrical problems which result from the interconnection of new Generation. Rather, these upgrades are transmission expansion upgrades "necessary to relieve constraints on the ISO

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10 July 27 Order at p. 36.

11 See Edison's Request for Clarification at 18.

12 July 27 Order at 36.

Controlled Grid" and to "ensure delivery of energy." In other words, under the CAISO's proposed definition of Delivery Upgrades there can be no Delivery Upgrades "associated with interconnecting new supply." Therefore, the CAISO respectfully requests that the Commission clarify that, in the context of interconnection service and consistent with the CAISO's proposed Amendment No. 39, there is no obligation for the CAISO and Participating Transmission Owners to construct (or for New Facility Operators to pay for) Delivery Upgrades (as that term is defined in Amendment No. 39) necessary for the provision of transmission service.

The interconnection process is necessarily limited to the examination (and the assessment of costs) associated with system facilities necessary for a new generator to "access the transmission provider's system at the receipt point."13/ Commission policy prohibits transmission providers from requiring that generators pay the costs associated with possible future delivery rights as part of the interconnection process. By the same token, Commission policy forecloses generators from requiring that costs associated solely with future delivery of power – such as Delivery Upgrades under the ISO Tariff – be made a part of the interconnection costs and rolled into rates. Nothing in the July 27 Order signals an intention by the Commission to depart from this policy.

On the contrary, in the July 27 Order the Commission expressly held that it did not intend to "change [the] requirement related to upgrades necessary for a particular transmission service" and that the roll–in treatment applies only to

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13/ *Entergy* at p. 6.

"system upgrades associated with interconnecting new supply."[14/] Accordingly, the Commission's interim roll-in policy cannot apply to Delivery Upgrades and the CAISO respectfully requests that the Commission issue an order clarifying that Delivery Upgrades – as defined in the CAISO's proposed New Facility Interconnection Policy – are not subject to the Commission's interim roll-in policy but will continue to be addressed through the CAISO's transmission expansion protocols.

Furthermore, and in order to provide additional clarity regarding this matter, the CAISO requests that the Commission distinguish between Delivery Upgrades and "network" or "system" upgrades, as those terms are used in the July 27 Order. In the July 27 Order the Commission reiterated that the May 16 Order only required the rolling in of the "costs of interconnection and system upgrades." The Commission also stated, as noted above, that "delivery upgrade costs" should be rolled into transmission rates.[15/] The Commission qualified this statement by noting that "delivery upgrade" costs can only be rolled into rates "consistent with our goal to roll in all system upgrade costs that are associated with interconnecting new supply".[16/] Accordingly, a fair reading of the July 27 Order suggests that the Commission meant to distinguish between "system" and "network" upgrade costs associated with interconnection service and "Delivery Upgrade" costs, as defined under Amendment No. 39 and related to the provision of transmission service. Thus, the CAISO believes that the

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14/ July 27 Order at p. 23.
15/ *Id.* at p. 22.
16/ I*d.*

Commission did not intend to include the costs of Delivery Upgrades in its new interim roll-in policy as outlined in the May 16 and July 27 Orders. The CAISO believes that any other interpretation would not only run afoul of the Commission's long standing policy regarding the separation of interconnection and transmission costs but would result in an inefficient expansion of the ISO Controlled Grid.

b. The Roll-In of Delivery Upgrade Costs Will Result In An Inefficient Expansion Of The Transmission System

Absent further clarification from the Commission, a Generator could argue that even in cases where Congestion on a certain path exists only a few hours a day or only during particular times of the year, the May 16 and July 27 Orders require the CAISO and the Participating TOs to undertake (and for California ratepayers to fund) construction of a new or upgraded transmission line – a multi-million dollar expansion project – that is not needed for grid reliability and whose cost is not supported. In such cases, the CAISO and Participating TOs would be required to undertake, and roll into transmission rates, potentially costly transmission projects where the cost of Congestion and other factors do not support expansion or upgrade of the facilities. Thus, the inclusion of such Delivery Upgrades into the Commission's interim roll-in policy could shift large costs to consumers with little offsetting benefit.

The CAISO submits that *transmission* expansion should continue to be handled through the CAISO's transmission expansion process – a process that encourages a deliberate approach for identifying reliable and cost-effective ways to relieve system constraints and allows for all interests to be considered in allocating resources to major transmission projects. Therefore, the Commission should clarify that the July 27 Order does not impose an affirmative obligation on the part of transmission providers to undertake all Delivery Upgrades requested by an interconnecting generator. It would be absurd and harmful to consumers, to require transmission providers to undertake all such upgrades irrespective of whether reduced congestion costs and increased access to generation would justify the cost of the upgrade from the standpoint of consumers.

B. The Commission Should Clarify That The Roll-In Orders Are Not Dispositive On The Appropriate Long-Term Interconnection Policy

The Commission has made it repeatedly clear that the May 16 and July 27 Orders represent only an interim policy. Specifically, the Commission has provided that "because of the emergency facing the West"[17/] it will require the rolling-in of the costs associated with the interconnection of "generation that was first proposed after the March 14, 2001" and "capable of commercial operation by November 1, 2002."[18/] The Commission has also made it clear that the "roll-in measures should not apply to projects that were contractually obligated, under arrangements agreed to before May 16, 2001, to be operational by November 1, 200."[19/]

Accordingly, the CAISO believes that the roll-in policy represents only a temporary measure and that it is not dispositive on the long-term approach to the appropriate allocation of the costs associated with the interconnection process. For example, the CAISO believes that existing Commission policy – as

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17/ July 27 Order at p. 12.
18/ July 27 Order at p. 22.

contrasted to the emergency measures adopted in the roll-in policy – on the costs associated with the interconnection of generation allows direct assignment of costs associated with reliability upgrades – upgrades designed to remedy reliability problems caused by the interconnection of a new generation facility to the transmission network. Accordingly, the CAISO respectfully requests that the Commission clarify that the May 16 and July 27 Orders do not constitute dispositive Commission policy, have no effect (other than on a specified short-term basis) on the appropriate cost-assignment policy with respect to the costs associated with interconnection, and do not constitute pre-judgment on the appropriateness of the interconnection-costs allocation proposal set forth in the CAISO's proposed Amendment No. 39 to the CAISO Tariff.

19/ *Id.*

III. CONCLUSION

Wherefore, for the reasons stated herein, the ISO respectfully requests that the Commission provide the requested clarifications, or, in the alternative, grant rehearing.

Respectfully submitted,

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Dated: August 27, 2001

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Washington, DC, on this 27th day of August, 2001.

David B. Rubin
Bradley R. Miliauskas