

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

PJM Interconnection, L.L.C.

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Docket No. EL98-71-000

**MOTION TO INTERVENE AND COMMENTS OF
THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION**

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, and the Commission's August 21, 1998 Notice of Filing, the California Independent System Operator Corporation ("California ISO") hereby moves to intervene in the above-captioned proceeding and submits comments upon the filing made by PJM Interconnection, L.L.C. ("PJM") in this proceeding on August 12, 1998.

I. COMMUNICATIONS

Please address communications concerning this filing to the following persons:

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II. BACKGROUND

As the Independent System Operator ("ISO") for the five-state PJM control area, PJM is responsible for the reliable operation of a multi-state transmission grid and

administers the PJM Open Access Transmission Tariff (“PJM Tariff”). In its capacity as an ISO, PJM schedules transmission service over the transmission systems owned by PJM member Transmission Owners. PJM also serves the separate function of overseeing the competitive energy market in the PJM control area as the operator of the PJM Power Exchange. As a Power Exchange, PJM is responsible for the economic dispatch of resources bid into the PJM Interchange Energy Market.

On August 14, 1998, PJM filed a petition requesting a temporary waiver of Part 382 of the Commission’s regulations, 18 C.F.R. Part 382, governing the assessment of annual charges under Parts II and III of the Federal Power Act and related statutes. PJM notes that there is significant uncertainty as to the applicability of the Commission’s annual charge regulations to the activities of ISOs and Power Exchanges (“PXs”). PJM contends either that it should not be subject to the Commission’s annual charge regulations or that the Commission should temper the application of those regulations to prevent the imposition of a disproportionate assessment of annual charges on PJM. In the petition, PJM requests that the Commission provide the following relief:

- grant PJM a temporary waiver, to the extent necessary, of Part 382 of the Commission’s regulations and exempt PJM from the assessment of annual charges until the Commission clarifies the applicability of annual charges to ISOs;
- in the alternative, grant PJM a temporary waiver and exemption from the assessment of annual charges for 1998 transactions; or
- in the event the Commission does not grant a waiver, permit PJM to collect the costs of the Commission’s annual charges retroactively through its Schedule 1 formula rate from customers that conducted transactions in 1998.

III. BASIS FOR MOTION TO INTERVENE

The California ISO is a non-profit public benefit corporation organized under the laws of the State of California as the ISO for the California market. The California ISO is responsible for the reliable operation of a grid comprising the transmission systems of Pacific Gas and Electric Company, Southern California Edison Company and San Diego Gas and Electric Company. All costs associated with fulfilling this function, including those costs associated with ensuring California ISO compliance with regulatory requirements and with the operation and administration of the California ISO, are recovered from market participants through cost-recovery mechanisms that include a monthly Grid Management Charge (“GMC”). The California ISO therefore has a unique interest in any FERC proceeding that could affect the operation of ISOs, impose new or expanded regulatory requirements upon ISOs, or result in the assessment of any costs or charges against ISOs.

This proceeding raises certain issues not yet addressed by the Commission concerning the applicability of Part 382 of the Commission’s regulations to ISOs and the assessment of annual charges against ISOs. As such, the California ISO has an interest in this proceeding which cannot adequately be represented by any other party. Accordingly, the California ISO respectfully requests that it be permitted to intervene herein with full rights of a party.

IV. COMMENTS

In this proceeding, the California ISO will limit its comments to issues relating to the assessment of annual charges against PJM in its capacity as an ISO. Unlike PJM, the California ISO does not discharge the function of a PX. The Commission has

approved the establishment of the California ISO as an entity that is distinct and independent from the PX in the California market.¹ The Commission has recently rejected requests that certain PXs, including the California Power Exchange Corporation, be relieved of annual charges under Part 382.² The California ISO is not addressing challenges to or attempts to distinguish the Commission's Automated Power Exchange, Inc. order in the comments filed in this proceeding.

It is also important to note that there are other significant distinctions between the arrangement in California and in the PJM area. Of particular significance is the fact that the rates for recovering the embedded costs of the transmission facilities operated by the California ISO are recovered under individual tariffs filed by the public utility owners of those facilities.³ In addressing PJM's petition, which the California ISO supports, the Commission should recognize that differences among the structures and operations of ISOs may lead to the application of Part 382 in different ways.

Insofar as the instant proceeding offers the Commission a forum to consider certain questions related to the application of Part 382 to ISOs and the assessment of FERC annual charges against ISOs, the California ISO submits the following comments:

A. ISOs Should Not Be Assessed Transmission-Based Annual Charges When Such Charges Are Already Collected From Transmission Owners

Under Part 382 of the Commission's regulations, the Commission assesses annual charges against public utilities based on "the proportion of the long-term firm

¹ Pacific Gas and Electric Company, 77 FERC ¶ 61,204 at 61,809-10 (1996).

² Automated Power Exchange, Inc., 84 FERC ¶ 61,020 at 61,086-87 (1998), petition for review by the D.C.

sales and transmission megawatt-hours of each public utility” and “the short term sales and transmission and exchange megawatt-hours of each public utility” in the immediately preceding reporting year. 18 C.F.R. § 382.201(b)(1) and (2) (1998). The regulations define these terms as “the megawatt hours of electrical energy associated with [sales, transmission, and exchange transactions], the rates, charges, terms and conditions of which are regulated by the Commission.” 18 C.F.R. § 382.102(j) and (k) (1998). The term “transmission” refers to the “jurisdictional transmission of capacity and energy.” 18 C.F.R. § 382.102(h) and (i) (1998).

The portion of these charges associated with transmission transactions have been, and presumably will continue to be, assessed against owners of transmission facilities. The assessment of “transmission megawatt-hour” annual charges against ISOs for those transactions which already result in charges assessed against transmission facility owners would be contrary to the language of Part 382 and would lead to an inequitable double-recovery of charges for the same transaction. It would also be contrary to the Commission’s consistently stated policy of encouraging Transmission Owners to give operational control of their facilities to ISOs.

PJM notes that it, like many ISOs, neither owns transmission facilities nor collects transmission revenues for itself.⁴ Instead, it collects amounts owed for the use of transmission systems owned by PJM member Transmission Owners from PJM market participants and remits those revenues to the Transmission Owners.⁵ Only through a tortured construction of the annual charge regulations can any megawatt-

Circuit Court of Appeals pending.

³ Pacific Gas and Electric Company, 81 FERC ¶ 61,323 (1997).

⁴ PJM Petition at 4-5.

⁵ Id. at n.2. PJM itself receives a small scheduling and dispatch fee to recover costs associated with

hours associated with transmission transactions coordinated through PJM or any similarly-situated ISO be attributed to that ISO for purposes of assessing annual charges. The definitions of these terms, with their focus on “jurisdictional transmission of capacity and energy” and “rates . . . regulated by the Commission” clearly contemplate that the parties to be assessed annual charges with respect to these megawatt-hours are those that receive the revenues associated with the transmission transaction. Such transmission megawatt-hours are therefore properly attributable to the Transmission Owner over whose facilities the transaction is conducted and who receives the revenues associated with that transaction.

This conclusion is even more clear in the case of ISOs that, like the California ISO, are structured so that Transmission Owners recover the cost of their transmission facilities through separate tariffs setting forth “rates . . . regulated by the Commission.” The California ISO believes, however, that while separate Transmission Owner tariffs strengthen this reading of the Commission’s regulations, they are not critical to it. When an ISO collects transmission charges under a joint regional tariff, for remission to the Transmission Owners who are responsible for advocating and supporting the rates necessary to recover their revenue requirements, those Transmission Owners, not the ISO, are receiving the revenues at “rates . . . regulated by the Commission.” Accordingly, these Transmission Owners, not the ISO, have “transmission megawatt-hours” for purposes of assessing annual charges under the Commission’s regulations.

In addition, the Transmission Owners that own the transmission facilities operated by an ISO have traditionally been assessed annual charges for transmission

transmission transactions.

transactions occurring on those facilities. The Commission has made no suggestion that such charges will no longer be assessed now that those facilities are being operated by ISOs. If the Commission also assesses annual charges for the same transmission transactions against the ISOs operating those facilities, the second charge will be passed on to the Transmission Owners through ISO cost-recovery mechanisms and ultimately will be borne by the customers of those Transmission Owners. Requiring the customers of Transmission Owners that are part of an ISO to pay double annual charges for the same transaction would inequitably saddle those customers with a disproportionate share of the Commission's costs and would conflict with one of the intrinsic goals of electric restructuring: the reduction of energy costs for end-use consumers.

B. The Assessment of Excessive Annual Charges Against ISOs Will Discourage the Formation of and Participation in ISOs

The Commission developed its current annual charge regulations in 1987, at a time when the role or even existence of ISOs had not yet been contemplated.⁶ In the more than ten years since those annual charge regulations were promulgated, the Commission has implemented and overseen an ambitious restructuring of the electricity marketplace. The Commission has expressed a strong commitment to the concept of ISOs and encouraged the formation of ISOs as part of that restructuring process.⁷ That commitment is potentially imperiled by the issues raised in this proceeding. If the

⁶ Order No. 472, FERC Stats. & Regs. ¶ 30,746 (1987).

⁷ Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21540, FERC Stats. & Regs. ¶ 31,036 at 31,730 (1996), Order on Reh'g, Order No. 888-A, 62

Commission applies its regulations in a manner that imposes duplicative cost burdens on the ultimate customers of the services facilitated by an ISO, that inevitably will discourage the creation of and participation in ISOs.

The Commission's regulations provide for the assessment of annual charges on a megawatt-hour basis. 18 C.F.R. § 382.201 (1998). This principle is both even-handed and relatively easy to apply with respect to conventional public utilities. The regulations based on this principle were promulgated pursuant to the requirement of the Omnibus Budget Reconciliation Act of 1986 that public utility assessments be based on methods determined by the Commission to be "fair and equitable."⁸ When so doing, the Commission determined that the resulting Section 201 assessments would fairly apportion costs among the public utilities regulated by the Commission in 1987.⁹

Depending on whether and how the Commission applies Section 201 to ISOs, the same conclusion might not be reached for the public utilities regulated by the Commission in 1998. As pointed out by PJM, one possible application of the Commission's annual charge regulations could result in an ISO being assessed annual charges for virtually every megawatt-hour transmitted over the facilities that it operates.¹⁰ While such an approach would do violence to both the language and intent of Part 382, as discussed above, it is a possibility that must be considered for the purposes of these comments. If consumers ultimately served through an ISO are subjected to a duplicative assessment (attributable separately to the ISO and to the Transmission Owners), those consumers necessarily will be at a disadvantage as

Fed. Reg. 12274, FERC Stats. & Regs. ¶ 31,048 at 30,249 (1997), Order on Reh'g, Order No. 888-B, 62 Fed. Reg. 64688, Order on Reh'g, Order No. 888-C, 82 FERC ¶ 61,046 (1998).

⁸ Order No. 472 at 30,610.

⁹ Order No. 472 at 30,639-42.

compared with energy consumers in regions without ISOs. This can only inhibit realization of the Commission's goal that the formation of and participation in ISOs be encouraged.

C. Transactions That Generally Are Not Subject To Annual Charges Should Not Be Subject To Annual Charges When Conducted Through an ISO

PJM identifies a number of energy transactions that would not normally be subject to the assessment of FERC annual charges but might result in their assessment if conducted through an ISO. Chief among these transactions are those for network transmission service for bundled native load. In PJM, for example, regional Transmission Owners provide transmission to their bundled retail customers by taking network service under the PJM Tariff, albeit at no charge.¹¹ PJM contends that annual charges would not be assessed for megawatt-hours associated with such transactions if the Transmission Owner continued to operate its own transmission facilities and that charges should therefore not be assessed only because the ISO is now responsible for operation of those facilities.¹²

The California ISO agrees that transactions which would not normally trigger the assessment of annual charges should not do so merely because these transactions take place over transmission facilities operated by an ISO. Again, it makes no policy sense to penalize participation in ISOs. Customers in states wishing to turn to ISOs for implementation of retail direct access should not be required to bear an increased (and duplicative) share of the Commission's costs as a consequence.

¹¹ PJM Petition at 7-8.

¹² Id. at 7-9, citing Order No. 888-A at 30,217. - 10 -

D. ISOs Should Be Permitted Retroactively To Recover Any FERC Annual Charges From ISO Customers and Market Participants

PJM recovers all of its operating expenses from transmission customers through a monthly formula rate set forth in Schedule 1 of the PJM Tariff.¹³ Due both to the accrual method by which these rates are calculated and the uncertainty as to what, if any, FERC annual charges will be assessed against ISOs, to date the rates charged by PJM do not include revenues necessary to pay FERC annual charges. Surely, if any annual charge assessment is made, PJM, which like the California ISO is structured as a non-profit entity, should be made whole.¹⁴ Accordingly, the California ISO urges that the Commission recognize that any ISO so assessed must be provided a make-whole adjustment mechanism.¹⁵ Where an ISO is operated as a non-profit entity whose only revenue is through customer and market participant cost-recovery mechanisms, that ISO is simply unable to bear the costs associated with an unexpected or unpredictable annual charge assessment. Permitting an ISO to recover annual charges from those customers whose transactions led to the assessment of charges will permit the ISO to continue to operate while ensuring an equitable assignment of cost responsibility.

V. CONCLUSION

Based on the foregoing, the California ISO respectfully requests that the Commission permit it to intervene and accord it full party status in this proceeding and that

¹³ PJM Petition at 13. As described above, the California ISO collects its operating expenses through similar monthly charges.

¹⁴ See Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 at 62,265 (1997).

¹⁵ The Commission must also recognize that different ISOs will require different make-whole mechanisms. For example, inasmuch as annual charges based on 1998 data are levied in 1999, some ISOs may need to include these charges prospectively in their 1999 customer and market-participant cost-recovery mechanisms.

the Commission act on the PJM petition in this proceeding consistent with the comments submitted above.

Respectfully submitted,

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Attorneys for the California Independent System Operator Corporation

Date: September 18, 1998

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 this Docket No. EL98-71-000, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (1998).

Dated at Washington, D.C. on this 18th day of September, 1998.

Sean A. Atkins

September 18, 1998

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: PJM Interconnection, L.L.C.
Docket No. EL98-71-000

Dear Secretary Boergers:

Enclosed for filing is one original and 14 copies of the Motion to Intervene and Comments of the California Independent System Operator Corporation in the above-referenced docket. An additional copy of the filing is also enclosed. Please stamp the additional copy with the date and time filed and return it to the messenger.

Thank you for your assistance in this matter.

Respectfully submitted,

Edward Berlin
Kenneth G. Jaffe
Sean A. Atkins

Attorneys for the California
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