

110 FERC ¶61,297
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

California Independent System Operator Corporation Docket Nos. ER03-218-005,
ER03-219-005, and
EC03-81-002

ORDER ON COMPLIANCE FILING

(Issued March 22, 2005)

1. On March 25, 2004, the California Independent System Operator Corporation (ISO), in compliance with our order issued November 17, 2003 (November 17 Order),¹ submitted an amendment to the Transmission Control Agreement (TCA) between the ISO and Participating Transmission Owners (PTOs).² In this order, we accept the ISO's revised rate schedule sheets, subject to further revision.

2. In the November 17 Order, we directed the ISO to revise section 3.4 of the TCA so that it states the ISO will make a filing pursuant to section 205 of the Federal Power Act (FPA) to modify the TCA and the ISO Tariff in the event of a withdrawal of a non-public utility from the ISO in the limited circumstance when an impending or actual adverse tax action creates a risk that the tax exempt status of their financing may be lost. The November 17 Order also directed the ISO to revise section 4.2.4 of the TCA to provide that market participants that can demonstrate a legitimate need for the information and in accordance with screening procedures to be posted on the ISO website and filed with the Commission be granted access to the ISO's Transmission Register.³

¹ California Independent System Operator Corp., 105 FERC ¶ 61,207 (2003).

² The PTOs include Pacific Gas & Electric Company, San Diego Gas & Electric Company, Southern California Edison Company, the City of Vernon, California, and the Cities of Anaheim, Azusa, Banning, and Riverside, California (collectively, the Southern Cities).

³ The Transmission Register lists facilities under the ISO's operational control.

Background

3. The ISO has revised section 3.4.8 of the TCA to provide that following relinquishment by the ISO of operational control of facilities, recognizing entitlements, of a non-public utility in accordance with section 3.4 of the TCA,⁴ the ISO will:

(1) promptly prepare the necessary changes to the TCA and to the ISO Tariff, if necessary; (2) make a filing pursuant to section 205 of the FPA, and (3) take whatever other regulatory action required to properly reflect the “Withdrawal for Tax Reasons” as that term is described in section 3.4 of the TCA.

4. The ISO has also revised section 4.2.4 of the TCA to provide that the ISO will make the Transmission Register information for each PTO available to that same PTO on WEnet or a secure ISO-maintained internet website, and that the ISO will provide a copy of the Transmission Register information to other entities that can demonstrate a legitimate need for the information in accordance with screening procedures posted on the ISO Home Page and filed with the Commission. The ISO states that it will include the screening procedures and non-disclosure agreement in its procedures and post them on the ISO Home Page. The ISO proposed an effective date of March 25, 2004 for the revisions to the TCA.

Notice of Filing and Protests

5. Notice of the compliance filing was published in the *Federal Register*, 69 Fed. Reg. 18,068 (2004), with comments, protests and interventions due on or before April 15, 2004.

6. Pacific Gas & Electric Company and the California Department of Water Resources State Water Project filed timely motions to intervene. Southern California Edison Company (SoCal Edison) filed a timely protest. On April 30, 2004, the ISO filed a motion for leave to file answer and answer SoCal Edison’s protest.

7. In its protest, SoCal Edison states that the revisions to section 3.4.8 of the TCA are confusing and potentially conflict with other provisions in the TCA. SoCal Edison states that the ISO’s compliance filing does not appear to require that the ISO revise its rates and the TCA to reflect the withdrawal of entitlements from the ISO’s operational control. SoCal Edison states that, in discussing the withdrawal of a non-public utility under section 3.4, the Commission intended the scope of its order to apply to both *facilities* and *entitlements*. SoCal Edison states that in the compliance filing, the ISO does not attempt to define the phrase “recognizing entitlements” nor does it describe how the phrase is

⁴ Entitlements are defined in the ISO Tariff as the right of a PTO obtained through contract or other means to use another entity’s transmission facilities for the transmission of energy. *See* ISO Tariff, Appendix A, Masters Definitions Supplement.

intended to be construed by the ISO. SoCal Edison states that section 3.4.8 of the TCA should be revised so that it is consistent with the rest of section 3.4. Section 3.4 sets forth the procedures for Withdrawal for Tax Reasons of “affected transmission lines, associated facilities, or Entitlements.” SoCal Edison states that section 3.4.8 should use the same terminology to assure that ISO ratepayers do not continue to pay the costs of any transmission facilities that have been withdrawn from ISO operational control by a non-public utility for tax reasons. SoCal Edison states that section 3.4.8 should be revised to provide that:

Following the relinquishment by the ISO of the Operational Control of any affected transmission lines, associated facilities, or Entitlements, in accordance with section 3.4 of the TCA, the ISO promptly shall prepare the necessary changes to this Agreement and to the ISO Tariff (if any), make a filing pursuant to section 205 of the FPA, and take whatever other regulatory action, if any, that is required to properly reflect the Withdrawal for Tax Reasons.

8. In its answer, the ISO states that a comparison of SoCal Edison’s proposed version of section 3.4.8 and what the ISO actually filed reveals two differences: (1) SoCal Edison proposes the use of the phrase “any affected transmission lines, associated facilities, or Entitlements” where the ISO proposes to use “facilities, recognizing Entitlements, of a non-public utility; and (2) SoCal Edison proposes to use the phrase “in accordance with section 3.4 of the TCA” where the ISO proposes to retain the pre-existing phrase “in accordance with this section 3.4”. The ISO states that it does not oppose the implementation of the first of SoCal Edison’s proposed changes but believes the pre-existing language is clear on its face. The ISO states that it would support the first of SoCal Edison’s proposed revisions to section 3.4.8 of its tariff as providing a consistent set of procedures for the ISO to follow regardless of whether it is a non-public utility or a public utility with tax-exempt debt that must withdraw facilities or entitlements from ISO operational control for tax reasons. Also, the ISO states that the following sentence should be added to the end of section 3.4.8:

Following the relinquishment by the ISO of Operational Control of facilities, recognizing entitlements, of a public utility in accordance with this section 3.4, the ISO promptly shall prepare the necessary changes to this agreement, submit the changes to the participating TOs for execution and take whatever regulatory action, if any, that is required to properly reflect the withdrawal for tax reasons.

The ISO states that this change would preserve the distinction between the withdrawal of public utilities and the withdrawal of non-public utilities.

Discussion

9. Although answers to protests generally are prohibited under 18 C.F.R. § 385.213 (a)(2) (2004), we nevertheless find good cause to allow the ISO's answer in this proceeding because it has assisted us in the decision-making process.

10. Our review indicates that the ISO does not object to SoCal Edison's proposed revision to section 3.4.8 concerning any affected transmission lines, associated facilities or entitlements, and since such language would further provide clarity to the TCA, we will require the ISO to make this change. However, we agree with the ISO that the phrase "in accordance with this section 3.4" is clear on its face and requires no modification and is accepted for filing, effective March 25, 2004. Accordingly, SoCal Edison's proposed language on this provision is rejected. With respect to the proposed language regarding section 4.2.4, we find that the ISO's proposed language complies with our prior directive and is therefore accepted for filing March 25, 2004. We also find that the ISO's proposed screening procedures are reasonable.

The Commission orders:

(A) The revised rate schedule sheets, as discussed in the body of this order, are hereby accepted for filing effective March 25, 2004.

(B) The ISO is hereby directed to file, within 15 days of the date of this order, revisions to section 3.4.8 of the TCA, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.