

102 FERC ¶ 61,177
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

California Independent System Operator Corporation Docket No. ER03-310-000

ORDER ACCEPTING INFORMATIONAL FILING SUBJECT TO
OUTCOME OF ONGOING PROCEEDINGS

(Issued February 19, 2003)

1. This order accepts for filing updated Transmission Access Charge (TAC) rates, as filed by the California Independent System Operator Corporation (California ISO or ISO) for informational purposes, effective January 1, 2003, subject to refund and subject to the outcome of Docket No. ER00-2019-000, et al. and the pending rate proceedings involving the Transmission Revenue Requirements (TRRs) of several Participating Transmission Owners (PTOs).¹ This informational filing is in the public interest because it provides notice of the California ISO's intent to adjust its TAC rates and sufficient time for public comment and review.

I. Background

2. Pursuant to Appendix F, Schedule 3, Section 8.1 of the California ISO's Open Access Transmission Tariff (OATT), the ISO may update its TAC rates semi-annually to reflect, among other things, the addition of new PTOs' TRRs. On October 18, 2002, in Docket Nos. EL03-14-000 and EL03-15-000, the Cities of Azusa and Anaheim, California filed petitions for declaratory order for a determination by the Commission that their respective TRRs, as approved by their rate setting bodies, were acceptable for inclusion in the California ISO's rates for the purpose of becoming PTOs in the ISO. The petitioners asserted that, upon becoming PTOs, they would turn operational control of their transmission entitlements over to the ISO and would be reimbursed by the ISO

¹The end of the 60-day period of time for Commission action was February 18, 2003. On that day, however, all Federal government offices in the Washington, D.C. Metropolitan Area, including the offices of the Federal Energy Regulatory Commission, were officially closed as a result of a severe snow storm that affected the area.

based upon their TRRs through the ISO's collection of TAC and Wheeling Access Charge rates for transmission service provided to ISO customers. On October 29, 2002, in Docket Nos. EL03-20-000 and EL03-21-000, the Cities of Riverside and Banning, California filed similar petitions requesting the same relief.

3. On December 23, 2002, the Commission responded by consolidating the petitions filed by the Cities of Anaheim, Azusa, Banning and Riverside (collectively, "Southern Cities") with the proceedings in Docket Nos. ER00-105-006 and ER00-2019-005² and directing settlement proceedings to resolve common issues of fact and law regarding various proposed cost components.³

II. Description of Filing

4. On December 20, 2002, in accordance with Appendix F, Schedule 3, Section 8.1 of the California ISO's OATT, the California ISO filed updated TAC rates to account for the addition of the Southern Cities' TRRs, the inclusion of Southern California Edison Company's (SoCal Edison) settled rate, and revisions to the Transmission Revenue Balancing Accounts (TRBAs) of the current PTOs.⁴

²On October 15, 2002, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission the question of whether the review conducted by the Commission of the revenue requirements of a non-jurisdictional entity, the City of Vernon, California, that is part of a jurisdictional Independent System Operator, the California ISO, was sufficient to ensure that the ISO's rates will be just and reasonable under section 205 of the Federal Power Act. See Pacific Gas and Electric Company v. FERC, 306 F.3d 1112 (D.C. Cir. 2002). On December 23, 2002, the Commission ordered settlement proceedings on this issue in Docket Nos. EL00-105-006 and ER00-2019-005. See City of Vernon, California, et al., 101 FERC ¶ 61,353 (2002).

³See City of Azusa, California, et al., 101 FERC ¶ 61,352 (2002).

⁴The existing PTOs' TRBAs must be revised to reflect the addition of new PTOs. SoCal Edison's TRBA must be revised further due to the settlement in Docket No. ER02-925-000, et al., approved by the Commission on December 24, 2002. See Southern California Edison Company, 101 FERC ¶ 61,364 (2002). The terms of the settlement impact both SoCal Edison's TRR and TRBA.

III. Notice of Filing and Pleadings

5. Notice of the California ISO's filing was published in the Federal Register, 68 Fed. Reg. 552 (2003), with comments, protests, and interventions due on or before January 10, 2003.

6. The Cities of Anaheim, Azusa, Banning, Colton and Riverside, California; the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency; the City of Vernon, California; the Cogeneration Association of California and the Energy Producers and Users Coalition; the Modesto Irrigation District; the Northern California Power Agency; the Sacramento Municipal Utility District; and the Transmission Agency of Northern California filed timely motions to intervene. The Public Utilities Commission of the State of California filed a timely notice of intervention. On January 31, 2003, the California Electricity Oversight Board (California Oversight Board) filed a motion to intervene out-of-time.

7. The California Department of Water Resources State Water Project (California DWR); the Metropolitan Water District of Southern California; and Pacific Gas and Electric Company, SoCal Edison and San Diego Gas & Electric Company (collectively, Joint Movants) filed timely motions to intervene and protests.

8. On January 27, 2003, the California ISO filed an answer.

IV. Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene are granted. Additionally, we will grant the California Oversight Board's untimely intervention, since we find that doing so at this early stage of this proceeding will not unduly disrupt the proceeding or place undue burdens on the parties.

10. Under Rule 213(a) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2002), no answer may be made to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded that good cause has been shown that would justify accepting the California ISO's answer. We will therefore reject that answer.

B. Procedural Concerns

11. California DWR protests the inclusion of the costs of the Southern Cities' facilities in the proposed TRRs because the Commission has not accepted these costs or authorized their inclusion in the ISO's rates and the facilities have not been properly transferred to the ISO. Metropolitan objects to the revised rates for the East-Central TAC which include costs for the new Southern Cities' PTOs because the Commission has not acted on the Transmission Control Agreement, under which the Southern Cities would join the ISO, and has not accepted the Southern Cities' TRRs nor given them an effective date. It requests that the Commission reject the instant filing and require the ISO to resubmit TAC rates which exclude the Southern Cities' TRRs or, alternatively, suspend the filing for the maximum period. Joint Movants argue that the Southern Cities are not yet PTOs because the Commission has not yet accepted their tariffs, and, therefore, their TRRs cannot be included in the updated TAC rates. Joint Movants further state that, even if the Southern Cities are PTOs, their TRRs cannot be included in the TAC rates until they have been accepted by the Commission, unless the TRRs are accepted subject to refund. They note that, if the Commission permits the California ISO to include Southern Cities' TRRs in the adjusted TAC rates, it should do so subject to refund, with interest.

12. On January 24, 2003, the Commission conditionally accepted amendments to the Transmission Control Agreement and the California ISO's OATT which allow the California ISO to assume operational control of the facilities and entitlements being turned over to it by the Southern Cities.⁵ On January 24, 2003, the Commission also authorized the California ISO to acquire control of Southern Cities' jurisdictional facilities (via the acquisition of scheduling rights on certain assets used for transmission in interstate commerce).⁶ Control of these facilities has been transferred to the California ISO.⁷ Furthermore, on February 6, 2003, the Commission clarified that Southern Cities'

⁵See California Independent System Operator Corporation, 102 FERC ¶ 61,061 (2003).

⁶See California Independent System Operator Corporation, 102 FERC ¶ 61,058 (2003). In its order, the Commission rescinded the December 23, 2002 order issued by delegated authority, which authorized the proposed transaction, and dismissed rehearing of that order. Id. at P 2 and 19.

⁷On January 10, 2003, in Docket No. EC03-27-000, the California ISO informed the Commission that it had assumed operational control of the transmission facility

(continued...)

TRRs are effective January 1, 2003, subject to refund and subject to the outcome of the settlement proceedings ordered on December 23, 2002 in Docket Nos. EL03-14-000, et al.⁸ These orders have addressed the procedural issues protestors raised regarding the instant filing. Therefore, protestors procedural concerns are now moot.

C. Concerns Regarding Facilities and Allocation of Firm Transmission Rights

13. California DWR states that neither the California ISO nor the Commission have addressed the following concerns: (1) certain facilities the ISO proposes to include as transmission under its control primarily support competitive generation and, therefore, should not be included in the ISO's rates, (2) no evidence has been offered that the facilities or generation entitlements either would be used by other market participants that would pay for these facilities through a rolled-in ISO TAC rate or would serve a function other than delivering remote Southern Cities' generation to the Southern Cities, (3) the benefit of the transfer of these facilities has not been adequately explained, and (4) no information has been provided as to whether or how Firm Transmission Rights would be allocated to the Southern Cities.

14. We find that California DWR's concerns have been addressed by the Commission. Specifically, the Commission addressed these issues in its January 24, 2003 orders issued in Docket Nos. EC03-27-000 and EC03-27-001⁹ and Docket Nos. ER03-218-000 and ER03-219-000.¹⁰ In addition to responding to California DWR's concerns, the Commission noted that the concerns were primarily rate issues that are more properly addressed in Docket No. EL03-14-000, et al. In that docket, the Commission has ordered settlement judge proceedings,¹¹ and we refer the protestors to these proceedings for resolution of the issues raised.

D. Waiver

⁷(...continued)
interests owned by the Southern Cities.

⁸See City of Azusa, California, et al., 102 FERC ¶ 61,153, at P 5 (2003).

⁹See supra note 5.

¹⁰See supra note 4.

¹¹See supra note 2.

15. California DWR also argues that the California ISO has not justified waiver of the 60-day prior notice period for this filing. California DWR requests that the Commission reject the instant filing, impose a 60-day notice period, suspend the instant filing for the maximum period, set the issues raised for hearing, and direct the California ISO to refile the proposed rates without the Southern Cities' TRRs.

16. On August 27, 2002, the Commission approved a revision to the California ISO's OATT that permits its TAC to be changed effective on the same date the Commission makes effective changes in the TRRs of a PTO.¹² In that order, the Commission disagreed that the California ISO should be required to make a section 205 filing in order to give proper notice of changes to the TAC rates.¹³ The Commission found that the ISO's commitment to make informational filings to demonstrate that it had properly calculated the charges based upon the inputs to the formula received from the PTOs should provide adequate notice and also protection regarding the ISO's implementation of the formula inputs.¹⁴ Since the Southern Cities' TRRs were accepted effective January 1, 2003, we will accept the California ISO's TAC proposal effective January 1, 2003, subject to refund and subject to the outcome of Docket No. ER00-2019-000, et al. and the different pending rate proceedings involving the TRRs of different PTOs.¹⁵

¹²California Independent System Operator Corporation, 100 FERC ¶ 61,209, at P 21 (2002).

¹³Id. at P 23.

¹⁴Id. The Commission noted that the ISO had committed to provide advance notice to market participants by posting on its website all changes to the TAC. Id. at n.19.

¹⁵We note that the underlying formula rate is pending before the Chief Administrative Law Judge in Docket No. ER00-2019-000, et al., and the rates thereunder are being collected subject to refund. Thus, the instant updated rates are also subject to the outcome of Docket No. ER00-2019-000, et al. Furthermore, we note that the rates may be adjusted by the outcome of different pending rate proceedings involving the TRRs of different PTOs (e.g., Docket No. EL03-14-000, et al.).

Docket No. ER03-310-000

- 7 -

The Commission orders:

The California ISO's informational filing is hereby accepted for filing, effective January 1, 2003, subject to refund and subject to the outcome of Docket No. ER00-2019-000, et al. and the pending rate proceedings involving the TRRs of different PTOs, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.