

128 FERC ¶ 61,027
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Sudeen G. Kelly, Marc Spitzer,
and Philip D. Moeller.

Cities of Anaheim, Azusa, Banning,
Colton, and Riverside, California and
City of Vernon, California

Docket No. EL03-54-005

v.

California Independent System Operator Corporation

ORDER DENYING REHEARING

(Issued July 16, 2009)

1. This order denies a request for rehearing filed by the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) of an order issued in this proceeding on March 29, 2007¹ which on voluntary remand from the United States Court of Appeals for the District of Columbia Circuit granted a request for rehearing by Southern California Edison (SoCal Edison) that had originally been denied. That order reversed an earlier order issued on March 30, 2005² denying rehearing of an order issued on April 20, 2004.³

¹ *Cities of Anaheim v. California Independent System Operator Corporation*, 118 FERC ¶ 61,255 (2007) (March 29, 2007 Order).

² *See Cities of Anaheim v. California Independent System Operator Corporation*, 110 FERC ¶ 61,387 (2005) (March 30, 2005 Order).

³ *Cities of Anaheim v. California Independent System Operator Corporation*, 107 FERC ¶ 61,070 (2004) (April 20, 2004 Order).

Background

2. For a six week period, from February 7, 2000 to March 22, 2000, certain reliability must-run units designated to serve local load were not available,⁴ and the California Independent System Operator Corporation (CAISO) dispatched other generating resources to replace these units. Originally, the CAISO billed the costs for the dispatch to replace the unavailable reliability must-run units to SoCal Edison as Out-Of-Market charges. SoCal Edison protested the charges, and the CAISO, relying on Commission orders prohibiting the CAISO from using its out-of-market dispatch authority when there are unaccepted bids in the market,⁵ re-billed these costs as Intra-Zonal Congestion charges to all loads in the SP15 Zone, including Southern Cities and Vernon. On October 30, 2000, Southern Cities initiated arbitration regarding this matter. On April 15, 2002, the Arbitrator issued a decision simply stating all claims of applicants were denied.⁶ On May 17, 2002, Southern Cities and the City of Vernon, California (collectively, Applicants) filed a petition asking the Commission to review the Arbitrator's Award. On November 25, 2002, the Commission issued an order finding the Arbitrator's Award inconsistent with the arbitration procedures set forth in the CAISO tariff and referred the matter back to the arbitrator.⁷

⁴ Testimony by Mr. Byron Woertz, director of client relations for the CAISO, on behalf of the CAISO in the earlier arbitration proceeding indicates that the reliability must-run units were Alamitos 4, Huntington Beach 2, Redondo Beach 5, and Redondo Beach 6. Mr. Woertz's testimony indicates that these units were unavailable because they had not completed scheduled maintenance on time. *See* Testimony of Byron Woertz, Docket No. EL03-54-000 at 3 (filed March 20, 2003). These units, during the relevant time period, were owned or leased by Williams Energy Marketing & Trading Company (Williams), and the reliability must-run agreement was between the CAISO and Williams. *See* Williams Transmittal Letter at 1, Docket No. ER00-1172-000 (filed January 19, 2000) (extending reliability must-run agreement for one year, to be effective January 1, 2000 through calendar year 2000); *cf.* *Williams Energy Marketing & Trading Co.*, Docket No. ER00-1172-000 (February 23, 2000) (unpublished letter order accepting extension of reliability must-run agreement).

⁵ *See California Independent System Operator Corporation*, 90 FERC ¶ 61,006, *reh'g denied*, 91 FERC ¶ 61,026 (2000).

⁶ Award, American Arbitration Association Case No. 71 198 00758 00 (issued April 15, 2002).

⁷ *Cities of Anaheim, et al. v. California Independent System Operator Corporation*, 101 FERC ¶ 61,235 (2002).

3. On February 7, 2003, the arbitrator issued a further decision (February 7 Arbitration Award).⁸ The arbitrator briefly described the parties' positions and concluded that the CAISO took "Voltage Support actions related to Intra-Zonal Congestion management" and that "[Existing Transmission Contract] holders were not exempt from [CAISO] charges for such Intra-Zonal Congestion costs."⁹ On February 26, 2003, Applicants filed for Commission review of the February 7 Arbitration Award. In response, the Commission issued an order providing for submission of briefs.

4. In the April 20, 2004 Order, the Commission reversed the findings of the arbitrator. The Commission found that the charges at issue were for voltage support and, thus, should not be allocated as Intra-Zonal Congestion Management charges to all scheduling coordinators, including the Applicants, in the affected zone. Rather, the Commission found that the costs should be billed to SoCal Edison, the responsible utility in whose control area the reliability must-run units were located.¹⁰

⁸ Findings of Fact and Conclusions of Law, American Arbitration Association Case No. 71 198 00758 00 (issued February 7, 2003).

⁹ *Id.* at 2.

¹⁰ The Commission explained:

[T]he resource dispatches that resulted in the disputed charges would not have occurred if the generating units subject to RMR contracts had been available; had the RMR units in SoCal Edison's service area been available, SoCal Edison would have been billed the costs for such dispatch. In this regard, we add that we believe the Arbitrator did not fully consider either the policy underlying the establishment of RMR contracts or their purpose in relation to the ISO. While the ISO Tariff directs that Intra-Zonal congestion costs be assigned to all Scheduling Coordinators within the affected zone, when RMR units are not available and other resources are dispatched in their place, then those other resources are being dispatched, not for Intra-Zonal Congestion, but for Voltage Support. Assignment of the costs of those resources to Intra-Zonal Congestion, rather than Voltage Support, would not be consistent with cost causation principles. Accordingly, the disputed charges should be borne by SoCal Edison, as the PTO, pursuant to section 5.2.8 of the ISO

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5. In the March 30, 2005 Order, the Commission denied SoCal Edison's request for rehearing. The Commission addressed: (1) the appropriate deference to be given to the findings of the arbitrator, and (2) the previous finding that the charges had been misclassified as for Intra-Zonal Congestion.

6. SoCal Edison appealed, and on December 23, 2005, SoCal Edison filed a brief with the United States Court of Appeals for the District of Columbia Circuit, No. 05-1125, arguing, *inter alia*, that the Commission did not address SoCal Edison's contention that the CAISO Tariff, by its express terms, required all Scheduling Coordinators to bear the costs of voltage support incurred by the CAISO. That is, SoCal Edison argued to the D.C. Circuit that, even if the Commission were correct and the charges at issue were not for Intra-Zonal Congestion but for voltage support, section 2.5.28 of the CAISO Tariff requires these costs to be allocated among all Scheduling Coordinators in the zone. SoCal Edison stated that it raised this issue on rehearing but that the Commission did not address this tariff provision in its order denying rehearing.

7. The Commission sought a voluntary remand of this proceeding in order to address section 2.5.28 of the CAISO Tariff and SoCal Edison's claim that that section is dispositive. In the March 29, 2007 Order, the Commission initially pointed out that, in its request for rehearing, SoCal Edison's entire discussion of section 2.5.28 of the CAISO Tariff was a single sentence,¹¹ while its brief to the D.C. Circuit devoted five pages to its applicability. This conduct, the Commission found, was troubling. Nevertheless, the Commission agreed with SoCal Edison that section 2.5.28 is controlling and warrants assignment of the costs at issue to Scheduling Coordinators rather than the Responsible Utility, and granted SoCal Edison's request for rehearing accordingly. The Commission noted that, upon further consideration, it was persuaded that, where the voltage support is not provided by reliability must-run units under reliability must-run contracts,

Tariff, rather than allocated as Intra-Zonal Congestion to all Scheduling Coordinators, including Petitioners.

April 20, 2004 Order, 107 FERC ¶ 61,070 at P 34-35 (citations omitted).

¹¹ Specifically, on page 9 of its request for rehearing, SoCal Edison wrote simply, "Likewise, under section 2.5.28 of the ISO Tariff, the 'cost of Voltage Support . . . shall be allocated to the Scheduling Coordinators.'" (Ellipses in original.)

section 2.5.28 governs,¹² and that section expressly allocates the cost responsibility for this additional voltage support to Scheduling Coordinators.¹³

8. On April 27, 2007, Southern Cities filed the instant request for rehearing, arguing that the March 29, 2007 Order is both procedurally and substantively flawed. They maintain that the Commission erred both in relying only on SoCal Edison's analysis in its appellate brief, and in reviving a procedurally dead issue on voluntary remand, thereby departing from the Commission's customary practice and creating bad precedent.

9. They also assert that the Commission's interpretation of the CAISO Tariff is incorrect. According to Southern Cities, section 2.5.28 does not apply to the voltage support at issue here because the CAISO did not respond to the need for voltage support by ordering generators to decrement, i.e. decrease, real power. Southern Cities base their argument on provisions in the CAISO Tariff that set out how scheduling coordinators are to be compensated for providing voltage support. Section 2.5.27.5 provides that the "total payments for each Scheduling Coordinator [for voltage support] shall be the sum of the short term procurement payments based on opportunity cost, as described in Section 2.5.18." Southern Cities state that section 2.5.18 provides that long term voltage support is obtained first from reliability must run units, and second from participating generators providing reactive energy output outside the generator's voltage support obligation defined in section 2.5.3.4. Section 2.5.3.4 provides that:

If the [CAISO] requires additional Voltage Support, it shall procure this either through Reliability Must Run Contracts or, if no other more economic sources are available by instructing its Generating Unit to move its MVar outside its mandatory range. Only if the Generating Unit must reduce its MW output in order to comply with such an instruction will it be compensated accordance with Section 2.5.18. [¹⁴]

¹² Section 2.5.28 provides that the cost of Voltage Support "shall be allocated to *Scheduling Coordinators*" (emphasis added).

¹³ The Commission also looked to section 2.5.1, Scope (a subsection of section 2.5, Ancillary Services), that states generally that "[t]he ISO will calculate payments for Ancillary Services to Scheduling Coordinators and charge the cost to *Scheduling Coordinators*" (emphasis added).

¹⁴ CAISO Tariff Section 2.5.3.4.

That is, Southern Cities argue, the payment provisions of the CAISO Tariff for non-reliability must-run units, per section 2.5.18, would only apply if a generating unit had to reduce its MW output to provide the voltage support. Southern Cities also state that section 2.5.18 requires the CAISO, when procuring voltage support, to select the least expensive units “to back down to produce additional Voltage Support in each location where Voltage Support is needed.”

10. Southern Cities argue that, because the provisions just cited for the procurement of and payment for voltage support do not appear to contemplate voltage support provided by incrementing, i.e., increasing, real power, section 2.5.28 likewise does not apply to such voltage support. Southern Cities further argue that, because the voltage support at issue in this proceeding was procured by incrementing real power, section 2.5.28 does not control the allocation of such costs.

11. Southern Cities conclude that no tariff provision contemplates the voltage support at issue in this proceeding, and that the CAISO should allocate the costs associated with such voltage support as if the reliability must-run generators had provided the voltage support, i.e., with the approach taken by the Commission in its original April 20, 2004 and March 30, 2005 Orders.

Discussion

12. During the period at issue, certain reliability must-run generators in SoCal Edison’s service territory were unavailable. In place of those generators, the CAISO procured voltage support by dispatching alternative resources. Had the reliability must-run generators been used, their cost would have been the responsibility of SoCal Edison, because section 5.2.8 of the then-effective CAISO Tariff expressly stipulates that the utility in whose service area the reliability must-run generator is located is responsible for the charges incurred.¹⁵

13. However, since these reliability must-run generators were not used, other tariff provisions control the allocation of costs. Section 2.5.1 identifies voltage support as an ancillary service and states that ancillary services shall be charged to Scheduling Coordinators. Similarly, section 2.5.28 states that voltage support shall be allocated to Scheduling Coordinators, and specifies a methodology for allocating voltage support costs.¹⁶ The Commission found in its March 29, 2007 Order, and reaffirms here, that the cost allocation provisions for ancillary services in section 2.5, specifically including Section 2.5.28, are the appropriate provisions governing the allocation of the voltage

¹⁵ See March 29, 2007 Order, 118 FERC ¶ 61,255 at P 10.

¹⁶ *Id.* P 8-9, 11-13.

support costs at issue here. We will, therefore, deny Southern Cities' request for rehearing.

14. Southern Cities argue that section 2.5.28 is not controlling because other provisions of the CAISO Tariff indicate that, in Southern Cities' view, that section only covers situations where real power is decremented to provide voltage support. We disagree. While it is true that some of the tariff provisions governing calculating and allocating payments for voltage support to Scheduling Coordinators refer only to situations where real power is decremented, the provisions upon which the Commission has relied for the allocation of voltage support costs to Scheduling Coordinators make no such distinction.

15. Section 2.5.28 states "[t]he cost of Voltage Support and Black Start shall be allocated to Scheduling Coordinators." The CAISO Tariff defines "Voltage Support" as:

Services provided by Generating Units or other equipment such as shunt capacitors, static var compensators, or synchronous condensers that are required to maintain established grid voltage criteria. This service is required under normal or system emergency conditions.^[17]

The tariff definition of voltage support makes no distinction between voltage support provided by other means and voltage support provided by decrementing real power. So, when the CAISO Tariff in section 2.5.28 refers to the allocation of these costs, it is not just referring to voltage support provided when real power is decremented. Unlike other provisions for calculating payment to Scheduling Coordinators, this allocation provision – section 2.5.28 – contains no language excluding certain types of voltage support.

16. Moreover, the provisions cited by Southern Cities contemplate the voltage support at issue here. Section 2.5.3.4 states:

If the [CAISO] requires additional Voltage Support, it shall procure this *either* through Reliability Must-Run Contracts *or, if no other more economic sources are available* by instructing a Unit to move its MVar output outside its mandatory range. *Only* if a Generating Unit must reduce its MW output in order to comply with such an instruction will it be compensated in accordance with Section 2.5.18.¹⁸

¹⁷ "Voltage Support," CAISO Tariff Appendix A.

¹⁸ CAISO Tariff Section 2.5.3.4 (emphasis added).

The tariff indicates that voltage support can be provided by “other more economic sources,” such as the incrementing of real power. This refutes the argument by Southern Cities that there are only two contemplated means of resolving voltage support issues in the CAISO Tariff. So, the very tariff section cited by Southern Cities as excluding incremental real power as voltage support actually contemplates a variety of forms of voltage support and does not exclude what occurred here.

17. Furthermore, we do not believe that any claimed exclusion of incremental real power from various payment provisions, as cited by Southern Cities, refutes our conclusion in our March 29, 2007 Order. The payment provisions cited by Southern Cities detail the opportunity cost calculation used to compensate generators for decrementing real power. That is, generators are compensated for revenue they would have earned if they had not decremented real power to provide voltage support. It would make little sense for these same sections to provide for opportunity cost payments to Scheduling Coordinators when real power is *incremented*. Generators are compensated, and properly compensated, for incrementing real power by the price paid for that real power.

18. Southern Cities also argue that the Commission should not have considered SoCal Edison’s argument regarding section 2.5.28, since it was not fully developed until SoCal Edison’s brief before the U.S. Court of Appeals for the District of Columbia Circuit. While the Commission acknowledges that SoCal Edison’s argument was not fully developed in its request for rehearing, and that Southern Cities’ argument has some appeal – after all, the Commission’s March 27, 2007 Order acknowledged that SoCal Edison’s handling of this issue was indeed “troubling”¹⁹ – there are mitigating concerns that caused the Commission to exercise its discretion and to take the comparatively unusual step of reconsidering this issue on voluntary remand.²⁰ The Commission decided

¹⁹ March 29, 2007 Order, 118 FERC ¶ 61,255 at P 7. SoCal Edison originally devoted a single sentence to Section 2.5.28 in its request for rehearing. On appeal, SoCal Edison spent five pages on this point. Needless to say, the Commission rightfully found this “troubling.” The fact the Commission in the end has found this argument persuasive does not, nor should it, excuse SoCal Edison’s actions. Nor does it indicate any change in our policy. We expect, and our regulations indicate, *see* 18 C.F.R. § 385.713 (2008), that arguments to be made on appeal should be plainly and fully articulated on rehearing, and not, for the first time, on appeal, so that the Commission may consider and address them on rehearing.

²⁰ *E.g.*, *Mobil Oil Exploration v. United Distribution Co.*, 498 U.S. 211, 230 (1991) (Commission has broad discretion as to procedures and priorities); *Port of Seattle v. FERC*, 499 F.3d 1016, 1031 (D.C. Cir. 2007) (Commission has discretion to
(continued...)

upon further reflection that a decision which allocated the costs at issue to SoCal Edison would be inconsistent with the language of the CAISO Tariff.

19. We find no merit to Southern Cities' due process arguments. The March 29, 2007 Order reconsidered and granted SoCal Edison's rehearing request, and our rules do not normally provide for answers to requests for rehearing.²¹ Had we originally granted SoCal's rehearing (as we find in our March 29, 2007 Order that we should have), Southern Cities would not have been entitled to file an answer but would have been entitled to seek rehearing, and that is what has occurred. Moreover, Southern Cities have had a full opportunity here to make their case,²² and we have fully considered all their arguments. Thus, they have been accorded full and adequate due process.

The Commission orders:

The request for rehearing is hereby denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

modify or set aside a prior decision). The statute allows us to reconsider in circumstances when the record is still before us, 16 U.S.C. § 825l (a) (2006), and here the case – including the record – was remanded back to the Commission on March 7, 2006 to allow the Commission to review and reconsider its earlier orders.

²¹ 18 C.F.R. § 385.713(d) (2008).

²² *E.g.*, *CNG Transmission Corp. v. FERC*, 40 F.3d 1289, 1293 (D.C. Cir. 1994) (an opportunity to seek rehearing is an opportunity to be heard).

Document Content(s)

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