128 FERC ¶ 61,072
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER09-239-001

ORDER DENYING REHEARING

(Issued July 21, 2009)

1. This order addresses the Metropolitan Water District of Southern California's (Metropolitan) request for rehearing of the Commission's December 19, 2008 order[1] in the above-captioned proceeding. As discussed below, we deny rehearing.

Background

2. On October 31, 2008, the California Independent System Operator Corporation (CAISO) filed revisions to its then-effective tariff and its Market Redesign and Technology Upgrade tariff (MRTU Tariff), which is now in effect.[2] The purpose of the tariff revisions was to allocate to FPL Energy, LLC (FPL) Merchant Congestion Revenue Rights associated with FPL's contribution to the Path 59 Upgrade.[3] According to the CAISO, it was appropriate to revise the tariff such that Merchant Congestion Revenue Rights would be allocated to FPL, because the MRTU Tariff only provided for the

[1] *Cal. Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,328 (2008) (December 19 Order).

[2] MRTU is a comprehensive redesign of the wholesale market operated by the CAISO. The Commission approved the MRTU structure in a series of orders. *See, e.g.*, *Cal. Indep. Sys. Operator Corp.*, 126 FERC ¶ 61,221 (2009) (addressing the CAISO's MRTU readiness certificate). MRTU went into effect on March 31, 2009.

[3] The Path 59 Upgrade is a transmission upgrade to the Blythe-Eagle Mountain transmission line, which is owned by Southern California Edison Company (SoCal Edison).

allocation of these instruments to sponsors of *new* merchant transmission projects, i.e., merchant projects that were introduced after MRTU. By contrast, the Path 59 Upgrade was an existing merchant transmission project, i.e., it was in service before MRTU became effective.

3. Metropolitan argued that the proposed duration of the Merchant Congestion Revenue Rights -- thirty years or the pre-specified intended life of the facility -- is excessive due to the legal limitations applicable to the Eagle Mountain terminus. Metropolitan argued that the value of FPL's transmission upgrade to the Blythe-Eagle Mountain line depends on the continued existence of the Amended District – Edison Eagle Mountain Pumping Plant Supplemental Contract (Supplemental Contract) between Metropolitan and SoCal Edison, which is subject to termination in 2017, or earlier, upon one year advance notice. Metropolitan also argued that FPL could transfer a Merchant Congestion Revenue Right to an entity for a period that may far exceed the actual duration of the Merchant Congestion Revenue Right. Metropolitan asserted that there was no basis for the proposed allocation of 96 MW of Merchant Congestion Revenue Rights to FPL in the west to east direction, and noted that although the Commission had previously approved an allocation of 96 MW of Firm Transmission Rights in the west to east direction, that determination should not be precedent in support of the CAISO's proposal. Further, Metropolitan questioned whether the CAISO performed the three-part test contained in the MRTU Tariff for determining the quantity of Merchant Congestion Revenue Rights allocated to FPL. Metropolitan argued that it was not clear that FPL would receive the 96 MW of Merchant Congestion Revenue Rights as proposed by the CAISO if encumbrances and transmission ownership rights are considered, as is required under section 36.11.3.2 of the MRTU Tariff.

4. The December 19 Order accepted the CAISO's proposed tariff revisions and found that the proposal was just and reasonable under section 205 of the Federal Power Act (FPA).[4] The December 19 Order explained that it would be unduly discriminatory for the CAISO not to allocate Merchant Congestion Revenue Rights to FPL when the Path 59 Upgrade would have been eligible for an allocation of those rights had it been a new project under MRTU rather than an existing one.[5] The December 19 Order also stated that having the same term for Merchant Congestion Revenue Rights allocated to both new and existing projects helped ensure that all merchant project sponsors are treated comparably.[6]

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[4] 16 U.S.C. § 824d (2006).

[5] December 19 Order, 125 FERC ¶ 61,328 at P 21.

[6] *Id.*

5. The December 19 Order rejected Metropolitan's argument that the term of the Merchant Congestion Revenue Rights allocated to FPL should be limited to one year or, at the latest, until 2017.[7] The December 19 Order explained that Metropolitan's concern was grounded in a contract issue that was not before the Commission, and that the Commission would not condition acceptance of the proposed tariff revisions on an issue that was not ripe for consideration.[8] The December 19 Order also found that it was appropriate for FPL to be allocated 96 MW of Merchant Congestion Revenue Rights in the west to east direction,[9] and stated that Metropolitan's contention that the CAISO may not have applied the three-part test under the MRTU Tariff for determining how many Merchant Congestion Revenue Rights should be allocated was speculative.[10]

Request for Rehearing

A. Metropolitan's Existing Contracts with SoCal Edison

6. Metropolitan contends that the December 19 Order erred in rejecting its arguments regarding the inconsistency of the CAISO's proposal and its existing contractual arrangements with SoCal Edison. According to Metropolitan, it affirmatively raised the contract argument in its protest and thus "directly and deliberately placed the agreements before the Commission," and that by ignoring the contract issue the Commission failed to consider relevant evidence. Metropolitan also states that the Commission does not have discretion to accept a section 205 filing that contravenes a private contract.[11] Next, Metropolitan states that its 1987 Service and Interchange Agreement (S&I Agreement) with SoCal Edison is a Commission-accepted rate schedule and argues that the Commission cannot view the CAISO's proposal in a vacuum and ignore the jurisdictional S&I Agreement.[12] Further, Metropolitan notes that the S&I Agreement was included by

[7] *Id.* P 23.

[8] *Id.*

[9] *Id.* P 22.

[10] *Id.* P 24.

[11] Metropolitan cites *Transmission Agency of N. Cal. v. Pacific Gas and Elec. Co.*, 55 FERC ¶ 61,417, at 62,252 (1991) (*TANC*).

[12] In support, Metropolitan cites to *Cambridge Elec. Light Co.*, 68 FERC ¶ 61,260, at 62,151 (1994) (*Cambridge*) and *Richmond Power and Light Co. v. FPC*, 481 F.2d 490, 493 (D.C. Cir. 1973) (*Richmond Power*).

the CAISO in its Transmission Control Agreement as an "Encumbrance,"[13] and argues that the CAISO must honor the terms of the S&I Agreement under both the terms of the Transmission Control Agreement and its duty to honor existing contracts. Metropolitan argues that because the Commission did not take this into account, the December 19 Order is not based on substantial evidence.

7. Metropolitan states that the value of FPL's transmission upgrade is entirely dependent on the continued existence of the Supplemental Contract[14] and, therefore, the Commission must consider whether the thirty-year duration of the Merchant Congestion Revenue Rights is excessive in light of this legal limitation. According to Metropolitan, extending the life of the Merchant Congestion Revenue Rights beyond one year or, alternatively, beyond 2017 is excessive.

8. Metropolitan also argues that the December 19 Order erred in finding that Metropolitan's contract concerns were unfounded, in failing to consider the contract issue, and in finding it sufficient to address Metropolitan's arguments if and when the issue is realized. Metropolitan states that it properly presented the contract issue before the Commission and that its concerns are not unfounded simply because it may have other remedies available. According to Metropolitan, this "wait and see" approach imposes undue harm on it. Metropolitan further argues that the December 19 Order purports to place the burden on Metropolitan of removing unnecessary encumbrances by suggesting that Metropolitan will have to file a section 206 complaint or a contract-related lawsuit in order to give effect to the contracts. Metropolitan also objects to the grounds on which the December 19 Order found the tariff revisions to be just and reasonable.

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[13] Metropolitan states that under the Transmission Control Agreement, an Encumbrance is a legal restriction or covenant binding on a Participating Transmission Owner that affects the operation of transmission lines and which the CAISO must take into account in operating its transmission system. Metropolitan Rehearing Request at n.17.

[14] In its earlier protest in this proceeding, Metropolitan explained that the Supplemental Contract was one of the supplemental contracts referenced in the S&I Agreement, and that the Supplemental Contract permitted SoCal Edison to operate and maintain a substation on Metropolitan-owned property. *See Motion to Intervene and Protest of the Metropolitan Water District of Southern California on CAISO's Proposed Allocation of Merchant CRRs to FPL Energy, LLC* at 7, Docket No. ER09-239-000 (Nov. 21, 2008).

Commission Determination

9. We deny rehearing. We continue to find that the CAISO's proposal is just and reasonable because it provides for the comparable treatment of merchant projects, whether they were in service prior to or after MRTU implementation. Metropolitan's arguments do not persuade us to change our finding. Because the MRTU Tariff provisions at section 36.11 treat all new merchant project sponsors the same, all new sponsors are allocated Merchant Congestion Revenue Rights with the same term, i.e., thirty years or the life of the project (whichever is shorter). The tariff provisions do not otherwise condition the term of the Merchant Congestion Revenue Right. The December 19 Order found that the existing Path 59 Upgrade should be treated in the same manner, and that this project should not be singled out for different treatment just because it became operational prior to the effective date of MRTU.[15] We affirm this finding. If the Path 59 Upgrade were a new merchant project under the MRTU Tariff, we find that under those previously accepted tariff provisions FPL would be allocated Merchant Congestion Revenue Rights for a thirty-year term (or for the life of the facility, whichever is shorter) regardless of the contractual arrangements that SoCal Edison has with Metropolitan.

10. Even if Metropolitan is correct that the value of the Path 59 Upgrade is "entirely dependent" on the existence of the Supplemental Contract,[16] it is merely speculating on what will occur in 2017. It is not known if the Supplemental Contract will be extended by the parties rather than terminated. Under the MRTU Tariff, the term of the Merchant Congestion Revenue Rights is thirty years or the life of the facility, whichever is shorter.[17] This term applies to both new and existing merchant projects under MRTU.[18] If, following the expiration of the Supplemental Contract and the S&I Agreement, Metropolitan believes that FPL is attempting to use associated Merchant Congestion Revenue Rights in a manner inconsistent with the MRTU Tariff's provisions governing Merchant Congestion Revenue Rights, or if it believes that changed circumstances have rendered the tariff provisions as unjust and unreasonable, it has a right to file a complaint under section 206 of the FPA or seek other relief, as appropriate. However, at this point in time, such concerns are speculative and do not warrant rejection or conditioning of the CAISO's filing.

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[15] December 19 Order, 125 FERC ¶ 61,328 at P 21.

[16] Metropolitan Rehearing Request at 9-10.

[17] *See* MRTU Tariff §§ 24.10.3, 36.11.1.

[18] As we note above, this ensures that new and existing merchant projects are treated similarly.

11. Moreover, we believe that Metropolitan's assertion presupposes that there is currently an actual conflict between its contractual arrangements with SoCal Edison and the term of the Merchant Congestion Revenue Rights that would be allocated under the CAISO's tariff revisions. We affirm the December 19 Order's finding, however, that there is not a live controversy that we need to resolve. Indeed, there could be events that alter the existing dynamics, such as Metropolitan and SoCal Edison amending their existing contracts. Until there is a live controversy, we decline to condition the CAISO's tariff revisions as suggested by Metropolitan. In this regard, we reject Metropolitan's contention that we have ignored the contract issues it raised in its protest. We considered Metropolitan's contract argument and found no basis to reject or condition the CAISO's proposed tariff revisions.

12. Metropolitan argues that the December 19 Order did not take into account that the S&I Agreement is an "Encumbrance" under the Transmission Control Agreement, and that the CAISO cannot effectively abrogate such grandfathered agreements. Notwithstanding our consideration of Metropolitan's contract argument in the December 19 Order, we have reexamined the jurisdictional S&I Agreement in light of Metropolitan's request for rehearing. We find that the tariff revisions proposed by the CAISO in this proceeding do not contravene the S&I Agreement. In other words, the CAISO's filing is independent of, and does not directly affect, Metropolitan's and SoCal Edison's contractual arrangements. Nothing in the CAISO's filing, or in the December 19 Order, suggests, explicitly or implicitly, that those arrangements must be modified.

13. Our review of the S&I Agreement, which is on file with the Commission, supports our conclusion that the CAISO's section 205 filing does not contravene the terms of that contract. Metropolitan has not cited to any specific provision of the S&I Agreement that it believes would be contravened by the CAISO's tariff revisions, and we are not aware of any conflict. However, section 14 of the S&I Agreement governs the use of Metropolitan's transmission system, which is the focus of Metropolitan's concerns. In part, this section provides that SoCal Edison's equipment and facilities "shall be removed by Edison at its cost upon the termination of this Agreement, unless agreed otherwise between the parties."[19] Although this provision may be relevant to Metropolitan's point that SoCal Edison's facilities may be removed from Metropolitan's property in the future, we are still not convinced that the CAISO's tariff revisions directly or indirectly contravene the S&I Agreement. We find that the award of Merchant Congestion Revenue Rights to FPL for the Path 59 Upgrade does not impact either SoCal Edison's or Metropolitan's obligations under the S&I Agreement.[20]

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[19] S&I Agreement, § 14.3.

[20] Moreover, the contract language quoted above expressly contemplates that the parties may agree to a different date for removal of SoCal Edison's facilities. This

(continued…)

14. The cases to which Metropolitan cites in support of its contention are inapposite. In *TANC*, Pacific Gas & Electric Company (PG&E) and the Transmission Agency of Northern California (TANC) had entered into a transmission service agreement in 1989, which provided for the negotiation of a successor agreement with terms consistent with the 1989 agreement. Subsequently, in 1991, PG&E filed a transmission rate schedule that provided for service to TANC's members. PG&E argued that the 1991 rate schedule fully implemented the 1989 agreement. The Commission found that this was not the case and rejected the 1991 rate schedule.[21] In *Cambridge*, the issue was whether a proposed transmission service agreement was inconsistent with a memorandum of understanding that the parties had previously executed.[22] In both cases, the central issue was whether a proposed jurisdictional rate schedule was inconsistent with an existing agreement between the same parties. That, however, is not what is at stake here. The issue, as framed by Metropolitan, is whether the term and allocation of Merchant Congestion Revenue Rights impacts Metropolitan's agreements with SoCal Edison (including the jurisdictional S&I Agreement).[23] As discussed above, we do not believe that this is the case. Moreover, unlike the agreements at issue in *TANC* and *Cambridge*, the S&I Agreement and the Supplemental Contract are entirely independent of the CAISO's tariff revisions.

15. Further, Metropolitan cites *Richmond Power* for the proposition that "[r]ate filings consistent with contractual obligations are valid; rate filings inconsistent with contractual obligations are invalid."[24] In *Richmond Power*, the court remanded to the Commission certain orders accepting rate schedules that superseded existing requirements contracts between a utility and municipal customers. The court concluded that the rate schedules, which effected a rate increase for the customers and some changes in the terms of service, were inconsistent with the existing contracts. Again, in this case, the CAISO's tariff revisions are not inconsistent with the existing contracts between Metropolitan and SoCal Edison. Indeed, they are independent of each other. Metropolitan does not face different

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reinforces our view in the December 19 Order that there is not currently a live controversy between SoCal Edison and Metropolitan. As we stated in the December 19 Order, if and when an issue arises, Metropolitan has several tools at its disposal to address it. *See* December 19 Order at P 23.

[21] *TANC*, 55 FERC ¶ 61,417 at 62,252.

[22] *Cambridge*, 68 FERC ¶ 61,260 at 62,150-51.

[23] Metropolitan Rehearing Request at 8-12.

[24] *Richmond Power*, 481 F.2d at 493.

terms of service or rates in its relationship with SoCal Edison as a result of the CAISO's tariff filing. Thus, the facts of this case demonstrate that the CAISO's filing is not inconsistent with existing contracts.[25]

16. In sum, although Metropolitan states that it will be harmed if FPL is allocated Merchant Congestion Revenue Rights for a full thirty-year term,[26] it has not provided any concrete example of how it would be harmed in either its rehearing request or its underlying protest. Nor does it point to any provision in the S&I Agreement that it believes is impacted by the thirty-year term of the Merchant Congestion Revenue Rights. It is therefore difficult for us to speculate why Metropolitan would be harmed if Merchant Congestion Revenue Rights allocated to FPL in accordance with the CAISO's tariff proposal. We disagree with Metropolitan that the CAISO's tariff revisions directly injure it. Again, if and when a dispute arises in the future regarding Metropolitan's contractual relationship with SoCal Edison, it should raise the issue at that time, either before this Commission or a court of competent jurisdiction, as appropriate.[27]

B. Secondary Transfers of Merchant Congestion Revenue Rights to FPL

17. Metropolitan asserts that the Commission erred in failing to consider that under the thirty-year term, any Merchant Congestion Revenue Rights allocated to FPL could be transferred to an eligible entity in secondary markets. According to Metropolitan, allowing FPL to do this beyond 2017 exposes the market to the existence of Merchant Congestion Revenue Rights that the associated transmission facilities are unable to support. Metropolitan notes that the CAISO has indicated that it does not intend to monitor secondary transfers.

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[25] In the same footnote where it cites *Cambridge* and *Richmond Power*, Metropolitan cites to *Tennessee Gas Pipeline Co. v. FERC*, 17 F.3d 98, 104 (5th Cir. 1994) for the proposition that a contract should be read so as to give effect to all of its provisions. *See* Metropolitan Rehearing Request at n.16. As explained above, however, we find that the CAISO's tariff revisions do not affect performance under the jurisdictional S&I Agreement, either directly or indirectly.

[26] *See, e.g.*, Metropolitan Rehearing Request at 10.

[27] Metropolitan states that the December 19 Order places the burden on the "negatively-impacted party" by suggesting that Metropolitan could file a section 206 complaint or a lawsuit. Metropolitan Rehearing Request at 10-11. We have not, however, shifted the burden to Metropolitan. We have simply suggested to Metropolitan the tools at its disposal in the event it has a dispute regarding the S&I Agreement or the Supplemental Contract.

Commission Determination

18. We deny rehearing. The MRTU Tariff permits the secondary trading of Congestion Revenue Rights in general,[28] and there is nothing to indicate that such secondary trading does not apply to Merchant Congestion Revenue Rights, so long as it is conducted in accordance with the requirements of the tariff. Further, the MRTU Tariff sets forth the requirements governing Merchant Congestion Revenue Rights and Metropolitan has not demonstrated that FPL will act in a manner inconsistent with those requirements. We again emphasize that if it believes that FPL is taking action inconsistent with the MRTU Tariff, then Metropolitan can file a complaint with the Commission.

C. Application of the MRTU Tariff's Three-Part Test for Determining the Amount of Merchant Congestion Revenue Rights to be Allocated to Project Sponsors

19. Metropolitan asserts that the Commission erred because the December 19 Order's determination that FPL could be allocated 96 MW of Merchant Congestion Revenue Rights was not supported by the record. Specifically, Metropolitan argues that the CAISO did not demonstrate that it performed the three-part test under its MRTU Tariff to determine the amount of Merchant Congestion Revenue Rights that should be allocated to FPL.

Commission Determination

20. We deny rehearing. In its transmittal letter, the CAISO stated that the parties agreed to continue to apply the pre-MRTU revenue allocation to the Path 59 Upgrade under the MRTU process, and thus FPL would be allocated 96 MW of Merchant Congestion Revenue Rights, which is what it was allocated in Firm Transmission Rights revenues.[29] The CAISO further explained that it "estimated that, had the CAISO been required to treat the existing facility as a new facility *through the process established in Section 36.11*, FPL would have been allocated the same amount of Merchant [Congestion Revenue Rights]."[30]

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[28] *See* MRTU Tariff § 36.7.

[29] *See* CAISO Filing at 10-11.

[30] *Id.* (emphasis added).

21. We conclude that this showing is adequate in demonstrating that an allocation of 96 MW of Merchant Congestion Revenue Rights to FPL was an appropriate allocation by the CAISO and is just and reasonable. In so finding, we note that the Path 59 Upgrade is already in service and, therefore, the CAISO had a preexisting starting point for determining the amount of Merchant Congestion Revenue Rights allocable to FPL for its contribution to the Path 59 Upgrade. The CAISO's estimate using the three-step process for new merchant projects demonstrates to us that the CAISO intends to treat the existing Path 59 Upgrade in a manner comparable to new merchant projects, although the project was operational prior to MRTU's start-up. As discussed in the December 19 Order and here, the comparable treatment of the existing merchant project and new merchant projects was a key consideration in our acceptance of the proposed tariff language.[31] We thus find that the CAISO's representations sufficiently describe how it reached the amount of Merchant Congestion Revenue Rights allocable to FPL, and we deny Metropolitan's request for rehearing on this matter.

D. Extending the West to East Allocation Amount for Firm Transmission Rights to Merchant Congestion Revenue Rights

22. Metropolitan contends that the December 19 Order did not address the issue Metropolitan raised regarding the *amount* of the Merchant Congestion Revenue Rights to be allocated to FPL in the west to east direction. Further, Metropolitan argues that the Commission erred by failing to consider that Firm Transmission Rights involve a different set of rights than Merchant Congestion Revenue Rights, and that the CAISO's filing seeking acceptance of the agreed-upon Firm Transmission Rights revenue allocation to FPL under the then-current tariff noted that it was a one-time solution for a unique situation. Metropolitan points out that Firm Transmission Rights only have a one-year duration while Merchant Congestion Revenue Rights have a thirty-year duration.

Commission Determination

23. We deny rehearing. In the December 19 Order, we found that the then-existing arrangement for the allocation of Firm Transmission Rights revenues was persuasive in our finding that the CAISO's proposed allocation of 96 MW of Merchant Congestion Revenue Rights to FPL under its proposed tariff revisions was reasonable.[32] We are not persuaded by Metropolitan's arguments regarding the differing durations of Firm Transmission Rights and Merchant Congestion Revenue Rights. Even if Firm

[31] December 19 Order, 125 FERC ¶ 61,328 at P 21.

[32] *Id.* P 22.

Transmission Rights are only for a year's duration, FPL has been receiving Firm Transmission Rights auction revenues for this direction for several years.[33]

24. We find that the continued allocation of Merchant Congestion Revenue Rights to FPL in this direction and amount helps assure us that the CAISO's proposed tariff revisions in this proceeding are just and reasonable because those revisions continue a practice that we have previously accepted.[34] Although those earlier orders had accepted tariff revisions to provide FPL with Firm Transmission Rights auction revenues, we find that it is just and reasonable for the CAISO to allocate FPL with Merchant Congestion Revenue Rights of the same amount. While they are different products, the reasons for allocating Firm Transmission Rights revenues and Merchant Congestion Revenue Rights to FPL were to compensate it for its investment in transmission facilities. Because of the fundamental similarity between Firm Transmission Rights and Merchant Congestion Revenue Rights in this regard, we reject Metropolitan's arguments.

25. In its Specification of Errors,[35] Metropolitan also asserts that the Commission erred on this issue because the Western Electricity Coordinating Council (WECC) does not have a rating for the west to east direction, although this is only mentioned as background in the substantive discussion.[36] To the extent Metropolitan argues that we erred in this regard, we deny rehearing. In this case, the CAISO's allocation of Merchant Congestion Revenue Rights to FPL is based on the continuation of a preexisting practice that we had previously accepted. The CAISO also explained that it estimated that the amount of Merchant Congestion Revenue Rights allocated to FPL under its filing is consistent with the amount of such Merchant Congestion Revenue Rights that would have been allocated to FPL had the Path 59 Upgrade been a new merchant project under MRTU and, consequently, had the three-part test contained in the MRTU Tariff for allocating Merchant Congestion Revenue Rights been applied. As explained in this order, we affirm that the CAISO's continuation of the preexisting practice and its estimate using the three-part test contained in the MRTU Tariff for new merchant projects is reasonable. Thus, under the circumstances presented here, we find that

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[33] *See, e.g.*, *Cal. Indep. Sys. Operator Corp.*, 102 FERC ¶ 61,278 at P 21, 23 (2003) (conditionally accepting the CAISO's tariff revisions regarding the allocation of Firm Transmission Rights revenues for the Path 59 Upgrade); *see also Cal. Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,329 at P 7 (2006) (accepting allocation agreed to by the CAISO, SoCal Edison, and FPL) (June 15 Letter Order).

[34] *See* June 15 Letter Order, 115 FERC ¶ 61,329 at P 7.

[35] *See* Metropolitan Rehearing Request at 2.

[36] *See id.* at 14.

whether or not WECC has issued a rating for the west to east direction on Path 59, it is not determinative in our finding that the tariff revisions are just and reasonable.

E. Whether the Commission Impermissibly Shifted the Burden from the CAISO to Metropolitan

26. Metropolitan contends that the Commission impermissibly shifted the burden under section 205 of the FPA by presuming the CAISO's proposal to be just and reasonable, and requiring Metropolitan to show that the proposal was unjust and unreasonable.[37]

Commission Determination

27. We disagree with Metropolitan that we impermissibly shifted the burden of proof from the CAISO onto Metropolitan. Metropolitan is correct that under section 205 of the FPA, the proponent of a rate change has the burden of demonstrating that the proposal is just and reasonable and not unduly discriminatory or preferential.[38] In this case, we found that the CAISO has demonstrated that its proposal satisfied this statutory standard, and we found that the CAISO still met its burden when measured against the arguments raised in Metropolitan's protest. The December 19 Order therefore accepted the CAISO's proposed tariff revisions as just and reasonable, and we affirm that conclusion here. We did not, contrary to Metropolitan's contention, shift the burden onto Metropolitan to demonstrate that the CAISO's proposal was unjust and unreasonable. Further, we did not presume that the CAISO's proposal was just and reasonable; rather, we made an independent and reasoned judgment that the proposal was just and reasonable based on the record before us. Accordingly, we deny rehearing on this issue.

[37] *See* Metropolitan Rehearing Request at 2, 17.

[38] *See* 16 U.S.C. § 824d (2006).

The Commission orders:

Metropolitan's request for rehearing of the December 19 Order is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.