

I. BACKGROUND

This proceeding, which commenced over one year ago, concerns the collection of the ISO's Grid Management Charge ("GMC"). An extensive stakeholder process preceded the February 20, 2008 filing of revisions to the GMC that would accommodate the implementation of the ISO's Market Redesign and Technology Update ("MRTU") markets. In conjunction with its stakeholders, the ISO developed the rate design changes that the MRTU market design required and also facilitated stakeholder understanding of the impact of these changes by providing individual bill-impact analyses. Consequently, although a number of stakeholders intervened in this proceeding, only three parties raised substantive concerns with particular provisions of the proposed GMC tariff language: California Department of Water Resources, San Diego Gas & Electric Company and NCPA.²

On December 19, 2008, the Commission issued its Order Conditionally Accepting Tariff Revisions ("December 19 Order") that approved all of the proposed GMC MRTU changes with the exception of the two issues raised by NCPA.³ One of these items involved an inadvertent omission of language regarding Load following Metered Subsystems from tariff section 11.22.5.7. The other raised a question whether the calculation of Energy in the DAM subject to the GMC Market Usage-Forward Energy Charge would be offset (1) solely by "physical" Inter-SC Trades (*i.e.* trades at PNodes, which are subject to physical validation based on Energy Bids or Self-Schedules from a resource at the location of the PNode), which seemed to be the intent of the algorithm set forth in the Settlements BPM for Charge Code 4537, or (2) by both physical and financial

² Motions to intervene, comments and protests were filed on March 12, 2008.

³ 125 FERC ¶ 61,338 (2008).

Inter-SC Trades (*i.e.* trades at the Default Load Aggregation Points or Trading Hubs, which are not subject to physical validation). In its January 21, 2009 compliance filing, the ISO corrected the section 11.22.5.7 tariff language omission and submitted revised tariff language clarifying that the forward Energy offset was intended to include only physical Inter-SC Trades. The ISO also noted that, after MRTU was implemented, the ISO would consider addressing with its stakeholders alternative cost recovery methods for both physical and financial Inter-SC Trades.

In comments filed on February 11, 2009, in response to the compliance filing, NCPA again raised concerns about the exclusion of financial Inter-SC Trades in the Energy charge calculation. Upon further consideration of these comments, the ISO, in its February 26, 2009 answer, agreed that both “financial” and “physical” trades should be treated similarly in the allocation formula to offset Energy charges in the DAM. The ISO reasoned that both types of Inter-SC Trades are, in fact, financial. The purpose of both types of trades is to allow for contractual delivery of bilateral energy contracts at agreed-upon locations and to “reverse” the ISO charges – in the case of Inter-SC Trades of Energy, ISO Energy charges – from one party to its counter party. Inter-SC Trades are, thus, a purely financial service. The only purpose for the physical validation requirement for Inter-SC Trades at PNodes was to address problems associated with “seller’s choice” contracts.⁴ Accordingly, the ISO, in its February 26, 2009 answer, agreed with NCPA that the choice of location for an Inter-SC Trade should not dictate whether the trade should be used as an offset to an energy or demand schedule.

On March 30, 2009, the Commission directed the ISO to submit a compliance filing with revised tariff language reflecting the position set forth in its February 26, 2009

⁴ See *Cal. Indep. Sys. Operator Corp.*, 111 FERC ¶ 62,384 (2005).

answer,⁵ and the ISO submitted that compliance filing on March 31, 2009. WPTF's request to intervene out of time and protest is focused on this second compliance filing, but, as discussed below, in fact does not contest, or even address, the reason that the tariff language was filed.

II. MOTION FOR LEAVE TO ANSWER

Although an answer to WPTF's motion is not barred by the rules, Section 385.213(a)(2) of the Commission's regulations generally prohibits answers to protests. Accordingly, the ISO moves for waiver of Section 385.213(a)(2) to the extent necessary to allow the ISO to answer WPTF's pleading. The Commission has accepted answers that are otherwise prohibited if such answers clarify the issues in dispute.⁶ Answers have also been accepted where the information assists the Commission in making a decision.⁷ Good cause exists to permit this answer because it will assist the Commission in reaching its ultimate determination with respect to the substantive issues raised by WPTF involving the treatment of Inter-SC Trades in calculation of the GMC Market Usage Charge.

III. ANSWER

A. The WPTF Protest Raises Issues Beyond the Scope of the Current Proceeding.

The Commission's review of a compliance filing is to determine whether the actions proposed comply with the Commission's previously stated directives.⁸ WPTF raises two issues in its "Protest": (1) WPTF challenges the ISO's failure to convene a stakeholder process "prior to modifying the GMC rate language"; and (2) WPTF asserts

⁵ Letter Order, 126 FERC ¶ 61,289 (2009) ("March 30 Order").

⁶ See *Southwest Power Pool, Inc.*, 89 FERC ¶ 61,284 at 61,888 (2000).

⁷ See *El Paso Electric Co.*, 72 FERC ¶ 61,292 at 62,256 (1995).

⁸ See, e.g., *New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,042 at P 28 (2009).

that the tariff modifications “do not appear to reflect either NCPA’s concerns or how the ISO is actually allocating its Market Usage Charge.”⁹ Neither of these issues is related to whether the ISO properly implemented the Commission’s order. Indeed, WPTF at no point contends that the ISO did not comply with the Commission’s order. WPTF fails to show in any manner that its issues are within the scope of the proceeding to review the ISO’s second compliance filing, rather than impermissible attempts to seek, in the compliance phase of this proceeding, review of the March 30 Order. The Commission does not permit a challenge to the underlying order in a proceeding to review a subsequent compliance filing.¹⁰ WPTF’s arguments should have been raised in a request for rehearing of the March 30 Order and none was made.

The Commission should not make exceptions to its rules to accommodate WPTF. Having failed to set forth its position at any point during the stakeholder and Commission process or participate in the Commission process initiated over a year ago, WPTF should not now be permitted to raise a host of new issues associated with the impact of the charge on SCs whose financial Inter-SC Trades will not be fully offset by Energy purchases and sales in the DAM. The only issue appropriate for comment or protest would be whether the ISO’s March 31, 2009 tariff language complied with the March 30 Order. As NCPA notes in its recently-filed Answer to WPTF’s Protest, the ISO has fully complied with the Commission’s directive. The Commission should therefore reject WPTF’s “Protest.”

⁹ WPTF protest, at 4-5.

¹⁰ See *New York Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,042 at PP 27-28 (2009).

B. WPTF's Contentions Are Meritless.

Because WPTF has not properly brought its issues before the Commission, there is no reason for the Commission to consider them. If the Commission does consider them, however, it should find WPTF's contentions without merit.

1. The revised tariff language addresses the issues raised by NCPA.

WPTF's objection to the ISO's adherence to NCPA's requested change is unfounded. At the outset, the ISO notes that the revision made to ISO Tariff Appendix F, Schedule 1, Part A Paragraph 7 reflects the *exact* language proposed by NCPA:

[T]he rate for the Day-Ahead Market for Energy will be based on the MWh of net Energy purchases or sales in the DAM, *offset by MWh of net Energy associated with Inter-SC Trades of Energy in the DAM.*

(emphasis added).

In proposing this language, NCPA very explicitly set forth its concerns about how net Energy for Inter-SC Trades would be calculated and suggested specific tariff language that addressed its concerns. There can be no question about NCPA's understanding of the calculation of net Energy for Inter-SC Trades or about the nature of the change that NCPA requested.

In both sets of comments, NCPA asserted that it was unreasonably discriminatory for the ISO to offset forward Energy purchases and sales with physical Inter-SC Trades but not financial trades, noting that both physical and financial trades can be supported by physical generation. NCPA explained that, in the normal course of business, it would submit balanced schedules and did not expect to incur Market Usage-Forward Energy charges if both types of Inter-SC Trades were netted against Energy in the DAM.¹¹ In

¹¹ NCPA Motion to Intervene at 5.

response to the ISO's first compliance filing, NCPA continued to argue that the ISO had not sufficiently justified the disparate treatment between financial and physical Inter-SC Trades, noting that

an SC's net reliance on the Day-Ahead market can only be determined if inter-scheduling coordinator trades are counted equally.¹²

Based on the information presented by NCPA and the lack of input about this issue from any other stakeholders,¹³ the ISO re-evaluated the Market Usage-Forward Energy charge calculation and concluded that the ISO should not treat the two types of trades differently. The ISO therefore proposed that financial trades should be included in the netting of Inter-SC Trades against forward Energy.

NCPA's answer to WPTF's protest, filed on May 4, 2009, expressly acknowledges that the ISO's compliance filing addressed its concerns.¹⁴ Accordingly, WPTF's argument that this language does not seem to accomplish NCPA's purpose has no validity and should be disregarded. WPTF should not be given standing to challenge tariff language *on behalf* of another party, particularly when the ISO specifically adopted the language proposed by that party and the party agrees that the language accomplishes the intended results.

Although NCPA argues that WPTF's protest is untimely and should be rejected and fully agrees that the ISO has complied with the Commission's order, NCPA does note that its needs would also be met if the ISO were to implement the offset in a different manner—one that would not result in an absolute charge after offsetting all

¹² NCPA February 11 Comments at 3.

¹³ The application of Market Usage Charges to Inter-SC Trades was not specifically addressed during the ISO's GMC Under MRTU stakeholder process that was initiated in 2006. Neither NCPA nor WPTF participated in that process. See <http://www.caiso.com/1872/18728fb96b370.html>.

¹⁴ NCPA Answer at 2.

Inter-SC Trades.¹⁵ In the example that NCPA and WPTF employ, there is a Day-Ahead energy purchase of 100 MW and a “financial” Inter-SC Trade of 500 MW. This results in 400 MW of exposure to the Market Usage-Forward Energy charge because the charges apply to the absolute value of the difference. WPTF desires a result that would completely offset the 100 MW schedule with no resulting net charge. NCPA indicates that it would not object to this result.

The ISO, however, does object to this result. The ISO’s Market Usage-Forward Energy charge applies to the absolute value of energy sold or purchased. Sales have a positive value and purchases have a negative value. Inter-SC Trades have a positive or negative value and thus can be offset with the resulting absolute value difference subject to the Market Usage-Forward Energy charge. The purpose of Inter-SC Trades is to offset settlement charges—in the example above, Energy charges that would have applied to the Day-Ahead schedule would be charged to the counter-party to the Inter-SC Trade. Inter-SC Trades that go beyond trades that are intended to offset Energy settlements also go beyond the purpose of the Inter-SC Trade financial service that the ISO is providing. The ISO’s approach, as filed, treats the two types of trades in a non-discriminatory way. Until and unless the ISO changes the tariff through an amendment following a stakeholder process, entities that desire to enter into financial trades that could incur charges that they wish to avoid can enter into such trades outside the ISO’s markets.

2. WPTF had ample opportunity to evaluate the effect of the tariff modifications proposed by NCPA on financial Inter-SC Trades.

WPTF’s complaint about the lack of stakeholder process is also unfounded. It is important to note that NCPA challenged the exclusion of financial Inter-SC Trades from

¹⁵ NCPA Answer at 3.

the offset against forward Energy transactions in comments filed with the Commission on March 12, 2008, well over a year before WPTF filed its untimely request for intervention and protest. At that time, and during the stakeholder process prior to that time, the algorithm set forth in the Settlements Business Practice Manual (BPM) Configuration Guide for Charge Code 4537 (Market Usage-Forward Energy) contemplated that net Energy from physical Inter-SC Trades would be netted against Energy in the DAM.¹⁶ Like the netting financial Inter-SC Trades of which WPTF complains, this netting process also could result in the application of market usage charges to physical Inter-SC Trades of Energy if the Inter-SC Trades are not balanced by delivered Energy.¹⁷ Thus, if an SC has DAM Energy injections of 300 MW (a positive value) and 300 MW *physical* Inter-SC Trade transferring Energy out (a negative value), but only 200 MWs of Energy is delivered by the resource, the result will be *net* 100 MW (a negative value subtracted from a positive value) subject to the \$0.43. Even if WPTF was not aware of the configuration of Charge Code 4537 at the time the ISO filed the application in this proceeding, the NCPA comments would have provided notice of the potential financial impacts of adding financial Inter-SC Trades to the netting process. Furthermore, in addition to the bill-impact analyses provided by the ISO during the GMC Under MRTU stakeholder process, WPTF had other opportunities to consider the potential effects of the proposed GMC rate design through MRTU market simulation exercises that were conducted at the ISO throughout 2008. In addition to the implementation of the physical

¹⁶ In its March 12, 2008 Motion for Intervention at page 5 NCPA cited Version 1.3 of the Settlements BPM, GMC Configuration Guide.

¹⁷ The “physical” Inter-SC Trades for Energy are first validated against Day Ahead Schedule results. If the trade exceeds the results, the Inter-SC Trade is reduced. The Inter-SC Trade is then validated against meter data. To the extent the trade was not fully supported by the generating resource, the difference is converted to a financial Inter-SC Trade. This difference would be exposed to the Market Usage-Forward Energy charge.

Inter-SC trade offsets, which was in place throughout market simulation, the ISO implemented the change to allow financial Inter-SC Trades to be offset on or about March 1 while the conforming change was made to the Business Practices Manual for Settlements and Billing on February 25, 2009. Finally, even if WPTF was not attuned to the potential impacts of NCPA's March 12, 2008 comments on this issue, and was not otherwise aware of how the offsets were implemented in market simulation, the Commission's December 19 Order should have provided sufficient notice that changes to the charges applicable to Inter-SC Trades might be forthcoming.

Thus, WPTF's assertion that it could not have known about the allocation of the Market Usage-Forward Energy charge before MRTU *go live* and the receipt of credit statements is misplaced.

C. The Commission Should Not Grant the WPTF Motion for Intervention.

The Commission should not permit WPTF to intervene in this proceeding over a year after it commenced and after two Commission orders. WPTF provides no explanation for its failure to intervene earlier or participate in the rounds of comments and answers filed at the Commission by other market participants. Neither does WPTF explain its failure to request rehearing of the March 30 Order that accepted the ISO proposal with which WPTF now takes issue.

WPTF will not be prejudiced by a denial of its motion and protest because WPTF has other avenues available to it to address the issues raised in the protest. Specifically,

WPTF members may use other services to settle financial trades, such as the Inter-Continental Exchange (ICE), and need not utilize the ISO's Inter-SC Trade service.¹⁸

Finally, as stated in both compliance filings, the ISO intends to address alternative methods of cost recovery for the Inter-SC Trade accounting in a future stakeholder process. While the ISO disagrees with WPTF's argument that a stakeholder process should have been, or could have been, initiated before the March 31 tariff revisions were submitted, the ISO agrees that the issues involved in the allocation of Market Usage-Forward Energy charges to Inter-SC Trades should be revisited with stakeholders. The WPTF concerns can be addressed at that time.

IV. CONCLUSION

For the reasons described above, the Commission should deny WPTF's untimely motion to intervene and reject its protest.

Respectfully submitted,

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¹⁸ At page 11 of its Motion, WPTF comments that the ICE transaction charges are on the order of \$0.01/MWh.

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon the parties listed on the official service list in the above-referenced proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 6th day of May, 2009.

/s/ Daniel Klein
Daniel Klein