

UNITED STATES OF AMERICA 105 FERC ¶ 61,071
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator
Corporation

Docket Nos. ER03-1222-000
ER03-1222-001

ORDER ACCEPTING PROPOSED TARIFF AMENDMENT,
SUBJECT TO THE OUTCOME OF AN ONGOING PROCEEDING

(Issued October 17, 2003)

1. In this order, the Commission accepts proposed Amendment No. 57 to the California Independent System Operator Corporation's (CAISO) open access transmission tariff (tariff), effective October 17, 2003, subject to the outcome of the ongoing proceeding in Docket No. ER00-2019-006, et al. (Transmission Access Charge or TAC Proceeding), as discussed herein. This order benefits customers because it ensures that transmission revenues are disbursed by the CAISO in a fair manner.

Background

2. On August 18, 2003, the CAISO filed proposed Amendment No. 57 to the CAISO Tariff to correct what the CAISO characterizes as an error in the filing of Amendment No. 49.¹ On August 20, 2003, the CAISO filed an errata to replace an attachment to the filing. In Amendment No. 49, the CAISO revised its tariff to account for, among other things, the addition of a Participating Transmission Owner (PTO) that is not obligated to serve load, such as Trans-Elect NTD Path 15, LLC (Trans-Elect). However, the CAISO states that, in revising certain provisions to accommodate this type of PTO, it neglected to revise the mechanism that calculates the disbursement of High Voltage Access Charge and Transition Charge revenues for "no-load" PTOs.

3. Pursuant to Appendix F, Schedule 3, Section 10 of the CAISO Tariff, revenues are allocated to load-serving PTOs in proportion to their actual Gross Load. Since no-load PTOs do not have Gross Load, the CAISO proposes to allow no-load PTOs recovery of their High Voltage Transmission Revenue Requirements (High Voltage

¹See California Independent System Operator Corporation, 103 FERC ¶ 61,260 (2003), reh'g pending.

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TRR) based on the ratio of the no-load PTO's High Voltage TRR to the sum of all PTOs' High Voltage TRRs. Additionally, to ensure that over-recovery does not occur, the CAISO proposes a tariff revision that requires adjustment of the no-load PTO's Transmission Revenue Balancing Account to credit or debit any over- or under-recovery of the High Voltage TRR.

4. The CAISO requests that Amendment No. 57 be consolidated with the TAC Proceeding, if the Commission does not accept Amendment No. 57 without suspension.

Notice of Filings and Responsive Pleadings

5. Notice of the CAISO filing was published in the Federal Register,² with comments, interventions and protests due on or before September 8, 2003. Notice of the CAISO errata filing was published in the Federal Register,³ with comments, interventions and protests due on or before September 10, 2003.

6. The California Department of Water Resources, Turlock Irrigation District, Southern California Edison Company (SoCal Edison), Northern California Power Agency, Modesto Irrigation District, Transmission Agency of Northern California, the City of Redding, California, the City of Santa Clara, California and the M-S-R Public Power Agency, Metropolitan Water District of Southern California, the California Municipal Utilities Association (CMUA), Williams Power Company, Inc., the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California, and the California Electricity Oversight Board filed timely motions to intervene. Pacific Gas and Electric Company (PG&E) filed a timely motion to intervene, protest and comment. The City of Vernon (Vernon) filed a timely motion to intervene and protest. On September 23, 2003, SoCal Edison filed a motion for leave to respond and response to Vernon's protest. The CAISO also filed a motion for leave to file an answer and an answer to the motions to intervene, comments and protests.

7. Vernon claims that the proposed tariff amendment treats no-load PTOs more favorably than PTOs that serve load through their Utility Distribution Companies (UDC). It contends that, by definition, a PTO does not have End-Use Customers. Therefore, any distinction between the two types of PTO would perpetuate utility-specific transmission rate treatment on the CAISO system, even though the goal is a system-wide rate. Vernon

² 68 Fed. Reg. 52,191 (2003).

³ 68 Fed. Reg. 52,760 (2003).

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further argues that it is unfair for no-load PTOs to be guaranteed full recovery of their High Voltage TRRs, while load-serving PTOs are not afforded the same guarantee. Finally, Vernon requests that if the Commission does not reject Amendment No. 57 outright or require that the provisions therein be applied to all PTOs equitably, the Commission should make it effective only after suspension, subject to refund, and set it for hearing.

8. PG&E requests clarification and certain modifications to the CAISO's proposal. First, PG&E asserts that one of the benefits offered only to new PTOs, which is currently being litigated in the TAC Proceeding, is the issuance of firm transmission rights (FTRs) based on facilities turned over to the CAISO's operational control without the obligation to sell these "free" FTRs in the CAISO's periodic auctions for a transition period.⁴ PG&E contends that this provision should be clarified to reflect the original intent that only new PTOs with a "statutory or regulatory" obligation to serve load will receive "free" FTRs. This would exclude no-load PTOs with mere contractual obligations to serve load. PG&E argues that since no-load PTOs will receive revenues from the sale of FTRs, they should not also be allowed to receive FTRs free of an auction obligation.

9. In addition, PG&E states that Section 6.1 of Schedule 3 to Appendix F of the CAISO Tariff should be modified to state that transmission-related revenues, e.g., congestion revenues, will be credited against a no-load PTO's High Voltage TRR.⁵ PG&E also requests a minor modification to the above section to replace "TRR" with "High Voltage TRR."

10. Finally, PG&E opposes the CAISO's request to consolidate Amendment No. 57 with the ongoing TAC Proceeding. PG&E states that this would delay the TAC Proceeding or deprive participants of the right to create an adequate record.

11. SoCal Edison filed comments stating that Vernon's arguments should be rejected because the different treatment of load-serving and no-load PTOs is consistent with the CAISO Tariff's TAC methodology.

⁴ Pursuant to Section 4 of Schedule 3 to Appendix F, a new PTO "that has an obligation to serve load shall receive [free] FTRs . . ."

⁵ Transmission-related revenues are reflected in each PTO's Transmission Revenue Balancing Account and result in a negative rate that reduces each PTO's overall High Voltage TRR.

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12. In its answer, the CAISO argues that it is appropriate to treat differently entities that are differently situated. The CAISO states that Vernon is correct that a PTO does not serve load. However, each PTO must file its Gross Load with the Commission, and that Gross Load is used in the determination of the Transmission Access Charge pursuant to the CAISO and Transmission Owner Tariffs. The CAISO states that, since no-load PTOs will not have a Gross Load number, it is appropriate to treat them differently. With respect to Vernon's request for a "guarantee," the CAISO states that, provided that their calculation of Gross Load is correct, load-serving PTOs are, in fact, guaranteed full recovery of their High Voltage TRRs. Lastly, the CAISO objects to Vernon's request for suspension because it must have an effective TAC reimbursement policy in place for the proper functioning of the CAISO Controlled Grid. Moreover, Trans-Elect, a merchant transmission owner, is in the process of obtaining the requisite approvals to become a PTO, and a reimbursement policy needs to be in place to avoid uncertainty.⁶

13. The CAISO agrees with PG&E that no-load PTOs should not receive both "free" FTRs and auction revenues from the sale of FTRs. However, according to the CAISO, the proposed tariff language does not allow double-recovery. Specifically, pursuant to Section 9.4.3 (as found in Amendment No. 49), only "a New Participating [Transmission Owner] that has an obligation to serve Load shall receive FTRs for Inter-Zonal Interfaces . . ." In addition, the CAISO states that, under Section 3.2.7.3 (as found in Amendment No. 49), a project sponsor either receives a guaranteed return on its TRR or FTRs, but not both. Furthermore, Trans-Elect has already committed to file with the Commission a TRR and recover those costs through the CAISO's Transmission Access Charge, and the Commission has already determined the rate of return it will grant Trans-Elect for Path 15 in its order in Docket No. ER02-1672-000.

14. The CAISO disagrees with PG&E's request to clarify that "obligation" refers to a "statutory or regulatory" obligation (as it applies to certain provisions relating to the issuance of "free" FTRs and transmission crediting). The CAISO cannot envision situations in the foreseeable future when an entity's mere contractual obligations to serve load will have a real effect on decisions to turn over Operational Control of transmission to the CAISO and it does not want to place itself in a position of determining what is needed to meet a statutory or regulatory requirement. Nevertheless, the CAISO asserts that this is not the case with Trans-Elect, whose plan to join the CAISO, in large part, precipitated the filing of Amendment No. 57. Furthermore, regardless of the merits of PG&E's claim, Amendment No. 57 does not propose to change the text of Section 9.4.3

⁶ See unpublished letter order issued on October 10, 2003 in Docket No. ER03-1217-000.

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and, therefore, PG&E's allegation is beyond the scope of this proceeding. Lastly, the CAISO agrees to modify Section 6.1 of Schedule 3 of Appendix F to reflect "High Voltage TRR," instead of "TRR," and proposes to modify the language proposed by PG&E.

Discussion

Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁷ the timely, unopposed motions to intervene serve to make those who filed them parties to the this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁸ prohibits the filing of an answer to a protest or to an answer unless otherwise permitted by the decisional authority. We will accept SoCal Edison's response and the CAISO's answer because they have provided information that assisted us in our decision-making process.

Commission's Determination

16. As discussed below, we will conditionally accept Amendment No. 57 for filing, subject to the outcome of the TAC Proceeding, effective October 17, 2003. We find that no-load PTOs are, in fact, differently situated. Thus, a different rate treatment for the recovery of no-load PTOs' TRR may be appropriate. Accordingly, we find that the CAISO has proposed a reasonable "interim" rate recovery mechanism for a no-load PTO that joins the CAISO to recover its TRR. However, in order to allow any party to pursue issues related to this "interim" rate treatment or to propose alternative rate treatments for the recovery of the TRR by no-load PTOs, we direct the Presiding Administrative Law Judge in the TAC Proceeding to consider in the Initial Decision whether we should allow alternative rate treatments or modifications to be effective prospectively.

17. With respect to PG&E's concerns, we agree with the CAISO that Section 9.4.3 (as found in Amendment No. 49) adequately conveys that a no-load PTO is not entitled to both "free" FTRs and auction revenues from the sale of FTRs. Accordingly, tariff modifications are not warranted. Additionally, we agree with the CAISO that Amendment No. 57 does not propose to change the text of Section 9.4.3 and, therefore,

⁷ 18 C.F.R. § 385.214 (2003).

⁸ 18 C.F.R. §385.213(a)(2)(2003).

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PG&E's clarification regarding the term "obligation" is beyond the scope of this proceeding.

The Commission orders:

(A) Amendment No. 57 is hereby accepted for filing, subject to the outcome of the pending TAC Proceeding in Docket No. ER00-2019-006, et al., effective October 17, 2003.

(B) The rate schedule designations are accepted as filed.

(C) The CAISO is directed to file revised rate schedule sheets to reflect the Commission's directive, as discussed herein, within fifteen days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.