

107 FERC ¶ 61,114
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

California Independent System Operator Corporation Docket No. ER04-632-000

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO MODIFICATION

(Issued May 6, 2004)

1. In this order, we accept for filing, subject to modifications, proposed revisions to the California Independent System Operator Corporation (ISO) Open Access Transmission Tariff (OATT). This order benefits customers by ensuring that the ISO's tariff terms and conditions are clear and consistent with the application of the ISO's tariff billing provisions.

I. Background

2. On March 9, 2004, the ISO submitted for filing, pursuant to section 205 of the Federal Power Act,¹ revised tariff sheets that provide a new term, "PTO Service Territory," and clarify related tariff provisions that are used in the determination of the ISO's Transmission Access Charge (TAC). The ISO states that it agreed to file these tariff revisions as part of a stipulation in its TAC proceeding.

3. The ISO states that it has already proposed to replace "Service Area" with a new tariff term, "PTO Service Area," to accommodate new and differently situated types of Participating Transmission Owners (Participating TOs). Previously, the ISO stated that a PTO Service Area definition was needed to accommodate the possibility of new Participating TOs who would have little or no end-use load. That clarification was suspended, set for hearing and consolidated with the ISO's TAC proceeding.

¹ 16 U.S.C. § 824d (2000).

4. Additionally, the ISO notes that in a separate, unrelated proceeding,² the ISO had proposed an alternative definition of “PTO Service Area” to accommodate Participating TOs who faced the potential disaggregation of their utility functions. In July 2003, the Commission approved that alternative definition of “PTO Service Area.” Therefore, the ISO concludes that this approved definition overrode its earlier proposed “PTO Service Area” definition. However, the ISO, in the TAC proceeding, still believed that the approved definition did not address all potential situations involving the use of the “PTO Service Area” term. Also, the parties in that proceeding agreed that any further modification of this term should occur in a new, separate filing with the Commission.

5. Accordingly, as noted above, the ISO proposes to replace the definition of “PTO Service Area” with the term “PTO Service Territory.” Other proposed tariff revisions include a new term, Scheduling Coordinator Participating Transmission Owner (SCPTO), and revisions to the definitions of other terms, including Utility Distribution Company (UDC), End-Use Customer/End-User, and Metered Subsystem Operator (MSS Operator).

6. The ISO requests an effective date of May 8, 2004, sixty days after filing, for these tariff revisions.

II. Notice and Responsive Pleadings

7. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 13,026 (2004), with comments, protests and motions to intervene due on or before March 30, 2004. The Sacramento Municipal Utility District, Pacific Gas and Electric Company (PG&E), The Cogeneration Association of California, and the Energy Producers and Users Coalition filed timely motions to intervene. Southern California Edison (SoCal Edison); The Cities of Redding, Santa Clara, and Palo Alto, California and M-S-R Public Power Agency (Cities/MSR); the Transmission Agency of Northern California; the Northern California Power Agency (NCPA); the Modesto Irrigation District (Modesto), the Metropolitan Water District of Southern California (Metropolitan); and the California Department of Water Resources (CDWR) State Water Project filed timely motions to intervene and protest. The ISO filed an Answer to the protests.

8. The Intervenors generally argue that the proposed tariff revisions do not clarify the Market Participants’ obligations under the ISO’s tariff.

² Docket No. ER98-3760-008.

III. Discussion

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept the ISO's answer because it has provided information that assisted us in our decision-making process.

10. We find that the ISO's proposed revisions, as modified below, are just and reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed revisions, as modified, to be effective May 8, 2004, as requested.³

A. Definition of PTO Service Territory

11. "PTO Service Territory" is proposed to be defined as:

The area in which an IOU, a Local Public Owned Electric Utility, or federal power marketing administration that has turned over its facilities and/or Entitlements to ISO Operational Control was obligated to provide electric service to Load as of March 31, 2000. A PTO Service Territory may be comprised of the Service Areas of more than one Local Publicly Owned Electric Utility in which each entity was obligated to provide electric service as of March 31, 2000, if they are operating under an agreement with the ISO for aggregation of their MSS and their MSS Operator is designated as the Participating TO.

The ISO states that the March 31, 2000 "cut-off date" for determining which transmission customers and facilities remain the responsibility of a Participating TO, even if the transmission assets existing as of that date are transferred to another entity, is the date on which its new methodology for determining the TAC was filed with the Commission.

³ We note that the ISO's proposed effective date for its revisions to its OATT falls one day short of the required 60-day notice period. The 60-day notice period required by our regulations starts to run on the first day after the date of filing. Thus, the earliest date that a filing may become effective, absent waiver of the notice requirements, is the day after the 60-day notice period has expired or, as in this case, May 9, 2004. See *Utah Power & Light Co.*, 30 FERC ¶ 61,024 n.9 (1985). Nevertheless, we find good cause to grant waiver of the Commission's 60-day prior notice requirement to permit the effective date requested by the ISO. See *Central Hudson Gas & Elec. Corp., et al.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

The “cut-off date” also means that the Participating TO responsible for the transmission facilities as of that date will retain planning responsibility for those facilities.

12. Some Intervenors contest the March 31, 2000 “cut-off date.” These intervenors state that under the proposed definition, a Market Participant could be assessed access charges by a Participating TO, during the ISO’s proposed ten-year transition period, for end-use load that is no longer served by that Participating TO. Specifically, Modesto states that a customer who moves from a PG&E exclusive territory to a Modesto-PG&E joint service area and now is provided transmission service by Modesto would pay PG&E’s TAC and the associated Transition Charge,⁴ even though it had no continuing relationship with PG&E. Modesto concludes that it would be unfair for customers who have changed transmission providers to be liable for costs for which they no longer receive any service. SoCal Edison argues that the March 31, 2000 cut-off date should be deleted in order to ensure that the TAC is billed to the Participating TO that is responsible for, and actually serves, each end-use customer.

13. In its answer, the ISO states that the March 31, 2000 cut-off date will only have an effect when a municipal Participating TO is annexing territory (and customers) of an Original Participating TO and the transition charge is being paid by the Original Participating TO, who in turn would allocate the transition charge to all load as of March 31, 2000. The ISO concludes that there is limited potential for this type of cost shift. Regarding SoCal Edison’s concerns, the ISO states that it takes no position on whether the administrative complications that may arise during the ten-year transition period for customers that are served by a Participating TO other than their provider as of March 31, 2000 outweigh the potential for cost shifts to remaining customers of the historic Participating TOs, who could be allocated more of the TAC costs if other customers change suppliers.

14. We find that the “cut-off date” provision may result in unjust and unreasonable rates and therefore reject it. First, we note that the ISO has provided very little support or discussion regarding the reasonableness of this proposed “cut-off date” provision. Second, the March 31, 2000 date appears inappropriate in that it is the filing date, not the effective date of the ISO’s ten-year transition period. However, in addition to those facts, we find that the ISO’s proposal to have the Transition Charge applied to customers who may no longer be provided transmission service by a Participating TO is inconsistent with the general ratemaking principle of allocating current costs to current customers,

⁴ Generally, the Transition Charge permits the collection of charges from customers of Original Participating TOs that incur cost increases due to the inclusion in the ISO’s TAC of higher cost facilities of new Participating TOs during the ten-year transition period.

e.g., amortized expenses are assigned to current customers regardless if they were customers when the expense was initially incurred. In contrast, the ISO's proposed inclusion of a "cut-off date" could result in the assignment of future transition charges to specific load that took transmission service as of March 31, 2000. We find this proposal unreasonable. If the Participating TO, in the future, is liable for a TAC payment, it should pass through that charge to its current transmission customers. In conclusion, we find the inclusion of a March 31, 2000 "cut-off date" in this definition unreasonable, and require it to be deleted from the definition. In accordance with this directive, the ISO is directed to submit revised tariff sheets reflecting this modification within fifteen days of this order.

B. Definition of SCPTO and Utility Distribution Company (UDC)

15. The ISO also proposes the new term "SCPTO":

A Scheduling Coordinator that is neither a UDC nor an MSS Operator but is a Participating TO or represents a Participating TO that serves its or its representatives' Gross Load but does not serve End-Use Customers.

In addition, the ISO proposes a revision to the term UDC to include entities, such as CDWR, that serve their own load.

16. Metropolitan states that the revision of the term UDC is illogical and should be rejected. Both Metropolitan and CDWR contend that the ISO gave no explanation of why it is necessary to include CDWR in this definition and that it is not clear if CDWR would even fit into the definition even though the ISO's cover letter states that the proposed language is to "include entities such as CDWR." In addition, CDWR states that it does not meet the Commission criteria applicable to UDCs. Regarding the new term SCPTO, CDWR argues that because of the combination of Tariff definitions, no entity can possibly be a SCPTO.

17. In its answer, the ISO states that it would be better to determine the most appropriate Tariff revisions necessary to address Metropolitan's and CDWR's circumstances when these entities apply to become Participating TOs or MSS Operators. Accordingly, the ISO recommends that the Commission direct, without prejudice, the deletion of the modifications to the definition of "UDC" and the new definition of and references to "SCPTO."

18. In light of the ISO's answer, the Commission directs the ISO to delete from the proposed amendment the modifications to the definition of "UDC" and the new definition of and all references to "SCPTO." The ISO is directed to submit revised tariff sheets reflecting this modification within fifteen days of this order.

C. Other Tariff Revisions

19. The ISO has also proposed clarifications to sections 7.1 and 7.1.2 of its Tariff that are intended to more clearly indicate whether an entity pays the TAC or the Wheeling Access Charge. The ISO also states that section 7.2.7.3.3, which provides for allocation of the costs of Congestion Management associated with Inter Zonal interfaces, is no longer necessary and is therefore eliminated.
20. Finally, the ISO proposes to revise sections 3.2, 3.2.2.1, and 3.2.2.2 of its Tariff to better clarify the obligations of a Participating TO for transmission planning and expansion with respect to its PTO Service Territory. Under section 3.2 of the proposed amendment, Participating TOs are not responsible where transmission assets owned by others cross a Participating TO's territory. The amendment would specify responsibility where a Participating TO holds an ownership interest in transmission assets located outside of its territory but constituting part of the ISO Controlled Grid. Proposed section 3.2.2.1 attempts to better define the scope of transmission expansion plans that Participating TOs must develop on an annual basis. Proposed section 3.2.2.2 expands the ISO's responsibility to review all transmission expansion plans for a PTO Service Territory.
21. Cities/MSR contend that the proposed language is not clear as to which entities pay the TAC and which entities pay the Wheeling Access Charge and that section 7.1 of the ISO Tariff refers only to the "Access Charge," without specifying if it is the TAC or Wheeling Access Charge. Also, they contend that the ISO does not define the terms TAC and Wheeling Access Charge.
22. In its answer, the ISO states that there should be little confusion about the Access Charge. Everyone taking Wheeling Service from the ISO pays the Wheeling Access Charge. Everyone taking service within a PTO Service Area that does not pay the Wheeling Access Charge pays the TAC based on Gross Load.
23. Our review indicates that the ISO Tariff as it currently exists, along with the revisions proposed in this filing, provide enough clarity with respect to who pays the TAC and who pays the Wheeling Access Charge. The defined term Wheeling Access Charge is clearly included in the Tariff, and the defined term Access Charge, which is synonymous with the TAC is also included. Therefore, the Commission finds the proposed revisions to sections 7.1 and 7.1.2 reasonable. Regarding the revisions to the transmission planning and expansion sections, our review indicates that those revisions are also reasonable.

D. Other Issues

24. NCPA raises a concern regarding the ISO's proposed insertion of the new definition "PTO Service Territory" in the portion of section 5.2.8 of the ISO Tariff, dealing with responsibility for Reliability Must-Run (RMR) charges. NCPA points out that "PTO Service Territory" incorrectly replaces "Service Area" in a passage where a service area other than that of a Participating TO actually is intended. TANC suggests that the Commission order a technical conference. CDWR states that the proposal should be rejected because it is not the product of meaningful stakeholder consultation.

25. The ISO states in its answer that it agrees with NCPA. The Commission therefore directs the ISO to modify section 5.2.8 of its proposal to conform with NCPA's recommendation. In accordance with this directive, the ISO is directed to submit a revised tariff sheet reflecting this modification within fifteen days of this order.

26. Regarding TANC's suggestion, the ISO states in its answer that proposed language of the amendment was circulated before being filed with the Commission, giving parties the opportunity for questions and comments. The ISO adds that the proposed revisions relate primarily to the consequences of a future decision by an entity deciding to participate in the ISO as a PTO. The ISO concludes that the Commission should reject TANC's motion and avoid unnecessary confusion and delay. We agree with the ISO and reject TANC's motion. Additionally, as noted in the ISO Answer, a prospective participant may take all the time it chooses to fully evaluate how this filing would affect it if it becomes a Participating TO and the ISO is willing to provide the necessary support in that effort.

27. Since the ISO has agreed to amend its proposal by deleting the term SCPTO and the revisions to the definition of UDC, the Commission believes that CDWR's issues have been resolved. Therefore, its request for rejection is now moot.

The Commission orders:

(A) The proposed tariff sheets are hereby accepted for filing, subject to modification, to become effective on May 8, 2004.

(B) The ISO is hereby directed to submit a compliance filing within 15 days of the date of this order reflecting the modifications discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.