

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

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

California Independent System Operator
Corporation

Docket Nos. ER03-407-002
and ER03-407-003

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued July 25, 2003)

I. Introduction

1. In this order, we accept a compliance filing submitted by the California Independent System Operator Corporation (CAISO), as modified herein, pursuant to the Commission's order issued on March 12, 2003 (March 12 Order),¹ and we direct a further compliance filing. This order benefits customers by ensuring compliance with the March 12 Order.

II. Background

2. On January 13, 2003, the CAISO filed proposed Amendment No. 48 to amend the CAISO Tariff (Tariff) to provide congestion revenues, wheeling revenues, and revenues from the auction of firm transmission rights (FTRs)² to entities other than Participating Transmission Owners (PTOs), if any such entities fund transmission facility upgrades on the CAISO-Controlled Grid. The CAISO's proposal applied only to projects in which

¹California Independent System Operator Corp., 102 FERC ¶ 61,278 (2003). In an order being issued concurrently with this order, the Commission denies requests for rehearing of the March 12 Order. See California Independent System Operator Corp., 104 FERC ¶ 61,127 (2003).

²In the CAISO, a firm transmission right is a contractual right that entitles the FTR holder to receive, for each hour of the term of the FTR, a portion of any usage charges received by the CAISO from scheduling coordinators for the use of a specific congested inter-zonal interface during a given hour.

the Project Sponsor does not anticipate becoming a PTO, which would then include the costs of the upgrade in its transmission revenue requirement. The CAISO proposed the Tariff amendment in order to allow FPL Energy, LLC (FPLE), which is not a PTO, to be compensated for a recent upgrade to Southern California Edison Company's (SoCal Edison) Blythe-Eagle Mountain transmission line.³ According to the CAISO, the existing Tariff did not expressly provide a means of compensation for any entity other than PTOs, who are able to recover their costs through the CAISO's usage charge and wheeling access charge, along with the proceeds from FTR auctions.

3. The CAISO proposed that, in each instance, the PTO whose facilities were upgraded and the Project Sponsor would negotiate and agree upon the shares of wheeling, congestion revenues and FTR auction revenues to be provided to the Project Sponsor. It further proposed that if, by the date the new capacity is placed in service, the PTO and the Project Sponsor could not agree upon the shares to be provided to the Project Sponsor, they would submit the dispute to arbitration.

4. In the March 12 Order, the Commission rejected the CAISO's proposal for the PTO and Project sponsor to negotiate terms in each instance and instead found that "a Project Sponsor should receive FTRs associated with the full amount of capacity added to the system, as determined through the regional reliability council process. . . ."⁴ The Commission conditionally accepted Amendment No. 48 for filing, subject to the modifications ordered therein, and granted waiver of the notice requirement allow the amendment to become effective on January 13, 2003, the requested effective date. The Commission also directed the CAISO to revise the proposed Tariff and submit a compliance filing within 30 days.

5. On April 11, 2003, as amended on April 16, 2003, the CAISO submitted a compliance filing.⁵ It explains that in Amendment No. 48, it did not propose to allocate "FTRs." Rather, it proposed to allocate FTR auction, wheeling and congestion revenues. The compliance filing allocates those revenues based on the principle articulated in the March 12 Order. Specifically, the compliance filing proposes to add a formula, contained in Section 3.2.7.3(d) of the CAISO Tariff, for determining the Project

³The upgrade increased the amount of FTRs on that path from 72 MW to 168 MW and was placed in service on December 14, 2002.

⁴March 12 Order, 123 FERC ¶ 61,278 at P 21.

⁵The CAISO's April 16, 2003 filing was an errata filing.

Sponsor's share of revenues associated with the upgraded transmission capacity, which the CAISO explains as follows:[⁶]

The Project Sponsor's share is determined by dividing the total capacity of the upgraded line by the incremental amount of new capacity realized through the upgrade. The [PTO's] share is determined by subtracting the Project Sponsor's share from one hundred percent (100%). The [PTO's] share could also be determined by dividing the total capacity of the upgraded line by the rating of the facility prior to the upgrade. As an example:

Rating prior to the upgrade: 400 MW
Rating after the upgrade: 500 MW

Project Sponsor's share: $(500 - 400)/500 = 20\%$
[PTO's] share: $(500 - 400)/500 = 80\%$.

III. Notice of Filing and Pleadings

6. Notice of the CAISO's compliance filing was published in the Federal Register, 68 Fed. Reg. 19,805 (2003), with motions to intervene and protests due on or before May 2, 2003. Notice of the CAISO's errata filing to its compliance filing was published in the Federal Register, 68 Fed. Reg. 22,372 (2003), with motions to intervene and protests due on or before May 7, 2003. Timely protests were filed by Metropolitan Water District of Southern California (Metropolitan) and Transmission Agency of Northern California (TANC). Pacific Gas and Electric Company (PG&E) filed a timely protest, comments and a conditional motion to consolidate.

IV. Discussion

A. Procedural Matters

Rule 213 of the Commission's Rules of Practice and Procedure⁷ prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good

⁶See CAISO's Transmittal Letter at 2-3 (April 11, 2003).

⁷18 C.F.R. § 385.213 (a) (2002).

cause exists to allow the CAISO's answer as it provides additional information that assists the Commission in the decision-making process.

B. Substantive Matters

1. The Intent of the March 12 Order

7. Metropolitan, TANC and PG&E interpret the March 12 Order as directing that a Project Sponsor receive FTRs associated with capacity added to the system. PG&E further requests that the Commission clarify its intentions. The CAISO responds that these parties appear to believe that the Amendment No. 48 compliance filing should provide for the allocation of FTRs. However, it did not propose to allocate FTRs in Amendment No. 48, but proposed instead to allocate FTR auction, wheeling and congestion revenues. Thus, CAISO contends that any allocation of FTRs would be inappropriate.

Commission Determination

8. Although the March 12 Order stated that "a Project Sponsor should receive FTRs associated with the full amount of capacity added to the system, as determined through the regional reliability council process," we meant to refer to the allocation of FTR auction revenues, wheeling revenues and congestion revenues. We did not intend to address the allocation of FTRs themselves. Thus, the CAISO's compliance filing is consistent with our intent in this regard.

2. The Determination of the Rating of the Upgraded Transmission Facility

9. Metropolitan and TANC argue that the CAISO should be required to identify the Western Electricity Coordinating Council (WECC), or its successor, as the source for determining the new rating of the upgraded transmission facility. Metropolitan expresses concern that the CAISO could otherwise assert that the rating is determined through its own process. Further, the CAISO argues that it is unnecessary to revise the Tariff to refer to the WECC process, because the Commission stated that the regional reliability process should apply and that the CAISO agreed. It contends that Amendment No. 48 does not deal with how the rating of the upgraded facility is established.

Commission Determination

10. The March 12 Order expressly determined that the full amount of capacity added to the system would be "as determined through the regional reliability council process." The CAISO does not dispute our determination, and this key provision should be reflected in the compliance filing. Thus, we direct the CAISO to amend Section 3.2.7.3(d) of the Tariff to reference the WECC or its successor.

3. Issues that the Commission Finds Are Beyond the Scope of this Proceeding

11. PG&E raises a number of issues concerning the capacity-based methodology for allocating wheeling revenues that the Commission ordered the CAISO to adopt, including: the methodology incorrectly allocates wheeling revenues to Project Sponsors and disadvantages PTO ratepayers by shifting revenues to Project Sponsors; the CAISO Tariff requires a pro rata cost-based allocation of wheeling revenues; the allocation to a Project Sponsor of a percentage of revenues associated with an upgrade is disproportionately high in comparison to a cost-based allocation;⁸ O&M costs should be deducted from the Project Sponsor's share of any revenues, because the PTO will remain responsible for O&M costs of the upgraded facility; and the allocation methodology requires clarification in a number of respects.⁹ If the Commission does not reject the CAISO's proposal, then PG&E requests that the Commission consolidate the CAISO's compliance filing with the ongoing proceedings in Docket No. ER00-2019, et al., concerning the CAISO's proposed Amendment Nos. 27 and 34 to the CAISO Tariff, in

⁸This was the so-called "free rider" argument, raised by the CAISO in its initial filing of Amendment No. 48, but rejected by the Commission. See March 12 Order, 102 FERC ¶ 61,278 at P 5 and P 21.

⁹PG&E argues that "upgraded transmission facility" is vaguely defined in the CAISO's proposed Tariff revisions, the CAISO does not define how the pre-upgraded capacity of the PTO's facility will be defined, the calculation of the full capacity of a transmission path should not exclude Encumbrances, any revenues allocated to a Project Sponsor should only be a portion of the applicable revenues allocated to the PTO whose facilities are upgraded and not the revenues allocated to other PTOs, and the allocation formula should address the situation where a line de-rate occurs.

which the CAISO's treatment of FTRs and wheeling revenues, and the design of transmission access charges are being litigated.¹⁰

12. The CAISO asserts that the fact that PG&E did not seek of these rehearing issues renders its protest of the compliance filing an impermissible collateral attack on the March 12 Order. The CAISO further argues that it would not be worth the "months" of time and effort that would be required to make PG&E's proposed revisions, which the CAISO characterizes as refinements of the concept in the CAISO Tariff of an upgraded transmission facility, since the allocation methodology provided for in Amendment No. 48 may only be invoked once. The CAISO opposes PG&E's motion to consolidate, but it would be willing to make the treatment of wheeling revenues in Amendment No. 48 subject to the outcome of the proceeding in Docket No. ER00-2019, but prospectively only in order to avoid disruption to affected parties.

Commission Determination

13. None of PG&E's arguments concerning the CAISO's allocation formula pertains to the CAISO's compliance with the March 12 Order's directives. Rather, they are arguments that should have been raised on rehearing but were not. Thus, we reject them as an impermissible collateral attack on the March 12 Order.¹¹ Further, Amendment No. 48 is an interim measure. Nothing in the March 12 Order or this order is intended to prejudge the CAISO's long-term proposals for dealing with wheeling revenues that are at issue in ongoing proceedings.

4. Conclusion

14. Except as discussed above, we find that the CAISO's compliance filing complies with the March 12 Order. Accordingly, we conditionally accept the CAISO's compliance filing, as modified herein, and direct it to file an additional compliance filing within 30 days of the date of this order.

¹⁰The hearing in that proceeding is scheduled to commence in September 2003.

¹¹See, e.g., *Dighton Power Associates Limited Partnership v. ISO New England, Inc.*, 95 FERC ¶ 61,251 at 61,873, reh'g denied, 96 FERC ¶ 61,091 (2001); *Old Dominion Electric Cooperative v. Public Service electric & Gas Co.*, 84 FERC ¶ 61,155 at 61,844 n.16 (1998); *Montana-Dakota Utilities co.*, 81 FERC ¶ 61,298 at 62,407 (1997).

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The Commission orders:

(A) The CAISO's compliance filing is hereby conditionally accepted, as modified, as discussed in the body of this order.

(B) The CAISO is hereby directed to make an additional compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.