

102 FERC ¶ 61, 278
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 No. ER03-407-000

ORDER CONDITIONALLY ACCEPTING TARIFF AMENDMENT
FOR FILING, AS MODIFIED, GRANTING WAIVER OF
NOTICE, AND DIRECTING COMPLIANCE FILING

(Issued March 12, 2003)

I. Introduction

1. In this order, we: (1) conditionally accept for filing, subject to the modifications ordered herein, proposed Amendment No. 48, filed by the California Independent System Operator Corporation (CAISO), to amend the CAISO Tariff (Tariff); (2) grant waiver of the 60-day notice requirement to permit Amendment No. 48, as modified, to become effective on January 13, 2003; and (3) direct the CAISO to make a compliance filing. This order benefits customers by providing certainty to potential investors in transmission upgrades.

II. Background

A. Summary of the CAISO's Filing

2. On January 13, 2003, the CAISO filed Amendment No. 48 to amend the Tariff to provide congestion revenues, wheeling revenues, and firm transmission rights (FTRs)¹

¹In 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

(continued...)

auction revenues 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 applies only to projects in which the Project Sponsor does not anticipate becoming a PTO, which would then include the costs of the upgrade in its transmission revenue requirement. According to the CAISO, this amendment is necessary to compensate FPL Energy, LLC (FPLE) for a recent upgrade to a transmission line owned by Southern California Edison Company (SoCal Edison).

B. FPLE's Upgrade

3. In order to increase the transmission rating on SoCal Edison's Blythe-Eagle Mountain transmission line,² FPLE requested an upgrade of the 161/230 kV transformer at the Eagle Mountain substation. This upgrade increased the amount of FTRs on this path from 72 MW to 168 MW and was placed in service on December 14, 2002.

C. Current Tariff Provisions

4. Presently, the CAISO Tariff provides that a Project Sponsor (*i.e.*, the entity funding an upgrade of the CAISO-controlled grid) is entitled to receive the wheeling revenues attributable to the upgrade and a share of congestion revenues for the capacity added to the system. However, the present Tariff does 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.

5. The CAISO proposes that the PTO whose facilities were upgraded and the Project Sponsor reach an agreement on the shares of wheeling, congestion revenues and FTR auction revenues to be provided to the Project Sponsor rather than automatically providing shares equal to the amount of new capacity. According to the CAISO, upgrading existing facilities may create a "free rider" problem where the capacity associated with the upgraded facility may not be proportional to the investment both

¹(...continued)
inter-zonal interface during a given hour.

²In its motion to intervene and comments, FPLE states that it is developing several exempt wholesale generators in California, including Blythe Energy, LLC (Blythe). Blythe owns and operates a wholesale electric generating facility in Riverside County, California. The Blythe facility will offer power for sale into the CAISO and other markets.

parties have put into the facilities. For example, a PTO may invest tens of millions of dollars in constructing a new transmission line with a rating of 100 MW, while another party may spend far less upgrading the same facility to create an additional 50 MW of new capacity.

6. The CAISO further proposes that if, by date the new capacity is place in service, the PTO and the Project Sponsor cannot agree to the shares to be provided to the Project Sponsor, the parties would submit to arbitration.

D. Amendment No. 48's Proposed Tariff Revisions

7. In Amendment No. 48, the CAISO proposes to amend Sections 3.2.7.3, 7.1.4.3, 7.3.1.6, 7.3.1.7 of the Tariff and create a new Section 9.5.3 of the Tariff to:

- (1) provide the agreed upon share of revenues from the FTR auction to the Project Sponsor;
- (2) direct the PTO and Project Sponsors to agree on the shares of FTR auction, wheeling, and congestion revenues within 90 days of the later of the in-service date of the upgrade or the effective date of the proposed amendment or submit to arbitration pursuant to CAISO Tariff Section 13 to resolve the issue;
- (3) escrow all wheeling, congestion, and FTR auction revenues for the facility that have been upgraded until the revenue shares are finally determined;
- (4) disburse the agreed upon share of wheeling revenues to the Project Sponsor;
- (5) provide the agreed upon share of congestion revenues prior to the FTR auction; and
- (6) provide the agreed upon share of congestion revenues not conveyed through FTRs.

8. The CAISO requests waiver of the 60-day notice requirement in order to permit Amendment No. 48 to become effective on the date of filing (January 13, 2003), in order to provide FPLE with its share of revenues from the FTR auction which was held on January 14, 2003.³

³The CAISO states that in a letter to the CAISO, SoCal Edison indicated that it had reached agreement with FPLE on the allocation shares of congestion and FTR auction revenues, but had not reached agreement on the allocation of wheeling revenues.
(continued...)

III. Notice of Filing, Pleadings and Procedural Matters

9. Notice of the CAISO's filing was published in the Federal Register,⁴ with protests and motions to intervene due on or before January 3, 2003. Timely, unopposed motions to intervene were filed by the entities listed in the Appendix to this order. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁵ the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding.

10. On February 19, 2003, the CAISO filed an answer to the comments and protests, and SoCal Edison filed an answer to Southern Cities' protest. Rule 213 of the Commission's Rules of Practice and Procedure⁶ prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to allow the CAISO's and SoCal Edison's answers as they provide additional information that assists the Commission in the decision-making process.

IV. Discussion

A. Comments

11. The intervenors do not oppose the CAISO's goal of providing compensation to FPLE for its transmission upgrades. But, they argue that the CAISO has not justified Amendment No. 48, and they request several modifications and clarifications to the proposal. Several intervenors request that Amendment No. 48 be rejected and/or that the appropriate allocation methodology be addressed in, or made subject to, the outcome of a technical conference in either this proceeding, a technical conference in the proceeding concerning the CAISO's Comprehensive Market Redesign Proposal (MD02) in Docket

³(...continued)
CAISO's Answer at 15, note 6.

⁴68 Fed. Reg. 3023 (2003).

⁵18 C.F.R. § 385.214 (2002).

⁶18 C.F.R. § 385.213 (a) (2002).

No. ER02-1656, et al., or the Commission's Standard Market Design (SMD) rulemaking in Docket No. RM01-12-000.⁷

12. DWR argues that the CAISO does not explain how its proposal will encourage generation and transmission investment in California. DWR also argues that reliance on the SMD proposed rule is not a reasoned basis for Amendment No. 48, because SMD is not yet a final rule. Williams argues that the CAISO's proposal is a step backwards from MD02 without a clear rationale.

13. Vernon disputes the CAISO's rationale that upgrading existing facilities may create a "free rider" problem, described above. Vernon contends that the PTO, as a practical matter, will have foregone the opportunity to sponsor the transmission expansion itself, and the PTO should not be in the position of reducing the incentives for non-PTOs to fund that transmission.

14. The CAISO responds that nothing in Amendment No. 48 precludes further consideration of the long-term congestion management approach to be determined in either the MD02 proceeding or the SMD rulemaking and the process for compensating non-utility Project Sponsors of transmission upgrades. Thus, it is unnecessary for the Commission to condition the acceptance of Amendment No. 48 on the outcome of these and other dockets. The CAISO expects MD02 and SMD to significantly change the ways FTRs are implemented and allocated, but the CAISO needs tariff authority now to properly compensate FPLE for the money it spent upgrading the transmission network.

15. With respect to the determination and allocation of revenues, several intervenors oppose the methodology proposed by the CAISO and propose alternatives. Vernon argues that non-PTO Project Sponsors should be entitled to wheeling and FTR-related revenues associated with the full amount of incremental transmission capacity that the expansion funded by the non-PTO adds to the system. Sempra argues that the share should be based on system benefits rather than proportional investment. Allocation based on proportional investment will provide incentives to parties to construct only costly upgrades rather than make the most cost-effective upgrade, according to Sempra.

16. Williams proposes an "incremental revenue" approach that it believes would promote the intent of SMD: (1) the project sponsor will receive congestion and FTR

⁷Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,563 (2002).

auction revenues based on the incremental FTRs released by the CAISO; and (2) PTOs would have the first priority to recover their shares of wheeling revenue based on a historical average of the last three years, and surplus wheeling revenues would be allocated to project sponsors.

17. DWR argues that FTRs/CRRs should be allocated only to load. Further, it argues that the proposal is inconsistent with SMD's fundamental recognition that load needs FTR/CRR rights or revenues to protect transmission ratepayers. Oversight Board argues that FTRs should not be auctioned, but instead should be allocated to PTOs and entities that upgrade the CAISO Controlled Grid. It contends that Load Serving Entities should not be forced to bid against entities that have no economic barrier to outbidding all other market participants in the FTR auctions to ensure they receive their needed FTRs.

18. The CAISO responds that the Commission should not mandate an allocation based on incremental additions to the system. The CAISO refers to its "free rider" argument in its original filing, described above. Further, it contends that a number of factors other than a straight incremental capacity analysis may be relevant to the determination, including, but not limited to, the relative contributions of the PTO and the Project Sponsor to the overall increase in capacity; the effect of the upgrade on other lines; the responsibility for future O&M costs, anticipated changes in the CAISO market design or the nature of the facility (*i.e.*, whether it is primarily a radial line); and contractual issues. Also, it asserts that further proceedings on its proposal are unnecessary because the FPLE upgrade was a "somewhat unique circumstance." The CAISO is unaware of additional upgrades to be done by non-PTOs. Thus, the Commission and the parties may expend significant resources trying to develop additional implementation details unique to a situation in which the PTO and the Project Sponsor have, at least in part, reached an agreement. Further, the CAISO states that it has proposed allocating FTRs to load as part of its market redesign initiative. It contends that MD02 is the proceeding in which to investigate long-term structural components of the California and Western markets. In Amendment No. 48, it needed to make FPLE's upgrade work within the existing market framework.

19. Several comments (*e.g.*, DWR, SMUD, TANC, PG&E) argue that the CAISO's proposal is unclear with respect to how the benefits of transmission upgrades would be determined and allocated.⁸ For example: TANC argues that the proposal fails to allocate revenues associated with improvements that increase the capability of the CAISO's

⁸ The CAISO responds by noting that the process to establish a new rating for the upgraded facility is conducted through the Western Electricity Coordinating Council.

facilities due to investment in non-CAISO facilities;⁹ SMUD argues that the cost responsibility and ability to recoup costs paid for transmission upgrades hinges on the determination of which entity is the "beneficiary" of the upgrades, but the term "beneficiary" is not a Tariff-defined term;¹⁰ and PG&E argues that the proposal does not address whether the PTO will be responsible for operation and maintenance (O&M) expenses associated with the upgrade.¹¹

20. Several comments oppose the proposed process for negotiation and arbitration. For example, Dynegy argues that an independent entity should measure the benefits of transmission upgrades and allocate FTRs and/or FTR revenue rights. It also contends that arbitration is slow and cumbersome and inserts the CAISO at the end of the process rather than at the beginning. SoCal Edison argues that the absence of a clear methodology would likely lead to disparate results in similar cases, discourage transmission expansion through uncertainty, and result in increased and unnecessary resort to the arbitration process. Some comments express concern that a PTO would have no incentive to expedite the negotiations or arbitration. They contend that, during litigation, the non-PTO would receive no revenues for the costs of the new transmission that it has funded, while the PTO would be no better or worse off that it was previously. The CAISO responds that the arbitrator would be the independent authority to determine the allocation issue in the event of an impasse. Further, an allocation based on a calculation of the incremental capacity addition may not be appropriate under all

⁹The CAISO responds that TANC's argument fails to account for the benefits to a non-PTO from an upgrade to a CAISO Controlled Grid facility that increases the transfer capacity of a non-CAISO Controlled Grid facility. The CAISO further notes that issues such as the collateral effect of upgrading adjacent grid facilities should await consideration in the market redesign docket (ER02-1656) or as part of the Western regional coordination efforts now underway.

¹⁰The CAISO responds that it is unnecessary to define "beneficiary" in the context of Amendment No. 48. It has not attempted to directly assign the costs of network upgrades to specific beneficiaries. To the contrary, the [CAISO] plans to file an amendment in the near future that would remove the concept of attempting such a direct assignment.

¹¹The CAISO responds that its proposal does not attempt to resolve every issue that could arise in the design, implementation and operation of a transmission upgrade. Certain issues will be resolved in agreements specific to a particular project. However, the CAISO states that it supports including O&M costs for upgrades in the PTO's transmission rates if they assume responsibility for the new facilities.

circumstances. Moreover, the CAISO will make the market aware of the results of the negotiation via a market notice to all market participants. Also, to the extent the Project Sponsor purchases FTRs through the FTR auction, the results are posted on the CAISO website.

B. Commission Determination

21. We agree with intervenors that Amendment No. 48 does not provide the certainty required to encourage investment in transmission upgrades. Further, we agree with Vernon that the "free rider" argument is unconvincing, because the PTO will have had, and foregone, the opportunity to pay for the upgrade itself. We find 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 noted above.¹² The CAISO's proposed Amendment No. 48 to the CAISO Tariff is hereby conditionally accepted for filing, subject to the modifications ordered herein, to become effective on January 13, 2003. The CAISO is hereby directed to revise the proposed Tariff and submit a compliance filing within 30 days of the date of this order.

22. In view of our determination with respect to the allocation issue above, the issues raised concerning the proposed provisions for negotiation and arbitration are moot.

23. In order to permit FPPE to receive compensation related to its transmission upgrade, we will grant the CAISO's request for waiver of the 60-day notice requirement, to allow Amendment No. 48 to become effective, as modified herein, on January 13, 2003.

The Commission orders:

(A) The CAISO's request for waiver of the 60-day notice requirement is hereby granted, as discussed in the body of this order.

(B) The CAISO's proposed Amendment No. 48 to the CAISO Tariff is hereby conditionally accepted for filing, subject to the modifications ordered herein, to become effective on January 13, 2003, as discussed in the body of this order.

¹²We also note that the Commission is making the same determination in an order being issued concurrently. PJM Interconnection L.L.C., Docket No. ER03-405-000.

Docket No. ER03-407-000

- 9 -

(C) The CAISO is hereby directed to revise the proposed Tariff, as discussed in the body of this order, and submit a compliance filing within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Appendix**Intervenors in Docket No. ER03-407-000****I. Timely, Unopposed Motions to Intervene, Comments and Protests**

- * California Department of Water Resources State Water Project (DWR) - motion to intervene and protest;
- * California Electricity Oversight Board (Oversight Board) - motion to intervene and protest;
- * Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (collectively, Southern Cities) - motion to intervene and protest;
- * Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency (collectively, Cities/M-S-R) - motion to intervene and protest;
- * City of Vernon, California (Vernon) - motion to intervene and protest;
- * Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (collectively, Dynegy) - motion to intervene and protest;
- * FPL Energy, LLC (FPLE) - motion to intervene and comments;
- * Metropolitan Water District of Southern California (Metropolitan) - motion to intervene and protest;
- * Pacific Gas and Electric Company (PG&E) - motion to intervene and comments;
- * Sacramento Municipal Utility District (SMUD) - motion to intervene, limited protest and request for clarification;
- * Sempra Energy Resources (Sempra) - motion to intervene and comments;
- * Southern California Edison Company (SoCal Edison) - motion to intervene, comments and request for a technical conference;
- * Transmission Agency of Northern California (TANC) - motion to intervene and limited protest; and
- * Williams Energy Marketing & Trading Company (Williams) - motion to intervene and comments.

II. Timely, Unopposed Motions to Intervene Raising No Substantive Issues

- * Duke Energy North America, LLC and Duke Energy Trading and Marketing, LLC;
- * Mirant Americas Energy Marketing LP, Mirant California, LLC, Mirant Delta, LLC and Mirant Potrero, LLC;
- * Modesto Irrigation District;
- * Northern California Power Agency; and
- * Western Area Power Administration.