

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**California Independent System
Operator Corporation**

**Docket Nos. ER00-2019-006
ER01-819-002
ER03-608-000**

ORDER GRANTING MOTION FOR PARTIAL SUMMARY DISPOSITION

(Issued October 9, 2003)

1. On August 27, 2003, the Southern California Edison Company (“SCE”) filed a Motion for Partial Summary Disposition in this proceeding. The Motion contends that the California Department of Water Resources, State Water Project (“SWP”) had failed as a matter of law to show that the California Independent System Operator Corporation’s Tariff (ISO Tariff) lacks clarity regarding the ISO’s policy as to what facilities’ costs may be included in a Participating Transmission Owner’s (“TO”) Transmission Revenue Requirement (“TRR”) and thus in the ISO’s Transmission Access Charges. SCE argues that the costs of facilities under ISO Operational Control can be included in a Participating TO’s TRR and that the ISO’s policy as to what facilities can be turned over to ISO Operational Control mirrors FERC policy and thus cannot be found to be unjust and unreasonable.
2. On September 11, 2003, SWP and the Pacific Gas & Electric Company (PG&E) both filed their answers to the subject motion. SWP essentially argues that there are still genuine material issues of fact in dispute regarding which facilities are to be included in the ISO’s rates and charges. Specifically, SWP argues that its testimony in response to the ISO places squarely in material dispute the issue of which criteria and what policy, if any, guide the ISO’s determinations of facilities over which it will exercise operational control, and correspondingly which facilities will be included in the ISO’s transmission rates. PG&E’s answer supports SCE’s Motion based on recent Commission guidance that this Order discusses more fully below.
3. Some procedural background is helpful in addressing this dispute. In the ISO’s filing in this docket, the ISO amended the definition of TRR to clarify that “[t]he costs of any transmission facility turned over to the Operational Control of the ISO shall be fully included in the Participating TO’s TRR.” ISO Tariff, Master Definition Appendix. This approach was similar to the ISO’s original Access Charge proposal. The Commission

described the ISO's original Transmission Access Charge proposal as follows:

The Access Charge is designed to recover the transmission revenue requirement associated with the facilities that the Participating Transmission Owners transfer to the ISO.

Pacific Gas and Elec. Co., 81 FERC ¶ 61,122 at 61,500. (1997). The standard for which facilities may be turned over to ISO Operational Control was originally found only in the Transmission Control Agreement (TCA) among the ISO and all Participating TOs. The Commission ruled on October 30, 1997 that the TCA controls what facilities are placed under ISO Operational Control. The Commission explained that the TCA "specifies: 1) the transmission facilities that are to be transferred to the ISO's control; and 2) the extent of the ISO's operational control." *Id.* at 61,559. In this proceeding, the ISO amended Section 3.1 of the ISO Tariff to state what facilities a New Participating TO should turn over to the ISO's Operational Control. SCE has argued that such amendment is consistent with the TCA. The ISO Tariff, however, does not contain a general standard, like the TCA, for what facilities may be turned over to ISO Operational Control.

4. On June 2, 2003, SWP filed testimony arguing that to "provide transparency and certainty, the ISO Tariff should contain a clear description of the ISO's standards and criteria to determine whether [] facilities will be accepted for ISO Control and/or in ISO Transmission Access Charge rates." Exh. SWP-1 at 47:16-19. SWP also proposed new standards for determining what facilities should be accepted for ISO Operational Control and thus included in ISO Transmission Access Charge rates. Specifically, SWP sought, among other things, to exclude certain facilities from ISO Operational Control by classifying those facilities as generation-ties, rather than as network transmission, under a standard similar to the primary-use test adopted by Administrative Law Judge Peter Young in Docket No. ER99-2326¹ and the standard applied to certain PG&E facilities in wholesale transmission rates prior to PG&E's filing of an open access tariff pursuant to Order No. 888.

5. SCE moved on July 3, 2003 to exclude the issue of what facilities are appropriately placed under ISO Operational Control and how that process works on the grounds that such issue was not within the province of the ISO Tariff, but was determined by the TCA. At Oral Argument on July 16, 2003, the SWP represented that the scope of the facilities is an important issue relevant to the Transmission Access Charge formula at issue in this proceeding. Also, Staff reported that the Commission had yet to provide guidance regarding the issue of whether the scope of facilities is an underlying prerequisite to the justness and reasonableness of the Transmission Access Charge through its ruling on Judge Young's Initial Decision in Docket No. ER99-2326. The

¹ Pacific Gas and Elec. Co., 97 FERC ¶ 63,014 (2001).

undersigned Presiding ALJ thus denied SCE's Motion to Limit the Scope of the Proceeding without prejudice at Oral Argument on July 16, 2003, indicating that SCE could refile its motion if the Commission provided further guidance supporting SCE's position on this issue.

6. On August 28, 2003, the Commission provided further guidance on this issue in Opinion No. 466. Declining to adopt the primary-use test, the Commission ruled that:

The Commission finds that the Initial Decision erred in deciding which facilities were to be included in PG&E's TO-3 rate base (Transmission Revenue Requirement) based on whether these facilities should be classified as transmission or generation under our pre-ISO precedent. The relevant question now is simply whether operational control of the facilities was transferred to the ISO. If control was turned over, the facilities should be included in the TO-3 base. If it was not, they must be excluded.²

7. On October 7, 2003, the undersigned Presiding ALJ held Oral Argument on SCE's Motion for Partial Summary Disposition and responsive pleadings. Relying on the guidance provided by the Commission in Opinion No. 466, the undersigned Presiding ALJ granted SCE's Motion. Opinion No. 466 is clear that the cost of all facilities under ISO Operational control can be included in a Participating TO's TRR and thus in the ISO's Access Charges. The undersigned Presiding ALJ indicated that while it is strongly recommended that the ISO include the relevant language regarding the standard for facilities that could be turned over to ISO Operational Control in its Tariff, in addition to the TCA, that the TCA was nevertheless sufficient under the facts of this case to provide the parties with notice of the applicable ISO standard regarding this issue.

8. The undersigned Presiding ALJ also determined that SWP should be permitted to seek interlocutory appeal on this ruling. If determined necessary, prompt guidance from the Commission would ensure that the issue could be addressed during the course of the currently scheduled October 21, 2003, hearing without further delay.

9. Accordingly, for the reasons set forth herein above, SCE's Motion for Partial Summary Judgment is hereby granted.

SO ORDERED.

Bobbie J. McCartney
Presiding Administrative Law Judge

² Pacific Gas and Elec. Co., 104 FERC ¶ 61,226 at P 13 (2003).