

109 FERC ¶ 61,098
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. ER03-407-004

ORDER REJECTING COMPLIANCE FILING
AND DIRECTING FURTHER COMPLIANCE FILING

(Issued October 29, 2004)

1. In this order, we reject a compliance filing by California Independent System Operator Corporation (ISO) and direct a further compliance filing.¹ This order benefits customers by further clarifying the Commission's policy concerning compensation to non-transmission owners who sponsor upgrades to transmission facilities on the ISO-Controlled Grid.

Background

2. On January 13, 2003, the ISO filed proposed Amendment No. 48 to amend the ISO 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, if any such entities fund transmission facility upgrades on the ISO-Controlled Grid. The ISO's proposal applied only to projects in which the Project Sponsor does not anticipate becoming a Participating Transmission Owner, which would then include the costs of the upgrade in its transmission revenue requirement. The ISO proposed the Tariff amendment in order to allow FPL Energy, LLC (FPL Energy), which is not a Participating Transmission Owner, to be compensated for a recent upgrade to

¹ See *California Independent System Operator Corp.*, 104 FERC ¶ 61,128 (2003) (July 25 Order) (conditionally accepting compliance filing and directing further compliance filing).

²In the ISO, 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 ISO from scheduling coordinators for the use of a specific congested inter-zonal interface during a given hour.

Southern California Edison Company's (SoCal Edison) Blythe-Eagle Mountain transmission line. The ISO stated that the upgrade increased the amount of FTRs on that path (Path 59) from 72 MW to 168 MW and was placed in service on December 14, 2002. According to the ISO, the existing Tariff did not expressly provide a means of compensation for any entity other than Participating Transmission Owners, who are able to recover their costs through the ISO's usage charge and wheeling access charge, along with the proceeds from FTR auctions.

3. In its March 12, 2003 Order,³ the Commission rejected the ISO's proposal for the Participating Transmission Owner and Project sponsor to negotiate terms in each instance and instead determined 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 directed the ISO to reflect the Commission's determination in a compliance filing.

4. In its compliance filing submitted in April 2003, the ISO explained 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 proposed to allocate those revenues based on the principle articulated in the March 12 Order, as follows:

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 [Participating Transmission Owner's] share is determined by subtracting the Project Sponsor's share from one hundred percent (100%). The [Participating Transmission Owner'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: $(500 - 400)/500 = 20\%$
 Participating Transmission Owner's share: $(500 - 400)/500 = 80\%$.

³ *California Independent System Operator Corp.*, 102 FERC ¶ 61,278 (2003) (March 12 Order).

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

5. In the July 25 Order, the Commission clarified that it had meant in the March 12 Order to refer to the allocation of FTR auction revenues, wheeling revenues and congestion revenues. It had not intended to address the allocation of FTRs themselves. It found that the ISO's compliance filing was consistent with the intent of the March 12 Order in this regard.⁵

6. However, the July 25 Order found that the compliance filing did not reflect the March 12 Order's determination that "the full amount of capacity added to the system would be 'as determined through the regional reliability council process.'"⁶ Thus, the Commission directed the ISO to amend section 3.2.7.3(d) of the Tariff to reference the Western Electricity Coordinating Council (WECC) or its successor.

7. On August 25, 2003, the ISO submitted its compliance filing. It adds the reference to the WECC or its successor, as required by the Commission. However, the ISO contends that, in some instances, a determination of the amount of new capacity added to the system based on subtracting the old (pre-upgrade) rating of the facility from the new (post-upgrade) rating may not be clear and may not be just and reasonable. According to the ISO, the WECC's rating process focuses on defined "Paths," while some transmission facility upgrades may not be limited to such Paths. The ISO further contends that the definition of Path 59 changed contemporaneously with the process of the Blythe Energy upgrade that was the impetus for Amendment No. 48. According to the ISO, the WECC changed the rating for Path 59 from 72 MW to 218 MW as a result of two contemporaneous, but separate, factors: (1) the physical upgrade of the facilities between Blythe and Eagle Mountain; and (2) the redefinition of the location of Path 59.

8. Prior to the upgrade, the ISO states that Path 59 was defined as the path between the Blythe (SoCal Edison) substation and Eagle Mountain substations, and the path's rating was 72 MW. It states that, after the upgrade, the transfer capability between Blythe (SoCal Edison) and Eagle Mountain was 168 MW. The ISO further states that contemporaneous with the upgrade, the WECC changed the definition of Path 59 from the interface between the Eagle Mountain and Blythe (SoCal Edison) substations to the interface between the Blythe (SoCal Edison) and Blythe (Western) substations.⁷ As a result, the WECC determined the new rating of the re-defined Path 59 to be 218 MW.

⁵ July 25 Order, 104 FERC ¶ 61,128 at P 8.

⁶ *Id.* at P 10.

⁷ We interpret the ISO's reference to "(Western)" to be a reference to Western Area Power Administration.

9. According to the ISO, simply using the change in rating of the path could lead to the conclusion that the amount of capacity added to the system was 146 MW (*i.e.*, 218 MW - 72 MW = 146 MW). However, it argues that only 96 MW of this capacity can be considered to be physically added to the system. It argues that the other 50 MW increase in the path's rating does not represent capacity added to the system, but rather is directly attributed to the WECC's redefinition of the path to incorporate the amount of power that can flow across the new Path 59 to serve the load at Blythe into the new rating. Thus, the ISO asserts that FPL Energy is entitled to revenues associated with the 96 MW of capacity added to the system as a result of the Blythe-Eagle Mountain upgrade, but not for the 50 MW increase in the rating of Path 59 which the ISO contends was only the result of the WECC re-defining the path. The ISO argues that an entity should not be allocated capacity that is not created by a physical change to the network but only created "on paper." Therefore, the ISO proposes to add the following sentence at the end of section 3.2.7.3(d) of the ISO Tariff:

The full amount of capacity added to the system will be *based on the physical addition to the transfer capability* as determined through the regional reliability council process of the Western Electricity Coordinating Council or its successor. [Emphasis added.]

Notice of Filing and Responsive Pleadings

10. Notice of the ISO's compliance filing was published in the *Federal Register*,⁸ with interventions and protests due on or before September 15, 2003. Metropolitan Water District of Southern California (Metropolitan) filed timely comments. FPL Energy filed a timely protest and motion to reject. On September 30, 2003, SoCal Edison filed an answer.

11. Metropolitan agrees with the ISO that the net increase in Path 59's rating due to new facilities should be 96 MW. However, it asserts that, under the ISO's proposed language "based on the physical addition to the transfer capability," the ISO would be able to reach a different determination of the net physical addition than that reached through a WECC path-rating process. Metropolitan argues that the July 25 Order directed that the regional reliability council process be the forum to make all such determinations.

12. FPL Energy argues that the ISO's compliance filing should be rejected, because it goes beyond the narrow compliance directive in the July 25 Order. It asserts that the ISO did not seek rehearing of the July 25 Order and that the ISO's compliance filing is either

⁸ 68 Fed. Reg. 52,760 (2003).

an impermissible collateral attack on the July 25 Order or a Federal Power Act section 205 filing in the guise of a compliance filing. FPL Energy argues that the March 12 Order removed ISO and third-party discretion and directed that the amount of capacity added to the system be determined through the regional reliability council process.

13. Further, FPL Energy argues that the original agreement between SoCal Edison and Blythe, which was reflected in the ISO's original filing that the March 12 Order rejected, reflected those parties' agreement that the upgrades paid for by Blythe increased the rating on Path 59 from 72 MW to 218 MW and that the 218 MW rating included a reservation of 50 MW for SoCal Edison load to be served from Blythe. In support, FPL Energy attaches two letters from SoCal Edison to the ISO (dated December 5, 2002 and January 9, 2003) in which SoCal Edison refers to an increase in the Path 59 rating to 218 MW, including a reservation of 50 MW for SoCal Edison's load to be served from the Blythe substation, as a result of the system upgrades. According to FPL Energy, SoCal Edison and Blythe agreed that the path rating increase associated with the SoCal Edison Blythe load would be allocated such that the Blythe upgrade would be credited with the SoCal Edison Blythe minimum load of 15 MW which was present all hours of the year, and the SoCal Edison Blythe load above the minimum load would not be credited to either party. However, FPL Energy argues that when the Commission rejected the ISO's original proposal that the methodology be determined by agreement or arbitration, it also implicitly rejected the SoCal Edison-Blythe agreement.

14. FPL Energy contends that the ISO's proposal would let the transmission owner, SoCal Edison, receive all of the 50 MW benefit of the new capacity. However, FPL Energy asserts that, but for Blythe's transmission investment and proposal to the WECC, the Path 59 rating would not have been changed. It argues that the ISO's proposal is inequitable as well as contrary to the Commission's orders. FPL Energy further argues that giving the ISO discretion as to what upgrade may have increased the physical transfer capability of a transmission line may not provide enough certainty to encourage investment in transmission upgrades, which the Commission stated was the basis for its original modification of the ISO's proposal.

15. SoCal Edison responds that FPL Energy seeks to receive revenues associated with additional capacity that occurred as the result of changes on the ISO system that had nothing to do with the transmission upgrade sponsored by FPL Energy. It argues that the installation of a new transformer at the Eagle Mountain substation and the redefinition of Path 59 by the WECC were completely independent events, with the redefinition of Path 59 being the result of the WECC's standards and practices rather than the result of the upgrade at the Eagle Mountain substation. With respect to the WECC's redefinition of Path 59, SoCal Edison asserts the following:

During the same period [of the upgrade of the Eagle Mountain substation], WECC was working on revising the rating and the definition of Path 59. WECC decided to revise the path definition for Path 59 because a WECC Path is typically located between two Control Areas, and the pre-existing definition of Path 59 did not meet this criterion. Accordingly, WECC redefined Path 59 as a path that “runs” from Blythe WAPA to Blythe [SoCal] Edison, as opposed to [a path from] Blythe WAPA to Eagle Mountain Substation.⁹

Discussion

A. Procedural Matters

16. Rule 213 of the Commission's Rules of Practice and Procedure¹⁰ prohibits answers to protests unless otherwise permitted by the decisional authority. We find that good cause exists to allow SoCal Edison's answer as it provides additional information that assists the Commission in the decision-making process.

B. Substantive Matters

17. We agree with FPL Energy that, instead of raising the issue of the redefinition of Path 59 for the first time in its compliance filing, the ISO should have raised the issue in a request for rehearing of the July 25 Order, but failed to do so. Although we could, on that basis, treat the compliance filing as an impermissible collateral attack on the July 25 Order, we will address the compliance filing in order to provide certainty concerning the compensation issue, which, in turn, should encourage investment in transmission upgrades.

18. The intent of the July 25 Order was that the regional coordinating council should be the forum for determining the full amount of capacity added to the system by the upgrade to transmission facilities. This was consistent with the March 12 Order's determination that the certainty of a known methodology for determining compensation in the ISO Tariff would encourage investment in transmission upgrades. To the extent that the ISO proposes to give itself discretion, outside of the regional reliability council process, to determine the amount of transmission capacity added by an upgrade to transmission facilities on the ISO-Controlled Grid, we reject the compliance filing as inconsistent with the July 25 Order. Further, we need not address whether the redefinition of Path 59 affects the compensation due FPL Energy. To the extent that the

⁹ SoCal Edison's Answer at 3.

¹⁰ 18 C.F.R. § 385.213(a) (2004).

ISO has such concerns about the WECC's re-rating of Path 59 resulting from FPL Energy's upgrade, the ISO should pursue the matter with the WECC. This, too, is consistent with the Commission's prior determinations in this proceeding that the regional reliability council process be the forum for determining the amount of capacity added to the system by the upgrade.

C. Conclusion

19. Based on the discussion above, we reject the ISO's compliance filing and direct the ISO to revise its proposed last sentence of section 3.2.7.3(d) of the ISO Tariff by removing "based on the physical addition to the transfer capability," so that the revised sentence reads as follows:

The full amount of capacity added to the system will be as determined through the regional reliability council process of the Western Electricity Coordinating Council or its successor.

20. The ISO shall submit a revised compliance filing within 30 days of the date of this order.

The Commission orders:

(A) The ISO's compliance filing is hereby rejected.

(B) The ISO is hereby directed to file a further 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.