UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

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

ORDER ACCEPTING TARIFF REVISIONS SUBJECT TO MODIFICATION

( )

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.

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 its utility functions. In July 2003, the Commission approved that alternative definition of "PTO Service Area". Therefore, the

---

[1] 16 U.S.C. § 824d (2000).

[2] Docket No. ER98-3760-008.

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 includes 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.

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]

1. 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. 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

---

[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).

[4] Generally, the Transition Charge permits the collection of charges from

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 TAC is being paid by the Original Participating TO, who in turn would allocate the TAC 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 the 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, 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.

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

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

---

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.

> 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 a 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.

3. 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.

4. 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 it 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.

Secretary

Transmittal Sheet

05/05/04 Agenda
E-24
OMTR
OGC

CASE NAME:	California Independent System Operator, Inc.
DOCKET NO.:	EC03-27-002
ORDER TITLE:	Order Denying Rehearing
ACTION DATE:	N/A
CONTACT:	Jignasa Gadani OGC Team Member, x8608
	David Lengenfelder OMTR Team Member - West, x8351
	Janice Macpherson OGC Reviewer, x8921
	James Akers OMTR Reviewer, x8101
	Jamie Simler OMTR Reviewer, x8383

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners:

California Independent System Operator Docket No. EC03-27-002

ORDER DENYING REHEARING

( )

1. On February 24, 2003, the State Water Project of the California Department of Water Resources (SWP) sought rehearing of the Commission's order authorizing the acquisition by the California Independent System Operator Corporation (ISO) of scheduling rights on certain assets used for transmission in interstate commerce from the California Cities of Anaheim, Azusa, Banning and Riverside (Southern Cities).[1] We deny the request for rehearing, as discussed below.

2. This order benefits customers because it expands the scope of the ISO, thereby enhancing reliability and operation of the transmission grid, which in turn helps to make electric power markets more competitive.

I. Background

3. The Southern Cities sought to become Participating Transmission Owners in the ISO by transferring to it operational control of their transmission assets. The Southern Cities could only transfer to the ISO their scheduling rights to use the Southern Cities' share of a given line's transfer capability, because most of their transmission assets were Entitlements[2] and Encumbrances[3] over facilities for which the Southern Cities are not

---

[1] California Independent System Operator Corporation, 102 FERC ¶ 61,058 (2003) (January 24 Order).

[2] Entitlements are "[t]he right of a Participating TO obtained through contract or other means to use another entity's transmission facilities for the transmission of Energy." Master Definitions Supplement, Transmission Control Agreement, Appendix D.

[3] An encumbrance is "[a] legal restriction or covenant binding on a Participating TO that affects the operation of any transmission lines or associated facilities and which

operating agents and that were not in the ISO Control Area. The ISO compensates the Southern Cities for the use of their transmission assets by paying the Southern Cities' Transmission Revenue Requirements (TRRs), which the ISO recovers from its transmission customers through its Transmission Access Charge and Wheeling Access Charge (transmission rates and charges).[4]

4. The ISO filed an application under to section 203 of the Federal Power Act (FPA)[5] seeking Commission authorization to acquire control of these scheduling rights. The ISO submitted a corresponding rate filing in Docket Nos. ER03-218-000 and ER03-219-000.

5. The January 24 Order reviewed the proposed transaction under the Merger Policy Statement[6] and concluded that it was consistent with the public interest. The Commission found that the transaction would benefit competition because it would give the ISO control over the Southern Cities' entitlements to transmission facilities used in interstate commerce. The Commission stated that "participation in regional organizations such as ISOs and Regional Transmission Organizations (RTOs) is pro-competitive and anticompetitive effects are unlikely to arise from such transactions."[7] The January 24 Order also found that other benefits of ISOs and RTOs included market power mitigation and better management of grid congestion. The Commission noted that even if there is an increase in rates for some customers, "the transaction can still be consistent with the

---

the ISO needs to take into account in exercising Operational Control over such transmission lines or facilities if the Participating TO is not to risk incurring significant liability. Encumbrances shall include Existing Contracts and may include: (1) other legal restrictions or covenants meeting the definition of Encumbrance and arising under other arrangements entered into before the ISO Operations Date, if any; and (2) legal restrictions or covenants meeting the definition of Encumbrance and arising under a contract or other arrangement entered into after the ISO Operations Date." Master Definitions Supplement, Transmission Control Agreement, Appendix D.

[4] See the ISO's application filed on December 2, 2002 at 2-3.

[5] 16 U.S.C. § 824b (2000).

[6] Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (Dec. 30, 1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FER ¶ 61,289 (2001).

[7] January 24 Order at P 11.

public interest if there are countervailing benefits from the transaction."[8] We explained that the benefits of the increased scope of an ISO include the reduction or elimination of rate pancaking, increased competitive options for transmission customers, enhanced reliability and enhanced operation of the transmission grid for all market participants.

6. SWP contends that the January 24 Order failed to set certain issues of material fact for an evidentiary hearing.[9] SWP asks the Commission to reverse its January 24 Order and set for hearing the following issues: (1) whether certain of Southern Cities' facilities should be transferred, and therefore be subsidized through transmission rates, if they are generation tie facilities; (2) whether ISO ratepayers would be able to schedule transmission through the ISO over all the Southern Cities' facilities to be paid for in ISO rates; (3) the need for a full accounting of the cost to ISO ratepayers, including but not limited to effects on a) Grid Management Charges and b) reliability costs borne through socialized ISO rates; and (4) whether the ISO's treatment of Firm Transmission Rights (FTRs)[10] for the Southern Cities is appropriate in terms of cost consequences and potential discriminatory impacts on other market participants.

II. Discussion

7. We do not believe that a trial-type evidentiary hearing is necessary in this proceeding. The Commission is not required to hold a trial-type evidentiary hearing in every case, but may act summarily on the pleadings.[11] The Commission has found that a

[8] Citing to Merger Policy Statement at 30,114 and TRANSLink Transmission Company, L.L.C., 99 FERC ¶ 61,106 at 61,474 (2002).

[9] SWP also contends that the Commission failed to consider its answer filed on January 17. The January 17 filing was an answer to the ISO's answer to SWP's December 20, 2001 protest. We do not believe that the failure of the January 24 order to address SWP's January 17 filing harmed SWP. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), which prohibits an answer to an answer unless otherwise ordered by the decisional authority. Furthermore, the 4-page filing by SWP raised no new issues.

[10] An FTR is a contractual right, subject to the terms and conditions of the ISO Tariff, that entitles the FTR Holder to receive, for each hour of the term of the FTR, a portion of the Usage Charges received by the ISO for transportation of energy from a specific originating Zone to a specific receiving Zone and, if there is an uneconomic curtailment to manage Day-Ahead congestion, to a Day-Ahead scheduling priority higher than that of a schedule using Converted Rights capacity that does not have an FTR.

[11] See Century Power Corporation, 53 FERC ¶ 61,240 at 61,991, order on reh'g, 56 FERC ¶ 61,083 (1991); Florida Gas Transmission Company, 91 FERC ¶ 61,052 at 61,186 (2000); and Moreau v. FERC, 982 F.2d 556 (D.C. Cir. 1993).

trial-type evidentiary hearing requires an adequate proffer of evidence that such hearing is warranted, i.e., more than mere allegations on the part of a requesting party.[12] As discussed below, none of the issues merits a trial-type hearing.

A. Allocation of FTRs[13]

8. SWP asks the Commission to investigate the ISO's allocation of FTRs to the Southern Cities. SWP argues that the ISO allocated FTRs to the Southern Cities as consideration for the transfer without complying with the ISO Tariff provision and regulatory requirements. SWP states that the ISO did not disclose the amount of FTRs allocated to the Southern Cities, so SWP has no way of knowing how this allocation would affect its ability to obtain FTRs if it converts its transmission contracts.

9. We disagree; the ISO appropriately allocated FTRs to the Southern Cities in accordance with the Section 9.4.3 of the ISO Tariff. The Commission has found that the ISO's treatment of FTRs is reasonable, and may be used as a balance of incentives intended to encourage transmission owners to join the ISO.[14]

10. With regard to SWP's concern about the ISO's lack of disclosure of the amount of FTRs allocated to the Southern Cities, we find that the ISO provided adequate detail regarding the FTRs given to the Southern Cities for each of their transmission entitlements.[15] With respect to SWP's concern regarding its possible future allocation of FTRs from the ISO, if SWP decides to convert its entitlements, as noted above, we previously found that the allocation of FTRs by the ISO is reasonable. While the Southern Cities' receipt of FTRs may affect FTRs available to SWP, that does not make the transaction inconsistent with the public interest; the public interest does not require

---

[12] See South Carolina Electric & Gas Co., 56 FERC ¶ 61,379 at 62,440 (1991) citing to Woolen Mills Associates v. FERC, 917 F.2d 589, 592 (D.C. Cir. 1990); see also Florida Gas Transmission Company, 91 FERC ¶ 61,052 at 61,186 (2000) ("the requesting party must make allegations of material fact, provide adequate evidence in support of the allegations, and show that the material facts are in dispute").

[13] The FTR allocation issue raised by SWP is primarily rate issue that should have been addressed in a rate proceeding, not a section 203 proceeding. In this particular situation, we recognize that we committed to address this issue but failed to do so in the rate proceeding. Therefore, in this situation we will address the issue in this order.

[14] California Independent System Operator Corporation, 91 FERC ¶ 61,205 at 61,726 (2000), order on reh'g, 104 FERC ¶ 61,062 at P 29 (2003).

[15] See Attachment C to the ISO's January 14, 2003 answer, which lists the FTRs given to the Southern Cities for each of their entitlements.

that FTRs be "held open" for an entity because that entity may decide in the future to convert its entitlements.

11. With respect to the process for allocating FTRs, SWP raises arguments similar to those being addressed in Docket No. ER00-2019-000. In that docket, the Initial Decision addresses whether the process for allocating FTRs pursuant to Section 9.4.3 of the ISO Tariff is unreasonable and unduly discriminatory.[16] We need not resolve the issue here, since it is not relevant to whether the transaction is consistent with the public interest under section 203.

B. Generation Tie Facilities

12. SWP asserts that the January 24 Order disregarded evidence showing that some of the facilities at issue are generation tie facilities. SWP argues that the ISO's acceptance of generation tie facilities as part of the ISO-controlled grid violates Commission precedent, ISO Tariff provisions and ISO agreements. SWP essentially objects to the inclusion of the costs of these facilities in the Southern Cities' TRR, and thus in the ISO's transmission rates and charges, saying that this will increase the transmission rates and charges SWP pays, while subsidizing the transmission rates and charges paid by the Southern Cities.

13. We address in Section D of this order the SWP's argument that its transmission rates will increase if the Commission allows the transfer of Southern Cities' entitlements to generation tie facilities to the ISO. However, in Docket No. EL03-14-000, et al., the Commission approved a settlement agreement that resolved whether it was appropriate to include the recovery of the entitlements to certain facilities of the Cities of Azusa and Banning in their TRRs.[17] The Commission conditionally resolved all issues concerning TRRs for the Cities of Anaheim and Riverside, "subject to the establishment of evidentiary hearing procedures to address and resolve whether the TRRs should include costs associated with those Cities' entitlements in facilities referred to as the Northern Transmission System and the Southern Transmission System, and related transmission agreements between those Cities and the Los Angeles Department of Water and Power (LADWP)."[18] Therefore, we deny SWP's request for rehearing on this issue.

C. Effect of Transfer on Competition

---

[16] California Independent System Operator Corporation, 106 FERC ¶ 63,026 (2004).

[17] City of Azusa, California et al., 105 FERC ¶ 61,293 (2003) (the hearing is scheduled to begin on May 4, 2004).

[18] Id.

14. The January 24 Order found that the proposed transaction would not harm the generation markets because it did not involve a change in ownership or control of generation facilities, but a transfer of control over entitlements to transmission facilities.[19] In addition, the Commission found that based on Order No. 642 and Commission precedent, "participation in regional organizations such as ISOs and [RTOs] is pro-competitive and anticompetitive effects are unlikely to arise from such transactions."[20]

15. SWP argues that there is harm to competition because of subsidization of the Southern Cities' entitlements associated with generation tie facilities.[21] We note that SWP's argument assumes that the Riverside and Anaheim facilities at issue in Docket Nos. EL03-15-000 and EL03-20-000 are generation tie facilities. As noted above, this factual determination has been set for hearing in those dockets.[22] In an earlier order, the Commission granted SWP's request that the Commission make the proceeding subject to refund.[23] Thus, if the Riverside and Anaheim facilities at issue are found to be generation tie facilities, the Commission can provide for refunds in those dockets for any excess transmission rates and charges paid by the transmission customers of the ISO. Therefore, we deny SWP's rehearing request on this issue.

D. Effect of Transfer on Rates

16. SWP asserts that the ISO accepted generation tie facilities as part of the ISO controlled grid and that this will increase SWP's transmission rates. SWP alleges that there is no evidence that ISO customers bearing the increased costs associated with Southern Cities' facilities will benefit from reduced rate pancaking, or that the competitive options for these customers will increase. SWP asserts that, on the other hand, there is evidence that "no customers may benefit from these facilities – even if the ISO does develop the capability to schedule them – because no customers may have any interest in using facilities that serve only to connect the Southern Cities' generation

---

[19] January 24 Order at P 11.

[20] January 24 Order at P 11 and n.9.

[21] SWP also contends that the Commission mistakenly said in the January 24 Order that "[n]o party alleges an adverse effect on competition." We recognize this mistake. However, it was a harmless error, since we properly found the transaction does not harm competition since we are addressing SWP's arguments in this order.

[22] City of Azusa, California, et al., 105 FERC ¶ 61,293 (2003), reh'g denied, 106 FERC ¶ 61,143 (2004).

[23] City of Azusa, California, et al., 102 FERC ¶ 61,153 (2003).

output to the grid."[24] SWP argues that further there is no evidence that ISO control creates a more reliable, enhanced or more efficient grid.

17. The January 24 Order noted that the ISO made scheduling rights on the Southern Cities' entitlements available to market participants.[25] Furthermore, as explained in the January 24 Order, the Commission has found that even if rates increase for some customers, the transaction can still be consistent with the public interest if there are countervailing benefits from the transaction.[26] The increased participation in ISOs and RTOs produce the following benefits: market power mitigation, better management of grid congestion, reduction or elimination of rate pancaking, increased competitive options for transmission customers, and enhanced reliability and the operation of the transmission grid for all market participants. With the transfer of these facilities and entitlements, market participants in California now have access to a broad spectrum of resources in Nevada, Arizona and Utah.[27] Additionally, in Order No. 2000 the Commission found with considerable discussion that the benefits of RTO formation overall outweigh the costs.[28] Therefore, we deny SWP's request for rehearing on this issue.

18. Next, SWP contends that the examination of the justness and reasonableness of Southern Cities' TRR in Docket No. EL03-14, et al. does not excuse the January 24 Order's failure to consider cost consequences of the transfer of Southern Cities' facilities to the ISO. SWP believes that the Commission must examine as part of its section 203 analysis the nature and extent of such costs.

19. We disagree. As discussed above, the benefits of this transaction outweigh any

---

[24] SWP's request for rehearing at 20.

[25] See December 16, 2002 market notice.

[26] See Northeast Utilities Service Co. v. FERC, 993 F.2d 937 at 945 (1st Cir. 1993).

[27] See ISO Answer at 6.

[28] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999) at 31,017 and 31,036, order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), appeal dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000); see also Avista Corp., et al., 95 FERC ¶ 61114 at 61,324, reh'g granted in part and clarified in part, 96 FERC ¶ 61, 058 (2001). See also Merger Policy Statement at 30,114; TRANSLink Transmission Company, L.L.C, 99 FERC ¶ 61,106 at 61,474 (2002); International Transmission Company, et al., 97 FERC ¶ 61,328 at 62,538 (2001).

rate increases that result from the transaction, and in the pending TRR docket, EL03-14, et al., and Grid Management Charge proceeding, the Commission will ensure that any increase is not unjust and unreasonable.[29] Thus, we deny SWP's request for rehearing on this issue.

The Commission orders:

SWP's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

Secretary

[29] Moreover, we note that the costs associated with the Reliability Support requirement of the ISO has not changed because the transferred facilities are outside the ISO Control Area.