

106 FERC ¶ 61, 147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeene G. Kelly.

California Independent System Operator Corporation

Docket No. EL04-24-000

ORDER ESTABLISHING SCHEDULE FOR SUBMISSION OF PLEADINGS

(Issued February 17, 2004)

1. In this order, we establish a schedule for the submission of pleadings in response to a Petition for Review of Arbitrator's Award in American Arbitration Association Case No. 71 Y 198 00420 1.

Background

2. The California Independent System Operator Corporation (ISO), following an Arbitrator's Award in favor of San Diego Gas & Electric Company (SDG&E), filed a Petition for Review (Petition) of the Award. At issue is whether the ISO may charge SDG&E for transmission losses on schedules that SDG&E submits for facilities that are within the ISO Control Area according to the terms of the ISO Tariff.

3. In 1998, as part of California's electric market restructuring, SDG&E transferred operational control of its transmission facilities and entitlements to the ISO. As required, SDG&E provided the ISO with registry data for the ISO's official record of facilities turned over to the operational control of the ISO, and listed its existing contracts with Arizona Public Service (APS) and Imperial Irrigation District (IID) as Encumbrances affecting the ISO's operational control of Southwest Power Link (SWPL).¹ Subsequent to SDG&E's transfer of its transmission facilities and entitlements to the ISO's operational control, SDG&E submitted schedules to the ISO for transactions on SWPL, including the portion of the capacity owned by APS and IID.

4. Since 1998, the ISO has charged SDG&E for transmission losses associated with energy transmitted over transmission facilities owned by APS and IID. The ISO explains that it allocates transmission losses according to the methodology outlined in its Tariff,

¹ The SWPL is a 500 kV transmission line that, until last year, ran from SDG&E's Miguel Substation to the Palo Verde Nuclear Power Plant switchyard in Arizona. It is jointly owned by SDG&E, APS and IID.

and that it provides SDG&E with daily settlement statements. SDG&E has paid these charges calculated since the beginning of ISO operations in March 1998.

5. On July 6, 2001, following a period of negotiations with the ISO, SDG&E filed a Statement of Claim against the ISO under section 13.3.2 of the ISO Tariff. SDG&E argued that the ISO's formula for allocating transmission losses is unfair and inconsistent with the allocation formula contained in a contract between SDG&E, APS and IID. SDG&E argued that the allocation formula contained in the contract resulted in a more accurate allocation of transmission losses than did the allocation formula contained in the ISO Tariff. SDG&E further contended that it was the intent of the Tariff to honor contractual agreements, including the allocation formula contained in the contract. SDG&E argued that even if the ISO were permitted to use the allocation formula set forth in the Tariff, the ISO had misapplied the Tariff by allocating to SDG&E transmission losses occurring on a portion of the transmission line for which operational control had not been given to the ISO, and that the ISO had been misallocating certain transmission losses in the wake of Amendment No. 33 to the ISO Tariff. Finally, SDG&E argued that while the ISO had corrected the problem prospectively, the ISO refused to reallocate those costs on a retroactive basis.

6. On August 3, 2001, the ISO filed a Response to Claim denying the material allegations of SDG&E's Statement of Claim. The ISO also denied that SDG&E had been damaged by any act or omission of the ISO. The ISO argued that it had not breached any contractual or Tariff provision, and that it had applied Tariff provisions according to their plain meaning. The ISO denied that its administration of its Tariff was unjust, unreasonable, or unduly discriminatory, and denied that it had charged SDG&E for any "improper Amendment 33 penalties." The ISO also denied that it had engaged in any unlawful, unfair, or deceptive business practice, and denied that it had breached any fiduciary duty to SDG&E.

7. The Arbitrator was appointed on March 13, 2002, and a procedural schedule was proposed jointly by the parties. The Arbitrator issued his Award on October 23, 2003, in favor of SDG&E for \$21, 253,136.50, which equals the difference, including interest, between SDG&E's payments to the ISO for transmission losses on the transactions associated with APS and IID and what SDG&E received from APS and IID for losses from March 31, 1998 and December 31, 2002.

8. The Arbitrator concluded that the ISO Tariff limits the ISO-controlled grid to those facilities that have been placed under the ISO's operational control, that SDG&E could not and did not transfer operational control over the APS and IID shares of SWPL to the ISO, and that, therefore, the APS and IID portions of SWPL are not a part of the ISO-controlled grid. The Arbitrator also concluded that since the APS and IID owned portions of the SWPL are not a part of the ISO-controlled grid, section 7.4 of the ISO Tariff does not apply to energy schedules on their respective shares of the line, and that

since the APS and IID portions of the SWPL are not part of the ISO-controlled grid, APS and IID are not Market Participants, and SDG&E is not a Scheduling Coordinator for energy scheduled on the portions of SWPL owned by APS and IID. Finally, the Arbitrator concluded that the ISO exceeded its authority under the ISO Tariff by imposing its transmission loss methodology to transactions on facilities that are not part of the ISO-controlled grid.

The ISO's Petition for Review

9. The ISO argues that the Arbitrator's Award is contrary to or beyond the scope of relevant ISO documents, and that his conclusion is contrary to Orders No. 458 and 458-A² in that it provides precisely the relief precluded by those orders. The ISO argues that the Arbitrator erroneously conflated ownership with operational control, and erroneously equated operational control, as defined in the ISO Tariff, with the ability to direct the manner in which entities schedule generation and load. The ISO contends that the Arbitrator also erred by concluding that SDG&E is not the Scheduling Coordinator for the energy schedule on the portions of the SWPL owned by APS and IID, and that this conclusion is not supported by the language of the ISO Tariff or by substantial evidence.

10. The ISO argues that allowing more favorable treatment for SDG&E with respect to transmission losses would result in other entities that participate in the ISO paying a disproportionately higher share of the costs involved. The ISO adds that this cost shift, if permitted to occur, should take place only after full consideration of these issues by the Commission. The ISO stresses that this conflict presents fundamental issues concerning the ability of the ISO, as Control Area Operator, to fulfill its responsibility to maintain the reliability of the electric system in its Control Area, and to pass on the attendant costs to the beneficiaries of that reliability in a manner that is fair, nondiscriminatory, and consistent with its Tariff.

Notice, Interventions, Comments and Protests

11. Notice of the petition was published in the Federal Register, 68 Fed. Reg. 67,412 (2003), with motions to intervene or protests due on or before December 5, 2003. Timely motions to intervene were filed by IID, APS, and Southern California Edison Company. Modesto Irrigation District filed a timely motion to intervene with comments, and SDG&E filed timely motion to intervene and answer to the petition. The California Electricity Oversight Board filed a motion to intervene with comments one day out of time.

² Pacific Gas and Electric Company, et al., 100 FERC ¶ 61,156 (2002) (Order No. 458) and Pacific Gas and Electric Company, et al., 101 FERC ¶ 61,151 (2002) (Order No. 458-A).

12. In its answer to the petition, SDG&E asks the Commission to uphold the Arbitrator's Award, and also argues that review of the arbitrator's decision should be conditioned on the ISO's posting the arbitrator's decision in compliance with its tariff; SDG&E points to ISO Tariff section 13, which provides that "the arbitrator's decision shall be published in an ISO newsletter or electronic bulletin board."

13. Modesto states that it agrees with the Arbitrator's Award, and argues that transactions that are not undertaken on the ISO-controlled grid, including transactions undertaken pursuant to existing contracts that have not been converted to the Cal ISO's operational control pursuant to the terms of the ISO Tariff, plainly should not be assessed charges or fees by the Cal ISO. Modesto states that the Cal ISO Tariff contains unambiguous provisions to determine if a specific transmission facility or an existing right under an Existing Contract has been turned over to the Cal ISO's operational control, and the Cal ISO's assessment of charges for transactions over facilities which have not been turned over to its operational control are a clear violation of the Cal ISO Tariff.

14. The California Electricity Oversight Board is concerned that this proceeding may affect the uniform interpretation and application of the methodology of allocation of costs, which directly affects the proper functioning of the California energy markets.

Discussion

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), each timely, unopposed motion to intervene serves to make the entity that filed it a party to this proceeding. We will grant the late motion to intervene of the California Electricity Oversight Board, in light of the interest it represents, the absence of any undue prejudice or delay, and the early stage of the proceeding.

16. Section 13.4.1 of the ISO Tariff provides for appeals of an arbitrator's award to the Commission or to a court:

"A party may apply to the FERC or any court of competent jurisdiction to hear an appeal of an arbitration award only upon the grounds that the award is contrary to or beyond the scope of the relevant ISO Documents, United States federal law, including, without limitation, the Federal Power Act, and any FERC regulations and decisions, or state law. Appeals shall, unless otherwise ordered by FERC or the court of competent jurisdiction, conform to the procedural limitations set forth in this section 13.4.1."

17. Section 13.4.2 of the ISO Tariff further provides that:

"the parties intend that FERC or the court of competent jurisdiction should afford substantial deference to the factual findings of the arbitrator. No party shall seek to expand the record before the FERC or court of competent jurisdiction beyond that assembled by the arbitrator, except (i) by making reference to legal authority which did not exist at the time of the arbitrator's decision, or (ii) if such party contends the decision was based upon or affected by fraud, collusion, corruption, misconduct or misrepresentation."

18. The Commission here establishes the following schedule for the submission of pleadings in this proceeding:

- 21 days from the date of issuance of this order, the Cal ISO, as well as interveners supporting the Cal ISO, may file initial briefs addressing the Award and the Cal ISO's appeal of the Award;
- 14 days from the date of filing of initial briefs, SDG&E, as well as interveners supporting SDG&E, may submit reply briefs addressing the Award and Cal ISO's appeal of the Award;
- 14 days thereafter, the Cal ISO, as well as interveners supporting the Cal ISO, may file rebuttal briefs.³

As required by section 13.4.1 of the ISO Tariff, parties must limit their pleadings to a discussion of whether or not the Arbitrator's Award is contrary to, or beyond the scope of, the relevant ISO Documents, United States federal law, or state law. Further, parties are prohibited from including in their pleadings any information or arguments that were not raised in the arbitration proceeding, unless they can demonstrate that they fall within one of the exceptions specified in section 13.4.2.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

³ Accord, e.g., Cities of Anaheim, et al., 104 FERC ¶61,099 (2003).