

UNITED STATES OF AMERICA 93 FERC ¶ 61,104
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
William L. Massey, Linda Breathitt,
and Curt Hébert, Jr.

California Independent System
Operator Corporation

Docket No. ER00-2019-002

ORDER ACCEPTING IN PART AND REJECTING
IN PART COMPLIANCE FILING

(Issued October 27, 2000)

In this order, we accept in part, and reject in part, a compliance filing submitted by the California Independent System Operator Corporation (California ISO or ISO) pursuant to the Commission's order issued in this proceeding on May 31, 2000, California Independent System Operator Corporation, 91 FERC ¶ 61,205 (2000), reh'g pending (May 31 Order).

Background

In the May 31 Order, the Commission accepted for filing, suspended for a nominal period, subject to refund, and established hearing and settlement judge procedures for the ISO's proposed Transmission Access Charge (TAC) methodology and related tariff revisions. The May 31 Order also rejected certain provisions of the ISO's proposal and found one proposed provision to be inconsistent with the Commission's statutory responsibilities. In response to these findings by the Commission, the ISO has submitted a compliance filing which amends various tariff sheets to reflect the Commission's findings. Specifically, the ISO has submitted tariff sheets to: (1) modify the Revenue Review Panel (RRP) provision of the tariff; (2) eliminate the "buy-down" provision; and (3) amend the transition date for the West Central TAC area to be the same as the transition date of the other TAC areas or, alternatively, to provide information demonstrating the need for a deferral.

Compliance Filing

On August 3, 2000, as amended on August 7, 2000, the ISO submitted revisions to: (1) Article 6.1 of ISO Tariff Appendix F to reflect the rejection of the "buy down" proposal; (2) Articles 4.2 and 4.3 of Appendix F to reflect changes to the beginning date of the amortization period for the West Central TAC area; and (3) Article 9.2 of Appendix F, Schedule 3, High Voltage Access Charges (Appendix F) regarding the use of a Revenue Review Panel to assess the Transmission Revenue Requirement (TRR) of entities that not public utilities (often referred to as Governmental Entities, or GEs). The latter revisions allow an alternative procedure for the filing of a GE's TRR, and modify the tariff to make decisions of the RRP subject to review and acceptance by the Commission

The ISO also submitted approximately seventy tariff sheets "to reflect the sum of changes contained in various recent ISO Tariff amendments, which the Commission has accepted for filing or for which a Commission order is pending" and changes to two other tariff sheets to embody changes which the ISO intended to reflect in the initial filing in Docket No. ER00-2019-000 but which were not included.¹

Notice and Interventions

Notice of the ISO's compliance filing was published in the Federal Register, 65 Fed. Reg. 31,163 (2000), with comments, protests and motions to intervene due on or before August 24, 2000. The Modesto Irrigation District (MID), the Transmission Agency of Northern California (TANC), the Cities of Redding, Palo Alto, Santa Clara and the M-S-R Public Power Agency (collectively Cities/M-S-R), and Sacramento Municipal Utility District (SMUD) filed protests. The Northern California Power Agency (NCPA) filed comments supporting the protests of TANC and Cities/M-S-R. Southern California Edison Company (SoCal Edison) and Pacific Gas and Electric Company (PG&E) filed motions for clarification of the compliance filing.

The protests request rejection of: (1) those tariff sheets that were not specifically ordered changed by the Commission's May 31 Order, and (2) the tariff changes to Article 9.2, RRP. On September 7 and 8, 2000, TANC, MID, SMUD, NCPA, the City of Vernon (Vernon) and the ISO filed answers to the motions for clarification. SoCal Edison responded to the answers on September 22, 2000, and subsequently Vernon filed an opposition to SoCal Edison's pleading.

Discussion

¹ISO's transmittal letter, p. 3.

The parties' answers to the motions for clarification are permitted by the Commission's regulations.² However, we will reject SoCal Edison's response to the answers, as an impermissible answer to answers. Because we have rejected SoCal Edison's answer, Vernon's opposition thereto need not be addressed.

As discussed below, we find that the instant filing complies in part with the May 31 Order. Our review of the ISO's proposed changes to the tariff relating to Article 6.1 of Appendix F regarding the rejection of the "buy down" proposal and Articles 4.2 and 4.3 of Appendix F to reflect changes to the beginning date of the amortization period for the West Central TAC area indicates that they are in compliance with the Commission's May 31 Order, and we will accept them for filing.

The ISO's proposed revised language concerning the RRP under Appendix F, Section 9.2 states, in part, as follows:

If the Participating TO is not FERC jurisdictional, the Participating TO shall at its sole option: (1) file its High Voltage TRR and Low Voltage TRR for those facilities and Entitlements under the Operational Control of the ISO directly with the Commission in accordance with the rules and requirements established by the Commission or (2) submit to the ISO its TRR The decision of the [Revenue Review] panel shall be subject to review and acceptance by the FERC.

TANC, MID, and Cities/M-S-R request rejection of the last sentence quoted above on the basis that it is not merely beyond the scope of the Commission's directive but contrary to the clear language of the Federal Power Act (FPA). Specifically, these parties argue that the ISO's proposal to permit Commission review of the justness and reasonableness of non-public utilities' TRRs violates Section 201 (f) of the FPA.³ MID

²See 18 C.F.R. § 385.214(a) (2000).

³Section 201 (f) states that no provision of Part II of the FPA "shall apply to, or be deemed to include, the United States, a State or any political subdivision of a state, or any agency, authority, or instrumentality of any one or more of the foregoing, or any corporation which is wholly owned, directly or indirectly, by any one of more of the foregoing . . . unless such provision makes specific reference thereto." 16 U.S.C. § 824(f) (1994). We note, however, that while municipal and other utilities are not subject to the Commission's regulation as public utilities under FPA sections 205 and 206, the Commission does have jurisdiction to order such utilities to provide transmission services on a case-by-case basis under FPA section 211, and to set just and reasonable rates for service ordered under section 211. Future tariff filings should include conforming changes to reflect this clarification. Instead of referring to a Participating TO that "is not FERC jurisdictional," such filings should refer to a Participating TO "that is

and Cities/M-S-R also argue for rejection of the ISO's proposed alternative TRR filing procedure on the basis that it is outside the scope of what the Commission directed the ISO to do in the May 31 Order and, thus, is not appropriately part of the compliance filing.

In its answer, the ISO states that the proposed tariff revision making the decisions of the RRP subject to Commission review and acceptance is directly responsive to the May 31 Order. The ISO relies on the following guidance provided in the May 31 Order:

The ISO's proposal that the RRP's findings are final and non-appealable is inconsistent with our statutory responsibilities. . . . [T]he Commission must be able to determine that the pass through of costs by the ISO to its customers are just and reasonable. . . . We also find that the current public process rate review utilized by many GEs does not supplant the FPA requirement for Commission review of rates in these circumstances. . . .

PG&E and SoCal Edison filed comments requesting clarification and modification of the proposed language in Section 9.2 to be fully consistent with the Commission's directives in its May 31 Order. Specifically, PG&E states that the ISO tariff needs to provide that the ISO will file with the Commission rate changes to incorporate GE Participating Transmission Owners' TRR in the ISO's Transmission Access Charge and that this filing should include all cost support and other information required under Section 35.13 of the Commission's Regulations. PG&E asserts that whether the ISO uses a RRP or other process preceding its FERC filing, this should not affect the ISO's obligation to file. SoCal Edison requests clarification that, to the extent a GE chooses to file its TRR directly with the Commission, such a filing must be made under FPA section 205 in order to allow the Commission a full opportunity to review the justness and reasonableness of the GEs' rates. SoCal Edison argues that, if the GE chooses to forego this option and instead decides to file its rates with the Commission in accordance with the ISO's tariff provision, not subject to a just and reasonable standard, the GE's TRR must be fully reviewed under the just and reasonable standard as part of the Commission's oversight of the ISO's Transmission Access Charge rates and charges. SoCal Edison also states that the ISO tariff should provide that any filing made by a GE under Section 9.2(1) is not determinative of the reasonableness of the GEs' TRR and does

not subject to the FERC's jurisdiction under sections 205 and 206 of the Federal Power Act."

not preclude or limit FERC's ability to review the ISO's rates and charges, which incorporate such TRRs, under the just and reasonable standard.

The ISO states in its Answer that many of the issues raised by SoCal Edison and PG&E are the types of questions which the Commission determined in its May 31 Order should be resolved in settlement negotiations. The ISO notes that the May 31 Order stated that the Commission did not wish to be overly prescriptive at this time but rather remain flexible to resolutions within the bounds of the FPA.

SMUD, NCPA, MID, and TANC also filed answers to PG&E and SoCal Edison's motions taking issue with the proposal that the GEs' TRR be completely subject to Commission justness and reasonableness review under FPA section 205, since that section applies only to public utilities. These parties also argue that the requested clarifications are outside the scope of the compliance filing and, as such, should be rejected. Vernon's answer requests that the motions be denied on the basis that SoCal Edison's and PG&E's contentions that FPA section 205 standards and procedures must be applied to GEs are inconsistent with the specific rulings of the May 31 Order.

The relevant issue in reviewing the ISO's compliance filing is whether it complies with the guidance in the May 31 Order. We find that the alternative filing procedure is an acceptable means of implementing our guidance in that order. We specifically note that the proposal to allow entities the option to file directly with the Commission is acceptable. No party has directly objected to this procedure, this election is at the sole option of the filing entity, and it provides a direct review by the Commission of that entities' costs. While we accept the general framework laid out in the ISO's tariff language, we note that additional details regarding the RRP option must be further developed by the parties in the proceeding before the settlement judge. We note that contemporaneously with this order, we are issuing an order on the petition for declaratory order filed by Vernon in Docket No. EL00-105-000, regarding our regulatory review of the TRRs of non-public utility entities that participate in an ISO. Our review of the TRR of non-public utility entities is to determine whether their proposed rate methodology, in the context of participation in a Commission jurisdictional public utility ISO, will result in a just and reasonable component of the ISO's rates.

The second contested issue relates to the ISO's filing of approximately seventy tariff sheets that were not ordered to be filed as part of the May 31 Order. The ISO has apparently filed these tariff sheets as an administrative measure to place on file with the Commission and to post on the Western Energy Network website the sum of updated tariff sheets reflecting changes submitted to the Commission in various other filings in docketed proceedings and to correct typographical errors and inadvertent omissions. TANC, SMUD, MID and Cities/M-S-R have protested the inclusion of these tariff sheets in the instant compliance on grounds that they were not ordered to be filed, so therefore

they are outside the scope of the proceeding. These parties assert that Commission precedent clearly provides that these proposed tariff sheets should be rejected. These parties also state that the filing of different tariff sheets is problematic in that the service lists for the various proceedings in which these tariff changes were initially filed do not correspond exactly to the TAC filing service list and therefore, revised tariff sheets could be accepted without knowledge of or review by an affected party.

In its answer, the ISO responds that the updated tariff sheets which it has included in the instant compliance filing do not include any new provisions nor any new exclusions of language. The ISO argues that the tariff provisions which it had already submitted in other previous filings were not changed by the tariff sheets submitted herein; the ISO is simply providing the most current versions of those tariff sheets. The ISO also states that the additional tariff sheets contain no changes on which to comment and since there are no new proposals, it has not violated the filing requirements contained in Part 35 of the Commission's regulations.

In the May 31 Order, the Commission required only those modifications which the ISO has correctly identified as corresponding to the May 31 Order. Therefore, we accept the tariff sheets submitted in strict compliance with the May 31 Order as modified above. Additionally, we accept the two tariff sheets which the ISO stated should have been amended as part of the initial submittal in Docket No. ER00-2019-000 but which were inadvertently omitted, inasmuch as the instant compliance filing is the appropriate vehicle for such revisions.¹ However, we agree with SMUD, NCPA and MID that the applicable precedent on the appropriate scope of compliance filings does not allow the proposed filing of the additional sheets that are unrelated to the original submittal.² We also note that prior Commission orders in other ISO proceedings defer the designation of tariff sheets.³ We therefore reject the additional tariff sheets filed by the ISO.

The Commission orders:

¹The red-lined copy of these two tariff sheets are included in Appendix C of the instant compliance filing.

²See *Central Hudson Gas & Electric Co.*, 90 FERC ¶ 61,045 (2000); *El Paso Electric Co.*, 89 FERC ¶ 61,181 (1999); *Mid-continent Area Power Pool*, 88 FERC ¶ 61,157 (1999) (each finding that proposed revisions not required to be filed by the earlier order were beyond the scope of the compliance filing and were rejected).

³We note that on October 13, 2000, the ISO filed in Docket Nos. EC96-19-055 and ER96-1663-058 First Replacement Volume Nos. I and II of its FERC Electric Tariff in compliance with Order No. 614, Designation of Electric Rate Schedule Sheets, 65 Fed. Reg. 18,221 (April 7, 2000), FERC Stats. and Regs., ¶ 31,096 (Mar. 31, 2000).

(A) The ISO's compliance filing is hereby accepted, as discussed in the body of this order, subject to the outcome of the proceeding in ER00-2019-000.

(B) The ISO is hereby informed that rate schedule designations will be supplied in a future order. Consistent with our prior orders, the ISO is hereby directed to promptly post the proposed tariff sheets as revised in this order on the Western Energy Network.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,
Acting Secretary.