

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

99 FERC ¶ 61,212

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, Linda Breathitt,
and Nora Mead Brownell.

California Independent System Operator Corporation

Docket No. ER99-1770-001

ORDER GRANTING IN PART AND
DENYING IN PART REHEARING,
AND DIRECTING COMPLIANCE FILING

(Issued May 22, 2002)

On July 19, 1999, the Coalition of New Market Participants (Coalition)¹ filed a timely request for rehearing of the Commission's June 17, 1999 order accepting for filing a revision to the California Independent System Operator Corporation's (ISO) Transmission Control Agreement (TCA) with Pacific Gas and Electric Company (PG&E). California Independent System Operator Corporation, 87 FERC ¶ 61,312 (1999) (June 17 Order). In this order, we grant in part and deny in part the Coalition's request for rehearing. This order is in the public interest because it acknowledges existing contract rights and supports open access transmission by making additional information available to customers.

Background

¹For purposes of the rehearing, the members of the Coalition are: Enron Power Marketing, Inc., New Energy Ventures, Inc., Coral Power, L.L.C., and Arizona Public Service Company.

In filings involving the establishment of the ISO, a dispute arose concerning preexisting usage rights on Path 15, a constrained transmission path owned by PG&E. The Commission determined that it would be inappropriate and unnecessary to abrogate existing transmission contracts to implement the proposed restructuring. The Commission directed PG&E and other Path 15 rightholders to negotiate a resolution of competing contractual claims for proposed transmission priority on Path 15.² A resolution was achieved, and PG&E and affected parties developed operating instructions that allow the ISO to honor the preexisting rights of the parties.

In Docket No. ER99-1770-000, the ISO made a filing on February 11, 1999, amending the TCA to include the negotiated operating instructions. In response to the notice of the February 11 filing,³ the Coalition, on March 3, 1999, filed a protest complaining that the filing did not disclose all of the existing priorities. The Coalition argued that critical information was missing from Exhibit B-1 to the TCA. This missing information, the Coalition argued, could be useful to the Commission and any affected party, particularly members of the Coalition, to determine whether Path 15 was being managed fairly and whether the rights across the path were being allocated equitably. The Coalition argued that this information is needed to determine whether non-discriminatory access is being provided by the ISO.

On March 19, 1999, the Commission's Director of Rate Applications (Director), issued a deficiency letter to the ISO. The Director noted that Exhibit B-1 referred to "other documents" containing specific operating instructions and information on how the relative transmission rights and priorities of the parties should be managed and administered during times of congestion on Path 15. The Director ordered the ISO to provide the "other documents" containing "the remaining operating procedures." In response to that letter, on April 19, 1999, the ISO amended the filing to include all operating instructions, scheduling rights of existing contract holders and curtailment procedures. The ISO stated that the proposed revisions to the TCA were provided to it by PG&E and that they were the result of negotiations involving PG&E and all other major holders of transmission rights over Path 15. The Commission noticed the amended filing.⁴

²California Independent System Operator Corporation, 82 FERC ¶ 61,325 at 62,277 (1998).

³The notice was published in the Federal Register, 64 Fed. Reg. 9495 (1999), with comments, protests, or motions to intervene due on or before March 3, 1999.

⁴Notice of the amended filing was published in the Federal Register, 64 Fed. Reg. 23613 (1999), with comments, protests, or motions to intervene due on or before May 7,

The Transmission Agency of Northern California, the Modesto Irrigation District, the Cities of Redding and Santa Clara, California, and the MSR Public Power Agency filed motions to intervene and expressed some concerns that the data on the operating instructions might require some additional clarification. However, these intervenors pointed out that they had brought the concerns to the attention of the ISO and PG&E and were confident that an agreement could be reached. Members of the Coalition do not have existing transmission contractual rights on Path 15, and the Coalition did not comment on the amended filing. No protests were filed in response to the notice of the amended filing.

The Commission Order

On June 17, 1999, the Commission accepted the ISO's amended TCA in a letter order. Commenting on the interventions, the Commission stated:

While some intervenors suggest that the instructions may need some clarification, they have not requested a hearing and are pursuing their concerns directly with PG&E and the ISO.

87 FERC at 62,242.

The Request for Rehearing

In its request for rehearing of the June 17 Order, the Coalition argues that the Commission failed to address material issues raised by the Coalition in its protest and that to the extent that the Commission failed to address the Coalition's arguments, it denied the positions advocated by the Coalition. In its protest to the ISO's original filing and on rehearing, the Coalition alleged three principal errors:

(1) that the proposed real time curtailment priorities are discriminatory and unfair;

(2) that the ISO had improperly delegated its function to manage and allocate the rights on Path 15 to a broadly described ETC Facilitator; and

1999.

(3) that the ISO's filing did not provide sufficient information concerning the methodology for determining the amounts of capacity to which existing rights holders are entitled.

The Coalition states that while the amended filing addressed one of the Coalition's concerns, *i.e.*, that the ISO provide the specific operating instructions referenced in the original filing, it did not resolve the Coalition's other concerns regarding discrimination in transmission access to Path 15, including the relative curtailment priorities of the existing transmission rights vis-a-vis other transmission service.

Discussion

The revisions to the TCA submitted by the ISO in this docket were a result of Commission-directed negotiations involving PG&E and the existing transmission rights holders on Path 15. The TCA is an agreement among the ISO and the transmission owners (TOs) that establishes the terms and conditions under which the TOs become Participating TOs and states how the ISO and each Participating TO will discharge its respective duties. The Commission directed existing rights holders to work out the relative priorities of their rights to Path 15 and to reflect their agreement in revised operating procedures. The filing at issue in this case is the result.

1. Realtime Curtailment Priorities

The Coalition objects to the Curtailment Priority Table included with the filing here at issue. The table shows how the various existing rights holders across Path 15 have agreed to prioritize their rights. The Coalition argues that how they have agreed to prioritize their rights negatively affects the rights of non-incumbents such as the members of the Coalition. As discussed below, this negative effect is the unavoidable consequence of the Commission's prior decision to recognize the existing contract rights. See Pacific Gas and Electric Company, 81 FERC ¶ 61,122 at 61,470-72 (1997); California Independent System Operator Corporation, 82 FERC ¶ 61,325 at 62,276-79 (1998).

In its order authorizing the ISO to begin operations, the Commission specifically recognized existing contractual protocols. In doing so the Commission rejected the contention of the Coalition for a Competitive Electric Market that the retention of existing contractual rights is discriminatory and unfair to other market participants. The Commission said:

Although the California energy market is undergoing a monumental change, we believe that it is inappropriate and unnecessary to abrogate existing transmission contracts in order to implement the proposed restructuring of

California's electric power industry. We disagree . . . that the retention of existing contractual rights is discriminatory and unfair to other market participants. While we agree with the California Commission that it may be difficult for the ISO to accommodate the varied operational protocols and procedures of Existing Contracts, we view this as an unavoidable transitional problem. We believe that the temporary problem of accommodating the scheduling and operating practices of Existing Contracts under the ISO's rules and protocols is outweighed by considerations of not upsetting the benefits and obligations of Existing Contracts, which were established over many years.

Accordingly, we accept the ISO's proposal to honor all Existing Contracts of Non-Participating Transmission Owners. Such contracts would include existing transmission contracts, interconnection agreements, and all other contracts that pertain to the use of a Non-Participating Transmission Owner's transmission system.

81 FERC ¶ 61,122 at 61,470-71 (1997) (footnotes omitted). The Commission also made clear that the rights of existing contract holders may be broad:

In response to concerns raised by many parties that Transmission Control Agreement section 4.4.3 will preclude them from exercising certain rights under Existing Contracts, and to provide guidance requested by PG&E, the Commission finds that parties to Existing Contracts should be able to exercise their rights under those Existing Contracts. To the extent that an existing contract provides for the right to schedule additional transmission service to accommodate load growth, the ISO must accommodate such increased schedules. In addition, to the extent a party has the right to change receipt and delivery points, or to adjust its schedules in order to economically integrate its resources and load, that party should retain those abilities. Therefore, we direct the ISO to modify section 4.4.3 of the Transmission Control Agreement to clarify that the exercise of rights under Existing Contracts will not be considered a "new encumbrance."

Id. at 61,472.

The February 11 filing in this docket was a revision to Appendix B of the TCA to reflect the negotiations among existing rightholders concerning Path 15 rights. Exhibit B-1 is entitled "Path 15 Operating Instructions for Existing Encumbrances Across the Path 15 Interface." This docket concerns only the priority of existing contracts. As discussed above, the Commission had already determined that the retention of the existing contractual

rights was not discriminatory. The Coalition, in attacking the priorities the Existing Contract holders have worked out, argues that the way in which existing contract rights are prioritized may affect the availability of Path 15 for Coalition members when Path 15 is constrained. Although the Coalition may be correct that priority for existing contracts may affect other users, this is a consequence of the Commission's earlier decisions to respect the rights contained in Existing Contracts. We conclude, therefore, that the Coalition's arguments are a collateral attack on the earlier decisions to respect the existing contractual rights and we deny rehearing on this issue.

2. PG&E's Role as Existing Transmission Contract Facilitator

We turn to the argument that the ISO has improperly delegated functions concerning Path 15 to PG&E as Existing Transmission Contract Facilitator (ETC Facilitator). This also is an issue concerning Existing Contract rights. The Commission directed parties with rights under Existing Contracts for transmission capacity over Path 15 to negotiate operating instructions that would resolve the transmission priority issue.⁵ As part of that negotiation, the Existing Contract holders selected PG&E as the ETC Facilitator, which provides certain reservation information for Path 15 to the ISO. Thus, the Coalition is complaining about the mechanism that the Existing Contract holders have chosen to help settle issues of priority among the Existing Contract holders.

The use of the ETC Facilitator is consistent with the Commission's orders approving the ISO. While the Coalition argues that the ISO shall determine transmission capacity available for reservation by or allocation to various rightholders, the Coalition ignores the fact that such a determination is to be "based on the information provided by the Participating TOs and contract rights holders."⁶ The Commission has directed the ISO to take no role in interpreting Existing Contracts. The Commission has also approved a process under which the ISO relies on the operating instructions provided by a Participating TO until a dispute between parties to an Existing Contract is resolved. See 81 FERC at 61,473. We find that the Existing Contract holders agreement to use PG&E as an ETC Facilitator to provide reservation information to the ISO concerning Existing Contracts is consistent with the ISO's role with respect to Existing Contracts, and we see no need for a further clarification of the duties of the ETC Facilitator at this time.

3. The Calculation of Available Transmission Capacity (ATC) on Path 15

⁵82 FERC at 62,277; 82 FERC at 61,242-43.

⁶ISO Tariff Section 2.4.4.5.1.4.

Finally, the Coalition argues on rehearing that the ISO should be required to make publicly available the detailed methodology through which PG&E allocates capacity on Path 15 to existing transmission rights holders. Until that is done, the Coalition contends that other market participants have no way to determine whether the amount of ATC for other users is correct.

We agree that PG&E's methodology for calculating ATC on Path 15 must be made publicly available. The definition of ATC in PG&E's TO Tariff is general and does not provide PG&E's underlying calculations.⁷ Further, the Appendices to PG&E's TO Tariff do not provide this information. Therefore, we will grant rehearing on this issue and direct the ISO to submit a compliance filing showing PG&E's methodology for calculating ATC on Path 15.

The Commission orders:

(A) The Coalition's request for rehearing is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Within 30 days of the date of this order, the ISO shall file PG&E's methodology for calculating ATC on Path 15, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

⁷PG&E's TO Tariff defines ATC as, "for any given transmission path, the capacity rating in MW of the path established consistent with ISO and WSCC transmission capacity guidelines, less any reserved uses applicable to the path." Section 16.4 of the TO Tariff provides that the TO Tariff, along with the ISO Tariff and PG&E's distribution tariff, supersedes PG&E's existing OATT.