106 FERC ¶ 61, 205
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Cities of Anaheim, Azusa, Banning, Colton, and
Riverside, California

v. Docket No. EL00-111-007

California Independent System Operator
Corporation

Salt River Project Agricultural Improvement
and Power District

v. Docket No. EL01-84-003

California Independent System Operator
Corporation

California Independent System Operator
Corporation Docket No. ER01-607-005

ORDER DENYING REHEARING

(Issued March 3, 2004)

1. IDACORP Energy L.P. (IDACORP) requested rehearing of the October 3, 2003 Order issued in this proceeding, which accepted a compliance filing regarding neutrality adjustment charges assessed under the Open Access Transmission Tariff (Tariff) of the California Independent System Operator Corporation (ISO).[1] For the reasons discussed below, we will deny rehearing.

[1]Cities of Anaheim, et al. v. California Independent System Operator Corp., 105 FERC ¶ 61,021 (2003) (October 3 Order).

BACKGROUND

2. This proceeding arose out of the ISO's treatment of certain charges resulting from energy imbalances. In order to meet real-time energy needs, the ISO administers an imbalance energy market. If this market produces insufficient resources, the ISO must purchase the necessary energy through out-of-market (OOM) dispatch calls. In a complaint filed September 14, 2000 in Docket No. EL00-111-000, Southern Cities objected to the ISO's collection of OOM dispatch costs from all Scheduling Coordinators, as opposed to only those who lack adequate supply, and argued that the ISO had violated certain provisions of its Tariff by recovering those costs through neutrality adjustment charges[2] in excess of a limit of $0.095/MWh.[3]

3. The Commission responded to Southern Cities' complaint by order dated March 14, 2001.[4] The March 2001 Order dismissed as moot certain allegations and granted others, finding that the ISO had violated its Tariff's stated neutrality adjustment charge limit for OOM charges. Consequently, the March 2001 Order, among other things, directed the ISO to recalculate the neutrality adjustment charges for the relevant period, using the Tariff's stated $0.095/MWh limit applied on an hourly basis. The Commission later granted rehearing in part and denied rehearing in pertinent part, finding that the filed rate doctrine mandated that the ISO charge its customers the actual rate specified in its tariff, i.e., $0.095/MWh, during the period June 1, 2000 through September 15, 2000.[5]

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[2]Neutrality adjustment charges provide a mechanism to recover five specific categories of costs (or payments of credits) in order for the ISO to maintain a revenue-neutral position, which are not covered in other parts of the ISO's Tariff. See ISO Tariff section 11.2.9.

[3]On June 1, 2001, the Salt River Project Agricultural Improvement and Power District (SRP) also filed a complaint against the ISO in Docket No. EL01-84-000 challenging several aspects of the ISO's neutrality adjustment charges.

[4]Cities of Anaheim, et al. v. California Independent System Operator Corp., 94 FERC ¶ 61,268 (2001) (March 2001 Order).

[5]Cities of Anaheim, et al. v. California Independent System Operator Corp., 95 FERC ¶ 61,197 (2001) (May 2001 Order).

4. At the request of the parties, the Commission instituted Settlement Judge procedures, and on July 31, 2002, certain parties submitted to the Commission an Offer of Settlement and Settlement Agreement (Offer of Settlement). One party contested the Offer of Settlement.

5. In an order issued March 12, 2003, the Commission found that it could not approve the proposed Offer of Settlement as to all parties over the objections of a non-settling party.[6] The March 12 Order also denied rehearing of the May 2001 Order, finding that the ISO's recovery of OOM dispatch costs is not constrained by section 11.2.9.1's stated hourly limit of $0.095/MWh. The Commission clarified that, while sustaining our finding that the ISO's recovery of neutrality adjustment charges assessed under section 11.2.9 is limited to $0.095/MWh, any other costs assessed under provisions other than section 11.2.9, such as OOM charges, are not subject to that limit. The Commission directed the ISO to separate all costs recoverable under section 11.2.9 from all other costs included in the invoiced "neutrality costs" from June 1, 2000 forward, and to recalculate each customers' charges for each hour. The order specified that the separation of costs must be conducted on an hour by hour basis for all Scheduling Coordinators in all applicable hours, and that the ISO could not create a rolling true-up mechanism to effect the recalculation, as it proposed in its request for rehearing. The Commission directed the ISO to provide a report detailing the amounts of the various separated charges and the subsequent neutrality adjustment charge recalculations and reassessments, the recalculated OOM dispatch cost amounts, and any relevant amounts to be reassessed, within 90 days of the date of the order.

6. In addition, the Commission denied the untimely motions to intervene of IDACORP and others for failure to demonstrate good cause warranting late intervention. IDACORP sought reconsideration.

Neutrality Adjustment Report and October 3 Order

7. On June 10, 2003, the ISO submitted the report required by the March 12 Order separating out charges enumerated as neutrality adjustment costs under Tariff section 11.2.9 from others included in its bills. In the report, the ISO analyzed the calculable dollar value of each of the 5 categories of costs of section 11.2.9 and found that 4 of the 5 categories had a zero dollar impact. Only section 11.2.9(c), concerning amounts required to reach an accounting trial balance of zero in the course of the Settlement process, yielded any dollar impacts. The report explained that when these amounts were

[6] Cities of Anaheim, et al. v. California Independent System Operator Corp., 102 FERC ¶ 61,274 (2003) (March 12 Order).

allocated to Scheduling Coordinators pro rata for each hour, they were all below the neutrality limitation of $0.095/MWh. The ISO concluded that, because no neutrality adjustment amounts were levied in excess of $0.095/MWh, there should have been no changes to the costs that were credited or debited to Scheduling Coordinators during the applicable time period. Thus, the ISO asserted that no further action needed to be taken, including remitting revised invoices to the Scheduling Coordinators.

8. IDACORP protested the report, alleging that the ISO did not perform the calculations as the Commission had directed in the March 12 Order. Specifically, IDACORP complained that: (1) the ISO did not explain or calculate the charge types not enumerated in section 11.2.9; (2) the ISO reported the revised charges on a monthly, rather than hourly, basis; (3) the calculations yielded a price per hour, rather than a price per MWh; and (4) the ISO's treatment of charges under section 11.2.9(d), regarding payment adjustments for Regulation energy, contravened its Tariff.

9. The Commission accepted the ISO's report in the October 3 Order. The Commission found that the ISO had calculated the amount of neutrality adjustment charges for each hour of the period June 1, 2000 through December 31, 2000, as directed, and that the data demonstrate that the charges never exceeded the $0.095/MWh limit. Regarding IDACORP's first objection, that the ISO did not adequately identify amounts recoverable other than under Tariff section 11.2.9, the Commission found that it was reasonable for the ISO to calculate only the amounts due under section 11.2.9. The Commission reasoned that, because the March 12 Order found that refunds of other charges (specifically, OOM charges) were not warranted, further calculations were not necessary.

10. IDACORP next complained that the mathematical calculations are flawed, listing neutrality adjustment charges on a monthly rather than hourly basis, and yielding a price per hour instead of a price per megawatt-hour, as directed in the March 12 Order. The Commission noted the ISO's explanation that its calculations were limited by the data available and its conclusion that the prices in fact reflect hourly costs. The Commission agreed with the ISO's explanation that, since all of the charges per hour were negative, they necessarily were under the $0.095/MWh limitation, and rejected IDACORP's objection.

11. Regarding IDACORP's final assertion that the ISO's treatment of charges under section 11.2.9(d), for adjustments for Regulation energy, were inconsistent with the Tariff, the Commission found that the ISO properly figured its charges for Regulation energy, and correctly determined in its report that there was a zero dollar impact under section 11.2.9(d). The Commission relied on the fact that the ISO had not levied any

charges under section 11.2.9(d) since well before the period subject to the complaint because the ISO had discontinued its Regulation Energy Payment Adjustment, for which section 11.2.9(d) had been created.

12. Also in the October 3 Order, the Commission granted IDACORP's motion to intervene as of July 10, 2003.

REQUEST FOR REHEARING

13. IDACORP argues that by accepting the compliance filing report, the Commission permitted the ISO to ignore its orders and engage in retroactive ratemaking. IDACORP argues that the ISO ignored the Commission's directives to apply the $0.095/MWh limit on neutrality adjustment charges on an hour-by-hour basis and instead simply added up the neutrality adjustment charges over the course of each month for each Scheduling Coordinator and divided by hours in each month to produce an average dollar amount per hour. IDACORP argues that the ISO's method assumes that the neutrality adjustment charges are negative in all hours without any evidence to support its theory. IDACORP claims that the ISO itself, in arguing in support of an annual cap in earlier pleadings, has stated that neutrality adjustment charges can vary greatly from hour to hour.[7] IDACORP argues that given this volatility, there must have been hours when neutrality adjustment charges were significantly positive and may have exceeded the cap in those hours, but the ISO's averaging methodology masks this volatility and removes its effects. IDACORP states that the ISO's argument that the method it used was the only possible method "given its Settlement process and its Tariff" does not wash, arguing that the ISO's prior statements to the Commission about neutrality adjustment charge volatility, and the ISO's inclusion in its report of hour-by-hour calculations of the aggregated non-section 11.2.9 charges, show that the ISO has the necessary data to calculate the neutrality adjustment charges in the manner ordered by the Commission.

14. IDACORP also argues that by removing OOM charges from the neutrality adjustment charges and moving them to some other, unspecified Charge Type without the requisite notice to customers at the time those charges were incurred, the ISO has engaged in retroactive ratemaking with the Commission's blessing.

15. IDACORP repeats its arguments that the ISO did not separate out OOM charges or other non-section 11.2.9 charges from the aggregate in its compliance filing, as required by the March 12 Order, and argues that Market Participants and the Commission

[7] IDACORP points to statements made by the ISO in two of its rehearing requests. See IDACORP Request for Rehearing at 7-8.

have no way of knowing whether these charges have been properly excluded. Specifically, IDACORP again argues that the ISO charged for Regulated Energy and invoiced them as neutrality adjustment charges under section 11.2.9(d) during the relevant period. IDACORP states that the ISO's argument, which the Commission accepted, that payments under section 11.2.9(d) were zero during the relevant period, is in direct conflict with the ISO's previous statements that these amounts are an undifferentiable part of Imbalance Energy which cannot be broken out. IDACORP argues that allowing the ISO to collect charges for Regulated Energy as neutrality adjustment charges, then later revise those charges to the detriment of Scheduling Coordinators, is nothing more than retroactive ratemaking.

16. On November 18, 2003, the ISO filed an answer to IDACORP's rehearing request, and IDACORP subsequently filed a response.

DISCUSSION

17. As a preliminary matter, pursuant to Rule 713 of the Commission's Rules of Practice and Procedure,[8] answers to requests for rehearing normally are prohibited. Accordingly, we will reject the ISO's answer, and IDACORP's subsequent response.

18. In the March 12 Order, the Commission directed the ISO to prepare its compliance report so that the Commission could determine whether the ISO ever exceeded its $0.095/MWh limit on neutrality adjustment charges. IDACORP is correct that the amounts were not calculated on an hour-by-hour basis.

19. However, the report demonstrates that the amounts at issue are de minimis,[9] and IDACORP has not shown that it has been harmed by the ISO's calculating the charges on a monthly, rather than an hour-by-hour, basis. Indeed, IDACORP presents no evidence of any amount for which it is due a refund. Given that the data provided by the ISO shows that the amounts at issue were very small (and were actually negative in all months), we find that the administrative burden involved in performing further calculations to comply precisely with our earlier directive in every hour of the seven months at issue, for every Scheduling Coordinator, would be extremely costly while potentially causing substantial delay in both this proceeding and the Refund Proceeding

[8] 18 C.F.R. § 385.713 (2003).

[9] For example, the ISO notes that the amount of costs credited or debited as of the end of June 2000 with regard to the entire market was ($798.11). June 10 Transmittal Letter at 3. The amount per Scheduling Coordinator would be a fraction thereof. All other months reflected similarly minimal, negative amounts.

in Docket Nos. EL00-95-045 and EL00-98-042 by depleting the ISO's limited resources. Therefore, we conclude that any further recalculations of the neutrality adjustment charges are unwarranted.

20. IDACORP is concerned that the report has inadequate information because the ISO did not break down individually all types of amounts included in the original billings. In that regard we continue to find that because no refunds are warranted, it would be unreasonable to burden the ISO to go back and separate the aggregated non-neutrality adjustment amounts for compliance with our order.

21. Although the ISO may not have prepared its report exactly as directed, the manner in which it chose to proceed was adequate for the purposes for which the Commission needed the data. Considering the additional administrative burden that the ISO would have incurred, and the potential for delay, the ISO's approach was preferable.

22. We considered and rejected IDACORP's argument that the ISO miscalculated charges under section 11.2.9(d) for adjustments for Regulation energy; the ISO demonstrated that no such charges were billed during the period at issue. IDACORP presents no additional information in its request for rehearing to persuade us otherwise.

23. Therefore, the ISO substantially complied with the March 12 Order, and we will deny IDACORP's request for rehearing.

The Commission orders:

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

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.