

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

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

v.

Docket No. EL03-54-003

California Independent System Operator Corporation

ORDER GRANTING REHEARING

(Issued March 29, 2007)

1. On March 30, 2005, the Commission issued an order denying rehearing¹ in this dispute between the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) and the City of Vernon, California (Vernon) (collectively, Applicants) and the California Independent System Operator Corporation (CAISO). In February 2006, the Commission voluntarily sought a remand of the case from the United States Court of Appeals for the District of Columbia Circuit. This order reverses the March 30 Order and grants rehearing.

¹ See *Cities of Anaheim v. California Independent System Operator Corporation*, 110 FERC ¶ 61,387 (2005) (March 30 Order).

I. Background

2. For a six week period, from February 7, 2000 to March 22, 2000, certain Reliability Must Run (RMR) units designated to serve local load were not available,² and the CAISO dispatched other generating resources to replace these RMR units. Originally, the CAISO billed the costs for the dispatch to replace the unavailable RMR units to Southern California Edison Company (SoCal Edison) as Out-of-Market (OOM) charges. SoCal Edison protested the charges and the CAISO, relying on Commission orders prohibiting the CAISO from using its OOM dispatch authority when there are unaccepted bids in the market,³ rebilled these costs as Intra-Zonal Congestion charges to all loads in the SP15 Zone, including Southern Cities and Vernon. On October 30, 2000, Southern Cities initiated arbitration regarding this matter. On April 15, 2002, the Arbitrator issued a decision simply stating all claims of Applicants were denied. On May 17, 2002, the Applicants filed a petition asking the Commission to review the Arbitrator's Award. On November 25, 2002, the Commission issued an order finding the Arbitrator's Award inconsistent with the arbitration procedures set forth in the CAISO tariff and referred the matter back to the Arbitrator.

3. On February 7, 2003, the Arbitrator issued a further decision (February 7 Arbitration Award). The Arbitrator briefly described the parties' positions and concluded that the CAISO took "voltage support actions related to Intra-Zonal Congestion management" and that "[Existing Transmission Contract] holders were not exempt from [CAISO] charges for such Intra-Zonal Congestion costs." On February 26, 2003, Applicants filed for Commission review of February 7 Arbitration Award. In response, the Commission issued an order establishing a schedule for submission of briefs.

² Testimony by Mr. Byron Woertz, director of client relations for the CAISO, on behalf of the CAISO in the earlier arbitration proceeding indicates that the RMR units were Alamitos 4, Huntington Beach 2, Redondo Beach 5, and Redondo Beach 6. Mr. Woertz's testimony indicates that these units were unavailable because they had not completed scheduled maintenance on time. *See* Testimony of Byron Woertz, Docket No. EL03-54-000 at 3 (filed March 20, 2003). These units, during the relevant time period, were owned or leased by Williams Energy Marketing & Trading Company (Williams), and the RMR agreement was between the CAISO and Williams. *See* Williams Transmittal Letter at 1, Docket No. ER00-1172-000 (filed January 19, 2000) (extending RMR agreement for one year, to be effective January 1, 2000 through calendar year 2000); *cf. Williams Energy Marketing & trading Co.*, Docket No. ER00-1172-000 (February 23, 2000) (unpublished letter order accepting extension of RMR agreement).

³ *See California Independent System Operator Corporation*, 90 FERC ¶ 61,006, *reh'g denied*, 91 FERC ¶ 61,026 (2000).

4. On April 20, 2004, the Commission issued an order⁴ reversing the findings of the Arbitrator. The Commission found that the charges at issue were for Voltage Support and, thus, should not be allocated as Intra-Zonal Congestion Management charges to all Scheduling Coordinators, including the Applicants, in the affected zone. Rather, the Commission found that the costs should be billed to SoCal Edison, the Responsible Utility in whose control area the RMR units were located.

5. In the March 30 Order, the Commission denied SoCal Edison's request for rehearing. The Commission addressed: (1) the appropriate deference to be given to the findings of the Arbitrator, and (2) the previous finding that the charges had been misclassified as for Intra-Zonal Congestion.

6. SoCal Edison appealed, and on December 23, 2005, SoCal Edison's filed a brief with the United States Court of Appeals for the District of Columbia Circuit, No. 05-1125, arguing, *inter alia*, that the Commission did not address SoCal Edison's contention that the CAISO Tariff, by its express terms, required all Scheduling Coordinators to bear the costs of Voltage Support incurred by the CAISO. That is, SoCal Edison argued to the D.C. Circuit that, even if the Commission was correct and the charges at issue were not for Intra-Zonal Congestion but for Voltage Support, section 2.5.28 of the CAISO Tariff requires these costs to be allocated among all Scheduling Coordinators in the zone. SoCal Edison stated that it raised this issue on rehearing but that the Commission did not address this tariff provision in its order denying rehearing.

Discussion

7. The Commission sought a voluntary remand of this proceeding in order to address section 2.5.28 of the CAISO Tariff and SoCal Edison's claim that that section is dispositive. Initially, however, we point out that, in its request for rehearing, SoCal Edison's entire discussion of section 2.5.28 of the CAISO Tariff was a single sentence,⁵ while its brief to the D.C. Circuit devoted five pages to its applicability. We find this discrepancy between what SoCal Edison argued on rehearing and what it argued to the D.C. Circuit troubling. Requests for rehearing should present *and fully explain* all of a party's arguments, not serve merely as a placeholder for arguments to be explained for

⁴ See *Cities of Anaheim v. California Independent System Operator Corporation*, 107 FERC ¶ 61,070 (2004) (April 20 Order), *reh'g denied*, 110 FERC ¶ 61,387 (2005) (March 30 Order).

⁵ Specifically, on page 9 of its request for rehearing, SoCal Edison wrote simply, "Likewise, under section 2.5.28 of the ISO Tariff, the 'cost of Voltage Support . . . shall be allocated to the Scheduling Coordinators.'" (Ellipses in original.)

the first time on appeal;⁶ indeed, it was to address such circumstances that the Commission adopted current Rule 713(c)(2) of the Commission's Rules of Practice and Procedure.⁷

8. Nevertheless, in turning to the substance of SoCal Edison's argument, we have become convinced that, having now reviewed section 2.5.28 of the CAISO Tariff, on balance, in consideration of all relevant tariff language, the most reasonable interpretation is that section 2.5.28 of the CAISO Tariff is dispositive and warrants assignment of the costs at issue to Scheduling Coordinators rather than the Responsible Utility. Accordingly, we will reverse the March 30 Order and grant rehearing.

9. Section 5.2.8 of the CAISO Tariff, Responsibility for Reliability Must-Run Charge, governs the cost responsibility for Voltage Support from RMR units. Section 5.2.8 provides that "the costs incurred by the ISO under each Reliability Must-Run Contract shall be payable to the ISO by the *Responsible Utility* in whose Service Area the Reliability Must-Run Generating Units covered by such Reliability Must-Run Contract are located."⁸

10. During the six weeks at issue, however, the four units with whom the CAISO had entered into RMR contracts were not available, and so no Voltage Support was provided from those units. Consequently, of necessity, the CAISO secured the needed local Voltage Support from other units. If the originally contracted-for units had been available and had provided the needed Voltage Support, under section 5.2.8 of the CAISO Tariff, there is little question that SoCal Edison would have been responsible for those costs as the Responsible Utility for the area for which this local Voltage Support was needed. However, as noted, these units were not available, and the amounts the

⁶ 16 U.S.C. § 8251 (2000). See also *Constellation Energy Commodities Group, Inc. v. FERC*, 457 F.3d 14, 20 (D.C. Cir. 2006) ("Parties are required to present their arguments to the Commission in such a way that the Commission knows "specifically . . . the ground on which rehearing [i]s being sought,"" citing *Intermountain Municipal Gas Agency v. FERC*, 326 F.3d 1281, 1285 (D.C. Cir. 2003)).

⁷ 18 C.F.R. § 385.713(c)(2) (2006); see *Revision of Rules of Practice and Procedure Regard Issue Identification*, Order No. 663, FERC Stats. & Regs. ¶ 31,193 (2005), *order on reh'g*, Order No. 663-A, FERC Stats. & Regs. ¶ 31,211 (2006); cf., e.g., *NSTAR Electric & Gas Corp. v. FERC*, No. 05-1362, slip op. at 10 (D.C. Cir. March 9, 2007) (single footnote in opening brief is not enough to raise an issue for the court of appeal's review); *California Dep't of Water Resources v. FERC*, 341 F.3d 906, 911 (9th Cir. 2003) (issue not preserved for review where petitioner "raised the issue in a single sentence at the end of an unrelated section of its request for rehearing, without citing the statutory language it now urges [the court of appeals] to consider.")

⁸ Emphasis added.

CAISO paid were not incurred by the CAISO under RMR contracts – and SoCal Edison has brought to our attention tariff language that is dispositive as to the responsibility for costs in such circumstances.

11. Section 2.5.1, Scope (a subsection of section 2.5, Ancillary Services), states generally that “[t]he ISO will calculate payments for Ancillary Services to Scheduling Coordinators and charge the cost to *Scheduling Coordinators*.”⁹ Additionally, and more importantly, as SoCal Edison noted, section 2.5.28 of the CAISO Tariff provides that the cost of Voltage Support “shall be allocated to *Scheduling Coordinators*.”¹⁰

12. Here, as discussed above, the four designated RMR contract units, the four Williams units, were unavailable. No Voltage Support was forthcoming from those units and under those contracts. The CAISO thus had to seek the necessary Voltage Support from other units, units not under RMR contracts. Section 2.5.28 of the CAISO Tariff specifically provides for the assignment of costs that the CAISO otherwise incurred for such Voltage Support to Scheduling Coordinators.

13. In our earlier orders, we found that the costs to replace the unavailable RMR units should be billed in the same manner as RMR charges under section 5.2.8, *i.e.*, to the Responsible Utility in whose service area the RMR units covered by such RMR contracts are located. However, upon further consideration, we are persuaded that, where the Voltage Support is not provided by RMR units under RMR contracts, section 2.5.28 governs, and it expressly allocates the cost responsibility for this additional Voltage Support to Scheduling Coordinators.

14. Accordingly, we will reverse the March 30 Order and grant rehearing.

The Commission orders:

⁹ Emphasis added.

¹⁰ Emphasis added. Also, section 2.5.3.4, Voltage Support, provides that the:

ISO shall determine on an hourly basis for each day the quantity and location of Voltage Support required to maintain voltage levels and reactive margins within WSCC and NERC criteria. . . . The ISO will issue daily voltage schedules, which are required to be maintained for ISO Controlled Grid Reliability. . . . All Participating Generators shall maintain the ISO specified voltage schedule. . . . If the ISO requires *additional* Voltage Support, it shall procure this either through Reliability Must-Run Contracts or if no other more economic sources are available by instructing a Generating Unit to move its MVar output outside its mandatory range.

The March 30 Order is hereby reversed, and rehearing granted.

By the Commission.

(S E A L)

Philis J. Posey,
Acting Secretary.