

107 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. EC03-27-002

ORDER DENYING REHEARING

(Issued May 10, 2004)

1. On February 24, 2003, the State Water Project of the California Department of Water Resources (SWP) sought rehearing of the Commission's order authorizing the acquisition by the California Independent System Operator Corporation (ISO) of scheduling rights on certain assets used for transmission in interstate commerce from the California Cities of Anaheim, Azusa, Banning and Riverside (Southern Cities).¹ We deny the request for rehearing, as discussed below.

2. This order benefits customers because increased participation in ISOs and Regional Transmission Operators (RTOs) produce the following benefits: market power mitigation, better management of grid congestion, reduction or elimination of rate pancaking, increased competitive options for wholesale customers, and enhanced reliability and enhanced operation of the transmission grid for all market participants.

I. Background

3. The Southern Cities sought to become Participating Transmission Owners in the ISO by transferring to it operational control of their transmission assets. The Southern Cities could only transfer to the ISO their scheduling rights to use the Southern Cities' share of a given line's transfer capability, because most of their transmission assets were Entitlements² and Encumbrances³ over facilities for which the Southern Cities are not

¹ California Independent System Operator Corporation, 102 FERC ¶ 61,058 (2003) (January 24 Order).

² Entitlements are "[t]he right of a Participating TO obtained through contract or other means to use another entity's transmission facilities for the transmission of Energy." Master Definitions Supplement, Transmission Control Agreement, Appendix D.

operating agents and that were not in the ISO Control Area. The ISO compensates the Southern Cities for the use of their transmission assets by paying the Southern Cities' Transmission Revenue Requirements (TRRs), which the ISO recovers from its transmission customers through its Transmission Access Charge and Wheeling Access Charge (transmission rates and charges).⁴

4. The ISO filed an application under section 203 of the Federal Power Act (FPA)⁵ seeking Commission authorization to acquire control of these scheduling rights. The ISO submitted a corresponding rate filing in Docket Nos. ER03-218-000 and ER03-219-000.

5. The January 24 Order reviewed the proposed transaction under the Merger Policy Statement⁶ and concluded that it was consistent with the public interest. The Commission found that the transaction would benefit competition because it would give the ISO control over the Southern Cities' entitlements to transmission facilities used in interstate commerce. The Commission noted that even if there is an increase in rates for some customers, "the transaction can still be consistent with the public interest if there are countervailing benefits from the transaction."⁷ We explained that the benefits of the

³ An encumbrance is "[a] legal restriction or covenant binding on a Participating TO that affects the operation of any transmission lines or associated facilities and which the ISO needs to take into account in exercising Operational Control over such transmission lines or facilities if the Participating TO is not to risk incurring significant liability. Encumbrances shall include Existing Contracts and may include: (1) other legal restrictions or covenants meeting the definition of Encumbrance and arising under other arrangements entered into before the ISO Operations Date, if any; and (2) legal restrictions or covenants meeting the definition of Encumbrance and arising under a contract or other arrangement entered into after the ISO Operations Date." Master Definitions Supplement, Transmission Control Agreement, Appendix D.

⁴ See the ISO's application filed on December 2, 2002 at 2-3.

⁵ 16 U.S.C. § 824b (2000).

⁶ Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. & Regs. ¶ 31,044 (Dec. 30, 1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (Nov. 28, 2000), FERC Stats. & Regs. ¶ 31,111 (2000), order on reh'g, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001).

⁷ Citing to Merger Policy Statement at 30,114 and TRANSLink Transmission Company, L.L.C., 99 FERC ¶ 61,106 at 61,474 (2002).

increased scope of an ISO include increased market power mitigation, better management of grid congestion, the reduction or elimination of rate pancaking, increased competitive options for transmission customers, enhanced reliability and enhanced operation of the transmission grid for all market participants.

6. SWP contends that the January 24 Order failed to set certain issues of material fact for an evidentiary hearing.⁸ SWP asks the Commission to reverse its January 24 Order and set for hearing the following issues: (1) whether certain of Southern Cities' facilities should be transferred, and therefore be subsidized through transmission rates, if they are generation tie facilities; (2) whether ISO ratepayers would be able to schedule transmission through the ISO over all the Southern Cities' facilities to be paid for in ISO rates; (3) the need for a full accounting of the cost to ISO ratepayers, including but not limited to effects on a) Grid Management Charges and b) reliability costs borne through socialized ISO rates; and (4) whether the ISO's treatment of Firm Transmission Rights (FTRs)⁹ for the Southern Cities is appropriate in terms of cost consequences and potential discriminatory impacts on other market participants.

II. Discussion

7. We do not believe that a trial-type evidentiary hearing is necessary in this proceeding. The Commission is not required to hold a trial-type evidentiary hearing in every case, but may act summarily on the pleadings.¹⁰ The Commission has found that a trial-type evidentiary hearing requires an adequate proffer of evidence that such hearing

⁸ SWP also contends that the Commission failed to consider its answer filed on January 17. The January 17 filing was an answer to the ISO's answer to SWP's December 20, 2001 protest. We do not believe that the failure of the January 24 Order to address SWP's January 17 filing harmed SWP. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), which prohibits an answer to an answer unless otherwise ordered by the decisional authority. Furthermore, the 4-page filing by SWP raised no new issues.

⁹ An FTR is a contractual right, subject to the terms and conditions of the ISO Tariff, that entitles the FTR Holder to receive, for each hour of the term of the FTR, a portion of the Usage Charges received by the ISO for transportation of energy from a specific originating Zone to a specific receiving Zone and, if there is an uneconomic curtailment to manage Day-Ahead congestion, to a Day-Ahead scheduling priority higher than that of a schedule using Converted Rights capacity that does not have an FTR.

¹⁰ See *Century Power Corporation*, 53 FERC ¶ 61,240 at 61,991, order on reh'g, 56 FERC ¶ 61,083 (1991); *Florida Gas Transmission Company*, 91 FERC ¶ 61,052 at 61,186 (2000); and *Moreau v. FERC*, 982 F.2d 556 (D.C. Cir. 1993).

is warranted, i.e., more than mere allegations on the part of a requesting party.¹¹ As discussed below, none of the issues merits a trial-type hearing.

A. Allocation of FTRs

8. SWP asks the Commission to investigate the allocation of FTRs by the ISO to the Southern Cities. SWP argues that the FTR allocation was done “behind closed doors” in violation of the ISO Tariff and the Commission’s regulations which require open access disclosure and comparable treatment for all customers. SWP also states that it has no way of knowing how this allocation will affect its ability to obtain FTRs if it converts its transmission contracts.

9. The ISO allocates FTRs to new Participating Transmission Owners, such as Southern Cities, in accordance with section 9.4.3 of the ISO Tariff. The Commission has found that the ISO’s proposed treatment of FTRs is generally reasonable and may be used as a balance of incentives intended to encourage transmission owners to join the ISO.¹² However, the Commission also found that pursuant to intervenor requests, “more information was needed on various aspects of the ISO’s proposed treatment of FTRs.”¹³ This issue was set for hearing in Docket No. ER00-2019, and the Initial Decision addresses whether the process for allocating FTRs pursuant to section 9.4.3 of the ISO Tariff is unjust, unreasonable and unduly discriminatory.¹⁴ We note that SWP raises arguments in this section 203 proceeding that are similar to those being addressed in Docket No. ER00-2019. Since these arguments are appropriately raised in that proceeding instead of here, we deny SWP’s request for rehearing on this issue.

¹¹ See South Carolina Electric & Gas Co., 56 FERC ¶ 61,379 at 62,440 (1991) citing to Woolen Mills Associates v. FERC, 917 F.2d 589, 592 (D.C. Cir. 1990); see also Florida Gas Transmission Company, 91 FERC ¶ 61,052 at 61,186 (2000) (“the requesting party must make allegations of material fact, provide adequate evidence in support of the allegations, and show that the material facts are in dispute”).

¹² California Independent System Operator Corp., 91 FERC ¶ 61,205 at 61,726 (2000), order on reh’g, 104 FERC ¶ 61,062 at P 29 (2003).

¹³ California Independent System Operator Corp., 91 FERC at 61,726.

¹⁴ California Independent System Operator Corp., 106 FERC ¶ 63,026, P 227-234 (2004).

B. Generation Tie Facilities

10. SWP asserts that the January 24 Order disregarded evidence showing that some of the facilities at issue are generation tie facilities. SWP argues that the ISO's acceptance of generation tie facilities as part of the ISO-controlled grid violates Commission precedent, ISO Tariff provisions and ISO agreements. SWP essentially objects to the inclusion of the costs of these facilities in the Southern Cities' TRR, and thus in the ISO's transmission rates and charges, saying that this will increase the transmission rates and charges SWP pays, while subsidizing the transmission rates and charges paid by the Southern Cities.

11. We address in section D of this order the SWP's argument that its transmission rates will increase if the Commission allows the transfer of Southern Cities' entitlements to generation tie facilities to the ISO. However, in Docket No. EL03-14-000, et al., the Commission approved a settlement agreement that resolved whether it was appropriate to include the recovery of the entitlements to certain facilities of the Cities of Azusa and Banning in their TRRs.¹⁵ The Commission conditionally resolved all issues concerning TRRs for the Cities of Anaheim and Riverside, "subject to the establishment of evidentiary hearing procedures to address and resolve whether the TRRs should include costs associated with those Cities' entitlements in facilities referred to as the Northern Transmission System and the Southern Transmission System, and related transmission agreements between those Cities and the Los Angeles Department of Water and Power (LADWP)."¹⁶ Therefore, we deny SWP's request for rehearing on this issue.

C. Effect of Transfer on Competition

12. The January 24 Order found that the proposed transaction would not harm the generation markets because it did not involve a change in ownership or control of generation facilities, but a transfer of control over entitlements to transmission facilities.¹⁷ However, SWP argues that there is harm to competition because of subsidization of the Southern Cities' entitlements associated with generation tie facilities.¹⁸ We note that

¹⁵ City of Azusa, California et al., 105 FERC ¶ 61,293 (2003) (the hearing is scheduled to begin on May 4, 2004 in City of Anaheim, Docket No. EL03-15 and City of Riverside, Docket No. EL03-20).

¹⁶ Id.

¹⁷ January 24 Order at P 11.

¹⁸ SWP also contends that the Commission mistakenly said in the January 24 Order that "[n]o party alleges an adverse effect on competition." We recognize this mistake. However, it was a harmless error, since we properly found the transaction does not harm competition since we are addressing SWP's arguments in this order.

SWP's argument assumes that the Riverside and Anaheim facilities at issue are generation tie facilities. As noted above, this factual determination has been set for hearing¹⁹ and the Commission granted SWP's request that the proceeding be made subject to refund.²⁰ Thus, if the Riverside and Anaheim facilities at issue are found to be generation tie facilities, the Commission can provide for refunds in that proceeding for any excess transmission rates and charges paid by the transmission customers of the ISO. Therefore, we deny SWP's rehearing request on this issue.

D. Effect of Transfer on Rates

13. SWP asserts that the ISO accepted generation tie facilities as part of the ISO controlled grid and that this will increase SWP's transmission rates. SWP alleges that there is no evidence that ISO customers bearing the increased costs associated with Southern Cities' facilities will benefit from reduced rate pancaking, or that the competitive options for these customers will increase. SWP asserts that, on the other hand, there is evidence that "no customers may benefit from these facilities – even if the ISO does develop the capability to schedule them – because no customers may have any interest in using facilities that serve only to connect the Southern Cities' generation output to the grid."²¹ SWP argues that further there is no evidence that ISO control creates a more reliable, enhanced or more efficient grid.

14. The January 24 Order noted that the ISO made scheduling rights on the Southern Cities' entitlements available to market participants.²² Furthermore, as explained in the January 24 Order, the Commission has found that even if rates increase for some customers, the transaction can still be consistent with the public interest if there are countervailing benefits from the transaction.²³ The increased participation in ISOs and RTOs produce the following benefits: market power mitigation, better management of grid congestion, reduction or elimination of rate pancaking, increased competitive options for wholesale customers, and enhanced reliability and enhanced operation of the transmission grid for all market participants. With the transfer of these facilities and entitlements, market participants in California now have access to a broad spectrum of

¹⁹ City of Azusa, California, et al., 105 FERC ¶ 61,293 (2003), reh'g denied, 106 FERC ¶ 61,143 (2004).

²⁰ City of Azusa, California, et al., 102 FERC ¶ 61,153 (2003).

²¹ SWP's request for rehearing at 20.

²² See January 24 Order at P 13.

²³ See id. at P 14. This is also consistent with the finding by the court in Northeast Utilities Service Co. v. FERC, 993 F.2d 937, 945 (1st Cir. 1993).

resources in Nevada, Arizona and Utah.²⁴ Additionally, in Order No. 2000 the Commission found with considerable discussion that the benefits of RTO formation overall outweigh the costs.²⁵ Therefore, we deny SWP's request for rehearing on this issue.

15. Next, SWP contends that the examination of the justness and reasonableness of Southern Cities' TRR in Docket No. EL03-14, et al., does not excuse the January 24 Order's failure to consider cost consequences of the transfer of Southern Cities' facilities to the ISO. SWP believes that the Commission must examine the nature and extent of such costs as part of its section 203 analysis. We disagree. As discussed above, the benefits of this transaction outweigh any rate increases that result from the transaction. The Commission will ensure that any increase is not unjust and unreasonable in the proceeding in Docket No. EL03-14, et al. Furthermore, the Commission found that the Grid Management Charge²⁶ effective January 1, 2001 was just and reasonable as modified in California Independent System Operator, Inc. et al.²⁷ Thus, we deny SWP's request for rehearing on this issue.

²⁴ See ISO Answer at 6.

²⁵ Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (2000), FERC Stats. & Regs. ¶ 31,089 (1999) at 31,017 and 31,036, order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (2000), FERC Stats. & Regs. ¶ 31,092 (2000), appeal dismissed, Public Utility District No. 1 of Snohomish County, Washington v. FERC, 272 F.3d 607 (D.C. Cir. 2001) (Order No. 2000); see also Avista Corp., et al., 95 FERC ¶ 61,114 at 61,324, reh'g granted in part and clarified in part, 96 FERC ¶ 61, 058 (2001). See also Merger Policy Statement at 30,114; TRANSLink Transmission Company, L.L.C., 99 FERC ¶ 61,106 at 61,474 (2002); International Transmission Company, et al., 97 FERC ¶ 61,328 at 62,538 (2001).

²⁶ The Grid Management Charge is an annual charge assessed to scheduling coordinators and others to recover the ISO's administrative and general operating costs, including those costs incurred in establishing the ISO prior to the commencement of operations.

²⁷ SWP was a party in this proceeding. 106 FERC ¶ 61,032, reh'g pending. The ISO also filed its Grid Management Charge for year 2004 in Docket No. ER04-115. Moreover, we note that the costs associated with the Reliability Support requirement of the ISO has not changed because the transferred facilities are outside the ISO Control Area.

The Commission orders:

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

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.