UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	Docket No. ER04-632-000

MOTION TO PERMIT ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2003), the California Independent System Operator Corporation ("ISO")[1] respectfully submits its motion to permit answer and answer to the protests filed in the above-identified docket.[2] These protests concern a proposed new definition of "PTO Service Territory" and certain related revisions in the ISO Tariff that would facilitate new participation in the ISO. No party has shown that this filing is unjust or unreasonable or has any raised other than speculative objections more easily addressed in the context of future discussions about prospective participation and minor problems that the ISO believes could appropriately be corrected in a compliance filing. The Commission should therefore approve the ISO proposal, subject to the proposed modifications.

I. BACKGROUND

On March 9, 2004, the ISO filed a proposed amendment to the ISO Tariff in Docket No. ER00-2019-007, *et al.*, in order to provide a new definition, "PTO Service Territory," and clarify certain related provisions ("Amendment"). With this filing the ISO fulfilled a stipulation made at

[1] Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] In addition to those filing protests, discussed below, the following parties filed motions to intervene without comment: Pacific Gas & Electric Company, the Cogeneration Association of California/Energy Producers and Users Coalition, and the Sacramento Municipal Utility District.

hearing regarding this issue in the context of the proceeding to establish the ISO's transmission Access Charge.[3]

The Amendment is necessary in order to implement the ISO's transmission Access Charge methodology, particularly with respect to accommodating possible participation in the ISO by Transmission Owners whose circumstances significantly differ from those of the current participants. Moreover, because of increased participation the ISO needed to distinguish the territory for which a Transmission Owner is responsible from the Service Area for which a Utility Distribution Company is responsible.[4] The current language of the ISO Tariff contemplated Participating Transmission Owners ("Participating TOs") that would be traditional providers of electric delivery services. It assumed that they would have, in addition to bulk transmission assets, distribution networks and franchised retail service areas. There are existing New Participating TOs that do not have bulk transmission assets directly connected to their distribution networks that serve their retail Load. Moreover, there are new and potential New Participating TOs that do not necessarily have distribution networks and retail customers. Consequently, some of the key provisions and definitions relating to who pays and who collects the transmission Access Charge require revision in order to function appropriately. Although the ISO attempted to address these issues in Amendment No. 49 to the ISO Tariff, it became apparent that the proposed solution was not satisfactory to the parties in the proceeding.

During the hearing on the transmission Access Charge, the Presiding Judge granted a stipulation to defer this matter for a later filing. The ISO then worked with the parties to develop solutions to their concerns. While a number of drafts were circulated prior to and during the

[3] Hearing Transcript in ER00-2019-006, *et al.*, at 2253 (Nov. 7, 2003).

[4] As an example, Southern California Edison ("SCE") is responsible for the transmission in the majority of the Los Angeles basin, including the interties to the Cities of Anaheim, Riverside, Azusa and Banning. With the proposed Amendment, this would be SCE's PTO Service Territory, whereas the Service Area responsibility is for a distribution

proceeding in the fall of 2003, the ISO more recently circulated proposed tariff language on February 3, 2004, and convened a telephone conference to discuss this on February 17th; new drafts were circulated on March 3, 2004, and a proposed version for filing was circulated on March 7, 2004. The ISO also conferred and corresponded with the parties and Staff in order to clarify how these provisions operate. As the ISO explained in its transmittal letter, consensus could not be achieved on one issue, discussed below, but the ISO has crafted a filing that addresses the concerns that were raised during the course of consultations with stakeholders.

II. MOTION TO PERMIT ANSWER

Notwithstanding Rule 213(a)(2), 18 C.F.R. §385.213(a)(2), the Commission has accepted answers to protests that assist the Commission's understanding and resolution of the issues raised in a protest, *Long Island Lighting Co.*, 82 FERC ¶61,129 (1998); clarify matters under consideration, *Arizona Public Service Co.*, 82 FERC ¶61,132 (1998), *Tennessee Gas Pipeline Co.*, 82 FERC ¶61,045 (1998); or materially aid the Commission's disposition of a matter, *El Paso Natural Gas Co.*, 82 FERC ¶61,052 (1998). The ISO's Answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues and help the Commission to achieve a more accurate and complete record, on which all parties are afforded the opportunity to respond to one another's concerns. *Northern Border Pipeline Co.*, 81 FERC ¶61,402 (1997); *Hopkinton LNG Corp.*, 81 FERC ¶61,291 (1997). Accordingly, the Commission should accept this Answer.

---

company to serve retail Load in a specific regional area. In this example, the City of Anaheim serves Anaheim's retail Load, the City of Riverside serves Riverside's retail Load, etc.

III. PROTESTS

A. Inclusion of Cut-Off Date in the Definition of "PTO Service Territory"

Southern California Edison ("SCE") and Modesto Irrigation District ("MID") oppose the inclusion of a "cut-off" date in the definition of PTO Service Territory. The ISO included this provision in order to address a concern raised that a municipality that was a historic customer of a Participating TO might, prior to expiration of the ten-year transmission period in 2010, escape responsibility for the Transition Charge by "municipalization," i.e., becoming a municipal utility and taking itself outside the definition of the PTO Service Territory of the Participating TO. *See* ISO Tariff §§ 7.1, Appendix F, Schedule 3 § 5.8. The only circumstance, however, in which the cut-off date will have an impact is when a municipal Participating TO is annexing territory (and customers) of an Original Participating TO and the Transition Charge is being paid by the Original Participating TO. Former customers of Participating TO that become customers of a non-Participating TO will pay the Wheeling Access Charge (and no Transition Charge) regardless of the cut-off date. A transfer after the expiration of the transition period is meaningless because there will then be a uniform grid-wide rate. Thus, although there is a potential for a cost-shift without the cut-off date, it is limited.

MID's only concern is based upon the incorrect premise that the cut-off date would result in a customer switching from PG&E to MID in a joint electric distribution service area would, as a result of the cut-off date, pay PG&E's transmission Access Charge rather than MID's Wheeling charge. MID at 6–8. Load for which the Wheeling Access Charge appropriately is payable, as MID claims (at 7), is excluded from the definition of Gross Load, and only Gross Load is subject to the transmission Access Charge. *See* ISO Tariff Appendix A, definitions of Access Charge and Gross Load. The ISO notes that this was explained to MID in the course of stakeholder consideration of

the ISO's proposal, which MID essentially acknowledges (at 8). The cut-off date would not affect MID unless MID chose to become a Participating TO, in which case its customers would pay the transmission Access Charge regardless of whether PG&E or MID served them. Consequently, there is no merit to MID's concerns about an "exit fee." *Id*.

SCE complains that the rate and billing ramifications of preserving a cut-off date in the definition of PTO Service Territory are unreasonable. During the Access Charge transition period, customers that for whatever reason are served by a different Participating TO other than their historic service provider will be billed by their historic service provider for service actually rendered by another Participating TO. The ISO takes no position on whether the administrative complications engendered by the cut-off date outweigh the potential for a cost-shift. After 2010, administration of the tariff will be relatively simple, in that customers all will pay the same transmission Access Charge and Wheeling Access Charge, and the ISO will allocate the funds collected among the Participating TOs in accordance with their adjusted Transmission Revenue Requirements.

B. Reliability Must-Run Charges

The Northern California Power Agency ("NCPA") raises (at 3–4) a concern regarding the ISO's proposed revision to Section 5.2.8 of the ISO Tariff, which assigns responsibility for Reliability Must-Run ("RMR") charges. NCPA points out that "PTO Service Territory" incorrectly replaces "Service Area" in a passage where a service area other than that of a Participating TO actually is intended. Consequently, the ISO Tariff's more general definition of "Service Area" continues to be appropriate in that instance. The ISO agrees, and hereby proposes that the Commission direct the modification to the ISO's proposal such that the revised Section 5.2.8 would read (emphasis added):

> **5.2.8 Responsibility for Reliability Must-Run Charge** Except as otherwise provided in Section 5.2.8.1, the costs incurred by the ISO under each Reliability Must-Run Contract shall be payable to the ISO by the Responsible Utility in whose PTO Service Territory the Reliability Must-Run Generating Units covered by such Reliability Must-Run Contract are located or, where a Reliability Must-Run Generating Unit is located outside the PTO Service Territory of any Responsible Utility, by the Responsible Utility or Responsible Utilities whose PTO Service Territories are contiguous to the ***Service Area*** in which the Generating Unit is located, in proportion to the benefits that each such Responsible Utility receives, as determined by the ISO. Where costs incurred by the ISO under a Reliability Must-Run Contract are allocated among two or more Responsible Utilities pursuant to this section, the ISO will file the allocation under Section 205 of the Federal Power Act.

C. Revised Definition of "UDC" and Definition of "SCPTO"

The ISO's proposed changes to the definition of "UDC" and new definition of "SCPTO" are intended to address the possibility that an entity such as California Department of Water Resources State Water Project ("CDWR") or Metropolitan Water District of Southern California ("MWD") may in the future decide to become a Participating TO or an MSS Operator. These changes are necessary in order for such an entity to have a PTO Service Territory and pay the transmission Access Charge. *See* ISO Tariff § 7.1. The earlier drafts of the ISO's proposal relied upon the belief that the new definition of "SCPTO" would serve this purpose. However, after discussions among technical personnel, it appeared that revising the definition of "UDC" would be the preferable means to achieve this end.

Although neither CDWR nor MWD raised the matter in response to the drafts, including a revised definition of "UDC," that the ISO circulated to all concerned, both parties raise in their protests a number of concerns about this aspect of the ISO's proposal.[5] CDWR also opposes a proposed new definition for "SCPTO". The ISO does not intend to respond to all of these concerns, but the ISO would note that one particular concern is misplaced.

[5] Also inconsistent with their failure to review and comment on the drafts are CDWR's (at 14) complaint of neglect and MWD's assertion (at 5) that the ISO's filing does not reflect "lengthy discussions" nor the "comments of concerned parties". CDWR also misconstrues (at 15) the stipulation pursuant to which the ISO filed the Amendment as providing for the collaborative process to produce a filing. The ISO pledged to work with the parties to develop the most widely

CDWR argues (at 6–7) that granting it UDC status would contravene court precedent, specifically the holding of the U.S. Court of Appeals for the Ninth Circuit in *California Department of Water Resources v. FERC*, 341 F.3d 906 at 910 (2003) ("*CDWR v. FERC*"). However, the Ninth Circuit did not hold in that case, as CDWR contends, that the Commission must justify every finding related to CDWR with reference to CDWR's water operations. Indeed, the Ninth Circuit would be quite surprised to learn that CDWR cites this case for the proposition that it accords such special status to CDWR. The Ninth Circuit propounded no rule that the Commission's regulation of hydroelectric facilities requires in every instance a specific finding that there is no interference with their water operations. Rather, the Court merely confirmed the long-standing requirement that administrative orders demonstrate reasoned decisionmaking. *See CDWR v. FERC* at 910. In particular, the Ninth Circuit held that where the ISO proposed and the Commission approved emergency orders providing for the outright control of the operational schedules for generators, the Commission could not, without explanation, refuse to exclude CDWR and other hydroelectric facilities from similar types of controls related to planned outage schedules when it had found good reason to exclude such facilities from the "must offer" requirement.

CDWR's discussion of the Ninth Circuit's ruling is misleading. The assertion that "Article 4 of the [UDC] Agreement, as well as ISO Tariff § 4.3.2 and Dispatch Protocol § 3.5.2, impose the very same outage control requirements that the 9th Circuit vacated" is simply false. The outage control requirements CDWR cites call solely for information and coordination. Prior to the orders reviewed by the Ninth Circuit, CDWR's Generating Units, which are subject to Participating Generator Agreements, were subject to information and coordination requirements of Section OCP 2.2.1, 2.2.2, and 2.2.3. These provisions were not challenged in and not affected by *CDWR v.*

---

acceptable language and allow for stakeholder input, and attempted to do so, but specifically pledged to make a unilateral filing after a limited period in order to keep the process from stalling.

FERC. The provisions of ISO Tariff § 4.3.2 and DP § 3.5.2[6] are no more onerous that those to which CDWR is subject by virtue of its Participating Generator Agreement. *CDWR v. FERC* simply provides no basis for rejecting the ISO's Amendment.

Nonetheless, in the light of the controversy that the ISO's effort has engendered among the entities it was intended to accommodate, the ISO believes that it would be preferable to determine the most appropriate tariff revisions necessary to address CDWR's, MWD's or a similar entity's circumstances at such time as the ISO considers its application to become a Participating TO or MSS Operator. Accordingly, the ISO recommends that the Commission direct the deletion from the Amendment, without prejudice, of the modifications to the definition of "UDC" and the new definition of and references to "SCPTO"

D. Proposed Technical Conference

TANC proposes (at 5) to indefinitely postpone the schedule for pleadings in this proceeding and convene a technical conference for no reason other than the purported complexity of the ISO's filing. Versions of this language, however, were circulated throughout the transmission Access Charge proceeding and for 105 days thereafter, with full opportunity for questions and comments. In essence, there has already been a technical conference. Moreover, the revisions proposed in this Amendment relate primarily to the consequences of a future decision by an entity deciding to participate in the ISO as a Participating TO.

A prospective participant may take all the time it chooses to fully evaluate how this filing would affect it in the event it becomes a Participating TO. The ISO will provide whatever assistance and support it can in this effort, and the ISO hereby affirms its willingness to hold informal conferences with any interested stakeholders. Moreover, as part of any serious

[6] To the extend DP § 3.5.2 refers to appropriate scheduling procedures from the Outage Coordination Protocol, it would incorporate any limitations based on *CDWR v, FERC.*

negotiation in this regard, the ISO is open to the possibility that future tariff modifications may be necessary to address issues as they arise. In the meantime, holding the ISO Tariff in limbo will aggravate the complexity and uncertainty of its administration. The Commission should therefore reject TANC's motion and avoid unnecessary confusion and delay.

E. Organization and Clarity of the ISO Tariff

The Cities of Redding, Santa Clara and Palo Alto, California, and the M-S-R Public Power Agency ("Cities") contend (at 7) that the ISO Amendment does not clarify the relevant sections, particularly Section 7 of the ISO Tariff, because they are no less "befuddled" with the proposed revisions than they were with the existing language. Cities complain (at 7–8) in particular that Section 7 does not make clear who pays the transmission Access Charge and who pays the Wheeling Access charge, and advocate (at 10–11) a reorganization of these sections. Cities also complain (at 9–10) about confusing definitions.

The ISO recognizes that the ISO Tariff, as a long complex document, may on occasion require some analysis. There should be little confusion, however, about the Access Charge, which is straightforward. Everyone taking Wheeling Service from the ISO pays the Wheeling Access Charge. Everyone taking service within a PTO Service Area that does not pay the Wheeling Access Charge pays the Access Charge based on Gross Load. Moreover, this filing was never meant to clarify who pays the transmission Access Charge and who pays the Wheeling Access charge and to do so would be outside the scope of the stipulation.

IV. CONCLUSION

For the foregoing reasons, the Commission should accept the Amendment, modified as discussed above, and permit it to go into effect on May 8, 2004.

Respectfully submitted,

/s/ Michael E. Ward

Charles F. Robinson, General Counsel
Anthony Ivancovich, Senior Regulatory Counsel
The California Independent
System Operator Corporation
151 Blue Ravine Road
Folsom, California 95630
Tel: (916) 608-7135
Fax: (916) 351-4436

David B. Rubin
Michael E. Ward
Jeffrey W. Mayes
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Suite 300
Washington, D.C. 20007-5116
Tel: (202) 424-7500
Fax: (202) 424-7643

Counsel for the California Independent System Operator Corporation

Dated: April 14, 2004

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Folsom, California this 14th day of April, 2004.

/s/ Anthony Ivancovich
Anthony Ivancovich