UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

105 FERC * 61,021

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

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

v.

Docket Nos.

EL00-111-005
EL00-111-006

California Independent System Operator Corporation

Salt River Project Agricultural Improvement and Power District

v. Docket Nos.EL01-84-001
EL01-84-002

California Independent System Operator Corporation

California Independent System Operator Corporation Docket No.ER01-607-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 3, 2003)

1. Several parties requested rehearing of the March 12, 2003 order issued in this proceeding, which addressed various issues concerning neutrality adjustment charges assessed under the Open Access Transmission Tariff (Tariff) of the California Independent System Operator Corporation (ISO) and the ISO's charges to recover costs for out-of-market (OOM) transactions.[1] For the reasons discussed below, we will deny rehearing in part and reject rehearing in part. In this order, we also accept the report filed by the ISO in compliance with the March 12 Order analyzing neutrality adjustment charges.

BACKGROUND

The Complaints

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 OOM dispatch calls. In a complaint filed September 14, 2000 in Docket No. EL00-111-000, Southern Cities alleged that: (1) the ISO's collection of

OOM dispatch costs from all Scheduling Coordinators, as opposed to only those who lack adequate supply,[2] was unjust and unreasonable; and (2) the ISO had violated certain provisions of its Tariff by recovering the costs from the City of Riverside through neutrality adjustment charges[3] in excess of a limit of $0.095/MWh established in a prior proceeding.

3. The Commission accepted an amendment to the ISO's Tariff on December 8, 2000,[4] which revised OOM cost allocation in a manner that was consistent with the position of Southern Cities. The revision, part of Tariff Amendment No. 33, allocated OOM costs to demand only to the extent that it appears unscheduled in real time (i.e., to those Scheduling Coordinators who created the need for OOM dispatch calls).

4. On June 1, 2001, the Salt River Project Agricultural Improvement and Power District (SRP) filed a complaint against the ISO in Docket No. EL01-84-000 challenging several aspects of the ISO's neutrality adjustment charges. First, SRP requested refunds for the period December 10 to 11, 2000, alleging that the Commission authorized an effective date of December 10, 2000 for the modified OOM cost allocation method accepted in Amendment No. 33, rather than December 12, 2000. Thus, SRP contended that the ISO implemented the new allocation method two days late and that refunds are owed. Second, SRP argued that the ISO violated the neutrality adjustment charge limit throughout the time period January 1, 2000 through December 31, 2000, and sought refunds of all charges assessed in excess of the $0.095/MWh limit applied on an hourly basis, with interest. SRP further contended that the ISO improperly raised the limit from $0.095/MWh to $0.35/MWh as of September 15, 2000 because it never filed a tariff revision with the Commission under section 205 of the Federal Power Act (FPA) nor provided proper notice of the rate change to SRP.

Earlier Orders

5. The Commission responded to Southern Cities' complaint by order dated
March 14, 2001.[5] The March 2001 Order dismissed as moot Southern Cities' first allegation because Tariff Amendment No. 33 had revised OOM cost allocation consistent with the position of Southern Cities. With respect to Southern Cities' second allegation, the March 2001 Order granted that portion of the complaint and found that the ISO had violated its Tariff's stated neutrality adjustment charge limit for OOM charges assessed to the City of Riverside (Riverside) during the period of June 1, 2000 to September 15, 2000. Consequently, the March 2001 Order, among other things, directed the ISO to:
(1) recalculate the neutrality adjustment charges assessed to Riverside for the relevant period, using the Tariff's stated $0.095/MWh limit applied on an hourly basis; and
(2) prospectively abide by any such applicable limit (pending Commission-approved modification thereof).

6. On rehearing,[6] the Commission found that the ISO's previous allocation methodology could not be found moot for the period of November 14, 2000 (the refund effective date) through the date of implementation of the December 8 Order. Nevertheless, the Commission denied this aspect of the rehearing requests because neither Southern Cities nor Vernon had provided adequate support for their positions that the previous cost allocation method was unjust and unreasonable. The order found that, although Southern Cities and Vernon asserted that they were

assessed excessive OOM dispatch costs during the relevant period, neither party had provided the Commission with any supporting cogent evidence. The order noted that the parties acknowledged their calculations were inaccurate because the applicable neutrality adjustment charges included non-quantified "various other types of costs" in addition to OOM dispatch costs. Thus, the May 2001 Order found that the previous allocation methodology had not been shown to be unjust and unreasonable and rejected Southern Cities' and Vernon's requests for relief during the period November 14, 2000 to December 10, 2000.

7. Regarding the arguments raised by the ISO, the Commission found that, regardless of what the ISO intended the tariff language to be, the filed rate doctrine mandated that the ISO charge its customers the actual rate specified in its tariff. Thus, the ISO's alleged administrative error was not an excuse for limiting the neutrality adjustment charge on an annual (as opposed to on an hourly) basis, and charging greater than 0.095/MWh during the period June 1, 2000 through September 15, 2000.[7]

8. The Commission agreed with the parties' assertions that the relief ordered for Riverside in the March 2001 Order should be applicable to any Scheduling Coordinator that was overcharged, and broadened the directive in the earlier order for the ISO to recalculate the neutrality adjustment charges assessed to all Scheduling Coordinators for the period of June 1, 2000 to September 15, 2000.

9. Parties filed further requests for rehearing, but upon the request of parties in both complaint proceedings, the Commission issued an order instituting settlement judge procedures.[8] The order did not institute hearing proceedings or authorize designation of a presiding administrative law judge.

Settlement Judge Procedures

10. The parties participated in numerous settlement conferences to resolve the complaints, and on July 31, 2002, Southern Cities, SRP and the ISO (Settling Parties) submitted to the Commission an Offer of Settlement and Settlement Agreement (Offer of Settlement). The proposed Offer of Settlement would have (1) moved back the effective date of Amendment No. 33 by four days (December 8 as opposed to December 12), which would have revised the method of allocating OOM amounts to Scheduling Coordinators over that period and (2) would have eliminated the ISO's refund obligation associated with past overcharges of the neutrality adjustment charge for all customers.

11. In addition to comments supporting the Offer of Settlement from the Settling Parties and trial staff, PG&E filed comments opposing the Offer of Settlement, and the Commission received motions to intervene out-of-time, and protests or comments in opposition, from IDACORP Energy, L.P. (IDACORP), and several others. PG&E objected that the proposed Offer of Settlement purported to resolve the ISO neutrality adjustment overcharges by retroactively moving back the effective date of Amendment No. 33 in a way that reallocated tens of millions of dollars of charges to non-settling parties, while precluding PG&E and others from seeking refunds for amounts that they were overcharged for neutrality adjustment charges on other days, and therefore the Offer of Settlement was unjust, unreasonable and unduly discriminatory and constituted retroactive ratemaking. PG&E

contended that, although settling parties can agree to pay a higher rate for past periods, they could not lawfully impose the higher rate on parties such as PG&E that did not agree with the arrangement. Subsequently, participants filed reply comments. IDACORP withdrew its protest on the condition that it be granted the same rights, procedurally and substantively, as other Settling Parties. The Settling Parties and the California Department of Water Resources (DWR) opposed the late interventions.[9]

March 12, 2003 Order

12. 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. The Commission explained:

> The Commission has previously determined in its March [2001] Order on the original complaint, and on rehearing in the May [2001] Order, that OOM costs were allocated in accordance with provisions of the ISO Tariff. Further, the Commission in those orders required the ISO to refund neutrality adjustment charges in excess of the stated limit in the ISO Tariff. . . . [B]oth of the actions proposed by the Offer of Settlement would effectuate a retroactive rate adjustment by the ISO on parties who have not agreed to the Offer of Settlement.

March 12 Order, 102 FERC * 61,274 at P 39-40. The Commission noted that, for at least one non-settling party, OOM charges would increase significantly over those previously paid, and that the Offer of Settlement would waive the Commission's required refunds of neutrality adjustment overcharges due non-settling parties.

13. 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 maintaining our finding that the ISO's recovery of neutrality adjustment charges 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.

14. With respect to the ISO's contention that the neutrality adjustment charges be calculated on an hourly basis, rather than an annual basis, we denied rehearing for the reasons given in the May 2001 Order. The Commission also denied the rehearing requests of Southern Cities and Vernon, finding that the evidence they submitted demonstrated increases in the amount of OOM costs

incurred, but that that evidence did not mandate a finding that the ISO's prior allocation methodology was unjust and unreasonable. Regarding SRP's allegation that the ISO incorrectly delayed implementation of Amendment No. 33 by two days, the Commission found that the December 8 Order intended that the effective date for the revision was to be December 12, 2000, although a typographical error stated that the date was to be December 10, 2000, and the Commission held that the cost allocation elements of Amendment No. 33 properly went into effect on December 12, 2000. The Commission agreed with SRP's allegation that the ISO did not raise the neutrality adjustment charge limitation to $0.35/MWh in September 2000 in accordance with the requirements of the Federal Power Act (FPA). Although the ISO had claimed that its actions were sufficient because Section 11.2.9.1 authorized the ISO Governing Board to increase the limit for a defined period,[10] we found that that tariff language did not eliminate the need for the ISO to seek Commission approval of its increase under FPA Section 205 and to file tariff sheets reflecting the revised limit.

15. Finally, the Commission denied the untimely motions to intervene of IDACORP and others for failure to demonstrate good cause warranting late intervention. The Commission held that permitting these entities' late intervention after issuance of several orders and extensive settlement discussions would result in unjustified delay and disruption of the proceeding and undue burden on other parties.

16. DWR, SRP and the ISO filed timely requests for rehearing, as discussed below. IDACORP filed a request for reconsideration.

Neutrality Adjustment Report

17. 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 analyzes the calculable dollar value of each of the 5 categories of costs of Section 11.2.9 and finds that 4 of the 5 categories have 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 explains that when these amounts are allocated to Scheduling Coordinators pro rata for each hour, they are all below the neutrality limitation of $0.095/MWh. The ISO concludes that, because no neutrality adjustment amounts were levied in excess of $0.095/MWh, there should be no changes to the costs that were credited or debited to Scheduling Coordinators during the applicable time period. Thus, the ISO asserts that no further action needs to be taken, including remitting revised invoices to the Scheduling Coordinators.

18. Notice of the compliance report was published in the Federal Register,[11] with protests, comments and motions to intervene due on or before July 10, 2003. PG&E filed comments in support of the ISO's report. Puget Sound Energy, Inc. (Puget) and IDACORP filed motions to intervene. IDACORP also protested the report, alleging that the ISO did not perform the calculations as the Commission had directed in the March 12, Order. Specifically, IDACORP complains 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 yield 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, contravenes its Tariff.

19. The ISO filed an opposition to IDACORP's motion to intervene and responded to the protest. The ISO asserts that the intervention is merely a "subterfuge to end-run the Commission's rejection of its previous effort to intervene,"[12] and should be rejected. Regarding the substance of the protest, the ISO contends that IDACORP's arguments lack merit and states that IDACORP's requests for relief should be rejected.

DISCUSSION

Procedural Matters

20. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,
18 C.F.R. * 385.214 (2003), the timely, unopposed motion to intervene of Puget serves to make it a party to this proceeding. We will grant IDACORP's motion to intervene as of July 10, 2003. The ISO offers no cogent reason to deny IDACORP's motion.[13] IDACORP has demonstrated an interest which may be directly affected by the outcome of the proceeding, which is grounds for intervention pursuant to Rule 214(b)(2)(ii). Although Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. * 385.213 (2003), generally prohibits an answer to a protest, we will accept the ISO's answer because it provides information that assists our understanding of the issues raised in this proceeding.

Neutrality Adjustment Report

21. We will accept the ISO's report. The ISO has calculated the amount of neutrality adjustment charges for each hour of the period June 1, 2000 through December 31, 2000, as directed, and the data demonstrate that the charges never exceeded the $0.095/MWh limit.

22. IDACORP's first objection is that the ISO did not adequately identify amounts recoverable other than under Tariff Section 11.2.9. Because the March 12 Order found that refunds of other charges (specifically, OOM charges) were not warranted, however, it was reasonable for the ISO to calculate only the amounts due under Section 11.2.9. The ISO adequately explained how it determined amounts due under each of the five charge types enumerated in Section 11.2.9.

23. IDACORP next complains 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. The ISO explains that its calculations were limited by the data available, but demonstrates that they in fact reflect hourly costs.[14] The ISO states that the charges per hour were measured using a different unit ($/hour) than the unit used to measure the neutrality adjustment charge limitation ($.0.095/MWh), but reasonably explains that since all of the charges per hour were negative, they necessarily were under the limitation in Tariff Section 11.2.9.1. Hence, we find IDACORP's objections to be without merit.

24. Finally, IDACORP asserts that the ISO's treatment of charges under Section 11.2.9(d), for adjustments for Regulation energy,

are inconsistent with the Tariff. The ISO clarifies in its answer that it has not levied any charges under Section 11.2.9(d) since well before the period of concern in this proceeding, when it discontinued its Regulation Energy Payment Adjustment, for which Section 11.2.9(d) was created. Since that time, there have been no adjustments to Regulation energy requiring charges under Section 11.2.9(d). We find that this explanation demonstrates 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).

Docket No. EL00-111-005, et al. - -

Offer of Settlement

25. While the March 12 Order rejected the Offer of Settlement on the basis that it would result in impermissible retroactive ratemaking, DWR and SRP argue on rehearing that the Offer of Settlement would not have adjusted rates retroactively in contravention of the FPA because the dates in question (December 8 - 12, 2000) were after the refund effective date of the Southern Cities' complaint. Thus, these parties assert, the Offer of Settlement addressed unjust and unreasonable rates well within the period allowed by FPA Section 206 for rate adjustments and refunds. DWR further contends that the March 12 Order imposed retroactive ratemaking by directing the ISO to remove OOM charges from its recalculation of neutrality charges. DWR maintains that the OOM charges had been assessed under Tariff Section 11.2.9 but that the order would require retroactive reassessment under Section 11.2.4.2.1, thus impermissibly reassigning those charges to a different tariff category. DWR interprets this as trading one tariff violation for another, and cites Transwestern Pipeline, 73 FERC * 61,091 (1995), for the proposition that the rule against retroactive ratemaking prevents a utility from correcting past mistakes for its own benefit. DWR concludes that the only remedy which the Commission may direct is to disallow the OOM charges.[15]

26. DWR further argues that the proposed settlement was in the public interest and was supported by substantial evidence, and thus should not have been rejected by the Commission. DWR asserts that the Commission failed to recognize the overall fairness and non-discriminatory aspects of the settlement. Finally, DWR alleges that the Commission erroneously found that the Offer of Settlement waives refunds of neutrality adjustment overcharges due to non-settling parties, highlighting that the Offer of Settlement would apply equally to all Scheduling Coordinators.

27. In addition, SRP challenges the March 12 Order on the basis that retroactive relief may be granted without violating the rule against retroactive ratemaking where a violation of an existing tariff provision occurred. SRP refers to an ISO tariff provision[16] requiring monitoring of intentional excessive imbalances by Scheduling Coordinators and the imposition of sanctions and/or penalties for such behavior. SRP concludes that the ISO violated this provision for several months before it filed Tariff Amendment No. 33 by allowing intentional excessive imbalances to continue.

Commission Response

28. We reject SRP and DWR's arguments that the Offer of Settlement would not have resulted in impermissible retroactive ratemaking. If the Commission had found that the previous cost allocation method was unjust and unreasonable, then the Commission could have required refunds of OOM charges during the period following the refund effective date. Because the Commission did not make such a finding, refunds were not available, and could not be required in the context of a contested settlement.

29. We also disagree with DWR that removing OOM charges from the neutrality adjustment charge billings results in retroactive ratemaking. The March 12 Order finds that the ISO erred by treating OOM charges as neutrality adjustment charges and requires the assessment and billing of OOM charges as provided by the Tariff. The order does not allow the ISO to change its rate structure, as DWR implies;[17] rather, it requires the ISO to correct an invoicing mistake. The Commission did not find that the ISO assessed OOM charges incorrectly; its directive that the OOM charges be removed from neutrality adjustment charges was merely to enable the ISO and the Commission to determine the extent to which the ISO overcharged neutrality adjustment charges in each hour. Therefore, the Commission has not excused the ISO from its billing error, as DWR alleges. As the Commission is enforcing the Tariff, as filed, and not adjusting it, the directives in the March 12 Order do not constitute retroactive ratemaking, and Transwestern Pipeline is inapposite.

30. The non-discriminatory aspects of the Offer of Settlement are not relevant, given our finding that the settlement would result in an impermissible retroactive rate adjustment. DWR focuses on the effect of the Offer of Settlement during the four days December 8 through December 12, 2000 and overlooks the fact that the Offer of Settlement could have waived refunds due to non-settling parties for the period prior to December 8, 2000. The Commission could not countenance depriving non-settling parties of refunds potentially owed them by the ISO for exceeding its neutrality adjustment charge limitation during the earlier month-long period.

31. While SRP correctly states the principle that retroactive relief may be granted where a violation of an existing tariff provision has occurred, that precept does not apply here. The scenario where it typically comes into play is where a utility charges a rate not in conformance with the rates on file; in that case, the Commission may require refunds if customers were overcharged at any time in the past, even prior to a refund effective date. SRP relies not on a rate provision, however, but a provision requiring the ISO to develop procedures for monitoring imbalances and imposing sanctions. SRP does not allege that the ISO failed to develop such procedures or that it failed to abide by any such procedures. Thus, there is no evidence that the ISO violated any tariff provisions.

Amendment No. 33 Effective Date

32. If the Commission does not reverse its decision to reject

the Settlement, SRP states that it should reverse its determination that the correct effective date for Amendment No. 33 was December 12, 2000, rather than December 10, 2000. The Commission earlier noted that the December 8 Order contained a typographical error in the body of the order indicating an incorrect effective date but that the discussion in the body of the order made clear that the effective date would be the date proposed by the ISO, which was December 12, 2000. SRP contends that the grounds cited by the Commission for its determination lacked reasoned explanation and factual support. SRP notes that the Commission stated in the May 2001 Order that the tariff amendment was effective as of December 10, 2000, and argues that the Commission acted arbitrarily by relying on one later order describing a December 12, 2000 effective date and ignoring another order referring to the earlier date. SRP also disputes the Commission's statement in the March 12, Order that the Offer of Settlement acknowledged the December 12, 2000 effective date, asserting that Offer of Settlement does no more than recognize that the amendment was implemented on December 12, 2000.

Commission Response

33. The December 8 Order clearly intended to grant the ISO's requested effective dates for the several tariff revisions accepted. The Discussion paragraph states that the Commission would grant the effective dates requested by the ISO; the Ordering Paragraph also refers to the ISO's requested effective dates. The ISO's Transmittal Letter at p. 11 specifically requested that the Commission:

> permit [Amendment No. 33] to become effective on December 8, 2000 . . except for the revision to Section 11.2.4.2 of the ISO Tariff, which the ISO requests become effective on December 12, 2000. . . . Because the purpose of the revision of Section 11.2.4.2.1 is to encourage scheduling in the forward markets, the ISO believes that it should not become effective before the first date, subsequent to this filing, when changes to scheduling practices can be implemented. Because bids were submitted to the PX today for Trading Day December 11, the ISO believes December 12 is the earliest appropriate effective date.

Thus, there is no question about the effective date that the ISO requested. Unfortunately, as we discussed in the March 12 Order, the December 8 Order states incorrectly, "The ISO requests that the Commission allow Amendment No. 33 to become effective today, on December 8, 2000, . . . except for the provisions regarding cost allocation for out-of-market Dispatches, for which the ISO requests an effective date of December 10, 2000."[18] This was a typographical error. The ISO's immediate request for clarification of the effective date reflects the confusion that the order's error created; the fact that later orders inconsistently described the effective date similarly reflects the error. If the ISO had misinterpreted the intent of the December 8 Order, the Commission would have responded to the request for clarification immediately. In any event, the telling text must be the December 8 Order itself, and none of SRP's arguments dissuade us from our understanding of the intent of the December 8 Order. Accordingly, we will deny rehearing.

Allocation of OOM Charges

34. DWR contends that the March 12 Order deviates from precedent requiring that entities creating OOM charges should pay for the costs that they cause. DWR cites the Commission's order directing remedies in response to California's dysfunctional wholesale markets,[19] and an order addressing unaccounted for energy (UFE) losses[20] as controlling precedent, and states that the Commission must provide a reasoned analysis to support a change from that precedent.

Commission Response

35. Southern Cities and Vernon previously requested rehearing of the Commission's findings in 2001 regarding the allocation of OOM charges, and the March 12 Order denied those requests. DWR had been a party in 2001 but did not seek rehearing of that earlier order. Because that aspect of the March 12 Order was an order on rehearing which did not modify the May 2001 Order, we find that DWR's belated request for rehearing on this issue does not lie. Accordingly, this portion of DWR's request for rehearing will be rejected.[21]

Recalculation Methods

36. In its request for rehearing of the May 2001 Order, the ISO proposed two methods for dealing with excess neutrality adjustment charges. First, ISO proposed to record any neutrality adjustment charge amount in excess of the stated hourly limit of $0.095/MWh in a memorandum account, for inclusion in the amounts to be recovered in the next succeeding hour or hours in which the amounts collected were less than $0.095/MWh.[22] Second, ISO proposed that, to the extent that any amounts remained to be refunded to certain Scheduling Coordinators even after applying the neutrality cap methodology, ISO would seek to recoup the excesses from those Scheduling Coordinators who received the excess revenues and remit the amounts to those Scheduling Coordinators to which refunds are due. If the ISO were not to be paid in full, the amounts remitted would be reduced pro rata accordingly.[23]

37. In the March 12 Order, the Commission found that the ISO cannot use its proposed neutrality cap methodology. The Commission stated that the ISO may not create such a rolling true-up mechanism in the stated rate without explicit authorization, and that proposing to do so now would be revising its tariff retroactively. With respect to the ISO's proposed neutrality invoice methodology, the Commission described this proposed methodology in the March 12 Order, but did not make a finding concerning it.

38. On rehearing, ISO argues that the proposed neutrality cap methodology will allow the ISO to remain revenue neutral as required by its Tariff, and will not violate the filed rate doctrine. ISO states that the language of Section 11.2.9 clearly requires that neutrality adjustment charges are to be applied so as to allow the ISO to remain revenue neutral, and that the limitation on neutrality adjustment charges later added in

Section 11.2.9.1 must therefore be applied in a manner that ensures the ISO's revenue neutrality. ISO argues that there is no violation of the filed rate doctrine so long as the neutrality adjustment charges assessed, calculated on an hourly basis, do not exceed the limitation established pursuant to Section

11.2.9.1. ISO also states that if the Commission does not reverse its determination in the March 12 Order and allow ISO to use its neutrality cap methodology, the ISO will use the neutrality invoice methodology to ensure that it remains revenue neutral.

Commission Response

39. This issue is rendered moot by the findings in the ISO's neutrality adjustment report. The ISO will not need to recalculate and reassess any neutrality adjustment charges, because it never exceeded its $0.095/MWh limitation. Therefore, there is no need to approve any formula for conducting the recalculations.

Increased Neutrality Adjustment Charge Limitation

40. In September 2000, the ISO raised the limitation on neutrality adjustment charges from $0.095/MWh to $0.35/MWh for the time period from September 15, 2000 to January 15, 2001, without a filing with the Commission under Section 205. The ISO claimed that its actions were sufficient because Section 11.2.9.1 authorizes the ISO Governing Board to increase the limit for a defined period with advance notice to Scheduling Coordinators.[24] In the March 12 Order however, the Commission found that the tariff language does not eliminate the need for the ISO to seek Commission approval of its increase under FPA Section 205 and to file tariff sheets reflecting the revised limit. The Commission thus found that the neutrality adjustment charge limitation remains $0.095/MWh, as provided in the ISO's tariff, for all of 2000, and directed the ISO to use that limitation in its recalculations of the neutrality adjustment charges owed in each hour.

41. ISO argues on rehearing that Section 11.2.9.1 set the neutrality adjustment charge limitation at a default level of $0.095/MWh but explicitly gave the ISO Governing Board the discretion to increase the limitation above that level for a defined period after appropriate notice to Scheduling Coordinators. ISO contends that there is no language in Section 11.2.9.1 suggesting that the ISO believed it needed or would seek Commission approval for any increase in the neutrality adjustment charge limitation made under the provision. ISO states that the Commission accepted Section 11.2.9.1 in its order on Amendment No. 27 to the ISO Tariff without any further comment. ISO also notes that in subsequent orders, prior to the March 12 Order, the Commission did not comment on Section 11.2.9.1 or the ISO's raising of the neutrality adjustment charge limitation. ISO argues that if it had not been in conformance with the FPA, the Commission would have said so in previous orders, and that the Commission's silence indicated that no action other that the ISO Governing Board's decision is required.

Commission Response

42. We deny rehearing on this issue. As we explained in the March 12 Order, the language in Section 11.2.9.1 sets forth the ISO's process for modifying the limit on neutrality adjustment charges, but does not eliminate the need for the ISO to seek Commission approval of any increase under FPA section 205 and to file tariff sheets reflecting the revised limit. While it is true that the Commission was silent in this proceeding prior to the March 12 Order, the Commission's silence cannot be

interpreted to justify the ISO's increasing of a rate without complying with the statutory filing requirements of FPA Section 205. Furthermore, this issue was not within the scope of this proceeding until first raised by the SRP complaint, filed on June 1, 2001.[25]

43. In any event, this issue is moot. Because the ISO never exceeded the $0.095/MWh limitation, it is of no consequence whether the $0.35/MWh limit ever went into effect.

Docket No. EL00-111-005, et al. - -

Action on ISO Report

44. DWR charges that the Commission erroneously failed to direct refunds based on the recalculations ordered to be performed in the March 12 Order. DWR notes that the order does not state that the Commission will review and approve the report or indicate that the ISO will have to provide restitution to anyone who was overcharged for neutrality charges. SRP requests clarification that parties will have an opportunity to comment on the ISO's report and reserves the right to request that the ISO answer data requests and hold a technical conference after the report is filed.

45. We are taking action on the ISO's report in this order. As it turns out, refunds are not necessary because the ISO never violated its tariff with respect to exceeding the limitation on neutrality adjustment charges. Ordering refunds in the March 12, Order would have been premature. SRP, and all the parties in this proceeding, had the opportunity to comment on the ISO's report. None of the parties requested further data requests nor a technical conference. Indeed, none, other than IDACORP, had any objections to the report.

Intervention

46. IDACORP requests reconsideration of the Commission's denial of its motion to intervene out-of-time filed in August 2002. IDACORP argues that the ruling was arbitrary, capricious and failed to reflect reasoned decision making because the Commission did not articulate any reason for its finding that good cause for untimeliness was not established. In support of its assertion that good cause was established, IDACORP references its explanation that, prior to submission of the Offer of Settlement, IDACORP had no notice that its neutrality adjustment charge refunds were likely to be affected by these proceedings, nor that the proceedings were intended to resolve refund matters for non-parties. IDACORP states that it believed the amounts the ISO would refund to IDACORP would be taken into account in Docket No. EL00-95 and that this understanding was disabused only on August 14, 2002, shortly before it filed its motion to intervene and opposition to the Offer of Settlement in the instant case. IDACORP claims that, because the March 12, Order rejected the Offer of Settlement and established a new basis for the resolution of the issues, its participation now could not be disruptive.

47. We will not reconsider our determination that IDACORP failed to establish good cause to intervene out-of-time. We do not agree that IDACORP had no way of knowing before August 2002 that

its rights could be affected by this proceeding, because the

May 2001 Order ruled that relief previously ordered for Riverside should be applicable to any Scheduling Coordinator that was overcharged, and broadened the directive in the March 2001 Order for the ISO to recalculate the neutrality adjustment charges assessed to all Scheduling Coordinators. When the Commission subsequently established Settlement Judge procedures, IDACORP had an opportunity to seek to participate, but did not avail itself of the opportunity. Seeking to intervene after the submission of an Offer of Settlement, in order to oppose that proposed settlement, was in its very nature disruptive, and hence was not the appropriate time to seek party status. We do not understand why IDACORP would have thought neutrality adjustment charge refunds would be available in Docket No. EL00-95, because they are outside the scope of that complaint proceeding;[26] any determination made there would be irrelevant to a decision to intervene herein. We also believe that the outcome of the March 12 Order is irrelevant to a determination whether IDACORP established good cause to intervene in August 2002.

48. We have granted IDACORP's motion to intervene as of July 10, 2003, elsewhere in this order, because it timely filed a motion to intervene after notice of the ISO's compliance report. IDACORP must accept the record as it had developed as of that date, and its participation is limited to the issues raised in the ISO's report, and any future pleadings in this proceeding.

The Commission orders:

(A) The requests for rehearing and reconsideration are hereby denied in part and rejected in part, as discussed in the body of this order.

(A) The ISO's neutrality adjustment report, filed in compliance with the March 12 Order, is hereby accepted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

Footnotes

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

[2] At the time Southern Cities filed its complaint, costs for such dispatch calls were billed to all Scheduling Coordinators in proportion to their metered demand.

[3] 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.

[4] California Independent System Operator Corp., 93 FERC * 61,239 (2000), order on reh'g, 97 FERC * 61,275 (2001) (December 8 Order).

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

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

[7] In another order issued on March 14, 2001, the Commission allowed the ISO to correct its error by accepting for filing a revised neutrality adjustment charge that incorporates an annual rather than a hourly limitation effective as of February 27, 2001. See California Independent System Operator Corporation, 94 FERC * 61,266, reh'g denied, 95 FERC * 61,195 (2001).

[8] Cities of Anaheim, et al. v. California Independent System Operator Corp., 96 FERC * 61,024 (2001).

[9] In response to a procedural order issued by the Settlement Judge on November 1, 2002, several parties requested guidance from the Commission regarding the appropriate procedures to be followed to approve the Offer of Settlement. On December 30, 2002, the Commission issued an order concluding that, where a contested settlement is filed in a case that is pending solely before a settlement judge, the Commission should consider the record in the proceeding and address the issues presented. Cities of Anaheim, et al. v. California Independent System Operator Corp., 101 FERC * 61,392 (2002).

[10] The tariff section provides: The total annual charges levied under Section 11.2.9 shall not exceed $0.095/MWh, applied to Gross Loads in the ISO Control Area and total exports from the ISO Controlled Grid, unless: (a) the ISO Governing Board reviews the basis for the charges above that level and approves the collection of charges above that level for a defined period; and (b) the ISO provides at least seven days' advance notice to Scheduling Coordinators of the determination of the ISO Governing Board.

[11] 68 Fed. Reg. 37,148 (2003).

[12] Answer at 3.

[13] Contrary to the ISO's assertion, IDACORP need not show good cause unless the motion to intervene is untimely; IDACORP timely filed its motion on July 10, 2003.

[14] See Answer at 6-8.

[15] See DWR rehearing at 8 - 9.

[16] ISO Tariff * 11.2.4.1.

[17] DWR rehearing at 8.

[18] December 8 Order, 93 FERC at 61,774 (emphasis added).

[19] San Diego Gas & Electric Co., et al., 93 FERC * 61,294 (2000) (penalizing participants that underschedule more than 5 percent of their loads).

[20] California Independent System Operator Corp., 101 FERC * 61,219 at P 17 (2002), order on clarification, 103 FERC * 61,042 (2003).

[21] See Pacific Gas and Electric Company, 102 FERC * 61,009 (2003); accord California Independent System Operator Corp., 96 FERC * 61,267 at 62,021 n.5 (2001); Southwestern Public Service Company, 65 FERC * 61,088 at 61,533 n.14 (1993).

[22] ISO calls its methodology the "neutrality cap methodology" for ease of reference.

[23] ISO calls this methodology the "neutrality invoice methodology" for ease of reference.

[24] The tariff section provides: "The total annual charges levied under Section 11.2.9 shall not exceed $0.095/MWh, applied to Gross Loads in the ISO Control Area and total exports from the ISO Controlled Grid, unless: (a) the ISO Governing Board reviews the basis for the charges above that level and approves the collection of charges above that level for a defined period; and (b) the ISO provides at least seven days' advance notice to Scheduling Coordinators of the determination of the ISO Governing Board."

[25] In addressing Southern Cities' and Vernon's assertions in the May 2001 Order that the ISO has exceeded the $0.35/MWh limit since September 15, 2000, the Commission stated that Southern Cities' complaint clearly encompassed the period June 1, 2000 though September 15, 2000, and these charges are beyond the scope of this proceeding. May 2001 Order, 95 FERC at 61,687.

[26] We note, however, that OOM transactions are subject to mitigation and refund as part of the refund proceeding in Docket Nos. EL00-95-045 and EL00-98-042.