UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California	)	
v.	)	**Docket No. EL00-111-002**
California Independent System Operator Corporation	)	
Salt River Project Agricultural Improvement and Power District	)	
v.	)	**Docket No. EL01-84-000**
California Independent System Operator Corporation	)	
California Independent System Operator Corporation	)	**Docket No. ER01-607-001**

REQUEST FOR REHEARING BY THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

The California Independent System Operator Corporation ("ISO")[1] respectfully submits this request for rehearing of the Commission's Order Denying Rehearing, Denying Complaint in Part, and Rejecting Offer of Settlement and Settlement Agreement issued on March 12, 2003 in the above-captioned dockets, 102 FERC ¶ 61,274 ("March 12 Order"), pursuant to Section 313(a) of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(a) (1994), and Rule

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

713 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713 (2002).

I. SUMMARY

This request for rehearing concerns two issues: (1) the ISO's ability to defer collection of any portion of neutrality adjustment charges that exceed, in a given hour, the limitation on such charges established pursuant to Section 11.2.9.1 of the ISO Tariff, and (2) the ISO's ability to raise the level of the neutrality adjustment charge limitation pursuant to Section 11.2.9.1 of the ISO Tariff. On the first issue, the March 12 Order determined that the ISO's proposal to include amounts in excess of the neutrality adjustment charge limitation, measured on an hourly basis, in the amounts to be recovered in the next succeeding hour or hours in which the amounts collected were less than the hourly limitation, always subject to the applicable cap, violated the "filed rate doctrine." The ISO respectfully submits that this proposed methodology meets the requirements of the filed rate doctrine, because the methodology will allow the ISO to remain revenue neutral as required by Sections 11.2.9 and 11.2.9.1 of the ISO Tariff, will honor the capped level of such charges, and will not violate the express terms of Section 11.2.9.1. However, if the Commission does not approve the use of the methodology, the ISO will, if necessary, apply another methodology it has proposed, whereby it will attempt to recover amounts in excess of the neutrality adjustment charge limitation from certain Scheduling Coordinators.

On the second issue, the March 12 Order determined that, whenever the ISO Governing Board wishes to increase the level of the neutrality adjustment charge limitation, the ISO must seek Commission approval of the increase under Section 205 of the Federal Power Act ("FPA") and must file tariff sheets reflecting the revised limitation. The ISO submits that the Commission, in accepting without comment or modification, the proposed ISO Tariff amendment at Section 11.2.9.1, appropriately found that whenever the ISO Governing Board increases the neutrality adjustment charge limitation pursuant to that provision, no filing under the FPA is required, as indicated also by subsequent Commission orders. Further, the Commission similarly has permitted the ISO to variously increase and limit other charges pursuant to other portions of the ISO Tariff, without filing under Section 205. For these reasons, the Commission should not require the ISO to submit a filing under the FPA whenever the neutrality adjustment charge limitation is increased. In the alternative, if the Commission declines to reverse its determination that the ISO must submit a filing under the FPA whenever the ISO Governing Board wishes to increase the level of the neutrality adjustment charge limitation, the Commission should make that determination effective on a prospective basis only, because, until the March 12 Order was issued, the ISO had reasonably relied on the Commission's adoption of Section 11.2.9.1, the language of which makes no mention of a filing under the FPA, nor has the Commission given any indication in any prior orders that such an additional step was required, and so the ISO could not have reasonably anticipated that the

Commission would require the ISO to submit a filing under the FPA in that circumstance.

II. SPECIFICATION OF ERROR

The ISO respectfully submits that the March 12 Order erred in the following respects:

1. The Commission erred in finding that the ISO's proposal to include amounts in excess of the neutrality adjustment charge limitation, measured on an hourly basis, in the amounts to be recovered in the next succeeding hour or hours in which the amounts collected were less than the hourly limitation, violated the "filed rate doctrine."

2. The Commission erred in finding that, whenever the ISO Governing Board wishes to increase the level of the neutrality adjustment charge limitation, the ISO must seek Commission approval of the increase under Section 205 of the FPA and must file tariff sheets reflecting the revised limitation.

III. BACKGROUND

This request for rehearing concerns two issues: (1) the ISO's ability to defer collection of any portion of neutrality adjustment charges that exceed, in a given hour, the limitation on such charges established pursuant to Section 11.2.9.1 of the ISO Tariff, and (2) the ISO's ability to increase the level of the neutrality adjustment charge limitation pursuant to Section 11.2.9.1 of the ISO Tariff.

Neutrality adjustment charges are assessed pursuant to Section 11.2.9 of the ISO Tariff. Section 11.2.9 describes the five categories of "charges or

payments" that the ISO is authorized to levy as "special adjustments." The five categories are: (1) amounts needed to round statements to the nearest dollar; (2) penalties; (3) amounts needed to bring the Settlement process to a zero balance; (4) certain payments adjustments for Regulation; and (5) certain awards resulting from arbitration or negotiation over billing disputes. In most cases, these special adjustments, which are referred to in the heading of Section 11.2.9 as "neutrality adjustments," are charged or paid to Scheduling Coordinators *pro rata* based on metered Demand during a given interval.[2] The ISO originally filed Section 11.2.9 as part of Amendment No. 6 to the ISO Tariff and the Commission accepted Amendment No. 6 for filing in 1998.[3]

Subsequently, the ISO filed proposed Section 11.2.9.1 as part of Amendment No. 27 to the ISO Tariff, which amendment the Commission accepted for filing on May 31, 2000, effective June 1, 2000.[4] During the time period relevant to this part of the proceeding, Section 11.2.9.1 provided in its entirety as follows:

> The total 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

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[2] ISO Tariff Section 11.2.9(b) provides for an exception for amounts in regard to penalties, which are levied on the Market Participants liable for payment of the penalties.

[3] *See California Independent System Operator Corporation*, 82 FERC ¶ 61,327, at 62,295 (1998) ("Amendment No. 6 Order").

[4] *See California Independent System Operator Corporation*, 91 FERC ¶ 61,205, at 61,730 (2000) ("Amendment No. 27 Order").

> 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.[5]

On September 7, 2000, the ISO Governing Board, acting under authority of Section 11.2.9.1, raised the neutrality adjustment charge limitation from $0.095/MWh to $0.35/MWh for the time period from September 15, 2000 to January 15, 2001.[6]

The Commission's March 14, 2001 and May 14, 2001 orders in the present proceeding determined, *inter alia*, that the ISO must apply the neutrality adjustment charge limitation described in Section 11.2.9.1 on an hourly rather than an annual basis over the time period relevant to the proceeding.[7] However, neither the March 14 Order nor the May 14 Order addressed explicitly how the ISO is to implement the limitation on an hourly basis, except in general terms.

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[5] As part of Amendment No. 35 to the ISO Tariff, the ISO proposed to modify the beginning of Section 11.2.9.1 to read "The total *annual* charges under Section 11.2.9 . . . ." *See* Attachment J to Amendment No. 35 Filing, Docket No. ER01-836-000 (filed Dec. 29, 2000) (emphasis added). The Commission accepted this modification for filing in its order on Amendment No. 35. *California Independent System Operator Corporation*, 94 FERC ¶ 61,266, at 61,297-98 (2001) ("Amendment No. 35 Order"). No further changes to Section 11.2.9.1 have been filed with the Commission.

[6] *See* Answer of the California Independent System Operator Corporation, Docket No. EL01-84-000 (filed June 21, 2001), at Attachment B (copy of e-mail provided on September 8, 2000 to all Market Participants announcing resolution of the ISO Governing Board to raise neutrality adjustment charge limitation to $0.35/MWh). *See also id.* at Attachments C and D (public notices posted on the ISO Home Page on September 1, 2000 announcing that increasing the neutrality adjustment charge limitation was on the agenda for the September 7, 2000 meeting of the ISO Governing Board). After January 15, 2001, the neutrality adjustment charge limitation reverted back to $0.095/MWh, in accordance with Section 11.2.9.1. No further changes to the level of the neutrality adjustment charge limitation subsequently have been made.

[7] *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 94 FERC ¶ 61,268, at 61,934 (2001) ("March 14 Order"); *Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corporation*, 95 FERC ¶ 61,197, at 61,687 (2001) ("May 14 Order").

Accordingly, in its request for rehearing of the May 14 Order, the ISO stated that, if the limitation had to be applied on an hourly basis, the ISO would need to implement the limitation in a way that was consistent with the ISO's status as a revenue-neutral entity. To this end, the ISO explained that it would record any amount in excess of the hourly limitation 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 the hourly limitation. The hourly limitation would be honored in every hour. The ISO proposed that the amount included in the memorandum account would be allocated forward based on each Scheduling Coordinator's liability.[8]

Moreover, the ISO explained, to the extent that amounts remained to be refunded to certain Scheduling Coordinators even after application of the neutrality cap methodology, the ISO would necessarily engage in a much more laborious process: the ISO would seek to obtain the amount above the limitation from those Scheduling Coordinators who received the revenue that the ISO recovered through the neutrality adjustment charges, and to the extent the ISO received the amounts due from those Scheduling Coordinators, it would remit the amounts to those Scheduling Coordinators to which refunds are due. If the ISO were to not be paid in full, the amounts remitted would be reduced *pro rata* accordingly.[9] The ISO explained that it would take these actions unless the

[8] *See* Request for Rehearing, Motion for Clarification, and Petition for Reconsideration of the California Independent System Operator Corporation, Docket No. EL00-111-002 (filed June 13, 2001), at 29-31. For ease of reference, the present filing will refer to the methodology described above as the "neutrality cap" methodology.

[9] *See* June 13 Request for Rehearing at 31-33.

Commission informed the ISO that they were impermissible.[10] If it is not permitted to use the neutrality cap methodology, the ISO obviously has to use this alternate methodology (or some other methodology) to maintain its revenue neutral status: as the Commission has recognized repeatedly, the ISO has no source of funds other than its markets, and the amounts received and paid to the markets must balance in order for the ISO to remain revenue neutral.[11]

Further, in the March 14 Order and May 14 Order, the Commission gave no indication that the ISO Governing Board had acted impermissibly in increasing the neutrality adjustment charge limitation in September 2000. On June 1, 2001, Salt River Project Agricultural Improvement and Power District ("SRP") filed its complaint in the present proceeding. In the complaint, SRP argued, *inter alia*, that the ISO had failed to comply with the requirements of the FPA in increasing the neutrality adjustment charge limitation to $0.35/MWh.[12]

The March 12 Order, with regard to the discussion in the June 13 Request for Rehearing concerning how to apply an hourly neutrality adjustment charge limitation, stated that the ISO's proposed neutrality cap methodology was impermissible. The Commission found that "[t]he ISO may not create a rolling true-up mechanism in the stated rate without explicit authorization; proposing to do so now would be revising its tariff retroactively."[13] With regard to the

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[10] *See id.* at 29. For ease of reference, the present filing will refer to the methodology described above as the "neutrality invoice" methodology.

[11] *See* March 14 Order at 61,934.

[12] *See* Complaint of Salt River Project Agricultural Improvement and Power District Against California Independent System Operator Corporation, Docket No. EL01-84-000 (filed June 1, 2001), at 11-13.

[13] March 12 Order at P 43.

proposed neutrality invoice methodology, the Commission described the proposal but did not make a finding concerning it.[14]

With regard to the ISO's ability to increase the neutrality adjustment charge limitation, the March 12 Order determined as follows:

> [W]e agree 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 FPA. The ISO claims that its actions were sufficient because section 11.2.9.1 [of the ISO Tariff] authorizes the ISO Governing Board to increase the limit for a defined period. We find, however, that that 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 effect of the section is to explain the ISO's process for modifying the neutrality limit above and beyond the statutory filing requirement. Hence, the neutrality limitation remains $0.095/MWh, as provided in the ISO's tariff, for all of 2000. The ISO is directed to use that limitation in its recalculations of the neutrality adjustment charges owed in each hour.

March 12 Order at P 47 (footnote omitted).

IV. ARGUMENT

A. The ISO's Proposed Neutrality Cap Methodology Meets the Requirements of the Filed Rate Doctrine

1. The Proposed Neutrality Cap Methodology Will Allow the ISO to Remain Revenue Neutral as Required by Sections 11.2.9 and 11.2.9.1 of the ISO Tariff and Will Not Violate the Express Terms of Section 11.2.9.1

The "filed rate doctrine" requires that utilities charge only the rates that have been filed with and accepted by the Commission.[15] As explained below,

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[14] *See id.* at 16 & n.14.

[15] *See, e.g.*, *Montana-Dakota Utilities Company v. Northwestern Public Service Company*, 341 U.S. 246, 251 (1951); *Bangor Hydro-Electric Company v. ISO New England Inc.*, 97 FERC ¶ 61,339, at 62,589 n.7 (2001). Further, the Commission does not have the authority to alter a rate retroactively. *See Arkansas Louisiana Gas Company v. Hall*, 453 U.S. 571, 577 (1981).

application of the neutrality cap methodology does not violate the filed rate doctrine. To the contrary, use of the neutrality cap methodology will allow the ISO to remain revenue neutral as required by Section 11.2.9 of the ISO Tariff (the approval of which antedated the neutrality adjustment charge limitation contained in Section 11.2.9.1) while remaining in accordance with the express language of Section 11.2.9.1.

The language of Section 11.2.9 makes clear that neutrality adjustment charges are to be applied so as to allow the ISO to remain revenue neutral. Section 11.2.9 provides that, with regard to each of the five categories of "charges or payments" that the ISO is authorized to levy as "special adjustments," it is the Scheduling Coordinators or Market Participants (not the ISO) that must pay or receive the charges or payments. No provision in the section makes the ISO responsible for any of these charges or payments. The section is thus intended to maintain the ISO's status as a revenue-neutral entity – a status the Commission has repeatedly recognized.[16] Further, one of the special adjustments in Section 11.2.9 applies to:

> amounts required to reach an accounting trial balance of zero in the course of the Settlement process in the event that the charges calculated as due from ISO Debtors are lower than payments calculated as due to the ISO Creditors for the same Trading Day.[17]

This requirement that the ISO bring the Settlement process to a zero balance is synonymous with a requirement that the ISO maintain its revenue neutral status.

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[16] March 14 Order at 61,934 ("Regarding the ISO's contention that there is no basis for requiring it to absorb the costs for maintaining system reliability, we agree."); Amendment No. 35 Order at 61,928 ("The ISO is a non-profit entity and there is no basis for requiring the ISO to absorb these neutrality costs on a month-to-month basis when the ISO's charges are designed to collect its revenue requirement on an annual basis.").

[17] ISO Tariff, § 11.2.9(c).

In sum, the explicit and implicit purpose of Section 11.2.9 is to ensure that the ISO remains revenue neutral.

Section 11.2.9.1 was filed with the Commission several years after the acceptance of Section 11.2.9, and by its terms applies to "charges levied under Section 11.2.9."[18] Thus, Section 11.2.9.1 was expressly made to apply to the already existing provisions of Section 11.2.9. Because these already existing provisions ensure that the ISO maintains its status as a revenue neutral entity, Section 11.2.9.1 must also ensure the ISO's revenue-neutral status, unless there is language in Section 11.2.9.1 indicating otherwise. However, there is no language in Section 11.2.9.1 indicating that Section 11.2.9's underlying goal of maintaining the ISO's revenue neutrality is being modified in any respect. Market Participants have thus been on notice, since the time that Section 11.2.9.1 was accepted for filing by the Commission, that the section is to be applied so as allow the ISO to remain revenue neutral. For these reasons, Section 11.2.9.1 must be implemented in a way that is consistent with Section 11.2.9, *i.e.*, that does not violate the ISO's revenue-neutral status.

Further, the only language in Section 11.2.9.1 establishing a rate provides that the neutrality adjustment charges under Section 11.2.9 "shall not exceed $0.095/MWh" or any higher neutrality adjustment charge limitation established under Section 11.2.9.1. This limitation is to be applied on an hourly basis over

[18] *See* Filing Containing Amendment No. 27 to the ISO Tariff, Docket No. ER00-2019-000 (filed Mar. 31, 2000), at Sheet No. 213 of Attachment A, and pp. 58-59 of Attachment B (showing proposed Section 11.2.9.1 following accepted Section 11.2.9).

the time period until the change to Section 11.2.9.1 in Amendment No. 35 was approved, at which point the limitation is to be applied on an annual basis.[19]

There is no violation of the filed rate doctrine so long as the neutrality adjustment charges assessed under Section 11.2.9 for the time period relevant to the present proceeding, calculated on an hourly basis, do not exceed $0.095/MWh or the higher limitation established pursuant to Section 11.2.9.1. Use of the neutrality cap methodology will allow the ISO to remain revenue neutral as required by Section 11.2.9 of the ISO Tariff while avoiding any violation of the express terms of Section 11.2.9.1. The ISO will remain revenue neutral because, under the neutrality cap methodology, charges in excess of the neutrality adjustment charge limitation for a given hour can be "carried over" into the subsequent hour. Use of the neutrality cap methodology will not violate the terms of Section 11.2.9.1 because the charges assessed in each hour will not exceed the limitation established under Section 11.2.9.1.[20]

2. If the Commission Does Not Approve the Use of the Neutrality Cap Methodology, the ISO Will Apply the Neutrality Invoice Methodology in Order to Preserve its Revenue Neutrality

As discussed in the June 13 Request for Rehearing, to the extent the neutrality cap methodology did not allow the ISO to remain revenue neutral, the ISO would have to employ the neutrality invoice methodology. The ISO

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[19] *See* March 12 Order at P 11 n.9.

[20] Because the limitation on neutrality adjustment charges will apply in each hour, the ISO disagrees with the Commission's characterization of the limitation as a "true-up" mechanism. *See* March 12 Order at P 43. A true-up mechanism can result in the actual rate being higher than the nominal rate before the true-up. Under the neutrality cap mechanism, by contrast, the rate for any hour cannot exceed the stated $0.095/MWh (or other level established pursuant to Section 11.2.9.1).

explained that applying the neutrality invoice methodology would be a laborious process of last resort.[21] If the Commission does not reverse its determination in the March 12 Order and permit the ISO to apply the neutrality cap methodology, the ISO will use the neutrality invoice methodology to ensure that it remains revenue neutral. In the June 13 Request for Rehearing, the ISO explained that it would apply both methodologies, to the extent needed, unless the Commission were to inform the ISO that their use was impermissible.[22] The Commission did not state in the March 12 Order (or anywhere else) that the use of the neutrality invoice methodology is impermissible. Therefore, the ISO will apply that methodology as necessary to allow the ISO to remain revenue neutral.

B. The ISO Governing Board Has the Ability to Increase the Neutrality Adjustment Charge Limitation Pursuant to Section 11.2.9.1 of the ISO Tariff

1. The Commission Accepted for Filing, Without Modification or Comment, Section 11.2.9.1 of the ISO Tariff, and Thus Appropriately Found that When the ISO Governing Board Increases the Neutrality Adjustment Charge Limitation Pursuant to that Provision, No Filing Under the FPA Is Required, as Indicated Also by Subsequent Commission Orders

Section 205 of the FPA requires that each public utility "file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission . . . ."[23] The ISO complied with this requirement in filing Section 11.2.9.1. The section set the neutrality adjustment charge limitation at a "default" level of $0.095/MWh but explicitly gave

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21 *See* June 13 Request for Rehearing at 31.

22 *See id.* at 29.

23 FPA Section 205(c), 16 U.S.C. § 824d(c) (1994).

the ISO Governing Board the discretion to increase the neutrality adjustment charge limitation above that level for a defined period after providing appropriate notice to Scheduling Coordinators. Thus, any increase by the ISO Governing Board of the neutrality adjustment charge limitation would be pursuant to Section 11.2.9.1 as filed. There is no language in Section 11.2.9.1 even suggesting that the ISO believed it needed to seek or would seek Commission approval for any increase in the neutrality adjustment charge limitation made pursuant to the section, nor did the ISO make any statement in the transmittal letter for Amendment No. 27 expanding on the meaning of the bare words in Section 11.2.9.1 or indicating that the ISO intended (or did not intend) to submit a filing under the FPA whenever the ISO Governing Board increased the neutrality adjustment charge limitation pursuant to Section 11.2.9.1. The Commission accepted Section 11.2.9.1 in its order on Amendment No. 27 without any further comment.[24] In sum, neither the Commission nor the ISO gave an indication that a filing under the FPA is required whenever the ISO Governing Board raises the level of the neutrality adjustment charge limitation. To the contrary, the Commission's silence in accepting Section 11.2.9.1 indicated that no action other than the ISO Governing Board's decision as described in the section is required.

Over the time after the Commission accepted Amendment No. 27, the Commission's orders (prior to the March 12 Order), and the Commission's lack of comment on various ISO filings, indicated that the Commission did not consider the ISO Governing Board to have violated the FPA in raising the neutrality

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[24] *See* Amendment No. 27 Order at 61,730.

adjustment charge limitation to $0.35/MWh without making a filing with the Commission under the FPA. The ISO Governing Board increased the limitation to $0.35/MWh several months after the Commission accepted Amendment No. 27. Several months after that, the ISO submitted the change to Section 11.2.9.1 contained in Amendment No. 35. The Commission, in accepting the change, noted that "[t]he ISO states that Section 11.2.9.1 properly gives the ISO Board the authority to adjust" the neutrality adjustment charge limitation.[25] The Commission did not contradict, or even comment on, the ISO's statement,[26] thus indicating that the ISO's statement was correct.

Further, the ISO, in its answer to the Southern Cities' complaint in the present proceeding, noted that the ISO Governing Board approved the increase to $0.35/MWh, and that the limitation in Section 11.2.9.1 "can be modified at the discretion of the ISO Governing Board."[27] However, the March 14 Order did not mention these ISO statements. In its request for rehearing of the March 14 Order, the ISO noted that the ISO Governing Board increased the neutrality limitation to $0.35/MWh and that this change was "consistent with the Tariff."[28] In the May 14 Order, the Commission stated that the Southern Cities and Vernon

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[25] Amendment No. 35 Order at 61,928.

[26] *See id.*

[27] Answer of the California Independent System Operator Corporation to Complaint of the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California, Docket No. EL00-111-000 (filed Sept. 25, 2000), at 11 nn.4 and 5. Additionally, the Southern Cities' complaint noted that the ISO Governing Board had increased the neutrality adjustment charge limitation to $0.35/MWh. *See* Complaint, Docket No. EL00-111-000 (Sept. 15, 2000), at 15.

[28] Request for Rehearing of the California Independent System Operator Corporation, Docket No. EL00-111-001 (filed Apr. 13, 2001), at 5, 17, 18-19. This filing also included a memorandum to the ISO Governing Board concerning Section 11.2.9.1, which explained that "Section 11.2.9.1 gives the Board the authority to modify the cap as needed," related the Board resolution increasing the neutrality limitation to $0.35/MWh, and contained no mention of a filing under the FPA being required. *Id.* at Attachment.

"now assert that the ISO has been exceeding the $.35/MWh limit *that became effective on September 15, 2000*."[29] Moreover, the Commission did not state that the ISO should have submitted a filing under the FPA when it increased the neutrality adjustment charge limitation.

The various Commission orders described above all indicate that the Commission considered the ISO to have been in conformance with the FPA in increasing the neutrality adjustment charge limitation pursuant to Section 11.2.9.1 and without making a filing with the Commission under the FPA. If the ISO had not been in conformance with the FPA, the Commission would certainly have said so in one or more of the orders.

2. The Commission Has Permitted the ISO to Increase Levels of Charges and Limitations on Charges in the ISO Tariff Pursuant to Other Portions of the ISO Tariff

In the March 12 Order, the Commission stated that the language of Section 11.2.9.1 "does not eliminate the need for the ISO to seek Commission approval of [the neutrality adjustment charge limitation] increase under FPA Section 205 and to file tariff sheets reflecting the revised limit." March 12 Order at P 47. The Commission, though, has found no such "need" to submit a filing under the FPA when the ISO has raised levels of charges and limitations on charges pursuant to other portions of the ISO Tariff.

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[29] May 14 Order at 61,687.

The Commission long ago accepted for filing Section 7.3.1.3.1 of the ISO Tariff, concerning the default Usage Charge.[30] That section provides as follows:

> The default Usage Charge will be calculated within the range having an absolute floor of $0/MWh and an absolute ceiling of $500/MWh; *provided that the ISO may vary the floor within the absolute limits, with day-prior notice (e.g., applicable to next day's Day-Ahead Market) to Scheduling Coordinators; and vary the ceiling within the absolute limits, with at least seven (7) days notice to Scheduling Coordinators*.

(Emphasis added.) The Commission has recognized that this provision authorizes the ISO to "establish a default Usage Charge" within the absolute limits described,[31] and has given no indication that a filing under the FPA is required as well whenever the ISO establishes a default Usage Charge. Similarly, Section 11.2.9.1 permits the ISO Governing Board to establish the level of the neutrality adjustment charge limitation, and no filing under the FPA should be required.

The ISO recognizes that Section 7.3.1.3.1 establishes absolute limits on the floor and ceiling that the ISO may establish for the default Usage Charge, whereas Section 11.2.9.1 sets an absolute ceiling (i.e., $0.095/MWh) on the neutrality adjustment charge limitation that the ISO may establish, but sets no absolute floor on that limitation. However, this is a distinction without a

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[30] Section 7.3.1.3.1 was accepted in the Amendment No. 6 Order. The default Usage Charge is calculated and imposed in circumstances where "inadequate or unusable Adjustment Bids have been submitted to the ISO to enable the ISO's Congestion Management to schedule Inter-Zonal Interface capacity on an economic basis . . . ." ISO Tariff, Section 7.3.1.3.

[31] *See California Independent System Operator Corporation*, 87 FERC ¶ 61,143, at 61,569 n.2 (1999).

difference. In discussing Section 11.2.9.1, the March 12 Order focused only on the asserted need for the ISO to "seek Commission approval *of its increase* under FPA Section 205 and to file tariff sheets reflecting the revised limit." March 12 Order at P 47 (emphasis added). Raising the default Usage Charge to a level below the absolute ceiling of $500/MWh, as the Commission permits the ISO to do without having to make a filing under the FPA, constitutes an increase just as increasing the neutrality adjustment charge limitation does. For the same reason that the Commission does not require the ISO to submit a filing under the FPA whenever it increases the default Usage Charge, the Commission should not require the ISO to submit a filing under the FPA whenever it increases the neutrality adjustment charge limitation.

Moreover, the Commission has authorized the ISO to disqualify Energy and Ancillary Service bids exceeding levels determined by and specified by the ISO Governing Board, without requiring that the ISO submit a filing under the FPA whenever those levels were changed.[32] The applicable ISO Tariff language did not provide for any floors or ceilings on the bid caps.[33] Thus, the Commission has approved a limitation on the charges the ISO is willing to pay, the limitation being determined at the ISO Governing Board's discretion and without a filing under the FPA being required. Similarly, the Commission should not require the ISO to submit a filing under the FPA whenever the ISO Governing Board, in its

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[32] *See California Independent System Operator Corporation*, 89 FERC ¶ 61,169 (1999). The Commission approved such "bid caps" on a temporary basis. *See id.* at 61,511.

[33] *See* Filing Containing Amendment No. 21 to the ISO Tariff, Docket No. ER99-4462-000 (filed Sept. 17, 1999), at Attachment B.

discretion, raises the level of the limitation above which neutrality adjustment charges will not be assessed in the manner described in Section 11.2.9.

3. Even if the Commission Declines to Reverse its Determination that the ISO Must Submit a Filing Under the FPA Whenever the ISO Governing Board Wishes to Increase the Level of the Neutrality Adjustment Charge Limitation, the Commission Should Make that Determination Effective Solely on a Prospective Basis

In the event that the Commission declines to reverse its determination that the ISO must submit a filing under the FPA whenever the ISO Governing Board wishes to increase the level of the neutrality adjustment charge limitation, the Commission should make that determination effective on a prospective basis only. The March 12 Order was the first and only place in which the Commission has given any indication that Section 11.2.9.1 does not permit the ISO Governing Board to increase the neutrality adjustment charge limitation once the requirements described in that section are met. Moreover, as explained above, the Commission had previously indicated – through its own orders and lack of comment on the ISO's filings – that the ISO did not act incorrectly in any way in failing to submit a filing under the FPA when the ISO Governing Board increased the neutrality limitation to $0.35/MWh in September 2000. Thus, until the March 12 Order was issued, the ISO had reasonably relied on the direction (and lack of direction) in Commission's prior orders, and could not have reasonably anticipated that the Commission would require the ISO to submit a filing under the FPA in that circumstance.

For these reasons, the ISO requests that the Commission make the FPA filing requirement prospective only, effective from the date the Commission

issues an order concerning the present filing, and consequently that the Commission permit the $0.35/MWh neutrality limitation for the time period from September 15, 2000 to January 15, 2001 to continue to apply for that time period.

V. CONCLUSION

WHEREFORE, for the above-stated reasons, the ISO respectfully requests that the Commission grant rehearing of its March 12, 2003 Order Denying Rehearing, Denying Complaint in Part, and Rejecting Offer of Settlement and Settlement Agreement, and that the Commission further find, determine, and order:

(1) That the ISO's proposal to include amounts in excess of the neutrality adjustment charge limitation, measured on an hourly basis, in the amounts to be recovered in the next succeeding hour or hours in which the amounts collected were less than the hourly limitation, does not violate the "filed rate doctrine."

(2) That the ISO is not required to submit a filing under the FPA whenever the neutrality adjustment charge limitation is increased pursuant to Section 11.2.9.1 of the ISO Tariff.

(3) That, in the alternative, the ISO is required to submit a filing under the FPA whenever the neutrality adjustment charge limitation is

increased pursuant to Section 11.2.9.1 of the ISO Tariff, on a prospective basis only.

Respectfully submitted,

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Dated: April 11, 2003

April 11, 2003

The Honorable Magalie Roman Salas
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Re: Cities of Anaheim, Azusa, Banning, Colton & Riverside, CA v. California Independent System Operator Corporation
Docket No. EL00-111-002

Salt River Project Agricultural Improvement & Power District v. California Independent System Operator Corporation
Docket No. EL01-84-000

California Independent System Operator Corporation
Docket No. ER01-607-001

Dear Secretary Salas:

Enclosed for electronic filing please find a Request for Rehearing of the California Independent System Operator Corporation in the above captioned dockets.

Thank you for your assistance in this matter.

Respectfully submitted,

Margaret A. Rostker
Counsel for The California Independent
System Operator Corporation

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in the above-captioned dockets.

Dated at Folsom, California, on this 11th day of April, 2003.

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Margaret A. Rostker