

125 FERC ¶ 61,328
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER09-239-000

ORDER ACCEPTING TARIFF MODIFICATIONS

(Issued December 19, 2008)

1. On October 31, 2008, the California Independent System Operator Corporation (CAISO) filed proposed revisions to its planned Market Redesign and Technology Upgrade Tariff (MRTU Tariff), as well as its currently effective tariff (Current Tariff). The filing proposes to provide for the allocation of Merchant Congestion Revenue Rights to FPL Energy, LLC (FPL) for an existing transmission upgrade FPL paid for to the Blythe-Eagle Mountain transmission line (Path 59 Upgrade), which is owned by Southern California Edison Company (SoCal Edison). In this order, we accept the CAISO's proposed tariff modifications.

I. Background

2. In January 2003, the CAISO filed Amendment No. 48 to its Current Tariff, which proposed to provide congestion revenues, wheeling revenues, and Firm Transmission Rights¹ to merchant project sponsors when they fund transmission upgrades on the CAISO-operated grid. The immediate need for Amendment No. 48 was to ensure that FPL was compensated for the Path 59 Upgrade. The Commission conditionally accepted the amendment in the Amendment No. 48 Order,² and FPL was compensated accordingly for the Path 59 Upgrade. This included an allocation of Firm Transmission Rights.

¹ Under the CAISO's current market design, a Firm Transmission Right is a contractual right that entitles its holder to receive, for each hour of the Firm Transmission Right, a portion of any usage charges received by the CAISO from scheduling coordinators for the use of a specified congested inter-zonal interface during that hour.

² *California Indep. Sys. Operator Corp.*, 102 FERC ¶ 61,278, *order on reh'g*, 104 FERC ¶ 61,127 (2003) (Amendment No. 48 Order).

3. Following the Amendment No. 48 Order, the CAISO, FPL, and SoCal Edison entered into discussions to determine how revenues associated with the Path 59 Upgrade, including Firm Transmission Rights, should be allocated between FPL and SoCal Edison. The CAISO, FPL, and SoCal Edison concluded, and the Commission accepted,³ that FPL should be allocated 57.1 percent of congestion, wheeling, and auction revenues or costs for the import (east to west) direction (i.e., 96 of 168 MW), while SoCal Edison was allocated 42.9 percent (i.e., 72 of 168 MW) and that the allocations would be the same for the export (west to east) direction. The CAISO, FPL, and SoCal Edison also resolved that once the CAISO begins funding the MRTU Congestion Revenue Rights balancing account, the allocation of congestion revenues and Congestion Revenue Rights are determined by Commission-approved mechanisms in the tariffs.

4. Under MRTU, Firm Transmission Rights will become obsolete; instead, the new market design will use Congestion Revenue Rights.⁴ MRTU Tariff sections 36.11-36.11.3.2 govern the allocation of Merchant Congestion Revenue Rights and, upon implementation of MRTU, will replace the existing Amendment No. 48 mechanism for allocating Firm Transmission Rights to merchant project sponsors. The MRTU Tariff provides that project sponsors of merchant transmission facilities that turn over control of these facilities to the CAISO and do not recover the cost of the investment through the CAISO's access charge, wheeling access charge, or other regulatory cost recovery mechanism may be allocated Congestion Revenue Rights options or obligations that reflect the contribution of the upgrade to grid transfer capacity.⁵ The term of Merchant Congestion Revenue Rights will begin when the project has been energized and operational control has been transferred to the CAISO, and it will continue for thirty years or the pre-specified life of the project, whichever is shorter.⁶

II. The Filing

5. The CAISO explains that MRTU Tariff section 36.11 does not apply to the Path 59 Upgrade only because the upgrade is an existing merchant transmission project rather than a new one. It is therefore necessary to revise the MRTU Tariff and the Current

³ *California Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,329 (2006).

⁴ Instead of specific paths, which are the basis for the CAISO's existing Firm Transmission Rights model, the CAISO's Congestion Revenue Rights design recognizes a set of network nodes in which power is injected and withdrawn from the transmission grid.

⁵ See MRTU Tariff § 36.11.

⁶ See *id.* § 36.11.1.

Tariff to ensure that FPL receives Merchant Congestion Revenue Rights to compensate it for its investment in the Path 59 Upgrade. The CAISO states that it, FPL, and SoCal Edison agreed to continue the existing pre-MRTU revenue allocation for the Path 59 Upgrade to allocate Merchant Congestion Revenue Rights to FPL. According to the CAISO, FPL will be allocated 96 MW of Merchant Congestion Revenue Rights options in each direction between the Blythe Scheduling Point and the 230 kV side of the transformer at SoCal Edison's Eagle Mountain substation.⁷

6. To ensure that FPL is provided its allocation of Merchant Congestion Revenue Rights, the CAISO proposes new section 24.10.3.2 in the MRTU Tariff, and an identical provision in proposed new section 24.7.3.2 of its Current Tariff.⁸ Proposed MRTU Tariff section 24.10.3.2 provides an exception to the general allocation provisions in section 36.11, so that, consistent with the Amendment No. 48 proceeding, FPL shall receive Merchant Congestion Revenue Rights associated with transmission usage rights modeled for the Path 59 Upgrade. Further, the CAISO proposes that the Merchant Congestion Revenue Rights would be in effect for thirty years or the pre-specified life of the merchant facility, whichever is less, starting from the date on which the facility was energized.

7. The CAISO explains that had it treated the existing Path 59 Upgrade as a new facility under section 36.11 of the MRTU Tariff, FPL would have been allocated the same amount of Merchant Congestion Revenue Rights. The exception only applies to the Path 59 Upgrade for purposes of providing FPL with Merchant Congestion Revenue Rights, and once FPL is allocated those Merchant Congestion Revenue Rights, it will be subject to the same obligations and rights applicable to all holders of Merchant Congestion Revenue Rights.

⁷ Under MRTU, there are Congestion Revenue Rights options and Congestion Revenue Rights obligations. A Congestion Revenue Right option, which the CAISO proposes to allocate to FPL, entitle the holder to a payment if the congestion is in the same direction as the option, but requires no obligation charge if the congestion is in the opposite direction of the Congestion Revenue Right, as an Congestion Revenue Right obligation would.

⁸ The change to the Current Tariff has been proposed to ensure that FPL receives its Merchant Congestion Revenue Rights in a timely manner, because Congestion Revenue Rights are allocated before they become effective. This is the case for all Congestion Revenue Rights, and the Current Tariff already includes language for other Congestion Revenue Rights allowing them to be allocated before implementation of MRTU.

8. The CAISO states that during its stakeholder process before making this filing, it received comments from the Metropolitan Water District of Southern California (Metropolitan) and the California Department of Water Resources (CA Dept. of Water Resources). Metropolitan expressed concerns about the effect of the proposal on its interconnection arrangements with SoCal Edison for the Eagle Mountain substation, and whether the term of the Merchant Congestion Revenue Rights allocated to FPL should be through 2017 at the latest, which is when Metropolitan's interconnection agreement with SoCal Edison expires. The CA Dept. of Water Resources is concerned about the treatment of FPL's transition from Firm Transmission Rights to Congestion Revenue Rights, stating that it will establish precedent for future merchant projects.

9. In response to Metropolitan's concern, the CAISO states that FPL and SoCal Edison were asked to consider whether it would be appropriate to limit the term of the Merchant Congestion Revenue Rights as requested by Metropolitan.⁹ The CAISO explains that, because it is not a party to those agreements, it is inappropriate for it to determine whether the arrangements limit the life of the Merchant Congestion Revenue Rights. The CAISO also notes that the proposed tariff revisions would allow for the imposition of a shorter term as agreed to by the parties. The CAISO states that, in response to the CA Dept. of Water Resources, any future qualified project sponsors after MRTU is implemented will be subject to section 36.11 of the MRTU Tariff.

10. The CAISO requests an effective date of December 31, 2008 for the proposed revision to its Current Tariff, and an effective date of January 31, 2009 for the proposed revision to the MRTU Tariff. If MRTU implementation is delayed more than 120 days beyond its current schedule, the CAISO requests waiver of section 35.3 of the Commission's regulations to allow the revisions to become effective on the date of MRTU implementation.

III. Notice, Interventions, and Responsive Pleadings

11. Notice of the proposed tariff revisions was published in the *Federal Register*, 73 Fed. Reg. 67,498 (2008), with motions to intervene, comments, and protests due on or before November 21, 2008. Metropolitan filed a timely motion to intervene and protest. SoCal Edison filed a timely motion to intervene and comments. The CA Dept. of Water Resources filed a timely motion to intervene.

⁹ According to Metropolitan, to the best of its knowledge, SoCal Edison and FPL did not respond to the CAISO's question. See Metropolitan Protest at 15.

IV. Metropolitan's Protest and SoCal Edison's Comments

A. Metropolitan

12. Metropolitan raises concerns regarding the proposed term of the Merchant Congestion Revenue Rights, the allocation of these rights to FPL for the west to east (export) direction, and the basis for the proposed allocation amount. Metropolitan explains that it owns a transmission line that is in SoCal Edison's former control area and that resources for its load are contractually integrated with SoCal Edison's system pursuant to a 1987 Service and Interchange Agreement (S&I Agreement) that terminates in 2017. Metropolitan notes that the S&I Agreement references supplemental agreements that address interconnection arrangements at various locations, including an Amended District-Edison Eagle Mountain Pumping Plant Supplemental Contract (Supplemental Contract). Under the Supplemental Contract, Metropolitan has permitted SoCal Edison to operate and maintain the Eagle Mountain substation, which is located on Metropolitan's property. Metropolitan states that the Supplemental Contract remains in effect for the duration of the S&I Agreement. Metropolitan notes that SoCal Edison's Eagle Mountain substation is the terminus of Path 59. According to Metropolitan, no energy can flow directly from the Eagle Mountain substation to the CAISO-controlled grid except over Metropolitan's 230 kV transmission line to Hinds, where SoCal Edison owns another substation on Metropolitan property.

13. Accordingly, Metropolitan contends that the proposed duration of the Merchant Congestion Revenue Rights is excessive due to the legal limitations applicable to the Eagle Mountain terminus. Metropolitan explains that its recognition of the value of FPL's transmission upgrade to the Blythe-Eagle Mountain line depends on the continued existence of the Supplemental Contract, which is subject to termination upon one year advance notice if not terminated with the S&I Agreement in 2017. Metropolitan notes that upon termination of either agreement, SoCal Edison must remove all equipment unless Metropolitan agrees to pay for it. Thus, Metropolitan asserts that the value of FPL's transmission upgrade will expire no later than the termination of the S&I Agreement. Therefore, Merchant Congestion Revenue Rights allocated to FPL should have a maximum duration of one year to reflect the CAISO's annual Congestion Revenue Rights evaluation process, or until 2017 at the latest.

14. In addition, Metropolitan states that any Merchant Congestion Revenue Rights allocated to FPL can be transferred to an eligible entity under MRTU Tariff section 36.7.2. Therefore, unless the Commission limits the duration of any Merchant Congestion Revenue Rights allocated to FPL to one year or until 2017, FPL could transfer a Merchant Congestion Revenue Right to an entity for a period that may far exceed the actual duration of the Merchant Congestion Revenue Right.

15. Further, because the Western Electricity Coordinating Council (WECC) has not established a Path 59 rating in the west to east direction, and because the WECC 2008 Path Rating Catalog only contains technical information regarding east to west transfers and does not address the west to east direction, Metropolitan contends that there is no basis for the proposed allocation of 96 MW of Merchant Congestion Revenue Rights to FPL in the west to east direction. Metropolitan notes that although the Commission had previously approved an allocation of 96 MW of Firm Transmission Rights in the west to east direction, that determination should not be precedent for the proposed allocation of Merchant Congestion Revenue Rights herein.

16. Metropolitan also argues that there is no foundation for the CAISO's conclusion that FPL would be entitled to 96 MW of Merchant Congestion Revenue Rights under MRTU Tariff section 36.11. Metropolitan asserts that the CAISO's filing does not describe the basis for its estimate of the Congestion Revenue Rights allocation, including whether it applied the three-step process for determining incremental Merchant Congestion Revenue Rights¹⁰ and what the results were. Metropolitan asserts that the CAISO's conclusion that application of section 36.11.3.2 would yield the same amount of Merchant Congestion Revenue Rights to FPL as the CAISO proposes here is difficult to reconcile with recent comments the CAISO has made regarding the Blythe-Eagle Mountain line.¹¹

17. Further, Metropolitan states that less than a week after the CAISO submitted this filing, the CAISO noted continuing and extreme issues with the Blythe-Eagle Mountain Line in a filing with the Commission for amendment of the MRTU Tariff to adopt a price

¹⁰ See MRTU Tariff § 36.11.3.2.

¹¹ For example, Metropolitan states that on May 15, 2008, the CAISO noted that there was a negative \$600 price at Blythe as a result of congestion on the Blythe-Eagle Mountain line coming into Blythe, and that this congestion impacts other constraints on the system.

Metropolitan also notes that in materials prepared for a stakeholder presentation on August 8, 2008, the CAISO stated that: (1) it observed frequent congestion on the Blythe-Eagle Mountain line in the day-ahead market; (2) if loading on this line exceeds its 168 MVA rating, the dispatcher will curtail Blythe generation as needed to manage flow; (3) adjusting SoCal Edison's load aggregation point to manage congestion on this line is not an operational practice; (4) as a result, Blythe-Eagle Mountain line constraint will not be enforced anymore; and (5) the CAISO will continue to enforce the Blythe Inter-tie Limit.

cap and floor.¹² Thus, Metropolitan reiterates that it is not clear that FPL would receive the 96 MW of Merchant Congestion Revenue Rights as proposed by the CAISO if encumbrances and transmission ownership rights are considered, as is required under section 36.11.3.2 of the MRTU Tariff.

B. SoCal Edison

18. SoCal Edison states that it participated in the CAISO's September 24, 2008 stakeholder meeting discussing the proposal in addition to another meeting with Metropolitan that was organized by the CAISO. SoCal Edison states that Metropolitan expressed two primary concerns: (1) under the Supplemental Contract, Metropolitan has a right to terminate upon one year advance notice; and (2) the Supplemental Contract is subject to the S&I Agreement, which expires in 2017. SoCal Edison argues that there is always a possibility that a facility under the CAISO's operational control may be withdrawn from such control and is not specific to this filing. Likewise, SoCal Edison states that because the CAISO is obligated to honor contracts, the existing contract at issue here may terminate, and then the FPL segment would no longer be part of the CAISO grid. However, such speculative events should not be addressed by the Commission in this filing. Should the affected path cease, at some future date, to be part of the CAISO grid, SoCal Edison believes that future Congestion Revenue Rights on the impacted path either would not be issued or would have no value. The CAISO's proposal already specifically addresses concerns over early termination.

V. Discussion

A. Procedural Matters

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. The CAISO is granted a waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2008), if it is needed, to permit the MRTU Tariff sheets to become effective more than 120 days after the date the proposal was submitted. The revisions to the Current Tariff are to be effective December 31, 2008. The CAISO requests an effective date of January 31, 2009 for the revisions to the MRTU Tariff; however, since the date of the instant filing, the CAISO postponed implementation of MRTU beyond

¹² Metropolitan states that the CAISO, in describing the need for Commission acceptance of its proposed price caps, noted a severe price anomaly involving constraints, encumbrances, and the Blythe-Eagle Mountain line. Metropolitan is referring to the CAISO's pending November 3, 2008 filing in Docket No. ER09-241-000.

February 1, 2009.¹³ Accordingly, we accept the revisions to the MRTU Tariff effective upon MRTU implementation, and we direct the CAISO to make an informational filing specifying the effective dates of the tariff sheets being accepted herein prior to the implementation of MRTU.

B. Substantive Matters

21. The CAISO's proposed revisions to the Current Tariff and MRTU Tariff are accepted. The proposed tariff modifications provide a just and reasonable mechanism to ensure that FPL is appropriately compensated for the Path 59 Upgrade. As the CAISO explains, under MRTU, only project sponsors of new merchant transmission projects would be eligible to receive an allocation of Merchant Congestion Revenue Rights and existing merchant transmission projects would not be eligible for such an allocation. Given a project sponsor's responsibility in developing such a merchant transmission project, it is equitable that it receive the benefits of Congestion Revenue Rights related to such project, regardless of whether the project is already in service. Thus, it is appropriate for the CAISO to revise the MRTU Tariff and the Current Tariff to allocate Merchant Congestion Revenue Rights to FPL for the Path 59 Upgrade, to replace the Firm Transmission Rights that FPL currently holds. It would be unduly discriminatory if FPL were not provided Merchant Congestion Revenue Rights for which it would otherwise be eligible simply because the project already existed when MRTU is implemented. The CAISO's explanation that all merchant transmission project sponsors, existing or new, will be subject to the same rules once MRTU is implemented ensures that FPL is not receiving unduly preferential treatment.

22. We find that Metropolitan's concerns are unfounded. First, with respect to whether the CAISO has justified providing an allocation of Merchant Congestion Revenue Rights to FPL for the west to east direction on Path 59, Metropolitan itself notes the Commission has already found that it was appropriate to ensure that FPL was allocated Firm Transmission Rights for this direction.¹⁴ Metropolitan has not provided justification for us to depart from our prior determination, or explained why the allocation of Merchant Congestion Revenue Rights to FPL here materially differs from the allocation of Firm Transmission Rights in accordance with Amendment No. 48. In both instances, FPL is compensated for its role in developing the Path 59 Upgrade.

23. Additionally, we are not persuaded by Metropolitan's argument that the term of the Merchant Congestion Revenue Rights allocated to FPL for the Path 59 Upgrade

¹³ On November 24, 2008, the CAISO's Board of Governors approved an MRTU implementation date of March 1, 2009.

¹⁴ See *California Indep. Sys. Operator Corp.*, 115 FERC ¶ 61,329 (2006).

should be limited until 2017, at the latest, because of the existing S&I Agreement and the Supplemental Contract. The CAISO's proposal is that these Merchant Congestion Revenue Rights are "to be in effect for a period of thirty years, or the pre-specified intended life of the Merchant Transmission Facility, whichever is less, from the date of [sic] Blythe Path 59 was energized."¹⁵ This is consistent with MRTU Tariff section 36.11.1, which also provides that the term of Merchant Congestion Revenue Rights is thirty years or the pre-specified life of the facility, whichever is shorter, and which we found to be just and reasonable.¹⁶ Having consistent provisions regarding the term of the Merchant Congestion Revenue Rights in section 36.11.1 (applicable to new merchant transmission projects) and in proposed MRTU Tariff section 24.10.3.2 (applicable to FPL's existing merchant transmission project) ensures that all project sponsors are treated comparably. Moreover, as noted by the CAISO, if the parties so agree, the term of the Merchant Congestion Revenue Rights can be shortened. Further, Metropolitan's concern is grounded in a contract issue that is not before the Commission in this proceeding. We will not condition our acceptance of the proposed tariff revisions on a contract issue that is not before us. If and when this issue is realized, the contract parties can raise it before the Commission or in another appropriate forum. For these reasons, we find that Metropolitan's concerns about transferring Merchant Congestion Revenue Rights are also unfounded.

24. Finally, Metropolitan's argument that the CAISO may not have used the three-part test in section 36.11.3.2 of the MRTU Tariff is speculative. The CAISO is required to follow its tariff, and the CAISO affirmed that FPL will be treated the same as any other merchant transmission project sponsor. Metropolitan has not advanced any evidence that the CAISO is not complying with its tariff other than its argument that the CAISO's management of the Blythe-Eagle Mountain line is challenging. We therefore find the CAISO's proposed Merchant Congestion Revenue Right allocation to FPL for the Path 59 upgrade to be consistent with its tariff and acceptable.

The Commission orders:

(A) The CAISO is granted a waiver of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2008), to the extent it is needed, to permit the proposed MRTU Tariff sheets to become effective more than 120 days after the date the proposal was submitted.

¹⁵ Proposed § 24.7.3.2 in the Current Tariff and proposed § 24.10.3.2 in the MRTU Tariff.

¹⁶ See *California Indep. Sys. Operator Corp.*, 120 FERC ¶ 61,023, at P 74 (2007) (accepting the CAISO's tariff revisions related to Merchant Congestion Revenue Rights).

(B) The CAISO's proposed tariff revisions are accepted for filing, as discussed in the body of the order.

(C) The CAISO is directed to make an informational filing specifying the effective date of the tariff sheets being accepted herein prior to the implementation of MRTU.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.