

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Nora Mead Brownell, and Suedeen G. Kelly.

California Independent System Operator
Corporation

Docket No. ER06-39-000

ORDER CONDITIONALLY ACCEPTING METERED SUBSYSTEM AGREEMENT
AND NOTICES OF CANCELLATION

(Issued December 9, 2005)

1. In this order, we conditionally accept a Metered Subsystem Agreement (Anaheim MSS Agreement) between the California Independent System Operator Corporation (California ISO or ISO) and the City of Anaheim California, and various Notices of Cancellation, in order to allow Anaheim to change from a Utility Distribution Company (UDC) and Participating Generator to a Metered Subsystem,¹ effective December 1, 2005, as requested.

Background

2. On October 14, 2005, the California ISO filed the Anaheim MSS Agreement establishing the terms and conditions by which Anaheim will: (1) operate electric resources within the California ISO Control Area; (2) schedule transactions using the California ISO Controlled Grid; (3) participate in the California ISO's markets through a Scheduling Coordinator; and (4) meet its obligations under the California ISO Tariff. On the same date, the California ISO filed Notices of Cancellation for the following three agreements between the California ISO and Anaheim: (1) the Utility Distribution Company Operating Agreement, (2) the Meter Service Agreement for ISO Metered Entities, and (3) the Participating Generator Agreement.

¹ A Metered Subsystem is a geographically contiguous system located within a single zone that has been operating as an electric utility within the ISO Control Area, is encompassed by ISO-certified revenue quality meters at each interface point with the ISO-Controlled Grid, and has ISO-certified revenue quality meters on all Generating Units or, if aggregated, each individual resource and participating load internal to the system. The Metered Subsystem operates in accordance with an MSS Agreement.

3. The California ISO states that the purpose of the submission of the MSS Agreement and the cancellation of the three agreements is to allow Anaheim to change from a Utility Distribution Company and Participating Generator to a Metered Subsystem (MSS) effective December 1, 2005.

4. The California ISO notes that, in *California Independent System Operator Corporation*,² the Commission conditionally accepted MSS Agreements with the City of Roseville and with Silicon Valley Power, as well as an MSS Aggregator Agreement with the Northern California Power Agency. The California ISO states that the Anaheim MSS Agreement differs from the MSS Agreements in the August 2002 Order because it reflects: (a) the particular features of Anaheim as an MSS; and (b) the results of the negotiations that resulted in its MSS Agreement with Anaheim. The California ISO maintains that these differences are permissible because the August 2002 Order stated that the individual MSS Agreements filed in that proceeding “were not intended to and do not establish a pro forma MSS Agreement” and that “the terms of an MSS agreement may reflect the unique nature of differing systems.”³

Notice of Filing and Responsive Pleadings

5. Notice of the California ISO’s filing was published in the *Federal Register*, 70 Fed. Reg. 61,972 (2005), with interventions and protests due on or before November 4, 2005. The City of Santa Clara, California, and Northern California Power Agency filed timely motions to intervene. Southern California Edison Company (SoCal Edison) filed a timely motion to intervene and protest. The Cities of Anaheim, Azusa, Banning, Colton, Pasadena, and Riverside, California (Cities) filed a motion for leave to intervene out-of-time. On November 21, 2005, the California ISO filed an answer to SoCal Edison’s protest.

SoCal Edison’s Protest

6. SoCal Edison argues that the Commission should reject the Anaheim MSS Agreement because it contains provisions that go beyond what the California ISO Tariff specifies for an MSS. SoCal Edison references section 8.2.1 of the Anaheim MSS Agreement, which provides that:

² 100 FERC ¶ 61,234 (2002) (August 2002 Order). By unpublished letter order issued on January 3, 2003, the Commission accepted a filing complying with the Commission’s directions in the August 2002 Order.

³ August 2002 Order, 100 FERC ¶ 61,234 at P 52, 53.

Nothing in this agreement shall obligate Anaheim to make any Generating Units available as Reliability Must-Run Generation, unless Anaheim notifies the ISO that it desires to participate in the RMR Unit designation process.

7. SoCal Edison contrasts this provision with sections 5.2.3 and 23.4.4 of the ISO Tariff. Section 5.2.3 of the ISO Tariff provides that:

The ISO will, subject to any existing power purchase contracts of a Generating Unit, have the right at any time based upon ISO Controlled Grid technical analyses and studies to designate a Generating Unit as a Reliability Must-Run Unit.

Section 23.4.4 of the ISO Tariff provides that:

Each MSS Operator shall be responsible for any Reliability Must-Run Generation and Voltage Support required for Reliability of the MSS, including the responsibility for any costs of such Reliability Must-Run Generation, and Voltage Support and may satisfy this requirement through Generating Units owned by the MSS or under contract to the MSS.

SoCal Edison argues that by departing from these provisions of the ISO Tariff, the ISO is allowing Anaheim to avoid responsibility for Reliability Must-Run (RMR) costs and to shift that responsibility to other ISO participants.⁴

8. SoCal Edison also references section 8.2 of the Anaheim MSS Agreement, which provides that Anaheim is not responsible for the costs of RMR units located in another Participating Transmission Owner's (PTO) service territory. SoCal Edison acknowledges that ISO Tariff section 5.2.8 provides that the PTO in whose service territory the RMR unit is located is responsible for the costs of the unit. But SoCal Edison argues that "at some future point in time" the ISO may modify its tariff to specify a different cost responsibility for RMR costs. Since RMR billing procedures may change in the future, SoCal Edison argues that it is unjust, unreasonable and unduly discriminatory to include a contractual provision in the Anaheim MSS Agreement providing that Anaheim does not have to pay RMR costs for RMR units located outside of its service territory.⁵

⁴ SoCal Edison Protest at 2, 5-7.

⁵ *Id.* at 7.

9. Finally, SoCal Edison objects to a statement in the Anaheim MSS that refers to must-offer obligations set out in the ISO Tariff. The statement is as follows:

The Parties acknowledge that Anaheim's Generation resources are dedicated first and foremost to serve Anaheim's retail native Load within Anaheim's Service Area and that such resources are, except for times of System Emergency or Anaheim's voluntary participation in the ISO markets or other circumstances as specified in this Agreement, not subject to ISO Dispatch.⁶

SoCal Edison states that it is concerned that, if there is a Commission-sanctioned must-offer obligation, or successor requirement for load-serving entities to be resource adequate, and a requirement for resource adequacy resources to be available to the California ISO for dispatch, Anaheim may claim that this provision overrides that requirement. SoCal Edison argues that the Commission should reject the Anaheim MSS Agreement and require that the California ISO modify the agreement to state that no provision in the Agreement exempts Anaheim from any must-offer obligations set out in the California ISO Tariff.⁷

Discussion

Procedural Matters

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant the untimely, unopposed motion to intervene of the Cities given their interest in this proceeding, the early stage of the proceeding, and the absence of any prejudice or delay.

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept the California ISO's answer and will, therefore, reject it.

⁶ California ISO and the City of Anaheim MSS Agreement at §8.2 (California ISO Filing, Attachment A at 19).

⁷ SoCal Edison Protest at 8.

Commission's Determination

Section 8.2.1 of the Anaheim MSS Agreement

12. Section 8.2.1 of the Anaheim MSS Agreement relieves Anaheim of RMR responsibility unless Anaheim notifies the California ISO that it desires to participate in the RMR Unit designation process. As SoCal Edison has observed, this provision of the Anaheim MSS Agreement directly contradicts sections 5.2.3 and 23.4.4 of the ISO Tariff, which, subject to certain qualifications, give the California ISO the right to designate generating units as RMR Units and impose upon MSS Operators responsibility for RMR Generation and Voltage Support, including the cost of RMR Generation and Voltage Support.

13. Section 8.2.1 is inconsistent with the California ISO Tariff and could be unduly preferential to Anaheim and unduly discriminatory to others on the California ISO system. Moreover, the California ISO has not stated why the waiver of RMR obligation is necessary. Nor has it provided an explanation for the proposed departure from its tariff, or given any indication that it has considered the effect of this departure upon the other participants in its system.⁸

14. We will reject this provision and require the California ISO, within 30 days from the date of this order, to file an amendment to the Anaheim MSS Agreement deleting section 8.2.1. If the California ISO wants to relieve MSS entities of their RMR obligations, it must amend its Tariff to make the provision applicable to all of its MSS entities and explain why it is doing this. It must also make it clear that it has taken into account the effect of this measure upon all market participants on its system.

Section 8.2 of the Anaheim MSS Agreement

15. SoCal Edison's concerns regarding section 8.2 of the Anaheim MSS Agreement and the statement regarding generation subject to ISO dispatch is that "at some future point in time" the ISO may modify its Tariff to specify a different cost responsibility for RMR, and that Anaheim "may" claim that the statement regarding generation subject to ISO dispatch overrides a must-offer obligation that the Commission may impose at some future date.⁹

⁸ While the MSS Agreements covered in the August 2002 Order had similar provisions, no one raised this issue there, and the Commission did not consider it.

⁹ SoCal Edison Protest at 2, 7-8.

16. These concerns are speculative and we will not address them here. If, at some future date, the California ISO *does* amend its Tariff to specify a different cost responsibility for RMR Units and if, at some future date, the Commission *does* impose a must-offer obligation and Anaheim claims that the statement regarding ISO dispatch overrides that requirement, it will be appropriate to address these issues at that time.

Notices of Cancellation

17. As noted above, in connection with the Anaheim MSS Agreement, the California ISO has filed notices of cancellation of the Utility Distribution Company Operating Agreement, the Meter Service Agreement for ISO Metered Entities, and the Participating Generator Agreement. We note that the notices of cancellation do not contain designations in accordance with Order No. 614, which requires that all rate schedule sheets (*i.e.* tariff sheets, rate schedules, and service agreements) submitted to the Commission after June 1, 2000, be designated.¹⁰ We will require the California ISO to resubmit the notices of cancellation with designations pursuant to Order No. 614 and section 35.9(a) of the Commission's regulations, 18 C.F.R. § 35.9(a) (2005), within 30 days of the date of this order. We will conditionally accept those notices of cancellation, subject to the California ISO's submitting a compliance filing as discussed above, in order to allow Anaheim to change from a Utility Distribution Company and Participating Generator to a Metered Subsystem.

Waiver

18. We will grant waiver of the Commission's 60-day prior notice requirement and accept the California ISO's filing, to become effective December 1, 2005, as requested.¹¹

The Commission orders:

A. The Anaheim MSS Agreement is hereby conditionally accepted for filing, to become effective December 1, 2005, as requested, as discussed in the body of this order.

¹⁰ *Order No. 614, Designation of Electric Rate Schedule Sheets*, FERC Stats. and Regs., Regulations Preambles, July 1996 – December 2000 ¶ 31,096 (2000).

¹¹ *See Central Hudson Gas & Electric Corporation, et al.*, 60 FERC ¶ 61,106 at 61,337, *reh'g denied*, 61 FERC ¶ 61,089 (1992) (Commission will waive prior notice requirement when filing has no rate impact).

B. The notices of cancellation of the Utility Distribution Company Operating Agreement, the Meter Service Agreement for ISO Metered Entities, and the Participating Generator Agreement are hereby conditionally accepted for filing, as discussed in the body of this order.

C. As discussed in the body of this order, the California ISO is hereby directed to make a compliance filing within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.