UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

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

v. Docket No. EL03-54-001

California Independent System Operator Corporation

ORDER DENYING REHEARING

(Issued March 30, 2005)

1. This order denies a request for rehearing by Southern California Edison Company (SoCal Edison) of the Commission's order issued in this proceeding on April 20, 2004.[1] In the April 20 Order, the Commission reversed an arbitrator's award concerning costs incurred by the California Independent System Operator Corporation (ISO) from February 7, 2000 to March 22, 2000 caused by the dispatch of generating resources required to replace certain Reliability Must Run (RMR) units that were not available during this period.

Background

2. Originally, the ISO billed the costs for the dispatch to replace these unavailable RMR units to SoCal Edison as Out-of-Market (OOM) charges. SoCal Edison protested these charges, and the ISO, relying on Commission orders prohibiting the ISO from using its OOM dispatch authority when there are unaccepted bids in the market,[2] re-billed these costs as Intra-Zonal Congestion to all loads in the SP15 Zone, including the Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities) and the

[1] *Cities of Anaheim v. California Independent System Operator Corporation*, 107 FERC ¶ 61,070 (2004) (April 20 Order).

[2] *See California Independent System Operator Corporation*, 90 FERC ¶ 61,006, *reh'g denied*, 91 FERC ¶ 61,026 (2000).

City of Vernon, California (Vernon) (collectively, Applicants). While OOM charges did not impact Applicants, re-billing as Intra-Zonal Congestion costs resulted in charges of $1,552,883 to Southern Cities and $351,600 to Vernon.

3. On October 30, 2000, in accordance with the ISO Tariff, Southern Cities initiated arbitration. They claimed that the ISO's characterization of the disputed charges as Intra-Zonal Congestion costs was not valid under the ISO Tariff and that, even if the characterization was valid, the charges were not properly chargeable to Existing Transmission Contract (ETC) holders. Statements of Claim were subsequently filed by Vernon and SoCal Edison. Vernon argued that the charges against it should also be deemed improper. SoCal Edison opposed reallocation of the disputed charges and argued that the claims should be rejected outright because the claims were pending before the Commission as one of the unresolved issued in Docket No. ER98-3760-000.

4. On April 15, 2002, the Arbitrator issued a decision which stated simply that all claims of Applicants were denied (April 15 Arbitration Award).

5. On May 17, 2002, Applicants filed a petition asking the Commission to review the April Arbitration Award. On November 25, 2002, the Commission issued an order finding the April 15 Arbitration Award inconsistent with the arbitration procedures set forth in the ISO Tariff, which require the Arbitrator to include findings of fact and conclusions of law, and referred the matter back to the Arbitrator.[3]

6. On February 7, 2003, the Arbitrator issued a further decision (February 7 Arbitration Award), which did include findings of fact and conclusions of law, and which concluded that the ISO took "voltage support actions related to Intra-Zonal Congestion management" and that "ETC holders were not exempt from ISO charges for such Intra-Zonal Congestion costs." Accordingly, the Arbitrator concluded that the findings did not support the claims which were, therefore, denied.

7. On February 26, 2003, Applicants filed for Commission review of the February 7 Arbitration Award. On July 23, 2003, the Commission issued an order establishing a schedule for the submission of pleadings.[4] Initial Briefs were filed by Applicants and the California Department of Water Resources State Water project. Reply Briefs were filed by the ISO, SoCal Edison, and the California Electricity Oversight Board. A Rebuttal Brief was filed by Applicants.

---

[3] *See Cities of Anaheim v. California Independent System Operator Corporation*, 101 FERC ¶ 61,235 (2002) (November 25 Order).

[4] *See Cities of Anaheim v. California Independent System Operator Corporation*, 104 FERC ¶ 61,099 (2003).

8. In the April 20 Order, the Commission held that the charges at issue were for Voltage Support and thus should not be allocated as Intra-Zonal Congestion Management charges to Scheduling Coordinators in the affected zone. The Commission explained that the record clearly indicated that there had been a voltage concern and that there were increases in real power generation, which then provided adequate voltage support for the lines with the voltage concern.[5] The Commission further explained that the resource dispatches that resulted in the disputed charges would not have occurred if the generating units subject to RMR contracts, *i.e.*, the RMR units, had been available; had the RMR units in SoCal Edison's service area been available, SoCal Edison would have been billed the costs for such dispatch. Thus, the Commission concluded that assignment of the costs of those resources to Intra-Zonal Congestion would not be consistent with cost causation principles.[6]

9. Accordingly, the Commission reversed the Arbitrator's Award and directed the ISO to revise its billings, make refunds, with interest, and file a refund report.

10. SoCal Edison filed a request for rehearing. SoCal Edison argues that the Commission: (1) failed to give the Arbitrator substantial deference; (2) erred in concluding that the disputed charges should be classified and billed to SoCal Edison under section 5.2.8 of the ISO Tariff; and (3) violated the filed rate doctrine and the rule against retroactive ratemaking.

Discussion

11. We will deny rehearing. We are not persuaded to change the determination we made in our April 20 Order.

12. SoCal Edison acknowledges that the Commission recognized the value of exercising deference to an Arbitrator's decision.[7] Nonetheless, SoCal Edison argues that the Commission disregarded the ample support in the record for the Arbitrator's Award, including the Commission's own orders and the ISO Tariff. SoCal Edison further asserts that the Commission failed to defer to the factual finding of the Arbitrator and to explain why the Arbitrator's findings were "contrary to or beyond the scope of the relevant ISO documents, United States federal law, including without limitation, the FPA, and any FERC regulations and decisions, or state law," as provided for in section 13.4.1 of the ISO Tariff. SoCal Edison maintains that the Commission, in effect, conceded that the Arbitrator made no error in his factual findings, but that the Commission merely disliked the outcome of the facts from a *policy* perspective.

---

[5] April 20 Order at P 32; *see also Id.* at P 30.

[6] *Id.* at P 33-35.

[7] *See Id.* at P 33.

13. We disagree. In the April 20 Order, we found that the provisions of the ISO Tariff had been violated. For example, we stated that "under the ISO Tariff Voltage Support and Intra-Zonal Congestion Management are separately defined services and each has separate cost recovery provisions and what occurred here more properly falls within the former rather than the latter."[8] As the Arbitrator failed to find that the cost assignment was improper under the ISO Tariff, he made findings "contrary to or beyond the scope of the relevant ISO documents."[9]

14. SoCal Edison also argues that the Commission erred in determining that the charges were misclassified. According to SoCal Edison, the Commission did not reconcile its finding that the costs are more like Voltage Support with the text of the ISO Tariff, which does not permit the costs to be classified as Voltage Support. SoCal Edison argues that the Commission's January 7, 2000 and April 12, 2000 Orders in Docket Nos. ER00-555-000 and -001[10] required the ISO to classify and allocate the disputed costs as Intra-Zonal Congestion charges, as the ISO did. Moreover, SoCal Edison argues, even if Commission precedent did not require such classification, under any fair reading of the ISO Tariff, the charges still should be allocated to Scheduling Coordinators within the impacted zone.

15. We disagree. As we pointed out in the April 20 Order, the record clearly indicates that there was a voltage concern, and the ISO's witness stated that the voltage concern would have been addressed by the RMR units had they been available.[11] The unavailability of RMR units did not, somehow, convert these voltage concerns to Intra-Zonal Congestion.[12] RMR units exist to provide voltage support; that they were unavailable simply *increased* the voltage concerns.

16. Section 5.2.8 provides that costs for RMR units are to be charged to the Responsible Utilities in whose control areas the RMR units are located. SoCal Edison is correct that the ISO Tariff did not explicitly state that costs for resource dispatch required when RMR units were unavailable must be charged the same as for the RMR units.[13]

---

[8] *Id.*

[9] 104 FERC ¶ 61,099 at P 10; *see also* April 20 Order at P 33.

[10] *See California Independent System Operator Corporation*, 90 FERC ¶ 61,006 (2000); *California Independent System Operator Corporation*, 91 FERC ¶ 61,026 (2000).

[11] April 20 Order at P 32, 34.

[12] In fact, SoCal Edison's reading effectively renders <u>all</u> voltage concerns Intra-Zonal Congestion, while the ISO Tariff treats them as two distinct concerns. *See* April 20 Order at P 27.

[13] We note, however, that the ISO Tariff also does not prohibit charging the same as for the RMR units either.

However, this service was provided only because the RMR units were out of service due to mechanical problems. The resources at issue were, in essence, dispatched to provide RMR service. The ISO had no choice but to incur these costs in order to assure reliability. As such, we find that these costs should be billed in the same manner as RMR charges are billed under section 5.2.8. This comports with the traditional ratemaking principle that ratemaking solutions should follow cost causation.

17. Finally, SoCal Edison argues that charging these costs to SoCal Edison amounts to improper retroactive imposition of a new rate, as section 5.2.8 of the ISO Tariff "could not be more clear that it applies only to 'costs incurred by the ISO *under each reliability Must-Run Contract*.'"[14] SoCal Edison alleges that an "attempt to recover past costs, or to otherwise attempt retroactively to charge something other than the tariff rate that was in effect for the past period, is a violation of the filed rate doctrine and is considered prohibited retroactive ratemaking."[15]

18. We disagree. Section 5.2.8 of the ISO Tariff *did* provide that costs driven by the need for voltage support for reliability purposes, which normally would lead to dispatch of RMR units, were to be borne by the participating transmission owner, *i.e.*, SoCal Edison. The unavailability of the RMR units due to mechanical problems did not relieve the ISO from its obligation to procure energy in order to meet local, *i.e.*, SoCal Edison's, reliability needs. Thus, SoCal Edison cannot claim that it lacked notice that costs driven by the need for voltage support for reliability purposes were to be borne by the transmission owner. Courts have recognized the importance of notice to the filed rate doctrine, explaining that the doctrine has "twin goals of predictability and equity."[16] Neither goal prohibits the assignment of costs to SoCal Edison. Consequently, the imposition of such charges does not violate the filed rate doctrine,[17] and such costs are still appropriately recovered from SoCal Edison consistent with section 5.2.8 of the ISO Tariff.

---

[14] SoCal Edison Request for Rehearing at 11 (emphasis in original).

[15] *Id.*

[16] S*ee, e.g., Consolidated Edison Co. of NY, Inc. v. FERC*, 347 F.3d 964, 970 (D.C. Cir. 2003) (citations omitted).

[17] Moreover, to assign the costs to Intra-Zonal Congestion, as proposed by SoCal Edison would violate the filed rate doctrine and the ISO Tariff in light of our finding that, contrary to the position taken by the ISO, these costs were voltage support costs, not Intra-Zonal Congestion costs.

The Commission orders:

SoCal Edison's request for rehearing is hereby denied.

By direction of the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.