

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. ER06-1360-000

ORDER ACCEPTING REVISIONS TO TRANSMISSION CONTROL AGREEMENT

(Issued October 10, 2006)

1. This order addresses a filing in which the California Independent System Operator Corporation (CAISO) seeks to revise the Transmission Control Agreement (TCA) to provide for the addition of Trans Bay Cable LLC (Trans Bay) as a Participating Transmission Owner (PTO). The Commission accepts the proposed revisions to the TCA, effective as requested, in order to allow the CAISO to assume the operational control of the facilities and entitlements being turned over to it by Trans Bay.

Background

2. The CAISO states that Trans Bay has proposed to turn over operational control of its entitlement to the entire capacity of a new high voltage direct current transmission line that would be used to transmit approximately 400 megawatts of electricity from an existing Pacific Gas and Electric Company (PG&E) substation adjacent to the City of Pittsburg, California (Pittsburg), underneath San Francisco Bay, to an existing PG&E substation within the City of San Francisco, California (the Project).

3. The CAISO states that the Commission accepted for filing an operating memo filed by Trans Bay, entered between Trans Bay, Pittsburg, and Pittsburg Power Company, that set forth the rate principles and operational responsibilities under which Trans Bay would pursue the development, financing, construction, and operation of the Project.¹ The CAISO states that the CAISO's Governing Board has accepted the Project, as well as Trans Bay's application for PTO status, conditioned on Commission approval of Trans Bay's Transmission Owner Tariff (TO Tariff) and Transmission Revenue Requirement (TRR).

¹ *Trans Bay Cable LLC*, 112 FERC ¶ 61,095 (2005), *order granting clarification*, 114 FERC ¶ 61,031 (2006).

4. In the instant submittal, the CAISO has filed proposed revisions to the TCA on behalf of itself, PG&E, San Diego Gas & Electric Company (SDG&E), Southern California Edison Company (Edison), the Cities of Anaheim, Azusa, Banning and Riverside, California (Southern Cities), the City of Vernon, California (Vernon), Trans-Elect NTD Path 15, LLC, the U.S. Department of Energy - Western Area Power Administration (Western), the City of Pasadena, California (Pasadena), and Trans Bay, in order to permit Trans Bay to become a PTO, to identify the transmission interests that Trans Bay will be turning over the CAISO's operational control, and to make other modifications to the TCA that have been agreed upon by the parties to the TCA.

5. The CAISO requests that the proposed revisions to the TCA become "effective on October 10, 2006 (*i.e.*, sixty days after submittal of the filing)," except for Trans Bay's signature page, Original Sheet No. 103D of Appendix A (Transmission Entitlements for Trans Bay Cable LLC), and Original Sheet No. 238 of Appendix F (Notices for Trans Bay Cable LLC). For these proposed revisions, the CAISO requests waiver of the Commission's notice requirements of section 35.3² to permit them to become effective upon notice provided after October 10, 2006. The CAISO submits that good cause exists for waiver³ and proposes to issue notice of the actual effective date of the revised TCA (including Trans Bay's signature page and the related sections of Appendix A and F) once the CAISO has accepted operational control of Trans Bay's entitlement and Trans Bay has filed its TO Tariff and TRR with the Commission, with the effective date being conditioned on Commission approval of Trans Bay's TO Tariff and TRR.

Notice of Filing and Responsive Pleadings

6. Notice of the CAISO's filing was published in the *Federal Register*, 71 Fed. Reg. 50,058 (2006), with interventions, comments, and protests due on or before September 1, 2006. The California Electricity Oversight Board, Western, SDG&E, Edison, Trans Bay, the Transmission Agency of Northern California, and the Northern California Power Agency filed timely motions to intervene. The M-S-R Public Power Agency, the Modesto Irrigation District, and the Cities of Santa Clara and Redding, California (collectively, M-S-R Members) filed a motion to intervene and protest. The Los Angeles Department of Water and Power (LADWP) and PG&E filed timely motions to intervene and comments. Vernon filed a motion to intervene out of time. Edison and the CAISO filed answers.

² 18 C.F.R. § 35.3 (2006).

³ Namely, Trans Bay has indicated to the CAISO that its lenders will likely impose a condition requiring Commission approval of the proposed TCA revisions before the closing of the Project's construction financing. Thus, the CAISO requests waiver of the 120-day advance filing requirement to allow the closing of financing to proceed on schedule.

7. In its protest, M-S-R Members contend that a certain modification made by the CAISO to Appendix B of the TCA⁴ is erroneous and should not be approved. Specifically, M-S-R Members argue that the description of the transmission service under a contract between M-S-R Members and Edison (Edison-MSR Contract),⁵ was inappropriately modified from bi-directional service to south-to-north transmission service in Appendix B. M-S-R Members agree that the terms of the Edison-MSR Contract, providing for firm transmission service in the south to north direction and for “as available” interruptible transmission service in the north to south direction, have not been modified and are not in dispute. Rather, M-S-R Members contend that changing the description of the transmission service in Appendix B is erroneous because, as a term of an existing contract, the “as available” interruptible north-to-south transmission service is also an encumbrance on the system.⁶ Further, M-S-R Members argue that the CAISO’s proposed revision creates the impression that the CAISO has abrogated M-S-R Members’ existing right of north-to-south “as available” interruptible transmission service. Finally, M-S-R Members express concern that the proposed revision creates an inconsistency between the terms of the Edison-MSR Contract and its description in Appendix B.

8. LADWP identifies certain inaccuracies in the descriptions of four existing contracts Edison identified in Appendices A.2 and B of the revised TCA.⁷ LADWP

⁴ Appendix B of the TCA identifies the encumbrances on the ISO controlled grid as a result of existing contracts between PTOs and other parties.

⁵ M-S-R Members explain that the Edison-MSR Contract is listed as a Firm Transmission Service Agreement (Victorville/Lugo-Midway) as an encumbrance in Appendix B.

⁶ M-S-R Members point to the definition of encumbrance in the CAISO Conformed Simplified and Reorganized Tariff as of August 18, 2006 (CAISO Tariff) as:

A legal restriction or covenant binding on a [PTO] that affects the operation of any transmission lines or associated facilities and which the ISO needs to take into account in exercising [o]perational [c]ontrol over such transmission lines or associated facilities if the [PTO] is not to risk incurring significant liability. **Encumbrances shall include Existing Contracts** and may include: (1) other legal restrictions or covenants meeting the definition of Encumbrance and arising under other arrangements entered into before the ISO Operations Date, if any; and (2) legal restrictions or covenants meeting the definition of Encumbrance and arising under a contract or other arrangement entered into after the ISO Operations Date. M-S-R Members Protest at 9-10 (emphasis in original).

⁷ Appendix A.2 of the TCA identifies the entitlements held by PTOs under certain existing contracts.

states that it does not protest the filing but requests that the Commission accept its corrections to the identified entitlement and encumbrance descriptions in the TCA appendices.

9. In its answer, Edison responds that the M-S-R Members' argument lacks substance because there has been no change to the terms of the Edison-MSR Contract. Instead, Edison states that M-S-R Members are concerned that an "impression may be left that the [CAISO] has abrogated [a] term of the [Edison-MSR Contract]," which does not provide a cognizable legal basis to contest the proposed revision. According to Edison, the description of the Edison-MSR Contract was changed in the revised TCA "in order to reflect the parties' convention not to include anything other than firm obligations under [e]xisting [c]ontracts in the **descriptions** of contracts that constitute [e]ncumbrances."⁸ Edison states that the Edison-MSR Contract is properly listed as an encumbrance in Appendix B and that M-S-R Members have no right to dictate how such agreement shall be described by the parties (to the TCA) in the appendix.

10. Edison argues that the definition of encumbrance includes a restriction or covenant that affects the operation of transmission lines or associated facilities and which the CAISO must take into account when exercising operational control over such transmission lines. Edison contends that M-S-R Members do not have firm transmission service in the north-to-south direction but rather interruptible (non-firm) transmission on an as available basis, which does not need to be taken into account by the CAISO when exercising operational control of the grid.⁹ Finally, Edison explains that because non-firm transmission service is not an operating consideration for the CAISO, the parties to the TCA have concluded that it should not be included in the description of the Edison-MSR Contract in Appendix B of the TCA, and that M-S-R Members will not be harmed as the contract is not modified by the description in the Appendix B.

11. As to LADWP's issues, Edison responds that it is not opposed to the corrections suggested by LADWP and that it would not oppose a filing by the CAISO making such corrections.

12. The CAISO also responds that the M-S-R Members' protest lacks substance because the protested revision to Appendix B will not have an impact on the CAISO's exercise of operational control of the ISO-controlled grid and the implementation of existing Edison-MSR Contract. The CAISO explains that it relies on the operating instructions of the PTOs, rather than the descriptions in the TCA, in its administration of existing contracts and encumbrances and considers the descriptions informational only. Thus, the CAISO states that the change in description in Appendix B will not affect the ability to honor the terms of the existing Edison-MSR Contract.

⁸ Edison Answer at 5 (emphasis in original).

⁹ Edison Answer at 6.

13. Consistent with Edison's assertion, the CAISO states that it does not take any action in its exercise of operational control of the ISO-controlled grid to account for the interruptible transmission service provided by Edison under the Edison-MSR Contract. Thus, the CAISO points out that, in its view, the interruptible service under the Edison-MSR Contract does not qualify as an encumbrance within the meaning provided for in the CAISO Tariff.¹⁰

14. In response to LADWP's concerns, the CAISO responds that the requested corrections appear reasonable, but that the CAISO must rely on Edison's confirmation that the modifications accurately describe the terms of the subject contracts.

Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2006), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will grant Vernon's untimely motion to intervene, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2006), prohibits answers to protests unless otherwise ordered by the decisional authority. We will accept Edison's and the CAISO's answers because they have provided information that assisted us in our decision-making process.

17. Section 35.3(b) of the Commission's regulations provides that the Commission, upon request, may permit a rate schedule that is predicated on the construction of facilities to be filed and posted more than 120 days in advance of the date set by the parties for the contract to go into effect.¹¹ In this case, we find good cause to grant the CAISO's request for waiver of the 120-day advance notice requirement for its proposed revisions to Trans Bay's signature page and the related pages in Appendix A and F (Original Sheet Nos. 72D, 103D, and 238), in order to allow the closing of the Project's construction financing to proceed on schedule.

B. Commission Determination

18. We will accept the CAISO's proposed revisions to the TCA, with the exception of Original Sheet No. 72D, Original Sheet No. 103D, and Original Sheet No. 238, to

¹⁰ CAISO Answer at 5.

¹¹ See 18 C.F.R. § 35.3(b) (2006).

become effective October 11, 2006.¹² As discussed above, we will grant waiver of the Commission's 120-day advance notice requirement and allow Original Sheet Nos. 72D, 103D, and 238, to become effective upon future notice by the CAISO. At that time, we will require the CAISO to resubmit these sheets, identifying the appropriate effective date, in conformance with Order No. 614.¹³

19. We agree with M-S-R Members that, under section 16 of the CAISO Tariff, its non-firm transmission rights must be accommodated as part of an existing contract. However, as the CAISO has clarified, the protested revision to Appendix B will have no substantive effect with regard to the terms of the existing Edison-MSR Contract or with regard to CAISO's obligation to honor those terms in its exercise of operational control over the ISO-controlled grid.¹⁴ Thus, M-S-R Members' concerns that: 1) the proposed revision to Appendix B could create the impression that its existing rights under the Edison-MSR Contract have been abrogated, and 2) that there is a resulting inconsistency between the revised Appendix B and the Edison-MSR Contract, are without merit since the description in Appendix B has no practical effect on the CAISO's operational control or obligation to honor existing rights.¹⁵

20. Moreover, as Edison and the CAISO argue, and we agree, non-firm transmission service under an existing contract and identified as an existing right, does not create an encumbrance on the ISO-controlled grid. Section 16.2 of the CAISO Tariff clearly identifies how non-firm transmission is identified as existing rights under existing contracts. Specifically, section 16.2.4.1.1(d) of the CAISO Tariff states, in relevant part:

¹² Absent waiver, this is the earliest date that the CAISO's proposed revisions can be made effective (after 60-days notice).

¹³ See *Designation of Electric Rate Schedule Sheets*, Order No. 614, 65 Fed. Reg. 18,221, FERC Stats. and Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000).

¹⁴ Section 16.2 of the CAISO Tariff sets forth that the responsible PTO, in this instance, Edison, shall be responsible for the submission of transmission instructions to the ISO on behalf of the holders of existing rights, *i.e.*, M-S-R Members. The CAISO Tariff also clearly sets forth that the CAISO will have no role in interpreting the terms of the Existing Contract. CAISO Tariff at §§ 16.2.3.1(i), 16.2.3.1.1. Therefore, Edison provides the operating instructions to the ISO for M-S-R Members rights under the Edison-MSR Contract.

¹⁵ Neither of these parties, in this proceeding, has made the claim that the Edison/MSR Contract was not being scheduled with the CAISO appropriately. However, M-S-R Members may submit a complaint to the Commission, after any other contractually prescribed remedies, if Edison is not submitting correct operating instructions to the ISO with regard to M-S-R Members rights under the Edison-MSR Contract.

Transmission capacity will be made available to holder of non-firm Existing Rights in a manner similar to that done prior to the ISO Operations Date; that is, treated as the lowest valued use of available transmission capacity.

21. The CAISO Tariff further clarifies that when insufficient capacity exists for service over inter-zonal interfaces “scheduled uses of non-firm Existing Rights will be curtailed, pro rata, to the extent necessary.”¹⁶ As a result, we agree with Edison and the CAISO, that the codification of M-S-R Members non-firm rights in the Edison-MSR Contract is not necessary in the TCA. M-S-R Members’ interruptible transmission rights under the Edison-MSR Contract will be subordinate to other types of transmission rights for use by the CAISO. Accordingly, we agree that interruptible (non-firm) use under this existing contract is not an encumbrance on the ISO-controlled grid.

22. Regarding LADWP’s proposed corrections, we reject LADWP’s corrections at this time. The CAISO stated in its answer that it will accept changes, if agreed to by the two parties to the contract - in this case Edison and LADWP. Therefore, to the extent that the parties agree, the CAISO may make a future filing making the changes to Appendices A.2 and B, as proffered by LADWP.

The Commission orders:

(A) The CAISO’s proposed revisions to the TCA are hereby accepted for filing, as discussed in the body of this order, effective as requested.

(B) The CAISO must submit, as discussed in the body of this order, revised sheet numbers 72D, 103D, and 238, in conformance with Order No. 614, upon providing notification of the effective date for those sheets.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁶ See CAISO Tariff at §§ 16.2.4.2.4(b), 16.2.4.3.5(b).