

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation Docket No. ER05-381-000

City of Pasadena, California Docket No. EL05-18-000

ORDER ACCEPTING AND SUSPENDING FILING, ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES AND CONSOLIDATING
PROCEEDINGS

(Issued February 11, 2005)

1. In this order, the Commission accepts and suspends, for a nominal period, a revised transmission control agreement (TCA) filed by the California Independent System Operator Corporation (CAISO). The revisions to the TCA identify transmission facilities and entitlements that the City of Pasadena (Pasadena) will be turning over to the CAISO's operational control. This order also consolidates this proceeding with the petition for declaratory order set for hearing and settlement judge procedures in Docket No. EL05-18-000. This order benefits customers by providing the parties with a forum in which to resolve their concerns.

Background

2. On October 29, 2004, in Docket No. EL05-18-000, Pasadena, a non-public utility, filed a petition for declaratory order requesting that the Commission: (1) find that Pasadena's proposed transmission revenue requirement (TRR) was proper for purposes of Pasadena becoming a Participating Transmission Owner (PTO) in the CAISO; (2) approve Pasadena's proposed Transmission Owner Tariff (TO Tariff); and (3) grant any other relief or waivers necessary or appropriate for approval or implementation of Pasadena's TRR and TO Tariff to become effective the later of January 1, 2005 or the effective date of a TCA acceptable to Pasadena. Pasadena explained that, upon becoming a PTO, it would turn over operational control of its transmission facilities and entitlements to the CAISO.

3. In an order issued on December 30, 2004, in Docket No. EL05-18-000,¹ the Commission accepted Pasadena's proposed TRR and TO Tariff to become effective the later of January 1, 2005 or the effective date of a TCA with the California ISO that is acceptable to Pasadena, subject to refund (and subject to further Commission orders following the outcome of a Commission proceeding concerning the appropriate standard of review to be applied to Pasadena's petition²). The Commission also established hearing and settlement judge procedures.

4. On December 23, 2004, in the instant proceeding, the CAISO filed a revised TCA on behalf of itself; Pacific Gas & Electric Company; San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SoCal Edison); the Cities of Anaheim, Azusa, Banning, and Riverside, California (collectively, Southern Cities); the City of Vernon, California; Trans-Elect NTD Path 15, LLC; Western Area Power Administration-Sierra Nevada Region; and Pasadena. The revisions to the TCA identify: (1) transmission facilities and entitlements that Pasadena will be turning over to the California ISO's operational control; (2) associated encumbrances; and (3) contact persons at Pasadena for receipt of notices.

5. The CAISO requests waiver of the Commission's 60-day prior notice requirement to permit an effective date of January 1, 2005. The CAISO states that good cause for waiver exists because it will allow Pasadena to timely become a new PTO.

Notice of Filing and Responsive Pleadings

6. Notice of the CAISO's filing was published in the *Federal Register*, 70 Fed. Reg. 1,430 (2005), with protests and interventions due on or before January 13, 2005. The California Electricity Oversight Board, Southern Cities, SoCal Edison, SDG&E, and Pasadena filed timely motions to intervene. The California Department of Water Resources State Water Project (CDWR) filed a timely motion to intervene, protest and motion to consolidate. The Northern California Power Agency (NCPA) filed a motion to intervene out of time. The CAISO, Pasadena and CDWR filed answers.

7. In its protest, CDWR argues that the rates at issue in Docket No. EL05-18-000 are linked to the facilities and entitlements in the TCA at issue in the instant filing.

¹ *City of Pasadena*, 109 FERC ¶ 61,386 (2004).

² *Id.* at P 1 (citing *City of Vernon*, 101 FERC ¶ 61,353 (2002), and *City of Azusa*, 101 FERC ¶ 61,352 (2002), *reh'g denied and hearing established*, 106 FERC ¶ 61,143 (2004)).

Specifically, CDWR questions whether the facilities and entitlements in the TCA will be open for non-discriminatory use and whether they are used or useful to the CAISO's ratepayers. CDWR also contends that the CAISO has not shown that the CAISO's transmission rates will be just and reasonable after the inclusion of the costs of these facilities and entitlements in the CAISO's transmission rates. In addition, CDWR protests the CAISO's filing of the amended TCA to accommodate Pasadena's transfer. CDWR argues that a hearing and the consolidation of the instant proceeding with Docket No. EL05-18-000 would be consistent with Commission precedent and would enhance administrative efficiency.

Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceeding. We will grant NCPA's untimely intervention, given its interest, the early stage of this proceeding, and the absence of any undue prejudice or burden.

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the CAISO's, Pasadena's and CDWR's answers and will, therefore, reject them.

B. Hearing Procedures

10. The CAISO's filing raises issues of material fact that cannot be resolved on the record before us. Our preliminary analysis indicates that the proposed TCA has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we accept the proposed TCA, suspend it for a nominal period, make it effective January 1, 2005,³ as requested, subject to refund, and set this matter for hearing and settlement judge procedures.

11. Moreover, because the instant filing and Pasadena's petition involve common issues of law and fact, we will consolidate Docket No. ER05-381-000 with Docket No. EL05-18-000 for purposes of settlement, hearing and decision.

³ See *Central Hudson Gas & Electric Corp.*, 60 FERC ¶ 61,106 at 61,338, *reh'g denied*, 61 FERC ¶ 61,089 (1992).

The Commission orders:

(A) The CAISO's proposed TCA is hereby accepted for filing and suspended for a nominal period, to become effective January 1, 2005, subject to refund, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the CAISO's proposed TCA revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures.

(C) Docket Nos. ER05-381-000 and EL05-18-000 are hereby consolidated for purposes of settlement, hearing and decision.

(D) The settlement judge or presiding judge designated to preside in Docket No. EL05-18-000, as appropriate, shall determine the procedures best suited to accommodate the consolidation of the proceedings.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.