

105 FERC ¶ 61,314
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation

Docket No. ER04-61-000

ORDER ACCEPTING AMENDMENT TO TRANSMISSION CONTROL
AGREEMENT

(Issued December 19, 2003)

1. This order accepts for filing an amendment to the Transmission Control Agreement (TCA) among the California Independent System Operator Corporation (CAISO) and the Participating Transmission Owners (PTOs) to reflect revised Path 15 Operating Instructions.¹ Two parties have protested this filing. We find that all of the issues raised by these parties are either outside the scope of the instant proceeding or without merit. Accordingly, we will accept the instant submittal.

2. This order benefits customers because it ensures that all existing transmission contract (ETC) customers with entitlements to contract capacity on Path 15 will continue to be protected and that all rights are being allocated equitably.

Background and CAISO's Filing

3. The TCA is the agreement among the CAISO and Participating TOs that establishes the terms and conditions under which transmission owners place certain transmission facilities and entitlements under the CAISO's operational control. The TCA describes how the CAISO and each PTO will discharge its respective rights and responsibilities with respect to the operation of those facilities and entitlements.

¹ The current PTOs are Southern California Edison Company (SoCal Edison), Pacific Gas & Electric Company (PG&E), San Diego Gas & Electric Company (SDG&E), the City of Vernon (Vernon), and the Cities of Anaheim, Azusa, Banning, and Riverside, California (Southern Cities).

4. Path 15 encompasses two high voltage transmission lines that extend from southern California to Northern California. Path 15 generally extends south from PG&E's Los Banos substation to a point of interconnection with SoCal Edison's transmission facilities at the Midway substation. PG&E has several ETC customers who retained capacity on Path 15 under their existing contracts after the CAISO commenced operations. Under the TCA, transmission priorities among these ETC customers for Path 15 capacity were negotiated with PG&E and are established under the Path 15 Operating Instructions which PG&E provides to the CAISO as the Path 15 facilitator. In its role as Path 15 facilitator, PG&E coordinates with the CAISO to ensure that all ETC customers receive the service to which they are entitled over Path 15 based on their contracts.²

5. The current TCA contains the Path 15 Operating Instructions which are set forth in Exhibit B-1 to PG&E's TCA Appendix B. The Path 15 Operating Instructions expired by their own terms on April 1, 2003. The CAISO requests a December 20, 2003 effective date for the proposed updated Path 15 Operating Instructions.

6. The new Exhibit B-1 to PG&E's Appendix B modifies the expired Appendix B to include several revisions which are intended to protect ETC customers' existing rights, as well as PG&E's use of Path 15. These revisions include permitting PG&E to make arrangements with an ETC customer to permit that party to self-schedule its Path 15 capacity rights. However, ETC customers whose schedules over Path 15 are submitted to the CAISO by the ETC facilitator (i.e., PG&E) will not be assessed Usage Charges³ associated with their Path 15 schedules by the ETC facilitator.

Notice of Filing, Interventions, Protests and Answer

7. Notice of the CAISO's filing was published in the Federal Register, 68 FR 62,061 (2003), with comments, interventions and protests due on or before November 12, 2003. Timely motions to intervene were filed by the Cities of Redding and Santa Clara, California and the M-S-R Public Power Agency, and the Transmission Agency of Northern California (TANC). PG&E filed a motion to intervene and comments in support of the CAISO's filing. Protests were filed by the Modesto Irrigation District (Modesto)⁴ and the California Department of Water Resources State Water Project

² See California Independent System Operator Corporation, 99 FERC ¶ 61,212 (2002).

³ Usage Charge is a congestion charge and is defined in the CAISO Tariff as the amount of money, per 1 kW of scheduled flow, that the CAISO charges a Scheduling Coordinator for use of a specific congested inter-Zonal interface during a given hour.

⁴ The service to Modesto is actually provided by PG&E to TANC, a joint power agency of which Modesto is a member. TANC is not protesting this filing.

(DWR). On November 26, 2003, the CAISO and PG&E filed a joint answer (Joint Answer) to the motions to intervene, comments and protests.

Discussion

Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Any motions to intervene out-of-time filed before the issuance of this order are granted. Granting late interventions at this stage of the proceeding will not disrupt this proceeding or place additional burdens on existing parties. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. 385.213(a)(2) (2003), prohibits an answer to a protest unless otherwise ordered by the decisional authority. However, the Commission finds good cause to admit CAISO's answer since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will ensure a complete record upon which the Commission may act.

Analysis

9. In its protest, DWR argues that since PG&E turned operational control of Path 15 to the CAISO, PG&E has no basis to retain any right to grant or deny DWR permission to schedule its ETC rights directly with the CAISO, or to actively control its entitlements on Path 15. We find that the proposed language in the revised TCA addresses DWR's concerns. Exhibit B-1, as revised, states that PG&E may make arrangements with an ETC customer to permit that party to self-schedule its Path 15 rights directly with the CAISO. We have previously found that it would be impractical for PG&E to relinquish its role as the Path 15 facilitator prior to the expiration of the ETCs.⁵ We have also previously held that the CAISO shall have no role in interpreting existing contracts.⁶ PG&E's role as Path 15 facilitator is important to ensure that the CAISO honors the entitlements under the ETCs and is consistent with PG&E's role as the Scheduling Coordinator for the ETC customers.

10. DWR states that Exhibit B-1 should be revised to permit ETC customers the right to seek Commission review with regard to the TCA, as opposed to being required to present the suggested revision to PG&E for its consideration. Our review of the proposed revisions indicates that any ETC customer may propose revisions to the Path 15 Operating Instructions at any time. To the extent that it no longer believes that the Path

⁵ California Independent System Operator Corporation, 99 FERC ¶ 61,212 (2002).

⁶ Pacific Gas and Electric Company, et al., 81 FERC ¶ 61,122 at 61,473 (1997).

15 Operating Instructions protects its ETC rights, DWR may file a complaint with the Commission.

11. DWR also argues that holders of firm contract rights should not be assessed Usage Charges associated with their Path 15 schedules in the future if they schedule directly with the CAISO and forego PG&E's service as the Path facilitator. The Joint Answer notes that there is nothing in the Operating Instructions that makes ETC customers subject to Usage Charges if they submit their schedules in a manner consistent with their contract obligations. However, if an ETC customer self-schedules its Path 15 service directly with the CAISO and does not hold PG&E harmless for such charges, PG&E would still be indirectly liable for these charges.

12. We find that the proposed revision is appropriate. It simply adds an option that upon mutual agreement, DWR can directly schedule with the CAISO. The concerns raised by DWR are outside the scope of the instant filing. Under the Path 15 Operating Instructions, schedules submitted by PG&E will continue to not be subject to usage charges. Electing to implement unspecified alternative scheduling arrangements and the consequences associated with that will not be addressed here.

13. DWR argues that the submittal is unclear and requires further explanation. According to DWR, there is an inconsistency between the CAISO's position that it adjusts DWR's schedule curtailments only after all new firm use entitlements have been adjusted and PG&E's position that it retains an equal curtailment priority for new firm use to that of DWR. Modesto makes a similar claim. In response, the Joint Answer states that DWR's concern appears to be due to a misunderstanding and that there is no inconsistency as the table in Attachment A to Exhibit B-1 of the amendment shows. PG&E does not retain any entitlement of equal curtailment priority to that of DWR under its contracts for new firm use. This table shows that PG&E's equal curtailment priority is only for its must-take Encumbrances and its implementation has no effect on DWR's calculated existing rights. Moreover, Attachment 1 to the Path 15 Operating Instructions makes clear that new firm uses are accommodated only after all transmission capacity needed for ETC customers has been provided.

14. We find that DWR's concern is without merit. Attachment 1 clearly states that new firm uses are accommodated only after ETC capacity requirements have been satisfied. The modifications to the table in Attachment A to Exhibit B-1 simply update and revise the ETCs which include PG&E must-take contracts with Qualifying Facilities and other resources. We find that the Path 15 Operating Instructions adequately protect the priority of DWR's existing rights while allowing new firm uses an equitable allocation of unused transmission capability.

15. Modesto protests the concept of any ETC capacity that is not scheduled by the ETC customer being made available for new firm use (i.e., to the market). Modesto

states that it is entitled to compensation for any such unused capacity which is converted to new firm use. Modesto states that the Commission should direct the CAISO to make an accounting of all new firm use for which it earned revenue with regard to any unused Modesto capacity and compensate Modesto for such use. In the alternative, Modesto argues that the Commission stop the CAISO from utilizing this capacity.

16. The Joint Answer asserts that the method by which the Available Transmission Capacity (ATC) is calculated has already been approved by the Commission in a separate proceeding and is not being altered here.⁷ The CAISO states that ATC is calculated as net of remaining ETC's actual scheduled amounts and any capacity that is available under ETCs that has not been scheduled is available to the CAISO for open access use without any reference to compensation. It further states that Modesto is served under TANC's South of Telsa Principles (SOTP) agreement and there is nothing in the SOTP agreement that entitles TANC or its members to compensation related to unused transmission capacity. The CAISO contends that as long as Modesto and other TANC members receive the service they schedule under the SOTP agreement, up to the SOTP's limit of 300 MW, the CAISO may use the unneeded transmission capacity without making compensation to TANC or Modesto.

17. The Commission finds that Modesto's existing rights to capacity on Path 15 are adequately protected under the revised Path 15 Operating Instructions. Modesto has not shown that the revised Path 15 Operating Instructions fail to allocate rights equitably or that it is entitled to compensation for any unused transmission capacity. Moreover, the Commission rejected this same argument in Pacific Gas and Electric Company, et al.,⁸ which states that, when "a customer did not utilize all of its transmission entitlement, the transmission provider and other third party customers could utilize that capacity on a non-firm basis."

18. Modesto argues that the proposed language in Exhibit B-1 allows for the Path 15 Operating Instructions to be revised too easily. Modesto contends that the CAISO should be required to establish firmer and clearer criteria to delineate when and why future revisions to the Path 15 Operating Instructions should be made. In response, the Joint Answer notes that the proposed language to which Modesto is protesting is intended to allow the CAISO and PG&E to respond to the legitimate needs of ETC customers in a more efficient manner.

19. The revised language states that all parties reserve all rights to argue for the implementation of different operating instructions and priorities for Path 15 consistent with its ETC rights in the event PG&E submits any revised Path 15 Operating

⁷ See Unpublished Letter Order dated May 28, 2003 in Docket No. ER99-1770-000.

⁸ 81 FERC ¶ 61,122 at 61,471.

Instructions. Modesto has failed to show how it will be procedurally or substantively harmed by the proposed language. The provision adequately preserves Modesto's right to comment on any revisions to the Path 15 Operating Instructions.

20. Modesto argues that the proposed Path 15 Operating Instructions are unclear as to the provision for future revisions or amendments. Additionally, Modesto argues that they are subject to excessively broad discretion by the CAISO in their implementation. Modesto contends that certain proposed language in Attachment 1 is a thinly disguised attempt by PG&E to delegate authority to the CAISO to interpret ETCs, from which the CAISO is barred.⁹

21. In response, the Joint Answer notes that the incorporation of the CAISO's Operating Procedures to the Path 15 Operating Instructions will have no impact on the rights of parties under the ETCs. CAISO and PG&E assert that Modesto has failed to show how any of the CAISO Operating Procedures has been detrimental to its ETC rights. Furthermore, the CAISO contends that the added reference to the CAISO's Operating Procedures is merely to provide clarity to all interested parties as to what procedures will be employed to modify the reserved capacity for ETC service after the specified times for routine reservation submissions for Hour-Ahead scheduling; the amount of reserved capacity cannot limit the service that ETC customer receives under its contract.

22. To the extent that Modesto believes and can demonstrate that the CAISO's Operating Procedures are detrimental to its ETC rights, it may file a complaint with the Commission.

23. Modesto states that the proposed Path 15 Operating Instructions only include Path 15 real-time South-to-North curtailment priorities. It contends that the North-to-South curtailment priorities are omitted. Modesto asserts that its ETC rights running North-to-South are also important and it should be able to review these curtailment priorities to ensure that its ETC rights are being honored by the CAISO and PG&E.

24. As noted by Modesto in its protest, the CAISO stated in its filing that the Path 15 North-to-South real-time curtailment priorities will be addressed in a separate and distinct set of operating instructions. Accordingly, the Commission finds that Modesto's concerns are outside the scope of this proceeding and will not address this issue here.

⁹ Specifically, Modesto objects to the following language: "Any revision to the amount of megawatts reserved for use by the ETC Parties after these [after the Hour-Ahead Market] shall be as provided in ISO operating procedures (currently M-423)."

The Commission orders:

The CAISO's revised TCA is hereby accepted for filing to become effective December 20, 2003.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.