

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION  
105 FERC ¶ 61,021

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, and Nora Mead Brownell.

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

v.

Docket Nos. EL00-111-005  
EL00-111-006

California Independent System Operator  
Corporation

Salt River Project Agricultural Improvement  
and Power District

v.

Docket Nos. EL01-84-001  
EL01-84-002

California Independent System Operator  
Corporation

California Independent System Operator  
Corporation

Docket No. ER01-607-004

ORDER ON REHEARING AND COMPLIANCE FILING

(Issued October 3, 2003)

1. Several parties requested rehearing of the March 12, 2003 order issued in this proceeding, which addressed various issues concerning neutrality adjustment charges assessed under the Open Access Transmission Tariff (Tariff) of the California Independent System Operator Corporation (ISO) and the ISO's charges to recover costs for out-of-market (OOM) transactions.<sup>1</sup> For the reasons discussed below, we will deny

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<sup>1</sup>Cities of Anaheim, et al. v. California Independent System Operator Corp., 102 FERC ¶ 61,274 (2003) (March 12 Order).

rehearing in part and reject rehearing in part. In this order, we also accept the report filed by the ISO in compliance with the March 12 Order analyzing neutrality adjustment charges.

## BACKGROUND

### The Complaints

2. This proceeding arose out of the ISO's treatment of certain charges resulting from energy imbalances. In order to meet real-time energy needs, the ISO administers an imbalance energy market. If this market produces insufficient resources, the ISO must purchase the necessary energy through OOM dispatch calls. In a complaint filed September 14, 2000 in Docket No. EL00-111-000, Southern Cities alleged that: (1) the ISO's collection of OOM dispatch costs from all Scheduling Coordinators, as opposed to only those who lack adequate supply,<sup>2</sup> was unjust and unreasonable; and (2) the ISO had violated certain provisions of its Tariff by recovering the costs from the City of Riverside through neutrality adjustment charges<sup>3</sup> in excess of a limit of \$0.095/MWh established in a prior proceeding.

3. The Commission accepted an amendment to the ISO's Tariff on December 8, 2000,<sup>4</sup> which revised OOM cost allocation in a manner that was consistent with the position of Southern Cities. The revision, part of Tariff Amendment No. 33, allocated OOM costs to demand only to the extent that it appears unscheduled in real time (i.e., to those Scheduling Coordinators who created the need for OOM dispatch calls).

4. On June 1, 2001, the Salt River Project Agricultural Improvement and Power District (SRP) filed a complaint against the ISO in Docket No. EL01-84-000 challenging several aspects of the ISO's neutrality adjustment charges. First, SRP requested refunds for the period December 10 to 11, 2000, alleging that the Commission authorized an

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<sup>2</sup>At the time Southern Cities filed its complaint, costs for such dispatch calls were billed to all Scheduling Coordinators in proportion to their metered demand.

<sup>3</sup>Neutrality adjustment charges provide a mechanism to recover five specific categories of costs (or payments of credits) in order for the ISO to maintain a revenue-neutral position, which are not covered in other parts of the ISO's Tariff. See ISO Tariff Section 11.2.9.

<sup>4</sup>California Independent System Operator Corp., 93 FERC ¶ 61,239 (2000), order on reh'g, 97 FERC ¶ 61,275 (2001) (December 8 Order).

effective date of December 10, 2000 for the modified OOM cost allocation method accepted in Amendment No. 33, rather than December 12, 2000. Thus, SRP contended that the ISO implemented the new allocation method two days late and that refunds are owed. Second, SRP argued that the ISO violated the neutrality adjustment charge limit throughout the time period January 1, 2000 through December 31, 2000, and sought refunds of all charges assessed in excess of the \$0.095/MWh limit applied on an hourly basis, with interest. SRP further contended that the ISO improperly raised the limit from \$0.095/MWh to \$0.35/MWh as of September 15, 2000 because it never filed a tariff revision with the Commission under section 205 of the Federal Power Act (FPA) nor provided proper notice of the rate change to SRP.

### **Earlier Orders**

5. The Commission responded to Southern Cities' complaint by order dated March 14, 2001.<sup>5</sup> The March 2001 Order dismissed as moot Southern Cities' first allegation because Tariff Amendment No. 33 had revised OOM cost allocation consistent with the position of Southern Cities. With respect to Southern Cities' second allegation, the March 2001 Order granted that portion of the complaint and found that the ISO had violated its Tariff's stated neutrality adjustment charge limit for OOM charges assessed to the City of Riverside (Riverside) during the period of June 1, 2000 to September 15, 2000. Consequently, the March 2001 Order, among other things, directed the ISO to: (1) recalculate the neutrality adjustment charges assessed to Riverside for the relevant period, using the Tariff's stated \$0.095/MWh limit applied on an hourly basis; and (2) prospectively abide by any such applicable limit (pending Commission-approved modification thereof).

6. On rehearing,<sup>6</sup> the Commission found that the ISO's previous allocation methodology could not be found moot for the period of November 14, 2000 (the refund effective date) through the date of implementation of the December 8 Order. Nevertheless, the Commission denied this aspect of the rehearing requests because neither Southern Cities nor Vernon had provided adequate support for their positions that the previous cost allocation method was unjust and unreasonable. The order found that, although Southern Cities and Vernon asserted that they were assessed excessive OOM dispatch costs during the relevant period, neither party had provided the Commission

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<sup>5</sup>Cities of Anaheim, et al. v. California Independent System Operator Corp., 94 FERC ¶ 61,268 (2001) (March 2001 Order).

<sup>6</sup>Cities of Anaheim, et al. v. California Independent System Operator Corp., 95 FERC ¶ 61,197 (2001) (May 2001 Order).

with any supporting cogent evidence. The order noted that the parties acknowledged their calculations were inaccurate because the applicable neutrality adjustment charges included non-quantified "various other types of costs" in addition to OOM dispatch costs. Thus, the May 2001 Order found that the previous allocation methodology had not been shown to be unjust and unreasonable and rejected Southern Cities' and Vernon's requests for relief during the period November 14, 2000 to December 10, 2000.

7. Regarding the arguments raised by the ISO, the Commission found that, regardless of what the ISO intended the tariff language to be, the filed rate doctrine mandated that the ISO charge its customers the actual rate specified in its tariff. Thus, the ISO's alleged administrative error was not an excuse for limiting the neutrality adjustment charge on an annual (as opposed to on an hourly) basis, and charging greater than 0.095/MWh during the period June 1, 2000 through September 15, 2000.<sup>7</sup>

8. The Commission agreed with the parties' assertions that the relief ordered for Riverside in the March 2001 Order should be applicable to any Scheduling Coordinator that was overcharged, and broadened the directive in the earlier order for the ISO to recalculate the neutrality adjustment charges assessed to all Scheduling Coordinators for the period of June 1, 2000 to September 15, 2000.

9. Parties filed further requests for rehearing, but upon the request of parties in both complaint proceedings, the Commission issued an order instituting settlement judge procedures.<sup>8</sup> The order did not institute hearing proceedings or authorize designation of a presiding administrative law judge.

### **Settlement Judge Procedures**

10. The parties participated in numerous settlement conferences to resolve the complaints, and on July 31, 2002, Southern Cities, SRP and the ISO (Settling Parties) submitted to the Commission an Offer of Settlement and Settlement Agreement (Offer of Settlement). The proposed Offer of Settlement would have (1) moved back the effective

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<sup>7</sup>In another order issued on March 14, 2001, the Commission allowed the ISO to correct its error by accepting for filing a revised neutrality adjustment charge that incorporates an annual rather than a hourly limitation effective as of February 27, 2001. See California Independent System Operator Corporation, 94 FERC ¶ 61,266, reh'g denied, 95 FERC ¶ 61,195 (2001).

<sup>8</sup>Cities of Anaheim, et al