

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 Corp.

Docket No. ER05-80-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION IN PART

(Issued May 9, 2005)

1. The Cities of Azusa, Banning, and Riverside, California (the Cities) request rehearing or clarification of the Commission's January 19, 2005 Order in Docket No. ER05-80-000.¹ That order accepted for filing an unexecuted Meter Service Agreement (MSA) for California Independent System Operator Corporation (CAISO) Metered Entities between the CAISO and the City of Azusa, California (Azusa), effective October 27, 2004. It also required Southern California Edison (SoCal Edison) to revise its service agreement for Wholesale Distribution Service with Azusa under its Wholesale Distribution Access Tariff (WDAT) (WDAT Service Agreement) to incorporate certain commitments it made in its comments in this proceeding. In this order we deny rehearing and grant clarification in part. SoCal Edison was required to modify its WDAT Service Agreement with Azusa, as stated in the MSA Order, but is not required to do so as to Banning and Riverside at this time.

Background

2. On June 25, 2004, Azusa applied for 28 MW of Wholesale Distribution Service pursuant to the WDAT from the CAISO controlled grid at SoCal Edison's RIO Hondo substation to Azusa's system at the proposed new Kirkwall substation. SoCal Edison agreed to provide the requested service and build the Kirkwall substation. In Docket No. ER04-667-000, SoCal Edison filed an unexecuted Kirkwall substation agreement and a revised WDAT Service Agreement on March 22, 2004. As originally filed, the agreements required Azusa to enter into an MSA with the CAISO for metering facilities to be owned, operated, and maintained by SoCal Edison on behalf of Azusa.

¹ *California Independent System Operator Corp.*, 110 FERC ¶ 61,025 (2005) (MSA Order).

3. Azusa protested the filing in Docket No. ER04-667-000, stating that it should not be required to enter into an MSA with the CAISO, because the MSA contained obligations that Azusa could not perform since SoCal Edison owned and controlled the meters.²
4. In an order issued May 21, 2004 in Docket No. ER04-667-000, the Commission found that CAISO-certified meters should be provided by SoCal Edison under the terms of its WDAT, but that SoCal Edison should not be liable for penalties associated with metering facilities it installed on Azusa's behalf.³ The Commission also ordered a hearing to resolve "material issues of fact regarding Azusa's ability to meet obligations imposed on it by the CAISO."⁴ The hearing was held in abeyance pending settlement judge procedures.
5. On October 1, 2004, SoCal Edison filed an offer of settlement in Docket No. ER04-667-000.⁵ Under the settlement, the CAISO agreed to file the unexecuted MSA in a separate proceeding. This commitment led to the filing of the unexecuted MSA at issue in the instant proceeding. On October 27, 2004, in the instant docket, the CAISO filed an unexecuted MSA. Pursuant to section 35.11 of the Commission's regulations,⁶ the CAISO requested waiver of the Commission's 60-day prior notice requirements to permit an effective date of October 27, 2004 for the MSA.
6. On January 19, 2005, the Commission issued the MSA Order. In that order, it waived the 60-day notice requirement and accepted the unexecuted MSA, effective October 27, 2004. We noted that, in order for the CAISO to operate an efficient and reliable transmission grid effectively, it is essential for parties to comply with metering requirements as described in the CAISO Open Access Transmission Tariff (OATT).⁷ We

² Docket No. ER04-667-000 Azusa Protest at 14-15.

³ *Southern California Edison Co.*, 107 FERC ¶ 61,179 (2004) (May 21 Order).

⁴ *Id.* at P 40-41.

⁵ The settlement was accepted at *Southern California Edison Co.*, 109 FERC ¶ 61,339 (2004) (Settlement Order).

⁶ 18 C.F.R. § 35.11 (2004).

⁷ *MSA Order*, 110 FERC ¶ 61,025 at P 24, citing *May 21 Order*, 107 FERC ¶ 61,179 (2004) at P 41; *California Independent System Operator Corp.*, 103 FERC ¶ 61,260 (2003).

stated that Azusa cannot evade the requirements of the MSA by virtue of the metering ownership arrangements and found that the *pro forma* MSA is just and reasonable even though SoCal Edison retains ownership and control of the facilities at issue.

7. The Commission stated that Azusa was aware of the dependence on SoCal Edison for the reporting of data to the CAISO under the current ownership arrangements and that SoCal Edison should not be liable for penalties associated with metering facilities it installed on Azusa's behalf. Additionally, we noted that SoCal Edison proposed, in its comments to the filing, to add language to the WDAT Service Agreement with Azusa reflecting SoCal Edison's agreement to abide by the CAISO's terms and conditions pertaining to maintenance, testing, and certification of CAISO-certified metering facilities.⁸ SoCal Edison stated that if it fails to properly maintain the facilities, Azusa will have full recourse against it under the WDAT Service Agreement and will, therefore, be "protected from potentially *unfair* liability."⁹ The Commission stated that it believed that this commitment should alleviate the Cities' concerns and minimize potential liabilities. We therefore required SoCal Edison to incorporate this commitment into the WDAT Service Agreement within 30 days of the issuance of the MSA Order.

8. SoCal Edison also stated that it had agreed to grant reasonable access rights to the CAISO and has already executed a set of procedures with Azusa for Azusa's rights to access Azusa-owned equipment within the Kirkwall substation.¹⁰ The Commission, therefore, also required SoCal Edison to incorporate this commitment into the WDAT Service Agreement within 30 days of the date of the MSA Order. In light of these facts, we found that Azusa should be able to comply with the requirements for granting the CAISO access to the metering facilities.

9. On February 17, 2005, SoCal Edison submitted a revised WDAT Service Agreement between it and Azusa in Docket No. ER05-593-000 pursuant to the MSA Order. That filing was not protested and was accepted, effective April 8, 2005, by delegated letter order on April 6, 2005.

⁸ SoCal Edison Answer at 8.

⁹ *Id.*

¹⁰ *Id.* at 12.

Request for Rehearing and Clarification

10. The Cities request rehearing and clarification of the MSA Order. They state that the Commission erred in not accepting their response, filed December 17, 2005, to the CAISO's and So Cal Edison's answers (Cities' Response). They also contend that the Commission erred in basing the decision to accept the unexecuted MSA on contested assertions by SoCal Edison. Finally, they argue that the MSA Order was incorrect in finding that the Cities could enforce SoCal Edison's obligation to maintain CAISO-compliant metering equipment and to provide the CAISO with access to the meters through modifications to the WDAT.

11. The Cities contend that the Commission's MSA Order was based on assertions made by SoCal Edison in its Answer filed on December 2, 2004 (SoCal Edison Answer). In its answer, SoCal Edison argued that Azusa should be required to assume the obligations of the MSA because the metering facilities were constructed for Azusa's sole use and benefit, and, therefore, Azusa should be the responsible party for those facilities. Azusa argues that, although the Commission is not required to accept answers to pleadings, it should have accepted its Response because it disputed the factual assertions made by SoCal Edison in its answer.

12. The Cities argue that, in accepting the MSA, the Commission asserted that Azusa's lack of ownership and control over the facilities was the consequence of a calculated business decision by Azusa. However, the Cities argue that their Response stated that Azusa requested the ability to construct, own and operate the metering facilities, which they contend would allow Azusa to comply fully with the MSA, but was never offered the opportunity to do so.¹¹

13. The Cities also contend that the MSA Order fails to address the Cities' assertion, that the existence of SoCal Edison's WDAT does not enable the Cities to comply with all provisions of the MSA. The Cities assert that the inclusion of provisions regarding maintenance of and access to the metering facilities is insufficient to ensure that all of the obligations regarding maintenance and access to the metering facilities contained in the MSA will be satisfied. They argue that the Commission has previously ordered SoCal Edison to provide CAISO-compliant meters and that SoCal Edison has delayed the installation of those meters for Azusa and has not begun to install the meters for Banning or Riverside.

¹¹ Azusa Request for Rehearing at 5.

14. In the alternative, the Cities state that the Commission should clarify that SoCal Edison is required to incorporate the obligations to abide by the CAISO's terms and conditions pertaining to maintenance, testing, and certification of CAISO-certified metering facilities and to grant reasonable access rights to the ISO into the WDAT Service Agreements for the Cities of Banning and Riverside, as well as for Azusa. They argue that both Banning and Riverside are similarly situated to Azusa in that, as Participating Transmission Owners in the CAISO, they may eventually be required to enter into the *pro forma* MSA when SoCal Edison begins installation of CAISO-compliant metering equipment at its interconnection points with Banning and Riverside. They claim that neither Banning nor Riverside anticipates that it will own, operate or control such facilities. Therefore, they contend that Banning and Riverside may be exposed to potential claims for penalties if SoCal Edison fails to maintain or grant access to the meters.

Discussion

15. We will deny rehearing and grant clarification in part. The Commission may accept an answer to a pleading when it provides information that assists the Commission in its decision-making process. The Cities argue that the Commission failed to respond to their assertion, in the Cities' Response, that neither the CAISO Answer nor the SoCal Edison Answer explained how or why Azusa can be required to fulfill the obligations that they claim are beyond its control. These arguments were raised in its initial protest to the CAISO filing. The Commission found that SoCal Edison's modifying its WDAT Service Agreement to memorialize its commitments to abide by the CAISO requirements should alleviate the Cities' concerns that Azusa cannot fulfill the requirements of the MSA. Therefore, the Commission addressed these same arguments as raised in the Cities' initial protest. In this respect, the Cities' Response did not assist the Commission in our decision-making process.

16. The Cities also argue that their Response would have assisted the Commission because it countered SoCal Edison's assertions as to the history regarding the construction of the metering facilities at Azusa. In the Cities' Response, they stated that SoCal Edison had already installed "a substantial portion of the necessary facilities" and that for Azusa to re-engineer and reconstruct those facilities would result in duplicative effort and unnecessary cost. The Cities also claimed that Azusa requested the ability to construct, own, and operate the metering facilities, but that SoCal Edison refused to allow Azusa to own or control critical components of the metering facilities and never offered to allow Azusa to construct, own and operate the complete metering facilities that they claim would have enabled Azusa to comply with all the terms of the MSA.

17. These allegations would not have led the Commission to a different conclusion than it reached in the MSA Order. In the MSA Order, the Commission noted that Azusa

was aware of the necessity to enter into the MSA prior to construction of the metering facilities. We stated that “[i]t appears that Azusa [was] in its current position as a result of the economic decision to have SoCal Edison construct the metering facilities on Azusa’s behalf.”¹² However, the Commission did not base its decision on what “appeared” to be. The May 21 Order stated that SoCal Edison should not be responsible for penalties associated with metering facilities built on Azusa’s behalf.¹³ In addition, the MSA Order stated that “[the Commission] will not allow Azusa, or any other entity, to bypass the CAISO’s metering obligations merely by contracting with another entity to own, operate, and maintain metering facilities designed for its sole use and benefit.”¹⁴

18. Although what appeared to be the circumstances leading to Azusa’s position, that it did not own, operate, or maintain the metering facilities, may have been in dispute, it remains that no entity should be allowed to bypass the CAISO’s metering obligations because another entity owns the facilities which were designed for its sole use and benefit. The MSA Order addressed the Cities’ concerns about the effect that the ownership of the facilities would have on Azusa’s ability to carry out the terms of the MSA. Under the WDAT Service Agreement, which has been modified as directed by the Commission, Azusa is now protected from potentially unfair liability. Under that agreement, SoCal Edison is now required to abide by the CAISO’s terms and conditions pertaining to maintenance, testing, and certification of CAISO-certified metering facilities. In addition, SoCal Edison has granted the CAISO and Azusa reasonable access rights to the metering facilities. If SoCal Edison does not comply with the terms of the WDAT Service Agreement, Azusa has recourse against SoCal Edison in the form of the Commission’s complaint procedures. Therefore, although the MSA Order did not reference the Cities’ Response, that response would not have aided the Commission in its decision-making process.

19. In respect to the Cities’ request for clarification that SoCal Edison is required to incorporate the obligations required in the MSA Order for the Cities of Banning and Riverside, as well as for Azusa, we will grant the clarification in part. SoCal Edison was required to incorporate the commitment to abide by the CAISO’s terms and conditions pertaining to maintenance, testing, and certification of CAISO-certified metering facilities and the commitment to grant reasonable access rights to the CAISO into the WDAT Service Agreement within 30 days of the MSA Order. It did so on February 17,

¹² *MSA Order*, 110 FERC ¶ 61,025 at P 25.

¹³ *May 21 Order*, 107 FERC ¶ 61,179 at P 41.

¹⁴ *MSA Order*, 110 FERC ¶ 61,025 at P 25.

2005 in Docket No. ER05-593-000. Therefore, we clarify that SoCal Edison was required to incorporate the commitments referenced in the MSA Order as to Azusa within 30 days of that order. SoCal Edison has fulfilled its obligation under the MSA Order.

20. However, to the extent that the Cities request clarification that SoCal Edison is also required to incorporate these same obligations into the MSA Service Agreements with the cities of Banning and Riverside, we deny the Cities' request for clarification. The MSA Order did not require SoCal Edison to do so. The CAISO has not filed an unexecuted MSA with either Banning or Riverside, therefore any rights and obligations under such an MSA are not properly before the Commission at this time.

21. Although the Cities state that Banning and Riverside are currently similarly situated to Azusa, the Commission has no way of analyzing at this time what the situation of either of these cities will be at such time as they may need an MSA with the CAISO. In fact, the Cities state that Banning and Riverside "may be required to enter into the *pro forma* MSA." Implicit in that statement is the fact that they may not be required to enter into an MSA. In addition, even if they are, at a future time, required to enter into an MSA with the CAISO, the Cities state that "neither Banning nor Riverside anticipates that it will own operate or control" any required metering facilities. Although they foresee being similarly situated to Azusa, this assertion is speculative. Therefore, SoCal Edison is not required, at this time, to incorporate the commitments made in this proceeding as to Azusa into the WDAT Service Agreements with Banning and Riverside. However, if at a future time either Banning or Riverside is required to enter into the *pro forma* MSA with the CAISO, and it is similarly situated to Azusa, SoCal Edison will be required to incorporate similar modifications into its WDAT Service Agreements with that city.

The Commission orders:

(A) The Cities' request for rehearing is hereby denied, as discussed in the body of this order.

(B) The Cities request for clarification is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.