120 FERC ¶ 61,244
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

California Independent System Operator Corporation — Docket No. EL07-33-001

ORDER ON REQUEST FOR CLARIFICATION AND REHEARING

(Issued September 20, 2007)

1. Imperial Irrigation District (Imperial) filed a request for rehearing of a Commission order granting the California Independent System Operator Corporation's (CAISO) petition for declaratory order regarding its proposed financing mechanism for the construction of interconnection facilities to connect location-constrained resources[1] to the CAISO-controlled grid.[2] In this order, we deny Imperial's request for rehearing of the April 19 Order.

Background

2. On January 25, 2007, the CAISO filed a petition for declaratory order seeking conceptual approval of a new mechanism to finance the construction of interconnection facilities to connect location-constrained resources to the CAISO-controlled grid. Specifically, the CAISO sought a determination that, upon the satisfaction of its proposed criteria or other Commission-directed criteria, its proposed rate treatment of the costs of the interconnection facilities would constitute an acceptable variation from Order No.

[1] Consistent with the April 19, 2007 order, we define location-constrained resources as generation resources that are typically constrained as a result of their location, relative size, and the immobility of their fuel source.

[2] *Cal. Indep. Sys. Operator Corp.*, 119 FERC ¶ 61,061 (2007) (April 19 Order).

2003's default generator interconnection policies[3] or that the proposed rate treatment would otherwise be just and reasonable.

3. The CAISO proposed to initially roll-in the costs of these interconnection facilities through the transmission revenue requirement (TRR) of the Participating Transmission Owner (PTO) that builds the facility. The CAISO noted that its Transmission Access Charge (TAC) would reflect the costs of the facility. The CAISO stated that each connecting generator would pay its *pro rata* share of the going-forward costs of using the line. It stated that, through inclusion in the TAC, all users of the grid would pay the cost of the unsubscribed portion of the line until the line is fully subscribed.

4. In the April 19 Order, the Commission granted the CAISO's petition, determining that the CAISO's proposed rate treatment would not be unduly preferential or discriminatory and would be just and reasonable. The Commission found that the CAISO's proposal struck a balance by eliminating barriers to the development of location-constrained resources while providing protections to ensure that rates remain just and reasonable.[4] The Commission further found that the CAISO's proposal included several features that ensure that benefits will accrue to users of the CAISO grid and that limit the cost impact on ratepayers, including a rate impact cap and capacity subscription requirements. Finally, the Commission noted that the CAISO will evaluate and approve each proposed interconnection facility in the context of a CAISO transmission planning process, thereby ensuring that the project will result in a cost effective and efficient interconnection of resources to the grid.

5. On May 21, 2007,[5] Imperial filed a request for rehearing, clarification, and expedited consideration of the April 19 Order.

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[3] *See Standardization of Generator Interconnection Agreements and Procedures*,Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (2004), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (2007).

[4] April 19 Order, 119 FERC ¶ 61,061 at P 3.

[5] We note that Imperial filed an errata to its May 21, 2007 filing on June 5, 2007 (Imperial Request for Rehearing).

Discussion

A. Interconnection and Pricing Policies

6. Imperial charges that the CAISO's interconnection financing proposal does not meet cost causation principles and that it is unjust and unreasonable to require customers to bear the costs of such facilities. Imperial asserts that there is no substantial evidence demonstrating that all CAISO transmission customers, including wheel-through customers, actually benefit from the unsubscribed capacity in interconnection facilities they are being asked to subsidize. It points out that, if the interconnection capacity is unsubscribed, renewable resources are not even flowing over that capacity for the benefit of any customers, let alone all customers. Imperial argues that spreading costs to all transmission customers would weaken price signals needed to ensure that facilities are sited efficiently.

7. Imperial argues that insufficient evidence has been presented that a new financing mechanism is needed to encourage the development of infrastructure to connect renewable energy resources. It claims that the Commission's existing interconnection procedures already allow for clustering of interconnection requests and allocating upgrades to multiple generators. Furthermore, Imperial contends that the CAISO's Large Generator Interconnection Procedures provide for a regional planning process for developing larger generation tie lines. Imperial asserts that the Commission should rely on the existing procedure unless it can provide substantial evidence to show that the existing procedure is not sufficient.

8. Imperial postulates that, even if it were shown that renewable resources in the Tehachapi area[6] are constrained as a result of their location, it does not follow that renewable resources in the Salton Sea area are likewise constrained or face the same barriers.[7] Imperial points out that it already has existing transmission infrastructure near the Salton Sea resource area and is in the process of creating even more transmission infrastructure to support additional resources. According to Imperial, the large number of

[6] As the April 19 Order noted, "[t]he Tehachapi resource area is an example of a situation where insufficient interconnection capacity may be preventing the development of location-constrained resources." April 19 Order, 119 FERC ¶ 61,061 at P 67.

[7] Imperial describes the Salton Sea as being embedded in its transmission system at the heart of Imperial's balancing authority area. Imperial Request for Rehearing at 11.

renewable generators it has connected to its collector system,[8] as well as the additional generators it is currently in the process of connecting to its transmission system, contradicts the conclusion that there are barriers to entry in the Salton Sea region.

Commission Determination

9. The April 19 Order addressed in detail the need for a change in Commission interconnection policies that would remove barriers to entry and facilitate the development of location-constrained resources in California. The Commission cited existing challenges in the Tehachapi region as examples of the obstacles faced by location-constrained resources.[9] Contrary to Imperial's assertions, the Commission's existing interconnection policies do not already address the unique concerns of these resources. As the Commission noted, in the April 19 Order, "[o]ur interconnection policy assumes that generators seeking to transmit energy or sell energy at wholesale in interstate commerce can choose where to interconnect and will do so in an economically efficient manner, so as to minimize costs of interconnection."[10] These policies do not take into account more recent initiatives[11] to develop renewable energy resources, which are often location-constrained and have a limited ability to minimize their interconnection costs.[12]

10. While the Commission's existing policies do allow for the clustering of proposed generating resources, this does not fully address the fact that location-constrained resources tend to have an immobile fuel source, are small in size relative to the necessary

[8] Imperial identifies its collector system as the 107-mile, 230 kV transmission line running from the southern portion of its service area to the northern portion of its service area where this line connects with the Southern California Edison system and the CAISO. Imperial states that it also constructed numerous tie lines to connect geothermal generators in the Salton Sea area to this collector system. Imperial Request for Rehearing at 8.

[9] April 19 Order, 119 FERC ¶ 61,061 at P 21, 67, 69.

[10] April 19 Order, 119 FERC ¶ 61,061 at P 65 (footnote omitted).

[11] These initiatives span state, regional and federal levels, including the State of California's renewable portfolio standard (RPS) of 20 percent by 2010. *See* April 19 Order, 119 FERC ¶ 61,061 at P 68.

[12] *Id.* P 64, 65.

interconnection facilities, tend to come on line incrementally over time, and are often remotely located from loads.[13]

11. Relying on existing clustering provisions would likely lead to lines being inefficiently sized, if they are built at all, and thus resource areas possibly being under-developed. Furthermore, though the current policies and procedures allow upgrades to be paid for by multiple generators, properly sizing interconnection lines to begin with is both cost effective and efficient.

12. In response to Imperial's arguments addressing the roll-in of costs associated with the unsubscribed portion of proposed interconnection facilities, the Commission addressed the broad benefits of accessing location-constrained resources for the entire grid:

> We believe the CAISO's proposal strikes a just and reasonable balance in addressing the barriers to development of location-constrained resources and recognizing the system benefits derived from such facilities. In particular, the CAISO's proposal includes several mechanisms that will ensure that any rolled-in amount is no more than is necessary to facilitate the needed investment in location-constrained resources… In order to approve specific projects, the transmission planning process must determine that the costs associated with meeting future demand requirements, including the State of California's RPS requirements, are expected to be lower over time with the project than without. The CAISO also anticipates that the [facilities] will provide additional benefits that will be evaluated by the CAISO and stakeholders in the regional transmission planning process. These benefits include: (1) promoting supply diversity and competition in the marketplace, as well as providing access to new sources of supply that will be available to all [load serving entities]; (2) promoting the efficient, cost effective development of infrastructure; and (3) ensuring that [the facilities] become part of and are effectively integrated into the CAISO grid.[14]

13. Further, the Commission addressed the issue of what benefits accrue to wheel-through customers in the April 19 Order, finding that "the CAISO's proposal will ensure that benefits will broadly accrue to [load serving entities] who take energy, including

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[13] *Id.* P 64.

[14] *Id.* P 77, 78.

imports, from the CAISO control area."[15] The Commission noted that these benefits will be identified in the transmission planning process and will likely include fuel supply diversity, reduced price volatility, and an enhanced ability for load serving entities to cost-effectively meet their RPS requirements. Finally, the Commission encouraged the CAISO to clarify in its tariff filing what, if any, costs would be allocated to wheel-through customers and their corresponding benefits.

14. We disagree with Imperial's assertion that spreading costs to all ratepayers will weaken price signals, thereby resulting in inefficient planning of infrastructure. The CAISO's petition as a whole addresses questions of economic efficiency by establishing minimum capacity subscription levels and requiring a demonstrable showing of interest for any proposed interconnection facility. The interconnection facility must provide access for location constrained resources located in an energy resource area, as identified by the appropriate state entity.[16] In addition, the regional planning process will evaluate projects on a case-by-case basis and allow participants to give input as to the optimal size of each facility. Combined, these provisions should guard against inefficient investment in infrastructure.

15. Finally, we note that nothing in the April 19 Order approved the building or financing of any specific facilities, including those in the Salton Sea area. For the foregoing reasons, we deny Imperial's request for rehearing.

B. Potential for Stranded Investment

16. Imperial asserts that it has made significant investments in transmission infrastructure to make renewable energy produced in the Salton Sea available to the State of California. It claims that it is concerned about making further investments in transmission infrastructure when its assets may become stranded as a result of the CAISO's new financing mechanism.

17. Imperial claims that the Commission has acknowledged but failed to address its concerns regarding stranded investments. Imperial asserts that this failure by the

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[15] *Id.* P 86.

[16] Under the CAISO's proposal, an interconnection facility must provide access to an energy resource area, which the CAISO contemplates will be identified by the California Energy Commission or other state agency. The CAISO broadly defines an energy resource area as a region in California that (1) holds the potential for development of a significant quantity of location-constrained resources and (2) is not readily accessible to the CAISO transmission grid.

Commission violates both the Federal Power Act (FPA) and Administrative Procedures Act.[17] Additionally, Imperial contends that in other cases the U.S. Court of Appeals for the District of Columbia Circuit has rejected Commission orders when the Commission failed to address an important issue, or failed to adequately explain a particular decision.[18] Imperial argues that the Commission has merely side-stepped the pertinent issue by determining that Imperial's concerns could be addressed through the CAISO's transmission planning process.

18. Imperial explains that it is concerned that neither the CAISO tariff nor the Charter of the Transmission Expansion Planning Policy Committee (TEPPC) of the Western Electricity Coordinating Council (WECC) specifically defines its responsibilities regarding the protection of ratepayers against unnecessary and duplicative transmission investments.[19] Imperial asserts that the fact that the CAISO included in its petition a minimum subscription criterion for the stated purpose of preventing stranded costs, suggests that the regional planning process alone is insufficient. Furthermore, Imperial argues that the FPA has charged the Commission with ensuring a proposed rate, term, or condition is just and reasonable, and that the Commission cannot delegate that authority to a regional planning organization, such as the CAISO.

19. Imperial asserts that the CAISO has not provided any evidence demonstrating that the CAISO's proposal would result in a cost effective and efficient interconnection of resources to the grid in the Salton Sea area. Imperial contends that, in the Salton Sea area, it would be more cost effective and more efficient for Imperial to interconnect resources, particularly in light of its closer location, existing infrastructure, and lower costs. Further, Imperial charges that it cannot be rationally concluded that it is just and reasonable for the CAISO transmission customers to pay higher transmission rates in order to subsidize the costs of extending new generation tie lines all the way into the Salton Sea area when Imperial already has much closer existing infrastructure in place and can construct the tie lines less expensively, more expeditiously, and with less environmental impact.

20. Imperial states that, while the April 19 Order indicated that the concerns of Imperial and other CAISO ratepayers potentially could be resolved in the CAISO's

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[17] Imperial Request for Rehearing at 20 (*citing* 5 U.S.C. § 557 (2007)).

[18] *Id.* at 19 (*citing NorAm Gas Transmission Co*. v. *FERC*, 148F.3d 1158, 1165 (D.C. Cir. 1998) (*citing Laclede Gas Co., v. FERC*, 997 F.2d 936, 945-48 (D.C. Cir. 1993); *N.C. Util. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994))).

[19] *Id.* at 21.

regional planning process, the April 19 Order lacks any assurances that the CAISO will, in fact, refrain from increasing transmission rates to subsidize the costs of new generation tie lines in the Salton Sea area when Imperial already has existing infrastructure in place. Imperial requests that the Commission direct the CAISO to coordinate development of needed collector systems with neighboring control areas and refrain from using the authority granted in the April 19 Order for facilities that bypass or otherwise strand investments made by the neighboring control areas.

21. Imperial requests that the Commission require the CAISO to: (1) acquire transmission service from transmission providers outside of the CAISO balancing area that request to interconnect with the neighboring balancing authority; (2) conduct an analysis between both balancing authorities to assess the most efficient interconnection plan that results in the lowest rate to consumers; and (3) establish and file a generator interconnection process to deal with generators that are connected in one balancing authority but request to interconnect to the neighboring balancing authority.[20]

Commission Determination

22. Contrary to Imperial's assertions, the Commission has fully addressed Imperial's arguments. In the April 19 Order, the Commission found that Imperial should raise its concerns in the CAISO's independent transmission planning process. The Commission also found that Order No. 890 requires that the CAISO coordinate with interconnected systems in preparing a transmission system plan, and that Imperial can also express its concerns during such regional processes.[21] In addition, the CAISO's proposal, approved in the April 19 Order, was a generic one. We will address any concerns that Imperial may have regarding the planning process and location of a new interconnection on a case-by-case basis when a transmission owner seeks approval of its proposed rate recovery.[22] We find that Imperial has had, and will have, multiple opportunities to comment on the CAISO's transmission planning process and to provide input to the Commission. The Commission has already considered each of Imperial's concerns and fully responded.

[20] *Id.* at 25.

[21] April 19 Order, 119 FERC ¶ 61,061 at P 85 (*citing* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523). Further, as the Commission noted in the April 19 Order "[i]t will be incumbent upon the transmission provider to establish the regional need and benefits of a proposed project." *Id.* P 76.

[22] *Id.* P 87.

23. The Commission's requirement that the CAISO evaluate existing resources to avoid inefficient transmission siting and stranded costs through its existing planning process does not constitute an impermissible delegation of Commission authority. The Commission has already considered and approved CAISO tariff language that enumerates the transmission planning process that the CAISO will follow.[23] The CAISO must file any proposed changes to this process, resulting from Order No. 890 or otherwise, with the Commission for review and approval. Furthermore, the CAISO proposes to initially roll-in costs of these interconnection facilities through the transmission revenue requirement of the participating transmission owner that builds the facility. As discussed above, the transmission owner will have to seek Commission approval for its proposed revenue requirement, allowing additional Commission input into the process and ensuring another safeguard that rates are just and reasonable. Finally, we note that, to the extent that Imperial believes that the planning process is unjust and unreasonable, it can file a complaint with the Commission.

24. Contrary to Imperial's claims, the CAISO's tariff specifically provides for coordination with entities outside of the CAISO Control Area in interconnection planning. Sheet No. 1004A in Appendix U of the CAISO's tariff explains that the CAISO will work with any affected systems operators in evaluating the impact of an interconnection request, including involving the affected systems operator in all meetings with the interconnection customer.

25. Finally, we reject as unnecessary Imperial's request that we direct the CAISO to coordinate development of needed collector systems with neighboring control areas. The CAISO is already subject to a directive to coordinate with neighboring control areas. As established in Order No. 890[24] and recognized in the April 19 Order, "the regional aspect of the transmission planning process will have to ensure proper siting and development of multi-user interconnection facilities."[25] A properly functioning regional transmission planning process should take into consideration exactly the concerns Imperial voices – the location of existing transmission, the ability to interconnect to that transmission in a cost-effective manner, and the ability to mitigate a project's environmental impact. Therefore, Imperial's concern about the cost effectiveness and efficiency of

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[23] *See, e.g.*, *Pacific Gas & Elec. Co.*, 81 FERC ¶ 61,122 (1997); *Pacific Gas & Elec. Co.*, 81 FERC ¶ 61,320 (1997).

[24] *See* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523 (requiring each transmission provider to coordinate with interconnected systems to identify system enhancements that integrate new resources).

[25] April 19 Order, 119 FERC ¶ 61,061 at P 76.

interconnection facilities that have not yet been proposed to access unnamed remote resources is speculative.

26. For all of these reasons, we deny Imperial's request for rehearing.

C. Extension of Proposal Beyond CAISO Control Area

27. Imperial requests clarification, or in the alternative, rehearing that the April 19 Order did not intend to authorize the CAISO to extend its proposal beyond the CAISO region. It further requests clarification that the Commission did not intend for the CAISO to become the regional transmission operator or balancing authority for all of California, and especially in areas where political subdivisions of the state, such as Imperial, operate transmission facilities and maintain their own balancing authority. Imperial contends that the CAISO is trying to expand its system into Imperial's service areas and displace Imperial. Imperial maintains that Congress did not intend to coerce governmental utilities to participate in Regional Transmission Organizations (RTOs) nor did it intend for RTOs to spread involuntarily into regions where RTOs did not exist.[26]

Commission Determination

28. We clarify that the Commission did not intend, in the April 19 Order, for the CAISO to become the regional transmission operator or balancing authority for all of California or in areas where a transmission operator and balancing authority already exists. As indicated by Imperial, the Commission's policy is that participation in an RTO is voluntary.[27]

29. We decline to address Imperial's speculative assertion that the CAISO is seeking to expand into Imperial's service area and displace Imperial. However, we note that the project sponsor, not the CAISO, is responsible for proposing the location of these interconnection facilities. As noted above, the proposed facility must provide access to an energy resource area, as defined by the appropriate California state agency, and be approved in the regional transmission planning process. We reiterate that the

[26] Imperial Request for Rehearing at 11 (*citing* Energy Policy Act of 2005, Pub. L. No. 109-58, § 1231, 119 Stat. 594, 955-56 (2005) (to be codified at 16 U.S.C. § 824j-1(j)) ("Nothing in this section authorizes the Commission to require an unregulated transmitting utility to transfer control or operation control of its transmitting facilities to a Transmission Organization that is designated to provide nondiscriminatory transmission access").

[27] *See, e.g., Louisville Gas & Elec. Co.*, 114 FERC ¶ 61,282, at P 29 (2006).

transmission planning process will be regional in scope and will require collaboration among all interested parties. We believe this process will appropriately determine the location of interconnection facilities.

D. Section 205 Filing

30. Imperial requests rehearing regarding the April 19 Order's restriction on parties raising arguments again when the CAISO makes its FPA section 205 tariff filing to implement its proposal.[28] Imperial states that it is unfair to use the petition for declaratory order process to approve a proposal, but disallow parties to raise similar issues when they have an opportunity to review the CAISO's actual proposed tariff language in a FPA section 205[29] proceeding. It specifically points out that the Commission in several instances referred to the CAISO's proposal as "unclear" and "ambiguous." Imperial contends that, if the CAISO files tariff language that is unjust and unreasonable, then it is a violation of the FPA for the Commission to refuse to consider where the original CAISO's proposal lacked a reasoned explanation and evidentiary support.

Commission Determination

31. In the April 19 Order, the Commission noted that the CAISO would be making a FPA section 205 filing with tariff language to implement the CAISO's proposal. The Commission further stated that the FPA section 205 proceeding "should not be a forum to reargue the threshold findings made in this order; rather, it should focus on implementation issues."[30]

32. In response to Imperial's request for rehearing of this issue, we note that parties must raise their concerns in the appropriate forum. Rule 713(b) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(b)(2007), permits parties to file requests for rehearing not later than 30 days after issuance of a final Commission decision or other final order. We find that Imperial has properly filed a request for rehearing of the April 19 Order, which we are appropriately addressing herein. However, we also note that we cannot provide Imperial with unlimited opportunities to attack the Commission's threshold findings in the April 19 Order and rehearing thereof regarding

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[28] Imperial Request for Rehearing at 26 (*citing* April 19 Order, 119 FERC ¶ 61,061 at P 88).

[29] 16 U.S.C. § 824d (2000).

[30] April 19 Order, 119 FERC ¶ 61,061 at P 88.

the CAISO's proposal.[31] Any other result would lead to protracted litigation as every response by the Commission to a party's arguments would allow yet another opportunity for rehearing.[32] The Commission will not allow litigation to drag on indefinitely nor will it allow an impermissible collateral attack on a prior Commission order. However, we do clarify that, to the extent that entities raise issues pertinent to the CAISO's upcoming FPA section 205 tariff filing that were not already considered in the April 19 Order, the Commission will consider those concerns as they specifically relate to that filing.

The Commission orders:

(A) The Commission hereby denies Imperial's request for rehearing, as described within the body of this order.

(B) The Commission hereby grants in part and denies in part requests for clarification, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[31] *See Sw. Gas Corp. v. FERC*, 145 F.3d 365, 370 (1998) ("The Commission need not revisit the reasoning of a general order every time it applies to a specific circumstance"); *see also McCulloch Interstate Gas Corp. v. Fed. Power Comm'n*, 536 F.2d 910, 913 (10th Cir. 1976) (citing *Callanan Rd. Co. v. United States*, 345 U.S. 507, 512 (1953) ("A party may not collaterally attack the validity of a prior agency order in a subsequent proceeding")).

[32] *See, e.g., Canadian Ass'n of Petroleum Producers v. FERC*, 254 F.3d 289, 296 (D.C. Cir. 2001) (rejecting the notion of "infinite regress" that would "serve no useful end").