

95 FERC ¶ 61,312  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;  
William L. Massey, and Linda Breathitt.

Strategic Energy L.L.C.

v.

California Independent System  
Operator Corporation

Docket No. EL01-41-000

ORDER DENYING COMPLAINT

(Issued May 31, 2001)

I. Introduction

As explained below, we deny a complaint by Strategic Energy L.L.C. (Strategic Energy) against California Independent System Operator Corporation (ISO).

II. Background

A. Prior Proceeding

In Docket No. ER01-607-000, the ISO filed Amendment No. 33 to the ISO Tariff, which addressed the ISO's need to obtain generation resources in order to maintain reliability of its transmission system in response to an immediate crisis in California's markets.<sup>1</sup> Among other things, Amendment No. 33 amended the ISO Tariff to reduce reliance on the ISO's real-time Imbalance Energy market by assigning to Scheduling Coordinators who rely on that market to serve their loads the ISO's costs of obtaining Energy through bids above the proposed break point or through out-of-market Dispatches when bids are insufficient. By order issued on December 8, 2000, the Commission accepted Amendment No. 33 for filing on an emergency basis.<sup>2</sup>

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<sup>1</sup>The ISO had declared Stage 2 Emergencies for the four days prior to its filing and stated that it saw no immediate relief.

<sup>2</sup>California Independent System Operator Corp., 93 FERC ¶ 61,239 (2000), reh'g pending.

On February 28, 2000, Strategic Energy filed a complaint against the ISO regarding the allocation to Strategic Energy of approximately \$4.9 million in costs resulting from ISO dispatch orders or other out-of-market costs claimed by the ISO from Scheduling Coordinators such as Strategic Energy for the month of December 2000. Strategic Energy requests that the Commission order the ISO to provide data in support of its claimed costs. In a supplemental pleading filed on March 5, 2001, Strategic Energy requests that it be permitted to place future disputed payments in escrow pending the resolution of such disputes.<sup>3</sup>

B. Notice of Filing and Responsive Pleadings

Notice of Strategic Energy's complaint was published in the Federal Register,<sup>4</sup> with motions to intervene and protests due on or before March 20, 2001. Timely motions to intervene raising no substantive issues were filed by: Southern California Edison Company; Modesto Irrigation District; Cities of Redding and Santa Clara, California; City of Vernon, California; and the California Electricity Oversight Board. Enron Power Marketing, Inc. (Enron) filed a timely motion to intervene and comments. On March 20, 2001, the ISO filed an answer to the complaint. On March 26, 2001, the Public Utilities Commission of the State of California (California Commission) filed a motion for leave to file a late intervention raising no substantive issues. On March 29, 2001, Strategic Energy filed a motion for leave to file reply and reply to the ISO's answer.

III. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>5</sup> the timely, unopposed motions to intervene serve to make those who filed them parties to this proceeding. In view of the early stage of this proceeding, its interest in the proceeding and the absence of any undue prejudice or delay, we will grant the California Commission's unopposed motion for late intervention.

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<sup>3</sup>Originally, in its complaint, Strategic Energy requested interim relief prior to the date that payment for its bill for December 2000 was due. It asked that it be permitted to place the disputed amount in escrow pending the outcome of the complaint. Subsequently, it paid the ISO the full amount, but stated that it was doing so under protest.

<sup>4</sup>66 Fed. Reg. 13,920 (2001).

<sup>5</sup>18 C.F.R. § 385.214 (2000).

The Commission's Rules of Practice and Procedure generally prohibit answers to answers unless otherwise permitted by the decisional authority.<sup>6</sup> We will permit Strategic Energy's answer to the ISO's answer, because it has aided us in understanding the issues.

B. The Parties' Positions

Strategic Energy claims that some of the disputed charges may reflect forward market purchases that are not properly attributable to the scheduling interval in which charges were assessed against Strategic Energy and that the ISO has refused to disclose information necessary to address Strategic Energy's concern. Strategic Energy alleges that the ISO has refused to provide data in support of its claimed costs, as required by the ISO Tariff. It further alleges that the ISO admitted that the December bill contained material errors, failed to correct those errors and demanded payment notwithstanding the alleged errors.

Strategic Energy argues that the ISO's failure to provide the supporting data in essence constitutes the imposition of a rule or regulation that has not been filed with or approved by the Commission as required by section 205(c) of the Federal Power Act (FPA),<sup>7</sup> and it requests that the Commission direct the ISO to provide information to support the ISO's claimed costs. Strategic Energy further argues that the ISO's apparent failure to assign out-of-market costs solely to the scheduling interval in which the power purchases are delivered creates an undue preference or advantage and creates an unreasonable difference in rates in violation of sections 205(a) and 205(c) of the FPA. It requests that the Commission clarify that if the ISO enters into a forward contract during a scheduling interval for power to be delivered in a later scheduling interval, the costs of the forward contract are recoverable only for the scheduling interval in which the power is to be delivered. It also states that bilateral discussions with the ISO did not resolve the dispute and that "[g]iven the limited amount of time available to address this matter," it does not believe that further ADR procedures would help to resolve the dispute.

As noted above, Strategic Energy states that it has paid the disputed charge for December 2000 under protest pending resolution of this complaint. However, it contends that this issue may arise again and requests that the Commission authorize it to place future disputed payments in escrow.

The ISO responds that under the ISO Tariff, Scheduling Coordinators such as Strategic Energy must follow the Tariff's alternative dispute resolution (ADR) procedures for disputing an ISO invoice before they may bring such complaints before the Commission. It argues that Strategic Energy's complaint is an attempt to circumvent the ADR requirement. In its answer, Strategic Energy responds

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<sup>6</sup>18 C.F.R. § 385.213 (2000).

<sup>7</sup>16 U.S.C. § 824d(c) (1994).

that its allegations pertain to the justness and reasonableness of the ISO's rates and are thus excepted from the ADR requirement under the ISO Tariff.

The ISO disputes Strategic Energy's claim that it has not provided the supporting data required under the ISO Tariff:<sup>8</sup>

Specifically, and in full compliance with Section 11.4.3, the ISO has provided to Strategic Energy, for all appropriate days and time periods, the total price for out-of-market dispatches in the Trading Day, the total Net Negative Uninstructed Deviation in that same interval, the percentage of the Net Negative Uninstructed Deviation that was caused by the Scheduling Coordinator, and the total dollar amount that the ISO will collect from Strategic Energy as a result.

With respect to Strategic Energy's claim that it lacks information about the prices used to calculate the charges allocated to it, the ISO contends that such information is not mandated under the ISO Tariff, but that Strategic Energy may obtain that information, and any additional information it deems necessary, through the discovery procedures set forth in the ISO Tariff ADR procedures. The ISO also contends that it has complied with the ISO Tariff regarding the attribution of costs of forward market purchases to the appropriate settlement intervals. Finally, with regard to settlement statements, the ISO states that it has a complete process for review, revision, and correction in the event of material errors and that it will initiate a correction upon its own discovery of any such error or as a result of the ISO Tariff's dispute resolution process.

Enron supports Strategic Energy's complaint. Enron also alleges that the ISO refused to provide market participants with information concerning dispatch orders for December 2000, which is preventing market participants from being able to verify those costs.<sup>9</sup>

### C. Commission Determination

We will deny Strategic Energy's complaint as premature, because it has not complied with the ISO Tariff ADR procedures. Section 13.1.1 of the ISO Tariff (Dispute Resolution, General Applicability) provides that:

[T]he ISO ADR Procedures shall apply to all disputes between parties which arise under the ISO Documents except where the decision of the ISO is stated in the provisions of this ISO Tariff to be final. The ISO

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<sup>8</sup>ISO Answer at 7.

<sup>9</sup>According to Enron, the ISO is currently providing such information subject to a two-day lag.

ADR Procedures shall not apply to . . . [d]isputes arising under contracts which pre-date ISO Operations Date, except as the disputing parties may otherwise agree[, and] [d]isputes as to whether rates and charges set forth in this ISO Tariff are just and reasonable under the FPA. [(Emphasis added.)]

We reject Strategic Energy's argument that its complaint falls within the exception to the ISO Tariff's ADR requirement for disputes concerning the justness and reasonableness of Tariff rates or charges. We view this billing dispute as the kind of matter for which the ISO ADR procedures were developed. As the ISO notes, the Commission has determined:

Due to the limited time and resources of the Commission, we find that it is essential that the parties to the ISO Tariff attempt to resolve their disputes before bringing them before the Commission.<sup>[10]</sup>

We further note that the ISO Tariff ADR procedures provide for mediation or arbitration and that the parties may appeal an arbitration decision to the Commission or the courts.

Accordingly, we find that Strategic Energy must pursue its billing dispute with the ISO through the ISO Tariff ADR procedures prior to filing a complaint with the Commission. In view of that determination, we need not reach the merits of the complaint.

The Commission orders:

- (A) The California Commission's motion for late intervention is hereby granted.
- (B) Strategic Energy's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.

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<sup>10</sup>Pacific Gas and Electric Co., et al., 81 FERC ¶ 61,122 at 61,489 (1997); see also, e.g., New England Power Pool, 89 FERC ¶ 61,292 at 61,910 (1999).

