200307025003 Received FERC OSEC 07/02/2003 10:39:00 AM Docket# ER00-2019-006, ET AL.

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)))	Docket No. ER00-2019-006, ER01-819-002 and ER03-608

THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S MOTION FOR DETERMINATION OF SCOPE OF PROCEEDING

To: The Honorable Bobbie J. McCartney

1. Pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212, the California Independent System Operator Corporation ("ISO") respectfully submits this Motion for Determination of Scope of Proceeding.

2. By this motion, the ISO requests that the Presiding Judge determine, as explained in greater detail below, that the following issues are beyond the scope of this proceeding:

- Whether the inclusion in the transmission Access Charge[1] methodology of a Transition Period and cost shift cap is just and reasonable and not unduly discriminatory;
- Whether the use of a postage stamp rate, as opposed to a license plate rate, for the High Voltage Access Charge is just and reasonable;
- Whether the requirement that a Participating TO turn over to ISO operational control all of its transmission facilities is just and reasonable;
- Whether Amendment No. 27 is unjust, unreasonable, or unduly discriminatory because it does not include in the Transmission Revenue Requirement, or otherwise incorporate in the Access Charge, the cost of reliability services;
- (A) Whether "phantom Congestion" is a problem attributable to Existing Contracts; and (B) whether there are alternative mechanisms for reducing phantom Congestion;

[1] Capitalized terms, unless otherwise defined, have the meaning given them in the ISO Tariff.

- Whether the Commission has the authority to review a governmental entity's Transmission Revenue Requirement; and
- Whether certain Amendment No. 49 changes to ISO Tariff Section 3.2 are just and reasonable.

3. The ISO does not, by this motion, seek a ruling from the Presiding Judge that specific portions of testimony be stricken. The ISO is confident that the parties can reach agreement on testimony to be withdrawn or stricken once a determination is made regarding the scope of the issues.

4. The ISO believes that the following issues will be resolved through stipulation. In the event that such stipulations are not forthcoming, the ISO reserves the right to request a determination that these issues are beyond the scope of the proceeding:

- Whether it is discriminatory to permit the Western Area Power Administration to turn over only part of its transmission facilities to the ISO's operational control, but not permit other potential Participating TOs the same option;
- Whether Amendment No. 27's approach to the Access Charge and Transmission Revenue Requirement for Participating Transmission Owners that do not own transmission facilities is just and reasonable;
- Whether the new definition of PTO Service Area included in Amendment No. 49 is just and reasonable; and
- Whether the ISO Tariff provisions regarding Metered Subsystems are just and reasonable.

PROCEDURAL BACKGROUND

5. On April 24, 2003, the ISO filed in this docket a Motion to Establish Reasonable Limits on Discovery. Following oral argument, the Presiding Judge denied the motion, but indicated her willingness to consider procedures to establish appropriate limitations on the scope of the issues to be litigated in this docket.

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6. In a subsequent May 6, 2003, report to the Presiding Judge regarding efforts to reduce discovery disputes, the ISO reported, "Although the ISO supports the resolution of issues concerning the scope of the proceeding at the earliest possible date, most intervenors do not believe it is feasible or advisable to do so prior to the filing of intervenor testimony. Therefore, following the filing of intervenor testimony, the parties will ask the Presiding Judge to schedule a prehearing conference to resolve any disputes regarding the scope of the issues."

7. Intervenor testimony was filed on June 2. Although the ISO has endeavored to develop a format for presenting disputes regarding the scope of the issues to the Presiding Judge through a prehearing conference, as outlined in the ISO's May 6 report, some parties are unwilling to address such disputes other than through formal motions. Accordingly, the ISO is filing this motion.

8. The parties have agreed that any party that wishes to seek a determination that issues not identified herein are beyond the scope of this proceeding will file a motion to that effect by July 3, 2003. Answers to motions regarding the scope of the proceeding will be filed by July 11, 2003. Because the Commission rules do not provide for replies to Answers, the ISO believes that oral argument on this motion would be appropriate.

9. The ISO notes that Staff testimony is due on July 20, 2003. Accordingly, the parties respectfully request that the Presiding Judge convene any oral argument and rule on this and similar motions on an expedited basis.

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LEGAL BACKGROUND AND DISCUSSION

10. On March 31, 2000, pursuant to its rights under section 205 of the Federal Power Act ("FPA"), the ISO filed Amendment No. 27 to the ISO Tariff. On May 31, 2000, the Commission set Amendment No. 27 for hearing and directed settlement proceedings. *California Ind. Sys. Oper. Corp.*, 91 FERC ¶ 61,205 (2000), attached as Attachment No. 1. In its order, however, the Commission included ruling on whether certain aspects of Amendment No. 27 were just and reasonable.

11. On March 11, 2003, pursuant to its rights under section 205 of the FPA, the ISO filed Amendment No. 49 to the ISO Tariff. On May 30, 2003, the Commission set five of the tariff revisions issues in Amendment No. 49 for hearing. *California Ind. Sys. Operator Corp.,* 103 FERC ¶ 61,260 (2003), attached as Attachment No. 2. With one exception (regarding exceptions to the requirement that Participating TOs turn all of their transmission facilities over to ISO control), the Commission approved the remainder of Amendment No. 49.

12. Under section 206 of the FPA , the Commission has the authority to prescribed just and reasonable rates for the ISO. The Commission can only exercise that authority, however, following a finding that the rates proposed under section 205 are unjust, unreasonable, or unduly discriminatory. 16 U.S.C. § 824e; *Sierra Pacific Power Co. v. FPA,* 350 U.S. 348 (1956).

13. Thus, in a proceeding under section 205, with regard to a tariff provision (or portion thereof) that the Commission has found just and reasonable and not unduly discriminatory, if the utility does not propose any additional changes to that tariff provision, testimony of other parties challenging that tariff provision or recommending

alternative provisions is beyond the scope of the proceeding. *See, e.g., California Power Exchange Corp.*, 86 FERC ¶ 61,001 at 61,005 (1999); *California Ind. Sys. Oper. Corp.,* 85 FERC ¶ 61,061 at 61,200 (1998). Such testimony constitutes a collateral attack on the Commission's orders. *See California Ind. Sys. Oper. Corp.,* 94 FERC ¶ 61,266 at 61,927 (2001). It does not matter if the Commission's finding was in the same or a previous proceeding. It also does not matter if the tariff language is new, but simply makes explicit a previously existing tariff requirement. *See California Ind. Sys. Oper. Corp.,* 101 FERC ¶ 61,045 (2002) at P 11.

14. Accordingly, to the extent that parties to this proceeding attempt to raise issues that have previously been decided by the Commission, or regarding tariff provisions that the ISO has not proposed (or no longer proposes) to change, such issues are beyond the scope of this proceeding.

ISSUE 1: WHETHER THE INCLUSION IN THE TRANSMISSION ACCESS CHARGE METHODOLOGY OF A TRANSITION PERIOD AND COST SHIFT CAP IS JUST AND REASONABLE AND NOT UNDULY DISCRIMINATORY

15. Under Amendment No. 27, the High Voltage Access Charge includes a "TAC Area" component and a grid-wide ("postage stamp") component, with a ten-year transition to a single postage stamp rate. Because these rates are based on the combined Transmission Revenue Requirements of different utilities, some utility customers will pay higher rates, and others lower rates, than under the previous utility specific ("license plate") rates. In other words, a portion of the costs borne by the customers of a utility with expensive transmission facilities will be shifted to customers of utilities with less expensive facilities.

16. To address this "cost shift," Amendment No. 27 imposes a limit of $72 million on the total amount of the cost shift. The limit applies during the ten-year transition to a postage stamp rate. A number of parties assert that a cost shift cap is unjust, unreasonable, or duly discriminatory. *See* Exh. NCP-1 at 3:20 – 11:5; Exh. SC-1 at 9:10 – 27:6; Exh. TNC-1 at 10-20, 20-29; Exh. MID-1 at 27:7 – 28:14; VER-1 at 9-27.[2]

17. In its order on Amendment No. 27, the Commission stated, "We recognize that some transition period may be appropriate in order to mitigate extreme cost shifts. . . . We also recognize that a 'cap' on cost shifts to customers of the Original Participating TOs that could occur during the ten-year transition period may be appropriate. However, the current record in this proceeding has not demonstrated that a ten-year period and the proposed limits on the amount of cost-shifts are the proper ones necessary to mitigate cost shifts." 91 FERC at 61,725. The only fair reading of the Commission's ruling is that it set for hearing only the issues of the *amount* of the cost cap and the *length* of the transition period. In other words, by stating that a cost shift cap and transition period "may" be appropriate, the Commission was indicating that amount and length would determine whether a particular cost cap and transition period is just and reasonable.

18. The Commission's statement that transition mechanisms serve to mitigate large costs shifts, *id.*, and its recognition that transmission costs are a relatively small portion of retail rates, *id.,* are fully consistent with its finding that the inclusion of a cost shift cap and Transition Period is just and reasonable. *By determining the level of the*

[2] These and further citations to testimony merely identify the discussion. The ISO does not contend that

cost cap and the length of the Transition Period, the Presiding Judge and Commission will be ensuring that the cost shift accomplishes the mitigation of large cost shifts. Below the cost cap, there is no limitation on cost shifts; the determination of the cost cap decides when the cost shift is great enough that a limitation is just and reasonable.

19. For example, the cost shift cap under Amendment No. 27 is $72 million. Cost shifts under that amount are not limited, and the cap has no effect on rates. Only when the cost shift is large, i.e., $72 million under Amendment No. 27, does the cap affect rates. The argument that $72 million is not a large enough shift to justify a limitation merely goes to the amount of the cap; it does not show that the inclusion of a cap is unjust or unreasonable, just that the cap should be higher.

20. Accordingly, the ISO requests that the Presiding Judge determine that the issue of whether the inclusion in the transmission access charge methodology of a Transition Period and cost shift cap is just and reasonable and not unduly discriminatory.

ISSUE NO. 2: WHETHER THE USE OF A POSTAGE STAMP RATE, AS OPPOSED TO A LICENSE PLATE RATE, FOR THE HIGH VOLTAGE ACCESS CHARGE IS JUST AND REASONABLE.

21. Pacific Gas and Electric Company ("PG&E") and San Diego Gas & Electric Company ("SDG&E") contend in their testimony that use of a postage stamp rate for the High Voltage Access Charge is unjust and unreasonable, and that the Presiding Judge and the Commission should require the ISO to adopt a license plate rate. Exh. PGE-1 at 6-15; Exh. PGE-2 at 3-7; Exh. SDGE-1 at 18-30.

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the cited testimony deals exclusively with the issue noted or must be stricken.

22. In the May 31 order on Amendment No. 27, the Commission stated: "We generally find that the two-tiered rate approach [for the Low Voltage Access Charge and the High Voltage Access Charge] is reasonable. [footnote] This evolution in rate design away from the utility-specific zones to a high voltage grid-wide methodology ensures a uniform grid-wide rate." 91 FERC at 61,722. In the footnote, the Commission *explicitly* rejected license plate rates *because* it had found postage stamp rates to be appropriate: "As such, we reject Sempra's arguments against a postage stamp rate and the bifurcation of the ISO operated transmission facilities into low and high voltage components." *Id.*, n.9

23. Because the ISO, in Amendment No. 27, proposed a use of the postage stamp rate, any party that wishes to propose a different methodology, such as a license plate rate, must demonstrate that the ISO's methodology is unjust or unreasonable or unduly discriminatory. Inasmuch as the Commission has already ruled to the contrary, such proposals are beyond the scope of this proceeding.

24. Although parties may contend that the Commission has endorsed or permitted license plate rates in other contexts, such approvals do not affect the scope of this proceeding. The ISO filed a postage stamp rate; the Commission has concluded that it is just and reasonable; and the Commission has not issued any orders that are inconsistent with that ruling.

25. To the extent that PG&E or SDG&E believe that circumstances subsequent to Amendment No. 27 have rendered a postage stamp rate unjust, unreasonable, or unduly discriminatory, such circumstances do not affect the preclusive effect of the Commission's orders or the ISO's right to determine which tariff revisions it will propose

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under section 205 of the FPA. The FPA provides PG&E and SDG&E an avenue to address their concerns. They can file a complaint under Section 206. What they cannot do is use this proceeding to collaterally attack the Commission's rulings on Amendment No. 27.

26. The Presiding Judge should therefore exclude the issue of whether a postage stamp methodology is just and reasonable from the scope of this proceeding.

ISSUE NO. 3: WHETHER THE REQUIREMENT THAT A PARTICIPATING TO TURN OVER TO ISO OPERATIONAL CONTROL ALL OF ITS TRANSMISSION FACILITIES IS JUST AND REASONABLE.

27. Section 3.1 of the ISO Tariff requires that a transmission owner seeking to become a Participating TO turn over all of its transmission facilities to ISO operational control. This language was added to Section 3.1 in Amendment No. 27.

28. In Amendment No. 49, the ISO sought to amend the tariff to provide a limited exception to this requirement. The Commission rejected the ISO's amendment, ruling that exceptions to the requirement should be pursued by a request for waiver, rather than by a tariff amendment.

29. The Northern California Power Agency ("NCPA") and the Modesto Irrigation District ("MID") nonetheless contend in testimony that the ISO Tariff requirement that a Participating TO turn over to ISO operational control all of its transmission facilities is unjust and unreasonable. *See* Exh. NCP-1 at 11:8 – 13:28; MID-1 at 26:3 to 27:5. The ISO anticipates that these parties will contend that the Commission has never ruled on the revision to section 3.1 that was contained in Amendment No. 27.

30. Although Amendment No. 27 revised Section 3.1 to include the requirement that a transmission owner seeking to become a Participating TO must turn over all of its

transmission facilities to the ISO's Operational Control, that requirement existed prior to Amendment No. 27 as part of the Transmission Control Agreement. *See* §§ 2.2, 4.1 of the Transmission Control Agreement.

31. The Transmission Control Agreement is an ISO rate schedule (Rate Schedule FERC No. 7) , which the Commission has found to be just and reasonable. *California Ind. Sys. Operator Corp.*, 82 FERC ¶ 61,325 (1998). The Amendment No. 27 revision to section 3.1 did not, therefore, effect a substantive change.

32. Had the Commission set the Amendment No. 49 revision of section 3.1 for hearing, NCPA and MID might have a basis to challenge the requirement that Participating TO's turn over to ISO operational control all of their transmission facilities; the Commission, however, did not. Because this requirement pre-existed Amendment No. 27, and the ISO no longer proposes to change it, challenges to the requirement are beyond the scope of this proceeding.

ISSUE NO. 4: WHETHER AMENDMENT NO. 27 IS UNJUST, UNREASONABLE, OR UNDULY DISCRIMINATORY BECAUSE IT DOES NOT INCLUDE IN THE TRANSMISSION REVENUE REQUIREMENT, OR OTHERWISE INCORPORATE IN THE ACCESS CHARGE, THE COST OF RELIABILITY SERVICES.

33. The ISO Tariff allocates to Participating TOs the cost of two mechanisms for maintaining localized transmission reliability: Reliability Must Run Units and Out of Market dispatches. *See* ISO Tariff §§ 5.2.7, 11.2.4.2.1.

34. PG&E contends that the Access Charge should recover these "reliability services" costs for Participating TOs. According to PG&E, absent such a recovery mechanism, the Access Charge is unjust and unreasonable. PG&E's proposal would spread these costs to all users of the ISO Controlled Grid. *See* Exh. PGE-1 at 17-19; Exh. PGE-2 at 7-9; Exh. PGE-3 at 2-5.

35. Arguments that the Access Charge should recover these reliability services costs are beyond the scope of this proceeding because the Commission has already concluded that it is just and reasonable that these costs be recovered from PG&E's customers. In *Pacific Gas and Electric Co.*, 100 FERC ¶ 61,160, some parties contended that the costs should not be recovered from those outside the local area directly affected. The Commission ruled, "PG&E's transmission system is the affected system. Thus, PG&E's customers should pay these costs." *Id.* at P 16 (2002). If it is just and reasonable to allocate these costs to PG&E's customers, then it is per se not unjust or unreasonable that the ISO does no allocate these costs on a grid-wide basis through the Access Charge.

36. Moreover, the Commission has explicitly rejected allocation of reliability services costs to customers outside a utility's former control area. In its order on rehearing in *San Diego Gas & Electric Co.*, 94 FERC 61,200 (2001), the Commission rejected arguments that SDG&E should charge Reliability Must Run costs to all Loads that use its transmission facilities. The Commission explicitly stated that it would "not allow local [Reliability Must Run] costs to be assigned to 'wheeling-out' and 'wheeling-through' service for load outside the ISO Control Area." *Id.* at 61,746.

37. Accordingly, the Presiding Judge should determine that issues concerning the inclusion of reliability services costs in the Transmission Revenue Requirement or otherwise in the Access Charge are beyond the scope of this proceeding.

ISSUE NO. 5: (A) WHETHER "PHANTOM CONGESTION" IS A PROBLEM ATTRIBUTABLE TO EXISTING CONTRACTS; AND (B) WHETHER THERE ARE ALTERNATIVE MECHANISMS FOR REDUCING PHANTOM CONGESTION.

38. In its testimony, the ISO has identified the possible reduction in "phantom Congestion" as a benefit to be gained though the Amendment No. 27 Access Charge methodology. As Ms. Le Vine testified, phantom congestion arises because a significant portion of the ISO Controlled Grid capacity is encumbered under Existing Contracts between Participating TOs and Non-Participating TOs. The scheduling timelines under certain of the Existing Contracts are at odds with the ISO scheduling process defined in the ISO Tariff and the Scheduling Protocol. Because certain Existing Contracts permit the transmission customer to make changes in their scheduling reservation capacity after the close of the ISO's Hour-Ahead market, the ISO must reserve capacity for these transactions in both the Day-Ahead Market and the Hour-Ahead Market. Phantom Congestion results when transmission capacity is made unavailable for use in the Day-Ahead and Hour-Ahead ISO Markets, causing a path to appear congested, but such capacity is not actually utilized by the Existing Contract holder in real time. While the ISO can and does utilize any available transmission capacity on the ISO Controlled Grid in real-time, this does not prevent phantom Congestion from affecting the Day-Ahead and Hour-Ahead ISO Markets. Exh. ISO-1 at 38:17 – 39:7.

39. The Transmission Agency of Northern California ("TANC") and MID challenge the validity of the ISO's assertion that phantom congestion is a significant problem arising from the ISO's responsibility to honor Existing Contracts. *See* Exh. TNC-1 at 6-30; Exh. MID-1 at 7:4 – 22:14. SDG&E contends that the ISO should

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consider alternative mechanisms for alleviating phantom Congestion. *See Exh.* SDGE-1 at 16:17 – 17:8.

40. The ISO does not dispute that the accuracy of the ISO's discussion of the costs of phantom congestion is an issue in this proceeding. The existence of phantom congestion and whether it is due to Existing Contracts (as opposed to software or market design), however, are not issues. As the Commission ruled in the order on Amendment No. 27, 91 FERC at ___:

> We do not agree with the position taken by the [Governmental Entities]. Software that perpetuates the non-conforming schedules will not fix this problem of "Phantom Congestion." We believe that this approach simply suggests an iterative scheduling process that will not allow sufficient time for the market to respond and will leave the ISO with insufficient time to manage the grid reliably. Furthermore, while [Governmental Entities] contend that their scheduling flexibility is a valuable asset, it results in overall market inefficiencies due to scheduling time lines that do not conform to the time lines of the overall markets. It is difficult to justify the scheduling flexibility advantage in light of the congestion these rights cause the ISO. Therefore, "Phantom Congestion" is a market inefficiency that must be addressed and rectified as quickly as possible."

41. The existence of alternative approaches to reducing phantom congestion is also not an issue. Amendments No. 27 and No. 49 define the Transmission Access Charge. They are not offered as a solution for phantom congestion; rather, the reduction of phantom Congestion is simply one of the benefits of the proposed methodology and a reason why the proposed methodology is just and reasonable. Arguments that phantom Congestion is not the result of the ISO's obligation to honor Existing Transmission Contracts and that the ISO has not evaluated other means for alleviating phantom Congestion should be thus excluded as beyond the scope of this proceeding.

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ISSUE NO. 6: WHETHER THE COMMISSION HAS THE AUTHORITY TO REVIEW A GOVERNMENTAL ENTITY'S TRANSMISSION REVENUE REQUIREMENT.

42. Amendment No. 27 proposed a Revenue Review Panel ("RRP") to review the Transmission Revenue Requirement and Gross Load for governmental entities. Alternatively, governmental entities could file their Transmission Revenue Requirements directed with the Commission. The Commission, in its order on Amendment 27, directed that any decision by the RRP be appealable to the Commission, 91 FERC at 61,274, negating much of the RRP's potential value as a forum to review the transmission revenue requirements of the governmental entities. Moreover, to date, all five municipal utilities that have become New Participating TOs have chosen to file their rates with the Commission. In light of the requirement for Commission acceptance of the ISOs revenue requirement, including any contribution by governmental entities, the ISO decided that the RRP was unnecessary, potentially put an unjustified burden on the ISO, and could result in increases to the GMC to pay for the RRP. Accordingly, Amendment No. 49 amended Section 7.1.1 to delete this provision. The Commission has accepted that portion of Amendment No. 49.

43. In addition, in its review of Commission orders regarding Vernon's Transmission Revenue Requirement, the U.S. Court of Appeals determined that the Commission *must* review the Transmission Revenue Requirement of a governmental entity that is a Participating TO in order to determine whether the ISO's rates are just and reasonable. *Pacific Gas & Elec. Co. v. FERC*, 306 F.3d 1112 (2002).

44. MID has submitted testimony to the effect that the Commission lacks authority to review a governmental entity's Transmission Revenue Requirement. *See* Exh. MID-1 at 7:4 – 22:14. MID's contention is directly contrary to the Commission's

ruling on Amendment No. 49, as well as the decision of the Court of Appeals, and is thus outside the scope of the proceeding. That MID might seek rehearing of the issue does not render testimony on the issue appropriate. If the Commission reverses itself on rehearing, MID can always seek leave to file supplemental testimony.

45. The Presiding Judge should therefore exclude from the scope of the proceeding the issue of the Commission's authority to review the Transmission Revenue Requirement of governmental entities.

ISSUE NO. 7: WHETHER CERTAIN AMENDMENT NO. 49 CHANGES TO ISO TARIFF SECTION 3.2 ARE JUST AND REASONABLE.

46. In Amendment No. 49, the ISO made a number of changes to section 3.2 of the ISO Tariff, addressing Transmission Expansion. One change in section 3.2.1.1 concerned information to be provided to the ISO to enable it to determine whether a project is need to promote economic efficiency. Amendment No. 49 also revised section 3.2.1.1.3.1 regarding proposals for transmission additions and upgrades; it included a requirement for an economic analysis that comports with ISO guidelines.

47. The Commission did not explicitly describe either of these provisions in its Order on Amendment No. 49. It did, however, state that, except for issues set for hearing (which did not include the changes to section 3.2) and a proposed change to section 3.1, it would "accept the remaining parts of . . . Amendment No. 49." As a result, the revisions have been approved by the Commission.

48. TANC nonetheless challenges the revision to section 3.2.1.1, contending that the "proposed" economic efficiency test is vague and needs clarification. *See* Exh. TNC-10 at 30-32. Contrary to MID's contention, the revision to section 3.2.1.1 did not institute the economic efficiency test, but merely addressed the information to be

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provided. The economic efficiency test, which appears in section 3.2.1, predates Amendment No. 49.

49. PG&E challenges that requirement of section 3.2.1.1.3.1 that the economic analysis comport with ISO guidelines. *See* Exh. PGE-1 at 31 and PGE-3 at 6-7.

50. Both TANC's and PG&E's challenges are precluded by the Commission's order accepting Amendment No. 49. If these parties believe the Commission did not adequately explain itself, they are free to seek rehearing and to pursue judicial remedies. They cannot, however, use this proceeding to collaterally attack the Commission's determination.

51. The Presiding Judge should therefore determine that issues concerning the Amendment No. 49 revisions to section 3.2 are beyond the scope of this proceeding.

CONCLUSION

Accordingly, the ISO respectfully requests that the Presiding Judge limit the scope of the issues in the instant proceeding as described above.

Respectfully submitted,

/s/ Michael E. Ward

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Dated: July 1, 2003

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the restricted service list compiled by the Secretary in the above-captioned proceeding.

Dated at Washington, DC, on this 1st day of July, 2003.

/s/ Michael E. Ward
Michael E. Ward

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ATTACHMENT 1

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COMM-OPINION-ORDER, 91 FERC ¶61,205, California Independent System Operator Corporation, Docket No. ER00-2019-000, (May 31, 2000)

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California Independent System Operator Corporation, Docket No. ER00-2019-000

[61,720]

[¶61,205]

California Independent System Operator Corporation, Docket No. ER00-2019-000

Order Accepting for Filing and Suspending Proposed Tariff Revisions and Establishing Hearing and Settlement Judge Procedures

(Issued May 31, 2000)

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

On March 31, 2000, the California Independent System Operator Corporation (ISO) filed Amendment No. 27 to its tariff, proposing a new methodology for determining transmission Access Charges, through which the embedded costs of the transmission facilities comprising the ISO controlled grid are recovered. The filing was required by legislation restructuring the California electric industry, and later by this Commission. [1] In making this filing, one of the objectives of the ISO is to create incentives to encourage new parties to join the ISO and become Participating Transmission Owners (Participating TOs). The ISO Governing Board approved the instant Transmission Access Charge (TAC) filing after an extensive stakeholder process. In this order, we accept for filing, suspend, and set for hearing the proposed Access Charge methodology and related tariff revisions. We also hold the hearing in abeyance pending efforts at settlement and establish settlement judge procedures.

Background

The current Access Charge methodology consists of three separate zone rates based on the revenue requirement of the Participating TO. Under Amendment No. 27, this methodology will continue in effect until a new Participating TO joins the ISO. Once that occurs, the Access Charge for high voltage transmission facilities [2] will be assessed based on the combined transmission revenue requirements of all the Participating TOs in each "TAC area," which correspond to each of the three control areas that were combined to form the ISO control area. If the Los Angeles Department of Water and Power (LADWP) chooses to become a Participating TO, its control area would become a fourth TAC area.

The ISO proposes that, over a ten-year transition period, the high voltage Access Charge (HV Access Charge) for these TAC areas would be combined to form a single ISO grid-wide Access Charge. This would be accomplished by blending the individual TAC area high voltage transmission revenue requirements with the sum of *all* Participating TOs' high voltage transmission revenue requirements, with the proportion represented by the ISO grid-wide portion increasing by ten percent each year. In addition, capital investments in any new high voltage transmission facilities, or additions to existing facilities, would be included in the ISO grid-wide component of the HV Access Charge. The low voltage transmission Access Charge would continue to be a license plate rate based on Participating TO's low voltage transmission revenue requirements.

The ISO explains that, as a result of the stakeholder process, the proposed Access Charge methodology "incorporates an integrated set of provisions to balance the costs borne and benefits received by all affected stakeholder classes," [3] primarily addressing likely cost shifts between current and new Participating TOs with higher cost transmission facilities. With the advent of the new methodology, customers of current Participating TOs may pay higher transmission rates, but the

[61,721]

amount of that increase will be mitigated by a ceiling on cost shifts in any one year during the 10-year transition period. The ISO believes that this potential for cost increases is balanced by certain benefits to the customers of existing Participating TOs, such as a lower Grid Management Charge (GMC), reduced congestion costs, and potentially lower costs for energy and ancillary services.

New Participating TOs may bear increased costs as a result of being subject to the Access Charge and the GMC. So that these increased costs will not deter the entry of new Participating TOs, the proposed methodology includes a "hold harmless" provision whereby the existing Participating TOs will compensate the new Participating TOs for any net increase in these costs for the 10 year transition period. In addition, there is a "buy-down" provision that requires new Participating TOs to use any cost-shifting benefits they receive solely to reduce their transmission plant investment, thereby lowering their transmission revenue requirements.

Other significant features of the proposal, intended to encourage new Participating TOs to join the ISO, include:

- any new Participating TO will receive firm transmission rights (FTRs) associated with the transmission facilities or entitlements it turns over to the ISO's operational control, without having to purchase them in an auction;

- establishment of a Revenue Review Panel (RRP) independent of the Commission that will have the authority to review transmission revenue requirements of entities that are not subject to FERC's jurisdiction;

- permitting the systems of new Participating TOs to qualify as Metered Subsystems [4] to facilitate their continued operation as vertically integrated utility systems while enabling them to participate in

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the ISO.

Notice, Interventions and Responsive Pleadings

Notice of the ISO's filing was published in the *Federal Register*, 65 *Fed. Reg.* 20,447 (2000), with motions to intervene and protests due on or before April 21, 2000. A notice of intervention was filed by the Public Utilities Commission of the State of California (California Commission). Timely motions to intervene, comments, and protests were filed by the entities listed in Appendix A. In addition, Dynegy Power Marketing, Inc. (Dynegy) and the United States Department of Energy Oakland Operations Office (DOE) filed motions to intervene out-of-time, and the California Large Energy Consumers Association (CLECA) filed an untimely motion to intervene. On May 8, 2000, the ISO filed an answer, and Southern California Edison Company (SoCal Edison) filed reply comments. On May 16, 2000, the City of Vernon (Vernon) filed an opposition to SoCal Edison's reply comments.

Positions of the Parties

Numerous parties filed comments and protests. The Utility Reform Network (TURN), on behalf of its small ratepayer constituents, supports the proposal in its entirety, describing the compromise, "as close to a 'win-win' scenario as this Commission is ever apt to see in matters of this much complexity and contentiousness." [5] Pacific Gas and Electric Company (PG&E) and SoCal Edison support the bulk of the TAC methodology with modest modifications, and the California Commission protests a single aspect of the proposal, asserting that use of an RRP is contrary to the FPA.

However, municipal utilities and other entities not subject to FERC jurisdiction (Governmental Entities, or GEs) are nearly unanimous in their opposition to the TAC filing, urging some combination of rejection, suspension, and establishment of hearing or settlement judge proceedings. Several contend that the filing is patently deficient and should be rejected on that basis alone. Specific elements of concern include the use of the RRP, the ceiling on cost increases for existing Participating TOs, the use of gross load rather than net load as the appropriate billing unit, and the fact that FTRs will be made available to GEs outside of the auction process for no longer than the ten-year transition period. Many also object to aspects of the Metered Subsystems provisions, and they seek rejection of the buy-down provision. On the other hand, Lassen Municipal Utility District (Lassen) indicates that it is in the process of joining the ISO and that it expects to do so on or about July 1, 2000.

Sempra Energy (Sempra) opposes the proposal entirely, instead championing the use of license plate rates and criticizing bifurcation of the Access Charge into high and low voltage rates. Sempra argues that the license plate model avoids cost shifting and therefore promotes

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the formation of Regional Transmission Organizations (RTOs), and that Order No. 2000 [6] recognized it as an acceptable way to recover fixed transmission costs. Further, Sempra asserts that the proposal unduly discriminates in favor of GEs in order to induce their participation in the ISO.

California Department of Water Resources (DWR) and State Water Contractors object to the

proposal's failure to allocate costs based on customers' contribution to peak usage (*i.e.*, time of use rates).

Enron Energy Services, Inc. (Enron) complains that the proposal's treatment of FTRs and Metered Subsystems for new Participating TOs is superior to that for current market participants and argues that it is unfair to require customers of the original Participating TOs to pay the stranded costs of new Participating TOs, as they are not served by and do not receive any benefits from new Participating TOs. Finally, Enron observes that there must be a hearing to determine whether the benefits that the ISO has suggested will accrue to original Participating TOs will in fact arise.

In its Answer, the ISO reiterates its belief that the proposed methodology is fully consistent with the goals of Order No. 2000 and contends, with respect to the various contested issues, that the compromise package does not unduly discriminate against any class of market participants. The ISO asserts that there is no basis for rejecting the proposed Access Charge methodology, and that suspension and an evidentiary hearing would have limited value. Further, the ISO states that appointment of a Settlement Judge alone is not likely to bring the stakeholders closer to consensus without guidance from the Commission on the policy issues presented in the comments, and urges the Commission to "exercise caution before upsetting the delicate balance at which the ISO Governing Board finally arrived." [7]

Discussion

Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.214 (1999), the California Commission's notice of intervention and the timely, unopposed motions to intervene of the entities listed in Appendix A serve to make them parties to this proceeding. In view of the early stage of this proceeding and the absence of any undue prejudice or delay, we will grant Dynegy's and DOE's motions to intervene out-of-time and accept CLECA's untimely intervention.

Although answers to protests generally are prohibited under 18 C.F.R. §385.213 (a)(2), we nevertheless find good cause to allow the ISO's answer in this proceeding because it provides additional information that assists us in the decision-making process. SoCal Edison's reply does not provide additional information that aids us in our disposition of this proceeding; we will, therefore, reject it. Vernon's motion in opposition thus need not be addressed.

Overview of the Transmission Access Charge Filing

At the outset, we recognize and appreciate the numerous complex issues in this proceeding as well as the significant progress produced during the stakeholder process. We share the view expressed in many of the pleadings that, while the process has been tedious, the ultimate goal of improving the existing rate design and expanding the ISO grid are worth the effort. [8] We also concur with the ISO's objectives of creating an equitable balance of costs and benefits among the various affected classes of stakeholders and the treatment of all Participating TOs on the same basis.

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We are cognizant of the considerable effort undertaken by the ISO and the California stakeholders in attempting to reach a consensus here, and we endorse the two-tiered rate approach reached through the stakeholder process. We find generally that the two-tiered rate approach is reasonable. [9] This evolution in rate design away from the utility-specific zone rates to a high voltage grid-wide methodology ensures a uniform grid-wide rate. We find the ISO's proposal which includes incentives for non-Participating TOs is a very positive step toward expanding the ISO's transmission grid. We also endorse the removal of disincentives such as the self-sufficiency test for Participating TOs. [10] Numerous GEs have previously

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identified this provision as a barrier to joining the ISO, and as a result, this test was never implemented.

We respect the ISO's concern that the delicate balance among the stakeholder classes reflected in the TAC filing could easily be upset. Nevertheless, we find that the proposal has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed tariff Amendment No. 27 for filing, suspend it for a nominal period, subject to refund, and set it for hearing.

While we are setting this case for a trial-type, evidentiary hearing, we believe it would be useful to continue the negotiations among the parties with the assistance of a settlement judge. We also concur with the comments of a number of intervenors that the stakeholder process has produced a framework upon which final resolution through settlement is possible. These comments indicate that further negotiations will depend on Commission guidance on major issues of contention. In this order we provide the requested guidance on the issues that are most critical to the resolution of this proceeding. Therefore, the hearing we have ordered shall be held in abeyance, and we will appoint Chief Administrative Law Judge Wagner as a settlement judge to assist the parties in reaching a settlement.

A. *The Revenue Review Panel*

An important and difficult issue in this proceeding deals with the rates for non-public utility members of the ISO. The ISO proposal requires that non-public utility entities such as locally publicly owned electric utilities (GEs, short for Governmental Entities) that are new Participating TOs submit their high voltage transmission revenue requirement to the ISO. [11] To enable filings to be made on a comparable basis, the ISO will develop and post on its Home Page a procedure for uniform accounting for high voltage transmission facilities that is consistent with the FERC Uniform System of Accounts. If the revenue requirement for a new Participating TO that is not subject to this Commission's Section 205-206 rate jurisdiction is submitted to the ISO and an objection is raised that cannot be resolved, the justness and reasonableness of the revenue requirement will be evaluated by a Revenue Review Panel (RRP) in accordance with standards established by FERC pursuant to the FPA and, if applicable, standards established by the ISO Governing Board. The RRP will be comprised of three individuals who have substantial experience in the establishment of unbundled transmission rates for public utilities and who do not have a financial stake in any participant in the California electricity market. Furthermore, the ISO proposes that the decision of the RRP shall be final and shall not be subject to further review.

Numerous intervenors have taken issue with the use of the RRP in determining the revenue requirement of entities that are not subject to the Commission's Section 205-206 rate jurisdiction. The California Commission argues that only this Commission, subject to judicial review, can decide the justness and reasonableness of the proposed charges. For supporting precedent, the California Commission points to this Commission's ruling in *Central Hudson Gas & Electric Corporation, et al.*, 86 FERC ¶61,062 , (1999) (*Central Hudson*) where we held that the transmission services provided by the New York ISO are jurisdictional notwithstanding the fact that some non-public utility entities such as the Long Island Power Authority may elect to join the New York ISO. PG&E also argues that the ISO is required to file with the Commission all rates and charges under Section 205 of the FPA and this obligation extends to rates for transmission service using the transmission facilities of GEs. PG&E states that if the Commission were to permit the ISO to set the transmission revenue requirement for GEs, this would constitute an unlawful delegation of its statutory duty because the ISO's transmission service rates, resulting from the blending of all transmission revenue requirements (public utility and non-public utility alike), are jurisdictional.

On the other hand, a number of municipal intervenors argue the RRP should be rejected and that jurisdiction over their transmission revenue requirement has been determined by the California legislature to be with local municipal councils. They contend that control should not be wrested from these local officials, and that to do so would contravene California state law. These GEs argue that their own public processes are sufficient to ensure the reasonableness of their transmission revenue requirement. Other municipals request that if the RRP is implemented, then its determinations should be subject to the review and acceptance

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of this Commission. Specifically, LADWP states that the RRP could be acceptable provided that: (1) the principles and standards recognize and accommodate legitimate differences between GEs and IOUs; (2) the review process is completed prior to a GE transferring control of its facilities to the ISO; and (3) any standards and procedures developed for the RRP should not be subject to change by the ISO Governing Board without approval of this Commission.

The ISO in its Answer agrees that the proposed HV Access Charge is subject to this Commission's jurisdiction under Part 2 of the FPA. Furthermore, the ISO notes that because the HV Access Charge is based on the transmission revenue requirement of all Participating TOs, including GEs that choose to become Participating TOs, the HV Access Charge methodology must include provisions to ensure that those revenue requirements are just and reasonable. However, the ISO does not believe that requiring non-public utility Participating TOs to submit their transmission revenue requirements to the Commission under Section 205 of the FPA is the only permissible means for confirming the reasonableness of those revenue requirements. The ISO asserts that the Commission has latitude to accept different approaches to satisfy its statutory requirement and notes that the Commission on rehearing in *Central Hudson*, stated that:

> We note . . . that we cannot review LIPA's rates under the Section 205 just and reasonable standard, but will apply the comparability standard we use when evaluating non-jurisdictional, so-called "NJ" transmission tariffs to assure that the tariff rate is comparable to the rate LIPA charges itself and others.[12]

Thus, the ISO concludes that the proposed RRP represents a carefully crafted compromise solution to reconcile the opposing positions on this issue which is a critical element of the Commission's RTO initiative.

We believe that the appropriate regulatory review authority of the transmission revenue requirement of non-public utility entities who may become Participating TOs is a complex and evolving question. We do not wish to be overly prescriptive at this time but rather remain flexible to resolutions within the bounds of the FPA. Consistent with our previous discussion in this order, we instruct the parties, with the assistance of a designated settlement judge, to negotiate within the following guidance. The ISO's proposal that the RRP's findings are final and non-appealable is inconsistent with our statutory responsibilities. In Order No. 2000-A , we confirmed that we did not intend "to broaden the applicability of Section 205 to non-public utilities." [13] Nevertheless, the Commission must be able to determine that the pass through of costs by the ISO to its customers are just and reasonable. We believe that such a determination can include prior review by the RRP to the extent allowed by the FPA. We also find that the current public process rate review utilized by many GEs does not supplant the FPA requirement for Commission review of rates in these circumstances.

We also note that the proposed RRP is consistent with our stated preference to utilize and implement ADR procedures where possible so as to allow for a more timely and certain regulatory finding. Consistent with that goal, we note that while the RRP process may be acceptable as a prerequisite to Commission review, we have concerns over possible regulatory lag resulting from this process and, as such, will require the parties to include stated time constraints in any review process that is agreed upon so as to ensure a timely regulatory outcome.

B. *The Ten-Year Transition Period and Cap on Cost Shifts*

As noted previously in this order, one of the prominent features of the ISO's proposal is the use of a ten-year transition period for the conversion of transmission revenue requirements in three separate TAC Areas to a single, HV Access Charge. The ten-year transition period is done on a straight linear basis, *e.g.*, 10 percent of each TAC area's composite transmission revenue requirements will become part of a grid-wide rate each year of the transition period together with 100 percent of new capital additions made by all Participating TOs. This transitional grid-wide rate is added to the specific TAC area rate to produce a composite rate that will be assessed to the load of each UDC, MSS or SC in their respective TAC areas during the transition period. The ISO supports the use of this ten-year period as the basis upon which a smooth transition from disparate TAC area rates to a single grid-wide rate would occur and a means by which to mitigate cost shifting among the Participating TOs.

The ISO has also included an annual limitation or "cap" on the increase in the total payment responsibility applicable to gross loads in the service area of an original Participating TO during the proposed ten-year transition period. The annual"cap" for each of the Original Participating TOs is $32 million each for PG&E and SoCal Edison and $8 million for SDG&E.

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A number of GEs request rejection of the proposed ten-year transition period arguing, among other

things, that it is unnecessary and unsupported. Specifically, the City of Burbank (Burbank) argues that it is an unnecessary remedy for rate shock based on prior Commission threshold levels utilized in other areas of regulation. LADWP has proposed a compromise ten-year transition period in which 50 percent of the high voltage transmission revenue requirement of all Participating TOs would be collected through a grid-wide uniform rate and the remainder collected through the ISO's proposed TAC area mitigation proposal. Other GEs express concern over the linear approach and the potential lumpiness of the transition period depending on when entities join the ISO. Furthermore, other GEs note that the differences between the transmission costs of new and original Participating TOs could be reduced by significant planned capital additions by the original Participating TOs.

With respect to the "cap" on cost shifts during the proposed ten-year transition period, GEs have requested that the cap be rejected because the ISO has provided no support for it, and the cap numbers appear to be simply the highest numbers that the ISO could get the original Participating TOs to accept. Other GEs argue that the cap should be eliminated because it limits the benefits to the new Participating TOs and does not consider the larger package of benefits that the Original Participating TOs received including billions in stranded cost recovery.

The ISO in its Answer states that, under the circumstances that presently exist in California, it is reasonable to phase-in the HV Access Charge over a ten year period and to limit the amount of costs that could be shifted to customers of Original Participating TOs in any year during the transition period. The ISO notes that the Commission has accepted similar transition periods in the case of other independent system operators such as NEPOOL. The ISO also states that the ISO Governing Board took into account the potential for additional transmission investment and reasonably determined that mitigation of cost shifts associated with the widely divergent transmission revenue requirements of original Participating TOs and most new Participating TOs was necessary to prevent unduly abrupt cost shifts during the transition period.

We recognize that some transition period may be appropriate in order to mitigate extreme cost shifts. The ISO is correct in that we did permit a similar transition period in NEPOOL, giving considerable weight to the interests of Participants who would pay more under the composite rate in determining the appropriate transition period. [14] We also recognize that a "cap" on cost shifts to customers of the Original Participating TOs that could occur during the ten-year transition period may be appropriate. However, the current record in this proceeding has not demonstrated that a ten-year transition period and the proposed limits on the amount of cost shifts are the proper ones necessary to mitigate abrupt cost shifts. For example, CMUA has cited to evidence that at least one of the original Participating TOs is planning significant dollar amounts of capital additions over the next five years. Under the ISO proposal, these capital additions will not be phased-in but will immediately become part of the grid-wide charge. Thus, while the ISO states that the impact of significant planned capital additions was considered by the ISO Governing Board in deliberations regarding the appropriate transition period, the potential impact on cost shifts still appears in dispute. [15] Additionally, the potential benefits that would inure to the customers of the original Participating TOs from the expansion of the transmission grid should also be considered in the selection of a reasonable transition period and the proper cap on cost shifts.

Generally, the use of transition periods are to mitigate large cost shifts and rate effects. Therefore, we believe the record should include, on a broader level, information on the overall impact of changes in

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transmission costs on the overall cost of electricity. We note that the ISO has submitted some information in the instant filing that indicates that the cost of transmission on the monthly bill of a typical residential end-user is approximately 3.1 percent of the total cost of electricity. From a broad perspective, this is a relatively small percentage cost component. Thus, negotiated mitigation measures that are designed to prevent abrupt cost shifts should also look at the context of transmission costs relative to the total cost of electricity.

In conclusion, we reiterate that, at this juncture, we are not able to ascertain whether the ten-year transition period and the proposed $72 million annual cap provides the proper compromise of costs and benefits. Additionally, we recognize that our rulings on other issues may impact this compromise. Therefore, we

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instruct the parties, with the assistance of the appointed settlement judge, to further evaluate and consider all relevant costs and benefits and the proper context of such amounts in the selection of an appropriate transition period.

C. *TAC Areas*

Under the ISO's proposal, the HV Access Charge will be based on three "TAC Areas" that correspond to the three original Participating TO's control areas: a Northern Area (PG&E), a Southern Area (SDG&E), and an East Central Area (SoCal Edison). If LADWP were to join the ISO, a fourth TAC Area, the West Central Area, would be established. The ISO proposes that when the first GE joins any one of the three TAC Areas, or if LADWP were to join and establish a fourth TAC area, the beginning date of the ten-year transition period is established for all the areas. If the LADWP joins after the beginning date of the transition period for the three TAC areas, its ten-year transition period would begin as of the date it joins the ISO.

Generally, the Intervenors have not taken issue with the ISO's proposal to use three or potentially four TAC areas during the proposed ten-year transition period. However, LADWP protests the potentially different beginning date for its transition period as being unduly discriminatory and requests that all TAC areas have the same transition date.

Our review indicates that the use of a different beginning date for this fourth TAC area, depending on the date when and if LADWP were to join the ISO, could result in a transition period to a single system rate significantly beyond the proposed ten-year transition period. Without further justification we believe that this potential delay to the final transition is unsupported.

Therefore, based on the current record, we find that the fourth TAC area should have the same transition date as the other proposed TAC areas. Alternatively, the ISO must submit additional information demonstrating the need for the deferral in any subsequently negotiated HV Access Charge proposal filed with the Commission.

D. *Firm Transmission Rights*

Under the ISO's proposal, a new Participating TO shall receive FTRs for Inter-Zonal interface commensurate with the transmission facilities and Converted Rights that it turns over to the ISO. The new Participating TO will receive the FTRs directly without the necessity of participating in the ISO's auction during the ten-year transition period. The ISO proposal also limits the FTRs given directly to the new Participating TOs to the lesser of the ten-year transition period or the term of the existing contract. The quantity of FTRs that the new Participating TO receives for their transmission capacity will be determined when a Transmission Control Agreement between the ISO and the new Participating TO is executed.

A number of Intervenors request that the ISO provide more details on its plan for FTR conversion and a definition of the term "commensurate." Similarly, a number of Intervenors protest the limitation on FTRs to ten years for those Existing Rights' contracts whose term is greater than ten years and argue that the FTRs must last for the life of the facility in the case of ownership, or the full term of the existing contract in the case of entitlement. Intervenors also raise concerns over the level of firmness and the scheduling priority of Existing Rights over Inter-Zonal Interfaces. In addition, Enron argues that it is unjust and unreasonable and discriminatory to implement FTRs for new Participating TOs in a manner that is far superior to that granted current market participants.

In its Answer, the ISO states that after the ten-year transition period, all Participating TOs will be treated the same for their owned transmission facilities and converted rights: they will receive FTR auction revenues and will be able to purchase FTRs in the ISO auction or purchase them in secondary market transactions. Thus, after the transition period, new participating TOs will receive auction revenues that reflect the market-determined value of the capacity of its transmission facilities and Converted Rights.

Generally, we find that the ISO's proposed treatment of FTRs is reasonable. As explained by the ISO, the proposal to exempt new Participating TOs from the auction process during the transition period is a feature that has been offered as an inducement to encourage participation in the ISO. The proposal will afford the new Participating TOs protection against potential cost increases during the transition period.

With respect to the ISO's proposal that the FTRs be limited to the lesser of the ten-year transition period or the life of the contract if its term is less than ten years, we find that this proposal is also reasonable. The holders of contract rights that become new Participating TOs must recognize that this election will fundamentally change their current status, and consistent with that change, the new Participating TOs should have to participate in the auction process for the purchase of FTRs in the same manner as the original Participating TOs after the transition period.

We also agree with Intervenors that more information is needed regarding various aspects of the ISO proposed treatment of FTRs.

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Therefore, the appointment of a settlement judge should help with the informational process and the subsequent negotiations regarding specific issues that may arise from the details of the ISO proposed treatment of FTRs.

E. *Phantom Congestion*

The ISO states that one of the benefits (in terms of cost savings) of new Participating TOs is the reduction of what it terms "Phantom Congestion." This term, as explained by the ISO, relates to the scheduling timelines afforded to current GEs under Existing Rights contracts which are different and not entirely compatible with the day-ahead and hour-ahead schedules that the ISO operates under. Because the Existing Rights contracts allow scheduling changes after the ISO scheduling deadlines, available transmission capacity remains unutilized. According to the ISO, an after-the-fact review of actual data from December 1998 to November 1999 indicates that in many days the congestion on contract paths was less than anticipated because the holders of Existing Rights did not fully utilize those rights, but that information was not available in real-time to the ISO to allow the market to respond. Thus, the ISO states that, if there were immediate conversion of Existing Rights to FTRs for new Participating TOs, this "Phantom Congestion" would be eliminated.

A number of GEs argue that: (1) "Phantom Congestion" is a valuable scheduling right of the GEs; (2) the ISO is at fault for failing to develop software to accommodate these rights nor recognize the operational realities of full service utilities; and (3) the requirement that Existing Rights be converted to FTRs to alleviate the purported "Phantom Congestion" is a step backwards inasmuch as the ISO currently allows a five year conversion period during which time a party to an Existing Contract can become a new Participating TO and continue to exercise their contract rights. Additionally, some GEs have suggested that the appropriate place to deal with this issue may be the stakeholder process now under way in the ISO congestion management program.

We do not agree with the position taken by the GEs. Software that perpetuates the non-conforming schedules will not fix this problem of "Phantom Congestion." We believe that this approach simply suggests an iterative scheduling process that will not allow sufficient time for the market to respond and will leave the ISO with insufficient time to manage the grid reliably. Furthermore, while GEs contend that their scheduling flexibility is a valuable asset, it results in overall market inefficiencies due to scheduling time lines that do not conform to the time lines of the overall markets. It is difficult to justify the scheduling flexibility advantage in light of the congestion these rights cause the ISO. Therefore, "Phantom Congestion" is a market inefficiency that must be addressed and rectified as quickly as possible. In the event this issue is not resolved in the overall negotiations, we will address it in a separate proceeding.

F. *The "Buy-Down" Provision*

The ISO has proposed a Transition Mechanism under which savings, defined as a "TAC Benefit," received by new Participating TOs for joining the ISO are computed. [16] As explained by the ISO, a new Participating TO annually compares what it would have paid for transmission if had not joined the ISO versus its assessment for transmission by the ISO. Similarly, a new Participating TO annually compares what it would have paid in GMCs if it had not joined the ISO versus its assessment for GMC by the ISO. The net savings or TAC Benefit from these two components is computed (if the costs are actually greater than savings, then the hold harmless cap is invoked for a new Participating TO during the

transition period). The new Participating TO's investment in high voltage transmission facilities will be reduced by the TAC Benefit. Specifically, according to the ISO, the new Participating TO may use the amount of the TAC Benefit to retire debt supporting the transmission facilities or to establish a fund to service that debt. Accordingly, each year during the transition period a new participating TO is required to amortize or "write-off" investment in high voltage transmission facilities equal to the savings realized through the TAC Benefits. [17]

A number of Intervenors have protested this "buy-down" provision. Vernon argues that, because the crediting provision prospectively reduces the revenue requirement, it provides a

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return of capital without a return on capital. Vernon also presents a present value analysis which it believes reflects an accurate understanding of how the buy-down proposal is to be implemented. Southern Cities believe that the buy-down provision constitutes discriminatory and inappropriate interference in the financial autonomy of a new Participating TO and is fundamentally unfair to its end-use customers. Southern Cities also argue that the limitation on reflecting benefits to their customers will require them to pay rates based on the full cost of the transmission facilities but no longer receive the full benefit of those facilities. The Northern California Power Agency (NCPA) argues that the credit back provision is neither internally consistent, justified, nor rational, and that it constitutes a regulatory taking in that the return on investment is diverted for purposes of reducing the cost of transmission in the future. NCPA notes that it shares with PG&E entitlements in the California-Oregon Transmission Project (COTP) and this credit requirement would result in a different, and thus discriminatory, rate treatment for owners of the same line. CMUA asserts that the ISO presumes that a true source of funds exists from which to amortize the new Participating TO's transmission investment and, in reality, that no such source exists.

We believe that the "buy down" provision is unsupported and potentially discriminatory, and it is therefore rejected. While we recognize that the ISO has included this provision as a mechanism by which to attempt to equalize the cost of the facilities of the original Participating TOs with that of the new Participating TOs through a converging of the varying transmission revenue requirements over the proposed ten-year transition period, it has not demonstrated that this provision is reasonable. There is general agreement by all parties that there will be benefits that will inure to all users of the ISO grid if new GEs were to join the ISO. We agree. Also, we agree with the GEs' comments that the higher cost transmission facilities of the GEs is a vintage problem and that any concerns over the return of or on capital related to the facilities of a new Participating TO should be examined in the forum where the revenue requirement of the new Participating TO is reviewed. The approved depreciation rates or the proxy capital recovery factor utilized as the bases for the recovery of investment in the HV facilities of the new Participating TOs should be utilized as the basis for the amortization of those facilities, and no further buy-down of the investment base is necessary or appropriate. This procedure should protect against any discriminatory treatment of facilities that are jointly owned by an original Participating TO and a new Participating TO regarding the depreciation of those facilities, whereas the ISO's "buy down" proposal could result in an accelerated book amortization of the new Participating TOs' portion of jointly owned transmission facilities but allow a less accelerated depreciation of the facility by the original Participating TOs.

Moreover, we also believe that the "buy-down" proposal is fundamentally inconsistent with the goals

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of Order No. 2000 and will discourage participation in ISOs. There may be a perception created that newer and thus higher cost transmission investment should be devalued. Thus, we believe that, while a transition mechanism may be appropriate, it should not include a "buy-down" provision.

G. *Use of Gross Loads with Limited Exclusion*

The ISO's proposal provides that the HV Access Charge and the transition charge are payable on each MWh of energy withdrawn from the ISO controlled grid. The Utility Distribution Companies (UDCs), Metered Subsystem Operators (MSS) or Scheduling Coordinators (SCs) will pay the ISO the HV Access Charge based on the amount of gross load. The proposed HV Access Charge methodology recognizes an exception for loads that are served by an existing Generator Unit that is a qualifying small power producer or qualifying cogeneration facility (QF) under the Public Utility Regulatory Policies Act of 1978 (PURPA) and has either: (1) secured Standby Service from an existing Participating TO and will continue to do so and thus, is already bearing a portion of the costs of the ISO grid through the charges for Standby Service; or (2) is configured to be curtailed concurrently with the outage of the Generating Unit, and thus, is not relying on the ISO grid for the receipt of either operating reserves or energy. Such loads would be netted out and not be subject to ISO charges.

Calpine Corporation and a number of GEs have protested the proposed use of gross load as the appropriate billing units. These intervenors argue that behind the meter generation serves load that does not actually utilize the ISO grid and, therefore, should not be subject to ISO charges. A number of GEs also argue that the exception to gross load for QFs results in undue preference and discrimination. The Energy Producers and Users Coalition and Cogeneration Association of California argue that the ISO proposal properly excludes existing loads that are met by the internal generation of QFs but fails to exclude new, non-grandfathered QF loads. As such, they assert that the ISO proposal violates both the FPA and PURPA in that it discriminates against new standby service customers.

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The ISO in its Answer notes that the transmission service made available under the ISO Tariff is the equivalent of network integration service under the Commission's *pro forma* tariff, and that the Commission has repeatedly determined that the use of gross load is appropriate for network service. With respect to the exception for QF load currently paying standby service, the ISO argues this exception appropriately recognizes that payment, and for QF-served loads that are not eligible for the exemption, they can exclude transmission costs in the calculation of standby service charges to recognize that the load is now bearing a portion of those costs through the HV Access Charge. The ISO concludes that the creation of this exemption does not require the creation of far broader exemptions that would allow other transmission customers to escape paying for the cost of the transmission system.

Our review indicates that the continued use of gross load as the billing units as proposed by the ISO is appropriate. In Order No. 888 we addressed similar concerns regarding loads that were "behind the meter," and we see no change in circumstances to warrant a different result here. [18] With respect to the exceptions for existing QF and cogeneration facilities, we generally agree with the ISO's criteria used to support its proposal. However, the record should be further developed to demonstrate that the criteria are applied in a non-discriminatory manner in order to avoid possible future claims of discrimination.

H. *Metered Subsystems*

The ISO's proposal also includes provisions that would enable the systems of new Participating TOs to qualify as Metered Subsystems (MSS). The ISO states that allowing new Participating TOs to qualify as MSS would facilitate their continued operation as vertically integrated utility systems while also providing an alternative way to participate in the ISO's markets and to use the ISO controlled grid for transactions with their surplus resources. The ISO states that limiting the availability of MSS status to entities that elect to become Participating TOs is consistent with the intent of the concept as a means of encouraging participation in the ISO by publicly owned entities that chose to remain vertically integrated.

A number of Intervenors have taken issue with various aspects of the ISO's proposed MSS. Some Intervenors argue that the eligibility for the MSS should not be limited to entities that become Participating TOs while other Intervenors challenge the provision requiring the operator of a MSS to comply with all applicable provisions of the ISO tariff. Intervenors also raise specific concerns over the operation and implementation of the ISO's proposal. Enron contends, among other things, that all generating entities that interface with the ISO controlled grid should be entitled to implement MSS, and not just existing municipal utilities or irrigation districts.

The ISO in its Answer responds to the various operational and implementation concerns and arguments requiring MSS members to become Participating TOs. The ISO also responded to Enron's protest by stating, in part, that by seeking to do away with limits on MSS, Enron is trying to revise radically the ISO's scheduling procedures, the structure of the ISO's markets, and the manner in which the ISO receives information about the status of generating units in its control area and where necessary, issues dispatch instructions to them.

Some comments on this issue indicate that the ISO and GEs appear to have made progress on this issue, and the parties should continue negotiations with the settlement judge. We note that the issue of the availability of MSS status being limited to those entities that elect to become Participating TOs is before the Commission in Docket No. ER98-3760-000 , *et al.*, and will therefore be decided in that proceeding. For the purposes of this proceeding, the parties should narrow their negotiations to the stated purpose of the MSS (*i.e.*, accommodating vertically integrated systems in the ISO framework).

Remaining Issues

While we have addressed and given guidance on the major issues that have been presented by the ISO's proposal, there remain other issues. Some of these issues appear to be specific concerns that with additional information and clarification are resolvable. Additionally, several parties raise issues that are unique to their particular situation, *e.g.*, time-of-use rates for parties with water interests. In order to afford the parties and the settlement judge flexibility in reaching an overall settlement, we will not address these additional issues at this time. However, we strongly urge the parties and the

[61,730]

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settlement judge to use a consensus approach and focus their efforts on those issues whose resolution is necessary for GEs to become new participating TOs in the ISO grid.

The Commission orders:

(A) The ISO's proposed tariff revisions are hereby accepted for filing, and suspended for a nominal period, subject to refund, to become effective on June 1, 2000, as requested.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of the ISO's proposed tariff revisions. However, this hearing will be held in abeyance while the parties attempt to settle, as discussed in Paragraphs (C)-(E) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §385.603 (1999), the Chief Administrative Law Judge is hereby designated as the settlement judge in this proceeding. To the extent consistent with this order, the designated settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene an initial settlement conference as soon as practicable.

(D) Within 120 days of the date of this order, the settlement judge shall issue a report to the Commission. The settlement judge shall issue a report at least every 60 days thereafter, appraising the Commission of the parties' progress toward settlement.

(E) If the settlement discussions fail, a presiding administrative law judge, to be selected by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date of the settlement judge's report to the Commission, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, to rule on all motions (except motions to dismiss), and to preside over the hearing in this proceeding, as provided in the Commission's Rules of Practice and Procedure.

(F) The ISO is hereby informed that the rate schedule designations will be supplied in a future order. Consistent with our prior orders, the ISO is hereby directed to promptly post the proposed tariff sheets as revised in this order on the Western Energy Network.

Appendix A

Timely Interventions

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California Department of Water Resources (DWR)

California Electricity Oversight Board

California Manufacturers and Technology Association

California Municipal Utilities Association (CMUA)

California Power Exchange Corporation

Calpine Corporation (Calpine)

Cities of Anaheim, Azusa, Banning, Colton and Riverside (Southern Cities)

Cities of Redding, Santa Clara and Palo Alto and the M-S-R Public Power Agency (Cities/M-S-R)

City of Burbank (Burbank)

City of Roseville

City and County of San Francisco

City of Vernon (Vernon)

Cogeneration Association of California and Energy Producers and Users Coalition

Duke Energy Trading & Marketing, L.L.C.

Enron Energy Services, Inc.

Glendale Water and Power Department (Glendale)

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Independent Energy Producers Association

Lassen Municipal Utility District (Lassen)

Los Angeles Department of Water and Power (LADWP)

Metropolitan Water District of Southern California (Metropolitan)

Modesto Irrigation District (Modesto)

Northern California Power Agency (NCPA)

Pacific Gas and Electric Company (PG&E)

Sacramento Municipal Utility District (SMUD)

Sempra Energy

Southern California Edison Company (SoCal Edison)

Southern Energy California, L.L.C.

Southern Energy Delta, L.L.C.

Southern Energy Potrero, L.L.C.

State Water Contractors

Transmission Agency of Northern California (TANC)

Trinity Public Utility District

Turlock Irrigation District (Turlock)

Utility Reform Network, The (TURN)

Western Area Power Administration (WAPA)

Williams Energy & Marketing Company

-- Footnotes --

[61,720]

[1] Section 9600(a)(2)(A) of California's A.B. 1890 required the ISO to recommend a new rate methodology within two years after commencement of operations. *See Pacific Gas and Electric Company, et al.*, 77 FERC ¶61,204, at p. 61,827 (1996).

[2] High voltage transmission facilities are those transmission facilities in the ISO controlled grid that operate at 200 kV and above.

[3] Transmittal Letter at 7.

[61,721]

[4] The ISO defines a MSS as a geographically contiguous system of a new Participating TO, located within a single zone which has been operating for a number of years prior to the ISO Operations Date subsumed within the ISO Control Area and encompassed by ISO certified revenue quality meters at each interface point with ISO grid and ISO certified revenue quality meters on all generating units internal to the system which is operated in accordance with a MSS agreement.

[5] TURN at 3-4.

[61,722]

[6] *Regional Transmission Organizations*, 65 *Fed. Reg.* 809 (January 6, 2000), *FERC Statutes and Regulations* ¶31,089 (1999), (*Order No. 2000*), *reh'g denied*, Order No. 2000-A , 65 *Fed. Reg.* 12,088, 90 FERC ¶61,201 (2000), *FERC Statutes and Regulations* ¶31,092 .

[7] ISO Answer at 12.

[8] For example, the Los Angeles Department of Water and Power (LADWP) controls approximately 25 percent of the transmission import capacity into the state of California.

[9] As such, we reject Sempra's arguments against a "postage stamp" HV Access Charge and the bifurcation of the ISO-operated transmission facilities into low and high voltage components.

[10] Under the self-sufficiency test, a Participating TO is required to have generating and transmission

resources greater than or equal to its monthly peak demand plus resources necessary to meet other WSCC reliability criteria.

[61,723]

11 *See* Section 7.1.1 and Section 9 of Appendix F, Schedule 3 of the ISO Tariff. For Participating TOs that are public utilities under the FPA, they will make the appropriate filings at FERC to establish their transmission revenue requirements for the applicable HV Access Charge and to obtain approval of any changes thereto. Also, for Federal power marketing agencies whose transmission facilities are under ISO control, they shall develop their High Voltage transmission revenue requirement pursuant to applicable federal laws and regulations, including filing with FERC.

[61,724]

12 88 FERC ¶61,138, at p. 61,403 (1999).

13 Order No. 2000-A at p. 31,372 .

[61,725]

14 *See New England Power Pool and Massachusetts Municipal Wholesale Electric Company*, 83 FERC ¶61,045, at pp. 61,237 -41 (1998), *reh'g pending.*

15 However, we do recognize that the amount of new capital additions may be impacted by both the timing and number of new Participating TOs joining the ISO.

[61,727]

16 *See* Appendix F, Schedule 3, Sections 1.2(b) and 6.1(b).

17 The ISO clarifies in its Answer that the new Participating TOs retain complete discretion regarding the financing of their transmission facilities. However, for ratemaking purposes, over the ten-year transition period, the new Participating TO's transmission revenue requirement will be calculated to reflect a reduction to net plant balances by the amount of "savings" realized by each new Participating as though the Participating TO applied the cost-shift benefits to reduce its investment in high voltage transmission facilities, regardless of whether or not it does so. The ISO thus concludes in its Answer that the "buy down" mechanism does not interfere with the financing discretion of new Participating TOs or deprive them of any cost recovery or returns to which they are entitled on their investments in high voltage transmission facilities.

[61,729]

18 *See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, 61 *Fed. Reg.* 21,540 (1996), *FERC Statutes and Regulations, Regulations Preambles January 1991-June 1996* ¶31,036, at pp. 31,735 -36 (1996) (*Order No. 888*), *order on reh'g*, Order No. 888-A , 62 *Fed. Reg.* 12,274 (1997), *FERC Statutes and Regulations* ¶31,048 (1997), *order on reh'g*, Order No. 888-B , 62 *Fed. Reg.* 64,688, 81 FERC ¶61,248 (1997), *order on reh'g*, Order No. 888-C , 82 FERC ¶61,046 (1998), *appeal docketed*, *Transmission Access Policy Study Group, et al. v. FERC*, Nos. 97-

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1715 *et al.* (D.C. Cir.).

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ATTACHMENT 2

COMM-OPINION-ORDER, 103 FERC ¶61,260, California Independent System Operator Corporation, Docket Nos. ER03-608-000, ER00-2019-006 and ER01-819-002, (May 30, 2003)

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California Independent System Operator Corporation, Docket Nos. ER03-608-000, ER00-2019-006 and ER01-819-002

[61,963]

[¶61,260]

California Independent System Operator Corporation, Docket Nos. ER03-608-000, ER00-2019-006 and ER01-819-002

Order on Tariff Amendment

(Issued May 30, 2003)

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

1. In this order, we accept in part, suspend in part, and reject in part, proposed tariff revisions the California Independent System Operator Corporation (CAISO) filed as Amendment No. 49 to its Open Access Transmission Tariff (OATT) in Docket No. ER03-608-000. Additionally, we will consolidate Docket No. ER03-608-000 with the on- going proceeding in Docket No. ER00-2019-006, *et al.*, for purposes of hearing and decision. This order benefits customers by clarifying certain provisions of the CAISO tariff.

Background

2. On March 11, 2003, the CAISO filed its proposed Amendment 49 to its OATT. This amendment proposes to modify the transmission access charge amendments that the Commission previously accepted for filing, suspended and set for hearing in Docket No. ER00-2019-000, *et al.* The CAISO states that these tariff revisions reflect changes based on three years of operational experience and settlement discussions among stakeholders in California. The CAISO has proposed revisions to twelve separate provisions of its tariff regarding the operation of Transmission Access Charge (TAC) rate design and five clarifications to Amendment No. 27, the tariff provisions the CAISO originally filed in Docket No. ER00-2019-000. The CAISO requests that these tariff revisions be made effective June 1, 2003.

3. Notice of the CAISO filing was published in the *Federal Register* on March 24, 2003, 68 *Fed. Reg.* 14,231 (2003), with comments, protests, and motions to intervene due on or before April 1, 2003. The following parties filed timely unopposed motions to intervene and comments: California Department of Water Resources State Water Project (California State Water Project); California Municipal Utilities Association (CMUA); Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern

Cities); Cities of Santa Clara and Palo Alto, California (Santa Clara/Palo Alto); City of Vernon, California (Vernon); Cogeneration Association of California and the Energy Producers and Users Coalition; Metropolitan Water District of Southern California (Metropolitan); Modesto Irrigation District (Modesto)[1] ; Northern California Power Agency (NCPA); Pacific Gas and Electric Company (PG&E); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SoCal Edison); and Transmission Agency of Northern California (TANC); and Western Area Power Administration (WAPA); and Williams Energy Marketing & Trading Company.

4. The following parties filed timely unopposed motions to intervene that raised no substantive issues: California Electricity Oversight Board; Dynegy Power Marketing, Inc., El Segundo Power, LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC. On April 2, 2003, the City and County of San Francisco (San Francisco) filed an untimely motion to intervene that raised no substantive issues. On April 16, 2003, the CAISO and SoCal Edison separately filed answers to the protests. On April 23, 2003, Modesto and Vernon filed separate reply comments to CAISO and SoCal Edison answers.

[61,964]

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[2] the timely, unopposed motions to intervene of the movants listed above serve to make them parties to this proceeding. Regarding the untimely motion to intervene from San Francisco, given its interest in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay from granting late intervention, we will grant this party's intervention. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits the filing of an answer to a protest or to an answer unless otherwise permitted by the decisional authority.[3] We will accept the CAISO, SoCal Edison, Vernon and Modesto answers because they have assisted us in understanding the issues before us.

Discussion

I. Issues to Consolidate with Docket No. ER00-2019-000

6. Our analysis indicates that some of the proposed tariff changes in Amendment 49 have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. In addition, concerns over these proposed tariff changes raise factual questions that we can not summarily decide in this proceeding because the outcome may adversely affect the hearing in Docket No. ER00-2019-006, *et al*. Accordingly, we will consolidate five issues described below with Docket No. ER00-2019-006, *et al*., for purposes of hearing and decision.

Transition Charge--In Amendment 27, the CAISO proposed that new Participating Transmission Owners' costs of new and existing High Voltage facilities would be incorporated in the Transition Charge cost shift calculation to determine the net costs or benefits of a Participating Transmission Owner.[4] The CAISO now proposes a revision that would exclude new transmission investments from the cost shift cap calculation. The CAISO states that this modification will ensure that the costs of New

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High Voltage facilities will be borne by all CAISO customers rather than assigning most of the costs to customers within a particular Transmission Access Charge area. In addition, the CAISO states that its proposed modification to the cost shift calculation will encourage new construction of high voltage facilities because the tariff removes the uncertainty with full cost recovery.

Allocation of Costs between High Voltage and Low Voltage Facilities--The CAISO states that it worked with the active parties in Docket No. ER00-2019-000 to develop a "Procedure for Division of Certain Costs Between the High and Low Voltage Transmission Access Charge," which is a new methodology for allocating the costs of multi-voltage substations, transmission towers that carry both high voltage and low voltage, general expenses and existing contracts. The CAISO further states that this new procedure was incorporated through settlement[5] of dockets in which the Original Participating Transmission Owners made corresponding changes to their respective Transmission Owner tariffs to implement the Transmission Access Charge under Amendment 27. As a result, the CAISO proposes to create a definition for the methodology for allocating the costs of joint use facilities between the High Voltage Transmission Revenue Requirement and the Low Voltage Transmission Revenue Requirement of each participating transmission owner and post this procedure on the CAISO website and include a cross-reference to the requirements in the CAISO tariff.[6]

Transmission Revenue Credit--Amendment 49 seeks to revise the definition of Transmission Revenue Credit to include a definition of Net FTR Revenue in which New Participating Transmission Owners given Firm Transmission Rights in accordance with Section 9.4.3 of the CAISO tariff are required to credit against their Transmission Revenue Requirements only the positive difference between the Usage Charges paid and the Firm Transmission Rights and Usage Charge revenue received.

Conversion of Existing Contracts--The CAISO states that in recognition of the fact that certain Participating Transmission Owners may present special or unusual circumstances, Amendment 49 adds Section 4.5 in Schedule 3 of Appendix F that allows for flexibility to assist New Participating Transmission Owners in converting existing rights to Firm Transmission Rights. The CAISO also provides clarification regarding the characteristics to be considered in the determination of the amount of contracted transmission capacity, and the firmness of the capacity.

Treatment of Behind the Meter Load--In Amendment 27, the determination of Gross Load excluded behind-the-meter Load of existing Qualifying Facilities that were operational as of March 31, 2000, and that received standby service. In Amendment 49, the CAISO proposes to revise the definition of gross load by deleting the date limitation. By deleting the date limitation, the CAISO contends that its proposed change eliminates the potential for double charging Qualifying Facilities customers taking standby service. It further states that the exemption should not disadvantage other custom

[61,965]

ers because transmission revenues received by Participating Transmission Owners from Standby Service are taken as a credit against the Participating Transmission Owners Transmission Revenue Requirements.

7. We will suspend for a nominal period these five issues to be consolidated with Docket No. ER00-2019-000, *et al.*, and establish an effective date of June 1, 2003, subject to refund.

II. Issues resolved in Docket No. ER608-000

8. We will accept the remaining parts of the CAISO's proposed Tariff Amendment 49 for filing, and establish an effective date of June 1, 2003, but for the waiver provision to transfer certain facilities to the CAISO. These proposed changes to the tariff are described below.

Waiver Provision to Transfer Certain Facilities to the CAISO

9. The CAISO proposes to amend Section 3.1 of its tariff by adding a provision[7] that would give the CAISO discretion to exempt a federal power marketing agency seeking to become a New Participating Transmission Owner from the obligation to turn over operational control to the CAISO of all of its transmission facilities and entitlements to the extent the federal power marketing agency's transmission facility or entitlement has overriding regional importance (i.e., such as the upgrade to Path 15). The proposed tariff provision also provides that such exemption would be filed for the Commission's approval either with the transmission control agreement or under Section 203 of the Federal Power Act. The CAISO argues that the proposed exemption is necessary to encourage the Western Area Power Administration to transfer its portion of Path 15 to the operational control of the CAISO.

10. Several parties indicated that they were not opposed to the general principle of allowing the CAISO the ability to grant a waiver of the general requirement that a Participating Transmission Owner transfer control of all its facilities to the CAISO.[8] However, they argue that the current proposed language to grant waiver is narrowly focused and unduly discriminatory because it does not make reasonable accommodations to all market participants.

11. Some of these parties[9] also challenge the CAISO's "overriding regional importance" standard of review process to determine waiver eligible participants. They argue that the CAISO does not provide adequate guidance or criteria on how it will evaluate whether certain facilities have overriding regional benefits. Hence, these parties propose that the Commission require the CAISO to establish explicit standards for granting waivers and make them subject to stakeholder review and comments prior to waiver approval.

12. SoCal Edison also argues that the Commission should reject the CAISO's proposal to create "partial" Participating Transmission Owners. SoCal Edison states that the CAISO has not explained why WAPA cannot turn control over all of its transmission facilities to the CAISO. SoCal Edison proposes that the Commission order the CAISO to work with WAPA and market participants to craft a reasonable and nondiscriminatory solution to the path 15 upgrades.

Commission Determination

13. We will reject without prejudice the CAISO's proposal to amend its OATT to allow it the discretion to waive the requirement that a New Participating Transmission Owner turn over operational control of *all* its transmission facilities to the CAISO under certain conditions. We find that the provision is insufficiently defined and could lead to discriminatory and unreasonable results. Further, and perhaps more importantly, the OATT should not include a provision that would grant this type of discretionary power to a transmission provider, including the CAISO. Should the CAISO in the future believe that an exemption from the requirement that a New Participating Transmission Owner turn over

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operational control of *all* its transmission facilities to the CAISO is appropriate, the CAISO at that time may file a request for a waiver of its OATT. While we would entertain such a request, we do not, here, prejudge whether such a request will be granted. We believe that a party seeking such a waiver must show that the waiver is in the public interest because, as a general proposition, we believe that waivers are not in the public interest. We thus would be inclined to consider such requests only in a very narrow circumstance, that is, if the request involves exempting a federal agency from this requirement and that agency is involved in a high value project both with overriding regional significance and that provides substantial benefits to customers.

Application to Become a Participating Transmission Owner

14. The CAISO tariff currently requires that a Participating Transmission Owner applicant declare its intent to become a Participating Transmission Owner by January 1 or July 1 of any year, so that an agreement can be negotiated and filed by the following April 1 or October 1, respectively. The CAISO notes that the tariff does not establish a specific date by which an application to become a Participating Transmission Owner must be submitted. As a result, the CAISO proposes to modify the application process (*i.e.*, Section 3.1.1) to require the submission of an application within 15

[61,966]

days of a Participating Transmission Owner's Notice of Intent, so that the process can begin promptly and the CAISO has sufficient time to negotiate and file with the Commission an amendment to the Transmission Control Agreement. The CAISO also proposes to eliminate the April 1 and October 1 contract execution and filing deadlines because these deadlines are unrealistic.

15. The Southern Cities state that they do not oppose a time limit for submission of an application. However, the Southern Cities claim that 15 days is unreasonably short because the Participating Transmission Owner application requires a collection of detailed information regarding the prospective Participating Transmission Owner's transmission facilities and entitlements. As a result, the Southern Cities request that the Commission require a Participating Transmission Owner application to be filed 30 days after the submission of the Notice of Intent.

16. PG&E disagrees with the CAISO's assertion that the contract execution and filing deadlines are unrealistic. PG&E contends that the elimination of these deadlines will lead to similar problems that the CAISO is seeking to resolve through its proposal for a 15 day application deadline. In addition, PG&E is concerned that elimination of the deadlines will result in the Transmission Control Agreements and related documents being executed and filed just before the effective date of the agreements.

Commission Determination

17. We find the CAISO's proposal to require the submission of an application within 15 days of an entity declaring its intent to become a Participating Transmission Owner to be reasonable. Because applicants in this process control the timing of their Notice of Intent, they also control the time in which to collect data concerning their facilities and entitlements prior to and 15 days following their submission of a Notice of Intent, we find no reason to extend the filing deadline beyond 15 days. With regard to PG&E's concern that the elimination of the contract execution and filing deadline will result in Transmission Control Agreements and related documents being filed just before the effective date of the

agreements, we find this argument to be speculative and, therefore, we will allow the CAISO to eliminate the contract execution and filing deadlines.

Elimination of the Revenue Review Panel

18. Under Amendment No. 27, the CAISO proposed a Revenue Review Panel to review the transmission revenue requirement of non-jurisdictional public utility entities (*e.g.*, Governmental Entities) that are new Participating Transmission Owners.[10] In the CAISO proposal, the Revenue Review Panel's decisions would have been final and not subject to review. However, the Commission determined that the Revenue Review Panel's decisions are appealable to the Commission.[11] Because the effect of this Commission decision diminished the Revenue Review Panel's role, the CAISO proposes that the Revenue Review Panel be eliminated.

19. PG&E supports the elimination of the Revenue Review Panel if the CAISO includes a detailed procedure and standard in the tariff that would enable a Commission review of new Participating Transmission Operator's Transmission Revenue Requirements to determine if they are just and reasonable. PG&E states that the tariff must be explicit in detailing the cost support necessary to permit a just and reasonable rate determination of a proposed Transmission Revenue Requirement. PG&E believes that the detail should be comparable to the requirements in Section 205 of the Federal Power Act.

20. TANC argues that the CAISO's amendment effectively requires that all publicly owned electric utilities, including non-jurisdictional utilities, be regulated by the Commission. TANC contends that the Commission should order the CAISO to revise the CAISO tariff to eliminate the requirement that non-jurisdictional utilities file Transmission Revenue Requirements with the Commission.

Commission Determination

21. Generally, we find that the Revenue Review Panel should be eliminated to ensure the justness and reasonableness of each Participating Transmission Owner's Transmission Revenue Requirement. In addition, we agree with the CAISO's contention that the Revenue Review Panel has become unnecessary since all five municipal utilities that have become Participating Transmission Owners have chosen to file their proposed Transmission Revenue Requirement with the Commission rather than the Revenue Review Panel Board. We also find that it would be administratively more efficient for the Commission to directly review and determine the justness and reasonableness of the Transmission Revenue Requirement of new Participating Transmission Owners as opposed to the alternative Revenue Review Panel review process in Amendment 27, (*i.e.*, Transmission Revenue Requirement disputes of non-public utility entities being appealable to the Commission). Finally, we find the elimination of the Revenue Review Panel will not only streamline the review process, but also eliminate the potential administrative costs associated with the Revenue Review Panel from the CAISO's Grid Management Charge.

Metering Equipment

22. Section 7.1.4.4 of the CAISO tariff sets forth a temporary procedure for Scheduling Coordinators that schedule wheeling out or wheeling

[61,967]

through transactions or schedule transactions for Non-Participating Transmission Owners located within the CAISO control area to provide details of the transactions to the CAISO rather than maintain CAISO certified meters at the scheduling points. The CAISO implemented the procedure to give the Scheduling Coordinators enough time to meet the necessary metering requirements. However, Section 7.1.4.4.1 through Section 7.1.4.4.3 provides for termination of this temporary procedure once the CAISO issues a Notice of Full Scale Operations.

23. The CAISO states that its intent to have certified metering equipment at every scheduling point has not been fulfilled. This is due in part to a number of Participating and Non-Participating Transmission Owners that possess metering equipment that does qualify for CAISO certification. The CAISO contends that although some Participating and Non-Participating Transmission Owners have proposed to replace their current meters with CAISO certified meters, this has not been accomplished. As a result, the CAISO proposes to delete language that provides for termination of these temporary procedures because operating without the procedure is impossible for the CAISO.

24. CDWR states that the CAISO's proposal is unacceptable because it essentially allows the condition to persist indefinitely, without consideration of the costs and benefits to all market participants. CDWR argues that a better alternative is to enforce market participants to comply with current metering requirements.[12] It further states that the CAISO has acknowledged that because of the CAISO's socialization of costs, one entity's failure to have adequate metering adversely affects others. As a result, rather than accept the proposed approach, the Commission should order an examination of the consequences of a noncompliance with the CAISO metering requirements.

Commission Determination

25. We agree with CDWR. The elimination of the language that provides for termination of the temporary procedure upon full scale operations of the CAISO does not resolve the ongoing problem of Participating and Non-Participating Transmission Owners not having CAISO certified meters. We realize that in order for the CAISO to operate an efficient and reliable transmission grid effectively, it is essential for parties to comply with the metering requirement as described in the CAISO tariff. Therefore, we will require the CAISO in a compliance filing within 30 days from the date of this order to submit a report identifying the Scheduling Coordinators who are not in compliance, the reasons for the non-compliance, and the anticipated date of compliance. In the interim, we will permit the deletion of Sections 7.1.4.4.1 through 7.1.4.4.3.

Miscellaneous Issues

26. The CAISO proposes to remove the impact of the Grid Management Charge from the hold harmless provision for New Participating Transmission Owners. The CAISO states that the proposal is appropriate because the new Grid Management Charge methodology removes the inequities of the Grid Management Charge in Amendment 27. Under Amendment 27, a governmentally owned utility's

responsibility for the Grid Management Charge could significantly increase if it became a Participating Transmission Owner. The CAISO states that since there is no difference between the Grid Management Charge costs that a Participating Transmission Owner and Non-Participating Transmission Owner would pay for the same service, no further protection is needed. No parties protested the removal of the Grid Management Charge from the hold harmless provision. We find that the proposed change is reasonable because the Grid Management Charge emphasizes the principles of cost causation in which all customers that are not similarly situated should incur the same cost for various services. Since new Participating Transmission Owners will not experience higher costs because of the Grid Management Charge, we find that no additional protection is necessary.

27. The CAISO also proposes to modify its tariff to include a market notification process that requires the CAISO to issue a "Market Notice" when the CAISO is aware of revised rates of Participating Transmission Owners. We find it reasonable and we note that no protests were filed on this issue. Accordingly, we will accept this proposal.

Low Voltage Access Fee

28. The CAISO proposes to amend Section 7.1 and Section 1.1 of Appendix F, Schedule 3 of the CAISO tariff to clarify the method of billing and the fact that Participating Transmission Owners serving load in another Participating Transmission Owner's service area must pay the latter a Low Voltage Access Charge and the method of billing for the charge.

29. Modesto argues that if it becomes a Participating Transmission Owner, the above requirement would result in Modesto paying a Low Voltage Access Charge for certain load in PG&E's service territory served by Modesto's transmission and distribution facilities.[13] It further states that a California law, AB2638, prohibits an electrical corporation from providing electric transmission or distribution service to retail customers in the Mountain House Community Services District. However, Modesto contends that the pro

[61,968]

posed tariff language leads Modesto to conclude that PG&E could charge Modesto for service to Mountain House that PG&E does not provide. As a result, Modesto would prefer to not wait to have this matter resolved in a Section 205 or 206 proceeding. Modesto states that for the sake of administrative convenience the Commission should require the CAISO to amend the tariff to provide safeguards to prevent inappropriate billings.

Commission Determination

30. According to the CAISO tariff, the Low Voltage Access Charge for each Participating Transmission Owner is set forth in the Participating Transmission Owner's Transmission Owner Tariff. Our interpretation of the CAISO tariff as it relates to the low voltage charge is that Modesto would not be assessed PG&E's charge because the retail customer loads are served by transmission and distribution facilities either owned or entitled to Modesto. To the extent that PG&E's Transmission Owner Tariff is interpreted differently, we would encourage both PG&E and Modesto to negotiate an agreement that resolves any dispute that results from implementing California law AB2638.

Miscellaneous Changes

31. The CAISO also proposes in Amendment 49 to correct grammar and typographical errors, and inconsistent or outdated use of terminology in the following sections related to Amendment 27: Sections 3.1.2, 3.2, 3.2.1.1.2, 3.2.1.1.3, 3.2.1.2, 3.2.2.1, 3.2.2.3, 3.2.2.4, 3.2.3, 3.2.6, 3.2.7, 3.2.8.2, and 7.1.4.1; Appendix A, Definitions of Access Charge, New High Voltage Facility, and TRBA; Appendix F, Schedule 3, Sections 1.1, 2, 3, 4.3, 5, 6.1, 7 and 10.1. Finally, the CAISO proposes in Amendment 49 to delete certain language from Section 7.1.6.3 of its tariff, consistent with the Commission's order in *California Independent System Operator Corp.*, 101 FERC ¶61,219 at P 58 (2002), directing the CAISO to remove corresponding language from Section 2.2.3 of the Transmission Control Agreement. The parties raised no concerns regarding the corrections. Because we find these corrections reasonable, we will accept these proposed corrections.

32. Section 7.1 of the CAISO tariff refers to the Transmission Revenue Requirement prior to the adjustment for Transmission Revenue Credits. The definition of Transmission Revenue Requirement, however, includes an adjustment of costs for those credits, and the reference is thus circular. The CAISO proposes in Amendment 49 to amend Section 7.1 to refer to the costs of facilities and entitlements. Because we find this reasonable, we will accept this proposed amendment.

33. The new transmission access charge in Amendment 27 made the terms Base Transmission Revenue Requirements and Self-Sufficiency Test Period irrelevant and these terms should have been deleted. The CAISO proposes in Amendment 49 to delete these two definitions from Appendix A of the CAISO tariff. Because we find this reasonable, we will accept this proposed deletion.

34. Amendment 27 explicitly required that Participating Transmission Owners provide to the CAISO any changes that the Participating Transmission Owner proposes to make to its Transmission Revenue Requirement, Transmission Revenue Balancing Account or Gross Load. Amendment 45 added a requirement that Participating Transmission Owners also provide a copy of the submittal to the CAISO to the other Participating Transmission Owners by serving the person named for service in the notice provisions of the Transmission Control Agreement. However, this information is not consistently included in those filings. Because the CAISO and market participants have had difficulty in the past determining the actual amounts to be included in the Access Charge calculation, the CAISO proposes in Amendment 49 to amend Section 7.1 to require that a specific appendix be added to the filing that states the High Voltage Transmission Revenue Requirement, the Low Voltage Transmission Revenue Requirement (if applicable), and the appropriate Gross Load. The CAISO also proposes to amend Section 9.2 to clarify that these requirements apply to federal power market agencies. Because we find these proposals reasonable, we will accept these proposed amendments.

35. To avoid confusion regarding the confidentiality of data, and allow the Participating Transmission Owners to ensure that the CAISO has correctly calculated and disbursed the Wheeling Access Charge revenue, the CAISO proposes in Amendment 49 to include in Section 7.1.4.3 of its tariff, a list of the data that the CAISO will release to the Participating Transmission Owners. Because we find this reasonable, we will accept this proposed amendment.

The Commission orders:

20030702-5003 Received FERC OSEC 07/02/2003 10:39:00 AM Docket# ER00-2019-006, ET AL.

(A) The Commission hereby consolidates certain issues in Docket No. ER03-608-000 with the proceeding established in Docket No. ER00-2019-006, *et al.*, suspends these issues for a nominal period and makes them effective June 1, 2003, subject to refund, as discussed in the body of this order.

(B) The Commission rejects the CAISO's proposed tariff Section 3.13 related to a waiver provision to transfer certain facilities to the CAISO.

(C) The Commission hereby accepts in part the CAISO's remaining proposed tariff revisions for filing and makes them effective June 1, 2003, as discussed in the body of this order.

(D) The CAISO is hereby directed to file a report with the Commission, within 30 days from the date of this order, identifying the Scheduling Coordinators who are not in compliance with the CAISO tariff metering requirements, the reasons for non-compliance, and the anticipated date of compliance, as discussed in the body of this order.

[1] On April 17, 2003, Modesto filed a correction to its comments. In its April 17, 2003 filing, Modesto changed the word "use" in two instances to "does not use."

[2] 18 C.F.R. §385.214 (2002).

[3] 18 C.F.R. §385.213(a)(2) (2002).

[4] *See* Section 8.6 CAISO tariff and Section 1.1 and 5.7 of Schedule 3, Appendix F of the CAISO tariff.

[5] Offer of Settlement occurred in Docket No. ER01-833-000.

[6] *See* Section 11 of Schedule 3, Appendix F of the CAISO tariff.

[7] *See* Section 3.1.3 of the CAISO tariff.

[8] CMUA, Metropolitan, CDWR, TANC and the Southern Cities.

[9] Metropolitan, PGE and SoCal Edison.

[10] *See* Section 7.1.1 of the CAISO tariff.

[11] *See California Independent System Operator Corporation*, 91 FERC ¶61,205 (2000).

[12] PG&E raised similar concerns.

[13] The load served by Modesto is the Mountain House Community Services District under California Assembly Bill 2638, Cal Pub. Util. Code §9610 (2003) (AB2638).

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