

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

California Independent System)	Docket No. ER00-2019-006,
Operator Corporation)	ER01-819-002 and
)	ER03-608-001

**THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION'S
MOTION TO STRIKE TESTIMONY OF
THE CALIFORNIA DEPARTMENT OF WATER RESOURCES –
STATE WATER PROJECT AND
REQUEST FOR ORDER SHORTENING TIME**

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 (2003), the California Independent System Operator Corporation ("ISO") respectfully submits this Motion to Strike Testimony of the California Department of Water Resources – State Water Project ("SWP") and request for order shortening time.

2. Specifically, by this motion, the ISO first requests that the Presiding Judge strike Questions and Answers 26 through 33 of the Initial and Cross Answering Testimony of Richard D. Jones (Exh. No. SWP-70 at 1:13–2:21, 17:1–22:2), which generally discuss unbundling of "in-kind reliability support products" and incorporates reference pages 65:11–67:18 of Exhibit No. SWP-1 (Initial and Answering Testimony of Harrison Call, Jr.). The indicated sections of this testimony is attached as Attachments 1-A and 1-B, respectively. The ISO notes that Mr. Jones responds to testimony of Pacific Gas and Electric Company, which should also be withdrawn or stricken if the ISO's motion is granted. In

addition, Ms. Deborah Le Vine has filed Rebuttal testimony responding to Mr. Jones, which the ISO would withdraw if the motion is granted.

3. Second, in the event that a Joint Stipulation to be offered by the ISO and SWP (regarding the need for SWP to file a Transmission Revenue Requirement and other matters under certain specified circumstances) is rejected, the ISO requests that the Presiding Judge strike pages 67:19–70:24 of Exhibit No. SWP-72, which is the vehicle whereby SWP witness Jones adopts in his Initial and Cross-Answering Testimony (SWP-70 at 1:13–2:21) Questions and Answers 105–109 of the Initial and Answering Testimony of Harrison Call (Exh. No. SWP-1 at 67:19–70:24), which discusses rate treatment of “non-transmission-owning Participating Transmission Owners upon contract conversion.” The indicated sections of this testimony is included as Attachments 2-A and 2-B, respectively.

I. Unbundling of In-kind Reliability Support Products

4. Questions and Answers 26 through 33 of the Initial and Cross Answering Testimony of Richard D. Jones (Exh. No. SWP-70 at 17:1–22:2) discuss recommendation that “in-kind reliability support products” provided by SWP under its Existing Contracts be unbundled and provided to the ISO as services if its Existing Contracts are “converted.” This testimony has nothing to do with the ISO’s proposal, the ISO’s transmission Access Charge, or even with the ISO Tariff. As such, it should be stricken.

5. SWP’s testimony appears to arise from a misunderstanding of the ISO Tariff’s treatment of Existing Contracts. Under Section 2.4.4.3 of the ISO Tariff, a party to an Existing Contract that has transmission rights (“Existing

Rights”) may turn those rights over to the ISO’s Operational Control and become a Participating Transmission Owner. The transmission rights, which are in effect assigned to the ISO, are thereafter denominated “Converted Rights.” Although Section 2.4.4.3.2 of the ISO Tariff encourages the parties to the Existing Contract to negotiate changes to the Existing Contract to avoid inconsistencies with the ISO Tariff, or to seek such changes from the Commission, the ISO Tariff effects no changes other than to the scheduling rights. The underlying Existing Contract remains intact.

6. In Amendment No. 27, the ISO proposed a special benefit to New Participating Transmission Owners. Under Section 9.4.3, New Participating Transmission Owners would receive Firm Transmission Rights commensurate with their Converted Rights. Again, however, the ISO did not propose to make any change to the Existing Contracts. Indeed, the ISO cannot make such a proposal. The ISO is not a party to the Existing Contracts.

7. SWP may well believe that it should be able to offer the ISO and receive compensation for “in-kind reliability support services” totally aside from issues concerning its Existing Contracts. It is free to bring such concerns to the Commission’s attention by means of a complaint under Section 206 of the Federal Power Act. Proceedings concerning the ISO’s transmission Access Charge, however, are not the appropriate vehicle for such efforts, and SWP witnesses’ testimony in this regard is not remotely relevant to the issues before the Presiding Judge.

8. Because SWP's witnesses' testimony will waste time and resources in unnecessary cross-examination and briefing, as well as distract parties from the real issues, it should be stricken.

II. Rate Treatment of "Non-transmission-owning Participating Transmission Owners upon Contract Conversion."

9. Questions and Answers 105–109 at Exhibit SWP-72 at 67:19–70:25) concern the consequences of SWP's belief that it is a "transmission customer" and not a "transmission provider." This testimony cites the ISO's "belief" that SWP, if it transferred its Existing Rights to the ISO's Operational Control, would need to establish a Transmission Revenue Requirement, Transmission Balancing Account, and TO Owner Tariff. It contends that these requirements are a disincentive to SWP's participation in the ISO, and that the ISO Tariff must include special provisions for SWP, such as (1) acknowledging that if SWP renegotiated its Existing Contracts such that it made no payments under those contracts, it would not need to establish a Transmission Revenue Requirement, Transmission Balancing Account, and TO Owner Tariff, or (2) establishing a special category for a Participating Contract Rightsholder.

10. The ISO has negotiated a stipulation with SWP under which SWP would withdraw this testimony; the stipulation, however, is opposed by other parties. If the Presiding Judge rejects the stipulation, the ISO requests that pages 67:19–70:25 of Exhibit SWP-72 (and SWP-1, if necessary) be stricken because SWP witness's arguments constitute a collateral attack on previous Commission decisions.

11. Earlier, in the context of Amendment No. 9 to the ISO Tariff, SWP argued to the Commission that, as a transmission customer, not a transmission provider, it should not be required to establish a Transmission Revenue Requirement, Transmission Balancing Account, and TO Tariff Owner. Rather than recite the entire history of those proceedings, the ISO will simply quote SWP's own words from its brief before the U.S. Court of Appeals for the District of Columbia Circuit, picking up the history with the Commission's response to SWP's request for clarification:

On August 2, 1999, the Commission granted [SWP's] requested clarification, finding that:

With regard to [SWP's] concern that because [SWP] is a transmission customer and not a transmission provider certain provisions do not apply to it, we clarify that any Participating Transmission Owner that has no transmission customers need not develop a Transmission Revenue Balancing Account, a Transmission Revenue Requirement, nor an Access Charge. We direct the ISO to modify its tariff accordingly.

88 F.E.R.C. at 61,528.

. . .

[T]he ISO and Southern California Edison filed requests for rehearing of the August 2 Rehearing Order, contending that entities like [SWP], with only contractual entitlements to transmission capacity to turn over to ISO control, would in effect have transmission customers if they joined the ISO (inferentially because the ISO would sell [SWP's] contract rights to other customers). . . .

On March 28, 2001, the Commission issue a second order on rehearing The March 28 Rehearing Order stated that if [SWP] joins the ISO by assigning its contract rights, it must, in order to comply with ISO

ratemaking, develop a transmission Access Charge with a Transmission Revenue Requirement derived from the rates [SWP] pays to Southern California Edison Company and Pacific Gas & Electric [sic] under its existing contracts. 94 F.E.R.C. at 62,269. The March 28 Rehearing Order also concluded that [SWP] must have a TRBA that would give back congestion Usage Charge revenues, wheeling revenues, and FTR auction revenues to [SWP's] putative transmission customers. *Id.*

Brief of Petitioner California Department of Water Resources, Case No. 01-1234, U.S. Court of Appeals for the District of Columbia Circuit at 7–9 (Excerpts included as Attachment 3). The Petition for Review was denied because SWP failed to seek timely rehearing of the second rehearing order. *California Dept. of Water Resources v. FERC*, Case No. 01-1234 (D.C. Cir. Sept. 26, 2002). (Included as Attachment 4.) The Commission's decision is thus final.

12. In short, the Commission has decided (and SWP has admitted) that the ISO Tariff requirement that SWP file a Transmission Revenue Requirement, based on its payments under its Existing Contracts, and a Transmission Revenue Balancing Account is just and reasonable. There is no place for testimony suggesting that anything more is required.

III. Request for Order Shortening Time

13. In order to avoid the need to submit Ms. Le Vine's testimony and subject her to cross examination on these topics, the ISO requests that the Presiding Judge issue an order shortening time for an Answer to this Motion, such that it can be heard prior to the commencement of the hearing in this proceeding on October 21, 2003.

CONCLUSION

Accordingly, the ISO respectfully requests that the Presiding Judge issue an order shortening time and strike the testimony of the California Department of Water Resources – State Water Project as described above.

Respectfully submitted,

/s/ Michael E. Ward

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Dated: October 14, 2003

Attachment 1-A

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<i>California Independent System</i>)	Docket No. ER00-2019-006
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)	ER03-608-000

Initial and Cross-Answering Testimony
Of Richard D. Jones
On behalf of the
California Department of Water Resources
State Water Project

1 **Q1. Please state your name and business address.**

2 **A1.** Richard D. Jones, State Water Contractors Association, 455 Capitol
3 Mall, Suite 220, Sacramento, CA 95814-4409.

4 **Q2. On whose behalf are you testifying?**

5 **A2.** I am testifying on behalf of the State Water Project of the California
6 Department of Water Resources.

7 **Q3. Have you provided a summary of your professional**
8 **experience?**

9 **A3.** Yes. A copy of my resume is attached hereto as Exhibit SWP-71.

10 ***I. Summary and Overview***

11 **Q4. What is the purpose of your testimony?**

12 **A4.** This testimony has two purposes.

13 First, because of the intervening death of SWP witness Harrison Call, Jr.,
14 with certain minor modifications, I adopt as my own portions of Mr. Call's
15 testimony concerning SWP operations and its implementation of

1 contractual rights and entitlements. A blacklined version of Ex. SWP-1
2 showing the testimony I am adopting is provided as Exhibit 72. The
3 modifications are as follows.

- 4 • Mr. Call's testimony made reference to an ISO data response
5 indicating that SWP's Remedial Action System supported as much as
6 a third of the south-to-north capacity rating for Path 15. Ex. SWP-1
7 at 8:7-9. Although I can understand how Mr. Call might have read
8 the ISO's response to say that, I am not in a position to quantify the
9 amount of reliability support to Path 15 that is attributable to SWP's
10 RAS. However, there is no question in my mind that SWP's RAS
11 supports the capacity rating for Path 15.
- 12 • Mr. Call's testimony discounts the ISO's allegation of benefits to SWP
13 from a SWP rate of return on its ETC based on his years of
14 experience in utility ratemaking. Ex. SWP-1 at 54:9-12. Because my
15 background is in power system operations, and not ratemaking, I
16 would rely on the data responses of Pacific Gas & Electric Company
17 (PG&E) and Southern California Edison Company (SCE) to support
18 the proposition that SWP cannot expect a benefit in the form of a
19 rate of return on contract entitlements. Ex SWP-73.

20 With these modifications, the portions of Exhibit SWP-1 and the
21 accompanying exhibits that I adopt are set forth in Exhibit SWP-72.

22 Second, I will provide cross-answering testimony to the testimony of
23 PG&E, SCE and FERC Staff concerning treatment of and inducements for
24 conversion of Existing Transmission Contracts (ETCs). Specifically, I will
25 address (1) the mechanism for and quantities of Firm Transmission Rights

1 **IV. Treatment of rights and obligations under converted**
2 **contracts.**

3 **Q26. Would you comment on PG&E's approach to contract**
4 **conversion?**

5 Q26. On one hand, PG&E purports to have transferred all of its
6 transmission rights and entitlements to ISO control (except insofar as it
7 retains favorable Original PTO encumbrances and ETC Facilitator control
8 (Ex. SWP-79)). Thus PG&E claims it is unable, in discovery, to describe the
9 derates on PG&E's system affecting SWP's contract rights (Ex. SWP-82 at
10 2(4)), referring the matter to the ISO. PG&E further asserts that its
11 performance under its Comprehensive Agreement with SWP consists of
12 listing the Comprehensive Agreement as an encumbrance (Ex. SWP-75 at
13 25(3)). Moreover, PG&E states that upon contract conversion, SWP would
14 have no rights under the Comprehensive Agreement. Ex. SWP-75 at 2. See
15 also Ex. SWP-12.

16 On the other hand, PG&E claims that it retains ongoing rights under
17 transmission contracts that have been turned over to ISO control. Mr.
18 Weingart states, "Certain ETCs have unique features that are the product
19 of negotiating circumstances at the time of entering into the contract and
20 should not be disturbed without the consent of the Participating TO." Ex.
21 PGE-1 at Q&A 66. By "consent of the Participating TO," PG&E means the
22 consent of PG&E. Ex. SWP-75 at 3. PG&E further claims proprietary rights
23 to SWP's provision of such reliability support as the Remedial Action
24 System, Voltage Support and Underfrequency Load Shedding under the
25 Comprehensive Agreement. Ex. SWP-75 at 2, 3, 26.

26 Upon SWP's contract conversion the *Independent System Operator*—not
27 PG&E—would be providing SWP transmission service. Although PG&E has

1 and can (particularly if SWP has no ongoing ETC rights) identify no service
2 it would still provide under the ETC after contract conversion, PG&E
3 expects to retain veto control over SWP's contract conversion. Ex. PGE-1 at
4 Q&A 66; Ex. SWP-75 at 3. SWP, as a party to the Comprehensive
5 Agreement, was not given similar power over PG&E's decision to join the
6 ISO.

7 If PG&E has truly turned control of its transmission over to the
8 *Independent System Operator*, and is providing no consideration to SWP
9 under the contract, I see no basis for PG&E to interpose itself in any way.

10 **Q27. What is your response to PG&E's position that upon contract**
11 **conversion, SWP would be expected to continue its in-kind**
12 **reliability support?**

13 A27. PG&E has made it clear that upon SWP contract conversion, PG&E
14 expects that SWP would remain responsible for all of the in-kind reliability
15 support it provides under the Comprehensive Agreement—but retain none
16 of the benefits of that bargain. Ex. SWP-74; see Ex. SWP-75 at 2, 11, 12;
17 Ex. SWP-79 at 27(7). Particularly in view of the proposal for one-size-fits-
18 all FTRs limited to the Transition Period, absent unbundling and some form
19 of compensation, this position is so unreasonable as to destroy the basic
20 bargain of the Comprehensive Agreement. *See generally* Ex. SWP-75.

21 As I noted above, PG&E, having turned over control of its transmission to
22 the ISO, would be providing *nothing* to SWP under that ETC, but SWP
23 would be expected to continue to provide valuable reliability support not
24 only to the capacity rating of Path 15, but also to system voltage levels
25 and to other aspects of the system (Ex. SWP-74; Ex. SWP-81)—without
26 any compensation from any source (Ex. SWP-8B at 59-60; Ex. SWP-75).

1 **Q28. Is PG&E's approach with regard to SWP's reliability support**
2 **upon contract conversion comparable to treatment of PG&E**
3 **generation and load?**

4 A28. No. PG&E, for instance, receives very large sums in Reliability Must
5 Run payments for reliability support such as Voltage Support it now
6 provides on an unbundled basis. PG&E reserves the right to terminate such
7 service for reasons of insufficient payment. Ex. SWP-84.

8 Moreover, PG&E load is paid for reliability support akin to the support SWP
9 provides. I am not a rate expert, but I can provide examples where this
10 has been done.

11 **Q29. How is PG&E load using TO/ISO Tariff service compensated**
12 **for Voltage Support?**

13 A29. According to PG&E discovery in Docket No. ER00-2360, "PG&E's
14 larger Retail End Users pay bills that are adjusted based on the customer's
15 average power factor each month. . . . The adjustments provide an
16 economic incentive for retail End Users to use less reactive power, by
17 providing bill credits if the customer's average power factor is at least 85
18 percent." Ex. SWP-85 at 1. *See also* Ex. SWP-85 at 13.

19 Specifically, PG&E stated that

20 [t]hose customers with at least 400 kilowatts of maximum
21 demand served on PG&E's retail rate Schedules A-10, E-19,
22 and E-20 pay rates that are adjusted to reflect the
23 customer's average monthly power factor. These
24 adjustments are revenue-neutral relative to an assumed
25 average power factor of 85 percent. If the customer's
26 average power factor is higher than 85 percent, the bill is
27 credited by a factor of 0.06 percent for each percentage
28 point above 85 percent. For example, a customer with a
29 100 percent power factor for the entire month would
30 receive a bill credit of 0.9 percent. If the customer's

1 average power factor is lower than 85 percent, the bill is
2 increased by a factor of 0.6 percent for each percentage
3 point below 85 percent. For example, a customer with an
4 average power factor of 60 percent would pay a bill that is
5 adjusted (increased) by a factor of 1.5 percent.

6 Ex. SWP-85 at 2.

7 **Q30. How is PG&E load using TO/ISO Tariff service compensated**
8 **for underfrequency load shedding?**

9 A30. PG&E has explained that

10 PG&E provides service to approximately 150
11 Schedule E-20 customers under the 'interruptible'
12 option of its Non-Firm Service Program. These
13 customers' loads are served on under-frequency
14 relays that interrupt their service at a frequency
15 of 59.65 Hertz. . . . This retail customer service
16 option provides a block of approximately 400 MW
17 of total load that is interrupted first, prior to
18 reaching the level of frequency decay at which
19 the DWR pump loads are tripped.

20 Ex. SWP-85 at 3.

21 PG&E's tariff Schedule E-20, Revised *Cal. P.U.C. Sheet No. 16430-E*
22 provides in Section 11.j. that non-firm customers subject to under-
23 frequency load shedding receive bill reductions in the form of
24 reduced peak period demand charges and reduced energy charges.

25 Ex. SWP-85 at 19.

26 **Q31. Has the ISO found ways to pay for demand response**
27 **through load interruption?**

28 A31. The ISO also has certain programs that compensate load for
29 curtailments. According to the ISO, it prefers ISO "command
30 responsiveness" to customer demand response. Ex. SWP-86 at 15.

1 In a February 2001 memo the ISO explained its pricing for its
2 summer reliability load interruption as follows:

- 3 • A reservation price of \$20,000 per MW-month.
- 4 • A curtailment performance payment at \$500 per MWhr.
- 5 • Pricing Comments – The reservation price and the
6 performance payment are similar to the CPUC Tier
7 2/Pay-for-Performance payments for interruptibles
8 proposed by the CPUC in last week’s technical report.
9 The reservation payment is approximately half the price
10 paid for the Summer 2000 program. It was lowered to
11 be more consistent with the effective discount for the
12 interruptible program. The performance price is higher
13 than the 2000 program to provide better incentives for
14 performance.

15 Ex. SWP-86 at 3.

16 **Q32. Has the ISO made any proposal to ensure that SWP, upon**
17 **contract conversion, receives comparable treatment to that**
18 **afforded PG&E generation and load described above?**

19 A32. No. The ISO apparently supports PG&E’s position. Ex. SWP-3 at 1-3;
20 Ex. SWP-8B at 59-60; Ex. SWP-75 at 15, 16, 17, 18.

21 **Q33. What do you recommend with respect to treatment of SWP**
22 **in-kind reliability support upon contract conversion?**

23 A33. As set forth in SWP’s initial testimony (Ex. SWP-1 at Q&A 102-04),
24 particularly if FTRs are to be granted on a one-size-fits-all basis, in-kind
25 SWP reliability support services should be unbundled and compensated so
26 that SWP receives comparable treatment as, for instance, PG&E has been
27 given for its Reliability Must Run units and as PG&E has provided to third
28 parties such as retail customers. Ex. SWP-85; Ex. SWP-86.

1 Additionally, ISO Tariff barriers to SWP's provision of reliability support
2 should be removed. Ex. SWP-1 Q&A 104.

3 ***V. Conclusion***

4 **Q34. Do you have any additional comments?**

5 A34. As stated in SWP's initial testimony, SWP has identified no
6 discernible benefits—aside from potential payment of Reliability Services
7 costs based on cost causation as opposed to ISO socialization—associated
8 with converting its contracts to ISO control.

9 Obviously, the fact that SWP would be expected to surrender its
10 contractual entitlements and benefits in exchange for lesser ISO service
11 and unknown, less than fully compensatory FTRs, yet maintain all of its
12 burdens of its ETCs on an uncompensated basis, acts as a barrier to SWP
13 participation in the ISO.

14 The positions of PG&E, SCE, the ISO and in certain respects FERC Staff
15 with respect to SWP's contract conversion belie claims about ETC problems
16 with phantom congestion, alleged system benefits of greater ISO
17 participation and the consequent need to induce contract conversion.

18 **Q35. Does this conclude your testimony?**

19 A35. Yes, it does.

Attachment 1-B

1 reasonable to think that ETC Rightsholders should be fully hedged against the
2 risk and costs of ISO congestion management.

3 I recommend that the ISO revise its crediting mechanism for ETC
4 Rightsholders so that they not only do not profit, but also remain fully
5 protected from congestion charges. In other words, the ETC Rightsholders
6 should be kept neutral—without experiencing a profit, *or a loss from insufficient*
7 *FTR Usage Charge revenues*. This could be done through a monthly true-up,
8 through negative credits, or potentially through other means. The ISO has, for
9 instance, various “true-up” or balancing mechanisms in other billing categories
10 that might serve as a model.

11 *iii. Unbundling in-kind reliability support products upon*
12 *contract conversion*

13 **Q102. You earlier mentioned the in-kind reliability support SWP provides**
14 **under ETCs. How would that be treated upon contract conversion?**

15 A102. While SWP would receive uncertain and inferior service upon contract
16 conversion, losing the benefits of its ETC bargain, SWP is at risk to retain all of
17 the burdens of its ETC bargain. Ex. SWP-12; Ex. SWP-8B at 59-60. These
18 burdens include the Remedial Action System supporting Path 15,
19 underfrequency load shedding from SWP pumps, Voltage Support from SWP
20 pumps and generation, and other in-kind support from SWP resources. See Ex.
21 SWP-2. The fact that SWP would surrender its contractual entitlements and
22 benefits in exchange for lesser ISO service and unknown FTRs, yet maintain all
23 of its burdens of its ETCs, acts as a barrier to SWP participation in the ISO.

24 **Q103. Do you have any recommendation in this regard?**

25 A103. It is a concern that SWP would, if it became a PTO under the ISO’s
26 proposal, apparently receive FTRs that may not even cover congestion costs

1 and yet remain under the obligation to provide extensive in-kind support to the
2 grid. In line with the RTO West model, I recommend that the ISO identify,
3 unbundle, and accommodate these resources in its Tariff. In so doing, the ISO
4 should recognize the dedicated-purpose nature of hydro and demand-based
5 resources such as SWP's, but should strive to use those resources to maximize
6 productive efficiency in transmission usage. Ex. SWP-61, SWP-62.

7 As I noted earlier, the principles of economic efficiency and ratemaking set
8 forth in *Union Electric* have in fact occurred in practice, as, for instance, SWP's
9 investment in reservoirs and pump units sized to shift its pumping load to off-
10 peak periods. Its unusually large dispatchable pump load makes SWP one of
11 the longest established and largest demand response providers in the nation—
12 under its ETCs.

13 Yet the ISO Tariff has no provisions that would acknowledge or compensate
14 such a resource as the SWP-PG&E Remedial Action System that supports
15 about a third of Path 15's capacity rating. Ex. SWP-3 at 1-6. Similarly, I am
16 aware of no ISO Tariff provisions that expressly accommodate other SWP
17 resources or products such as 1) under-frequency load shedding settings for
18 pump loads that are more sensitive than those of other firm loads;
19 2) complementary ramping of SWP pumps in morning and evening shoulder
20 periods to smooth out system changes; 3) SWP Voltage Support from load as
21 well as generation. See Ex. SWP-2.

22 **Q104. Does the ISO's notion of "command responsiveness" comport**
23 **with your recommendation to permit SWP resources to be unbundled**
24 **and available outside of the ETCs?**

25 A104. No. As mentioned before, instead of demand response, the ISO has a
26 program in which the ISO contracts with customers, setting out payments and

1 criteria for load drop. Ex. SWP-8B at 55:3-6. . In the first place, as I have
2 shown, SWP's demand-based resources go significantly beyond simply
3 dropping load at the ISO's command. *Compare* Ex. SWP-2 *with* Ex. SWP-8B at
4 54-56.

5 Second, SWP resources have a primary purpose of water management. SWP
6 must dispatch water deliveries in accordance with water contractor schedules,
7 perform flood control activities, and meet environmental and recreational
8 requirements. Unlike gas-fired merchant generation, these resources cannot be
9 dispatched for the primary purpose of assisting the ISO in managing the grid.
10 Ex. SWP-8B at 79:4-10.

11 This reality of SWP's primary water management purpose was recognized in its
12 ETCs. Thus I see no reason why the California ISO could not do the same in
13 cataloguing, unbundling and appropriately compensating dedicated purpose
14 hydro and demand-based resources that enhance the productive efficiency of
15 the grid.

16 In summary, the only current means for these proven efficient resources to
17 reach the grid is through ETCs. The lack of any clear ISO treatment for these
18 resources does act as a barrier to SWP contract conversion.

19 *iv. Rate treatment for non-transmission-owning PTOs*
20 *upon contract conversion*

21 **Q105. How would SWP, as a non-transmission owning PTO, pay for**
22 **transmission service as a PTO?**

23 A105. According to the ISO, upon SWP becoming a PTO and contract
24 conversion, SWP would need to continue making transmission payments to
25 PG&E and SCE as well as to the ISO for the same transmission service. *See*

Attachment 2-A

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Attachment 2-B

1 criteria for load drop. Ex. SWP-8B at 55:3-6.. In the first place, as I have
2 shown, SWP's demand-based resources go significantly beyond simply
3 dropping load at the ISO's command. *Compare* Ex. SWP-2 *with* Ex. SWP-8B at
4 54-56.

5 Second, SWP resources have a primary purpose of water management. SWP
6 must dispatch water deliveries in accordance with water contractor schedules,
7 perform flood control activities, and meet environmental and recreational
8 requirements. Unlike gas-fired merchant generation, these resources cannot be
9 dispatched for the primary purpose of assisting the ISO in managing the grid.
10 Ex. SWP-8B at 79:4-10.

11 This reality of SWP's primary water management purpose was recognized in its
12 ETCs. Thus I see no reason why the California ISO could not do the same in
13 cataloging, unbundling and appropriately compensating dedicated purpose
14 hydro and demand-based resources that enhance the productive efficiency of
15 the grid.

16 In summary, the only current means for these proven efficient resources to
17 reach the grid is through ETCs. The lack of any clear ISO treatment for these
18 resources does act as a barrier to SWP contract conversion.

19 *iv. Rate treatment for non-transmission-owning PTOs*
20 *upon contract conversion*

21 **Q105. How would SWP, as a non-transmission owning PTO, pay for**
22 **transmission service as a PTO?**

23 A105. According to the ISO, upon SWP becoming a PTO and contract
24 conversion, SWP would need to continue making transmission payments to
25 PG&E and SCE as well as to the ISO for the same transmission service. *See*

1 Ex. SWP-13 at 1, 3. SWP would then need to incur the risk and expense of a
2 FERC ratemaking in order to recoup one set of the duplicate transmission
3 payments.

4 SWP would be required to file a rate case at FERC in order develop a
5 Transmission Revenue Requirement consisting of the rates SWP pays to
6 PG&E and SCE. That SWP “Transmission Revenue Requirement”—actually
7 SWP’s share of the Transmission Revenue Requirements of PG&E and SCE—
8 would then become part of the ISO Access Charge spread to ISO grid users.
9 As the ISO has indicated, accompanying this exercise is the risk that SWP
10 would not even be made whole in the FERC ratemaking process, because of
11 potential “mismatches” in collections and in authorized rates as opposed to the
12 TRR. *Id.*

13 **Q106. Is this double-payment with a FERC ratemaking requirement still**
14 **a disincentive to SWP?**

15 A106. SWP appreciates the ISO’s recognition, in pleadings concerning
16 Amendment 49, that this exercise might be avoided if SWP negotiates with
17 SCE and PG&E to remove the requirement for duplicative contract payments.
18 However, SWP has received no indication that either of these utilities would
19 agree to such removal.

20 If negotiations were successful, the problem remains that the literal ISO Tariff
21 language would require meaningless rate and tariff filings. Moreover, if contract
22 renegotiation were not successful in removing the double payment obligation,
23 exposure to the waste and risk of engaging in the double payment/FERC
24 ratemaking process the ISO envisions also creates a barrier to SWP’s joining
25 the ISO.

1 **Q107.Do you have any recommendation in this regard?**

2 A107. Yes. In Amendment 49, the ISO dealt with the issue through its
3 proposal to increase ISO negotiating flexibility with “Weird” new PTOs. In its
4 protest of Amendment 49, SWP proposed the following Tariff language to
5 address this problem:

6 3.1.4 The ISO shall exempt a non-electric utility, which owns and
7 operates no transmission facilities, seeking to become a new PTO
8 solely through conversion of contractual Entitlements that meet
9 the criteria in Section 3.1 above, from the requirements to
10 develop a Transmission Revenue Requirement, a Transmission
11 Revenue Balancing Account, a tracking account, or a
12 Transmission Owner Tariff. In such circumstances, the non-
13 electric utility will, having so amended its Existing Transmission
14 Contract(s), pay only one Transmission Access Charge directly to
15 the ISO, provide Net FTR Revenue credits directly to the ISO,
16 but will not receive Wheeling revenues.

17 Notably, this language would make it clear that SWP (and other similarly
18 situated entities), which owns and operates no transmission facilities of its own,
19 would not be required to file rates and tariffs associated with contract rights on
20 other entities’ facilities that are already under ISO Control. This language also
21 depends on a predicate that the ETCs would be amended to permit payment of
22 only one transmission rate.

23 **Q108.How did the ISO respond to this suggestion?**

24 A108. It appears that the ISO did not read the Tariff language closely enough
25 to grasp the precondition that the contracts would be amended to allow
26 payment of only one transmission rate. In its April 16, 2003, Answer to
27 Protests in Docket No. ER03-608, the ISO acknowledged that SWP could
28 avoid the empty exercise of paying two transmission rates and filing at FERC

1 to recoup the double charge, but refused to revise the ISO Tariff to so state
2 because SWP would need to renegotiate its ETCs.

3 According to the ISO, “If SWP were able to negotiate a release from the
4 payment obligations of its Existing Contracts, no further amendments to the
5 ISO Tariff would be necessary in order to accommodate SWP as a New
6 Participating TO. SWP would simply have no HVTRR to file and no HVTRR
7 to recover from rates.” *California Independent System Operator Corp.*, Docket No.
8 ER03-608, Answer of ISO to Protests at 16-17 (filed April 16, 2003).

9 By refusing to cure the problem in the Tariff, even assuming that SWP would
10 have renegotiated its ETCs to avoid paying twice, the ISO maintains another
11 barrier to SWP becoming a PTO. For this reason, I believe that the Tariff
12 modification SWP has proposed should be adopted.

13 **Q109. Do you have any further recommendations to remove barriers to**
14 **SWP participation?**

15 A109. Many if not most requirements applicable to Participating Transmission
16 *Owners* simply do not make sense when imposed upon SWP, which is a
17 transmission *customer*—not a transmission *provider*. A more fitting alternative
18 would be to establish a classification of Participating Contract Rightsholder.
19 The provisions regarding conversion of existing contracts evidently have been
20 designed to suit the needs of entities whose physical transmission facilities the
21 ISO seeks to control. Unfortunately, they make no sense for existing contract
22 holders that do not provide electric transmission service, such as SWP. As
23 currently written, these inapposite provisions constitute a significant barrier to
24 SWP’s joining the ISO.

25 **Q110. Does this conclude your testimony?**

Attachment 3

need to receive regulated transmission revenues. It did not, however, address how DWR, a transmission customer, would be kept whole upon contract conversion if it were required to pay out Usage Charges, but would not be able to retain the proceeds from FTRs or Usage Charges.

On May 3, 1999, the Commission accepted the ISO's proposal subject to certain conditions and modifications. The May 3 Order declined at that time to address issues concerning the treatment of rights held under existing contracts or "the manner in which revenues . . . and proceeds . . . are allocated to customers through Access Charges." 87 F.E.R.C. at 61,581.

DWR filed its Request for Rehearing on June 2, 1999. Cert. Index 80. On August 2, 1999, the Commission granted DWR's requested clarification, finding that:

With regard to DWR's concern that because DWR is a transmission customer and not a transmission provider certain provisions do not apply to it, we clarify that any Participating Transmission Owner that has no transmission customers need not develop a Transmission Revenue Balancing Account, a Transmission Revenue Requirement, nor an Access Charge. We direct the ISO to modify its tariff accordingly.

88 F.E.R.C. at 61,528.

The ISO filed its revised tariff sheets in response to the August 2 Rehearing Order on August 12 and August 17, 1999. Cert. Index 87, 88. The tariff sheets

failed to comply with the Commission's mandate to amend the tariff to reflect that rightsholders such as DWR "need not develop" a TRBA [Transmission Revenue Balancing Account], TRR [Transmission Revenue Requirement] or Access Charge, to modify the ISO Tariff's Charge.

On September 1, 1999, the ISO and Southern California Edison filed requests for rehearing, of the August 2 Rehearing Order, contending that entities like DWR, with only contractual entitlements to transmission capacity to turn over to ISO control, would in effect have transmission customers if they joined the ISO (inferentially because the ISO would sell DWR's contract rights to other customers). Cert. Index 92, 94. Therefore, the ISO and Southern California Edison argued, the Commission must require DWR to have in place both a Transmission Revenue Requirement and a mechanism such as a Transmission Revenue Balancing Account for crediting FTR/Usage Charge revenues. Cert. Index 92 at 8-9.

On March 28, 2001, the Commission issued a second order on rehearing, reversing the aspect of the August 2 Rehearing Order at issue here. The March 28 Rehearing Order stated that if DWR joins the ISO by assigning its contract rights, it must, in order to comply with ISO ratemaking, develop a transmission Access Charge with a Transmission Revenue Requirement derived from the rates DWR pays to Southern California Edison and Pacific Gas & Electric under its existing

transmission contracts. 94 F.E.R.C. at 62,269. The March 28 Rehearing Order also concluded that DWR must have a TRBA that would give back congestion Usage Charge revenues, wheeling revenues, and FTR auction revenues to DWR's putative transmission customers. *Id.* The March 28 Rehearing Order did not discuss how this process would keep DWR economically whole upon contract conversion.

This appeal followed.

STATEMENT OF FACTS

Petitioner Department of Water Resources is an agency of the government of the State of California, with headquarters in Sacramento. Cert. Index 81, June 8 Intervention at 2. DWR is responsible for monitoring, conserving, and developing California's water resources. Cert. Index 81, June 8 Intervention at 2; 94 F.E.R.C. at 62,267, n.3. DWR does not own and operate any transmission facilities and is not an electric transmission provider.

DWR's State Water Project is the largest single power and transmission customer in California.³ To meet DWR's power demand to operate the State Water Project's massive pumps, DWR entered into long-term transmission contracts with FERC-jurisdictional utilities Pacific Gas & Electric and Southern California Edison

³ DWR's electric generation facilities are not subject to the FERC's rate jurisdiction under Part II of the Federal Power Act pursuant to section 201(b)(1), 16 U.S.C. § 824(b)(1). The construction, operation and maintenance of Petitioner's hydroelectric generating facilities were authorized by two licenses issued by the FERC under Part I of the Federal Power Act, 16 U.S.C. §§792-823b.

Attachment 4

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 01-1234

September Term, 2002

ARGUED: 09/12/02

Filed On: September 26, 2002

[704420]

California Department of Water Resources,
Petitioner

v.

Federal Energy Regulatory Commission,
Respondent

California Independent System Operator Corporation,
et al.,

Intervenors

BEFORE: Sentelle and Randolph, *Circuit Judges*, and Silberman, *Senior
Circuit Judge*

ORDER

Upon consideration of the motion to correct the record as to timeliness of intervenors for petitioner's filing of motion for leave to intervene, it is

ORDERED that the motion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:

Cheri Carter
Deputy Clerk

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 14th day of October, 2003

/s/Jeffrey W. Mayes

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