

UNITED STATES OF AMERICA 94 FERC ¶ 61,266  
FEDERAL ENERGY REGULATORY COMMISSION

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

California Independent System Operator Corporation      Docket No. ER01-836-000

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS

(Issued March 14, 2001)

In this order, we conditionally accept Tariff revisions and other proposals filed by the California Independent System Operator Corporation (ISO), to become effective as discussed herein.

Background

On December 29, 2000, and modified on January 13, 2001, the ISO filed Amendment No. 35, containing numerous amendments to the ISO Tariff and related protocols. Briefly, these revisions include: (1) changes to the ISO's Tariff to increase participation by small distributed generators in the ISO's markets; (2) modifications to enhance the ISO's pre-dispatch provisions; (3) the incorporation of requirements for generators set forth in the Western Systems Coordinating Council (WSCC) Reliability Criteria Agreement; (4) the addition of a mechanism to recover FERC annual charges from entities receiving transmission service on the ISO controlled grid; (5) extension of the partial waiver of the "No Pay" penalties for Participating Loads; (6) a change to the deadline for submission of meter data to the ISO; and, (7) several miscellaneous ISO Tariff revisions necessary to comply with prior Commission orders and to correct typographical errors.

The ISO requests: (1) waiver of the prior notice requirements and an effective date of January 1, 2001, for the Tariff revisions associated with (a) small distributed generators, (b) FERC annual charges, and (c) generator requirements under the WSCC Reliability Criteria Agreement; (2) waiver of the prior notice requirements and an effective date of October 15, 2000, for the Tariff revision associated with the "No Pay" penalties; (3) an effective date of the later of February 27, 2001, or seven days after the ISO posts notice on its home page that the software is ready for use for the pre-dispatch provisions; and (4) an effective date of February 27, 2001 for all other revisions.

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### Notice and Interventions

Notice of the ISO's filing was published in the Federal Register, 66 Fed. Reg. 2900 (2001), with motions to intervene and protests due on or before January 19, 2001. A notice of intervention, limited protest, and motion for summary rejection 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 California Department of Water Resources (DWR); California Electricity Oversight Board (Oversight Board); California Power Exchange Corporation (PX); Cities of Redding, Santa Clara and Palo Alto, California and the M-S-R Public Power Agency (Cities/M-S-R); Metropolitan Water District of Southern California (Metropolitan); Modesto Irrigation District (Modesto); Northern California Power Agency (NCPA); Williams Energy Marketing & Trading Company (Williams EM&T); Pacific Gas and Electric Company (PG&E); Sacramento Municipal Utility District (SMUD); San Diego Gas & Electric Company (SDG&E); Southern California Edison Company (SoCal Edison); Southern Energy California, L.L.C., Southern Energy Delta, L.L.C., and Southern Energy Potrero, L.L.C., jointly (Southern); Transmission Agency of Northern California (TANC); Turlock Irrigation District (Turlock); City and County of San Francisco; Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California (Southern Cities); The Cogeneration Association of California and the Energy Producers and Users Coalition (CAC/EPUC); Grid Services, Inc. (Grid Services); and, City of Vernon, California (Vernon).

On February 5, 2001, the ISO filed an answer. Grid Services and Vernon filed responses to the ISO's answer.

### Discussion

#### A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>1</sup> the notice of intervention and the timely, unopposed motions to intervene serve to make the above-listed intervenors parties to this proceeding. 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. We are not persuaded to allow the answers of Vernon and Grid Services, and, accordingly, we will reject them.

#### B. Distributed Generation

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<sup>1</sup>18 C.F.R. § 385.214 (2000).

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In response to discussions with stakeholders and in the context of a proceeding before the California Commission, the ISO has identified a number of modifications to its Tariff that should reduce barriers to small distributed generators entering the ISO's markets. Specifically, the ISO proposes the following:

- clarification that a distribution-level Generating Unit under 1 MW that does not participate in the ISO's Ancillary Services and/or Imbalance Energy markets is not a "Participating Generator" and is not required to be an ISO Metered Entity;
- reduction of the minimum rated capacity threshold for Generating Units to participate in the ISO's Ancillary Services markets from 10 MW to 1 MW, and provision of flexibility to undertake programs for aggregation of Generating Units under 1 MW to participate in such markets;
- clarification that a distribution-level Generating Unit of under 10 MW that does not participate in the ISO's Ancillary Services and/or Imbalance Energy markets is not required to install ISO telemetry; and,
- addition of provisions that will allow net metering arrangements for distribution-level Generating Units under 1 MW.

The ISO notes that most stakeholders support the revisions, though the ISO concedes that many stakeholders argue that the changes do not go far enough, particularly in addressing requirements for all on-site load, irrespective of the size of the generator.<sup>2</sup>

Some intervenors argue that the ISO's proposed Tariff revisions will actually prohibit small generators from participating in the ISO's markets.<sup>3</sup> Intervenors contend that the ISO's modifications go well beyond the changes that are necessary to implement the ISO's goals and that the changes in fact impose substantial obligations on small generating units (1-10 MW). Cities/M-S-R argues that the ISO has deleted important language from the Tariff that exempts small generating units from most of the provisions of Section 5 of the ISO Tariff. Metropolitan asserts that small generators that were exempt from ISO telemetering and metering requirements will now have to comply with these requirements. CAC/EPUC argue that the ISO has provided no technical justification for distinguishing between generation connected at the transmission level and at the distribution level. Moreover, CAC/EPUC contends that there is no technical

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<sup>2</sup>ISO application at 3.

<sup>3</sup>Metropolitan at 7, Cities/M-S-R at 8-10, and CAC/EPUC at 11-13.

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basis for the ISO's 1 MW and 10 MW cut-offs. CAC/EPUC recommends that the Commission set the ISO's gross metering and telemetry requirements for hearing.

Grid Services argues that the Commission's jurisdiction in retail markets is limited by the Federal Energy Act [sic] of 1992 and that California's Assembly Bill 1890 controls the extent of the ISO's jurisdiction in the distribution grid. In addition, Grid Services asserts that the ISO's effective date of January 1, 2001, will immediately place distributed generation in noncompliance with the ISO's metering requirements. Grid Services argues that the metering requirements will take time to implement and requests an effective date of January 1, 2002, or six months after the Commission's approval of the applicable Tariff revisions, whichever is later.

SoCal Edison supports the Tariff modifications with respect to distributed generation; however, SoCal Edison argues that the ISO should do more to encourage QF participation in the ISO's markets. SoCal Edison asserts that the ISO should remove the prohibitions in the ISO Tariff against "net metering" for QF's with more than 1 MW of capacity.<sup>4</sup>

The ISO contends that Intervenors are mistaken that the Tariff modifications will add metering and telemetry requirements to a larger number of generating units. The ISO argues that the Tariff changes do not make any generating unit that was not previously subject to ISO metering and telemetry requirements subject to additional or different requirements. In addition, the ISO notes that the net metering concerns raised by CAC/EPUC and SoCal Edison are presently being litigated in Docket Nos. ER98-997 and ER98-1309 and that it is inappropriate to allow CAC/EPUC another forum to litigate its concerns over the existing Tariff requirements.

The ISO argues that the telemetry requirements also maintain the status quo except to the extent that a small generator elects to participate in the ISO's markets. In order for the ISO to maintain the real-time reliability of the grid, the ISO must ensure that generating units are available to meet the commitments that they voluntarily have undertaken to supply the ISO with Ancillary Services or Supplemental Energy. The ISO notes that the filing contains an error in three places where it incorrectly uses the term "Imbalance Energy" instead of "Supplemental Energy."<sup>5</sup> The ISO proposes to correct this error when it makes a compliance filing. The ISO contends that the instant filing

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<sup>4</sup>Under net metering, QF's offset their on-site load against their on-site generation so that the QF generators do not have to separately schedule their load and generation.

<sup>5</sup>The error appears in the definition of "Participating Generator," in Section 5.1.3(d) and Section 5.1.4.1. ISO answer at 10.

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adds two additional exemptions for distributed generating units under 1 MW that do not participate in the ISO's markets or submit Supplemental Energy bids. These units are allowed to have net metering and they are not subject to the ISO's Tariff Requirements related to System Emergencies. The ISO argues that these exemptions are not appropriate for generating units greater than 1 MW.

In addition, the ISO notes that there is no distribution-only wheeling service under the Tariff and that a sale from a distributed generator to a wholesale purchaser involves transmission service subject to the Commission's jurisdiction and is a wholesale sale within the Commission's exclusive jurisdiction. Lastly, the ISO disagrees with Grid Services over a later effective date for the Tariff changes associated with distributed generation. According to the ISO, the instant filing reduces metering requirements for certain generating units and adds no new requirements except to require coordination of generator outages which should be minimal and does not justify the significant additional time requested by Grid Services.

#### Commission Conclusion

We accept the ISO's Tariff modifications to permit additional small distributed generation to participate in the ISO's markets. The California Commission notes that the ISO's proposal enables the participation of generators smaller than 10 MW in the ISO's markets, but in return, imposes certain requirements on such generators. The California Commission concludes that the ISO's proposals appear to be a step in the right direction and that overall these changes appear to strike a reasonable balance. We agree. However, we direct the ISO to make a compliance filing to correct the error noted in its answer.

The ISO states that it is was able to reduce the threshold from 10 MW to 1 MW due to the instillation of its Automatic Dispatch System (ADS) which allows the ISO to communicate with a large number of smaller generating units.<sup>6</sup> In order for a generator to participate in the ISO's markets, a generator needed to provide telemetry and direct control equipment such that the ISO could direct the operation of the generator as necessary to maintain the reliability of the grid. This requirement ensures that generating units are available to meet the commitments that they have voluntarily undertaken to participate in the ISO's markets. These obligations are consistent with how the ISO treats larger generators. Therefore, it is reasonable to extend this requirement to 1 MW to 10 MW generators.

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<sup>6</sup>ISO answer at 6.

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Moreover, the Tariff language clearly states that generating units with a rated capacity of less than 10 MW that are not certified by the ISO to participate in the ISO's markets are not required to incur the expense of telemetry equipment.<sup>7</sup> Thus, we disagree with Intervener concerns that the ISO's Tariff modifications will add new requirements to small generators that were previously exempt from these requirements.

We decline to set the ISO's "net metering" requirements for hearing in this proceeding. This issue is presently being litigated in Docket Nos. ER98-997-000 and ER98-1309-000. In addition, both SoCal Edison and CAC/EPUC are parties to that proceeding.

Grid Service's arguments that the Commission does not have jurisdiction to address the distribution grid are without merit. Sales for resale by a distributed generator and the transmission of electric energy in interstate commerce (including unbundled retail transmission) are subject to the Commission's jurisdiction under Section 201 of the Federal Power Act even if the power enters the grid at distribution voltage. The Energy Policy Act of 1992 does not define the extent of the Commission's jurisdiction for purposes of this issue. We also disagree with Grid Services' request to delay the effective date of the Tariff changes for distributed generation. Implementing a January 1, 2001, effective date will not place distributed generation in non-compliance with the ISO's metering requirements because those units are exempt from the metering requirements until the units are certified by the ISO to participate in the ISO's markets. Delaying the effective date will only delay the addition of new distributed generation in the ISO's markets.

### C. Pre-Dispatch Provisions

In Amendment No. 26 to the ISO's Tariff, the Commission accepted several changes that modified the scheduling protocols (pre-dispatch) and payment options for Reliability Must-Run (RMR) generation.<sup>8</sup> Currently, RMR owners with bilateral agreements must choose between the "market path" or "contract path" for payment options for their reliability energy for a given hour.<sup>9</sup> RMR owners are also bound by their first market or contract election for all RMR energy instructed after the close of the PX's Day-Ahead market. In response to requests from RMR owners that some of the

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<sup>7</sup>ISO Tariff, Section 5.1.3(d).

<sup>8</sup>See California Independent System Operator Corporation, 90 FERC ¶ 61,345 (2000), reh'g pending (Amendment No. 26 Order).

<sup>9</sup>The ISO Tariff requires the RMR owner's Scheduling Coordinator to make the election on the RMR owner's behalf. The ISO proposes to modify the Tariff to allow the RMR owner to make this election directly to the ISO.

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changes implemented in Amendment No. 26 limited the RMR owners' ability to mitigate risk, the ISO proposes several changes to the pre-dispatch provisions of the ISO Tariff. The ISO proposes to permit mixed elections which would allow RMR owners to elect within the same hour market payment for part of the instructed reliability energy and contract payment for the rest of the instructed reliability energy. The ISO also proposes to allow an RMR owner to deliver reliability energy in the ISO's real-time market for the instructed hour if the ISO requests the reliability energy less than two hours before the close of the PX Day-Of market for the instructed hour.

The ISO proposes to add a new penalty to require RMR owners to generate unscheduled reliability energy when requested by the ISO. Amendment No. 26 required RMR owners to schedule their energy in the PX's Day-Ahead or Day-Of markets. If an RMR owner failed to schedule its reliability energy in the forward markets, it was still required to deliver the reliability energy; however, the RMR owner forfeited any payment for that energy. An RMR Owner that fails to deliver unscheduled reliability energy suffered a non-performance penalty and the loss of the RMR Availability Payment. Under current practice, if fuel costs are higher than the non-performance penalty and loss of the Availability Payment, the RMR owner is actually better off not generating the requested reliability energy. The ISO proposes to create an additional penalty equal to the difference between the fuel cost saved and the loss Availability Payment and the non-performance penalty.

The ISO notes that in accepting Amendment No. 26 on an interim basis, the Commission directed the ISO to "file for continuation of its RMR procedures or new procedures on the earlier of the date it files its new congestion management plan (which it has committed to file by October 31, 2000) or January 15, 2001, the date that its compliance filing is due under Order No. 2000."<sup>10</sup> The ISO requests that it be permitted to address the long-term continuation of its RMR procedures when it makes its congestion management filing on January 31, 2001, as directed by the Commission in San Diego Gas & Electric Company, et al., 93 FERC ¶ 61,294 (2000).

SoCal Edison and the California Commission argue that the Commission should reject the ISO's proposal to allow mixed payment elections for instructed reliability energy and the option to deliver instructed energy into the ISO's real-time market. Intervenor argue that the ISO's modifications increase the chance that the RMR owner will receive the higher of the market or contract price. Intervenor assert that such an approach removes all risk from an RMR owner's payment election and would put RMR owners in a significantly better position than non-RMR market participants. However, SoCal Edison supports both the ISO's Tariff modifications permitting RMR owners

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<sup>10</sup>ISO application at 6, referencing the Amendment No. 26 Order, 90 FERC at 62,139.

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instead of their Scheduling Coordinators to make the daily market/contract election and the increased penalty for RMR owners failing to perform. The California Commission supports increasing the penalty for non-performance of an RMR owner, but the California Commission argues that the ISO's proposed penalty is not great enough. The California Commission proposes a penalty equal to the amount of MWh which the RMR owner fails to deliver multiplied by the highest ISO market clearing price in the prior 12 months (including the day of non-performance).

NCPA argues that the new penalty fundamentally alters the terms of the RMR Agreements between RMR owners and the ISO, was not part of the stakeholder process, and is being unilaterally imposed by the ISO. NCPA contends that the RMR Agreements already have a penalty for failure to deliver energy (the non-performance penalty) and that by withholding the Availability Payment under the RMR Agreement, the ISO is altering the terms of the RMR Agreement and the expectations of the RMR owners. In addition, NCPA asserts that the penalty associated with the saved fuel is excessive when added to the other penalties. NCPA recommends that the total penalty should subtract the loss of the Availability Payment and the non-performance penalty from the cost of the saved fuel.

In response, the ISO argues that the penalty was discussed during the stakeholder process and was requested by stakeholders to eliminate the perverse incentive for an RMR owner not to generate when the previous non-performance penalty was less than the cost of fuel. In addition, the ISO contends that the Commission, in accepting Amendment No. 26 to the ISO Tariff, eliminated the payment for RMR energy apart from the terms of the RMR Agreements.

The ISO believes that allowing RMR owners to make mixed elections more appropriately reflects the compensation scheme contemplated by the RMR Agreements. According to the ISO, before the implementation of pre-dispatch, RMR owners would have decided to enter the market prior to receiving a dispatch notice. RMR owners that bid their units at variable cost and were paid the RMR contract rate when their bids were not successful could always ensure that they would never be required to operate for less than their variable cost. The ISO notes that in modifying Amendment No. 26 to permit separate elections of contract or market payment for each hour, the Commission closely tracked the original intent of the RMR Agreements. However, the ISO argues that by allowing an RMR owner within the same hour to mix market payment for instructed reliability energy and contract payment for the rest of the instructed reliability energy, the ISO has further refined the market choices that would occur absent RMR.

#### Commission Conclusion

The ISO's proposal to permit mixed elections within the same hour needlessly adds complexity to the RMR settlement process; therefore, we reject this aspect of the

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ISO's proposal. The ISO has not demonstrated that providing a mixed election is needed to return RMR owners to the operating status that they enjoyed prior to the ISO's implementation of pre-dispatch. In addition, in light of the ISO's ongoing effort with stakeholders to develop additional revisions of the RMR procedures,<sup>11</sup> the ISO has not justified the added expense required to implement the necessary software modifications associated with implementing the mixed election payment option.

However, we accept the ISO's other Tariff modifications to the RMR procedures. Even though the PX suspended operation of its Day-Ahead and Day-Of markets on January 31, 2001, the ISO's modifications are workable without the PX. We disagree with NCPA that the new penalty for non-compliance of an ISO dispatch notice is excessive. Because an RMR owner that fails to schedule its RMR energy in a forward market receives no payment for the energy that it is required to produce, a perverse incentive exists for the RMR owner to forgo its fuel costs and not produce the required RMR energy. This perverse incentive negates the non-performance penalty that the Commission approved in Amendment No. 26. Therefore, it is reasonable for the ISO to include the fuel cost savings of an RMR owner as an additional penalty for failing to comply with an ISO pre-dispatch notice.

Rather than file its congestion management proposal on January 31, 2001, the ISO filed a request for additional time to continue to develop its proposal.<sup>12</sup> Thus, the ISO's request to address the long-term continuation of its RMR procedures in that filing is moot. We direct the ISO to address the long-term continuation of its RMR procedures when the ISO files revised pre-dispatch procedures that reflect suspension of the PX markets.

#### D. WSCC Reliability Criteria

On April 14, 1999, the Commission approved the WSCC Reliability Management System (RMS) which allows the WSCC to impose sanctions and monetary fines on transmission providers.<sup>13</sup> According to the ISO, Section 5 of the RMS requires the ISO to make a good-faith effort to establish a binding obligation on generators in the ISO's

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<sup>11</sup>See ISO answer in Docket No. ER01-991-000 at 4-5, explaining that such revisions are necessary as a result of the suspension of the PX spot markets. See also the order issued concurrently with this order in Docket No. ER01-991-000, directing the ISO and stakeholders to negotiate comprehensive revisions to RMR contracts.

<sup>12</sup>The ISO's request for an extension of time is pending before the Commission and will be addressed in a future order.

<sup>13</sup>Western Systems Coordinating Council, 87 FERC ¶ 61,060 (1999).

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control area to adhere to provisions of the WSCC Reliability Criteria Agreement. The ISO proposes to amend the Tariff to make explicit a generator's responsibility to comply with the WSCC Reliability Criteria Agreement. The ISO also proposes to modify the Tariff so that a generator is responsible for any sanctions or penalties that may arise from that generator's failure to comply with the WSCC Reliability Criteria Agreement.

The California Commission supports the ISO's proposal; however, the California Commission questions if the WSCC penalties will be assessed against small distributed generators. The California Commission recommends an exemption for generating units under 10 MW. SoCal Edison requests that the Commission order the ISO to modify its proposed Tariff provisions so that WSCC penalties will not be assessed against a generator that is forced to violate the WSCC Reliability Criteria due to an order given by the ISO.

The ISO responds that the WSCC Reliability Criteria will apply to distributed generation, provided that the distributed generation participates in the ISO's markets and assumes the obligations of a Participating Generator. The ISO notes that WSCC penalties in question are structured such that an ISO directive cannot cause a generator to incur a penalty. Therefore, the ISO argues that SoCal Edison's request is without merit.

#### Commission Conclusion

We accept the ISO's Tariff modifications. We are satisfied that the ISO cannot order a generator to violate the WSCC Reliability Criteria; therefore, we will not modify the Tariff as requested by SoCal Edison. We decline to exempt generators smaller than 10 MW from these penalties. These penalties only apply to generators that participate in the ISO's markets. As we noted in our discussion of the telemetry requirements for small generators, generators that voluntarily participate in the ISO's markets must be able to fulfill their reliability commitments to the ISO.

#### E. FERC Annual Charges

Under Order No. 641, annual charges will now be assessed only to public utilities, including ISOs and RTOs, that provide transmission service.<sup>14</sup> The ISO proposes to recover FERC annual charges through a separate charge to Scheduling Coordinators. The ISO estimates that the initial rate for annual charges will be \$0.021/MWh. The ISO notified all market participants on December 18, 2000, that it was implementing the charge on January 1, 2001, the date that the annual charges will be assessed against the ISO.

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<sup>14</sup>Revision of Annual Charges Assessed to Public Utilities, 93 FERC ¶ 61,083, reh'g pending (Order No. 641).

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Metropolitan generally supports the ISO's methodology for collecting revenues for future FERC annual charges during the year that transmission service is provided. However, because the ISO is collecting these funds a year prior to their remittance, Metropolitan argues that these funds should be segregated in a separate, interest bearing account so that market participants will gain the benefit of the ISO's advance collection. DWR and NCPA support the recovery of FERC annual charges provided that there is no double recovery of these costs by the ISO and the transmission providers.

Turlock requests clarification of several aspects of the ISO's recovery of FERC annual charges. Turlock states that a conflict appears in the Tariff language proposed by the ISO, *i.e.*, while one provision of the Tariff states that the FERC annual charge will be based upon the use of the ISO grid another provision states that the FERC annual charge will be based on metered demand, or load. Turlock argues that under the second provision a customer could be assessed annual charges based upon its load even though that load may be served entirely by behind-the-meter generation which is never transmitted over the ISO grid. Turlock requests that the Commission limit the recovery of FERC annual charges to those transactions that actually use the grid. In addition, Turlock argues that the ISO's calculation of the FERC annual charge could lead to an over-recovery due to the mismatch of jurisdictional and non-jurisdictional loads in the rate calculation. Turlock requests that the Commission require the ISO to clarify how its annual charge rate will be calculated.

The ISO states that its annual charge proposal will not result in a double recovery. The ISO, but not Participating Transmission Owners (PTOs), will be liable for annual charges associated with transmission transactions on the ISO controlled grid. To the extent that PTOs are still recovering annual charges in 2001 for transactions occurring in 2000 (to be billed by FERC in 2001), the ISO states that its proposal permits Scheduling Coordinators to elect an annual payment of accrued annual charge obligations which will defer payments until 2002. To the extent that NCPA's concerns are based upon existing contracts outside of the ISO Tariff, the ISO contends that the issue is beyond the scope of this filing. The ISO notes that the Tariff modifications already set aside the annual charge collections in a trust account as suggested by Metropolitan. Lastly, the ISO concurs with Turlock that only transactions that use the ISO grid should be charged annual charges. The ISO states that it does not have specific transaction data to differentiate between schedules that use ISO grid facilities from those that do not use the ISO grid. Therefore, the ISO will permit a party requesting an exclusion for transactions that do not use the ISO grid to submit the MWh volume to be subtracted from its gross metered demand prior to the ISO's issuance of the monthly invoice. The ISO commits to develop a procedure to implement this exclusion and post it on the ISO website.

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The ISO is correct that it will now be assessed FERC annual charges for transmission transactions occurring over its transmission system since January 1, 2001. Accordingly, it is reasonable that the ISO collect these charges from users of the grid and we accept the ISO's Tariff modifications to collect FERC annual charges. We note that Section 7.5.2 of the Tariff requires that all funds collected by the ISO for FERC annual charges be placed in a FERC annual charges trust account; therefore, Metropolitan's concern is unwarranted.

NCPA's concern that transmission customers taking transmission service under both the ISO Tariff and a stand-alone transmission rate schedule may be double charged for FERC annual charges is beyond the scope of this proceeding. FERC annual charges comprise a very small part of the revenue requirement of the stand-alone transmission rate schedules. If NCPA or any other stand-alone transmission customer believes that the total revenue requirement under its transmission rate schedule is excessive, the customer may file a complaint under Section 206 of the Federal Power Act (FPA).

We agree with Turlock that transmission customers that do not use the ISO grid for transmission service should not be charged a pass-through for FERC's annual charges. We accept the ISO's commitment to develop procedures allowing a customer to submit the MWh volume of transactions that do not use the ISO grid such that these volumes can be subtracted from its gross metered demand prior to the ISO's issuance of the monthly invoice. The ISO should post these procedures on its website and, if necessary, file conforming Tariff language with the Commission. However, we disagree with Turlock's interpretation of Section 7.5.3.1 of the Tariff. Turlock interprets the phrase "all entities subject to assessment of FERC Annual Charges by the ISO," to refer only to the investor owned utilities in California.<sup>15</sup> While inartfully drafted, perhaps, in context it is clear that the ISO intends to include the loads of all transmission users (public utility and non-public utility) in the calculation of the FERC Annual Charge Recovery Rate. As thus interpreted, the ISO's calculation of the FERC Annual Charge Recovery Rate is reasonable without the clarification sought by Turlock.

F. "No Pay" Exemption for Participating Loads

The ISO implemented an Ancillary Services Load Program in Amendment No. 28 that was designed to solicit additional load resources when projected resources were not sufficient to maintain system reliability.<sup>16</sup> This program was implemented on a trial basis

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<sup>15</sup>Turlock comments at 4.

<sup>16</sup>See California Independent System Operator Corporation, 91 FERC ¶ 61,256 (2000), reh'g pending.

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from June 15, 2000 until October 15, 2000. In order to increase participation in the program, the ISO, in Amendment No. 29, partially relaxed the "No Pay" provisions of the ISO Tariff for all Participating Loads during the trial period.<sup>17</sup> The "No Pay" exemption expired on October 15, 2000 with the expiration of the Ancillary Services Load Program. However, the ISO has determined that the Ancillary Services Load Program should be extended through the summer of 2001. Therefore, the ISO proposes to modify the Tariff in order to extend the "No Pay" exemption for Participating Loads on an extended trial basis. The ISO contends that the exemption should be temporary in order to discourage uninstructed deviations.

DWR protests for the fourth time the ISO's continued failure to establish permanent rules that recognize that large dispatchable loads, such as DWR's, cannot be turned on and off every ten minutes. DWR argues that the ISO has not advanced a reason to make the no pay exemption temporary and that expiration of the waiver in October of 2000, left DWR pump loads exposed to impossible ten-minute dispatches and no pay consequences. DWR requests that the Commission require the ISO to develop permanent market rules for load bids that reasonably recognize physical limitations of market participants. Metropolitan supports the extension of the partial waiver of the no pay penalties. However, Metropolitan requests that the waiver be extended to apply to any load which voluntarily reduces demand or participates in a demand reduction program.

The ISO argues that DWR is trying to relitigate the ISO's 10-minute market proposal which the Commission accepted in Amendment No. 29.<sup>18</sup> The ISO notes that its waiver extension applies to the period since the previous waiver expired. Therefore, DWR has not been exposed to any impossible ten-minute dispatches and no pay consequences. The ISO acknowledges that it is appropriate to facilitate demand responsiveness. However, the ISO argues that the larger issue of how to facilitate more demand responsiveness goes well beyond the limited extension to waiver of the no pay penalty in this proceeding. In addition, the ISO argues that Metropolitan's request to extend the waiver to apply to any load which voluntarily reduces demand or participates in a demand reduction program is inapposite. The ISO states that the no pay penalties only apply to Participating Loads. The ISO notes that the only other demand reduction

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<sup>17</sup>See California Independent System Operator Corporation, 91 FERC ¶ 61,324 (2000) (Amendment No. 29 Order). The "No Pay" provisions of the Tariff apply to Scheduling Coordinators that generate uninstructed energy from capacity committed to the ISO for Operating Reserves or Replacement Reserves. Under these circumstances, the Scheduling Coordinator may forfeit a portion of the payment to which it would be entitled for that capacity.

<sup>18</sup>See Amendment No. 29 Order, 91 FERC at 62,116-17.

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program operated by the ISO is not a market-based program and precludes participation by Participating Loads. Thus, the ISO contends that there are no loads subject to the no pay penalty that could apply for a waiver.

### Commission Conclusion

The ISO's waiver of the "no pay" penalty is not contested by any party,<sup>19</sup> and we find it to be reasonable. Accordingly, we accept the ISO's amendment. DWR's continued request to establish permanent rules that recognize that large dispatchable loads, such as DWR's, cannot be turned on and off every ten minutes is beyond the scope of this proceeding and is a collateral attack on the Commission's previous order on Amendment No. 29. We strongly encourage the ISO and DWR to work together to develop permanent protocols that will facilitate demand responsiveness for DWR's large pumping loads prior to expiration of the temporary exemption. As noted by the DWR, these loads range in size from 3.58 MW to 775.84 MW.<sup>20</sup> Reducing these loads at the time of the ISO's system peak could help the ISO maintain the reliability of the grid this summer.

#### G. Meter Data Submission Deadline

The ISO modified the deadline for Scheduling Coordinators to submit meter data to the ISO in Amendment No. 17 from 41 calendar days to 31 business days.<sup>21</sup> However, due to software concerns, the ISO was unable to implement the change. The ISO has used its authority under the Metering Protocol to require that Scheduling Coordinators submit metering data within 45 days. After a year of operating with this deadline and with the support of most Scheduling Coordinators, the ISO proposes to modify the Tariff to make the 45-day deadline permanent. No party objects to this amendment and we will approve it.

#### H. Miscellaneous Tariff Provisions

##### 1. Neutrality Cap

The ISO is authorized to levy additional charges as special adjustments, including amounts required to reach an accounting trial balance of zero where there is a mismatch in debits and credits between Scheduling Coordinators. As part of the ISO's transmission

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<sup>19</sup>We note that DWR supports the ISO's reinstatement of the waiver of the "no pay" penalty.

<sup>20</sup>DWR protest at 2.

<sup>21</sup>California Independent System Operator Corporation, 88 FERC ¶ 61,182 (1999).

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access charge filing in Amendment No. 27, the ISO capped the neutrality adjustment charge at \$0.095/MWh.<sup>22</sup> According to the ISO, the ISO Board approved the applicability of the neutrality adjustment cap on an annual basis. However, the Tariff language filed in Amendment No. 27 omitted the reference to the annual period. The ISO proposes to correct this error by adding the word "annual," consistent with the proposal approved by the ISO Board, to Section 11.2.9.1 of the ISO Tariff.

Vernon argues that the ISO is attempting to convert an hourly cap into something that is averaged over a year. According to Vernon, it would not be known whether the cap is violated until the end of the annual period. Vernon contends that the ISO's proposal is improper without some clarification as to the ISO's intent. Southern Cities argue that the ISO's proposal renders the section meaningless and useless if applied only as an annual limitation. Southern Cities argue that the Commission should reject the ISO's proposal.

The ISO responds that the annual limitation was exactly what the ISO Board approved in developing the transmission access charge proposal. The ISO argues that the Tariff language approved by the Board clearly indicates that the cap is applicable to total neutrality charges on an annual basis.<sup>23</sup> The ISO contends that the level in Section 11.2.9.1 was always meant to be a target and not a fixed level and that the ISO as a non-profit entity must recover these costs from market participants. The ISO states that Section 11.2.9.1 properly gives the ISO Board the authority to adjust the target rate if necessary for the ISO to recover these costs.

#### Commission Conclusion

Southern Cities filed a complaint against the ISO in Docket No. EL00-111-000. In pertinent part, Southern Cities allege that the ISO violated the terms of its Tariff by charging Southern Cities in excess of the stated rate for the neutrality charge. In an order issued concurrently with this order, the Commission agrees with Southern Cities and directs the ISO to recalculate the neutrality charge based upon the filed rate.<sup>24</sup> In the instant proceeding, the ISO proposes to cap the neutrality charge on an annual basis. The resulting neutrality charge capped on an annual basis is effectively the same as the previously filed rate without the annual limitation. We disagree with Southern Cities that

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<sup>22</sup>See *California Independent System Operator Corporation*, 91 FERC ¶ 61,205 (2000), reh'g pending.

<sup>23</sup>ISO answer at Attachment A.

<sup>24</sup>*Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California v. California Independent System Operator Corp.*, 94 FERC ¶ \_\_\_\_\_ (2001).

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the neutrality cap is meaningless if applied as an annual limitation. The ISO is a non-profit entity and there is no basis for requiring the ISO to absorb these neutrality costs on a month-to-month basis when the ISO's charges are designed to collect its revenue requirement on an annual basis. Moreover, it is clear from the draft language approved by the ISO Board, that the Board intended to cap the neutrality charge on an annual basis. Therefore, we will accept the ISO's Tariff modification.

## 2. Compliance with Prior Commission Orders

In accepting in part and rejecting in part the ISO's compliance filing associated with Amendment No. 27, the Commission directed the ISO in future tariff filings to remove any reference to a Participating TO that "is not FERC jurisdictional" and replace that phrase with "that is not subject to the FERC's jurisdiction under Sections 205 and 206 of the Federal Power Act."<sup>25</sup> The ISO proposes to make the conforming changes in the instant filing. No party objects to this amendment and we will approve it.

## 3. Typographical Error

The ISO introduced a typographical error in Amendment No. 22 when it modified Section SBP 3.3.2 of the ISO's Schedules and Bids Protocol.<sup>26</sup> These modifications included the addition of a cross reference to Section SBP 2.1.5 which should have been a cross reference to Section SBP 2.1.6. The ISO proposes to correct this error in the instant filing. No party objects to this amendment and we will approve it.

## I. Effective Dates and Waiver of Notice

We find good cause to grant waiver of the 60-day prior notice requirement to the extent necessary to allow the proposed Tariff revisions to become effective as requested by the ISO.<sup>27</sup>

### The Commission orders:

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<sup>25</sup>California Independent System Operator Corporation, 93 FERC ¶ 61,104 at 61,288 n.3 (2000).

<sup>26</sup>See California Independent System Operator Corporation, 89 FERC ¶ 61,229 (1999), order on reh'g, 90 FERC ¶ 61,315 (2000).

<sup>27</sup>See Central Hudson Gas & Electric Corporation, et al., 60 FERC ¶ 61,106 at 61,339, reh'g denied, 61 FERC ¶ 61,089 (1992).

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(A) The ISO is hereby directed to submit a compliance filing as discussed in the body of this order within 30 days of the date of this order.

(B) The ISO's proposed Tariff changes, as modified in Ordering Paragraph (A), are hereby accepted for filing, without suspension or hearing, to become effective as discussed in the body of this order.

(C) The ISO is hereby informed that rate schedule designations will be supplied in a future order. Consistent with our prior orders, we hereby direct the ISO to promptly post its revised Tariff sheets on the Western Energy Network.

By the Commission.

( S E A L )

David P. Boergers,  
Secretary.