

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

**California Independent System) Docket No. ER04-1198-000
Operator Corporation)**

**MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
TO MOTIONS TO INTERVENE, MOTIONS TO CONSOLIDATE, COMMENTS,
PROTESTS, AND REQUEST FOR HEARING**

Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.212, 385.213, the California Independent System Operator Corporation ("ISO")¹ hereby requests leave to file an answer, and files its answer, to the motions to intervene, motions to consolidate, comments, protests, and request for hearing concerning Amendment No. 63 to the ISO Tariff ("Amendment No. 63").² In support whereof, the ISO states as follows.

I. BACKGROUND

On September 7, 2004, the ISO filed Amendment No. 63 in the above-captioned docket. The purpose of Amendment No. 63 is to modify the ISO Tariff to accommodate the transfer by the Western Area Power Administration – Sierra

¹ Capitalized terms not otherwise defined herein have the meaning set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

² To the extent necessary, the ISO requests waiver of Rule 213(a)(2) (18 C.F.R § 385.213(a)(2)) to permit it to make this answer to protests. Good cause for this waiver exists here because the answer will aid the Commission in understanding the issues in the proceeding, provide additional information to assist the Commission in the decision-making process, and help to ensure a complete and accurate record in this case. See, e.g., *Entergy Services, Inc.*, 101 FERC ¶ 61,289, at 62,163 (2002); *Duke Energy Corporation*, 100 FERC ¶ 61,251, at 61,886 (2002); *Delmarva Power & Light Company*, 93 FERC ¶ 61,098, at 61,259 (2000).

Nevada Region (“Western”) of Western’s interest in the upgrade of Path 15 to the ISO’s Operational Control, and to provide clarifications regarding cost recovery for this interest. On that same day, the ISO also submitted, in Docket No. EL04-133-000, a petition to modify the Transmission Control Agreement (“TCA”) or, in the alternative, a complaint that the TCA be modified to include Western’s interest in the Path 15 upgrade (“TCA Filing”).

A number of parties submitted motions to intervene, motions to consolidate, comments, and/or protests concerning Amendment No. 63, and one party submitted a request for hearing.³ Several parties state their support for some or all of Amendment No. 63.⁴ The ISO does not oppose any of the motions to intervene. As explained below, however, the motions to consolidate, protests, and request for hearing are without merit and the Commission should accept Amendment No. 63 as filed.

³ The following parties submitted motions to intervene, motions to consolidate, comments, and/or protests concerning Amendment No. 63: the California Department of Water Resources State Water Project (“SWP”); California Electricity Oversight Board (“CEOB”); Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency; City of Vernon, California; The Metropolitan Water District of Southern California; Modesto Irrigation District; Northern California Power Agency (“NCPA”); Pacific Gas and Electric Company (“PG&E”), which also submitted a request for hearing; Sacramento Municipal Utility District (“SMUD”); San Diego Gas & Electric Company (“SDG&E”); Southern California Edison Company (“SCE”); Transmission Agency of Northern California; Western; and Williams Power Company, Inc. In addition, the Public Utilities Commission of the State of California filed a notice of intervention.

Parties also submitted filings in response to the TCA filing. The ISO will submit an answer to those filings on October 14, 2004.

⁴ See NCPA at 3; PG&E at 3-4; SMUD at 3; SWP at 1-2; Western at 3-8.

II. ANSWER

A. **The Tariff Revisions to Allow Western to Transfer to the ISO Operational Control of Only its Path 15 Rights are Just and Reasonable**

As described in the transmittal letter for Amendment No. 63, one purpose of the modifications to the ISO Tariff proposed in this docket is to allow Western to become a partial Participating Transmission Owner (“Participating TO”), so that Western may turn over to the Operational Control of the ISO only Western’s rights to the Path 15 upgrade, and not the rest of Western’s transmission rights. In this regard, the ISO has explained in detail that the Path 15 upgrade is a critical reliability interface and Western has a 10 percent interest in the upgrade (approximately 150 MW of transfer capacity); and Western would agree to transfer Operational Control only of its 10 percent interest in the upgrade and none of its other transmission assets, in exchange for Congestion revenues and ISO Tariff-defined Firm Transmission Right (“FTR”) auction revenues associated with its interest in the upgrade. Transmittal Letter for Amendment No. 63 at 2-6. Western reiterated these facts in the filing submitted in the present proceeding. Western at 2-8.

Some parties assert that Western should not be allowed to become a partial Participating TO. SCE at 19-20; SDG&E at 4. These parties do not sufficiently consider the reliability and economic benefits of having Western turn over Operational Control to the ISO of its interest in the Path 15 upgrade. That Operational Control will not be turned over unless Western becomes a partial Participating TO.

The transfer of only Western's rights to the Path 15 upgrade meets the following exception the Commission set out in the proceeding concerning Amendment No. 49 to the ISO Tariff:

Should the CAISO in the future believe that an exemption from the requirement that a New Participating Transmission Owner turn over operational control of *all* its transmission facilities to the CAISO is appropriate, the CAISO at that time may file a request for waiver of its OATT. . . . 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.

California Independent System Operator Corporation, 103 FERC ¶ 61,260, at P 13 (2003) (emphasis in original). Thus, the Commission recognized that it was not always appropriate for a New Participating Transmission Owner to turn over Operational Control of all of its transmission facilities. Western meets the Commission's exception because it is a federal agency involved in a high-value project – the Path 15 upgrade – that has overriding regional significance and provides substantial benefits to customers. Moreover, as required by the Department of Energy, Western did not market this transmission capacity because it was told to turn such capacity over to the ISO's Operational Control. The ISO has requested an exemption for Western through the filing of Amendment No. 63. SCE argues that granting the exemption to Western is not in the public interest as defined in the portion of Amendment No. 49 quoted above. SCE at 13. SCE is incorrect because, as explained above, the

Commission defined the public interest to include exactly the circumstance presented here.

SCE also characterizes Western's 10 percent interest (i.e., 150 MW) in the upgrade as "only a very small fraction" (SCE at 13), but that interest may very well make the difference between there being Congestion and there being no Congestion on Path 15 for the ISO's Market Participants. Further, SCE asserts that, even if Western does not turn over its interest, the 150 MW "will be made available by Western to the market under the reciprocity doctrine." SCE at 13. Western has told the ISO that, if Western's interest in the Path 15 upgrade were not turned over to the ISO's Operational Control, Western would make Path 15 upgrade capacity in excess of its own use available under its OASIS; however, Western has also said that the rate for that capacity would likely be a pancaked rate.⁵ Therefore, having Western turn over its interest to the ISO is the best option. Moreover, it would require transmission customers to access two different systems in order to use both the ISO's and Western's capacity over the same transmission interface.

SDG&E's statement (at 3) that the "parties failed to provide any reasonable explanation why Western should not be treated as a PTO [Participating TO]" is without merit. The ISO made extensive efforts to convince Western that its customers as well as all California consumers would have benefited by Western becoming a full Participating TO. The ISO's comments on Western's decisional process are posted on the ISO's website at

<http://www.caiso.com/docs/2003/08/01/200308011701097966.html> (under the page heading "WAPA Federal Control Area Proposal"). Despite the ISO's efforts, Western has chosen to join the SMUD Control Area. Thus, the question becomes, if it is not possible to bring all of Western's transmission assets into an integrated ISO Controlled Grid, is it better to balkanize 150 MW of capacity over a critically important interface? The ISO submits that the answer is that the public interest is best served by having Path 15 operated in a unified manner in accordance with the ISO Tariff.

B. Western's Receipt of Congestion and FTR Auction Revenue is Just and Reasonable, and Consistent with Amendment No. 48 to the ISO Tariff

The ISO has explained that Westerns' receipt of Congestion and FTR auction revenue is consistent with the ISO Tariff, including Amendment No. 48 to the ISO Tariff ("Amendment No. 48"). Transmittal Letter for Amendment No. 63 at 6-9. Further, as explained in Section II.A, above, Western's transfer of Operational Control of its interest in the Path 15 upgrade is predicated on Western's receiving such revenue. The parties that disagree with Western's receipt of the Congestion and FTR auction revenue fail to sufficiently take these considerations into account. See CEOB at 3; PG&E at 4; SCE at 7-8; SDG&E at 4.

SCE misses the point in arguing that Amendment No. 63 is not consistent with Amendment No. 48, on the ground that the two amendments contain different provisions. SCE at 4-6. The ISO said that the provisions are consistent,

⁵ Western stated that it has not begun a rate process for Path 15, but that it would need to

not that they are identical. See Transmittal Letter for Amendment No. 63 at 6-9. The differences between the amendments that SCE points out are merely the new changes proposed in Amendment No. 63. Obviously, the ISO would have had no need to submit Amendment No. 63 if Amendment No. 48 had contained all the provisions necessary to permit Western to become a partial Participating TO and turn over Operational Control of its interest in the Path 15 upgrade in return for receiving Congestion and FTR auction revenue. The important similarity between FPLE Energy, LLC ("FPLE") (whose financing of a transmission upgrade on a transmission line that was already under the ISO's Operational Control was a focus of Amendment No. 48), and Western (whose financing of a new transmission line that upgrades an existing transmission path that is under ISO Operational Control is a focus of Amendment No. 63), is that the ISO and its Market Participants are benefiting by additional transmission capacity being made available, *without any additional transmission Revenue Requirements being recovered through the transmission Access Charge*. Without Western, the ISO transmission Access Charge will be unchanged and include whatever rate the Commission finds appropriate for Trans-Elect NTD Path 15, LLC ("Trans-Elect"). The Commission may find that in order to get such a vitally important project built, it was just and reasonable for Trans-Elect to bear a slightly greater percentage of the costs than its capacity entitlement to the upgrade.

start such a process to determine the rate if Western does not turn over its interest to the ISO.

In Amendment No. 48, the Commission found that it was appropriate for FPLE to receive Congestion revenues and FTR auction proceeds because FPLE brought additional capacity to the ISO Controlled Grid and did not seek cost recovery for that additional capacity through the ISO's transmission Access Charge. This is precisely what is happening with the approximately 150 MW of additional capacity over Path 15 that Western is making available. Again, Western is under no obligation to turn these assets over to the ISO's Operational Control. The ISO, however, maintains that Market Participants benefit from the integrated operation of this critical regional transmission interface.

Some parties argue that Western should not profit from its participation in the Path 15 project, and that Western's recovery should be capped at the level of its unreimbursed investment in the project (\$1.3 million). PG&E at 4, 5; SCE at 7, 21; SDG&E at 4. The ISO stands by the rationales for recovery by Western that are explained in this proceeding and the proceeding concerning the TCA Filing. Nevertheless, if Western chooses, the ISO would certainly be willing to work with Western to return revenues that exceed its costs associated with the Path 15 upgrade, provided it does not jeopardize the formula rate that the Commission has in effect for the ISO's transmission Access Charge.

III. CONSOLIDATION AND/OR HEARING PROCEDURES ARE UNNECESSARY

SCE and SDG&E argue that the captioned proceeding should be consolidated with the proceeding concerning the TCA Filing. SCE at 22-23; SDG&E at 5-6. PG&E requests that the Commission institute hearing

procedures with regard to Amendment No. 63. PG&E at 5. Neither consolidation nor a hearing is necessary, and the Commission should deny the requests for them. The Commission has before it all of the information that is needed to render a decision concerning Amendment No. 63 (and the TCA filing). Moreover, the ISO has requested that the changes contained in Amendment No. 63 be made effective on November 1, 2004, in order to ensure that Operational Control over Western's interest in the Path 15 upgrade can be transferred to the ISO prior to energization of the upgrade, which may occur as early as mid-November 2004. Transmittal Letter for Amendment No. 63 at 10. Absent this clear determination of Operational Control, the operational issues associated with 150 MW on a critical regional transmission interface will be thrown into a needless limbo.

IV. CONCLUSION

Wherefore, for the foregoing reasons, the ISO respectfully requests that the Commission accept Amendment No. 63 in its entirety.

Respectfully submitted,

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Date: October 13, 2004

CERTIFICATE OF SERVICE

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

Dated at Folsom, CA, on this 13th day of October, 2004.

/s/ Anthony J. Ivancovich
Anthony J. Ivancovich