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August 11, 2003

Hon. Magalie Roman Salas, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

**Re: California Independent System Operator Corporation
Docket No. ER00-2019-002.**

Dear Secretary Salas:

Enclosed for filing are one original and fourteen copies of the Requests for Rehearing and Clarification or, in the Alternative, Motion for Clarification of the California Independent System Operator Corporation, submitted in the above-captioned proceeding.

Also enclosed are two extra copies of the request to be time/date stamped and returned to us by the messenger. Thank you for your assistance. Please contact the undersigned if you have any questions regarding this filing.

Respectfully submitted,



Michael E. Ward

Counsel for the California Independent
System Operator Corporation

Enclosure

than fifty percent capacity factor in the current month, regardless of whether the Distribution System is owned by a investor-owned utility or a Publicly Owned Electric Utility.³ Additionally, the ISO requests that the Commission clarify that its definition of capacity factor allows use of P_{\max} for a given month.

I. BACKGROUND

On March 31, 2000, the ISO filed Amendment No. 27 to the ISO Tariff, proposing a new methodology for determining transmission Access Charges, through which Participating Transmission Owners recover the embedded costs of their transmission facilities that constitute the ISO Controlled Grid. By Order dated May 31, 2000, the Commission made specific findings regarding certain aspects of Amendment No. 27 and accepted for filing, suspended, and set for hearing the remainder of the proposed Access Charge methodology and related tariff provisions. *California Independent System Operator Corporation*, 91 F.E.R.C. 61,205 (2000). Relevant to this filing, the Commission ruled that the Amendment No. 27's use of Gross Load as the billing determinant for the Access Charge was just and reasonable. *Id.* at 61,728-61,729. Issues that the Commission set for hearing regarding Amendment No. 27 are now pending before an Administrative Law Judge.⁴

proposals to exclude all Load that takes standby service and is served by behind-the-meter Generation.

³ The Commission defined capacity factor as "the ratio of the average load or output of a generator for a given time period to the capacity rating of the generator."

⁴ Since filing Amendment No. 27, the ISO has submitted a number of amendments to the ISO Tariff that affect the Access Charge. In two cases, Amendment No. 34, and Amendment No. 49, filed March 11, 2003, the Commission consolidated the proceedings with this docket. Neither Amendment No. 34 nor Amendment No. 49 bears upon the specific subject matter of this compliance filing. *California Independent System Operator Corporation*, 103 F.E.R.C. ¶61,260 at P 1 (May 30, 2003).

In the Rehearing Order, the Commission addressed requests for rehearing of the May 31, 2000, order. The Commission denied rehearing on several issues, deferred a number of issues to that Administrative Law Judge to address at hearing, and granted rehearing in part on the issue of the appropriate billing determinants for customers that rely on generation located behind the meter. Although the Commission affirmed its ruling regarding the use of Gross Load as the billing determinant for the Access Charge, the Commission concluded, “[C]ustomers that primarily rely on behind the meter generation to meet their energy needs are allocated too great a share of the transmission Access Charge.” Rehearing Order at P 55. The Commission defined such customers as those customers having generators with a 50 percent or greater capacity factor. *Id.* The Commission held that customers meeting the foregoing criterion should pay the [transmission Access Charge] on a “net load basis,” which the Commission explained as “the actual cumulative kWh load that utilized the grid in any given month, to reflect their use of . . . alternative resources, rather than on the basis of gross load.” *Id.* The Commission’s order spoke generally of “transmission customers” that met this criterion; nonetheless, in context, the order appeared limited to the customers of Participating TOs that are governmental entities. The Commission directed the ISO to submit revised tariff sheets implementing this requirement on a prospective basis. *Id.* The ISO filed amendments in compliance with the Rehearing Order on July 31, 2003.

II. Specification of Errors

1. The Commission erred in concluding that it is unjust and unreasonable to assess the Access Charge to certain Loads that rely primarily on behind-the-meter generation.
2. If the Commission decides that it did not err in concluding that it is unjust and unreasonable to assess the Access Charge to certain Loads that rely primarily on behind-the-meter generation, then the Commission should clarify that its conclusion applies to all such Load of a Participating Transmission Owner (“Participating TO”), regardless of whether the Participating TO is a governmental entity or an investor-owned utility.
3. If the Commission decides that it did not err in concluding that it is unjust and unreasonable to assess the Access Charge to certain Loads that rely primarily on behind-the-meter generation and that its conclusion applies to only to such Loads of a Participating TO that is a governmental entity, then the Rehearing Order unduly discriminates against the Load of Participating TOs that are investor-owned utilities.

III. Discussion

A. It Is Just and Reasonable to Assess the Access Charge According to the Gross Load of Participating Transmission Owners

As the Commission affirmed in the Rehearing Order, transmission service under the ISO Tariff is fundamentally network service. *Id.* at P 54. Although transmission service under the ISO Tariff differs somewhat from network service

under Order No. 888⁵, the Commission took those differences into account in its order on Amendment No. 27. *Id.* It is significant with regard to this issue that the only entities affected are Participating TOs; Wheeling customers are already charged on a net basis under the ISO Tariff. It is questionable whether it would be appropriate for Participating TO to take point-to-point service even if it were available.

Network service is, by its nature, available at all times to users of the transmission grid, without regard to the origin or destination of a transaction. As the Commission has noted, “Network service allows more flexibility [than point-to-point service] by allowing a transmission customer to use the entire transmission network to provide generation service for specified resources and specified loads without having to pay multiple charges for each resource-load pairing.” Order No. 888 at 31,646 n.65. “Network service permits [a utility] to fully integrate load and resources on an instantaneous basis in a manner similar to the transmission owner’s integration of its own load and resources.” *Id.* at 31,646. As the Commission has noted, “Because the . . . customers enjoy the benefits of reliable service by their association with the . . . integrated system, they should share in the cost of the entire transmission system.” *Niagara Mohawk Power Corp.*, 42 FERC ¶¶ 61,143, 61,531 (1988) (footnote omitted).

⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Service By Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶¶ 31,036 (1996) (“Order No. 888”), *order on reh’g*, Order No. 888-A, FERC Stats. & Regs., Regs. Preambles ¶¶ 31,048 (1997) (“Order No. 888-A”), *order on reh’g*, Order No. 888-B, 81 FERC ¶¶ 61,248 (1997), *order on reh’g*, Order No. 888-C, 82 FERC ¶¶ 61,046 (1998), *aff’d in relevant part, remanded in part on other grounds sub nom, Transmission Access Policy Study Group, v. FERC*, 225 F.3d. 667, Nos. 97-1715, (D.C.Cir. 2002), *aff’d sub. nom., New York v. FERC*, 535 U.S. 1 (2002) (hereinafter “Order No. 888”).

Indeed, unless Load relying primarily on behind-the-meter Generation has contracted with a particular source for back-up Energy of Standby Service in the case of a failure of the behind-the-meter Generator, network service is precisely the service that is required. The Load must be able to take back-up Energy from whatever capacity that the ISO has available to provide that Energy.

Governmental entities have noted that the Commission, in Order No. 888 and Order No. 888-A, permitted transmission customers with a discrete Load served by behind-the-meter Generation to take point-to-point service for that Load. They argue that the ISO Tariff, which does not offer point-to-point service, denies them that opportunity and that “the failure to provide this option and to charge the entire gross load for transmission service, regardless of whether that load uses the Cal ISO controlled-grid, is contrary to precedent regarding duplicative charges and cost causation, and finding that a different result is not warranted does not represent reasoned decision-making.” Rehearing Order at P 51. Point-to-point service, however, would not be appropriate for a Participating TO. The ISO’s planning and operations must take into account all of the Load of a Participating TO, regardless of whether it is served by Generation behind-the-meter. As the Commission noted in Order No. 888-A:

Customers taking network integration transmission service choose to have the transmission provider integrate their generation resources with their loads. Network service is a service comparable to the service that the transmission provider provides to its retail native load, where the Transmission Provider includes the network customers resources and loads (projected over a minimum ten-year period) into its long-term planning horizon. Because network service is usage based, network customers pay on the basis of their total load

Order No. 888-A at 30,260 n.247. In essence, once an entity becomes a Participating TO, it is part of the transmission provider for the purpose of transmission service, and only network service is appropriate or available.

The provision of network service to such Loads, in turn, requires the Participating TOs to build and maintain the transmission facilities necessary to provide service at any time. Allowing behind-the-meter Load that relies upon such facilities to avoid paying a full share of the costs of the facilities merely shifts costs to other users of the ISO Controlled Grid.

B. The Rehearing Order Is Inconsistent with Commission Precedent

The Commission has addressed this issue before and reached the opposite conclusion from its determination in the Rehearing Order, albeit in a slightly different context. *Pacific Gas and Electric Company, et al.*, Docket No. ER97-2358, *et al.*, concerned the Transmission Owner Tariffs and Wholesale Distribution Tariffs of the (investor-owned) Participating TOs. See 88 FERC ¶ 63,007 (1999), *aff'd* 100 FERC ¶ 61,156, *reh'g denied* 101 FERC ¶ 61,151 (2002). In that proceeding, certain parties argued that Load served by a Generator to which it was directly connected through a Participating TOs Distribution System should be exempted from the ISO's transmission Access Charge and pay only for Distribution service. The Initial Decision rejected that argument:

Provision of wholesale distribution-only service would unjustly permit a customer . . . to avoid its share of the costs associated with the construction, maintenance, and operation of the ISO Grid. The ISO-controlled Grid is the very backbone of the service that [the party] proposes to implement [D]istribution-only service

would have numerous effects on the ISO grid, and can not be performed in isolation from the ISO grid.

The ISO is responsible for ensuring that there are adequate resources to serve the loads located on both the transmission and distribution systems. The ISO is also responsible for all reliability needs and Ancillary Services for the distribution system; even those that are completely radial in nature. To fulfill these responsibilities, among others, the ISO must use the ISO Grid in acquiring capacity and energy to balance loads and satisfy reliability requirements, regardless of whether the load is served off of transmission facilities or off of the Companies' distribution facilities.

No modification of the [Wholesale Distribution Tariffs] is warranted with respect to this issue.

88 FERC at 65,075 (citations omitted). The Commission affirmed this decision without comment, adopting it as its own. 100 FERC ¶ 61,156 (2002).

The Rehearing Order allows certain Load to take Distribution-only service. The fact that, in this instance, the utility serving the Load also owns the Distribution System is irrelevant because it is a fundamental principle of the Commission's open access transmission policies that a utility must take transmission service under the same terms that it offers it to third parties.

The Rehearing Order is thus fundamentally at odds with the Commission's decision in *Pacific Gas and Electric Co.* Although FERC is not irrevocably bound by precedent, it must provide a reasoned explained for a departure therefrom. See, e.g., *ANR Pipeline v. FERC*, 71 F.3d 897, 901 (D.C. Cir. 1995). It has not done so here.

C. If Its Exemption from the Access Charge Is Limited to Governmental Entities, the Rehearing Order Unduly Discriminates Against the Loads of Investor-Owned Utilities.

As noted above, although the Rehearing Order spoke generally of "transmission customers" that rely on generation located behind the meter, the

context suggested that the order implicated only customers of Participating TOs that are governmental entities. If so, the order unduly discriminates against the customers of Participating TOs that are investor-owned utilities.

Like some governmental entities, certain Participating TOs that are investor-owned utilities have Generators that are directly connected to Load by the utilities' Distribution Systems. The use of the ISO Controlled Grid by the Load served behind-the-meter (*i.e.*, the meter at the interconnection of the Distribution System with the ISO Controlled Grid) by such Generators is indistinguishable from the use of the ISO Controlled Grid by the behind-the-meter Load of governmental entities that are Participating TOs.

If the exemption for certain Load relying on behind-the-meter Generation is limited to governmental entities, it will shift additional costs to the customers of investor-owned utilities. Amendment 27, however, already causes a cost-shift (up to a \$72 million maximum during a transition period) among the governmental entities and the investor-owned utilities associated with a transition from multiple transmission rates to one transmission rate for the ISO Control Area. Amendment 27 represents a balance between the additional costs imposed on the customers of investor-owned utilities and the benefits they derive from the addition of new Participating TOs. Amendment 27 is premised on each Participating TO being assessed the transmission Access Charge on the same rate base that paid the utility' transmission costs prior to its becoming a Participating TO. Although Amendment 27 charges the Access Charge to Load according to Megawatt-hours rather than Demand in Megawatts, the underlying

principle is that the same retail customers that paid the transmission costs prior to the inception of the ISO would pay for transmission once the utility became a Participating TO.⁶

The Rehearing Order's differential treatment of governmental entities and investor-owned utilities would thus have a discriminatory detrimental impact on the customers of investor-owned utilities. There is no factual basis for applying different Access Charges to the behind-the-meter Load of Participating TOs that are investor-owned utilities and to behind-the-meter load of those that are governmental entities.

There is also no basis in the ISO Tariff for doing so. The rates charged under the ISO Tariff make no distinction between Loads of Participating Transmission Owners that are governmental entities and Loads of those that are not. Similarly, the rates charged under the ISO Tariff make no distinction between Loads of non-Participating Transmission Owners that are governmental entities and Loads of those that are not.

Thus, discrimination between the Loads of investor-owned Participating TOs and those of Participating TOs that are governmental entities in this regard would be without rational basis and undue. If the Commission affirms its decision that customers that rely primarily upon behind-the-meter Generation should not pay the Access charge, then that decision should apply to all such customers.

⁶ Scheduling Coordinators that do not have Existing Contracts with a Participating TO pay the Wheeling Access Charge based on the Energy that is delivered using the ISO Controlled Grid. Wholesale customers of Participating TOs that still have an Existing Contract for transmission, pay the contract rates and are exempt from the ISO's Access Charge.

IV. Clarification of Capacity Factor

Although the Commission clearly defined capacity factor, it did not specifically set forth the factor to use for generator output or time period for determining the capacity factor. The ISO Tariff and, specifically, the Participating Generator Agreement allow for each Generating Unit to provide a number of levels of generator output including P_{min} , nameplate, P_{max} , installed capacity, and emergency ratings. If the Commission affirms the Rehearing Order and the ISO is accordingly required calculate the capacity factor, the ISO would propose to use P_{max} . P_{max} is a tested value of the Generating Unit that is already included in the ISO's software. The other ratings are values that are reported to the ISO and not necessarily tested.

The ISO proposes to use a one-month time frame consistent with the ISO's monthly billing. This would allow a Generating Unit that has outage problems in the beginning of the month to still obtain the 50 percent value for the exemption, and should be easy to calculate if the Participating TO is an ISO Metered Entity both at the Generating Unit and the connection to the ISO Controlled Grid.

V. Conclusion

For the reasons discussed above, the ISO requests that the Commission revise the Rehearing Order and reinstate its initial conclusion that the ISO's transmission Access Charge should be assessed to all Participating TOs on the basis of Gross Load. If the Commission denies this request, the ISO requests that the Commission revise or clarify the Rehearing Order such that *all* Load that

relies primarily on behind-the-meter Generation is exempted from the Access Charge.

Respectfully submitted,



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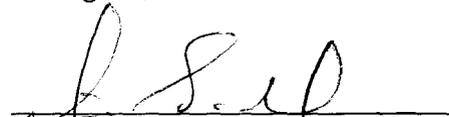
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Dated: August 11, 2003

CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon all parties on the official service list compiled by the Secretary in the above-captioned proceeding, in accordance with the requirements of Rule 2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C. this 11th day of August, 2003.


Michael E. Ward