

SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

3000 K STREET, NW, SUITE 300
WASHINGTON, DC 20007-5116
TELEPHONE (202) 424-7500
FACSIMILE (202) 424-7643
WWW.SWIDLAW.COM

KENNETH G. JAFFE
DIRECT DIAL (202) 424-7563
KGJAFFE@SWIDLAW.COM

NEW YORK OFFICE
THE CHRYSLER BUILDING
405 LEXINGTON AVENUE
NEW YORK, NY 10174
(212) 973-0111 FAX (212) 891-9598

November 1, 2000

VIA COURIER

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, D.C. 20426

**RE: Application to Transfer Operational Control Over Non-Jurisdictional Transmission Facilities to the California Independent System Operator Corporation
Docket No. EC01-___-000**

Dear Secretary Boergers:

Enclosed for filing, pursuant to Section 203 of the Federal Power Act and Part 33 of the Federal Energy Regulatory Commission's (the "Commission's") regulations (18 C.F.R. Part 33), please find an original and five (5) copies, plus one copy for the State of California, of the above referenced Application. The filing consists of the following documents and materials:

- Application with appendices (Attachment 1)
- Form of Notice (Attachment 2)
- Exhibit G
- Exhibit I

Also submitted for filing, in accordance with the Commission's regulations, is a diskette containing a Notice of Filing (in WordPerfect format) suitable for publication in the Federal Register.

The California Independent System Operator Corporation ("ISO") seeks authorization for the transfer of Operational Control,¹ from the City of Vernon, California ("Vernon") to the ISO of Vernon's interests in certain transmission facilities, to be effective on January 1, 2001. This transfer will enhance the ability of the ISO to operate the regional transmission system, including the interfaces between the ISO's Control Area and other Control Areas, on an integrated basis and to provide open and non-discriminatory access to the regional grid.

The Application includes the information and exhibits required by Part 33 of the Commission's regulations and the Commission's Merger Policy Statement, with the exception of the information required by Section 33.2(k) (18 C.F.R. § 33.2(k)) and Section 33.3 (18 C.F.R. § 33.3) Exhibits A, B, C, D, E, F, and H. The ISO has requested waiver of those requirements because of Vernon's status as a municipal utility. As demonstrated in the Application, the Merger easily satisfies the criteria established by the Commission. Accordingly, the ISO respectfully requests the Commission approve this Application without condition, modification or evidentiary, trial-type hearing.

I. Description of the Parties to the Transaction

Vernon is a municipally owned electric, natural gas, and water local distribution utility located adjacent to east Los Angeles. The peak load of Vernon's customers is approximately 196 MW. Vernon's distribution system is part of the ISO's Control Area (in particular the former Control Area of the Southern California Edison Company). Vernon meets the needs of these customers in part by participating as a Scheduling Coordinator under the ISO Tariff and the PX Tariff.

Vernon owns minority interests in several major transmission facilities interconnected with the ISO Controlled Grid and connecting the ISO's Control Area to other Control Areas. Vernon has a right to utilize a portion of those facilities' transfer capability. In addition, Vernon has certain contractual rights to utilize the transmission facilities of current Participating Transmission Owners ("Participating TOs") whose facilities form the existing ISO Controlled Grid.

The ISO was established by California electricity restructuring legislation in 1996 as a public benefit corporation, with the principal responsibility of assuming Operational Control over the transmission facilities of California electric utilities, including both investor-owned utilities and government-owned utilities. By exercising independent control over the regional grid, the ISO assures Market Participants of open and non-discriminatory access to the transmission facilities that are critical to the operation of competitive power markets, both at wholesale

¹ Capitalized terms not otherwise defined herein are defined in the Master Definitions Supplement, ISO Tariff Appendix A.

and, where cognizant state and/or local authorities have authorized direct access to ultimate consumers, at retail.

On November 26, 1996, the Commission conditionally approved the joint application of Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company (the "Initial Participating TOs") for authorization to establish the ISO as an independent system operator meeting the requirements set forth in Order No. 888, and to transfer Operational Control over their network transmission facilities to the ISO.² The ISO commenced operations on March 31, 1998.

II. Overview of the Section 203 Filing

The enclosed Section 203 Application involves the first instance of a municipally owned utility applying for Participating TO status in the ISO. The ISO believes that the Commission has jurisdiction over the transfer of Operational Control, regardless of whether the facilities to be transferred are jurisdictional or non-jurisdictional. The Commission has previously ruled that the ISO's assumption of Operational Control over the transmission facilities of a jurisdictional public utility constitutes a "change in control" requiring the Commission's approval under Section 203. Thus, the Commission would appear to have jurisdiction over the ISO's extension of Operational Control to encompass transmission facilities or transmission Entitlements of an entity that is not itself subject to the Commission's jurisdiction, as the ISO would be consolidating its operation of the transmission facilities that currently form the ISO Controlled Grid with the operation of transmission facilities or Entitlements of another entity. Should the Commission conclude that the transaction does not require approval under Section 203, the ISO requests guidance on the appropriate procedures to be followed.

The enclosed Section 203 Application demonstrates that the proposed transfer of Operational Control over Vernon's transmission interests to the ISO is in the public interest. The proposed transfer is in the public interest for the same reasons that the transfer to the ISO of Operational Control over the initial Participating TOs' transmission facilities was found, in the November 26 Order, to be consistent with the public interest. Namely, the proposed transfer will: increase the ISO's ability to provide Market Participants with open and non-discriminatory access to the regional grid; expand capacity available for Market Participants in other Control Areas to deliver Energy and Ancillary Services to Loads on the ISO Controlled Grid; and expand capacity available for the transfer of Energy and Ancillary Services both in and out of the ISO Controlled Grid. Further, the transfer will enable the ISO to operate the ISO Controlled Grid more

² See *Pacific Gas and Electric Co.*, 77 FERC ¶ 61,204 (1996) (the "November 26 Order").

efficiently since it will no longer have to reserve capacity for Vernon's potential exercise of Existing Rights to transmission service.

The proposed transfer of control also is consistent with the Commission's goals of fostering participation by government-owned utilities in regional transmission organizations, as expressed in Order No. 2000.

Finally, since Vernon is transferring Operational Control of its transmission Entitlements to the ISO, a jurisdictional entity, this transaction, arguably, constitutes a merger. Although it is unclear whether the three-factor test set forth in the Commission's Merger Policy Statement³ is applicable in this instance, since the Commission has not applied this standard in previous applications involving the formation of independent system operators, the proposed transfer easily satisfies this standard.

First, the proposed transfer will not adversely affect competition. With respect to generation market power, the ISO is not a Market Participant and Vernon is not transferring any generation facilities or power purchase contracts in connection with its application to become a Participating TO. Regarding transmission market power, the proposed transfer is pro-competitive as it will expand the scope of the ISO's regional control over transmission facilities and reduce inefficiencies in the operation of the ISO Controlled Grid created by the accommodation of Vernon's Existing Rights.

Second, the transaction will not subject wholesale customers to increased rates. If there is any effect on prices in the Imbalance Energy and Ancillary Service markets operated by the ISO, it is likely to be positive, due to expanded access for Market Participants and increased efficiency. Although the introduction of a new Participating TO will affect transmission Access Charges, the Commission has already established a mechanism to address these effects in Docket No. ER00-2019-000. The outcome of that proceeding will govern Vernon's collection of its High Voltage Transmission Revenue Requirement through the ISO's Access Charge. Docket No. EL00-105-000 provided a forum for any entity to raise concerns associated with Vernon's TRR.

Third, the proposed transfer will not adversely affect either federal or state regulation. Neither the Commission's authority over the transmission rates charged under the ISO Tariff nor the authority of any California state agency over Vernon is impaired by the proposed transfer.

³ See Order No. 592, *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, FERC Stats. & Regs. (Regulations Preambles) ¶ 31,044 (1996), *order on reconsideration*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

III. Communications and Service

Communications regarding the Application submitted with this letter should be addressed to the following individuals, whose names should be entered on the official service list maintained by the Secretary (with the persons designated to receive service in accordance with the Commission's Rule of Procedure 203(b)(3), 18 C.F.R. § 385.203(b)(3) (1998), marked by the "*"):

For the City of Vernon:

*Kenneth J. DeDario, Director of Utilities
Jorge C. Somoano, Asst. Director of Resource Management
City of Vernon
Utilities Department
4305 Santa Fe Avenue
Vernon, California 90058
Tel: (323) 583-8811
Fax: (323) 583-1983

For the California Independent System Operator Corporation:

Charles F. Robinson, General Counsel
*Roger E. Smith, Senior Regulatory Counsel
The California Independent System Operator Corporation
151 Blue Ravine Road
Folsom, California 95630
Tel: (916) 608-7135
Fax: (916) 608-7296

Kenneth G. Jaffe
*David B. Rubin
Rebecca A. Blackmer
Swidler Berlin Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643

The Honorable David P. Boergers
November 1, 2000
Page 6

An additional copy of this filing is enclosed to be date-stamped and returned to our messenger. Thank you for your assistance in this matter.

Respectfully submitted,

Kenneth G. Jaffe
On Behalf of the California Independent
System Operator Corporation

Enclosures