

UNITED STATES OF AMERICA 81 ferc ¶ 61, 320
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James J. Hoecker, Chairman;
Vicky A. Bailey, William L. Massey,
Linda Breathitt, and Curt Hebert, Jr.

Pacific Gas & Electric Company) Docket Nos. EC96-19-006,
San Diego Gas and Electric Company) EC96-19-008, EC96-19-010,
and Southern California Edison) EC96-19-011, ER96-1663-007
Company) ER96-1663-009, ER96-1663-
) 011 and ER96-1663-012

ORDER CONDITIONALLY ACCEPTING FOR FILING AND SUSPENDING CERTAIN
PRO FORMA AGREEMENTS AND PROPOSED TARIFF CHANGES, ESTABLISHING
PROCEDURES AND PROVIDING CLARIFICATION AND GUIDANCE

(Issued December 17, 1997)

I. Introduction

On October 31 and November 21, 1997, as amended by the California Independent System Operator Corporation (ISO) on November 26, 1997, the ISO and the California Power Exchange Corporation (PX) separately tendered several filings to respond to the Commission's July 30 and October 30, 1997, orders in Docket Nos. EC96-19 and ER96-1663, et al. ^{1/} These filings include certain *Pro Forma* Agreements and operating Protocols that govern the administration and operation of the ISO and PX, as well as certain proposed revisions to the ISO and PX Tariffs.

In this order, we will accept for filing certain of the ISO's *Pro Forma* Agreements and proposed Tariff changes, to become effective on the date that ISO operations commence, after a nominal suspension, subject to the conditions and modifications discussed herein, and subject to future Commission orders. Similarly, we will accept for filing the PX's *Pro Forma* Agreement and proposed Tariff changes, to become effective on the date that PX operations commence, after a nominal suspension, subject to the conditions and modifications discussed herein, and subject to

^{1/} Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, 80 FERC ¶ 61,128 (1997) (July 30 Order), and Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company, 81 FERC ¶ 61,122 (1997) (October 30 Order).

future Commission orders. In addition, we will treat the ISO's and PX's Protocols as filed under section 205 of the FPA, conditionally accept the Protocols for filing, as modified herein, subject to a nominal suspension and further Commission order, to become effective on the ISO Operations Date, and require the ISO and PX to file their amended Protocols under section 205 of the FPA within 60 days after the ISO Operations Date.

October 31 Filings

The ISO's October 31 filing consists of the following *Pro Forma* Agreements: UDC Agreement; Participating Generator Agreement; Existing Operating Agreement; Interim Black Start Agreement; Meter Service Agreement for ISO Metered Entities; and Meter Service Agreement for Scheduling Coordinators. ^{1/} The PX's October 31 filing includes a *Pro Forma* Meter Service Agreement for PX Participants. The ISO and PX request that the Commission accept the *Pro Forma* Agreements as "agreements in principle" that will be used as the basis for the agreements that will be executed by the ISO, PX and Market Participants.

The ISO also filed for informational purposes the following Protocols: Outage Coordination Protocol (OCP); Ancillary Services Requirements Protocol (ASRP); Settlements and Billing Protocol (SABP); Metering Protocol (MP); Scheduling Coordinator Application Protocol (SCAP); Schedules and Bids Protocol (SBP); Scheduling Protocol (SP); Dispatch Protocol (DP); Demand Forecasting Protocol (DFP); and Market Monitoring and Information Protocol (MMIP).

The PX also submitted the following Protocols for informational purposes: PX Registration and Certification Protocol (PRCP); PX Metering Protocol (PMP); PX Communications Protocol (PCP); PX Bidding and Bid Evaluation Protocol (PBEP); PX Scheduling and Control Protocol (PSCP); PX Settlement and Billing Protocol (PSABP); PX Market Monitoring and Information Protocol (PMMIP); and PX Emergency Recovery Protocol (PERP).

^{2/} The ISO states that it is submitting the *Pro Forma* Interconnected Control Area Operator Agreement for informational purposes only. The ISO states that negotiations with other control area operators are ongoing and that once the agreements are closer to being finalized, the parties to the agreements will determine whether they need to be filed with the Commission under section 205.

As noted above, the ISO and PX filed these protocols for informational purposes; the ISO and PX request an extension of time to review the Protocols to determine which require Commission approval under section 205 of the Federal Power Act.

Finally, the ISO and PX each filed, for informational purposes only, amendments to their respective tariffs. The ISO and PX state that they are submitting the tariff amendments in order for the Commission to be apprised of how the Protocols interact with the ISO and PX Tariffs. While the ISO does not request that its proposed tariff changes become effective, the PX does request acceptance of its proposed tariff changes effective January 1, 1998.

November 21 Filing

On November 21, 1997, the ISO and PX separately filed, under section 205 of the FPA, proposed amendments to their respective tariffs. The ISO and PX both request waiver of the Commission's 60-day notice requirement so that the proposed amendments can become effective January 1, 1998. The ISO and PX both state that the proposed tariff changes reflect changes required by the Commission's October 30 Order, including the deletion of any functions proposed to be implemented after January 1, 1998 pursuant to their respective staging plans. The ISO and PX also both state in support of these filings that the proposed tariff changes are required as a result of further software development.

The November 21, 1997, tariff amendment filings by the ISO and PX render the October 31, 1997, informational tariff filings moot.

November 26 Filing

On November 26, 1997, the ISO filed a Notice of Withdrawal and Application for New Section 205 Approval. In that filing, the ISO proposes to replace ISO Tariff Sections 11.3.2 and 11.3.3, which were included in its November 21 filing, with a new ISO Tariff Section 11.3.2.

December 9 Filing

On December 9, 1997, the ISO filed a letter with the Commission indicating that it has discovered a "significant gaming scenario with respect to the Imbalance Energy market" and proposing a modification to its Scheduling Protocol to correct this perceived problem.

II. Interventions and Comments

Notice of the ISO's October 31 filing was published in the Federal Register, 62 Fed. Reg. 60,896 (1997), with motions to intervene or protests due by November 21, 1997. Notice of the PX's October 31 filing was published in the Federal Register, 62 Fed. Reg. 60,895 (1997), with motions to intervene or protests due by November 21, 1997. Notice of the ISO's and PX's November 21, 1997 filings was published in the Federal Register, 62 Fed. Reg. 63,537 (1997), with motions to intervene or protests due by December 2, 1997. The due date for interventions and protests to the November 21 filings subsequently was extended to December 4, 1997. Notice of the ISO's November 26 filing was published in the Federal Register, 62 Fed. 64,216 (1997), with motions to intervene or protests due by December 8, 1997.

Timely motions to intervene and notice of intervention were filed in these proceedings by the parties listed in Appendix A. On December 10, 1997, Bonneville Power Administration (BPA), the Utility Reform Network (TURN) and Utility Consumers' Action Network (UCAN) filed Motions to intervene out of time and comments regarding the November 21 filings.

III. Discussion

A. Preliminary Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1997), the notice of intervention and timely, unopposed motions to intervene serve to make the intervenors listed on Appendix A parties to this proceeding. ^{1/} Given the stage of the proceeding and the absence of undue delay and prejudice, we find good cause to accept the untimely, unopposed motions to intervene of BPA, TURN and UCAN.

Numerous commenters object to the October 31 informational tariff filings by both the ISO and PX, claiming that these filings cause confusion, do not reflect the modifications required in the October 30 order, are not permitted under the FPA or the Commission's regulations, and waste Commission and intervenor resources. ^{1/} In view of the fact that the October 31 informational tariff filing has been superseded by the ISO's and PX's November 21 Tariff filings under section 205 of the FPA, these concerns are moot.

^{3/} Intervenors in Docket Nos. ER96-1663 and EC96-19 continue to have party status in this proceeding. See October 30 Order, 81 FERC ¶ 61,122 at 9.

^{4/} See, e.g., November 21, 1997 Comments of Transmission Agency of Northern California (TANC) at 27-32.

Similarly, the California Department of Water Resources (DWR) filed a motion to defer consideration of the protocols and related filings filed by the ISO and PX to afford them an opportunity to file revisions which address the changes required by the October 30 Order.

Commenters also contend that the ISO and PX filings continue to present a moving target, which complicates their ability to address the proposals in a timely and meaningful fashion. ^{1/} These parties contend that the size and frequency of the ISO and PX filings, as well as the large number of issues they present, make it virtually impossible for the parties to provide meaningful comments and for the Commission to engage in an adequate review of the filings in the limited time available prior to the expected commencement of ISO and PX operations. Accordingly, these parties urge the Commission to defer consideration of as many issues as possible until after the commencement of ISO and PX operations, and to focus our attention in this order on issues that require resolution prior to the ISO Operations Date. In addition, several intervenors renew their request for formal hearing procedures.

In view of the numerous filings that must be addressed prior to the ISO Operations Date, and the large number of new and ever-evolving proposed tariff changes, we agree with the commenters that the most sensible approach is to address in this order only those issues that require resolution prior to the ISO Operations Date. Accordingly, this order will address those substantive and procedural issues necessary for the ISO and PX to commence operation.

We will deny the renewed requests for hearings in these proceedings. We note that we are concurrently establishing formal hearings in a number of proceedings related to the California restructuring today, where development of a factual record is required. Moreover, in this order, we are also requiring the ISO and PX each to file conforming revisions to various ISO and PX *Pro Forma* Agreements and Tariffs and a compliance filing of the ISO and PX Protocols and Tariffs under section 205. Because of this filing requirement, Parties will have the opportunity to again raise issues related to the filings and new issues that arise in view of operational experience.

^{5/} November 21, 1997 Comments of Cities of Redding and Santa Clara, California, and the M-S-R Public Power Agency (M-S-R, et al.) at 5-7; November 21, 1997 Comments of Electric Clearinghouse, Inc. at 5-6.

Other issues not addressed by this order will be addressed in a subsequent order. In light of these determinations, DWR's Motion to Defer is moot.

Finally, as in our October 30 Order, the Commission will use the terms as defined in the Master Definitions Supplements. ^{1/} Accordingly, the capitalized terms used in this order reflect terms that conform to the terms contained in the ISO and PX Master Definitions. As we stated in our earlier order, we do not specifically endorse the definitions for purposes other than this order.

B. ISO and PX Protocols

One of the most significant issues remaining in this proceeding concerns the filing status of the ISO and PX Protocols. Under our "rule of reason" the Commission has previously noted that the ISO and PX will in the first instance identify the Protocols that should be filed under section 205 and not simply submitted for informational purposes. ^{1/} The Commission stated that in reviewing the applications, the Commission and all interested parties can evaluate and determine which Protocols will require section 205 review.

In the instant filings, the ISO and PX note that they have previously committed to "engage in a review of the Protocols to determine which provisions plainly require the Commission's explicit approval under section 205." ^{1/} However, the ISO and PX now request an extension of time to perform this analysis. ^{1/} The ISO and PX therefore submitted all their Protocols for informational purposes in Appendix II of their respective filings.

In response, the comments almost universally objected to the filings of the Protocols for informational purposes. Various

^{6/} See 81 FERC ¶ 61,122 at 9. The Master Definitions are set forth in Appendix A to that order.

^{7/} 81 FERC ¶ 61,122 at 16.

^{8/} ISO Application at 12 and PX Application at 7. These commitments were made in response to requests for rehearing of our July 30 Order.

^{9/} Both the ISO and PX state that they wish to review the October 30 Order prior to performing the requisite analysis. ISO Application at 12 and PX Application at 7.

Parties note that while considerable effort went into the filings, the ISO and PX have not complied with the Commission's orders. Moreover, various Parties note that Section 1 of the various *Pro Forma* Agreements filed by the ISO provides that where there is any inconsistency between the agreements and either the ISO Tariff or applicable ISO Protocols, the ISO Tariff and/or the ISO Protocols will prevail. Therefore, they claim that the ISO has inappropriately elevated the Protocols, filed for informational purposes, to take precedence over the terms of the *Pro Forma* Agreements. 1/

10/ TANC at 17-18; Metropolitan Water District (Metropolitan) at 18; California Municipal Utilities Association (CMUA) at 6.

Upon review of the Protocols, the Commission believes that, contrary to the earlier ISO and PX representations, the Protocols are not similar to internal operating manuals of all public utilities, which contain the kind of detail that the Commission should not want to concern itself with. 1/ A review of the ISO and PX Protocols reveals that they govern a wide range of matters which traditionally and typically appear in agreements that should be filed with and approved by the Commission. Many Tariff provisions simply cannot be understood and administered without the Protocols. 1/ Certain Protocols change the service to be rendered under the Tariffs that were accepted by the Commission. They also contain charges and provisions that are not specified

11/ 80 FERC ¶ 61,128 at 61,423.

12/ Modesto Irrigation District (Modesto) at 17.

in the ISO 1/ and PX 1/ tariffs. Furthermore, we note that the ISO and PX Protocols that were filed have not been modified to

13/ For example, Section 11 of the ASRP (Sanctions For Poor Performance) details how an Ancillary Service resource that fails a compliance test will be disqualified from providing the Ancillary Service. In contrast, Section 2.5.26 of the ISO Tariff (Penalties for Failure to Pass Tests) provides that a resource failing an availability test will not be entitled to payment for the committed period. Similarly, SCAP Section 6.3 requires Scheduling Coordinators to submit a \$500 non-refundable application fee, while Section 2.2.4.1 of the ISO Tariff simply states that the fee will be set by the ISO Governing Board.

14/ For example, PX Tariff Section 3.8.1.2 (regarding Price and Size Parameters for Day-Ahead Bidding) states:

All Energy Bids and Ancillary Services shall not be less than zero and shall be subject to any maximum price limit set by the PX. In

conform to the Commission's October 30 Order and violate principles established by that order.

addition, all bids shall be subject to minimum size and maximum size limits set by the PX in the PX Protocol on bidding and bid evaluation.

However, Section 1.2.2 of the PX Bidding and Bid Evaluation Protocol allows the PX to notify PX Participants of these limits from time to time.

In these circumstances, we see no alternative but to accept and suspend for a nominal period all of the ISO and PX Protocols for filing as part of the ISO and PX rate schedules. 1/ The ISO and PX must immediately conform their filed Protocols with the ISO and PX Tariffs consistent with this order, as well as our previous orders in this proceeding and post them on the publicly available portion of WEnet. 1/ In addition we will require the ISO and PX to each file under section 205 of the FPA their complete Protocols within sixty days of the ISO Operations Date. At that time we will afford the parties an opportunity to file comments.

In addition, after all of the Protocols are filed, we encourage the ISO, PX and all interested parties, through the

15/ We also accept for filing and suspend for a nominal period the modification to the Scheduling Protocol proposed in the ISO's December 9, 1997 filing. The parties will be afforded an opportunity to address this proposal at the time that the ISO files its Protocols under section 205 of the FPA, as discussed herein.

16/ In our October 30 Order, we directed the ISO and PX to post their rate schedules on the WEnet (See 81 FERC ¶ 61,122 at 2-3, Footnote 3). We clarify that all rate schedules are to be posted on the publicly accessible portion of WEnet (i.e., the ISO's and PX's Home Pages).

ongoing stakeholder process, to review the Protocols to determine which provisions are more appropriately included in the Tariffs.

We expect that as a result of that process, the ISO and PX will file to amend their respective Protocols and Tariffs under section 205 to incorporate these changes. For example, we note that the tariffs do not incorporate monitoring provisions; these activities are presently included only in the Protocols. ^{1/} If after this process, certain of the Protocols are truly "operating guidelines" that simply add details or procedures necessary to implement tariff provisions, the Commission will consider a future request to delete these Protocols from the rate schedules.

C. The Pro Forma Agreements

With the exceptions noted below, we accept the ISO and PX *Pro Forma* Agreements for filing and suspend them for a nominal period. Specifically, we accept the ISO's proposed Participating Generator Agreement (PGA), Existing Operator Agreement (EOA), and the PX's Meter Service Agreement for PX Participants. We find that the proposed *Pro Forma* Agreements are reasonable to the extent that they establish a necessary basis for negotiating and executing all future contracts between participating entities and the ISO and PX. We recognize that these *Pro Forma* Agreements are subject to certain modifications to reflect the unique circumstances of each individual participant (e.g., whether an entity is or is not a public utility subject to our jurisdiction).

Interim Black Start Agreement

The ISO's proposed Interim Black Start Agreement is reasonable to the extent that the ISO must establish minimum reliability criteria applicable to those entities which propose

^{17/} Similarly, we note that in its November 21, 1997 filing, "[t]he PX originally planned to include [Zonal Market Clearing Prices] in its Protocols, but ultimately decided that it more properly belonged in the PX Tariff in order that Market Participants could more easily find the rule." Application at 5.

to provide future Black Start service to the ISO. However, we find that it is inappropriate for the Commission to accept, under section 205 of the FPA, a *pro forma* agreement filed by the ISO, as the purchaser of this service. Therefore, we direct the ISO to post on the publicly available ISO Home Page, for informational purposes only, the necessary requirements and criteria for providing Black Start service. We note that any public utility that provides Black Start services to the ISO will have to make a filing under section 205 for approval of the rate, terms and conditions of that service.

Moreover, we find that it is unnecessary to accept the ISO's proposed Black Start agreement in light of the ISO's decision to secure this service under certain Reliability Must-Run Agreements. The ISO states that initially it will not have in place a competitive process to procure Black Start services and will thus rely on Southern California Edison Company, Pacific Gas & Electric Company, and San Diego Gas & Electric Company (collectively the Companies), to supply these services under the Reliability Must-Run Agreements. 1/ While we are sympathetic to the concerns raised by CMUA and others 1/ that other entities may be able to provide Black Start service, we find that the ISO must initially procure Black Start service from the Companies under Reliability Must-Run Agreements. However, after the ISO Operation date, we will require the ISO to undertake an exhaustive review of its Black Start service procurement process and to evaluate and consider all resources that may be able to provide the service.

Interconnected Control Area Operating Agreement

We find that the Interconnected Control Area Operating Agreement, filed for informational purposes by the ISO, may be useful as a basis for the negotiation of future bilateral interconnection agreements with the ISO's neighboring control areas. In our October 30 Order, we noted that the ISO committed to timely file interconnection agreements with all neighboring control areas. 1/ The Commission's conditional section 203 authorization was based, in part, on the ISO's commitment to negotiate and file the necessary agreements with all adjacent

18/ ISO Appendix III at 5-6.

19/ See, e.g., November 21, 1997, Comments of CMUA at 12-15.

20/ See 81 FERC ¶ 61,122 at 53-54. (Discussion under ISO Principle No. 10, which requires an ISO to develop mechanisms to coordinate with neighboring control areas.)

control area operators. We emphasize that all interconnected control area agreements entered into by the ISO must be filed with the Commission for approval under section 205 of the FPA. We reject the ISO's proposal to file the Interconnected Control Area Operating Agreement for informational purposes only. In response to concerns raised by NCPA and others, we note that any interconnection agreement negotiated by the ISO must clearly provide for the continuation of all existing contractual rights. ^{1/} Any other issues related to the ISO's interconnection agreements with neighboring control areas will be addressed when the actual agreements are filed with the Commission.

Meter Service Agreement for ISO Metered Entities and the Meter Service Agreement for Scheduling Coordinators

^{21/} See, e.g., November 21, 1997, Comments of Northern California Power Agency (NCPA) at 9-10.

In our October 30 Order, we recognized the importance of operating as a Metered Subsystem. ^{1/} In addition, we noted that the ISO intends to revise the ISO Tariff after January 1, 1998 to clarify the role, responsibility and requirements associated with a Metered Subsystem. As we stated in the October 30 Order, we consider this to be an extremely important issue and urge the ISO to resolve this issue. Based on the comments received to date regarding the ISO's proposed Metering Protocol, the Meter Service Agreement for ISO Metered Entities, and the Meter Service Agreement for Scheduling Coordinators, we recognize that there are also many other unresolved issues regarding the ISO's metering requirements and operating standards. For example, we agree with TANC and Metropolitan that it is unclear whether an entity that qualifies as both an ISO Metered Entity and a Scheduling Coordinator needs to sign both agreements and if so, which agreement is guiding in instances where there is a conflict between the agreements. ^{1/}

In addition, we note that TANC and others raise questions with regard to basic definitions and that it is unclear how the ISO will reconcile the metering standards contained in Existing Contracts with those now proposed by the ISO. ^{1/} We find that it is premature to address these and other issues until such time as the ISO's proposal is more fully developed. Because these agreements are still a work in progress we see no reason at this time to accept for filing the ISO's *Pro Forma* Meter Service Agreement for ISO Metered Entities and Meter Service Agreement for Scheduling Coordinators.

UDC Agreements

As noted above, the ISO's October 31 filing includes a *Pro Forma* UDC Agreement. However, on December 2, 1997, the ISO filed executed UDC Agreements with the Companies in Docket No. ER98-899-000. These appear to contain some provisions that differ from the October 31 *Pro Forma* UDC Agreement. In the December 2 filing, the ISO requests that the executed UDC Agreements be treated as a revised *Pro Forma* Agreement. In view of this new filing, all of the ISO's filed UDC Agreements will be addressed in a subsequent order.

^{22/} 81 FERC ¶ 61,122 at 134.

^{23/} November 21, 1997, Comments of TANC at 8-9; Metropolitan at 12-13.

^{24/} Id. at 10.

Generic Issues on the Pro Forma Agreements

We disagree with Modesto that parties electing not to become Participating Transmission Owners (i.e., electing to continue to take service under their Existing Contracts) should not be obligated to sign certain *Pro Forma* Agreements with the ISO. While we agree that any party can continue to take service under an Existing Contract, we find that any entity that wishes to take service from, or in any way participate in, the various markets administered by or through the ISO will have to sign the appropriate *Pro Forma* Agreements.

We agree with Metropolitan and others that the ISO's and PX's *Pro Forma* Agreements should not be subordinate to the ISO's and PX's Protocols. 1/ The ISO and PX Tariffs should be the guiding documents with respect to all inconsistencies and disputes between the Tariffs, Protocols, *Pro Forma* Agreements and all other agreements entered into by the ISO, PX and Market Participants. While the Commission will initially require that all ISO and PX Protocols be filed under section 205 of the FPA, this action in no way diminishes the preeminent position of the ISO and PX Tariffs vis-a-vis the Protocols. Accordingly, the ISO and PX are directed to revise Section 1 of their respective *Pro Forma* Agreements. In addition, as discussed further below, we agree with Metropolitan that the ISO and PX may not incorporate by reference their respective Protocols into their *Pro Forma* Agreements.

The definition section of the *Pro Forma* Agreements provides that terms will have the same meaning as defined in the ISO Tariff "[u]nless the context otherwise requires." Metropolitan and TANC note that this provision inappropriately allows terms to have different meanings under certain circumstances and requests that this language be deleted to avoid confusion and uncertainty. 1/ We agree that this clarification is necessary and require that this language be deleted from the agreements. We also agree with TANC that to the extent the ISO and PX propose to add or change a definition in the Master Definitions Supplement accepted by the Commission in the October 30 Order, they must make a filing under section 205 of the FPA. Finally, consistent with our determination in the October 30 Order, we

25/ See, e.g., November 21, 1997, Comments of Metropolitan at 9; M-S-R, et al. at 8-10; TANC at 10-11, 14.

26/ November 21, 1997, Comments of Metropolitan at 8 and TANC at 9-10 and 14.

agree with Metropolitan that the ISO and PX *Pro Forma* Agreements should delete all definitions not applied in their respective agreements. 1/

27/ November 21, 1997, Comments of Metropolitan at 13.

A number of parties raise concerns with regard to the fact that certain of the *Pro Forma* Agreements contain penalties (including the suspension of trading rights) and sanctions, the details of which have not yet been provided. 1/ As the Commission stated in the October 30 Order, all penalties and sanctions must be timely filed under section 205 of the FPA before any such penalty or sanction is implemented. 1/

We agree with TANC that the *Pro Forma* Agreements should be revised to state that termination will be effective upon acceptance by FERC of the Notice of Termination. 1/ As proposed, the *Pro Forma* Agreements provide that the operation of the terms of the agreement are suspended pending Commission acceptance of the termination notice.

Certain parties raise concerns that the *Pro Forma* Agreements would require non-public utilities to file a notice of termination with the Commission. 1/ We clarify that non-public utilities would not have to make a filing with the Commission. Only the ISO, as a jurisdictional entity that is party to the agreement, would be required to timely file, under section 205 of the FPA, a notice of termination with the Commission. The ISO is directed to clarify that it has the responsibility to file a timely notice of termination with the Commission.

Participating Generator Agreement (PGA)

We disagree with Southern Cities/Azusa and Banning's recommended change to Section 3.2.1 of the PGA, which would restrict the ISO's ability to terminate for non-compliance. 1/

28/ See, e.g., November 21, 1997, Comments of NCPA in Docket Nos. EC96-19-006 and ER96-1663-007 at 4-5 and Docket Nos. EC96-19-008 and ER96-1663-009 at 5-10; Metropolitan at 10.

29/ 81 FERC ¶ 61,122 at 249-50.

30/ November 21, 1997, Comments of TANC at 11, 14-15, and 18.

31/ November 21, 1997, Comments of NCPA in Docket Nos. EC96-19-008 and ER96-1663-009 at 5; Cities of Anaheim, Colton, and Riverside, California and Azusa and Banning, California (Southern Cities/Azusa and Banning) in Docket Nos. EC96-19-008 and ER96-1663-009 at 5; and Turlock Irrigation District (Turlock) in Docket Nos. EC96-19-008 and ER96-1663-009 at 8.

32/ November 21, 1997, Comments of Southern Cities/Azusa and Banning in Docket Nos. EC96-19-008 and ER96-1663-009 at 5.

The ISO should be permitted to terminate the PGA, subject to Commission approval, if a Participating Generator fails to comply with the terms of the agreement. However, we agree with Southern Cities/Azusa and Banning and TANC that the Participating Generator Agreement should contain an Uncontrollable Force provision similar to that contained in the UDC Agreement. 1/ The ISO is directed to incorporate this provision.

33/ November 21, 1997, Comments of Southern Cities/Azusa and Banning in Docket Nos. EC96-19-008 and ER96-1663-009 at 5 and TANC at 16.

We disagree with Turlock that Article IV (General Terms and Conditions) of the PGA should be modified to reflect that a Metered Subsystem can use a System Unit to provide certain services. 1/ As the title to the section implies, these are general terms and conditions and we find that there are no provisions in this article that would preclude a Metered Subsystem from utilizing a System Unit to provide any services. Similarly, we find Schedule 1 to be reasonable and not in need of the clarification requested by Turlock. 1/

We reject TANC's recommended change to Section 6.1 of the PGA. TANC recommends that the provision specify the procedures, rights, and obligations of the parties regarding the cost of unit operation and maintenance. 1/ We interpret Section 6.1 of the PGA as simply providing that the owners of the identified Participating Generators will be responsible for the costs of operating and maintaining their units. We find that this provision is reasonable.

We agree with Metropolitan's recommendation to delete the clause "prior to the ISO Operations Date" from Section 8.2 of the PGA. 1/ This deletion will clarify that approvals or permits secured by a Participating Generator will be obtained prior to execution of the PGA.

We disagree with TANC that Sections 10.1 and 10.4 of the PGA are inconsistent with the ISO Tariff. TANC recommends that these

34/ November 21, 1997, Comments of Turlock in Docket Nos. EC96-19-008 and ER96-1663-009 at 8.

35/ Id. at 9.

36/ November 21, 1997, Comments of TANC at 15.

37/ November 21, 1997, Comments of Metropolitan at 10.

provisions either restate the applicable terms of the ISO Tariff or should incorporate those terms by reference without partially restating them. ^{1/} We interpret these provisions as consistent with, and guided by, the relevant provisions of the ISO Tariff.

38/ Id.

Turlock is concerned that Section 2.1 of the PGA may permit the ISO to take certain actions that may harm the Participating Generator's customers. 1/ For example, Turlock states that Section 2.1 of the PGA may permit the ISO to require Turlock to operate certain of its hydroelectric facilities at times when they are of little value to Turlock, causing Turlock to incur higher costs at other times. 1/ We find that the relevant provision is reasonable. Section 2.1 of the PGA states that the ISO is responsible for the efficient use and reliable operation of the ISO Grid, and that to the extent that a Participating Generator fails to comply with its obligations under the PGA and the ISO Tariff and Protocols, the ISO may not be able to satisfy its responsibilities. With regard to Turlock's example, we find that, at certain times, in order to maintain the reliability of the ISO Grid, the ISO may have no alternative but to take actions that will have negative cost consequences on certain parties.

Existing Operating Agreement (EOA)

The Existing Operating Agreement recognizes that ISO Operations must accommodate the operations of existing systems within the ISO Control Area. We find the EOA, as modified below, to be reasonable. However, we clarify that if there is an inconsistency between the terms of the EOA and an Existing Contract, the Existing Contract controls. In response to Turlock's concern, 1/ if an entity signs the EOA, that entity maintains all of its rights and obligations under its Existing Contract.

39/ November 21, 1997, Comments of Turlock in Docket Nos. EC96-19-008 and ER96-1663-009 at 7-8.

40/ November 21, 1997, Comments of Turlock in Docket Nos. EC96-19-008 and ER96-1663-009 at 7.

41/ Id. at 9-10.

Sacramento Municipal Utility District (SMUD) states that the agreement is of a relatively recent vintage and is still in an evolutionary stage. While the ISO is continuing to amend the EOA, SMUD raises several issues. 1/ SMUD, as well as Southern Cities/Azusa and Banning and TANC, 1/ notes that the agreement provides that the ISO will honor Existing Operating arrangements "except as limited by the operation of [Scheduling Protocol] 7."

SMUD and Southern Cities/Azusa and Banning request that this limitation be removed, noting that existing rights have been recognized and preserved by the Commission's October 30 Order. Furthermore, Scheduling Protocol 1.2.3(a) states, in relevant part, that "if the provisions of this [Scheduling Protocol] and an Existing Operating Agreement conflict, the provision of the Existing Operating Agreement will prevail." We direct the ISO delete the reference to Scheduling Protocol 7. This modification is necessary to preserve existing operating and scheduling rights. The modification is not intended to restrict the ISO's ability to use available transmission capacity that is not used by Existing Operating Agreements.

SMUD states that the Section 1.2 definition incorrectly characterizes an Existing Subsystem as, "subsumed within the ISO Control Grid" as opposed to subsumed within the ISO Control Area. 1/ We agree with SMUD's recommended change.

We disagree with Turlock that Section 3.1 of the EOA requires clarification to state that an entity does not have to sign the EOA in order to participate in the ISO's Ancillary Service market. 1/ Section 3.1 of the EOA provides that an Existing Operating Entity must either be, or is represented by, a Scheduling Coordinator. We interpret this provision to in no way obligate an entity to sign the EOA in order to participate in the ISO's Ancillary Service market.

Turlock objects to providing unit and load specific information by individual load bus on an hourly basis. 1/ We

42/ November 21, 1997, Comments of SMUD at 16-18.

43/ November 21, 1997, Comments of Southern Cities/Azusa and Banning at 5 and TANC at 17-18.

44/ November 21, 1997, Comments of SMUD at 17.

45/ November 21, 1997, Comments of Turlock in Docket Nos. EC96-19-008 and ER96-1663-009 at 10.

46/ November 21, 1997, Comments of Turlock in Docket Nos. EC96-19-008 and ER96-1663-009 at 11-12.

agree with Turlock that unique characteristics of certain systems may require modification to the data requirements. However, as a general matter we believe that it is appropriate for the *Pro Forma* EOA to contain the proposed data requirements. To the extent entities such as Turlock negotiate different data submission requirements with the ISO, that is an issue best addressed in their individual executed EOAs.

With respect to Turlock's concerns regarding its ability to function as a Metered Subsystem, we interpret the ISO Tariff to permit Metered Subsystems to make sales from a System Unit. 1/ As we stated in the October 30 Order, we recognize the importance of the Metered Subsystem concept to many parties and encourage the ISO and all interested stakeholders to resolve these issues as expeditiously as possible.

We disagree with Southern Cities/Azusa and Banning's recommended change to Section 8.2.1. For the same reasons given above with respect to Participating Generators, the ISO should be permitted to terminate service under the EOA, subject to Commission approval, to the extent an Existing Operating Entity fails to honor the terms and conditions of the EOA. However, we clarify that this would in no way effect an entity's rights and obligations under an Existing Contract.

D. ISO and PX Tariff Amendments

As noted above, the ISO's and PX's proposed tariff changes filed on November 21, 1997, as revised on November 26, 1997, are extensive and in many respects depart from the provisions addressed in our October 30 order and from the anticipated tariff changes filed for informational purposes on October 31, 1997.

Numerous parties complain that the ISO's and PX's proposed tariff changes are unclear, inconsistent with the Commission's prior orders, inconsistent with their own Staging Plans, and the subject of further contemplated changes. As a result, essentially all parties reserve the right to address future ISO and PX Tariff changes. Moreover, parties point out that due to ambiguities in the Tariffs and related Protocols, certain issues may arise or alternatively become moot once they are implemented after operations commence. They assert that a full understanding

47/ Id. at 12-13.

of these issues will not be known until the ISO and PX actually implement their tariffs. Therefore, these parties request the opportunity to raise these issues at a later date.

Our preliminary review of the filings indicates that these proposed tariff changes may be unjust and unreasonable or unduly discriminatory. Accordingly, we will accept the ISO's and PX's proposed tariff changes for filing, suspend the filings for a nominal period to become effective on the date that ISO and PX operations commence, subject to the conditions and modifications discussed below, and subject to further Commission orders. 1/

Consistent with the procedures established in our October 30 Order, we will require the Tariff Amendments, including the modifications required herein, to be promptly posted electronically on the WEnet. In addition, we will require the ISO and PX each to make their compliance filing in these proceedings no later than 60 days after the commencement of ISO and PX operations. The filing shall reflect the modifications to the ISO and PX Tariffs, including the Protocols addressed above, required in our orders to date. At that time, the Commission will afford the parties an adequate opportunity to address the filings in view of actual ISO and PX operational experience. All issues raised by these filings, including, but not limited to ISO and PX issues regarding Tariff amendments not addressed in this order, will be the subject of a future order.

A number of parties raise concerns over the ISO's proposed allocation of its Grid Management Charge. All issues related to the development and allocation of the ISO's Grid Management Charge will be addressed in Docket No. ER98-210-000.

We agree with SoCal Edison that the ISO's proposed Tariff should be modified to reflect that the ISO will contract with the owners of Reliability Must-Run Generating Units to procure Black Start capability, as opposed to contracting with their Scheduling Coordinators. As noted by SoCal Edison, the Companies must sell

48/ We note that no party opposes the ISO's November 21 Motion to Withdraw a portion of its November 26 filing. Accordingly, we grant that motion, and accept for filing herein the proposed revision to ISO Tariff Section 11.3.2.

all of their generation into the PX, which will act as their Scheduling Coordinator. However, at least initially, the PX will not have the capability to sell Ancillary Services such as Black Start service. Accordingly, we will require the ISO to modify Sections 2.5.19 and 2.5.10 of the ISO Tariff as proposed by SoCal Edison.

The ISO proposes numerous ISO Tariff changes that would initially prohibit System Resources from supplying Ancillary Services. 1/ The ISO states that this change is necessary to reflect the limitations of the ISO's scheduling, settlement and billing software in the ISO Tariff. 1/ The ISO states that it will not be able to procure Ancillary Services from outside the Control Area until April 1, 1998. 1/

49/ System Resources are defined by the ISO as a group of resources located outside of the ISO Control Area. ISO Tariff Appendix A, Master Definitions Supplement, Original Sheet No. 344.

50/ See November 21, 1997, filing by the ISO in Docket Nos. EC96-19-010 and ER96-1663-011 at 1.

51/ ISO Revised Staging Plan No. 1, Section 12 at 18.

Numerous parties raise concerns with regard to the ISO's proposal to prohibit System Resources from supplying Ancillary Services. 1/ These parties claim that excluding resources located outside the ISO Control Area from participating in the Ancillary Services market will force the ISO to rely on more expensive Reliability Must-Run generators. TANC states that the exclusion of System Resources from the Ancillary Services market will result in an extremely narrow geographic market for these services. TANC requests that the ISO permit Scheduling Coordinators to utilize out-of-ISO-Control-Area Ancillary Services using transmission service under Existing Contracts. 1/ Metropolitan contends that while the ISO's Revised Staging Plan contemplates that Scheduling Coordinators will be able to Self-Provide all Ancillary Services by utilizing transmission Service under Existing Contracts, the ISO's proposed Tariff changes will only permit the Self-Provision of Regulation service. 1/

We recognize that the ISO may initially be unable to procure Ancillary Services from System Resources. However, to the extent permitted under their Existing Contracts, entities should be able to utilize transmission service (consistent with WSCC standards) to self-provide additional Ancillary Services from resources located outside the ISO Control Area, where technically feasible. While the ISO's proposed Revised Staging Plan No.1 provides for this option, 1/ the ISO's proposed revision to Section 2.5.7.4 of the ISO Tariff is unclear as to an entity's ability to self-provide all Ancillary Services. We direct the ISO to revise Section 2.5.7.4 to state that Scheduling Coordinators may utilize transmission service under Existing Contracts to self-provide Ancillary Services, where technically feasible, consistent with WSCC standards.

Initially, the ISO characterized a Metered Subsystem as a system subsumed within the ISO Controlled Grid and encompassed by revenue quality meters which would permit an entity to bid its resources into the ISO's Energy and Ancillary Services Market as a System Unit. 1/ In our October 30 Order we acknowledged the

52/ See, e.g., December 4, 1997, Comments of Redding and Santa Clara and M-S-R at 13-14; TANC at 24-26; DWR at 4.

53/ December 4, 1997, Comments of TANC at 25-26.

54/ December 4, 1997, Comments of Metropolitan at 13-14.

55/ See ISO Revised Staging Plan No. 1 at 8.

56/ The ISO defines a System Unit as a group of resources that simulate a single resource. A System Unit is not the same

ISO's statement that the MSS concept was a work in progress and that many issues surrounding the proposal were unresolved. 1/

as a System Resource, which is simply a resource located outside of the ISO Control Area.

57/ October 30 Order at 120.

The ISO now states that there will be no Metered Subsystems as of the ISO Operations date and that instead the ISO intends to execute agreements with PG&E and SoCal Edison who will be the Scheduling Coordinators for entities that currently operate on a Metered Subsystem-type basis (Existing Operating Entity). 1/ As explained above, in order for the ISO to provide for the operation of these existing subsystems (Existing Operating Arrangements), the ISO requires that these entities execute the ISO's proposed *Pro Forma* Existing Operating Agreement.

In light of the numerous comments we have received to date on this issue, we find that there are many issues still unresolved with regard to the Metered Subsystem concept and the related agreements. We agree with numerous parties that the ISO has not adequately explained the need for entities to execute an Existing Operating Agreement by January 1, 1998, in order to operate as a Metered Subsystem. In particular, we find that it is inappropriate to require entities to sign an Existing Operating Agreement before the details of the ISO's Metered Subsystem proposal are known. While we are accepting the ISO's proposed *Pro Forma* Existing Operating Agreement for filing, our action should not be interpreted as obligating a party to execute an Existing Operating Agreement before the ISO Operations Date.

Moreover, our approval of the *Pro Forma* Existing Operating Agreement should not be interpreted as in any way resolving the myriad of issues surrounding the ISO's proposal. It is unclear how the EOA will operate in conjunction with the ISO's treatment of Existing Contracts under Section 2.4 of the ISO Tariff. For example, it is unclear why entities that operate a Metered Subsystem under an Existing Contract will have to execute an EOA in addition to satisfying the requirements of Section 2.4 of the ISO Tariff, or if the EOA is intended to satisfy this ISO Tariff requirement. In addition, it is unclear whether the ISO intends that only entities that operate as a Metered Subsystem as of the ISO Operations Date will be permitted to function as a Metered Subsystem in the future. Therefore, we will address issues related to the Metered Subsystem concept when the ISO completes its Metered Subsystem proposal. At that time, the ISO must fully support its proposal.

The Commission orders:

58/ December 4, 1997, Comments of NCPA at 6.

(A) The ISO's proposed *Pro Forma* Agreements and Protocols are hereby accepted for filing and suspended for a nominal period, to become effective on the date that ISO operations commence, subject to the conditions and modifications discussed in the body of this order.

(B) The ISO's proposed Tariff changes are hereby accepted for filing and suspended for a nominal period, to become effective on the date that ISO operations commence, subject to the conditions and modifications discussed in the body of this order.

(C) The PX's proposed *Pro Forma* Agreement and Protocols are hereby accepted for filing and suspended for a nominal period, to become effective on the date that PX operations commence, subject to the conditions and modifications discussed in the body of this order.

(D) The PX's proposed Tariff changes are hereby accepted for filing and suspended for a nominal period, to become effective on the date that PX operations commence, subject to the conditions and modifications discussed in the body of this order.

(E) The ISO is directed to file its Protocols under section 205 of the FPA no later than 60 days from the ISO Operations Date.

(F) The PX is directed to file its Protocols under section 205 of the FPA no later than 60 days from the ISO Operations Date.

(G) The ISO is directed to refile its Tariffs and agreements in compliance with the Commission's orders in these proceedings no later than 60 days after the commencement of ISO operations.

(H) The PX is directed to refile its Tariffs and agreement in compliance with the Commission's orders in these proceedings no later than 60 days after the commencement of ISO operations.

(I) The timely and late filed Motions to Intervene set forth in Appendix A are hereby granted.

(J) The Motion to Defer of DWR is dismissed as moot.

(K) The requests to reject the ISO and PX informational Tariff filings are dismissed as moot.

(L) The requests for hearings are hereby denied.

Docket No. EC96-19-006, et al.

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By the Commission.

(S E A L)

Lois D. Cashell,
Secretary.

**APPENDIX A
TIMELY NOTICES OF INTERVENTION, MOTIONS TO INTERVENE,
PROTESTS AND COMMENTS**

EC96-19-006 and ER96-1663-007

Bonneville Power Administration
California Dept. of Water Resources (Motion to Defer)
Cities of Anaheim, Colton, and Riverside, California and Azusa
and Banning, California
Cities of Redding and Santa Clara, California, and the M-S-R
Public Power Agency
Electric Clearinghouse, Inc.
Houston Industries Power Generation, Inc.
Imperial Irrigation District
Los Angeles Department of Water and Power
Metropolitan Water District
Modesto Irrigation District
New York Mercantile Exchange
NorAm Energy Services, Inc.
Northern California Power Agency
Public Utilities Commission of the State of California
Sacramento Municipal Utility District
Transmission Agency of Northern California
Turlock Irrigation District
The Utility Reform Network (TURN) and Utility Consumers' Action
Network (UCAN) *

APPENDIX A

Docket Nos. EC96-19-008 and ER96-1663-009

Bonneville Power Administration
California Municipal Utilities Assn.
California Department of Water Resources
Cities of Anaheim, Colton, and Riverside, California and Azusa
and Banning, California
Cities of Redding and Santa Clara, California, and the M-S-R
Public Power Agency
Electric Clearinghouse, Inc.
Enron Power Marketing, Inc.
Houston Industries Power Generation, Inc.
Los Angeles Department of Water and Power
Metropolitan Water District
Modesto Irrigation District
New York Mercantile Exchange
NorAm Energy Services, Inc.
Northern California Power Agency
Public Utilities Commission of the State of California
Sacramento Municipal Utility District
San Diego Gas & Electric Company
Transmission Agency of Northern California
Turlock Irrigation District
The Utility Reform Network (TURN) and Utility Consumers' Action
Network (UCAN) *

APPENDIX A

Docket Nos. EC96-19-010 and ER96-1663-011 (November 21 Filing)

Bonneville Power Administration *
California Department of Water Resources
Cities of Redding and Santa Clara and M-S-R Public Power Agency
Los Angeles Department of Water and Power
Metropolitan Water District
Modesto Irrigation District
Northern California Power Agency
Sacramento Municipal Utility District
Southern California Edison Company
The Utility Reform Network (TURN) and Utility Consumers' Action
Network (UCAN) *
Transmission Agency of Northern California
Turlock Irrigation District

Docket Nos. EC96-19-011 and ER96-1663-012 (November 21 Filing)

Bonneville Power Administration *
California Department of Water Resources
Cities of Redding and Santa Clara and M-S-R Public Power Agency
City and County of San Francisco
Los Angeles Department of Water and Power
Metropolitan Water District
Modesto Irrigation District
Northern California Power Agency
Sacramento Municipal Utility District
The Utility Reform Network (TURN) and Utility Consumers' Action
Network (UCAN) *
Transmission Agency of Northern California
Turlock Irrigation District
Western Area Power Administration

* Filed a Motion to Intervene and Comments out of time