UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	Docket No. ER99-896-000

MOTION FOR LEAVE TO SUBMIT ANSWER AND ANSWER TO REQUESTS FOR REHEARING OF CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

On December 11, 1998, the California Independent System Operator Corporation ("ISO") filed Amendment No. 13 to the ISO Tariff.[1] Amendment No. 13 proposed a variety of modifications to the ISO Tariff, including changes to encourage compliance with the scheduling provisions and Ancillary Service market provisions of the ISO Tariff, a change to allocate appropriately cost responsibility associated with derates of transmission capacity, a change to promote the use of market mechanisms to resolve overgeneration conditions, and changes that address a number of miscellaneous issues that have arisen in the course of the ISO's administration of the ISO Tariff. On February 9, 1999, the Commission issued an order accepting Amendment No. 13 with certain modifications, to which the ISO had agreed in its Answer to Motions to Intervene, Request for Hearing, Comments and Protests and Motion for Deferred Effective Dates for Portion of Rate Filing, submitted on January 22, 1999. *California*

Independent System Operator Corp., 86 FERC ¶ 61,122 (1999). (the "February 9 Order").

A number of parties have submitted Requests for Rehearing of the February 9 Order. Pursuant to Rules 212 and 213 of the Commission's Rules of Practice and Procedure,18 C.F.R. §§ 385.212, 385.213, the ISO submits its Motion of Leave to Submit Answer and Answer to Requests for Rehearing. As explained below, the ISO submits this pleading for the limited purpose of correcting a misstatement in one of the Requests for Rehearing and clarifying one issue presented in another Request for Rehearing.

I. MOTION FOR LEAVE TO SUBMIT ANSWER

Notwithstanding Rule 213(a)(2) and 713(d)(1), 18 C.F.R. §§ 385.213(a)(2) and 385.713(d)(1), the Commission has accepted answers to requests for rehearing that assist the Commission's understanding and resolution of the issues raised in a rehearing request, *South Carolina Public Service Authority*, 81 FERC ¶ 61,192 (1997); *Williams Natural Gas Co.,* 75 FERC ¶ 61,274 (1996), or clarify or shed light on those issues, *Arizona Public Service Co.*, 82 FERC ¶ 61,132 (1998); *Tennessee Gas Pipeline Co.*, 82 FERC ¶ 61,045 (1998) .

The ISO submits its Answer for the limited purpose of correcting a misstatement in one Request for Rehearing of the February 9 Order and clarifying one of the issues raised in a second such request. Acceptance of the ISO's Answer will accordingly clarify the issues presented and assist the

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[1] Capitalized terms not otherwise defined herein are used in the sense given in the Master

Commission's understanding and resolution of those issues. Acceptance of the ISO's limited Answer will not delay the Commission's consideration of the rehearing requests in the instant docket. *See Portland Natural Gas Transmission System, et al.*, 83 FERC ¶ 61,080 (1998); *El Paso Natural Gas Company*, 82 FERC ¶ 61,337 (1998). The Commission should accordingly accept this limited Answer.

II. ANSWER TO REHEARING REQUESTS

A. Development of the Capability To Permit Non-Firm Energy Sales From Ancillary Service Capacity *Is* an Element of Ancillary Service Redesign.

Electric Clearinghouse, Inc. ("ECI"), seeks rehearing of the Commission's acceptance of the ISO's proposal to eliminate Ancillary Service payments to Scheduling Coordinators that generate Energy from capacity that has been committed to the ISO to meet the Scheduling Coordinator's obligation for reserves. ECI bases its opposition on a claim that the proposal eliminates the opportunity for Scheduling Coordinators to sell Energy from such capacity to customers in neighboring Control Areas on a non-firm basis. (ECI Rehearing Request at 2.) Among other arguments, ECI contends that "the ISO's claim that this issue was being addressed in the Ancillary Service redesign was simply not true." (*Id.* at 3.)

In fact, it is ECI's contention that is "simply not true." As the ISO explained in its March 1, 1999 filing of Amendment No. 14 to the ISO Tariff and Protocols, the Ancillary Service Redesign stakeholder process encompassed thirty-three potential modifications (later reduced through

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Definitions Supplement, Appendix A to the ISO Tariff.

merger to twenty) to the ISO's Ancillary Service markets.[2] Element number 14, entitled "Use of non-firm exports for non-spin and replacement reserves," encompassed the development of the capability to use generating capacity in the ISO Control Area simultaneously to make non-firm energy export sales and to satisfy Operating Reserve obligations to the ISO. The stakeholders assigned only a "medium" priority to that redesign element.[3] For this reason, and because of the ISO's assessment that it would provide only limited benefits in addressing problems in the Ancillary Service markets, the ISO did not include this redesign element in Amendment No. 14 for immediate implementation, upon the completion of the necessary software changes. Instead, it is among those improvements that will be considered further by the stakeholders following the implementation this summer of the first phase of Ancillary Service market enhancements.[4] Regardless of the priority assigned, however, it is clear that the development of the capability to permit Scheduling Coordinators to export non-firm energy and provide Ancillary Services to the ISO from the same generating capacity is part of the Ancillary Service Redesign effort.

ECI's claim that the ISO misstated the facts and misled the Commission is thus groundless. ECI's unfounded contention can form no basis for the Commission's further consideration of the February 9 Order.

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[2] *California Independent System Operator Corp.,* Docket No. ER99-1971-000, Transmittal Letter, at 12 (Mar. 1, 1999) ("Amendment 14 Transmittal").

[3] All elements considered in the Ancillary Service Redesign stakeholder process, as well as the priority assigned by stakeholders and the ISO's assessment of their benefits, are described in Attachment C to the Amendment 14 Transmittal (at 14-20).

[4] Attachment C to the Amendment 14 Transmittal (at 16) shows that this redesign elements remains part of the Ancillary Service Redesign plan.

B. The Solution to Excessive Transmission Owner Debits for Derated Transmission Capacity Does Not Discriminate Among Participating Transmission Owners.

The February 9 Order also approved the ISO's proposal to modify the ISO Tariff to eliminate excessive debits to Participating Transmission Owners ("Participating TO's") when transmission capacity is derated after the close of the Day-Ahead Market. The California Department of Water Resources ("DWR") seeks rehearing of the Commission's approval of one component of that proposal, arguing that the Commission acted erroneously and in excess of its jurisdiction in requiring Participating TO's that must repay Usage Charge revenues credits under revised Section 7.3.1.7 to debit such amounts to their Transmission Revenue Balancing Accounts or their transmission revenue requirements. DWR contends that, should DWR decide to become a Participating TO, it will not have a transmission revenue requirement and Participating TO's should be permitted instead to debit amounts they are required to repay against other charges they incur under the ISO Tariff. (DWR Rehearing Request at 2-5.)

As an initial matter, the ISO notes that the language giving rise to DWR's concern did not originate with Amendment No. 13. Prior to its modification by Amendment No. 13, Section 7.3.1.7 already required Participating TO's required to repay Usage Charge revenues "to . . . debit . . . [such revenues] from their Transmission Revenue Balancing Account[s]."[5] Insofar as DWR's complaint is concerned, Amendment No. 13 *expanded* the options available to Participating TO's, permitting those Participating TO's that lack such accounts to debit the Usage Charge repayment obligations to their transmission revenue requirements through another mechanism.

[5] The changes to Section 7.3.1.7 affected by Amendment No. 13 are shown in black-line format in Attachment F to the ISO's filing.

DWR claims that this change did not go far enough, because, it argues, some Participating TO's (i.e., those that give the ISO control over contractual transmission rights, rather than transmission facilities they own) will lack both a Transmission Revenue Balancing Account *and* a transmission revenue requirement. In this respect, DWR is mistaken. The ISO Tariff makes specific provision for parties with rights under existing transmission contracts to become Participating TO's on the basis of those rights. *All* Participating Transmission Owners, whether they convert transmission rights based on the ownership of transmission facilities or on rights under pre-existing transmission contracts, will have the opportunity to recover a portion of their transmission revenue requirements through Access Charges and Wheeling Access Charges.

Under Section 2.4.4.3 of the ISO Tariff, a recipient of firm transmission service under an Existing Contract can convert its rights to ISO transmission service and thereby become a Participating TO. As a Participating TO, an entity that converts rights under an existing transmission contract to ISO transmission services:

- must give operational control of the transmission entitlement represented by its contract rights to the ISO (Section 2.4.4.3.1.1);
- is entitled to receive appropriate recognition of its converted contract rights in determining whether it qualifies as Self-Sufficient (Section 2.4.4.3.1.3);[6]
- is entitled, like any other Participating TO, to receive an Access Charge based on its Transmission Revenue Requirements when

[6] A Self-Sufficient Participating TO bears no responsibility for the Access Charge of any other Participating TO. *See* ISO Tariff, Sections 7.1.2, 7.1.3.

Market Participants withdraw Energy from the portion of the ISO Controlled Grid representing by its contract rights (Section 7.1) ;

- is entitled to receive Usage Charge and Wheeling Access Charge revenues attributable to the capacity represented by its converted contract rights (Sections 2.4.4.3.1.4 and 7.3.1.6); and
- when transmission capacity represented by its converted contract rights is derated, may be required by Section 7.3.1.7 to repay some of those Usage Charge revenues.

DWR's claim that an entity that has rights under an existing transmission contract, but owns no transmission facilities, cannot develop a transmission Access Charge on the basis of its status as a transmission customer is misplaced. A Participating TO that converts contract rights to ISO transmission service receives Access Charge revenues in accordance with the ISO Tariff in recognition of the fact that the ISO will use the Participating TO's converted rights to provide service to other Market Participants. It establishes a Transmission Revenue Requirement not as a transmission customer, but as a transmission *provider*. Such a Participating TO could base its Transmission Revenue Requirement on its payments under the existing transmission contracts that it converts to ISO transmission service (for which it remains obligated in accordance with Section 2.4.4.3.1.5). It can then establish an Access Charge to recover a portion of those payments from any customers who withdraw Energy from the portion of the ISO Controlled Grid represented by its converted Existing Contract rights.[7]

[7] Although unstated in its Request for Rehearing, DWR's real concern may arise from a belief that few, if any, Market Participants would withdraw Energy from the transmission facilities over which it has contractual entitlements so that it would realize little, if any, Access Charge revenues if it becomes a Participating TO (assuming that it has contractual rights that can be converted to ISO transmission service). If this circumstance exists, it is a product of the existing methodology for calculating Access Charges, which is currently under review in anticipation of a filing next year of a revised Access Charge methodology in accordance with the Commission's

DWR's assertion that requiring such a Participating TO to establish an Access Charge to recover its Transmission Revenue Requirement would inappropriately extend the Commission's jurisdiction over public entities is similarly unfounded. Section 7.1.1. of the ISO Tariff recognizes that the transmission rates of publicly owned Participating TO's are not subject to the Commission's jurisdiction. Such Participating TO's are required to develop their Access Charges and submit them to the ISO, which is authorized, if it believes the Access Charge is excessive, to bring it to the attention of the Local Regulatory Authority with jurisdiction over the Participating TO's rates.[8] Plainly, there is no inappropriate expansion of the Commission's rate jurisdiction.

In sum, the ISO Tariff makes appropriate provision for the treatment of Participating TO's that convert existing transmission contract rights to the right to receive revenues under the ISO Tariff. There is no need to modify further Section 7.3.1.7, which provides only that, when a Participating TO is obligated to repay Usage Charges due to a derate of transmission capacity, it can reflect that expense in its transmission revenue requirement through an appropriate mechanism. Participating TO's that convert rights under existing transmission contracts do not require special treatment in this respect. If any holder of rights under existing transmission contracts is dissatisfied with the compensation it would receive for converting those rights, it is not obligated to do so.

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requirements. *Pacific Gas & Electric Co., et al.,* 81 FERC ¶ 61,122 at 61,501 (1997). Until then, DWR is not compelled to become a Participating TO if it does not believe that it would be fairly compensated for any contract rights that it turns over to the ISO.

[8] That Local Regulatory Agency may be the public Participating TO itself.

CONCLUSION

For the foregoing reasons, the Commission should accept the ISO's Answer and should act on the Requests for Rehearing of the February 9 Order consistent with the foregoing discussion.

Respectfully submitted,

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Dated: March 26, 1999

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 26th day of March, 1999.

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Kenneth G. Jaffe