DATE STAMP AND RETURN

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	**Docket No. ER02-2192-000**

MOTION FOR LEAVE TO FILE ANSWER AND ANSWER OF THE CALIFORNIA INDEPENDENT SYSTEM OPERATOR TO PROTESTS AND MOTION TO REJECT

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission ("Commission"), 18 C.F.R. §§ 385.212 and 385.213, the California Independent System Operator Corporation ("ISO") hereby requests leave to file an answer, and files its answer, to the protests and motion to reject filed by certain intervenors in the captioned proceeding.

In support hereof, the ISO respectfully states as follows:

I.

MOTION FOR LEAVE TO FILE ANSWER

Rule 213(a)(2) of the Commission's Rules of Practice and Procedure provides that answers to protests generally are not allowed "unless otherwise ordered by the decisional authority." In the past, the Commission has allowed the filing of answers to protests for various reasons demonstrating good cause. The Commission has found that good cause exists when an answer will facilitate the decisional process, help resolve complex issues, clarify the issues in dispute or a party's position on the issues,

lead to a more accurate and complete record, or provide useful and relevant information that will assist in the decision-making process. [1]

The ISO submits that good cause exists to grant the ISO leave to respond to the various protests and the motion to reject filed in this proceeding. The ISO's answer will lead to a more accurate and complete record and will assist the Commission in understanding and resolving the issues in this proceeding. For these reasons, the ISO respectfully requests that the Commission accept the following Answer.

II.

ANSWER

A. Procedural Background

The ISO submitted its Amendment No. 45 to the ISO Tariff on June 28, 2002. The purpose of Amendment No. 45 is to modify the ISO Tariff to revise the process for updating the ISO's High Voltage Access Charge ("HVAC") and Wheeling Access Charge (together, "Access Charges") to reflect changes in the Transmission Revenue Requirements ("TRRs") of Participating Transmission Owners ("Participating TOs").

Motions to intervene and protests were filed by The Metropolitan Water District of Southern California ("Metropolitan"), the Transmission Agency of Northern California ("TANC"), and the City of Vernon, California ("Vernon"). The California Department of Water Resources ("CDWR") filed a protest and motion to reject. Southern California Edison Company, Pacific Gas and Electric Company, and San Diego Gas & Electric

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[1] *East Tennessee Natural Gas Company*, 79 FERC ¶ 61,124 at 61,569 (1997); *Great Lakes Gas Transmission, L.P.*, 66 FERC ¶ 61,115 at 61,194 (1994); *Tennessee Gas Pipeline Company*, 55 FERC ¶ 61,437 at 62,306 n.7 (1994); *Transwestern Pipeline Company*, 50 FERC ¶ 61,362 at 62,090 n.19 (1980); *Transwestern Pipeline Company*, 50 FERC ¶ 61,211 at 61,672 n.5 (1980).

Company (collectively, the "Original Participating TOs" or "OPTO") filed a motion to intervene and comments on the ISO filing.[2]

B. Amendment No. 45 Is Not a Collateral Attack on the Commission's Amendment No. 27 Order.

CDWR argues that the Amendment No. 45 filing is procedurally flawed because it addresses matters that are under active negotiation in Docket No. ER00-2019 (Amendment No. 27). CDWR at 1. CDWR posits that the Amendment No. 45 filing thus amounts to a collateral attack on the Commission's order on Amendment No. 27 and the settlement process established therein. *Id.* at 2. To act on Amendment No. 45 without acting on the Access Charge scheme as a whole, CDWR argues, would severely prejudice the ongoing negotiations in the Amendment No. 27 docket. *Id.* at 1-2.

The fact that the tariff provisions proposed in Amendment No. 27 are currently at issue in a pending settlement negotiation in no way prejudices the ISO's ability, based on operating experience or other factors, to propose further adjustments to the methodology for assessing transmission Access Charges. There is nothing in the Federal Power Act or the Commission's regulations or precedents that precludes a public utility from presenting revised proposals that address concerns raised about previous, pending tariff amendments. In fact, this is not even the first revision to the Access Charge methodology filed by the ISO.

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[2] In addition, the following entities filed motions to intervene: California Electricity Oversight Board; Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency; City and County of San Francisco; Sacramento Municipal Utility District; Turlock Irrigation District; Williams Energy Marketing & Trading Company; the Cogeneration Association of California and the Energy Producers and Users Coalition; Modesto Irrigation District; and the Northern California Power Agency. A notice of intervention was filed by the Public Utilities Commission of the State of California. The ISO does not oppose the intervention of the parties that have sought to intervene in this proceeding.

On December 28, 2000, the ISO filed Amendment No. 34 to the ISO Tariff. This amendment proposed several modifications and clarifications to the process for updating and disbursing Access Charges. By order dated February 21, 2001, the Commission accepted the filing, set it for hearing, and consolidated it with the ongoing settlement proceedings. [3]

The ISO does not intend for the Amendment No. 45 filing to disrupt the ongoing negotiations in Docket No. ER00-2019, and there is no reason to believe that it would do so. The existence of those ongoing proceedings does not make the filing procedurally infirm. As it did with the ISO's Amendment No. 34 filing, the Commission may simply accept the Amendment No. 45 filing and consolidate it with the ongoing proceedings in Docket No. ER00-2019.

C. CDWR's "Discrimination" Complaint Is Unfounded.

CDWR argues that Amendment No. 45 would constitute undue discrimination against CDWR. Because CDWR would have no "Service Area" if it becomes a Participating TO through contract conversion, it believes it would not be treated the same as all other Participating TOs for ratemaking purposes. CDWR at 3. Specifically, CDWR asserts that undue discrimination arises from the insertion of the phrase "Participating TO Service Area" into the Tariff provisions determining assessment and disbursement of Access Charges. CDWR at 4-5. The Original Participating TO's support the proposed clarification. OPTO at 6.

It is important to note that the addition of the term "in the Participating TO Service Area" in Amendment No. 45 does not present a change of circumstance with regard to CDWR from the current tariff language. While CDWR may not have its own Service

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[3] *California Independent System Operator Corp.*, 94 FERC ¶ 61,147 (2001).

Area, its Load is located in the Service Area of a Participating TO. The revision is intended simply to better reflect the original intent of Amendment No. 27 to distinguish entities that are within the Service Area of *any* Participating TO from those that are not. Absent an Existing Contract, Load within the Service Area of a Participating TO (including CDWR's Load) is to pay the transmission Access Charge. Load that is not in a Participating TO Service Area, such as the Sacramento Municipal Utility District or the Modesto Irrigation District, will pay the Wheeling Access Charge.

CDWR currently pays for its use of the ISO Controlled Grid in accordance with its Existing Contracts. In addition to these Existing Contracts, CDWR owns a number of transmission lines that are ties to generators. If CDWR were to become a Participating TO during the term of its Existing Contracts, then it would turn over Operational Control of such Entitlement and recover the cost associated with such Entitlement through its Transmission Revenue Requirement. CDWR would then pay the High Voltage Access Charge and, if applicable, the Low Voltage Access Charge. When CDWR's Existing Contracts terminate, barring CDWR building a new transmission line, CDWR would no longer be a Participating TO and would be required to pay the High Voltage Access Charge and, if applicable, the Low Voltage Access Charge.

Accordingly, the proposed revision does not modify the charges that would be assessed to CDWR or, if it becomes a Participating TO, the revenues it would receive to meet its Transmission Revenue Requirement.

D. The Participating TOs Should Adjust Their Respective Transmission Revenue Balancing Accounts on a Consistent Basis.

The ISO Tariff requires that each of the Participating TOs maintain a Transmission Revenue Balancing Account ("TRBA") to serve as a mechanism to ensure

"that all Transmission Revenue Credits and other credits specified in Section 6 and 8 of Appendix F, Schedule 3 [of the ISO Tariff], flow through to transmission customers."[4] The TRBA is to be updated annually. In Amendment No. 45, the ISO proposes to revise Section 8.1 of Schedule 3 of Appendix F to require each Participating TO to update its TRBA effective January 1 of each year, utilizing the principal balance as of September 30 and a forecast of the Transmission Revenue Credits for the next year.

While accusing the ISO of misstating its position, Vernon states that it is "all in favor of consistent TRBA Adjustment filing procedures applicable to all PTOs (so long as Vernon is kept whole financially, as it certainly should in any event)." Vernon at 7. The Original Participating TOs also support this change recognizing that it "will limit the number of rate revisions that will be necessary for the ISO due to changes in the TRBAA, and will ensure that each PTO utilizes similar information to calculate its TRBAA." OPTO at 6. Metropolitan also supports establishing a uniform timing for TRBA adjustments. Metropolitan at 7.

The ISO agrees that Vernon's specific situation must be addressed. Vernon at 8. In its intervention and comments in Docket No. EL02-103 concerning Vernon's June 28, 2002 filing to adjust its TRBA, the ISO stated:

> The ISO believes that the simplest avenue to marry the two filings at this point is to accept Amendment 45 and, as requested by Vernon, "provide for, in a manner that will keep Vernon financially whole, a revised Vernon TRBA Adjustment to become effective consistent with applicable provisions of any ISO filing". The Commission should accept Amendment

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[4] The Participating TO tariffs define Transmission Revenue Credits as the net of: (1) revenues received from Wheeling service (excluding any Usage Charges received by the Participating TO as a Firm Transmission Right ("FTR") holder) and from the sale of FTRs; and (2) the shortfall or surplus resulting from any cost differences between Transmission Losses and Ancillary Service requirements associated with Existing Rights and the ISO's rules and protocols. See, for example, Vernon TO Tariff at 3.25.

> No. 45 and allow Vernon to remain financially whole by making their TRBA adjustment on January 1, 2003 using the principal balance in the TRBA as of September 30, 2002.
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> Alternatively, if the Commission desires to have the ISO implement a rate reduction at this time, and given the timing of the filings, the ISO would be willing to accept the Vernon TRBA adjustment, regardless of the outcome of Amendment 45, and the ISO would then make a compliance filing to reflect the proposed rate reduction as of July 1, 2002. Additionally, the ISO would expect Vernon, and all the other Participating TOs to make another TRBA adjustment effective on January 1, 2003 reflecting the principal balance in the TRBA on September 30, 2002, if Amendment 45 is accepted.

ISO Motion to Intervene and Comments filed in Docket No. EL02-103 on July 26, 2002.

Thus, the Commission can approve Amendment No. 45 without prejudice to Vernon.

E. While the ISO's Access Charge Is a Formula Rate, the ISO Has Made and Will Continue To Make Informational Filings To Identify Changes In the Rate.

TANC asserts that "the Commission and the ISO's customers are entitled to formal notice and justification for [rate changes] through a filing with the Commission under Section 205 of the Federal Power Act." TANC at 4-5. While the ISO agrees that it is important that Market Participants have notice of any rate changes, the ISO disagrees that a filing pursuant to Section 205 is required.

The ISO's transmission Access Charge and Wheeling Access Charge are formula rates that adjust automatically. Nevertheless, the ISO has always filed its proposed rate changes for informational purposes.[5]

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[5] The ISO provided its first informational filing regarding the implementation of the HVAC rates pursuant to Amendment No. 27 as part of its submission in Docket No. ER01-819-000 on December 28, 2000 to establish the transmission rates effective January 1, 2001. The ISO provided its second informational filing in Docket No. ER01-2457-000 on June 29, 2001 to establish the transmission rates effective July 1, 2001. The ISO made its third informational filing on December 21, 2001 in Docket No. ER02-599-000 *et al.*, to establish the rates effective on January 1, 2002. The ISO made its fourth informational filing as part of the submission in this docket.

Accordingly, the Commission should reject TANC's request that the ISO file its adjustments pursuant to its formula rate under Section 205. It is important to note that it is the Participating TOs that establish their respective Transmission Revenue Requirements with filings before the Commission. The ISO merely takes the outcome of these proceedings and updates its formula of charges. The ISO has and will continue to make informational filings to "show its work," providing transparency to the market that the ISO has properly calculated the charges based on the Commission-determined inputs to the formula.

F. The Amendment No. 45 Filing Does Not Violate the Filed Rate Doctrine.

CDWR states its concern that the Amendment No. 45 filing "may contemplate a retrospective change in settled rates, contrary to the filed rate doctrine." CDWR at 5. CDWR misunderstands the implementation of the Access Charge methodology.

Under the Amendment No. 45 methodology, Access Charges would be adjusted when the Commission makes a new rate for a Participating TO effective and on January 1 when the adjustment is made to the TRBA. These changes in Access Charges would be prospective only, except where the Commission has ordered refunds as part of its rate order. There is therefore no threat that the ISO will impose retrospective rate increases. Additionally, the ISO will post notification when a Participating TO files a new TRR or TRBA and will track the effective dates of such changes.

G. Amendment No. 45 More Closely Reflects Cost Causation Principles than Does the Existing Rate Stabilization Methodology.

Metropolitan questions why the current rate stabilization plan is not being retained. It states that by focusing just on the rates and not the total dollar impact on

each customer class, the ISO has failed to demonstrate a compelling reason to modify the tariff. Metropolitan at 7-8.

The Amendment No. 45 methodology, pursuant to which Access Charge changes are made at the time the Commission revises a Participating TO's TRR, more closely reflects the cost causation principles that are central to just and reasonable rates. This is explained in the testimony of Ms. Le Vine provided with the ISO Amendment No. 45 filing:

> The issue that arises from the settlement discussed above for TO5 is that the Wheeling customers, both High Voltage and Low Voltage are to receive a refund based on the settled rate. The disconnect in 2001 would be that the Wheeling customers were not charged $1.5518/MWh from May 6 through June 30, they were charged $1.3766/MWh. Additionally, by refunding to the Wheeling customers but not the UDC and MSS in a Participating TO Service Area, from the ISO's perspective, the different class of customers would be paying different rates for the same service, this is not contemplated by the ISO Tariff.
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> [B]y way of an example, the Commission approved the settlement in TO5 on July 26, 2001, if the ISO had implemented the revised rate for the Wheeling customers on August 1, 2001, the Wheeling customers would pay $1.5518/MWh for the same service the ISO would be charging the UDC in the Service Area of the Participating TO $1.7700/MWh. Additionally, going forward, in the next six month period the UDC would be at a different rate because of the over collection in the entire six month period.

Exhibit No. IS0-1 at 10-11.

Contrary to Metropolitan's assertions, the proposed change in Amendment No. 45 provides greater simplicity and transparency to the market. This is because the changes to the ISO Access Charge will take place immediately upon Commission action. It also better matches charges and refunds with the billing periods in which the transmission service was provided.

H. Amendment No. 45 Is Not Intended to Reopen or Revise the TO5 Settlement.

CDWR states that Amendment No. 45 appears to be an attempt to reopen or revise the settlement reached in the PG&E TO5 case and that this constitutes a collateral attack on a prior Commission Order. CDWR at 2. To the contrary, Amendment No. 45 is designed to effectuate the TO5 settlement. It is notable that numerous parties to the PG&E TO5 proceeding have intervened in this docket and not challenged the ISO's proposal to implement the agreement. As stated by the Original Participating TOs, "the proposed Tariff language better accommodates the requirement that cash refunds are to be provided pursuant to the above-described settlements, while leaving open the possibility that refunds will be handled in a similar manner in the future." OPTO at 5.

I. Amendment No. 45 Does Not Fail to Meet the Recommendations of the Operational Audit.

CDWR states that Amendment No. 45 fails to meet the recommendations of the Commission's Operational Audit of the ISO. Specifically, the CDWR charges that the proposed Amendment was developed with no opportunity for stakeholder discussions, and that the Amendment will complicate the ISO settlement and billing process. CDWR at 2-3. Metropolitan also asserts that Amendment No. 45 would add additional uncertainty and complexity to ISO transactions, contrary to the Audit's recommendations. Metropolitan at 8-9.

The ISO does not agree that a stakeholder process is required for each and every tariff amendment. In this instance, the ISO is trying to effectuate a settlement agreement. Indeed, the proposed amendment has received broad support. The measure is either actively supported or not opposed by all three of the California

investor-owned utilities, the CPUC and the California Electricity Oversight Board, numerous municipal utilities, and the independent power producers.

Contrary to Metropolitan's assertion, Amendment No. 45 provides clarity and simplicity to a complex issue. Previously, the Access Charges were calculated bi-annually regardless of when the Commission revised the Transmission Revenue Requirement. This resulted in both shortfalls and over-collections that were smoothed out over a six-month period. Thus, as discussed in the testimony of Ms. Le Vine, for example, the ISO would be charging $1.77/MWh when the Commission had made $1.5518/MWh the effective rate. By revising the ISO Tariff and allowing rates to become effective in accordance with Commission orders, the ratepayer receives immediate changes in the price.

Regarding complexity, allowing the rate to become effective immediately relieves the ISO from tracking the various interest periods that are required and have already required errata to be filed with the Commission. Additionally, Amendment No. 45 will allow the ISO to provide cash refunds to Wheeling customers immediately upon the issuance of Commission orders.

J. Metropolitan's Proposed Change to Section 7.1 Is Improper.

In their protest on the Amendment 45 filing, Metropolitan suggests that the phrase "Gross Load by the UDC, MSS, and Scheduling Coordinator in the Participating TO Service Area" in Section 7.1 be changed to "Gross Load of End-Use Customers served in the Participating TO Service Area by the UDC, MSS, and Scheduling Coordinator not directly connected to the facilities of a UDC or MSS." Metropolitan at 9.

This change is not appropriate. An End-Use customer is defined as a purchaser that does not resell the power. Metropolitan's proposal would take the Load in the Participating TO Service Area of *wholesale* customers who use the ISO Controlled Grid and exempt them from the Access Charge. As discussed previously, when CDWR's Existing Contracts terminate, its Load should be charged the Access Charge. However, with Metropolitan's edit, since CDWR resells power and is not considered to meet the definition of an "End-Use Customer" in accordance with the ISO Tariff, then the ISO would not be allowed to charge CDWR for use of the ISO Controlled Grid. While CDWR would probably enjoy use of the ISO Controlled Grid for free, the ISO believes that would be viewed by other Scheduling Coordinators as an unsubstantiated cost shift that did not result in just and reasonable rates.

III.

CONCLUSION

Wherefore, for the foregoing reasons and the reasons set forth in its Amendment No. 45 filing, the ISO requests that the Commission approve Amendment No. 45 to the ISO's Tariff and consolidate it with the ongoing proceeding in Docket No. ER00-2019.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing documents upon each person designated on the official service list compiled by the Secretary in this proceeding, in accordance with Rule 385.2010 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.2010).

Dated at Washington, D.C., on this 5th day of August, 2002.

Lynn M. Gallagher