UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	)	Docket No. ER03-608-000

**ANSWER OF
CALIFORNIA INDEPENDENT SYSTEM OPERATOR
CORPORATION TO MOTIONS TO INTERVENE,
COMMENTS, PROTESTS AND REQUESTS FOR HEARING**

Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213 (2002), the California Independent System Operator Corporation ("ISO")[1] respectfully submits its Answer to the Motions to Intervene, Comments, Protests and Requests for Hearing[2] in the above identified docket.

[1] Capitalized terms not otherwise defined herein are used in the sense given in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] Some of the parties commenting on Amendment No. 49 request relief, such as rejection or a hearing, in pleadings styled as protests; other parties submitted comments rather than protests. The prohibition in Rule 213(a)(2), 18 C.F.R. § 385.213(a)(2), does not apply to these issues. To the extent this Answer responds to protests, the Commission has also accepted answers to protests, notwithstanding Rule 213(a)(2), that assist the Commission's understanding and resolution of the issues raised in a protest, *Long Island Lighting Co.*, 82 FERC ¶ 61,129 (1998), clarify matters under consideration, *Arizona Public Service Co.*, 82 FERC ¶ 61,132 (1998); *Tennessee Gas Pipeline Co.*, 82 FERC ¶ 61,045 (1998), or materially aid the Commission's disposition of a matter, *El Paso Natural Gas Co.*, 82 FERC ¶ 61,052 (1998). The ISO's Answer will clarify matters under consideration, aid the Commission's understanding and resolution of the issues and help the Commission to achieve a more accurate and complete record, on which all parties are afforded the opportunity to respond to one another's concerns. *Northern Border Pipeline Co.*, 81 FERC ¶ 61,402 (1997); *Hopkinton LNG Corp.*, 81 FERC ¶ 61,291 (1997). The Commission should accordingly accept this Answer.

I. BACKGROUND

On March 11, 2003, the California Independent System Operator Corporation ("ISO") filed Amendment No. 49 to the ISO Tariff. Amendment No. 49 modifies the transmission Access Charge accepted for filing by the Commission as Amendment No. 27 and Amendment 34 that have been consolidated in Docket No. ER00-2019. Both amendments are currently pending hearing.

During the course of extensive, but unsuccessful, settlement negotiations, the ISO was able to identify a number of modifications to the transmission Access Charge methodology that would address certain concerns of a number of parties without disturbing the balanced approach represented by Amendment No. 27. In addition, based on three years of administering the revised transmission Access Charge, the ISO determined that there were a number of amendments that were necessary to facilitate the use of the new methodology and the application process for New Participating TOs. As a result, in testimony filed in the ER00-2019 proceeding by Ms. Deborah A. Le Vine, the ISO indicated a number of modifications to the ISO Tariff that it hoped the Commission would direct. In addition, Ms. Le Vine noted that there are areas of the ISO Tariff that should be clarified. Amendment No. 49 is intended to allow those modifications of Amendment No. 27 to be implemented prior to the issuance of a final Commission order in Docket No. ER00-2019. The proposed modifications are described in the ISO's letter accompanying the filing of Amendment No. 49.

On March 14, 2003, the Commission issued a Notice of Filing in the above-captioned proceeding. Numerous parties filed motions to intervene in this

proceeding, many accompanied with comments, protests, or requests for hearing.[3]

II. MOTIONS TO INTERVENE

The ISO does not oppose any of the Motions to Intervene filed in this docket.

III. PROTESTS, COMMENTS, AND REQUESTS FOR HEARING

Parties submitting protests and comments, some of which contain requests for hearing, have identified a number of specific issues regarding Amendment No. 49, and sometimes regarding other matters. As discussed below, the ISO believes that some parties raise legitimate concerns, and others do not. Nonetheless, in light of the ongoing proceedings in Docket No. ER00-2019, concerning the ISO's Access Charge, the ISO believes that all of these issues, except for those that concern neither Amendment No. 49, Amendment 34, nor Amendment No. 27, should be set for hearing and consolidated with Docket No. ER00-2019.

[3] Motions to Intervene that raised no substantive issues were filed by the City and County of San Francisco, California Electricity Oversight Board, Western Area Power Administration, and Williams Energy Marketing & Trading. Motions to Intervene and Protests or Comments were filed by Transmission Agency of Northern California ("TANC"); Modesto Irrigation District ("MID"); Southern California Edison Company ("SCE"); The Metropolitan Water District of Southern California ("MWD"); the Cities of Santa Clara and Palo Alto, California, and the M-S-R Public Power Agency; the California Department of Water Resources - State Water Project ("SWP"); the City of Vernon ("Vernon"); the Cities of Anaheim, Azusa, Banning, Colton and Riverside ("Southern Cities"); the Northern California Power Agency; Pacific Gas and Electric Company ("PG&E"); the California Municipal Utilities Association ("CMUA"); San Diego Gas & Electric Company ("SDG&E); the Cogeneration Association of California ("CAC") and the Western Area Power Administration ("WAPA").

A. Requirement that a New Participating TO Relinquish Operational Control of All Transmission Facilities to the ISO

A number of parties protest waiving the requirement that a New Participating TO turn over all of its transmission facilities to ISO Operational Control in the limited circumstance of a federal power marketing agency that constructs a high value project having overriding regional significance, such as the upgrade to Path 15. TANC (at 7–11) and MID (at 8–9) contend that all Participating TOs should be able to place only a portion of their transmission facilities under ISO Operational Control, not just federal power marketing agencies; CMUA (at 7–8) and Southern Cities (at 10–11) argue that the exemption should allow for some circumstances other that federal power marketing agencies. SCE (at 2–5)[4] and SDG&E (at 2–3) oppose any waiver of the requirement that Participating TOs turn all of their transmission facilities over to the ISO Operational Control.

Limiting the exemption is fully justified. Federal power marketing agencies, whose authorizations and appropriations are governed by Federal law, present different circumstances than do other potential New Participating TOs. WAPA has informed the ISO that Federal agencies cannot seek funds from private sources unless authorized by Congress. WAPA-Sierra Nevada Region's participation in the California Oregon Transmission Project, including Path 15, and in the Pacific AC/DC Intertie was authorized by Congress. See P.L. No. 98-

[4] SCE also contends that the modification in Amendment No. 49 would be ineffective because the ISO does not have the authority to unilaterally amend the Transmission Control Agreement. The ISO would hope that, in the event Amendment No. 49 is accepted, the parties to the Transmission Control Agreement would negotiate appropriate amendments.

360 at 98 Stat. 416. Because of the importance of the Path 15 upgrade, the transfer to ISO control should not await congressional legislation authorizing the transfer of all of WAPA-Sierra Nevada Region's facilities.

The general requirement that Participating TOs place all of their facilities under ISO Control remains reasonable. Otherwise, New Participating TOs could "cherry-pick" the facilities they place under ISO control. With the Access Charge transition to ISO Grid-wide rates, a New Participating TO choosing the most expensive facilities to turn over to ISO Operational Control in order to reduce the rates paid by their ratepayers and retaining the least expensive transmission, would deprive the other ISO rate payers of the savings associated with one grid-wide transmission rate. The Original Participating TOs were not given this option, and it would be unduly discriminatory to provide it to others without the justification provided in the case of federal power marketing agencies.

MID's contention (at 6–8) that the requirement that Participating TOs place all of their facilities under ISO Operational Control would be unnecessary if the ISO allowed holders of Existing Contracts to make transmission available through the ISO's systems to third parties is based on a faulty premise. The ISO has provided contract reference numbers to Participating TOs to allow them to schedule and settle in the ISO systems with the preferential treatment the ISO Tariff provides Existing Contracts. If an Existing Rightsholder desires to change Scheduling Coordinators using such contract reference number, the ISO's systems must be revised to assign the contract reference number to the new Scheduling Coordinator. Although the ISO requires that contract reference

number changes be submitted at least seven days prior to the scheduling interval to revise a Scheduling Coordinator, a change in the Scheduling Coordinator given permission to use the contract reference number, contrary to MIDs assertion, is not necessary for MID to make unused transmission available to third parties. MID can simply include the third party transmission in its own schedules. The fact that MID and other Existing Contract holders have not done so highlights the need to eliminate phantom congestion. Moreover, MID's complaint is fundamentally with the ISO Tariff as proposed in Amendment No. 27. Nothing in Amendment No. 49 modifies the basic premise that New Participating TOs should turn over all their facilities and entitlements.

A number of parties[5] also complain that the ISO does not set forth criteria for determining whether a project "is of overriding regional significance." The ISO believes that it would be difficult to develop criteria that could accommodate the full variety of circumstances that might arise in the future. If any party believes an ISO determination of overriding regional significance is incorrect, that party can challenge it when the Transmission Control Agreement is filed with the Commission. Nonetheless, if a party, during the course of the hearing on Amendment No. 27 and 34 (and Amendment No. 49 if the Commission approves the motion to consolidate), suggests criteria for the determination, the ISO will consider that suggestion and respond to it in the ISO's rebuttal testimony.

[5] SCE at 2-5, SDG&E at 2-3, PG&E at 4, MWD at 8-9.

B. Transmission Revenue Requirement Split Between High Voltage and Low Voltage

Various parties[6] protest the ISO's proposed tariff provision regarding the procedure for dividing certain costs between the High and Low Voltage Transmission Revenue Requirement. None, however, offer an alternative and none suggest its rejection. Rather, the parties recommend it be set for hearing. The procedure was an integral part of the settlement in Docket No. ER01-831 et al. and in accordance with that settlement, the procedure has been used pending the outcome of the ER00-2019 docket.

Although TANC (at 12–14) and SWP (at 6–7) contend that the ISO has improperly cited as precedent the adoption of this methodology in the settlements of the TO Tariff proceedings implementing Amendment No. 27, the ISO has not done so. The ISO fully accepts that this matter will be, and should be, resolved in this proceeding. The ISO is not attempting to preempt such litigation. The fact that this procedure is currently being used by the Participating TOs, however, is relevant to the ISO's request that Amendment No. 49 be made effective, so that the practice of allocation of costs can be consistent during the litigation of Amendment Nos. 27, 34 and 49.

PG&E (at 5–6) contends that all control area interconnections should be high voltage because all ISO customers benefit from the reliability and market-enhancing characteristics of such facilities. The ISO believes that this contention raises factual issues that are appropriate for hearing.

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[6] TANC at 12-14, MID at 12-13, MWD at 10-12, SWP at 6-7, PG&E at 5-6.

Finally, TANC (at 13), MID (at 12–13), and PG&E (at 5) contend that the procedure must be included in the ISO Tariff instead of being posted on the Website. TANC (at 14) argues that the ISO's formula is incomplete without the procedure. The ISO disagrees. The Tariff sets out the dividing line between the High Voltage and Low Voltage TRR at 200kV. The procedure simply sets forth the method of allocating costs to the two categories when sufficient information is lacking or facilities fulfill dual purposes. The question of the degree of detail required in a tariff is within the Commission's discretion and generally governed by a rule of reason. *See Automated Power Exch.,*85 FERC ¶ 61,232 (1998). Whether including the procedure on the ISO's Website is reasonable is a question of fact best decided after hearing.

C. Calculation of the Transition Charge

Although a number of parties protest Amendment No. 49's removal of New Facilities from the cost-shift calculation,[7] most of these protests are directed at the cost shift cap, not the method of its calculation. Whether a cost-shift cap is just and reasonable is already set for hearing, and this change of the cost-shift calculation is not in any manner determinative of that issue. The arguments are, therefore, irrelevant to the consideration of Amendment No. 49. Nonetheless, the ISO must point out the fallacy of the argument that the cost cap deprives New Participating TOs of the ability to recover their TRRs.

Currently, potential New Participating TOs recover their TRRs from their ratepayers, *i.e.*, native load and any purchasers of transmission from the

[7] TANC at 18-19, MID at 9-11, Vernon at 1-2, 10-19, Southern Cities at 4-9, PG&E at 6, CMUA at 4-7.

potential New Participating TOs. After becoming Participating TOs, these utilities will still recover their TRRs, but from a larger pool, including their original ratepayers. For those New Participating TOs that would be affected by the cost-shift cap, the overall cost to their original ratepayers will be less than before the utility became a Participating TO, *i.e*., the costs will be shifted to all ISO Controlled Grid transmission users. If the cost shift reaches a level that triggers the cost-shift cap, the shift of costs to the Original Participating TOs will be limited, but the New Participating TOs will *still* recover their full TRRs and reduce costs to their ratepayers by shifting costs (which are now limited at the cap) to the Original Participating TOs. The only impact will be that a portion of their TRRs will be recovered from their original ratepayers instead of from the larger pool. Because the cost-shift cap only limits, but does not eliminate, costs shifted to the Original Participating TOs, however, the New Participating TO's ratepayers will *still* pay less than they did prior to the utility becoming a New Participating TO.

The following example illustrates a New Participating TO's recovery of its TRR and the cost benefit to its original ratepayer. Suppose two Participating TOs:

> PTO1 has a TRR of $4,000,000 and has 4,000 ratepayers.
> PTO2 has a TRR of $2,000,000 and 1,000 ratepayers.
>
> Assuming all ratepayers use the same amount of energy, under a utility-specific rate PTO1 recovers its TRR by charging its ratepayers $1000/year and PTO2 recovers its TRR by charging its ratepayers $2000/year.
>
> If the two PTOs join their facilities and use a system wide TAC, the total TRR would be $6,000,000 and the total number of ratepayers will be

> 5,000. The total TRR will thus be recovered by charging all ratepayers $1200/year. PTO1's ratepayers will pay an additional $200/year, and PTO2's ratepayers *will save $800/year*. The total TRR will be distributed pro rata according to the individual PTOs TRRs, *i.e.,* 2:1. PTO1 will receive $4,000,000 and PTO2 will receive $2,000,000 in revenue distributions from the ISO, and each will recover its full TRR.
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> Prior to the combination of the transmission systems, PTO2's customers paid a total of $2,000,000/year; after the combination they pay a total of $1,200,000. This would result in a cost shift *benefit* of $800,000 to PTO2 and a cost shift *burden* of $800,000 to PTO1.
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> Next suppose there is a cost shift cap of $600,000. To keep the cost shift burden of PTO1 to that limit, PTO2 will only receive from PTO1 $600,000. This does not mean that PTO2 will not recover its TRR. Rather, it means that PTO2 will need to recover the difference between the cost shift benefit ($800,000) and the cost shift cap ($600,000) of $200,000 in the same manner as it recovered its entire TRR prior to the combination of the facilities – from its ratepayers.
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> Thus, PTO1 receives $4,000,000 and PTO2 receives $2,000,000. These amounts come from, ignoring for the time being the sale of transmission to others, PTO1 ratepayers who pay $1150/year and PTO2 ratepayers who pay $1400/year. PTO2 will *still recover its full TRR* and its ratepayers will pay *$600 less than prior to the combination.*

The ISO finds it difficult to understand how anyone could call this discrimination against PTO2 or assert that PTO2 is unable to recover its HVTRR.

The few protests that actually focus on Amendment No. 49 raise issues concerning the appropriate treatment of New Facilities. The ISO, as discussed in the transmittal letter for Amendment No. 49, believes that this modification is more consistent with the goal of a single High Voltage transmission charge because New Facilities would immediately be included in the grid-wide rates. Nonetheless, the ISO concedes that the issue is appropriately addressed in hearings.

Contrary to the assertions of some protesters, however, the modified calculation will encourage the construction of New High Voltage Facilities. Under the Amendment 27 methodology, if an Original PTO were to construct a New High Voltage Facility, the costs of that facility would be included in the Original PTO's utility-specific cost in the cost shift calculation. This increased utility-specific cost results in a lower cost shift burden than that calculated in the case in which the New Facilities were constructed by others or "removed" from the cost shift calculation. The problem with dampening the Original PTO's cost shift burden in this manner is that it allows the Original PTO's overall costs to increase to a higher level without triggering the cost shift cap. For example, consider the following example.

> Using the two PTOs described above, suppose that PTO1 is an Original PTO that plans to construct a New High Voltage Facility with an HVTRR of $500,000. Under Amendment 27, PTO1's utility-specific cost would be $4,500,000 ($4,000,000 for Existing Facilities plus $500,000 for New Facilities), or $1,125 per ratepayer.
>
> After the combination of PTO1 and PTO2, the total TRR of the system would be $6,500,000, or $1,300 per ratepayer. The total additional cost on PTO1 due to the combination is $700,000 (which is equal to ($1,300 - $1,125) x 4000 ratepayers). After applying PTO1's cost-shift cap of $600,000, PTO1 ratepayers would pay $1,275/year. In this instance PTO2's ratepayers would pay $1400/year, $600/year less than what they would have paid prior to the combination.
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> Under Amendment 49, the cost shift calculation for PTO1 and PTO2 would be the same as in the original example above. The combined costs would be $1,200/year (($4,000,000 + $2,000,000) / 5000 ratepayers. PTO1's utility-specific costs would be $1,000 per ratepayer, and its costs after combining with PTO2's system and implementing the cost-shift cap would be $1,150 per ratepayer. These costs are calculated for Existing Facilities only.
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> In addition, PTO1 would also include an adder to its rates reflecting the ISO Grid-wide cost of the $500,000 New Facility. This new facility would result in an additional cost of $100 per ratepayer ($500,000 divided by

5,000 ratepayers). In this case, PTO1 ratepayers would pay $1,250, *$25 less than if the New Facilities had been included in the cost shift calculation*.

As this example shows, including New Facility costs in the cost shift calculation creates a disincentive for an Original Participating TO to construct New High Voltage Facilities that substantially benefit customers of other Participating TOs because of the greater costs to their ratepayers. By "excluding" the costs of such New High Voltage Facilities from the cost shift determinations, and thereby ensuring that the costs of new regional transmission be borne proportionately by all ISO customers from the outset, Amendment No. 49 thus removes a disincentive to an Original PTO's construction of New High Voltage Facilities.

Amendment No. 49 also removes a disincentive to *New* Participating TO's construction of New High Voltage Facilities. Under the Amendment 27 methodology, if a New Participating TO were to construct a New High Voltage Facility, the costs of that facility would be included in the New Participating TO's utility-specific cost in the cost shift calculation. This increased utility-specific cost results in a *greater* cost shift *benefit* than that calculated in the case in which the New High Voltage Facilities were constructed by others or "removed" from the cost shift calculation. This allows the New Participating TO's overall costs to be reduced by a lesser amount without triggering the cost shift cap. For example, consider the following example.

> Using the two PTOs described above, suppose that PTO2 is a New Participating TO that plans to construct a New High Voltage Facility with an HVTRR of $500,000. Under Amendment 27, PTO2's utility-specific cost would be $2,500,000 ($2,000,000 for Existing Facilities plus $500,000 for New Facilities), or $2,500 per ratepayer.

> After the combination of PTO1 and PTO2, the total TRR of the system would be $6,500,000, or $1,300 per ratepayer. The total benefit of PTO2, and burden to PTO1, is $1,200,000 (which is equal to ($2,500–$1,300) x 1000 ratepayers). After the cost-shift cap, which limits PTO1's burden to $600,000, PTO2 ratepayers would pay $1,900 (which is equal to $1,300 + (($1,200,000–$600,000)/1000).
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> Under Amendment 49, the cost shift calculation for PTO1 and PTO2 would be the same as in the original example above. PTO2's utility-specific costs would be $2,000 per ratepayer, and its costs after combining with PTO1's system and implementing the cost-shift cap would be $1,400 per ratepayer. These costs are calculated for Existing Facilities only.
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> In addition, PTO2 would also include an adder to its rates reflecting the ISO Grid-wide cost of the $500,000 New Facility. This new facility would result in an additional cost of $100 per ratepayer ($500,000 divided by 5,000 ratepayers). In this case, PTO2 ratepayers would pay $1,500, *$400 less than if the New Facilities had been included in the cost shift calculation*.

As this example shows, including New Facility costs in the cost shift calculation creates a disincentive for a New Participating TO to construct New High Voltage Facilities that substantially benefit customers of other Participating TOs because it reduces the benefits to the New Participating TO's ratepayers. By "excluding" the costs of such New High Voltage Facilities from the cost shift determinations, and thereby ensuring that the costs of New High Voltage Facilities be borne proportionately by all ISO customers from the outset, Amendment No. 49 thus removes a disincentive to a New Participating TO's construction of New High Voltage Facilities.

As the ISO also pointed out in filed testimony (ISO-1 at 78 and ISO-18 at 9) the "exclusion" of such facilities only means that, implicitly, the cost of New High Voltage Facilities, such as the proposed Path 15 upgrade, are treated the same (e.g., as an adder) under the new Access Charge methodology. This

facilitates construction of New High Voltage Facilities by allowing third parties with little or no Gross Load to finance and construct such facilities without certainty about how their costs would be recovered. If the costs of such New High Voltage Facilities were included in the determination of the Participating TO's own utility-specific costs, the cost shift calculation simply could not accommodate New Participating TOs that are willing to build new transmission but that do not have their own Load or those that do not want to encumber the new facility (such as Trans-Elect NDT Path 15, LLC).

D. Elimination of the Impact of the GMC from the "Hold Harmless" Provisions

No party protested this aspect of Amendment No. 49.

E. Elimination of the Revenue Review Panel

TANC (at 14–17) contends that the Commission does not have the authority to require publicly owned utilities to file their HVTRR with the Commission for acceptance, and that the ISO's elimination of the Revenue Review Panel thus inappropriately expands Commission jurisdiction. The Commission, however, has already rejected jurisdictional arguments and directed that the HVTRRs of publicly owned utilities, if not filed with the Commission in the first instance, must be appealable to the Commission. TANC has not sought judicial review of that order. The Commission's exercise of appeal authority involves no greater a jurisdictional scope than a requirement that the HVTRRs be filed initially with the Commission, and the elimination of the Revenue Review Panel should not be rejected as an impermissible expansion of jurisdiction.

Direct filing with the Commission is preferable to a Revenue Review Panel subject to appeal because it removes a superfluous layer of review that imposes additional costs on the ISO and all Market Participants that participate in the process. As the Commission is aware, many parties, including TANC, have pressed the ISO to reduce its Grid Management Charge. Elimination of the Revenue Review Panel is one of several steps the ISO is taking in that direction. Moreover, the claim that filing with the Commission imposes an excessive burden on a publicly owned utility is belied by the fact that all five publicly owned utilities that have become New Participating TOs have filed their rates with the Commission rather than sought review by the Revenue Review Panel.

SWP (10–15) repeats its contention, already rejected by the Commission,[8] that it should be exempted from the requirement of filing an HVTRR and recovering the HVTRR through transmission rates and released from the payment requirements of its Existing Contracts. The fundamental problem with SWP's request, and its proposed language, is that the ISO Tariff cannot release SWP from the obligations of its Existing Contracts. Only the Commission or the parties to the Existing Contract can modify the terms. If SWP were able to negotiate a release from the payment obligations of its Existing Contracts, no further amendments to the ISO Tariff would be necessary in order to accommodate SWP as a New Participating TO. SWP would simply have no HVTRR to file and no HVTRR to recover from rates. SWP's only payment for

[8] *California Independent System Operator Corp.*, 95 FERC ¶ 61,343 (2001).

transmission would be the High Voltage Access Charge and where applicable, the Low Voltage Access Charge.

PG&E (at 7–8) agrees with the requirement that publicly owned utilities file their HVTRRs with the Commission, but argues that the Tariff should set forth the detail required. The ISO, however, believes that the Commission, not the ISO, is in the best position to determine the information it needs to evaluate such filings.

Finally, SCE (at 5–7) complains that the HVTRRs of federal power marketing agencies should be subject to "just and reasonable" review by the Commission. The filing requirements of federal power marketing agencies are already in Section 7.1 of the ISO Tariff and Section 9.2 of Schedule 3 of Appendix F, as included in Amendment No. 27. Amendment No. 49, however, simply adds language requiring that the filing include an Appendix stating the HVTRR, LVTRR and Gross Load data. Amendment No. 27 tariff provisions regarding the TRRs of federal power marketing agencies, like all other modifications included in Amendment No. 27 that were not explicitly decided by the Commission, are already subject to the ongoing litigation in Docket No. ER00-2019. The ISO notes, however, that it questions whether it can dictate in its tariff the standard that the Commission will apply in reviewing a filing.

F. Clarification Regarding Transmission Upgrades

SCE (at 7–8) contends that Amendment No. 49 excessively expands the ISO's ability to require Participating TOs to require system studies. PG&E (at 9) and SCE also argue that the ISO guidelines regarding economic benefit evaluation criteria need to be more specific. SCE wants them developed through a stakeholder process; PG&E believes that they should be in the ISO Tariff. As

discussed above, the question of the degree of detail required in a tariff is within the Commission's discretion and generally governed by a rule of reason. *See Automated Power Exch.,* 85 FERC ¶ 61,232 (1998). Whether including the guidelines, or the procedure for developing the guidelines, in the ISO Tariff is reasonable is a question of fact best decided after hearing.

SCE also complains that the formula for the disbursement of Usage Charge revenues to FTR holders is inadequate. That formula, however, is not revised by Amendment No. 49 and, indeed, was not revised by Amendment No. 27. SCE's complaint is therefore not appropriately raised in this proceeding.[9]

Similarly, TANC (at 11– 12) argues that the ISO must define or set criteria for the determination of the economic efficiency of a transmission addition. The requirement of economic efficiency is not part of Amendment No. 49. It has previously been approved by the Commission,[10] and TANC's argument is not relevant to this proceeding.

G. Revised Definition of Transmission Revenue Credit and of Net Transmission Revenue Credit

TANC (at 20–23) contends that the definition of "Net FTR Revenue" is too limited because it expires at the end of the transition period and only considers a single year of net revenue. TANC also complains about the limitations on Usage Charges for third party use of transmission and the failure to include hourly net Usage Charges. The ISO believes that these limitations are appropriate to the term of the transition period, the fact that New Participating TOs are "given" FTRs

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[9] This issue is appropriately resolved in Amendment 48.

[10] *See* ISO Tariff § 3.2.1.1.

during the transition period—rather than having to purchase them in auction, which the Original Participating TOs are required to do—should be sufficient. As the Commission has ruled:

> [W]e find that this proposal [to limit the free FTRs to ten years] is . . . reasonable. The owners of contract rights that become new Participating TOs must recognize that this election will fundamentally change their current status, and consistent with that change, the new Participating TOs should have to participate in the auction process of FTRs in the same manner as the original Participating TOs after the transition period.

California Independent System Operator Corp., 91 FERC ¶ 61,205 at 61,726 (2000).

SCE (at 16–19) and PG&E (at 9–10) support the definition of Net FTR Revenues, but urge a revision to the definition of Transmission Revenue Credit for consistency with the Vernon settlement. The ISO does not oppose revising the definition to incorporate the definition from the Vernon settlement to the Transmission Revenue Credit for New Participating TOs during the transition period. However, since the ISO Tariff applies to both the Original Participating TOs and the New Participating TOs, accommodations similar to the changes included in Amendment 49 for the Transmission Revenue Credit would need to be included.

Finally, as requested by MWD (at 13), the ISO confirms that wholesale end-users that serve their own load would meet the criteria for a Participating TO "that has the obligation to serve load," if the service of Load arises from a legal or regulatory obligation. The ISO agrees with PG&E's suggestion (at 12) that the latter requirement of a legal or regulatory obligation be added to the tariff provisions.

H. Application Process

Southern Cities (at 11–12) contends that the deadline for a Participating TO's application of 15 days after the Notice of Intent is too short, and should be extended to 30 days. PG&E (at 10–11) contends that the deletion of the contract execution deadline will result in needless delay. These are both factual issues that are appropriately resolved through hearing.

I. Market Notifications

No parties protest Amendment No. 49's provisions regarding Market Notification.

J. Information Required from Scheduling Coordinators

PG&E (at 11–12) supports a definite, rather than indefinite, extension of the deadline for installation of required metering equipment. SWP (at 7–10) urges the Commission to investigate noncompliance rather than approve an extension to the deadline. These are issues best addressed at hearing.

K. Treatment of Behind-the Meter Load

CAC (at 3) and SCE (at 13–14) contend that the definition of Gross Load should exclude all behind-the-meter Load taking Standby Service, not only that behind-the-meter Load served by Qualifying Facilities. The ISO agrees that there is no reason to distinguish Qualifying Facilities from other Load taking Standby Service in this regard, and will support this position if the Commission sets the matter for hearing.

MID (at 11–12) complains that the ISO's treatment of behind-the meter Load taking Standby Service is inconsistent with the requirement that MID's Access Charge be based on its Gross Load. MID's comparison is faulty. As long

as MID does not become a Participating TO, MID's Access Charge is the Wheeling Access Charge, which is assessed according to scheduled transactions on the ISO Controlled Grid, not Gross Load, and MID would thus not pay transmission charges for internal Load served by internal Generation or transactions that use Existing Contracts. Unlike behind-the meter Loads taking Standby Service, however, MID owns transmission facilities and can become a Participating TO. If MID does so, it will be similarly situated to other Participating TOs, each of which has internal Load served by internal generation. MID should be assessed the Access Charge in the same manner as it is assessed to those other Participating TOs, rather than as it is assessed to behind-the meter Load taking Standby Service. Like the other Participating TOs, MID would properly pay according to its Gross Load, which does not include behind-the meter Load taking Standby Service from MID. Absent application of the Access Charge to MID's Gross Load if they were to become a Participating TO, MID would be shifting costs to other Scheduling Coordinators who do not incur those costs today as was illustrated in the examples above.

PG&E (at 15) recommends that the exemption of certain Loads taking Standby Service from the definition of Gross Load should be revised to require that the Load continue to take Standby Service. The ISO does not object to this revision, but believes it should be included in a final compliance order after hearing and Commission decision.

L. Conversion of Existing Rights

SWP (at 2–5) and TANC (at 25–27) complain that the ISO has too much discretion in determining the allocation of FTRs to New Participating TOs, and

contend that specific criteria are necessary. MWD (at 14–15) agrees that the ISO should identify the factors to be considered. In light of the past assertions of various parties that their contractual rights are unique and require special consideration, the ISO believes that specific criteria would be difficult to develop. If, as the ISO requests, Amendment No. 49 is set for hearing, and these or other parties recommend specific criteria in their testimony, the ISO will consider those criteria and respond.

TANC (at 24–25) also contends that FTRs should be awarded to entities that own or manage facilities on behalf of the load-serving entity. The ISO is willing to consider proposed language to accomplish that end if it ensures that multiple FTRs will not be issued for the same transmission facility or Entitlement.

PG&E (at 12) urges rejection of the Amendment No. 49 provisions concerning the conversion of Existing Rights to FTRs. It contends that the FTRs are the property rights of the transmission owners and that the provisions improperly involve the ISO in the interpretation of Existing Contracts. Regardless of how one characterizes FTRs, however, the ISO Tariff already authorizes the provision of FTRs for Converted Rights. PG&E must consider that the party converting an ExistingContract when it becomes a Participating TO must warrant in accordance with Section 4.1.5 of the Transmission Control Agreement that it has authority to turn over operational control of each Existing Contract. Additional consideration should be given to the Application process of a New Participating TO whereby all Market Participants are put on notice that an

application has been received by a potential Participating TO and are given 60 days to provide comments and concerns to the ISO.

SCE (at 12) urges the revision of section 9.4.3 to exclude new facilities from the award of FTRs to New Participating TOs. The revisions to section 9.4.3 in Amendment No. 49, however, do not address this issue. It is properly litigated in the ongoing hearing on Amendment No. 27.

Finally, as requested by TANC, the ISO confirms that the award of FTRs to New Participating TOs will recognize two-way rights in Existing Contracts.

M. Clarifications

MID (at 12–13) objects to the "bright-line" determination that a Participating TO service load in another Participating TO's service territory must pay the Low Voltage Access Charge of the Participating TO in whose service area the load is located. It asserts that it unfairly would penalize MID for a special arrangement it has with PG&E to serve the Mountain House Community Services District. The ISO is not aware of the terms of MID's arrangement with PG&E, but if MID uses PG&E's transmission facilities for this service, it is appropriate that MID pay PG&E's Low Voltage Access Charge. If MID's contract with PG&E includes transmission, MID would be entitled to FTRs for that Existing Right upon becoming a New Participating TO.

N. Other Issues

PG&E (at 13–15) and SCE (at 8–10) believe that the proposed definition of "PTO Service Area" is not the best means of accommodating Participating TOs who have little or no end-use load. SCE offers an alternative tariff revision of Section 3 of the ISO Tariff, but it fails to address issues that arise in

connection with Section 7. The ISO is willing to work with these parties during the course of Docket No. ER00-2019, and this docket, if the Commission sets it for hearing, to develop alternative language that fully addresses these issues.

IV. CONCLUSION

For the foregoing reasons, the Commission should accept Amendment No. 49 to the ISO Tariff for filing, set it for hearing, consolidate it with Docket No. ER00-2019, and permit it to go into effect on June 1, 2003.

Respectfully submitted,

/s/ David B. Rubin

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Dated: April 16, 2003

CERTIFICATE OF SERVICE

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

Dated at Washington, D.C. this 16th day of April, 2003.

/s/ Jeffrey W. Mayes

Jeffrey W. Mayes

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