

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation)
Docket No. ER00-2019-000)
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)

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

I. INTRODUCTION AND SUMMARY

On March 31, 2000, the California Independent System Operator Corporation (“ISO”) filed Amendment No. 27 to the ISO Tariff.¹ Amendment No. 27 presented a revised methodology for determining transmission Access Charges, through which the embedded costs of the transmission facilities constituting the ISO Controlled Grid are recovered, together with associated changes adopted by the ISO Governing Board. The revised transmission Access Charge methodology was submitted in compliance with the directives of the Commission and the California legislature, requiring the ISO to submit a revised Access Charge methodology no later than two years after it commenced operations.²

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 *Pacific Gas and Electric Co., et al.*, 81 FERC ¶ 61,122 at 61,500 (1997); *Pacific Gas and Electric Co., et al.*, 77 FERC ¶ 61,204 at 61,827 (1996); Cal. Public Util. Code § 9600(a)(2)(A).

Under the proposed Access Charge methodology, Access Charges will move over a ten-year transition period from the current “license plate” structure, under which separate Access Charges are determined for and collected by each Participating Transmission Owner (“Participating TO”), based on its individual Transmission Revenue Requirement, to a single “postage stamp” Access Charge that recovers the costs of all High Voltage Transmission Facilities³ forming part of the ISO Controlled Grid. The Access Charge methodology incorporates a number of transition mechanisms designed to reduce cost shifting during and after the transition period and also to address concerns of Transmission Owners (principally governmental entities or “GEs”) that have thus far declined to become Participating TOs.

The ISO believes that the revised transmission Access Charge methodology is fully consistent with and satisfies the goals of the Commission’s Order No. 2000.⁴ In Order No. 2000, the Commission articulated the objective of ensuring that customers can access the transmission grid on a regional basis, by paying a single regional rate. The ISO’s proposed Access Charge methodology will ensure that no transmission customer pays pancaked transmission rates and will provide access to the regional transmission system on an open and non-discriminatory basis. As explained further below, the ISO has striven over the past year, with substantial opportunities for stakeholder participation throughout

³ High Voltage Transmission Facilities are those transmission facilities in the ISO Controlled Grid that operate at 200kV and above.

⁴ *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. and Regs., Regs. Preambles ¶ 31,089 (Dec. 20, 1999), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Mar. 8, 2000), FERC Stats. and Regs., Regs. Preambles ¶ 31,092 (Feb. 25, 2000).

the process, to develop an Access Charge methodology that provides for an equitable balance of costs and benefits among those entities and their customers that choose to turn control of their transmission facilities over to the ISO, and the establishment of a uniform High Voltage Access Charge across the entire ISO Controlled Grid. The ISO believes that a proposal that satisfies those goals will provide incentives for greater participation in the ISO and lead to the development of an expanded western energy market.

The Access Charge methodology proposed in Amendment No. 27 represents a compromise among the interests of the numerous stakeholders that participated actively in the development and negotiation process that culminated in a decision by the ISO's stakeholder Governing Board. As a compromise, the proposed Access Charge methodology is not perfect from the standpoint of any stakeholder or class of stakeholders. It does, however, represent a just and reasonable approach to designing rates that meets the imperative of fostering the further development of the ISO as an independent regional transmission institution.

Befitting the broad and active participation of stakeholders in the development of the proposed Access Charge methodology, numerous parties have moved to intervene in this proceeding. Some of the motions to intervene included comments on or protests of Amendment No. 27 or motions requesting specific relief. Pursuant to Rule 213 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213, the ISO submits its Answer to the motions to intervene, comments, protests, and other motions submitted in the above-

captioned docket. As explained below, the ISO does not oppose the intervention of any of the parties that have sought leave to intervene in this proceeding.

Several intervenors note their qualified or unqualified support for the proposed Access Charge methodology, including the Public Utilities Commission of the State of California (“CPUC”), representatives of End-Users that will ultimately pay transmission rates based on the ISO’s Access Charges, and two of the current Participating TOs. Other intervenors, including in particular, those representing GEs, oppose Amendment No. 27 and request substantial modifications, rejection, or hearing. These requests are unsupported.

The Access Charge methodology proposed in Amendment No. 27 represents a just, reasonable, and non-discriminatory approach to the development of *regional* charges for access to the ISO Controlled Grid. It includes a reasonable transition toward a postage stamp rate for access to High Voltage Transmission Facilities and necessary and appropriate mechanisms to mitigate cost shifts that will occur during the transition, so that cost differences are reduced when the ISO Grid-wide rate is fully implemented. Additionally, those mechanisms take full account of the potential for the expansion of the ISO Controlled Grid, through the participation of additional Participating TOs, to produce benefits for all customers. It also includes mechanisms to address concerns raised by prospective Participating TOs, including GEs, during the extensive stakeholder process through which the proposed methodology was developed.

As the product of an open and balanced negotiating process, the proposed methodology does not satisfy fully the concerns of any one participant or group of participants in that process. In particular, prospective Participating TOs argue that they should be permitted to benefit sooner, and with fewer restrictions, from the blending of their relatively higher cost transmission facilities into region-wide Access Charges. Those arguments were fully considered in the stakeholder process, where the ISO and the majority of the stakeholder representatives on its Governing Board determined that the elimination or relaxation of the mitigation measures included in the proposed Access Charge methodology would impose undue burdens on the customers of other Participating TOs. The proposed Access Charge methodology affords all Participating TOs the opportunity to recover their transmission-related costs, including a reasonable return on their transmission investment. After a reasonable transition period, the proposed Access Charge methodology eliminates the current differences among the prices paid for access by customers connected to different portions of the ISO Controlled Grid.

There is no basis for rejecting the proposed Access Charge methodology, which is fully described in the ISO's filing and substantially advances the Commissions' policy objectives by moving toward a regional basis for transmission access. Also, recognizing that this filing was preceded by an extended period for stakeholder input and negotiation, yet resulted in a consensus that, while broad, was nevertheless incomplete, the Commission

should offer guidance on the key points raised by intervenors before establishing any hearing or settlement judge procedures.

II. BACKGROUND

A. Amendment No. 27

The proposed Access Charge methodology was adopted following an extensive stakeholder process that commenced in December 1998. That process, which is described in detail in the testimony of Deborah Le Vine, the ISO's Director of Contracts & Compliance, included the solicitation of Access Charge proposals from stakeholders; the development of a database of transmission costs of current and prospective Participating TOs, against which those proposals could be tested; the formation of a Transmission Access Charge ("TAC") Working Group to provide a forum for discussions among interested parties; and the ISO's presentation of a potential compromise proposal to the TAC Working Group.⁵ The stakeholder process continued with the appointment in October 1999 of a negotiating committee comprising members of the ISO Governing Board representing End-User, GE, and current Participating TO classes. In deliberations throughout November and December, that committee produced a modified compromise Access Charge proposal. After further discussions with stakeholders and revisions to the proposal as a result of stakeholder comments, the ISO Governing Board adopted the Access Charge proposal reflected in Amendment No. 27 at its March 2000 meeting.

⁵ Ms. Le Vine's testimony is included as Attachment D to the ISO's filing.

The proposed Access Charge methodology would continue to afford customers access to the ISO Controlled Grid at non-pancaked rates. The current Access Charge methodology, based on rates reflecting the rolled-in Transmission Revenue Requirement of the Participating TO from whose Service Area the Energy is withdrawn, would apply until the Transmission Control Agreement ("TCA") has been executed by a new Participating TO. At that point, the Access Charge for the recovery of costs associated with and allocable to High Voltage Transmission Facilities included in the ISO Controlled Grid would initially be based on the Transmission Revenue Requirements of all Participating TOs in one of three or four "TAC Areas," corresponding to one of the former control areas that were combined to form the ISO Control Area.

Over ten years, the High Voltage Access Charges for these TAC Areas would be combined to form a single ISO Grid-wide High Voltage Access Charge. High voltage additions to the ISO Controlled Grid would be recovered through the ISO Grid-wide component of the High Voltage Access Charge both during and after the transition period. The Access Charge for the recovery of costs of Low Voltage Transmission Facilities would continue to be Participating TO-specific.

Over the same ten-year period, several transition mechanisms would be in effect to limit further the abruptness of cost shifts among Participating TOs and their customers and to protect new Participating TOs against certain cost increases that they might otherwise experience. These transition mechanisms include the following:

- a mechanism to hold new Participating TOs harmless with respect to certain cost increases they might otherwise face as a consequence of their decisions to join the ISO as Participating TOs;
- a limitation on the increase in transmission costs borne by customers of current Participating TOs as a result of the adoption of the new methodology, set at levels deemed acceptable by representatives of the End-Users who will ultimately pay transmission rates based on the resulting Access Charges in light of the benefits that expanded participation in the ISO is expected to bring to all customers; and
- a “buy down” mechanism designed to narrow the gaps of transmission rates among Participating TOs by applying certain cost-shift benefits received by higher cost Participating TOs to reduce their Transmission Revenue Requirements for purposes of the Access Charge calculation.

Other aspects of Amendment No. 27 would facilitate participation in the ISO by new Participating TOs and would ensure that the expanded participation by Transmission Owners provides benefits to all customers. These mechanisms include the following:

- New Participating TOs will be required to convert their transmission facilities and Existing Rights (contractual transmission service rights) to rights of Participating TOs under the ISO Tariff. An existing option for new Participating TOs to continue to exercise Existing Rights for a limited period after joining the ISO is eliminated. With respect to such Converted Rights, the ISO will no longer have to reserve transmission capacity to accommodate short-notice scheduling rights under many Existing Contracts, thereby reducing instances in which the ISO Controlled Grid is considered congested because the reserved capacity must be scheduled in the Day-Ahead market or else it is released for use by other Market Participants.
- New Participating TOs will be permitted, for a ten-year transition period or until termination of their Existing Contract, to receive Firm Transmission Rights (“FTRs”) commensurate with the capacity of the transmission facilities and Existing Rights they turn over to the ISO’s Operational Control, rather than revenues from the ISO’s auction of FTRs.
- The reasonableness of the Transmission Revenue Requirements of Participating TOs that are GEs will be determined, when disputes arise, by reference to a neutral Revenue Review Panel, so that costs

are not included in the Access Charge without the opportunity for review, but GEs are required to subject their transmission rates directly to the Commission's jurisdiction.

At the conclusion of the ten-year transition period, all Participating TOs would be treated comparably under the ISO Tariff's Access Charge methodology and the costs of their High Voltage Transmission Facilities would be recovered through a single Access Charge, applicable to the withdrawal of Energy anywhere on the ISO Controlled Grid.

B. Interventions

A notice of intervention was filed by the CPUC. In addition, motions to intervene were filed by numerous parties.⁶ Some interventions indicated the party's full or qualified support for the proposed Access Charge methodology. The CPUC voices concern over only one aspect of the methodology, and TURN, which represents End-Use Customers in California, supports the proposed methodology even though many of its members could end up paying higher charges for access to the ISO Controlled Grid. Similarly, SCE supports the

⁶ Interventions were filed by the California Department of Water Resources ("CDWR"); California Electricity Oversight Board; California Large Energy Consumers Association; California Manufacturers and Technology Association; California Municipal Utilities Association ("CMUA"); California Power Exchange Corporation; Calpine Corporation ("Calpine"); Cities of Anaheim, Azusa, Banning, Colton, and Riverside, California ("Southern Cities"); Cities of Redding, Santa Clara, and Palo Alto, California, and the M-S-R Public Power Agency ("Cities/M-S-R"); Cities of Santa Clara and Palo Alto, California; City and County of San Francisco; City of Burbank, California; City of Roseville, California; City of Vernon ("Vernon"); Duke Energy Trading and Marketing, L.L.C.; Dynegy Power Marketing, Inc.; Energy Producers and Users Coalition and the Cogeneration Association of California ("EPUC/CAC"); Enron Energy Services, Inc. ("Enron"); Glendale Water and Power Department; Independent Energy Producers Association; Lassen Municipal Utility District; Los Angeles Department of Water and Power ("LADWP"); Metropolitan Water District of Southern California ("MWD"); Modesto Irrigation District ("Modesto"); Northern California Power Agency ("NCPA"); Pacific Gas and Electric Company ("PG&E"); Sacramento Municipal Utility District ("SMUD"); Sempra Energy ("Sempra"); Southern California Edison Company ("SCE"); Southern Energy California, L.L.C., Southern Energy Potrero, L.L.C., and Southern Energy Delta, L.L.C.; State Water Contractors; The Utility Reform Network ("TURN"); Transmission Agency of Northern California ("TANC"); Trinity Public Utility District; Turlock

proposed methodology, while presenting comments on certain implementation details.⁷

Other intervenors protest the proposed Access Charge methodology and move for rejection, hearing, or other relief. As explained below, these requests lack merit.⁸

III. ANSWER TO COMMENTS AND PROTESTS⁹

A. Introduction

For the most part, intervenors support the overall thrust of the ISO's proposed Access Charge methodology. With a few exceptions, intervenors support the eventual establishment of a single ISO Grid-wide "postage stamp" Access Charge for the recovery of costs associated with High Voltage

Irrigation District ("Turlock"); Western Area Power Administration ("WAPA"); and Williams Energy Marketing & Trading Company.

⁷ PG&E takes a similar position, though it characterizes its concerns as representing a "Limited Protest."

⁸ Several intervening GEs note that four of the five dissenting votes were cast by ISO Governing Board representatives of transmission owning municipal utilities, which purportedly "eliminate[s] consideration of such 16-5 vote as being any sort of justification or support for the access charge methodology proposed by the ISO." Vernon at 16. The apparent premise of this statement – that if dissenting votes are cast mostly by Governing Board representatives from the same voting class, then the determination of the majority is meaningless – is puzzling, and inconsistent with the ISO's governance structure.

⁹ Some of the intervenors commenting on Amendment No. 27 do so in portions of their pleadings that are variously styled, without differentiation. *See, e.g.*, SMUD (combined Protest and Motion to Reject); Turlock (combined Protest and Request for Hearing). Intervenors also request affirmative relief in pleadings styled as protests. There is no prohibition on the ISO's responding to the comments in these pleadings. The ISO is entitled to respond to these pleadings and requests notwithstanding the labels applied to them. *Florida Power & Light Co.*, 67 FERC ¶ 61,315 (1994). In the event that any portion of this Answer is deemed an Answer to protests, the ISO requests waiver of Rule 213 (18 C.F.R. § 385.213) to permit it to make this Answer. Good cause for this waiver exists here given the nature and complexity of this proceeding and the usefulness of this Answer in ensuring the development of a complete record. *See, e.g., Enron Corp.*, 78 FERC ¶ 61,179, at 61,733, 61,741 (1997); *El Paso Electric Co.*, 68 FERC ¶ 61,181, at 61,899 & n.57 (1994).

Transmission Facilities.¹⁰ Most objections raised by intervenors relate largely to details of the proposed ten-year transition to an ISO Grid-wide High Voltage Access Charge, to mechanisms that are proposed to limit or mitigate cost shifts that would be borne by the End-Users of one class of Participating TOs or another, or to other aspects of the proposed methodology. Other complaints are raised by utilities with transmission facilities and/or Existing Rights who seek changes to the Access Charge methodology to expand the benefits they would realize if they choose to join the ISO as Participating TOs.

The ISO responds to these objections and complaints below. The Commission should be aware, however, that virtually all of these concerns were raised in the extensive stakeholder process and in the meetings conducted by the ISO Governing Board to receive input from stakeholders. In large part, they represent attempts to shift the compromise adopted by the ISO in favor of the proponent. The Commission should view such attempts skeptically where, as here, the ISO has conducted a lengthy, open stakeholder process and a resolution was adopted by a large majority of the Governing Board, including representatives of most stakeholder classes. The Commission should be especially reluctant to overturn such a determination where the principle issue is one of cost allocation, i.e., the extent to which it is reasonable and appropriate to shift costs from one group of transmission customers – the customers of the predominantly higher cost GEs – to another group of transmission customers – the customers of current Participating TOs. As the ISO's experience bears out, these issues are not susceptible to perfect or easy solutions. Consistent with the

¹⁰ See CMUA at 9.

general principle that a utility must establish only that its proposed rate design is reasonable, not that it is the only reasonable rate design or even the most reasonable rate design,¹¹ the Commission should exercise caution before upsetting the delicate balance at which the ISO Governing Board finally arrived.

B. The Proposed Access Charge Methodology Is Not Unduly Discriminatory or Preferential.

A number of intervenors claim that the proposed Access Charge methodology is unduly discriminatory and preferential. Significantly, some intervenors focus on certain aspects of the proposal to claim that it discriminates against New Participating TOs and in favor of Original Participating TOs.¹² Other intervenors, focusing on other elements of the proposal, claim that it is unduly preferential in favor of New Participating TOs and, as a result, discriminates against customers on the systems of Original Participating TOs.¹³ Still others claim that the proposed methodology unduly discriminates in some other manner.¹⁴

Taken together, these protests reveal the truth: the proposed Access Charge methodology does not unduly favor or discriminate against any class of Participating TOs, Market Participants, or transmission customers. It is an integrated package of provisions that was carefully constructed through an extensive stakeholder process to accommodate, to the extent possible, the

¹¹ See, e.g., *New England Power Co.*, 52 FERC ¶ 61,090, at 61,336 (1990), *aff'd*, *Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992) (rate design proposed need not be perfect, it merely needs to be just and reasonable), *citing* *Cities of Bethany, et al. v. FERC*, 727 F.2d 1131, 1136 (D.C. Cir.), *cert. denied*, 469 U.S. 917 (1984) (utility needs to establish that its proposed rate design is reasonable, not that it is superior to all alternatives).

¹² Modesto at 19; NCPA at 16; SMUD at 16; Southern Cities at 16; TANC at 18.

¹³ Enron at 6-8; Sempra at 9-13.

¹⁴ Cities/M-S-R at 33; EPUC/CAC at 4-6; Turlock at 9.

interests of all affected parties in a manner that is fair and reasonable. Any such proposal can be criticized as unbalanced by focusing on particular elements in isolation and by ignoring limitations on their operation. As SCE recognizes in its comments, however, it would be inappropriate to focus on individual elements of the proposed Access Charge methodology, rather than as an integrated package in which different measures address concerns of different groups of stakeholders, but the overall effect is to produce just and reasonable charges for access to the transmission facilities operated by the ISO.

As Zora Lazic, the ISO's Vice President, Client Services, explains in her testimony, one of the ISO's objectives in the stakeholder process that preceded this filing was to develop an Access Charge methodology that affords the same treatment to all Participating TOs and their customers.¹⁵ Because current and prospective Participating TOs are not starting out in the same position, however, a structured transition is necessary to get to that point. That transition incorporates mechanisms to protect the interests both of New Participating TOs and of Original Participating TOs.

For New Participating TOs and their customers, the proposed Access Charge methodology includes the following provisions:

- New Participating TOs with above average transmission costs have the opportunity to shift portions of those costs to customers on the systems of lower cost Participating TOs (predominantly, the two largest Original Participating TOs), as ISO Grid-wide High Voltage Access Charges are phased in over ten years;
- During the ten-year transition period, New Participating TOs can receive FTRs represented by the rights and facilities they contribute to the ISO Controlled Grid directly, without going through the auction process;

¹⁵ Ms. Lazic's testimony is included as Attachment C to the ISO's filing.

- During the ten-year transition period, New Participating TOs are entitled to payments from the ISO (funded by charges to Original Participating TOs) to hold them harmless from net cost increases resulting from the new Access Charge methodology and the loss of entitlement to exclusions from the Grid Management Charge (“GMC”); and
- New Participating TOs that are non-FERC jurisdictional entities are not required to submit their Transmission Revenue Requirements for Commission review.

For Original Participating TOs and their customers, the proposed Access

Charge methodology includes the following:

- To limit cost shifts, only costs of High Voltage Transmission Facilities are recovered on an ISO Grid-wide basis, not all transmission facilities included in the ISO Controlled Grid, and the shift to a single regional charge for those facilities is spread over ten years.
- Cost increases to customers of Original Participating TOs as a result of transmission cost shifts during the ten-year transition period are capped at levels deemed acceptable by representatives of End-Use Customers on the ISO Governing Board;
- Costs to customers of Original Participating TOs of meeting the commitment to hold New Participating TOs harmless against certain cost increases are included in the caps;
- New Participating TOs are required to convert Existing Rights to capacity that the ISO can use to schedule new firm uses of the ISO Controlled Grid, enabling customers of Original Participating TOs benefit from reduced Congestion Costs and more efficient Energy markets; and
- Customers of Original Participating TOs can obtain review of any questions about the reasonableness of the Transmission Revenue Requirements of non-jurisdictional Participating TOs through the neutral Revenue Review Panel.

While the ISO will discuss specific objections to these provisions below, it is readily apparent that the ISO’s proposed Access Charge methodology does not unduly discriminate against or favor either New Participating TOs or Original Participating TOs. Claims of discrimination or preference that ignore the “forest”

of the comprehensive Access Charge proposal while focusing on a select subset of the “trees” represented by isolated components of the proposal are unfounded.

C. The Adoption of an ISO Grid-Wide High Voltage Access Charge After a Ten-Year Transition Period Is Just and Reasonable.

Sempra challenges the proposed Access Charge methodology’s imposition of a single ISO Grid-wide High Voltage Access Charge after the ten-year transition period. It argues that a “postage stamp” High Voltage Access Charge will: (1) shift costs to customers of Original Participating TOs with few if any compensating benefits; (2) distort grid expansion decisions; (3) impede the expansion of the ISO beyond California; and (4) potentially require the defeasance of tax-exempt debt.¹⁶

These claims amount to an argument that any movement away from utility-specific “license plate” transmission rates is prohibited. This argument, however, is contrary to Commission policy. In Order No. 2000, the Commission addressed directly the question of the appropriate rate design for regional transmission organizations (“RTOs”). The Commission expressed a preference for uniform transmission access rates throughout a region, and focused on issues of whether and for how long it should permit RTOs to employ non-uniform “license plate” transmission rates.¹⁷ While it authorized RTO proposals to continue the use of license plate rates for a “fixed term” as a transition mechanism, and also proposals to extend the applicability of license plate rates, the Commission explicitly stopped short of announcing the acceptability of those

¹⁶ Sempra at 5-18.

¹⁷ Order No. 2000, FERC Stats. and Regs. at 31,177.

rates “as a permanent feature of an RTO.”¹⁸ The Commission also made it clear that any proposal to extend reliance on license plate rates beyond the initial “fixed term” would have to be justified “based on the factual situation of the particular RTO.”¹⁹ Sempra’s claim that the ISO’s Access Charge methodology can only be based on license plate rates turns the Commission’s *tolerance* of such rates on its head.

Moreover, Sempra’s attack on the cost shifts that would result from the ISO’s proposed Access Charge methodology ignores both the limitations on cost shifts that are built into the proposal and the benefits that expanded participation in the ISO by California utilities with transmission facilities and Entitlements, which could not be accomplished without a movement toward postage stamp rates. To ensure that expanded participation in the ISO by California transmission-owning utilities produces benefits to counterbalance cost shifts, the proposed Access Charge methodology requires New Participating TOs to convert their transmission facilities and Entitlements to rights consistent with the ISO Tariff. In particular, the ISO will be able to reduce the amount of transmission capacity that it reserves in forward markets to accommodate the within-the-hour scheduling rights that exist under many Existing Contracts. This should reduce much of the current “phantom” Congestion on the ISO Controlled Grid. The conversion of Existing Contract rights will also create a broader base over which to spread the ISO’s operating expenses, reducing the per-unit GMC.

¹⁸ *Id.*

¹⁹ *Id.*

The ISO acknowledges that the amounts of these potential benefits cannot be quantified with certainty. That is why the Access Charge proposal includes the mechanisms discussed above to limit the amount and pace of cost shifts. ISO Governors representing the End-User class, which will ultimately pay the cost shifts about which Sempra complains, determined that the prospect of these benefits was great enough to justify the cost shifts that are contemplated under the Access Charge proposal (with the specified mitigation measures in place). While achievement of these benefits depends upon decisions by California utilities to become Participating TOs, the cost shifts about which Sempra complains also depend upon the entry of additional Participating TOs with above-average transmission costs. If fewer New Participating TOs join the ISO, the benefits of the Access Charge proposal will be reduced, but so will the cost shifts.

Sempra's complaint that the split between High Voltage Access Charges and Low Voltage Access Charges will distort transmission planning decisions disregards the ISO's role in the regional transmission planning process.²⁰ Even if a Participating TO might be tempted to favor high voltage expansion plans over low voltage additions, in order to spread the costs of the project over the entire region, the ISO is required to review and agree with any transmission expansion project well before its costs will be included in a Participating TO's Transmission

²⁰ Sempra claims that the Commission "has never faced the issue of whether an ISO-operated transmission system should be bifurcated into high and low voltage components for ratemaking purposes." Sempra at 7-8. This claim ignores the Commission's decision in *New England Power Pool*, 83 FERC ¶ 61,045, at 61,233 (1998), in which the Commission considered this issue and *approved* the bifurcation of the New England transmission grid into high voltage and low voltage components for ratemaking purposes.

Revenue Requirement.²¹ Each year, as part of the ISO's coordinated planning process, the ISO reviews each Participating TO's five-year transmission plan. As part of that review, the ISO determines whether the transmission projects included in each Participating TO's annual plan are the transmission solutions that best satisfy the ISO's grid planning criteria and are cost-effective. To the extent that a proposed project is viewed by the ISO as inappropriate, either in configuration or size, the ISO will attempt to work with the applicable Participating TO to address the ISO's concerns. To the extent that the ISO and the Participating TO are unable to resolve their differences, the issue can either be resolved by the ISO Governing Board or through the ISO's Alternative Dispute Resolution procedures. That process, which occurs well in advance of the time a Participating TO would normally attempt to include the costs of a transmission project in its rates, should be sufficient to prevent a Participating TO from skewing its investments to favor high voltage projects.

Sempra's claim that the shift toward an ISO Grid-wide High Voltage Access Charge will deter the expansion of the ISO to other states is speculative. The proposed Access Charge specifically recognizes that the application of the Access Charge methodology to entities outside California could require case-specific adjustments. There is no reason to believe that the proposed methodology could not be adapted, as necessary, to meet the needs of out-of-state utilities that desire to become Participating TOs.

Finally, Sempra's argument that the movement toward a postage stamp Access Charge for High Voltage Transmission Facilities might require it to

²¹ ISO Tariff, Section 3.2.2.2.

refinance tax-exempt debt is, by its own admission, similarly speculative. Sempra does not say that the proposed Access Charge methodology *will* violate restrictions associated with the tax-exempt debt of its subsidiary, San Diego Gas & Electric Company (“SDG&E”), only that it cannot predict how the Internal Revenue Service will rule on the question.²² This uncertainty cannot and need not give Sempra a veto power over the design of charges under the ISO Tariff. As Sempra notes, changes that SDG&E proposed to the ISO Tariff were made to address the possibility that such a situation could arise. As one example, Section 2.1.3 of the ISO Tariff commits the ISO and any affected Participating TO to cooperate to develop any operating procedures necessary to prevent a Participating TO’s violation of any restrictions arising from the use of tax-exempt debt to finance transmission facilities turned over to the ISO’s Operational Control. Sempra has not identified any reason to believe that the provisions that were incorporated into the ISO Tariff to address potential impacts on SDG&E’s tax-exempt financing will not prove adequate or that they constitute a sufficient basis to lock the ISO indefinitely into a license plate-based Access Charge methodology.

D. The Proposed Transition Mechanisms Fairly Compensates New Participating Transmission Owners.

Some intervenors argue that the proposed Access Charge methodology deprives New Participating TOs of fair compensation for their High Voltage Transmission Facilities and Entitlements during the transition period. They are making those transmission facilities and Entitlements generally available through

²² Sempra at 17.

the ISO and are entitled, they argue, to recover the full costs of those facilities through a generally applicable ISO Grid-wide Access Charge.²³ Anything less than recovery of full cost through such region-wide charges they consider to be insufficient compensation.

These arguments are based on a misleading portrayal of the proposed Access Charge methodology. Currently, utilities that own transmission facilities and Entitlements, but have not elected to join the ISO as Participating TOs, recover the costs of their transmission facilities and Entitlements from their own customers – predominantly the customers taking bundled retail service in their Service Areas. Upon becoming a Participating TO, such an entity will continue to recover the costs of its Low Voltage Transmission Facilities from its own customers, who will not be required to pay the costs of any other Participating TO's Low Voltage Transmission Facilities.²⁴ The New Participating TO's costs associated with High Voltage Transmission Facilities will immediately be rolled in with the costs of the High Voltage Transmission Facilities of other Participating TOs in its TAC Area. If the New Participating TO's costs are higher than the average in its TAC Area, it will immediately begin receiving a contribution toward those costs from the Access Charges paid by customers on the systems of other Participating TOs in the TAC Area and customers on its system will have access to the entire ISO Controlled Grid at no additional transmission charge. Over the course of the ten-year transition period, the TAC Area High Voltage Access

²³ CMUA at 4-5; SMUD at 4.

²⁴ The claim of NCPA that the proposed Access Charge methodology ignores the costs of New Participating TOs' Low Voltage Transmission Facilities is thus mistaken. See NCPA at 23-24.

Charges will merge into a single ISO Grid-wide High Voltage Access Charge; the transition will apply to both Original Participating TOs and New Participating TOs on the same schedule. A higher cost New Participating TO will receive increasing contributions toward its High Voltage Transmission Revenue Requirement from customers on the systems of other Participating TOs throughout the ISO Control Area.

Every Participating TO – both New and Original – will thus continue to recover its Transmission Revenue Requirement. In exchange for placing its transmission facilities and Entitlements under the ISO Controlled Grid, a Participating TO and its customers will have region-wide transmission access and it will be able to roll the costs of its High Voltage Transmission Facilities into High Voltage Access Charges, determined first on a TAC Area basis and ultimately as a single ISO Grid-wide High Voltage Access Charge. It will no longer have to recover those cost solely from its own customers. It simply is not accurate to say that a New Participating TO is denied recovery of any portion of its Transmission Revenue Requirement or is treated less favorably in this regard than any Original Participating TO.

In addition, as explained below, during the transition period the New Participating TO will receive FTRs commensurate with the transmission capacity it turns over to the ISO's Operational Control. These FTRs function both as a hedge against Congestion costs and to provide scheduling priorities in certain circumstances in the Day-Ahead Market, which can be used by the New Participating TO to deliver Energy to its customers across the ISO Controlled

Grid. The New Participating TO receives a direct award of FTRs as well as the opportunity to roll in the New Participating TO's high voltage transmission costs with the similar costs of other Participating TOs. No intervenor has shown that a New Participating TO is entitled to shift its transmission costs to customers on the systems of other Participating TOs more rapidly or to a greater extent. Neither has any intervenor justified requiring customers on the systems of other Participating TOs to bear a greater share of the transmission costs of New Participating TOs. Their claims that the proposed Access Charge methodology is not compensatory are accordingly groundless.

E. The Limitation on Cost Shifts During the Transition Period Is Reasonable.

Intervenors representing Transmission Owners that currently are not Participating TOs generally argue that the proposed Access Charge methodology unreasonably limits cost shifts during the ten-year transition to an ISO Grid-wide "postage stamp" High Voltage Access Charge.²⁵ LADWP proposes a more rapid transition to an ISO Grid-wide High Voltage Access Charge with no associated mitigation measures.²⁶ These intervenors cannot, however, contest that the blending of their higher-than-average Transmission Revenue Requirements with the lower Transmission Revenue Requirements of other Participating TOs, including the Original Participating TOs, would result in cost shifts. Customers on the systems of lower cost Participating TOs would pay higher Access Charges

²⁵ Cities/M-S-R at 23; CMUA at 18-23; NCPA at 21; SMUD at 21-22, 23-24; Southern Cities at 11.

²⁶ LADWP at 26.

than they would under the continued application of a “license plate” methodology.²⁷

The ISO believes that movement toward a single ISO Grid-wide High Voltage Access Charge is appropriate to recognize the regional nature of the High Voltage Transmission Facilities and to promote further development of regional electricity markets. The ISO also believes that the expansion of the ISO Controlled Grid through the participation of more Transmission Owners is highly likely to produce substantial benefits for all customers who participate in the markets that rely on the ISO Controlled Grid. The timing and amounts of those benefits, however, are difficult to quantify. While some prospective New Participating TOs contend that these benefits are sufficiently certain to warrant greater increases in the transmission cost responsibility of customers of Original Participating TOs,²⁸ the majority of the members of the ISO Governing Board, including in particular the representatives of End-Use Customers, did not agree.

In these circumstances it is reasonable for the ISO’s proposed Access Charge methodology both to phase in the ISO Grid-wide High Voltage Access Charge over a ten-year period, and to limit the amount of costs that could be shifted to customers of Original Participating TOs in any year during the transition. The Commission has accepted similar transition periods in the case of

²⁷ Vernon asserts that no cost shift will result at all, because a cost shift cannot occur solely as a result of the “cost consequences of grid additions.” Vernon at 13-14. However, Vernon does not consider two factors that led the ISO to submit its proposed Access Charge methodology: increased high voltage transmission costs and increased exposure to GMC charges, both of which present barriers to the entry of New Participating TOs into the market. These factors cannot reasonably be considered merely cost consequences of grid additions.

²⁸ SMUD at 21.

other independent system operators.²⁹ Even with the proposed cap, cost shifts during the transition period will be substantial.³⁰ Cost shifts under LADWP's unmitigated and accelerated transition proposal – which the ISO Governing Board considered, but declined to adopt – would be even greater.

As CMUA notes, the disparity in the transmission costs of different Participating TOs could be reduced by additional transmission investments by lower cost Participating TOs.³¹ The proposed Access Charge methodology recognizes this possibility and provides for the inclusion of additions to the High Voltage Transmission System in the ISO Grid-wide portion of the High Voltage Access Charge, whether the investment is made by an Original Participating TO or a New Participating TO. The reflection of these additional investments in Participating TOs' Transmission Revenue Requirements, however, will only take place once the new facilities are operational. Even taking the potential for additional transmission investment into account, the ISO Governing Board reasonably determined that mitigation of cost shifts associated with the widely divergent Transmission Revenue Requirements of Original Participating TOs and most New Participating TOs was necessary to prevent unduly abrupt cost shifts during the transition period.

The ISO also notes that some of the same intervenors challenge provisions of the proposed Access Charge methodology that were included

²⁹ See, e.g., *New England Power Pool, et al.*, 88 FERC ¶ 61,292, at 62,887 (1999) (“[T]he NEPOOL Tariff provides for an eleven-year transition period over which the full [regional rate] is gradually phased in.”). This transition mechanism was adopted in *New England Power Pool*, 83 FERC at 61,237-41, and modified by *New England Power Pool*, 88 FERC ¶ 61,140 (1999).

³⁰ If the \$72 million cost-shift cap were reached every year, total cost shifts to customers of Original Participating TOs would exceed \$700 million during the transition period.

³¹ CMUA at 20-21.

precisely in order to ensure that the cost shifts that would occur under the proposed methodology are accompanied by substantial benefits to customers. They argue that a New Participating TO should not be required to convert Existing Rights to ISO transmission service, foregoing both within-the-hour scheduling rights and the current GMC exclusion.³² These arguments fail to recognize that, without these mechanisms, the ISO Governing Board would not have approved a methodology that provides even for the mitigated cost shifts that they challenge as insufficient.

It is true that higher cost Transmission Owners would realize greater benefits from becoming Participating TOs if the transition period were shorter or structured differently, to blend the Participating TOs' costs more quickly, or if there were no limit on cost shifts borne by customers of other Participating TOs. Increased benefits to some Participating TOs and their customers, however, would come at the price of increased burdens to other Participating TOs. The proposed Access Charge methodology represents a reasonable and delicate balance of these benefits and burdens, and the intervenors have identified no basis for upsetting the balance arrived at by the ISO Governing Board after an extensive stakeholder process.

The ISO recognizes that some entities may conclude that the benefits they could realize under the proposed Access Charge methodology are not great enough to induce them to become Participating TOs. While the proposed Access Charge methodology is designed in part to encourage greater participation in the ISO by utilities with transmission facilities and Entitlements, it

³² Cities/M-S-R at 24; Modesto at 19; TANC at 18.

was not designed to do so at any cost or to guarantee positive benefits to all prospective Participating TOs. Nor could it achieve such a result without placing undue burdens on the customers of current Participating TOs. Unless it can be shown that such demands are appropriate on a general basis (rather than benefiting only the interests of one or a select number of parties) and can be satisfied at a reasonable cost to other participants, the proposed Access Charge methodology cannot fairly be criticized for failing to accommodate them. The intervenors have not made this showing or even attempted to do so.

F. The Proposed Access Charge Methodology Is Not Required to Hold New Participating Transmission Owners Harmless Against All Potential Cost Increases.

The proposed Access Charge methodology includes a provision to protect New Participating TOs against certain cost increases they may incur as a result of a decision to become a Participating TO. Under proposed Section 8.6 of the ISO Tariff, for the first ten years following the implementation of the new Access Charge methodology, each New Participating TO is entitled to payments from the ISO to the extent it would experience a net cost increase due to the combination of the new Access Charge methodology and the payment of GMC based on the New Participating TO's Gross Load and exports. The payments would be funded by charges to the Original Participating TOs, subject to the cost-shift cap, which the Original Participating TOs would in turn recover from customers withdrawing Energy in their Service Areas.

Several GEs complain that the proposed "hold harmless" provision does not go far enough, because they could be subject to other cost increases upon

turning operational control of their transmission facilities over to the ISO.³³ These complaints are misplaced. The ISO was under no obligation to include in its Access Charge methodology provisions that protect any Transmission Owner against incurring any net cost increase as a result of becoming a Participating TO and fully participating in the restructured electricity markets. Rather, the ISO's objective was to include a limited hold harmless provision to protect New Participating TOs against certain increases that are directly associated with an entity's becoming a Participating TO, without unduly burdening the customers of the Original Participating TOs. Proposed Section 8.6 reasonably fulfills this function.³⁴

The ISO recognizes that some Transmission Owners may conclude that the costs of becoming a Participating TO outweigh the benefits, even taking into account the protection afforded by Section 8.6 and the ability of entities with above-average transmission costs to benefit from the movement toward a single ISO Grid-wide High Voltage Access Charge. The ISO also recognizes, however, that the benefits to customers of Original Participating TOs of expanded participation in the ISO, while real, are not easily quantified. There is accordingly a limit to the amounts that those customers can reasonably be asked to pay to protect New Participating TOs against cost increases. The ISO concluded that it

³³ LADWP at 24; Modesto at 14-15; SMUD at 22; TANC at 15; Turlock at 11.

³⁴ SCE argues that Section 8.6 could inadvertently result in a New Participating TO being entitled to a "negative" payment, i.e., a requirement that the New Participating TO *make* payments if it incurs a net benefit as a result of joining the ISO. SCE, App. A at 2-3. This result is unintended and the ISO does not believe it would result under the proposed provision, which provides for payment to a New Participating TO of its increased GMC exposure, "reduced by" any increase in responsibility for costs of High Voltage Transmission Facilities. It would be illogical to read this provision as contemplating that the eligibility of a New Participating TO for payments under this provision could be "reduced" below zero.

simply was not feasible to protect all prospective Participating TOs against all cost increases or to assure all prospective Participating TOs that they would realize economic benefits immediately without exceeding that limit. While some GEs would prefer greater protection, and may not join the ISO without it, that does not render the proposed Access Charge methodology unjust or unreasonable.

Enron, on the other hand, asserts that the Access Charge methodology is unjust and unreasonable *because of* the proposed hold harmless provision. It complains that the protections afforded New Participating TOs unfairly favor those Participating TOs.³⁵ Enron ignores the increased high voltage transmission costs and increased exposure to GMC charges that New Participating TOs face, and which the hold harmless provision is intended to counterbalance. In doing so, Enron also undervalues the benefits of providing incentives to New Participating TOs to join the ISO. The greater the number of transmission facilities that are part of the ISO Controlled Grid, the greater the increase in the volume of market transactions that can be made, and the greater the reduction in Congestion costs for all Market Participants, including Enron.

Some intervenors argue that the “hold harmless” provision of Section 8.6 is unclear.³⁶ The ISO submits that the questions they raise are presented not for clarification, but to confuse the issue. Section 8.6 is written to protect New Participating TOs from specified cost increases that they would incur as a result of joining the ISO in that status. With respect to GMC increases, the ISO

³⁵ Enron at 8-11.

³⁶ CDWR at 32-34; CMUA at 25; MWD at 21-22.

explained in its filing that New Participating TOs will pay GMC on Gross Load and exports because they must place all transmission facilities and Entitlements under the ISO's Operational Control, converting all Existing Rights, upon becoming Participating TOs. Under the current GMC settlement, non-Participating TOs pay only 50% of the GMC on Load served through Existing Rights that use the ISO Controlled Grid and nothing for using non-ISO Controlled Grid facilities inside the ISO Control Area. Becoming a Participating TO deprives the entity of these exclusions under the current GMC formula.³⁷

The other component of Section 8.6 relates to higher or lower costs for High Voltage Transmission Facilities attributable to the implementation of the Access Charge methodology that is the subject of Amendment No. 27. This clearly provides for an adjustment to the hold-harmless protection to which a New Participating TO is entitled, based on the extent to which it suffers or benefits from a cost shift due to the adoption of High Voltage Access Charges based initially on TAC Areas and the transition to an ISO Grid-wide High Voltage Access Charge as compared to the costs the New Participating TO would have incurred under utility-specific rates. Cost increases or reductions arising from other reasons are not included. The ISO believes that the language of Section 8.6 is sufficiently clear to express these concepts.

G. The “Buy Down” Provisions Reasonably Mitigate Cost Shifts and Do Not Deprive New Participating TOs of Compensation for Their High Voltage Transmission Facilities.

One of the transition mechanisms included in the proposed Access Charge methodology concerns the treatment of cost-shift benefits that accrue to

³⁷ ISO Transmittal Letter for Amendment No. 27 filing, at 13.

Participating TOs that have above-average High Voltage Transmission Revenue Requirements. As a result of the averaging of Participating TOs' high voltage transmission costs, first into TAC Area High Voltage Access Charges and ultimately into a single ISO Grid-wide High Voltage Access Charge, the transmission costs of higher cost Participating TOs will be spread to customers on the systems of other Participating TOs. This creates a benefit to the higher cost Participating TOs, which they could use to lower their rates to their own End-Use Customers or to cover other spending. If the cost-shift benefits are used in this way, however, the cost disparity would continue for decades, while the higher cost transmission facilities (which tend to be newer facilities) are depreciated.

The ISO Governing Board determined that it would be better to apply these benefits during the transition period in a manner that reduces the transmission cost disparity that has been such a significant impediment to the expansion of the ISO's operational control over regional transmission facilities. The proposed Access Charge methodology accomplishes this result by specifying that the calculation of each New Participating TO's High Voltage Transmission Revenue Requirement will take into account the cost-shift benefits (net of GMC increases and Transition Charges) received by such Participating TO in previous years.³⁸ The New Participating TO's Transmission Revenue Requirement will be calculated on the assumption that these net cost-shift benefits received in previous years have been applied to amortize or "buy down"

³⁸ Proposed Appendix F, Schedule 3, Sections 1.2(b) and 6.1(b) of the ISO Tariff.

the New Participating TO's investment in High Voltage Transmission Facilities. As a consequence, future cost shifts will be reduced.³⁹

Intervening GEs generally take issue with this provision. They argue that it interferes with their discretion regarding the financing of their transmission facilities, requiring them to replace low-cost debt, and deprives them of a return on their invested capital or recovery of their investment.⁴⁰ These contentions are unfounded.

First, each Participating TO will retain complete discretion regarding the financing of its transmission facilities. The proposed Access Charge methodology does not require any Participating TO that receives cost-shift benefits to use those benefits to retire its bonds, buy them back in the market, or modify its outstanding financing in any way. Rather, the "buy down" requirement affects only the amount that each New Participating TO will be permitted to include in its High Voltage Transmission Revenue Requirement for recovery through the ISO's High Voltage Access Charges. Each New Participating TO's High Voltage Transmission Revenue Requirement will be calculated *as though* the Participating TO applied the cost-shift benefits to reduce its eligible investment in High Voltage Transmission Facilities, regardless of whether or not it does so. It is a ratemaking assumption, *not* a requirement that a New Participating TO undertake any particular financial transaction. The Participating TO will itself decide whether to use the cost-shift benefits to retire outstanding

³⁹ These benefits of the "buy down" provision refute Enron's contention that the provision is founded on "absolutely no basis." See Enron at 11-12.

⁴⁰ CMUA at 23; Modesto at 16; NCPA at 18; SMUD at 25; Southern Cities at 16; TANC at 15; Turlock at 12; Vernon at 14.

debt, to establish a sinking fund to meet future debt repayment requirements, to reduce rates to its customers, or to meet any other financial need.

Second, the “buy down” requirement does not deprive any New Participating TO to which it applies of full compensation for its transmission facilities, including a return on its investment. Under well-settled ratemaking principles, a public utility is entitled to an opportunity to earn a reasonable return *of and on* amounts it has invested to provide jurisdictional service. This is accomplished by including in jurisdictional rates amounts designed to pay back the invested amounts, through depreciation or amortization, and an additional amount to compensate the utility for the cost of investments that have not yet been paid back through one of those mechanisms.⁴¹ There is no requirement that jurisdictional rates provide a return on amounts that the utility has been given an opportunity to recover through the allowance for depreciation and amortization.

As explained above, the proposed Access Charge methodology provides certain cost-shift benefits to higher cost New Participating TOs. The “buy down” provision requires only that the amounts of these benefits be treated as the equivalent of additional (or “accelerated”) amortization of High Voltage Transmission Facilities by the higher cost New Participating TOs. It is appropriate that these amounts be deducted from the Participating TO’s investment in determining its High Voltage Transmission Revenue Requirements to be included in the ISO’s High Voltage Access Charge in subsequent years. This treatment does not deprive the New Participating TO of a return on any

portion of its invested capital, because the capital at issue has already been returned to the New Participating TO through accelerated amortization.⁴²

The “buy down” provision of the proposed Access Charge methodology represents a reasonable mechanism to ensure that the cost shifts associated with the transition to a single ISO Grid-wide Access Charge for the regional high voltage grid are mitigated, rather than perpetuated. It does not interfere with the financing discretion of New Participating TOs or deprive them of any cost recovery or returns to which they are entitled on their investments in High Voltage Transmission Facilities.

H. The Proposed Methodology’s Application of Access Charges Based on Loads on the ISO Controlled Grid and the Limited Exclusion for Certain Loads Served by Qualifying Facilities Are Reasonable.

The proposed Access Charge methodology, like the current Access Charge methodology, provides for volumetric Access Charges payable on each megawatt-hour of Energy withdrawn from the ISO Controlled Grid. Utility Distribution Companies (“UDCs”) and Metered Subsystems Operators will pay the Access Charges based on the Gross Loads connected to their systems.⁴³ Some intervenors argue that they should be able to exclude portions of their

⁴¹ See *Nantahala Power and Light Co. v. FERC*, 727 F.2d 1342, 1351 (4th Cir. 1984).

⁴² The analysis appended to Vernon’s intervention, which purports to show that the “buy down” provision deprives a New Participating TO of full recovery of its transmission investment, ignores the fact that the cost-shift benefits that the higher cost New Participating TO receives from customers of other Participating TOs return a portion of the New Participating TO’s investment.

⁴³ See ISO Tariff, Section 7.1, and Appendix A, definition of “Gross Load.” Where Energy is delivered to a Load that is connected to the ISO Controlled Grid, but is not on the system of a UDC or Metered Subsystem, the Access Charge is payable by the Scheduling Coordinator serving the Load.

Loads from applicability of the Access Charge on the ground that they serve their Loads in part by local (“behind the meter”) Generation.⁴⁴

This argument flies in the face of Commission precedent. The transmission service that is made available under the ISO Tariff is the equivalent of “network integration transmission service” under the Commission’s *pro forma* tariff. It permits a customer to rely on resources located throughout the ISO Controlled Grid to serve Loads located at any location on the ISO Controlled Grid. The Commission has repeatedly determined that a network customer is required to procure service for its entire Load at each delivery point, with no reduction for Load that could be served by internal generation or by point-to-point transmission arrangements.⁴⁵ The same principle should apply to transmission service under the ISO Tariff for deliveries to Loads on the ISO Controlled Grid. All of those Loads benefit from the availability of the facilities making up the ISO Controlled Grid, through their ability to use the ISO Controlled Grid for the delivery of Ancillary Services to assure reliable service and for the delivery of Energy when internal generation is unavailable and to realize economies.

The proposed Access Charge methodology recognizes an exception for Energy delivered to certain Loads that are served by an existing Generating Unit that is a qualifying small power production facility or qualifying cogeneration facility (a “QF”) under the Public Utility Regulatory Policies Act of 1978

⁴⁴ Calpine at 3-5; Cities/M-S-R at 29; SMUD at 11-16; Turlock at 7-9.

⁴⁵ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. and Regs. Jan. 1991-June 1996, Regs. Preambles ¶ 31,036, at 31,736 (1996), *order on reh’g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. and Regs. III, Regs. Preambles ¶ 31,048, at 30,258-61 (1997); *Duke Power Co.*, 81 FERC ¶ 61,010, at 61,047 (1997).

("PURPA") and that either (i) secured "standby service" from a Participating TO and continues to do so; or (ii) was configured to be curtailed concurrently with an outage of the Generating Unit.⁴⁶ Some intervenors contend that this definition does not go far enough to exempt QF-served Loads from responsibility for Access Charges.⁴⁷ Others contend that it goes too far by providing an exemption for QF-served Loads to which other Loads are not entitled.⁴⁸ Neither contention is correct.

The question of the circumstances under which QF-served Load should be required to pay Access Charges was one of the most contentious issues addressed by stakeholders and the ISO Governing Board. The solution ultimately adopted recognizes that all Loads connected to the ISO Controlled Grid derive benefits from the grid and appropriately share in its fixed costs through the Access Charges. This principle applies to Loads served by QFs, as well as other Loads. Such Loads benefit from the availability of generating reserves located throughout the ISO Controlled Grid that protect QF-served Loads against interruption when the QF that normally serves the Load trips off-line and from Energy delivered over the ISO Controlled Grid during such outages.

At the same time, the solution recognizes two circumstances in which a QF-served Load may appropriately be exempted from responsibility for Access Charges. First, a QF-served Load could be configured in such a manner that it is effectively isolated from the ISO Controlled Grid, if the Load is automatically

⁴⁶ See ISO Tariff, Appendix A, definition of "Gross Load."

⁴⁷ EPUC/CAC at 4-6.

curtailed whenever the QF serving it is unavailable. In such a configuration, the Load is not relying on the ISO Controlled Grid for the receipt of either operating reserves or Energy. Second, a QF-served Load may already be bearing a portion of the costs of the ISO Controlled Grid through the charges for Standby Service that it pays to the Participating TO with which it is interconnected. The proposed methodology accordingly exempts QF-served Loads that are currently paying for Standby Service from Access Charges, provided they continue to secure Standby Service from a Participating TO. New arrangements for Standby Service for QF-served Loads that are not eligible for the exemption can exclude transmission costs in the calculation of Standby Service charges to recognize that the Load is bearing a portion of those costs through the Access Charges.

None of the intervenors' objections justifies rejection or modification of this reasonable solution to a very difficult problem. The limited exemption for certain QF-served Loads appropriately recognizes the state and federal policies to encourage QF development. None of the intervenors points to any provision of California law or of the Commission's PURPA regulations requiring QF-served Loads to receive a complete or expanded exemption from responsibility for transmission costs.⁴⁹ In particular, the fact that a Load may receive Energy from a QF located on or near its premises does not change the fact that the Load benefits from more reliable service available only because of the transmission system making up the ISO Controlled Grid. The Load served by a QF is not

⁴⁸ Cities/M-S-R at 33; SMUD at 16; Turlock at 9.

⁴⁹ EPUC/CAC cites 18 C.F.R. § 292.305's discussion of rates for the sale of power to a QF. EPUC/CAC at 5. The Access Charge methodology, of course, does not involve the sale of power.

“potential” Load, as EPUC/CAC claims;⁵⁰ it is actual Load that relies upon the ISO Controlled Grid. It is not unduly discriminatory to include this Load in allocating the costs of the facilities making up the ISO Controlled Grid when the entity serving the Load has not made other arrangements to compensate the Participating TO for a share of those costs.⁵¹

Conversely, there is no basis for eliminating the limited exemption for some QF-served Loads as being unduly preferential. As noted above, that exemption is limited to circumstances in which the QF-served Load has isolated itself from the ISO Controlled Grid or in which it is already paying for transmission costs through an approved Standby Service arrangement. In these narrow circumstances, an exemption is reasonable and appropriate. The creation of this exemption does not require the creation of far broader exemptions that would allow other transmission customers to escape responsibility for paying a share of the costs of the transmission system.

I. The Direct Allocation of Firm Transmission Rights to New Participating TOs During the Transition Period Is Reasonable.

Pursuant to Amendment No. 9 to the ISO Tariff, the ISO periodically issues FTRs through an auction process. FTRs are issued for each Inter-Zonal Interface and direction combination and entitle the holder to share in Usage Charge revenues received by the ISO when the ISO Grid is congested on that

⁵⁰ *Id.* at 5.

⁵¹ EPUC/CAC claims that assessing Access Charges against Load served by a QF is equivalent to assuming that all QF-served Loads will experience outages simultaneously. *Id.* at 6. This claim is entirely unfounded. Requiring that such Loads pay Access Charges (if they are not already paying for transmission service) gives appropriate recognition, among other things, to the fact that the Loads benefit from the capability of the ISO Controlled Grid to be used for the delivery of Operating Reserves at all times, even when the QFs are in operation. No assumption is made or required regarding the timing, duration, or frequency of QF outages.

path and to scheduling priority in the Day Ahead Market. Proceeds of the FTR auction are disbursed to the Participating TOs whose facilities and Entitlements make up the interface for which the FTRs are issued, to be credited by them against their Transmission Revenue Requirements.

During the stakeholder process through which the proposed Access Charge methodology was developed, some prospective Participating TOs complained that converting their transmission ownership rights and contractual Existing Rights to ISO Tariff rights, including the right to receive FTR auction revenues, could compromise their ability to continue to serve their customers because they could not be assured of receiving FTRs in the auction. Because the conversion of Existing Rights is critical to realizing benefits for all customers by reducing “phantom” Congestion, the ISO Governing Board decided to accommodate this concern in part. During the ten-year transition period (or, for the term of an Existing Contract, if shorter), a New Participating TO will receive directly, without having to purchase the FTRs in the auction, the FTRs represented by the transmission facilities and Existing Rights that it turns over to the ISO’s Operational Control.⁵² After the ten-year transition period, all Participating TOs will be treated the same for their owned transmission facilities and converted Existing Rights: they will receive FTR auction revenues and will be able to bid to purchase FTRs in the ISO’s auction or purchase them in secondary market transactions.

Some intervenors representing entities with Existing Rights argue that this provision does not go far enough. They seek to have FTRs assigned directly to

New Participating TOs beyond the transition period.⁵³ This modification is unnecessary and inadvisable. Different treatment for different classes of Participating TOs should not be perpetuated beyond the transition period. Further, a New Participating TO will continue to receive value for the transmission facilities and Existing Rights that it converts upon joining the ISO, in the latter case as long as the contract that granted those rights remains in effect. Although the New Participating TO will not receive FTRs directly after the transition period, it will receive FTR auction revenues that reflect the market-determined value of the capacity of its transmission facilities and Converted Rights. A Participating TO that continues to have Load-serving responsibilities can secure FTRs in the auction and in secondary market transactions, just like every other Market Participant, to provide financial hedges against Congestion costs. The ISO believes that experience during the transition period will prepare New Participating TOs to utilize the FTR auctions and secondary FTR markets to provide service to their customers, in the same manner that Original Participating TOs do today to serve their remaining bundled retail service customers.

Other intervenors argue that it is unfair to give FTRs directly to New Participating TOs, even for a transition period, while Original Participating TOs and other Market Participants must purchase FTRs through the ISO's auction or

⁵² See proposed Section 9.4.3 of the ISO Tariff.

⁵³ CDWR at 24; MWD at 26; SMUD at 36. WAPA seeks to extend the duration only of FTRs directly assigned to a New Participating TO with respect to the capacity of transmission facilities that it owns. WAPA at 5. NCPA asserts in a footnote that, under proposed Section 9.4.3 of the ISO Tariff, only FTRs issued with respect to converted contractual transmission service rights expire at the end of the ten-year transition period. NCPA at 13 n.11. This is incorrect. Section 9.4.3 clearly states that FTRs will be issued directly to New Participating TOs only for a ten-year transition period.

in secondary markets.⁵⁴ The Commission, however, has recognized the appropriateness of transition mechanisms to smooth the restructuring of regional transmission arrangements and electricity markets.⁵⁵ As noted above and in the ISO's testimony, requiring New Participating TOs to convert all of their transmission facilities and Existing Rights that serve a network function to rights under the ISO Tariff and to comply with the ISO's scheduling timelines and protocols is expected to produce substantial benefits to all Market Participants. If entities refrain from joining the ISO as Participating TOs because they are not sufficiently comfortable that the right to FTR auction revenues gives them protection equivalent to their owned transmission facilities and contractual Existing Rights, those benefits will be reduced. Giving FTRs directly to New Participating TOs for a limited transition period is a reasonable and appropriate means of encouraging their participation in order to achieve these benefits.

Some intervenors complain that the proposed Access Charge methodology is incomplete because it does not describe how many FTRs a New Participating TO will receive for its Existing Rights.⁵⁶ Amendment No. 27 states that a New Participating TO will receive one FTR for each MW of firm transmission capacity it converts, and the quantity of FTRs a New Participating TO receives for other transmission capacity will be "commensurate with the transmission capacity [it] is turning over to ISO Operational Control" and will be determined when the New Participating TO executes the Transmission Control

⁵⁴ Enron at 13-14; Sempra at 12-13; Turlock at 15.

⁵⁵ See *New England Power Pool*, 83 FERC at 61,237-41; *New England Power Pool*, 88 FERC ¶ 61,140.

⁵⁶ CDWR at 23-24; Modesto at 9; MWD at 24; SMUD at 38; TANC at 8.

Agreement.⁵⁷ During the stakeholder process it became apparent that the parties could not agree on a single methodology for the conversion of Existing Rights to FTRs that would apply in all cases. The ISO Governing Board determined that the best approach in these circumstances would be to specify a general standard, with the application of the standard to a particular case to be determined through negotiation and, if necessary, by the Commission. Consequently, case-by-case negotiation will be required because, as the intervenors note, Existing Contracts for transmission service provide service at varying levels of quality on different portions of the ISO Controlled Grid, ranging from service that is between non-firm and firm service to service that some parties characterize as “super-firm.” The ISO notes that the same approach is currently employed in Section 2.4.4.3.1.4 of the ISO Tariff. That section deals with the entitlement of a Participating TO to Usage Charge and FTR auction revenues. Like proposed Section 9.4.3, it provides that, with respect to Converted Rights arising from less-than-firm service under an Existing Contract, a Participating TO shall receive a proportional entitlement to those revenues. The manner in which that proportion will be determined is left for negotiation when the holder of Existing Rights applies to become a Participating TO.

Finally, WAPA points out that the version of Section 9.4.3 contained in Attachment A to the ISO’s filing (the replacement tariff sheets) differs from the version contained in Attachment B (the black-lined tariff provisions).⁵⁸ WAPA is correct; the ISO erred in preparing replacement tariff sheets to implement this

⁵⁷ Proposed Section 9.4.3 of the ISO Tariff.
⁵⁸ WAPA at 4.

aspect of the methodology. The version of Section 9.4.3 shown in Attachment B is the correct version. The ISO will submit a corrected replacement tariff sheet in a compliance filing.

J. The Revenue Review Panel Represents a Reasonable Approach to Ensuring the Justness and Reasonableness of the Portion of High Voltage Access Charges Representing the Costs of Facilities of Non-Jurisdictional Transmission Owners.

By providing for a transition to a single ISO Grid-wide Access Charge for the high voltage system, the revised Access Charge methodology necessarily contemplates Access Charges that are based on the costs of transmission facilities owned by all Participating TOs – including GEs whose transmission rates normally are not subject to the Commission’s jurisdiction. Amendment No. 27 includes a mechanism to ensure that the Transmission Revenue Requirements of non-jurisdictional Participating TOs included in the High Voltage Access Charges are reasonable. If a dispute regarding the reasonableness of a Transmission Revenue Requirement cannot be resolved through negotiation, it will be referred to a neutral Revenue Review Panel established by the ISO Governing Board. The Revenue Review Panel will determine the reasonableness of the non-jurisdictional Participating TO’s High Voltage Transmission Revenue Requirements, applying applicable Commission policies and precedents.⁵⁹

Some intervenors, including the CPUC, complain that the Revenue Review Panel affords insufficient protection against a non-jurisdictional Participating TO’s recovering excessive amounts through the ISO’s High Voltage

⁵⁹ See proposed Section 7.1.1, and Appendix F, Schedule 3, Section 9.1, of the ISO Tariff.

Access Charge. They insist that, because the ISO's High Voltage Access Charges are subject to the Commission's jurisdiction, as part of the ISO Tariff, the Commission must review the revenue requirements of all Participating TOs – including GEs – or, at a minimum, any party must have the right to bring any ruling of the Revenue Review Panel to the Commission for *de novo* review.⁶⁰ Some intervening GEs, in contrast, argue that the requirement that they subject their Transmission Revenue Requirements to review by the Revenue Review Panel represents an impermissible and unnecessary infringement on their independence. They contend that their own public processes are sufficient to ensure the reasonableness of their Transmission Revenue Requirements.⁶¹ Unlike other GEs, LADWP acknowledges that the Revenue Review Panel represents an appropriate approach to the problem of ensuring the reasonableness of the transmission costs of non-jurisdictional entities included in the ISO's Access Charges.⁶²

The ISO agrees that the charges it collects under the ISO Tariff, including the High Voltage Access Charges proposed in Amendment No. 27, are subject to the Commission's jurisdiction under Part 2 of the Federal Power Act. Because the High Voltage Access Charges are based on the Transmission Revenue Requirements of all Participating TOs – including GEs that choose to become Participating TOs – the Access Charge methodology must include provisions to ensure that those revenue requirements are just and reasonable. The ISO thus

⁶⁰ CPUC at 7; PG&E at 10-12; Sempra at 11-12.

⁶¹ CDWR at 27; Cities/M-S-R at 20; Modesto at 25; NCPA at 34-35; SMUD at 31; Turlock at 14; Vernon at 22-23.

⁶² LADWP at 29.

does not agree with GEs who argue that their Transmission Revenue Requirements should be exempt from any external review. At the same time, the ISO does not believe that requiring non-jurisdictional Participating TOs to submit their Transmission Revenue Requirements to the Commission under Section 205 of the Federal Power Act is the only permissible means for confirming the reasonableness of those revenue requirements.

As long as the end result of the filed rate – in this case, the High Voltage Access Charge formula rate – is just and reasonable, public utilities have substantial latitude to choose mechanisms that achieve that end result. The Commission has similar latitude to accept different approaches to satisfying the statutory requirement.⁶³ The Commission recognized both the sensitivity of this issue, and the flexibility that it has under the Federal Power Act when it addressed a similar issue presented by the restructuring of the New York Power Pool to establish an independent system operator (“NYISO”). Initially, the Commission ruled that it must review under Section 205 the revenue requirements of GEs (in that case, the Long Island Power Authority, or “LIPA”) that would recover costs of their transmission facilities through the NYISO’s tariff.⁶⁴ The Commission did assure such GEs as follows: “[W]e are committed to fostering regional transmission arrangements that will embrace public utility and non-public utility entities alike and would not lightly take actions that might

⁶³ See *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602-03 (1944); *Carnegie Natural Gas Co. v. FERC*, 968 F.2d 1291, 1293-94 (D.C. Cir. 1992).

⁶⁴ *Central Hudson Gas & Electric Corp.*, 86 FERC ¶ 61,062, at 61,213 (1999).

deter entities like LIPA from participating.”⁶⁵ On rehearing, the Commission reconsidered its ruling and held:

We note . . . that we cannot review LIPA’s rates under the Section 205 just and reasonable standard, but will apply the comparability standard we use when evaluating non-jurisdictional, so-called “NJ” transmission tariffs to assure that the tariff rate is comparable to the rate LIPA charges itself and others.⁶⁶

The issue of how the revenue requirements of non-jurisdictional participants in RTOs will be reviewed will be critical to the success of the Commission’s RTO initiative. The ISO can confirm from its experience in the stakeholder process that preceded this filing that many GEs are adamant in insisting that they will not voluntarily participate in a regional transmission organization if doing so requires them to give up their non-jurisdictional status. Other stakeholders were equally adamant that customers on the systems of other Participating TOs should not be required to pay Access Charges based in part on the unreviewed costs of GEs. The Revenue Review Panel incorporated in Amendment No. 27 represents a carefully crafted compromise solution to reconcile the opposing positions on this issue.⁶⁷ Consistent with the Commission’s directive that RTOs employ alternative dispute resolution mechanisms to minimize the need for Commission intervention, that the Revenue Review Panel will function as a neutral body to resolve disputes concerning the reasonableness of GEs’ Transmission Revenue Requirements and their consistency with the Commission’s policies and precedents. The Commission

⁶⁵ *Id.*

⁶⁶ *Central Hudson Gas & Electric Corp.*, 88 FERC ¶ 61,138, at 61,403 (1999).

should recognize, as it did in the case of the NYISO, that its review of non-jurisdictional components of rates of RTOs will be critical in determining whether non-jurisdictional Transmission Owners participate in those entities.

Accepting this component of the proposed Access Charge methodology is not, as some intervenors contend, tantamount to delegating the Commission's ratemaking authority. The Commission retains jurisdiction over the ISO's High Voltage Access Charge formula, including the provisions that permit the inclusion in High Voltage Access Charges of Transmission Revenue Requirements of non-jurisdictional Participating TOs that have been screened by the Revenue Review Panel. Through its continuing oversight of the ISO's rates, the Commission can determine whether the Revenue Review Panel process is producing just and reasonable results. If the Commission determines, either based on a complaint or on its own initiative, the Revenue Review Panel mechanism is not fulfilling its intended function, the Commission can require the ISO to modify the High Voltage Access Charge formula as necessary to ensure that the end result of the formula is a just and reasonable High Voltage Access Charge.

K. The Proposed Metered Subsystem Provisions Are Reasonable.

Amendment No. 27 includes provisions that would enable New Participating TOs to qualify as Metered Subsystems to facilitate their continued operation as vertically integrated utility systems while also providing an alternative way to participate in the ISO's markets and to use the ISO Controlled

⁶⁷ SCE, which indicates that it would oppose the provision for the Revenue Review Panel standing alone, states that it is acceptable as part of the overall compromise embodied in Amendment No. 27. SCE at 7.

Grid for transactions with their surplus resources.⁶⁸ The Loads and Generation on a Metered Subsystem would have to be scheduled with the ISO by a qualified Scheduling Coordinator (which could be the Metered Subsystem Operator or another entity it designates). The Metered Subsystem's Scheduling Coordinator would have the opportunity, however, to aggregate the Metered Subsystem's Generating Units and Participating Loads and submit Schedules and bids from the aggregated "System Unit," provided that the resources making up the System Unit can be individually identified through telemetry and can be operated internally in such a way that power flows on the ISO Controlled Grid are not affected by changes in the operating levels of individual resources.

Several intervenors take issue with aspects of these provisions. Some GEs challenge the provision requiring the operator of a Metered Subsystem to commit to comply with all applicable provisions of the ISO Tariff.⁶⁹ There is nothing extraordinary or objectionable about this provision. The operator of a Metered Subsystem will be participating in the ISO's markets, scheduling transactions on the ISO Controlled Grid, and serving Loads for which the ISO is responsible as the Control Area operator. It is entirely appropriate that an entity seeking to perform these activities through the Metered Subsystem mechanism commit to abide by the applicable rules for the conduct of those activities, which include the provisions of Section 3.3 that allow enhanced flexibility to Metered

⁶⁸ See primarily proposed Section 3.3 of the ISO Tariff. The Commission has recognized that the implementation of a Metered Subsystem concept was an important means of encouraging greater participation in the ISO. *Pacific Gas and Electric*, 81 FERC at 61,496. The proposed Metered Subsystem provisions were developed based on discussions that have been taking place among the ISO and various stakeholders over the period since the ISO commenced operations.

Subsystem operators. This provision does not, as these intervenors contend, abrogate or infringe upon any party's rights under an Existing Contract. Any California utility that prefers to continue to operate under an Existing Contract, rather than to convert its transmission rights under the contract to rights as a Participating TO, is free to do so. Moreover, the conversion of Existing Rights to ISO Tariff transmission rights in no way abrogates the provisions of an Existing Contract that relate to matters other than transmission service.

Intervenors also challenge provisions that require the Scheduling Coordinator for a Metered Subsystem Operator to schedule all of its Loads and resources with the ISO and to respond to ISO instructions to avoid or manage a System Emergency.⁷⁰ These provisions, too, do no more than require a Metered Subsystem Operator to follow the same rules that apply to all other Scheduling Coordinators that schedule transactions on the ISO Controlled Grid and operate Generating Units in the ISO Control Area. To maintain reliability in its Control Area, the ISO is responsible for ensuring that sufficient Operating Reserves are maintained to meet the requirements of the Western Systems Coordinating Council ("WSCC") Minimum Operating Reliability Criteria. The WSCC's minimum requirements for Operating Reserves are stated as a percentage of the total Control Area load.⁷¹ The ISO thus requires information on the total Load in the Control Area, including Loads connected to a utility that qualifies as a

⁶⁹ Modesto at 20-21 and TANC at 20, referring to proposed Section 3.3.1.1 of the ISO Tariff.

⁷⁰ Cities/M-S-R at 36; Modesto at 21-22; TANC at 21-22.

⁷¹ A Control Area must maintain Operating Reserves equal to five percent of the Loads served by hydroelectric resources and seven percent of other Loads. To enable the ISO to meet this aggregate obligation for the Control Area, the ISO Tariff imposes the corresponding obligation on Scheduling Coordinators. See ISO Tariff, Section 2.5.3.2.

Metered Subsystem to assure that the ISO is meeting its WSCC Control Area obligations. There is no basis for exempting Scheduling Coordinators serving Loads in a Metered Subsystem from the generally applicable scheduling requirements.

Similarly, to enable the ISO to deal with imminent or actual System Emergencies, the ISO must have the commitment of Generation operators to respond to its Dispatch instructions and the commitment of distribution utilities to interrupt or shed Loads, where necessary, in a coordinated fashion. The circumstances in which the ISO may issue such instructions are limited by the ISO Tariff to cases in which “[c]onditions beyond the normal control of the ISO . . . affect the ability of the ISO Control Area to function normally.”⁷² All operators of Generating Units and all UDCs in the ISO Control Area are currently required to obey those instructions.⁷³ If every utility qualifying as a Metered Subsystem – which is still part of the ISO Control Area – were exempted from these requirements, in whole or in part, the responsibility for providing the resources the ISO needs to manage emergency conditions would be shifted to other Generators and other utilities. Intervenors present no basis for exempting Metered Subsystems from these generally applicable requirements.

Some intervenors argue that the Metered Subsystem provisions should exempt Metered Subsystem Operators from additional provisions of the ISO

⁷² See ISO Tariff, Appendix A, definition of “System Emergency.” See also ISO Tariff, Section 5.1.3 (“operational circumstances . . . [that are] so severe that a real-time system problem or emergency could be in existence or imminent.”).

⁷³ See ISO Tariff, Sections 4.4.1 (UDC compliance with ISO direction in case of a System Emergency); 4.4.4 (ISO can direct UDC to disconnect Load); 4.5.3 (ISO to allocate required Load curtailments among UDCs); 5.1.3 (ISO control over Generating Units to maintain reliability); 5.6.1 (ISO control over Generating Units in System Emergency).

Tariff including, apparently, the requirement that Scheduling Coordinators submit Schedules in forward markets that are balanced between scheduled Load and Resources.⁷⁴ Nothing in the Commission's prior orders discussing the Metered Subsystem concept, however, requires the ISO to craft a whole new market structure to accommodate the desires of some utilities to conduct business in a different manner. The proposed Metered Subsystem provisions provide a reasonable accommodation to permit existing utilities to continue to use a mix of generating resources in an integrated manner through qualification as a System Unit. The ISO is not required, in addition, to establish more lenient scheduling deadlines for those utilities.

MWD accepts the principle that a Metered Subsystem would function in many respects as a UDC and should be subject to the same requirements as a UDC.⁷⁵ It argues, however, that some portions of the proposed Metered Subsystem provisions improperly impose additional requirements on Metered Subsystems. It argues first that a Metered Subsystem, but not a UDC, is required to coordinate maintenance outages of Generating Units, as well as distribution facilities with the local Participating TO.⁷⁶ This simply reflects the fact that the Metered Subsystem provisions govern both the Metered Subsystem Operator's operations as a distribution system and as a Generation operator. MWD also argues that the ISO must be experiencing an actual System

⁷⁴ Turlock at 18-19. Turlock attacks the ISO for requiring a Scheduling Coordinator for a Metered Subsystem, if a scheduled resource becomes unavailable after the close of the Hour Ahead Market, to settle the difference in the Imbalance Energy market. This is the same manner in which any other Scheduling Coordinator would deal with the loss of a scheduled resource in this time frame.

⁷⁵ MWD at 32.

⁷⁶ *Id.* at 33.

Emergency before it can exercise control over Metered Subsystem facilities.⁷⁷

This would, however, threaten the reliability of the ISO Control Area by depriving the ISO of the ability to act to avert a threatened System Emergency – authority that it can exercise over other Generating Units. It also complains about the ISO's ability to monitor Regulation provided by a Metered Subsystem, but fails to note that this authority goes hand in hand with the proposal's provision for a Metered Subsystem Operator to provide for its own Regulation requirements, even if its resources do not comply with all of the ISO's normal requirements for Regulation resources.⁷⁸

Some intervenors argue that the Metered Subsystem provisions afford undue preferences to entities that are eligible for them. In some cases, the intervenor simply notes that Metered Subsystems receive special treatment, but does not specify how that treatment amounts to an undue preference.⁷⁹ In fact, as discussed above, a Metered Subsystem Operator will be subject to all requirements of the ISO Tariff with respect to the operation of its system as a UDC, a Participating TO, and a Participating Generator, with the modifications specifically noted in the proposed revisions to the ISO Tariff. Those modifications are reasonable accommodations to recognize the ability and established practice of the Metered Subsystem to operate resources on its distinct system in a manner that does not affect flows on the ISO Controlled Grid. The Metered Subsystem Operator will nevertheless be responsible for the

⁷⁷ *Id.* at 35.

⁷⁸ *Id.* at 36. See proposed Section 3.3.11.1.2 of the ISO Tariff.

⁷⁹ CDWR at 42-43.

payment of Access Charges on Gross Load and exports to reflect the fact that it relies on and benefits from the ISO Controlled Grid.⁸⁰

Other intervenors argue that eligibility for the Metered Subsystem provisions should not be limited to entities that become Participating TOs.⁸¹ The ISO disagrees. The original purpose of the Metered Subsystem concept was to encourage publicly owned utilities in the ISO Control Area to participate fully in the ISO, including placing their transmission facilities and Entitlements under the ISO's Operational Control, by addressing concerns expressed by those entities regarding their continued ability to operate on a vertically integrated basis. In Order No. 2000, the Commission agreed that it is appropriate for RTOs to encourage participation by transmission-owning entities by distinguishing between entities that choose to participate and those that choose not to do so.⁸² The Metered Subsystem provisions, available only to entities that become Participating TOs, represent a reasonable means of encouraging participation.

In this respect, the ISO strongly disagrees with intervenors who allege that GEs cannot participate in the ISO's markets if the Metered Subsystem provisions are unavailable to them.⁸³ Several GEs are currently participating in competitive markets that use the ISO Controlled Grid, including the ISO's Ancillary Service and Imbalance Energy markets, without compromising their ability to continue to

⁸⁰ CDWR's citation to the ISO's opposition in another proceeding to a proposal that a customer could elect "distribution only" service and thereby escape responsibility for transmission-related costs is therefore inapposite. *Id.* at 43.

⁸¹ SMUD at 27-28; Turlock at 17.

⁸² Order No. 2000, FERC Stats. and Regs. at 31,180.

⁸³ SMUD at 28.

operate vertically integrated utilities. The Metered Subsystem provisions simply are not a prerequisite to participation in the ISO's markets.

The ISO also disagrees with Enron's contention that "all generating entities that interface with the ISO Controlled Grid should be entitled to implement MSS . . ."⁸⁴ First, by seeking to do away with any limits on Metered Subsystems, Enron is really trying to revise radically the ISO's scheduling procedures, the structure of the ISO's markets, and the manner in which the ISO receives information about the status of Generating Units in its Control Area and, where necessary, issues Dispatch instructions to them. Enron wants the ISO to accept bids for Ancillary Services and Supplemental Energy that do not specify the particular Generating Units or Loads that will supply the product. The compatibility of such a "portfolio bidding" approach with the ISO's obligation as Control Area operator and WSCC Security Coordinator to verify the availability of the Ancillary Services it procures, and with its ability to maintain the short-term reliability of the ISO Controlled Grid, are complex questions that extend well beyond the proper design of Metered Subsystem provisions.

Second, in directing the ISO to develop the Metered Subsystem concept to address certain concerns of existing utility systems, the Commission did not, as Enron now asserts, require the ISO to design a Metered Subsystem concept that could accommodate all Generating Units on the ISO Controlled Grid. Rather, it simply recognized that a Metered Subsystem Operator must meet the

⁸⁴ Enron at 16-18.

ISO's technical requirements and that the implementation of those requirements is complex.⁸⁵

Thus, the Metered Subsystem concept, as defined for implementation in Amendment No. 27, is not equivalent to the adoption of portfolio bidding. Resources aggregated as a System Unit still require telemetry and communications to each individual Generating Unit or Participating Load. Additionally, the Generating Units and Loads constituting the System Unit must be in close proximity to each other such that the operation of the resources constituting the System Unit does not result in a significant difference in flows on the ISO Controlled Grid. The Metered Subsystem proposal, unlike the portfolio bidding advocated by Enron, accordingly does not present the potential to exacerbate market power problems that the Commission identified in Order No. 2000.⁸⁶ Enron's attempt to expand the Metered Subsystem provisions to an all-encompassing revision of the ISO's scheduling practices is unwarranted.

L. Response to Comments on Other Details of the Proposed Access Charge Methodology.

Some intervenors argue that, by specifying that any transmission facility turned over to the ISO's Operational Control will be fully included in the Participating TO's Transmission Revenue Requirement, the Access Charges would inappropriately recover on a rolled-in basis costs of radial facilities that should be directly assigned to particular Generators or Loads.⁸⁷ This argument ignores the proposed revisions to Section 3.1 of the ISO Tariff, which require the

⁸⁵ *Pacific Gas and Electric Co.*, 81 FERC at 61,496.

⁸⁶ See Order No. 2000, FERC Stats. and Regs. at 31,218.

⁸⁷ CDWR at 40; SMUD at 10-11.

ISO to accept only transmission facilities that satisfy criteria adopted by the ISO Governing Board. Under these criteria, the ISO will accept only facilities that serve a network function or are necessary for the ISO's control of the grid.⁸⁸ The modification to the definition of Transmission Revenue Requirement only assures a Participating TO that it will receive compensation through Access Charge revenues for facilities that are accepted by the ISO under these criteria.

CDWR also contends that Section 7.1.2 does not clearly permit all Eligible Customers to obtain and pay for transmission service on the ISO Controlled Grid.⁸⁹ This contention is erroneous. Section 7.1.2 simply describes the allocation of High Voltage Access Charges and Transition Charges to Utility Distribution Companies and Metered Subsystems for Loads connected to their systems, and for other Loads to Scheduling Coordinators serving the Load. Any Eligible Customer that satisfies the specified requirements can become a Scheduling Coordinator. If the Eligible Customer is connected to the system of a UDC or Metered Subsystem, and is eligible for Direct Access, it can arrange transactions on the ISO Controlled Grid through its Scheduling Coordinator. It will bear its share of the embedded costs of the ISO Controlled Grid by paying its share of the High Voltage Access Charges and Transition Charges assessed to its UDC or Metered Subsystem. There is absolutely no restriction on access or impediment to access by any Eligible Customer.

⁸⁸ Contrary to MWD's assertion (MWD at 39-41), this provision does not authorize the ISO Governing Board to depart from the criteria set forth in the Transmission Control Agreement. Plainly, the ISO's criteria must be consistent with those applicable pursuant to that agreement. For the same reason, the arguments of other intervenors that application of these criteria will require New Participating TOs to turn over control of facilities that serve only their local retail customers are unfounded. See Cities/M-S-R at 17-18; Modesto at 25; TANC at 23.

⁸⁹ CDWR at 35-36.

SCE proposes a change in the way that Standby Service revenues are treated in the calculation of High Voltage Access Charges.⁹⁰ Revenues collected by a Participating TO are deducted from the Participating TO's Transmission Revenue Requirement. SCE argues that this deduction is inappropriate if the Transmission Revenue Requirement is then used to calculate the rates for Standby Service, as SCE contends it is. SCE's premise is incorrect. Rates for Standby Service are not proposed to be assessed under the ISO Tariff, so the inclusion of Standby Service revenues as a credit to the Participating TO's Transmission Revenue Requirement, determined for purposes of calculating Access Charges under the ISO Tariff, will not lead to an understatement of Standby Service charges determined by FERC under another rate schedule or by a Local Regulatory Authority.

SCE also criticizes the ISO Tariff's definition of a Participating TO's Transmission Revenue Requirement for specifying that Transmission Revenue Credits should be deducted from the Participating TO's transmission-related costs. It argues that the deduction should be described as the "Transmission Revenue Balancing Account Adjustment."⁹¹ While this term is not defined in the ISO Tariff, the ISO Tariff does define the "Transmission Revenue Balancing Account" as a mechanism for a Participating TO to pass Transmission Revenue Credits and other specified credits to customers. SCE apparently wants to specify in the Tariff that the balance in this account will be deducted from a Participating TO's Transmission Revenue Requirement. This change is

⁹⁰ SCE, App. A at 4-5.

⁹¹ *Id.*, App. A at 5-6.

unnecessary, as the Access Charge formula already provides for such a credit to implement the definition's specification that Transmission Revenue Credits should be deducted in calculating a Participating TO's Transmission Revenue Requirement.⁹² There is no advantage to defining a new term in the ISO Tariff that would have the same effect as the current provision: to reflect a credit for the Participating TO's Transmission Revenue Credits in the calculation of its Transmission Revenue Requirement.

SCE also complains that Wheeling Access Charges do not include Transition Charges, while Access Charges do.⁹³ This difference is intentional and appropriate. Transition Charges reflect amounts payable by customers of Participating TOs in connection with mitigating the cost shifts associated with the transition toward an ISO Grid-wide High Voltage Access Charge.⁹⁴ They thus relate to differences in the costs of transmitting Energy for withdrawal at different locations on the ISO Controlled Grid. It is reasonable to exclude these charges from the calculation of Wheeling Access Charges, which are payable only in connection with the transmission of Energy for consumption outside the ISO Controlled Grid.

PG&E and SCE would eliminate Section 7.1.3, under which the ISO disburses High Voltage Access Charges to Participating TOs in proportion to their High Voltage Transmission Revenue Requirements, and would base the High Voltage Access Charges on Participating TOs' actual Gross Loads, rather than the test-year Gross Loads upon which their Transmission Revenue

⁹² See proposed Appendix F, Schedule 3, Section 6.1 of the ISO Tariff.

⁹³ SCE, App. A at 6-7.

Requirements were based. They describe this proposal as a way to prevent cost shifting associated with load forecasting errors.⁹⁵ This change, however, would be contrary to normal ratemaking practice. Under well-settled principles, a utility's transmission rates should be established using the transmission revenue requirement and load data (actual or forecast) from the same test period.⁹⁶ The approach proposed by PG&E and SCE would lead to mismatches between the cost and Load data, and could require the ISO to disburse more revenues to Participating TOs than it received from transmission customers. The ISO does not believe that the possibility of cost shifting due to the effects of errors in one Participating TO's Load forecasts on other Participating TOs warrants a departure from normal ratemaking principles or exposing the ISO to this risk. Any Participating TO that is concerned about Load forecasting errors can participate in the proceedings through which another Participating TO's High Voltage Transmission Revenue Requirements and associated Gross Loads are reviewed to ensure that those values are reasonable.

PG&E argues that Section 7.1.2 should be modified to specify that all amounts payable by an Original Participating TO for High Voltage Access Charges and Transition Charges will be recoverable by the Original Participating TO.⁹⁷ The ISO does not believe that any tariff modification is necessary or appropriate. As PG&E notes, the ISO stated its view in its transmittal of Amendment No. 27 that all amounts payable by a Participating TO under the

⁹⁴ See proposed Appendix F, Schedule 3, Section 5.7 of the ISO Tariff.

⁹⁵ PG&E at 16-17; SCE, App. A at 1-2.

⁹⁶ See, e.g., *American Electric Power Service Corp.*, 88 FERC ¶ 61,141, at 61,451 (1999); *PacifiCorp*, 84 FERC ¶ 61,303, at 62,391 (1998).

proposed Access Charge methodology (in its capacity as a Utility Distribution Company or a Metered Subsystem Operator) are appropriately recoverable in its transmission rates.⁹⁸ PG&E also notes that the Commission has, in other contexts, confirmed its ability to recover other costs it incurs under the ISO Tariff.⁹⁹ The ISO does not believe that the inclusion or omission of the language proposed by PG&E would affect the ability of PG&E or any other entity to recover those costs. Regardless of what the ISO Tariff says on the subject, the costs in question are components of the costs incurred by a Utility Distribution Company or Metered Subsystem Operator to obtain transmission access to the ISO Controlled Grid for its customers. The Commission has demonstrated its willingness to permit the recovery of those costs in jurisdictional rates and, with respect to state-jurisdictional rates, recovery is constitutionally mandated.¹⁰⁰ Nothing more is necessary or appropriate in the ISO Tariff.

PG&E also contends that the Access Charge methodology should have modified the ISO Tariff provisions governing the recovery of the costs of Reliability Must-Run Contracts (“RMR Contracts”) to spread some of those costs to other utilities as part of the High Voltage Access Charge.¹⁰¹ The ISO believes that PG&E’s proposal is ill-advised and inappropriate. The ISO enters into contracts with RMR Units for two purposes: to secure rights to generation needed to preserve *local* reliability and as a mechanism to curtail the ability of some Generators to exercise *local* market power. There is no basis for

⁹⁷ PG&E at 6.

⁹⁸ The ISO did not limit its statement to *Original* Participating TOs, as PG&E proposes.

⁹⁹ PG&E at 6; *see also Southern California Edison Co.*, 90 FERC ¶ 61,118 (2000).

¹⁰⁰ *See Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953, 970-73 (1986).

spreading the costs of contracts that are entered into for local system support on a regional basis. The fact that an upgrade or addition to a Participating TO's High Voltage Transmission Facilities might be the most cost-effective way to reduce or eliminate the need for an RMR Contract, does not change the fundamentally local nature of the benefits the contract provides. Moreover, PG&E's proposal would diminish the incentive for a Participating TO to undertake transmission projects to reduce the need for RMR Contracts, by spreading some costs of the contracts to other entities.

PG&E and SCE also propose changes in Section 7.1.6.1, which implements the provision in Section 9600(a)(3) of the California Public Utilities Code calling for recognition in a tracking account of any differences between rates adopted by the ISO as part of its review of the Access Charge methodology and "rates . . . in effect prior to the decision for any transmission facilities owner."¹⁰² They argue that, as proposed by the ISO, the provision does not clearly compare rates implemented by the new Access Charge methodology with the rates superseded by the new Access Charge methodology.¹⁰³ The ISO agrees that the changes proposed by PG&E and SCE improve the clarity of the provisions and would agree to modify Section 7.1.6.1 accordingly.

Finally, PG&E proposes that the ISO be required to revisit the Access Charge methodology within two years after its implementation.¹⁰⁴ The ISO believes that such a requirement is unnecessary and potentially inimical to the

¹⁰¹ PG&E at 13.
¹⁰² Cal. Public Util. Code § 9600(a)(3).
¹⁰³ PG&E at 19; SCE, App. A at 3-4.
¹⁰⁴ PG&E at 20.

purposes of the proposed methodology. As PG&E notes with approval, the proposed Access Charge methodology includes provisions designed to encourage expanded participation in the ISO by utilities that are not currently participating with transmission facilities and Entitlements. The prospect that those provisions would be subject to review in only two years would discourage prospective New Participating TOs from relying on them. It is for this reason that an express reopener provision, although considered by the ISO Governing Board, was not included in the proposed Access Charge methodology. Moreover, any Participating TO or other Market Participant who believes that the proposed Access Charge methodology is not operating as designed or has unintended consequences will always be free to bring its views before the ISO Governing Board, which can direct the necessary changes to be filed with the Commission.

M. The Proposed Access Charge Methodology Does Not Alter the Current Grid Management Charge Settlement or Deprive Any Party of Rights to Advocate a GMC Design.

The ISO recovers its costs of operating the ISO Controlled Grid and the ISO Control Area and of administering markets for Imbalance Energy and Ancillary Services through a GMC. The GMC is assessed on a volumetric basis, based on the Demands served by Scheduling Coordinators. The current design of the GMC, initially established by a settlement accepted by the Commission in 1998, provides for an exclusion for volumes served by schedules that use Existing Rights, i.e., transmission capacity reserved under transmission service contracts in effect when the ISO commenced operations. Although the term covered by the initial settlement has expired, the GMC rate design remains in

effect, subject to refund and subject to further Commission orders in review of a filing that the ISO is required to submit by no later than October 31, 2000.¹⁰⁵

The proposed Access Charge methodology requires any entity with Existing Rights that becomes a Participating TO to convert those rights to ISO transmission service. The holder of Converted Rights is entitled to payment for the cost of such transmission in its Transmission Revenue Requirement and to a share of Usage Charge revenues and revenues from the ISO's auction of Firm Transmission Rights.¹⁰⁶ Converted Rights are not, however, eligible for the exclusion from GMC that applies to schedules relying on Existing Rights.

Some intervenors challenge Amendment No. 27's modification of Appendix F, Schedule 1 of the ISO Tariff to confirm that the exclusion from GMC does not apply to Converted Rights.¹⁰⁷ This aspect of Amendment No. 27, however, provides clarification only. It does not modify the rights of any party under the GMC settlement or under the procedures the Commission has established concerning the GMC. The ISO Tariff clearly distinguishes between Existing Rights and Converted Rights. The exclusion from GMC for Loads served by Schedules that rely on Existing Rights clearly does not encompass Converted Rights, as well. Since the ISO was requiring New Participating TOs with Existing Rights to convert those rights upon joining the ISO, it was reasonable and appropriate for the ISO to confirm that the effect of conversion was to terminate the entity's eligibility for the GMC exclusion.

¹⁰⁵ See *California Independent System Operator Corp.*, 87 FERC ¶ 61,304, at 62,227 (1999).

¹⁰⁶ For the ten-year transition period, the proposed methodology entitles New Participating TOs to receive FTRs directly instead of FTR auction revenues, if it so chooses.

Providing this clarification does not impair the rights of any party. Any party with Existing Rights will continue to benefit from the GMC exclusion, subject to further Commission action on the GMC rate design. When the ISO files its GMC proposal by October 31 of this year, any party will be able to argue that the exclusion for Loads served by Schedules using Existing Rights should be retained, curtailed, or expanded. Nothing in the proposed Access Charge methodology predetermines the outcome of that proceeding.¹⁰⁸

N. The Failure to Adopt Time-of-Use Rates at This Time Does Not Render the Proposed Access Charge Methodology Unreasonable.

CDWR and MWD challenge the failure of the ISO to incorporate time-of-use rates in its proposed Access Charge methodology. While the ISO does not dispute the potential desirability of time-of-use rates, the absence of this feature does not render the proposed Access Charge methodology unjust or unreasonable.

First, as noted above, the ISO as the proponent of the rate design reflected in the proposed Access Charge methodology, is required only to show that it has proposed a reasonable methodology, not that it has incorporated every feature that one or more stakeholders considers desirable.¹⁰⁹ The differentiation

¹⁰⁷ Cities/M-S-R at 34; Modesto at 16; TANC at 16; Turlock at 10.

¹⁰⁸ The only effect of Amendment No. 27 on that process is through the hold harmless provision of Section 8.6. As discussed above, that provision entitles a New Participating TO to payments to hold it harmless during the ten-year transition period against GMC cost increases resulting from joining the ISO as a Participating TO. If the GMC rate design is modified to eliminate or limit the current exclusion for Loads served by Existing Rights, then a New Participating TO that converted those rights will suffer no cost increase (or a smaller cost increase) as a result of its decision to join the ISO. It will accordingly require less protection under Section 8.6. Thus, Enron is incorrect in asserting that the hold harmless proposal “would end-run the GMC hearing that will be held in 2001.” Enron at 10. Rather, the modified GMC rate design would affect the protection afforded a New Participating TO under Section 8.6.

¹⁰⁹ See *supra* note 11.

of Access Charges on the basis of time-of-use was proposed during the stakeholder discussions, but failed to attract widespread support. In the face of the Commission's approval of numerous transmission rates that are not time-differentiated, CDWR cannot show that the failure to differentiate the ISO's Access Charges on the basis of time-of-use renders the proposed methodology unjust and unreasonable.

Second, while time-differentiated Access Charges might serve the salutary purpose of encouraging transmission customers to shift their usage to times when the transmission system is less congested, the need for such mechanisms on the ISO Controlled Grid is open to question. As the Commission is aware, the ISO Tariff already incorporates a form of locational marginal pricing to send price signals to customers regarding the costs of using the grid when Congestion is present. CDWR cites a Commission statement to the effect that the ISO's charges for use of the transmission system should give price signals to encourage customers to make efficient use of the ISO Controlled Grid.¹¹⁰ That statement, however, was made with reference to the use of locational marginal pricing for Congestion Management.¹¹¹ The ISO is conducting a comprehensive review of its Congestion Management processes, in response to the Commission's directive, in principal part to improve Congestion price signals. It is far from clear that additional price signals, which are not related to the costs of Congestion, are either necessary or appropriate.

¹¹⁰ CDWR at 9 (citing *Pacific Gas and Electric*, 81 FERC at 61,522).

¹¹¹ See *Pacific Gas and Electric*, 81 FERC at 61,522.

In these circumstances, the ISO's failure to incorporate time-differentiated Access Charges in its proposed methodology does not render that methodology unjust or unreasonable.

O. Repetition of Unfounded Concerns Regarding the Participation of Entities With Contractual Transmission Rights Present No Basis for Modifying or Rejecting the Proposed Access Charge Methodology.

CDWR repeats complaints that the ISO Tariff does not make adequate provision for participation in the ISO by entities that have contractual Entitlements to transmission service, but do not own transmission facilities. Acknowledging that it raised these same concerns in other proceedings, CDWR argues that a new category of "Participating Contract Rightsholder" should be created for such entities.¹¹²

As the ISO has explained when CDWR has raised the same argument in other contexts, the flaw in CDWR's argument is its belief that Existing Rights holders that do not currently have transmission customers will continue to lack transmission customers after the ISO assumes control of the Existing Rights. Once such an entity joins the ISO, its rights to revenues and its access to the ISO would be indistinguishable from those of owners of physical transmission facilities. When an entity becomes a Participating TO by "plac[ing] its transmission assets and Entitlements under the ISO's Operational Control,"¹¹³ it makes the capacity available to the ISO for scheduling the transactions of

¹¹² CDWR at 23.

¹¹³ See ISO Tariff, Appendix A, definition of "Participating TO." The ISO Tariff defines "Operational Control" as the "rights of the ISO . . . to direct the Participating TOs how to operate their transmission lines and facilities and other electric plant . . . for the purpose of affording

transmission customers under the ISO Tariff. The Participating TO does not cede ownership of the physical facilities to the ISO, but merely the right to control the operation of the transmission facilities and to make their capacity available to transmission customers. This is true whether the Participating TO's rights arise from ownership of the physical transmission assets or from contractual rights to use those assets.

Thus, if a Participating TO turns over a line with 1200 MW of transfer capacity to the ISO's Operational Control, and there are Existing Contracts for 500 MW of capacity on the line, the ISO can only schedule 700 MW of transactions over that line. Any Scheduling Coordinators whose transactions are scheduled over that line by the ISO are de facto transmission customers of the Participating TO, taking service under the ISO Tariff. If the holder of the rights under the Existing Contracts subsequently turns over its Entitlements to the ISO, the ISO can schedule the entire 1200 MW. A Scheduling Coordinator whose transaction is scheduled over the line by the ISO is then a transmission customer both of the Original Participating TO and of the holder of the rights under the former Existing Contracts.

The transmission pricing framework under Amendment No. 27 (as under the existing ISO Tariff provisions) reflects this concept. If CDWR has Entitlements on lines in a TAC area, all customers withdrawing Energy from the ISO Controlled Grid in that TAC Area pay High Voltage Access Charges based on the High Voltage Transmission Revenue Requirements of all Participating

comparable and non-discriminatory transmission access and meeting Applicable Reliability Criteria.”

TOs with facilities in that TAC Area or Entitlements on those facilities – including CDWR.¹¹⁴ For a Participating TO that has turned over to the ISO only contractual rights, its High Voltage Transmission Revenue Requirement consists of the payments it must continue to make under the contract or contracts that create those Converted Rights.¹¹⁵ The revenues are then distributed among those Participating TOs in proportion to their High Voltage Transmission Revenue Requirements.¹¹⁶ The ISO Tariff thus explicitly recognizes that a Participating TO that has only Entitlements is nonetheless due payments from transmission customers.

CDWR's circumstances actually illustrate the importance of requiring entities that become Participating TOs to have Transmission Revenue Requirements and transmission rates. It is the ISO's understanding that CDWR pays approximately \$20 million for contractual rights on facilities owned by PG&E and Edison, including a significant portion of Path 15. The ISO further understands that much of this capacity is in excess of CDWR's on-peak needs. If CDWR becomes a Participating TO and turns its Entitlements over to the ISO, it will continue to pay PG&E and Edison for those rights. It will not, however,

¹¹⁴ CDWR is correct that, in order to recover the costs of its low voltage facilities and Entitlements, it would have to fashion a low voltage rate. CDWR at 28 n.31. Amendment No. 27 does not dictate how that rate would be collected because the collection is the responsibility of the Participating TO charging the rate. Presumably, CDWR would collect the rates itself or, in the case of lines owned by other Participating TOs, enter into arrangements with others for collecting the rates. Although CDWR would have to pay itself for the use of its own facilities, it would be no different in that regard than other Participating TOs.

¹¹⁵ CDWR is incorrect in stating that, after converting its Existing Rights, it would no longer be required to make payments under the associated contracts. *See id.* at 19. The contracts remain in place. The only change is that CDWR would exchange its right to receive transmission service under the contracts to the rights associated with being a Participating TO under the ISO Tariff.

¹¹⁶ Proposed Section 7.1.3 of the ISO Tariff.

retain exclusive scheduling rights on those facilities.¹¹⁷ Instead, customers scheduling transactions over Path 15 or any other of CDWR's Entitlements would effectively be transmission customers of CDWR, as well as the other Participating TOs, and CDWR will recover its costs from those customers. If CDWR does not create a Transmission Revenue Requirement (based on the cost of its Entitlements), the ISO will be unable to determine the High Voltage Access Charge applicable to transactions within the TAC area in which CDWR holds Entitlements. In addition, the ISO's calculation of High Voltage Access Charge revenue disbursements will not include CDWR, and CDWR will have no opportunity to recoup the payments it makes for that Entitlement from transmission customers scheduling transactions under the ISO Tariff.

CDWR also complains that Amendment No. 27 discriminates against it because, as a Publicly Owned Electric Utility (as the term is defined in Amendment No. 27),¹¹⁸ it would need to conform to ISO accounting regulations and submit its rates to the ISO's Revenue Review Panel while other similarly situated entities (such as BART, Minnesota Methane, and Dynegey) would not.¹¹⁹ CDWR's concern is misplaced, and its assumptions are wrong. The intent of Amendment No. 27 is that every Participating TO must abide by accounting

¹¹⁷ For a ten-year period, Existing Rights holders that turn their Entitlements over to the ISO's control will receive FTRs in connection with that capacity and, if they retain the FTRs, enjoy the associated limited scheduling priority in the Day Ahead Market. Proposed Section 9.4.3 of the ISO Tariff.

¹¹⁸ CDWR asserts that the definition has inappropriate consequences, such as requiring CDWR to submit its retail rates (of which it has none) to the ISO for information purposes. CDWR at 31. This is a red herring. If CDWR has no retail rates, it need submit nothing. CDWR appears to believe that a definition of a class of entities is inapposite if there is a single requirement that does not apply to the entire class. Taken to its logical conclusion, CDWR's approach would require every entity to constitute a class of one.

¹¹⁹ *Id.* at 30-31.

requirements of and submit its rates for review by the Commission or the ISO's Revenue Review Panel. By allowing the ISO to schedule transactions using their Entitlements, and accepting payment therefore, entities are providing jurisdictional transmission services under Section 201 of the Federal Power Act. Thus, private entities such as those mentioned by CDWR must, if they are eligible to become and choose to become Participating TOs, abide by the accounting requirements of, and submit their rates to, the Commission. Similarly, public agencies such as CDWR and BART, by making their Entitlements available for the provision of transmission services, are engaging in electric services and are Local Publicly Owned Electric Utilities such that they must conform to ISO accounting requirements and submit Transmission Revenue Requirements to review by the ISO's Revenue Review Panel.

P. This Docket Is Not the Appropriate Forum to Modify the Treatment of Congestion Revenues.

NCPA goes on at some length to raise complaints about the ISO's Congestion Management system, including in particular the distribution of Usage Charge revenues. Its real complaint appears to be with certain retail rate policies of the CPUC that, it contends, shield retail customers from Congestion price signals to the relative detriment of wholesale customers.¹²⁰ While the thrust of NCPA's argument is unclear, one thing is obvious: it has nothing to do with the Access Charge proposal presented in Amendment No. 27. NCPA's concerns are appropriately addressed in the stakeholder process that the ISO has initiated to review its Congestion Management processes in response to the Commission's

¹²⁰ NCPA at 25-34.

directive.¹²¹ No modification to the Access Charge proposal is requested or appropriate.

IV. ANSWER TO PROCEDURAL MOTIONS AND REQUESTS

A. Motions to Reject Amendment No. 27 Are Unfounded.

Several intervenors urge the Commission to reject Amendment No. 27, arguing that the ISO's filing is patently deficient.¹²² These motions are unfounded.

First, the filing of a revised Access Charge methodology was specifically required by the Commission's *WEPEX* orders.¹²³ Rejection of Amendment No. 27 would leave in place the Access Charge methodology that was accepted on an interim basis only and waste the substantial effort that stakeholders and the ISO devoted to the negotiation of a revised transmission rate methodology.

Second, Amendment No. 27 provides a clear and specific description of the proposed Access Charge methodology in Schedule 3 to Appendix G of the ISO Tariff. That schedule constitutes a formula rate, describing how the High Voltage Access Charge will be developed based on the High Voltage Transmission Revenue Requirements of the Participating Transmission Owners.

¹²¹ *California Independent System Operator Corp.*, 90 FERC ¶ 61,006 (2000).

¹²² *Cities/M-S-R* at 37; *Modesto* at 7; *TANC* at 7. *Modesto* and *TANC* also complain that Amendment No. 27 fails to meet the additional requirements specified for "non-conforming" transmission rate proposals in the Commission's Policy Statement on Transmission Pricing. *Modesto* at 11-12; *TANC* at 11-12. *See Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act, Policy Statement*, FERC Stats. and Regs. Jan. 1996-June 1996, Regs. Preambles ¶ 31,005, at 31,141 (1994). They are wrong. The proposed Access Charge methodology is firmly based on the Transmission Revenue Requirements of Participating TOs. It is accordingly a conforming rate design proposal. *See id.*

¹²³ *See supra* note 2.

The schedule describes all of the components that will be used in the calculation. There is accordingly no basis for claims that the ISO has failed to provide a clear and specific description of the proposed charges.

Third, the omission of cost support data is appropriate in the case of this filing. The proposed Access Charge formula will only take effect once a new entity decides to become a Participating TO. Until that time, there will be no change in the Access Charges currently assessed. Once a new entity becomes a Participating TO, moreover, the charges resulting from the Access Charge formula will depend upon which entities make that choice and when they do so. Regardless, the proposed Access Charge methodology is a formula rate that describes how the Transmission Revenue Requirements of the Participating TOs will be combined for collection and revenues disbursed. The individual Transmission Revenue Requirement of each Participating TO is subject to review in separate proceedings before the Commission or, if applicable, the Revenue Review Panel. Finally, the transmission cost data of entities that are not currently Participating TOs are not in the ISO's possession, except for cost data provided pursuant to a confidentiality agreement executed in conjunction with the stakeholder negotiations, which prohibits the disclosure of those data in connection with the ISO's Access Charge filing. The intervenors are poorly placed to criticize the ISO for failing to file data that they refused to provide except on a confidential basis. In these circumstances, any cost data submitted with the filing would be both speculative and misleading. The omission of cost data in these circumstances presents no basis for rejection of a filing.

Some intervenors assert that any portion of Amendment No. 27 that does not directly relate to the Access Charge methodology must be rejected.¹²⁴ They cite no authority for this proposition, for a simple reason: there is none. The ISO has discretion under the Federal Power Act and the terms of the ISO Tariff to submit any changes to the rates and terms of service under the ISO Tariff that it deems appropriate. Nothing in the California restructuring law restricts that discretion. Moreover, as discussed in the preceding sections of this Answer, all provisions of Amendment No. 27 relate to the objective of ensuring that the proposed Access Charge methodology represents “a fair and equitable balance of costs and benefits,” and a just and reasonable basis for the participation in the ISO of additional Transmission Owners.

B. Suspension and an Evidentiary Hearing Is Likely to Be of Limited Value.

A number of intervenors request suspension of the ISO's Access Charge proposal and/or initiation of an evidentiary hearing.¹²⁵ The ISO does not oppose the suspension of the proposal for the maximum five-month period or the initiation of evidentiary hearing procedures if the Commission concludes that genuine issues of material fact are presented by the ISO's filing. The ISO submits, however, that suspension and hearing procedures are likely to be of limited value in this instance.

First, the Commission should recognize that suspension of the proposed Access Charge methodology would almost certainly cause any Transmission

¹²⁴ CDWR at 18; Turlock at 4-5.

¹²⁵ CDWR at 44; Cities/M-S-R at 38; Enron at 15-16; Modesto at 27; SMUD at 41; Southern Cities at 21; TANC at 24-25; Vernon at 10-12.

Owner contemplating joining the ISO as a Participating TO to defer that decision until the Commission has ruled on the merits of the Access Charge proposal. Until a new entity becomes a Participating TO, the current Access Charge methodology will remain in place. As a result, suspension of the proposal and any provision for refunds is likely to be of little practical significance.

Second, the ISO believes that the issues raised by intervenors do not constitute genuine issues of material fact, but policy issues or issues involving the implications of basic facts about which there is no genuine controversy.¹²⁶ For example, there is no disagreement that the proposed Access Charge methodology would shift costs among customers of Participating TOs or that the addition of New Participating TOs will benefit all customers that utilize the ISO Controlled Grid. The only questions are whether the proposal includes reasonable mechanisms to mitigate these cost shifts and whether the cost shifts that would result after mitigation are reasonable in light of the expected benefits. Similarly, there is no disagreement that New Participating TOs could incur costs for which they do not receive compensation under the proposed Access Charge methodology. The question is whether the limited “hold harmless” protection that they would receive is reasonable.

The Commission will have to weigh the possibility that a hearing will provide substantial assistance in the resolution of these questions – a prospect that the ISO believes to be limited – against the certainty that initiation of hearing procedures will lead to substantial delays in the implementation of a new Access

Charge methodology, leading prospective New Participating TOs to await the outcome of those procedures.

C. Appointment of a Settlement Judge Is Unlikely to Produce Greater Consensus Than the Fifteen-Month Stakeholder Process Without Guidance From the Commission on Critical Issues.

Several intervenors representing GEs that are dissatisfied with the benefits they would received under the proposed Access Charge methodology suggest the Commission defer hearing procedures and appoint a settlement judge.¹²⁷ They offer no support for this request or explanation of what appointment of a settlement judge would accomplish at this juncture. As the ISO explained in its filing and in the testimony of Ms. Le Vine, the filing of Amendment No. 27 was preceded by an extensive stakeholder process that encompassed fifteen months. That process culminated in the hands-on involvement by members of the ISO Governing Board elected by different stakeholder classes and their development of a proposal that received the support of over three-quarters of the Board members present and voting. The stakeholder process thus achieved substantial, albeit incomplete, consensus on an Access Charge methodology and associated issues.

As the interventions make clear, however, substantial differences remain regarding important aspects of the proposed Access Charge methodology. The ISO would have no objection to continued efforts to reach settlement in this

¹²⁶ Under settled Commission precedent, an evidentiary hearing is not required to resolve such issues. *Pennsylvania Gas and Water Co. v. FPC*, 463 F.2d 1242, 1251-52 (D.C. Cir. 1972); *Florida Power & Light Co.*, 64 FERC ¶ 61,351, at 63,485-86 (1993).

¹²⁷ *Cities/M-S-R* at 39; *LADWP* at 39; *Modesto* at 27; *SMUD* at 41-42; *Southern Cities* at 21; *TANC* at 25.

matter. In light of the significant efforts that have been devoted to date in attempting to resolve these issues, however, and given the competing interests that always exist when cost allocation questions are at issue, it is difficult to conceive that further negotiations or the assistance of a settlement judge alone will succeed in bridging these differences. The ISO believes that guidance from the Commission will be necessary to move the parties toward compromise on issues that have been contentious since the discussions that led to the creation of the ISO.

The ISO accordingly suggests that the Commission should not establish settlement judge procedures without first ruling on the most important issues that have been presented in the interventions. Only with that guidance is there a reasonable prospect that parties' positions might shift sufficiently for an agreement to be forged.

V. CONCLUSION

For the reasons set forth above, the ISO urges the Commission to grant all motions to intervene and to accept Amendment No. 27 without further procedures. If the Commission decides to order a hearing or to refer the filing to a settlement judge, the ISO urges the Commission first to address the policy issues raised by the proposed Access Charge methodology so that a new Access Charge methodology may be implemented as quickly as possible.

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Dated: May 8, 2000