UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

California Independent System Operator Corporation	**)**	**Docket No. TX01-___-000**

APPLICATION OF THE
CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
FOR TRANSMISSION ORDER

Pursuant to Section 211 of the Federal Power Act, 16 U.S.C. § 824j ("FPA"), as well as Part 36 of the Commission's regulations, 18 C.F.R. § 36.1 et seq., the California Independent System Operator Corporation (the "ISO") hereby applies for an order directing San Diego Gas & Electric Company ("SDG&E") to perform those transmission services that are necessary to fulfill the terms and conditions of the Transmission Control Agreement between SDG&E and the ISO, the Transmission Owner's Tariff, and the ISO Tariff, as they may be in effect from time to time.[1] The ISO submits this application as agent on behalf of those users of the SDG&E transmission system that are eligible to file a Section 211 application.[2]

This application arises out of (a) the transfer of Operational Control of SDG&E's transmission facilities to the ISO in 1998,[3] and (b) the forthcoming implementation of a statewide high-voltage transmission Access Charge ("TAC")

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[1] Capitalized terms used in this application have the meanings set forth in the Master Definitions Supplement, Appendix A to the ISO Tariff.

[2] As discussed in Section IV-A below, entities eligible to file a Section 211 application are "[a]ny electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale." 16 U.S.C. § 824j(a).

[3] See Pacific Gas and Electric Co., 81 FERC ¶ 61,122 (1997).

pursuant to the tariff sheets filed by the ISO on March 31, 2000 in Docket No. ER00-2019-000, which were accepted for filing and placed into effect, subject to refund, on May 31, 2000.[4] SDG&E has advised the ISO of its concern that these two circumstances, together or separately, may jeopardize the tax-exempt status of "local furnishing" debt issued to finance certain SDG&E transmission and distribution facilities. The purpose of the present application is to minimize the impact on SDG&E and ratepayers of any such loss should this concern prove well-founded. As evidenced by the concurrence attached hereto as Attachment A, SDG&E concurs in this application, confirms the factual statements made herein by the ISO based on representations by SDG&E, and waives its rights to a prior request and an evidentiary hearing under Section 211(a) and to a proposed order under Section 212(c), if the Commission issues an order substantially in the form requested herein.[5]

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[4] See California Independent System Operator Corp., 91 FERC ¶61,205 (2000).

[5] In Order No. 888-A, the Commission clarified that it would issue a Section 211 order "upon receipt of the transmission provider's waiver of its rights to a request for service under section 213(a) and to the issuance of a proposed order under section 212(c)," notwithstanding the more detailed procedural requirements contained in the statute. See Order No. 888-A, III FERC Stats. & Regs. ¶31,048 at 30,296. Section 5.2 of the pro forma tariff adopted in Order Nos. 888 and 888-A specifically provides for such waiver. Id. at 30,512.

I. NOTICES

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II. BACKGROUND

A. "Local Furnishing Bonds"

SDG&E has advised the ISO that SDG&E has financed a significant portion of its transmission and distribution systems with "Local Furnishing Bonds," the interest on which is exempt from federal income taxation under Sections 103, 142(a)(8) and 142(f) of the Internal Revenue Code of 1986 (the "Code") and predecessor statutory provisions. The outstanding amount of such Local Furnishing Bonds issued for the benefit of SDG&E is approximately $686 million, consisting of approximately $168 million of debt that financed transmission facilities and approximately $518 million that financed distribution facilities. The federal tax-exempt status of interest on these bonds depends on the SDG&E system qualifying as a system for the "local furnishing" of electric energy, as defined by the Code and Treasury Regulations, for so long as the Local Furnishing Bonds are outstanding.

The Code and Treasury Regulations define "local furnishing" to encompass use of facilities that are part of a system providing service to the general public in an area not exceeding two contiguous counties, or one city and a contiguous county (a "two-county area").[6/] In general, the IRS takes the position that the "local furnishing" exemption does not apply to facilities that are part of a system: (i) if any part of the system is dedicated on a priority basis to transmitting power for consumption outside of the permitted two-county area (with minor exceptions not relevant here); or (ii) that, in whole or in part, is built sooner, larger, or of a different design than needed to provide service to the general populace in the permitted two-country area.

As a general rule, any use of SDG&E's transmission system that is inconsistent with the "local furnishing" rules would preclude the tax-exempt treatment of interest on all Local Furnishing Bonds issued for the benefit of SDG&E, not merely the $168 million of Local Furnishing Bonds that were used to finance transmission facilities. SDG&E has advised the ISO that it is uncertain, for the reasons discussed below, whether the implementation of the transmission Access Charge methodology accepted for filing in Docket No. ER00-2019-000 would be consistent with the "local furnishing" rules. SDG&E has also pointed

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6/ Code § 142(f)(1); Treas. Reg. § 1.103-8(f)(2)(iii)(d) (1972). SDG&E is the only one of the California investor-owned utilities that meets the eligibility standards of Section 142 in that only SDG&E's service area is confined to two contiguous counties. As the Commission noted in Order No. 888, only "a handful" of utilities in the United States are eligible to issue Local Furnishing Bonds. See Order No. 888, FERC Stats. & Regs. Regulations Preambles [1991-1996] ¶ 31,036 at 31, 762.

out, however, that Section 142 of the Code provides an exception for uses pursuant to Commission orders issued under Section 211 or Section 213 of the FPA. Under Section 142(f), added to the Code in 1992, a transmitting utility's "local furnishing" status will be preserved if electricity is transmitted through the utility's system "pursuant to an order of the Federal Energy Regulatory Commission under Section 211 or 213 of the Federal Power Act" and the portion of the cost of the facilities used to provide the transmission service that is "financed with tax-exempt bonds is not greater than the portion of the cost of the facility which is allocable to the local furnishing of electric energy (determined without regard to this paragraph)." Accordingly, even if SDG&E's compliance with the operational directives of the ISO under the Transmission Control Agreement, TO Tariff, and ISO Tariff were determined to constitute a disqualifying use of SDG&E's transmission facilities, so long as such compliance is pursuant to a Commission order under Section 211, the special rule would, at a minimum, make it possible to preserve the tax-exempt status of the approximately $518 million of Local Furnishing Bonds that finance SDG&E's distribution facilities. Similarly, if implementation of the recently accepted high-voltage Access Charge were determined by the IRS to disqualify SDG&E's high-voltage transmission facilities, a Section 211 order to provide transmission service consistent with the terms of the Transmission Control Agreement, the ISO Tariff, and SDG&E's TO Tariff would preserve the tax-exempt status not only of the Local Furnishing Bonds in the amount of approximately $518 million used

to finance SDG&E's distribution facilities, but also those bonds (which SDG&E estimates to be in the amount of about $70 million used to finance the low-voltage portion of SDG&E's transmission system.

The Commission explicitly sought to protect the tax-exempt status of Local Furnishing Bonds even as it required utilities, in Order Nos. 888 and 888-A, to offer open-access, non-discriminatory transmission service.[7] Section 5.1 of the pro forma tariff, for example, states that "notwithstanding any other provision of this Tariff, the Transmission Provider shall not be required to provide Transmission Service to any Eligible Customer pursuant to this Tariff if the provision of such Transmission Service would jeopardize the tax-exempt status of [local furnishing bonds.]" Section 5.2 provides for the issuance of Section 211 orders to local furnishing utilities, after the waiver of their right to prior requests and proposed orders, in order to allow such facilities to avail themselves of Section 142(f) of the Code. In Order No. 888-A, the Commission clarified that "all costs associated with the loss of tax-exempt status of [local furnishing] bonds caused by providing open access transmission service are properly considered

[7] Prior to the issuance of Order No. 888, SDG&E voluntarily filed an open access tariff based on the model proposed by the Commission in the Notice of Proposed Rulemaking on open access transmission in Docket No. RM95-8. SDG&E's tariff included a provision, not found in the proposed pro forma tariff model, to accommodate its local furnishing bonds that was later incorporated by the Commission in Order No. 888. See Order No. 888, supra, at 31,762 and 31,763 n. 502; San Diego Gas & Elec. Co., 73 FERC ¶ 61,268 (1995) (accepting and suspending open access tariff sheets).

costs of providing that service. This includes costs of defeasing, redeeming, and refinancing those bonds."[8]

B. Transmission Control Agreement

To protect against the possibility that SDG&E's transfer of Operational Control of its transmission facilities to the ISO pursuant to the Transmission Control Agreement and in compliance with the restructuring orders of the Public Utilities Commission of the State of California ("CPUC") and use of the facilities in accordance with the open-access principles contemplated by the CPUC might be deemed by the IRS as disqualifying circumstances under Section 142, SDG&E (after consultation with the IRS in August 1997) and the ISO provided certain protections in the agreements and tariffs submitted to the Commission in Docket Nos. EC96-19 and ER96-1663. In particular, the Transmission Control Agreement, under which SDG&E conveyed operational control of its transmission facilities to the ISO, included as "Encumbrances" certain limitations on the ISO's operation of the SDG&E transmission system to assure curtailment priority for SDG&E's native-load customers, and to protect against net outbound flows from the SDG&E system on an annual basis. The Encumbrances further provided that if (1) the ISO either (a) requires that SDG&E take any action or, (b) adopts a rate for use of SDG&E's transmission facilities, that SDG&E believes would jeopardize the tax-exempt status of its local furnishing bonds, and if (2) SDG&E cannot obtain a written opinion of bond counsel or an IRS ruling to the contrary,

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[8] Order No. 888-A, III FERC Stats. & Regs. ¶ 31,048 at 30,181.

then SDG&E will not object to an application by the ISO for an order under Section 211 with respect to the requested action or rate. If, however, that application is denied, the ISO will, on SDG&E's request, reconvey operational control of the facilities to SDG&E.[9] The Commission specifically noted these provisions in approving the Transmission Control Agreement, which became effective when the ISO began operations on March 31, 1998.[10]

C. The Transmission Access Charge

Until the Access Charge methodology accepted for filing in Docket No. ER00-2019 becomes effective, users of the ISO Controlled Grid pay an Access Charge for deliveries to loads connected to that grid based upon the cost of the transmission facilities of the transmission owner from whose system the energy is withdrawn. Thus, the Access Charge for energy withdrawn from SDG&E's system is based on the costs of SDG&E's own transmission facilities.[11] The same rule applies for energy withdrawn from the transmission system of the other two transmission owners that currently participate in the ISO as such, Southern California Edison Company ("Edison") and Pacific Gas and Electric Company ("PG&E"). As a result, the costs of SDG&E's system, and the benefits of lower-cost tax-exempt debt, are allocated almost entirely to SDG&E's native-load customers.

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[9] The encumbrances incorporated in the Transmission Control Agreement satisfied the concerns raised by the IRS at the August 1997 meeting.

[10] Pacific Gas and Electric Co., 81 FERC ¶ 61,122 at 61,567 (1997).

[11] Such facilities include certain capacity on the Pacific Intertie to which SDG&E holds a legal entitlement.

Amendment No. 27 to the ISO Tariff, which was accepted for filing on May 31, 2000, will change that cost allocation effective January 1, 2001. Amendment No. 27 provides, among other things, for the separation of the three investor-owned utilities' transmission facilities into high-voltage (200-kV and above) and low-voltage (below 200-kV) segments. The costs of the three companies' high-voltage facilities will gradually be rolled into a uniform High Voltage Access Charge over a ten-year period, while Access Charges for use of the low-voltage systems will remain company-specific. Though the effect of the new High Voltage Access Charge methodology is to reduce the Access Charges for deliveries to customers in SDG&E's service territory,[12] it creates an issue potentially affecting the continued tax-exempt status of interest on SDG&E's Local Furnishing Bonds: the Access Charge of customers withdrawing power from, for example, PG&E's transmission facilities, will begin to reflect the costs not just of PG&E's own facilities, but also an increasing share of the costs of high-voltage facilities owned by SDG&E. Accordingly, a modestly increasing portion of the benefits of SDG&E's low-interest local furnishing bonds will flow to customers in PG&E's service territory.

The Amendment No. 27 tariff sheets provide for the new Access Charge to take effect at such time as a fourth Participating TO joins the ISO. On June 30, 2000, the City of Vernon, California ("Vernon") gave notice to the ISO of its

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[12] The reduction arises because the average cost of SDG&E's transmission facilities (per MW of load served) is higher than the corresponding values for the other Participating Transmission Owners.

intent to become a Participating TO as of January 1, 2001. On November 1, 2000 the ISO applied in Docket No. EC01-14-000 for authorization for the transfer of Operational Control over Vernon's transmission facilities to the ISO.[13] On November 30, the ISO Governing Board approved the final documents to allow Vernon to become a Participating TO. Thus, it now appears that the Amendment No. 27 high-voltage Access Charge, based in part on a blending of different utilities' high-voltage transmission costs, will take effect on January 1, 2001.

D. Ruling Request to IRS

SDG&E has advised the ISO that, in August 1997, SDG&E met with the IRS to discuss the impact on SDG&E's tax-exempt Local Furnishing Bonds of the ISO assuming operational control over SDG&E's transmission facilities. SDG&E has further advised the ISO that: (i) on the basis of that meeting, SDG&E concluded that Encumbrances relating to curtailment, priority, outbound flows, and system expansion subsequently included in the Transmission Control Agreement would be sufficient to preserve the tax-exempt status of the outstanding Local Furnishing Bonds so long as there was no change to transmission service ratemaking; but (ii) during that meeting, the IRS representatives cautioned that they could give no assurance that the tax-exempt status of the Local Furnishing Bonds could be preserved if the Commission ultimately adopts blended cost ratemaking for transmission service.

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[13] By order dated October 27, 2000 in Docket No. EL00-105-000, the Commission granted, with certain conditions, Vernon's request for a declaratory order approving Vernon's Transmission Revenue Requirements for use in developing transmission Access Charges. City of Vernon,

More recently, SDG&E has indicated that, in light of the proposed changes in the Access Charge described above, SDG&E (jointly with a bondholder) requested a ruling from the IRS on August 22, 2000, that the adoption of such an Access Charge would not adversely affect the tax-exempt status of the Local Furnishing Bonds. In connection with its review of that August 22, 2000 ruling request, the IRS decided it wanted to revisit whether SDG&E's executing the Transmission Control Agreement and its implementation would have an adverse effect on the tax-exempt status of SDG&E's Local Furnishing Bonds. (There had been a change in the responsible personnel at the IRS since the August 1997 meeting.) The IRS required SDG&E to file a new ruling request addressing both the impact of its signing the Transmission Control Agreement and the Access Charge on its Local Furnishing Bonds. On November 8, 2000, SDG&E jointly with a bondholder, requested an IRS ruling that neither the execution nor implementation of the Transmission Control Agreement nor the imposition of a blended-cost high-voltage TAC would adversely affect the tax-exempt status of interest on the Local Furnishing Bonds. That ruling request is currently pending before the IRS.

SDG&E has advised the ISO that it hopes that the requested ruling will be issued before January 1, 2001, rendering the instant application unnecessary; should SDG&E advise the ISO that the requested ruling has issued, the ISO will promptly withdraw this application.

California, 93 FERC ¶ 61,103 (2000).

III. SCOPE OF THE REQUESTED ORDER

In order to minimize the cost of any defeasance, redemption, or refinancing of SDG&E's Local Furnishing Bonds, the ISO requests that the Commission direct SDG&E to provide those transmission services that are necessary to fulfill the operating requirements of the ISO. In particular, the ISO requests that the Commission direct SDG&E to provide all services required of SDG&E under the ISO Tariff, the Transmission Control Agreement, and SDG&E's TO Tariff according to their terms, including whatever rates the Commission may hereafter approve for services provided thereunder.[14/] Furthermore, to effectuate fully the goal underlying this application (minimizing the financing costs incurred by SDG&E and passed on to ratepayers), the ISO requests that the Order be issued with an effective date of March 31, 1998.

IV. THIS APPLICATION MEETS THE CRITERIA FOR COMMISSION APPROVAL UNDER SECTION 211

Sections 211 and 212 establish certain criteria that must be met before the Commission can, in response to an appropriate application, issue a Section 211 order. This application meets all these criteria, which are discussed in turn below.

[14/] SDG&E has advised the ISO that the IRS and SDG&E's bond counsel are likely to attach substantial importance to the precise formulation of the Commission's order. Accordingly, the ISO respectfully proposes that the order, in an ordering paragraph, provide as follows:

> SDG&E shall provide those transmission services as necessary to fulfill its obligations under the Transmission Control Agreement between SDG&E and the ISO, the TO Tariff, and the ISO Tariff, under the rates, terms, and conditions set forth in that agreement and those tariffs as they may be in effect from time to time. This order is effective as of March 31, 1998.

A. The ISO As Applicant

Under Section 211, an application for an order requiring a utility to provide transmission service may be filed by "[a]ny electric utility, Federal power marketing agency, or any other person generating electric energy for sale for resale." In its order of October 30, 1997 accepting the Transmission Control Agreement, including the Encumbrances described above, for filing, the Commission ruled that the ISO did not fall within the category of eligible applicants; accordingly it required revision of the Transmission Control Agreement to provide that the ISO would, in filing a Section 211 as contemplated by the Transmission Control Agreement, do so "as agent for eligible applicants."[15]

On the basis of that ruling, the ISO submits the instant application as agent for those users of SDG&E's transmission facilities that are themselves eligible applicants.[16]

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[15] 81 FERC at 61,567. An "electric utility" is defined in Section 3(22) of the FPA as "any person or state agency which sells electric energy," other than certain federal power marketing agencies. 16 U.S.C. § 796(22). Although the ISO conducts markets in ancillary services and imbalance energy, it does not, itself, actually sell energy.

[16] It is clear that SDG&E provides "transmission services," within the meaning of Section 211, insofar as it conducts the actual switching, maintenance, monitoring, construction, and other actions necessary to carry out its obligations under the Transmission Control Agreement. See, e.g., Transmission Control Agreement §§ 6.1.1 and 6.1.2. The Commission has elsewhere held that an applicant may limit its Section 211 request to the provision of specified services:

> We find nothing . . . in either the Energy Policy Act or its legislative history that precludes requests for only certain components of transmission services rather than the full array of services. To the contrary, we believe that Congress intended the Commission to interpret expansively its new authority granted in the Energy Policy Act to expand the availability of transmission services.

American Municipal Power-Ohio, Inc. v. Ohio Edison Co., 74 FERC ¶ 61,086, 61,260 (1996).

B. Public Interest Determination

Section 211(a) requires that the Commission determine that the issuance of a transmission order would serve the public interest. As described above, if a favorable ruling is not forthcoming from the IRS, then, absent a Section 211 order, SDG&E has indicated that it will be required to redeem and refinance all of the Local Furnishing Bonds relating to its electric system. The order requested here would enable SDG&E to maintain existing tax-free debt for its distribution system, which would entail an annual savings to ratepayers that SDG&E estimates at about $10 million per year.[17] If, moreover, the IRS concludes that the high-voltage Access Charge, but not implementation of the Transmission Control Agreement, conflicts with the local furnishing requirement, then the Section 211 order requested here would enable SDG&E to preserve tax-exempt financing not only for its distribution facilities, but also for its low-voltage transmission facilities, at an additional estimated savings to ratepayers of $1.5 million per year (as estimated by SDG&E).

As reflected in Order Nos. 888 and 888-A as well in its approval of the Encumbrances set forth in SDG&E's Transmission Control Agreement, the Commission has already sought to assist local furnishing utilities in minimizing bond defeasance and refinancing costs as they undergo the transition to a

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See also Tex-La Electric Cooperative of Texas, Inc., 67 FERC ¶ 61,019 (1994) ("transmission services" to be read broadly).

[17] As the Commission is aware, the California legislature has imposed a cap on that portion of SDG&E's rates that represents the cost of energy. That cap does not apply to the distribution component of SDG&E's rates. The estimated added cost assumes that tax-free debt is about

competitive, open access marketplace. By reducing these costs, the requested order would clearly serve the public interest.

C. Other Statutory Criteria

In addition to the general finding that issuance of an order would be in the public interest, Sections 211 and 212 specify certain circumstances in which an order may not be issued. None of these restrictions applies here.

1. Section 211(b) prohibits any order that the Commission finds would "unreasonably impair the continued reliability of electric systems affected by the order." Requiring SDG&E to adhere to its obligations under the relevant tariffs and agreements governing operation of its transmission facilities and the ISO Controlled Grid would obviously have no adverse effect on reliability.

2. Section 211(c)(2) precludes an order that requires the transmission of energy that would replace (A) energy "required to be provided to such applicant pursuant to a contract during such period" or (B) "energy currently provided to the applicant utility subject to the order" pursuant to a FERC-filed rate schedule. The order sought here would not require the displacement of any energy currently provided by SDG&E to the ISO or to any other market participant. To the contrary, the order would simply maintain the status quo under the Transmission Control Agreement, the ISO Tariff, and SDG&E's TO Tariff.

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200 basis points less costly than taxable debt.

3. Section 212(a) requires that the order provide for transmission service under rates and terms that compensate the transmitting utility for resulting costs, and provide, to the extent practicable, for the recovery of such costs from the applicant rather than existing retail and transmission customers of the transmitting utility. The purpose of the provision is to protect existing customers from added rates due to transmission from which they do not benefit. As stated above, the order requested here would simply require a continuation of service under the terms of the existing tariffs and agreements. While those costs will be borne by customers other than the ISO, it is those customers who will be the beneficiaries of the services provided by SDG&E under the order. Thus, the order will be consistent with the requirement that those who actually benefit from the services, not others, pay for them.

4. Section 212(h) prohibits the issuance of an order requiring, or conditioned upon, the transmission of energy directly (a) to a retail customer, or (b) to an entity that will resell to an end user unless that entity is, among other things, required to serve that customer under state law and either was serving the retail customer on October 24, 1992, or owns or controls facilities by which it will deliver to the retail customer the energy transmitted under the Commission's order. The ISO does not here seek an order prohibited by this provision. SDG&E has confirmed that there are no retail customers that take service directly from the SDG&E transmission system; in all cases there are either distribution facilities owned by SDG&E or transmission facilities owned by

another utility intervening physically between SDG&E's transmission system and the end-user. Nor does SDG&E deliver energy from its transmission system under the ISO Tariff to any seller at retail other than a seller that owns transmission or distribution facilities that intervene between SDG&E's facilities and the reseller's retail load. Accordingly, all of the transmission service provided under the ISO Tariff using SDG&E's transmission facilities is consistent with Section 212(h).[18]

V. THE COMMISSION'S ORDER SHOULD BE MADE EFFECTIVE AS OF MARCH 31, 1998

As noted above, SDG&E and the ISO agreed to certain "Encumbrances" in the Transmission Control Agreement to protect the tax-exempt status of SDG&E's Local Furnishing Bonds from the inception of ISO operations. SDG&E has advised the ISO, however, that there is at least a possibility that the IRS will rule that, notwithstanding these Encumbrances, the implementation of the Transmission Control Agreement beginning on March 31, 1998 was inconsistent with the local-furnishing requirement. To avoid any suggestion that all the Local Furnishing Bonds for SDG&E's system were thereby disqualified because there was no Section 211 order in effect at the time, the ISO respectfully requests that the order sought herein be made effective as at March 31, 1998.

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[18] Section 212(g) prohibits transmission orders inconsistent with State laws governing retail marketing areas. California has, of course, adopted direct retail access (see Cal. Pub. Util. Code § 365(b), adopted in California Assembly Bill ("AB") 1890). Moreover, Section 2.2.3.1 (c) of the ISO Tariff requires each Scheduling Coordinator to demonstrate that each of its End Use Customers is eligible for Direct Access.

Nothing in Sections 211 and 212 precludes the issuance of an order requiring transmission service that relates back to a prior date, at least where the transmitting utility has consented to such an order. Here, of course, SDG&E has waived its right to a prior request and proposed order; moreover, by its concurrence in the instant application, it specifically waives any objection to the adoption of an order requiring that, as of March 31, 1998, it perform services that it has been required to perform in any event under the relevant tariffs and agreements. The Commission has, moreover, long recognized that it "has authority to use its power in equity, and to make retroactive orders, in furtherance of the statutory purposes of the Commission's enabling statutes."[19] Making the order requested here effective nunc pro tunc as at the transfer of operational control over SDG&E's transmission system to the ISO would serve the broader public interest that is the touchstone of Sections 211 and 212, as well as the purpose of Section 142 (f) of the Code. By avoiding the possible need to refinance, at taxable interest rates, the Local Furnishing Bonds in the amount of $518 million that relate to SDG&E's distribution facilities, (as well, quite possibly, as the bonds relating to SDG&E's low-voltage transmission system in the amount of $70 million), the order would save substantial costs to SDG&E and to ratepayers who ultimately bear the costs of those facilities.

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[19] See Gas Producing Enterprises Inc., 26 FERC ¶ 61,352, at 61,769 (1984).

VI. THE COMMISSION IS REQUESTED TO ISSUE ITS ORDER BEFORE JANUARY 1, 2001

As noted above, the IRS may conclude that the effectiveness of a blended-cost high-voltage TAC conflicts with the local-furnishing requirement, even though the implementation of the Transmission Control Agreement did not. Under such a ruling, the effectiveness of the high-voltage TAC on January 1, 2001 could trigger the requirement that all of SDG&E's Local Furnishing Bonds, including those relating to its low-voltage transmission and distribution facilities, be redeemed, at least in the absence of a Section 211 order. Under Section 142(f)(2), SDG&E may avoid such action if a Commission order under Section 211 is in effect on January 1, 2001. For that reason the ISO respectfully requests that the Commission issue its order prior to January 1, 2001. By doing so it will minimize the potential costs of debt defeasance and redemption for SDG&E's customers.[20]

CONCLUSION

For the reasons stated above, the ISO requests that the Commission direct SDG&E pursuant to Section 211(a) of the Federal Power Act to provide

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[20] As noted above, SDG&E consulted with the IRS in 1997 with respect to the Transmission Control Agreement and the possibility of a blended-cost rate as they might affect the Local Furnishing Bonds. On the basis of those consultations, SDG&E concluded that the "Encumbrances" relating to curtailment, priority, outbound flows, and system expansion subsequently included in the Transmission Control Agreement would suffice to preserve the tax-exempt status of its Local Furnishing Bonds, knowing that the adoption of a blended-cost Access Charge would require additional guidance from the IRS. It was only after the filing of the ruling request regarding the Access Charge on August 22, 2000 that, in early November 2000 and notwithstanding the prior consultation, the IRS indicated that it might take the position that implementation of the Transmission Control Agreement as well as the blended-cost TAC would

those transmission services that are necessary to fulfill SDG&E's obligations under the Transmission Control Agreement between SDG&E and the ISO, the TO Tariff, and the ISO Tariff, as that agreement and those tariffs may be in effect from time to time. The ISO further requests that such order be made effective as of March 31, 1998.

Respectfully submitted,

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constitute disqualifying circumstances for local furnishing purposes. SDG&E began discussions with the ISO regarding this application immediately after such indication.