M. TRANSMISSION CONTROL AGREEMENT

M.1. Whether the ISO properly complied with the requirement from the October 30, 1997 Order at 61,457, to include in section 2.3.1.3.2 of the ISO Tariff an adequate reference to section 5 of the Transmission Control Agreement placing limits on the ISO's ability to establish new reliability criteria? [Issue No. 534, Docket Nos. EC96-19-029 and ER96-1663-030. Proponents - Cities / M-S-R and Palo Alto]

The October 1997 Order required that Section 2.3.1.3.2 of the ISO Tariff "specifically reference, and be consistent with, section 5 of the Transmission Control Agreement." October 1997 Order, 81 FERC at 61,457. The current version of this Tariff section reads as follows: "The ISO may establish planning and Operating Reserve criteria more stringent than those established by WSCC and NERC or revise the Local Reliability Criteria subject to and in accordance with the provisions of the TCA." The Tariff section already references subjects described in Section 5 of the TCA (which has to do with the ISO). Thus, the Tariff section is in compliance with the Commission's directive. Moreover, Cities/M-S-R has identified no practical deficiency or confusion resulting from current Section 2.3.1.3.2 of the ISO Tariff. *Cf.* Initial Brief of Cities/M-S-R at 18-19. For these reasons, there is no need to modify the Tariff section further.

Cities/M-S-R is incorrect in asserting that the Commission required that Tariff Section 2.3.1.3.2 specifically reference Section 5.1.5 of the TCA. *See id.* at 19. The Commission specified no such requirement. *See* October 1997 Order, 81 FERC at 61,457. Therefore, the ISO need not reference this section of the TCA, or add the language to current Section 2.3.1.3.2 which Cities/M-S-R suggests. *See* Initial Brief of Cities/M-S-R at 19.

M.2. Should section 4.7.1(i) of the Transmission Control Agreement be modified to require that facilities that were accepted by the ISO during the application process under section 4.1.1, and not refused in accordance with Section 4.1.3, cannot then be "released" under section 4.7.1(i) once the applicant becomes a Participating TO. [Issue No. 379, Docket No. ER98-1971-001. Proponent - LADWP]

Section 4.7.1 of the TCA provides that, subject to the procedures outlined in Section 4.7.2 of the TCA, the ISO may relinquish its Operational Control over any transmission lines and associated facilities constituting part of the ISO Controlled Grid if, after consulting with the Participating TOs owning or having Entitlements to them, the ISO determines that it no longer needs to exercise Operational Control over them in order to meet its Control Area responsibilities and the facilities constitute: (1) directly assignable radial lines (other than lines interconnecting ISO Controlled Grid Critical Protective Systems or Generators contracted to provide Black Start or Voltage Support); (2) lines which by reason of changes in the configuration of the grid should be classified as local distribution; or (3) lines that are to be retired from service.

LADWP proposes that this provision be deleted as "unnecessary and confusing." Initial Brief of LADWP at 5. LADWP claims that "there is a potential for a classic 'bait and switch' to occur once an applicant has become a Participating TO" whereby the ISO could undertake "cherry picking" of facilities. *Id.* at 6-7. Alternatively, LADWP expresses its support for a settlement proposal made by the ISO in this proceeding: the modification of Section 4.7.1 to specify prospectively that facilities accepted by the ISO under the application process of Section 4.1.1 of the TCA and not refused under Section 4.1.3 will not be released under Section 4.7.1(i) unless the ISO determines that the nature of the function served by the facilities has changed. *Id.* at 5.

The ISO believes that Section 4.7.1 is an important provision that permits it, in clearly prescribed circumstances and in accordance with reasonable

procedures, to relinquish Operation Control over facilities no longer necessary to its responsibilities as the Control Area operator. LADWP's fears about bait and switch tactics are unfounded. When an entity sought to become a new Participating TO, there would be an extensive review prior to the transfer of specific facilities to the ISO's Operational Control. Similarly, a decision by the ISO to relinquish control over a facility in accordance with the TCA would be preceded by a stakeholder process and could be subject to dispute resolution procedures in accordance with the ISO Tariff. Moreover, the ISO cannot assume control over facilities or relinquish control of them absent approval by the Commission.

Nevertheless, the ISO is willing to resolve this issue in accordance with its settlement proposal. The specific revision to Section 4.7.1 would read as follows:

> 4.7.1 **Release from ISO's Operational Control.** Subject to Section 4.7.2, the ISO may relinquish its Operational Control over any transmission lines and associated facilities constituting part of the ISO Controlled Grid if, after consulting the Participating TOs owning or having Entitlements to them, the ISO determines that it no longer requires to exercise Operational Control over them in order to meet its Control Area responsibilities and they constitute:
>
> i. directly assignable radial lines and associated facilities interconnecting Generation (other than lines and facilities interconnecting ISO Controlled Grid Critical Protective Systems or Generators contracted to provide Black Start or Voltage Support);
>
> ii. lines and associated facilities which, by reason of changes in the configuration of the ISO Controlled Grid, should be classified as "local distribution" facilities in accordance with FERC's applicable technical and functional test, or should otherwise be excluded from the facilities subject to ISO Operational Control consistent with FERC established criteria; or
>
> iii. lines and associated facilities which are to be retired from service in accordance with Good Utility Practice.

With respect to facilities that, after the ISO Operations Date, are accepted by the ISO under the application process of section 4.1.1 and not refused pursuant to section 4.1.3, such facilities will not be released under section 4.7.1(i) unless the ISO determines that the nature of the function served by the facility has changed.

N. OTHER ISSUES

N.1. With respect to dispute resolution:

a. Whether the ISO should provide for access to ISO voice recordings by entities receiving dispatch instructions prior to the commencement of Alternative Dispute Resolution, regulatory, or judicial proceedings? [Issue No. 49, Docket Nos. EC96-19-008 and ER96-1663-009. Proponent - Southern Cities]

The ISO is required to record all voice conversations that occur on its Dispatch instruction communications equipment. *See* DP 4.2.2. Southern Cities believes that the ISO should make copies of its voice recordings of Dispatch instructions available upon request in the event of a dispute concerning a Dispatch instruction, before formal dispute resolution procedures or regulatory or judicial proceedings are initiated. Southern Cities asserts that the "only reasonable basis for the ISO's resistance to such a requirement is administrative burden," which burden Southern Cities suggests could be remedied by having the ISO charge a potentially refundable fee for a copy of the recording.[192]

Southern Cities' presumption of the ISO's motivations is incorrect. Recordings of Dispatch instructions include information concerning the specific MW value and price point of the resource being Dispatched, i.e., bid information. *See* DP 4.3(c). The ISO Tariff specifies that bid information is to be considered confidential. ISO Tariff, Section 20.3.2(a)-(c). The ISO is required to maintain the confidentiality of such information. *Id.*, Section 20.3.1. In the event of a dispute to be resolved through arbitration, the arbitrator may protect the

[192] *See* Initial Brief of Southern Cities on Issues F.1, K.2, N.1.a, and N.1.b, at 10-11. Under Southern Cities' scheme, the fee would be refunded if the Scheduling Coordinator that requested the copy were found to be correct with regard to the matter in dispute. *Id.* at 11.

confidential information from disclosure. *Id.*, Section 13.3.9. For these reasons, the ISO's voice recordings should not be made available as Southern Cities requests.

b. Does ISO Tariff § 13.3.5.1 afford arbitrators too much discretion to create agreements? [Issue No. 305, Docket Nos. EC96-19-029 and ER96-1663-030. Proponent - Southern Cities]

Southern Cities contends that Section 13.3.5.1 of the ISO Tariff, concerning "Arbitrator's Discretion," gives too much discretion to an arbitrator of a dispute among parties concerning ISO Documents, at the expense of the Commission's rightful role in the regulatory process. *See* Initial Brief of Southern Cities on Issues F.1, K.2, N.1.a, and N.1.b, at 11. Southern Cities is concerned that the provision would allow arbitrators unilaterally "to modify obligations that form part of a generally applicable tariff." *Id.* at 12. To prevent such an eventuality, Southern Cities would have the Commission delete the last sentence of Section 13.3.5.1, which reads as follows:

> Where any ISO Document leaves any matter to be agreed between the parties at some future time and provides that in default of agreement the matter shall be referred to the ISO ADR Procedures, the arbitrator shall have the authority to decide upon the terms of the agreement which, in the arbitrator's opinion, it is reasonable that the parties should reach, having regard to the other terms of the ISO Document concerned and the arbitrator's opinion as to what is fair and reasonable in the circumstances.

When considering this provision, it is important to recall that the arbitrator's power to determine the terms of the ISO Document in question is not triggered unless (1) the ISO Document concerned calls for future agreement by the parties, (2) the ISO Document concerned provides for ADR procedures upon a failure of such agreement, and (3) the parties involved have failed to agree. This

is not the case with regard to most ISO Documents containing obligations that form part of the "generally applicable Tariff." Moreover, if parties are concerned that the arbitrator will wrest control over the pertinent ISO Document from them, they have one sure protection: they can agree upon the terms themselves.

N.2. Whether DP 3.8.1 and 3.9.1 which state that the ISO will provide certain information regarding the status of the system to adjacent control areas are unduly discriminatory and preferential by failing to make that information available to Market Participants? [Issue No. 608, Docket Nos. EC96-19-029 and ER96-1663-030. Proponent - Dynegy]

Dynegy asserts that Sections 3.8.1 and 3.9.1 of the DP are unduly discriminatory. Section 3.8.1 provides that information regarding changes in the status of an Interconnection, changes in an Interconnection's Total Transfer Capability, and situations that could affect the reliability of an Interconnection, is to be shared with the ISO and adjacent Control Areas. Section 3.9.1 provides that each Existing Operating Entity ("EOE") is to report to the ISO any change or potential change in transmission equipment status, or any change in the EOE's transmission system that could affect grid reliability.[193] Dynegy claims that the information should instead be provided to the entire market, to promote the competitiveness of electricity markets and foster greater public confidence in the integrity of OASIS systems. *See* Initial Brief of Dynegy at 23-25.

Dynegy's request is based on a fundamental misunderstanding of the general requirement that the transmission function be unbundled from the wholesale sales function. The Commission's Order No. 889 provides for such

[193] In Amendment No. 27, the ISO has proposed to modify this provision to remove the word "EOE" and replace it with "Metered Subsystem."

unbundling to "prevent abuses based on preferential access to information and other discriminatory behavior."[194]

Pursuant to section 37.4 of the Commission's Regulations, 18 C.F.R. § 37.4 (1999), employees of transmission providers engaged in transmission system operations must function independently of employees engaged in wholesale merchant functions. Employees engaged in wholesale merchant activities are denied access to the system control center or similar facilities used for transmission operations or reliability functions that differs in any way from the access available to other open access transmission providers.

Order No. 889 was drafted not to prevent adjoining transmission systems from exchanging vital operational data without posting the information on the OASIS, but rather to prevent employees of the transmission system operators or their affiliates from utilizing sensitive information for wholesale merchant transactions. Dynegy fails to consider the caveat in Order No. 889 that the Commission's standards of conduct are to be interpreted consistent with prudence and common sense.[195] The information described in Sections 3.8.1 and 3.9.1 are typical exchanges necessary to promote reliable operation of interconnected systems.

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194 *See Open Access Same-Time Information System (formerly Real-Time Information Networks) and Standards of Conduct*, Order No. 889, 61 Fed. Reg. 21,737 (May 10, 1996), FERC Stats. and Regs. Jan. 1991-June 1996, Regs. Preambles ¶ 61,035 (1996), at 31,603. The subsequent history of Order No. 889 was as follows: *order on reh'g*, Order No. 889-A, 62 Fed. Reg. 12,484 (Mar. 14, 1997), FERC Stats. and Regs. III, Regs. Preambles ¶ 31,049 (1997), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

195 *See* Order No. 889-A, FERC Stats. and Regs. III, Regs. Preambles ¶ 31,049, at 30,557.

N.3. Whether there should be a new section 2.2.6.11 to provide that a Scheduling Coordinator will continue to schedule power for seven (7) days following notice to the ISO and the UDC that it will stop scheduling for an eligible customer? [Issue No. 404, Docket Nos. EC96-19-029 and ER96-1663-030. Proponent - PG&E]

PG&E and SDG&E propose that a new section (Section 2.2.6.11) be added to the ISO Tariff requiring that a Scheduling Coordinator must continue to schedule power and provide meter data for a brief period following notice to the ISO and to the UDC that it will stop scheduling for an Eligible Customer. Joint Initial Brief of PG&E and SDG&E at 3. The proposed section reads as follows:

> A Scheduling Coordinator must notify the ISO and the affected UDC as soon as reasonably possible under the circumstances, but no later than seventy-two hours before the time at which it determines it will stop providing meter data reporting or scheduling services for any customer, or any energy service provider serving retail customers, in the affected UDC's service territory. If the Scheduling Coordinator provides such notice for any customer or any energy service provider serving retail customers less than seventy-two hours before it actually stops providing meter data reporting or scheduling such Load, then the Scheduling Coordinator shall be responsible for all costs of Energy, Ancillary Services and associated charges for seven days after actual notice of termination.

The ISO does not oppose this request.

PG&E and SDG&E state that there have been numerous instances of a Scheduling Coordinator's terminating the reporting of meter data for an Energy Service Provider, without adequate notification to the UDC which becomes the default Scheduling Coordinator for the Load. *Id.* at 4. They note that the failure to provide notice to the UDC causes inadequate Load forecasts on behalf of the UDC and possibly Imbalance Energy charges. *Id.*

The ISO questions the assertion by PG&E and SDG&E that requiring such notification "will cost Scheduling Coordinators virtually nothing." *Id.* at 5. There may be situations where the Scheduling Coordinator does not receive sufficient

notice. Nevertheless, Scheduling Coordinators may be able to protect themselves from this added responsibility in their contractual relationship with the entities for whom they are providing scheduling services. The ISO recognizes the concerns raised by PG&E and SDG&E and does not oppose their recommended revision to the Tariff.

N.4. Must the ISO modify its bylaws to provide for the existence, role and independence of a separate market monitoring unit within the organization. [Issue No. 399, Docket Nos. EC96-19-029 and ER96-1663-030. Proponent – TURN / UCAN]

TURN/UCAN is correct that the October 1997 Order directed the ISO to clarify its bylaws to incorporate the institutional aspects of its market monitoring plan, and to include its monitoring plan in the ISO Tariff.[196] However, the ISO explained in its June 1, 1998 Compliance filing why it did not believe that changes to the bylaws were necessary. It said that when the Commission referenced the market monitoring plan, presumably it was referring to the proposed creation of the unit now known as the DMA. This unit is internal to the ISO. The ISO went on to explain that

> [t]he ISO Bylaws do not provide any outline of the organizational structure of the ISO except for the Governing Board, Officers and certain standing and advisory Governing Board Committees. The [DMA] does not fall under any of those areas. The ISO does not believe, therefore, that any changes to the ISO Bylaws are necessary.[197]

Rather than in the bylaws, the structure and functions of the DMA are detailed in the MMIP, which was accepted by the Commission as part of the June 1, 1998

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[196] Initial Brief on Issues B.2.d, B.8, and N.4, at 8 (citing October 1997 Order, 81 FERC at 61,552).

[197] Transmittal Letter for June 1, 1998 Compliance filing, Docket Nos. EC96-19-029 and ER98-1663-030, at 10-11.

Compliance filing. The MMIP also fully describes the structure and functions of the MSC, which is external to the ISO. No changes can be made to the MMIP without authorization by the Commission. Nevertheless, in order to resolve this issue, the ISO is willing to propose amendments to its bylaws to incorporate the institutional aspects of its market monitoring plan.

However, the additional relief sought by TURN/UCAN is unwarranted. TURN/UCAN claims that the structure of the ISO's market monitoring plan is problematic, but fails to provide any evidence that the plan has yielded undependable results.[198] To the contrary, the Commission has acknowledged that the existing market monitoring structure works reliably,[199] and has recognized the value in an ISO's having both an internal staff and an outside expert.[200] Therefore, the market-protection mechanisms contained in the MMIP are sufficient.

TURN/UCAN's claim that the DMA is not really a separate division within the ISO organization, because the DMA reports to the ISO's General Counsel, is

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198 *See* Initial Brief on Issues B.2.d, B.8, and N.4, at 8-9. TURN/UCAN appears to see something improper in the ISO's submittal of its proposed New Generator Interconnection Policy to the Commission without advice from the DMA or MSC. *See id.* TURN/UCAN ignores the fact that the ISO's submittal was the product of a lengthy and extensive stakeholder process that was conducted over nearly a year. *See* Transmittal Letter for Amendment No. 19 filing, Docket No. ER99-3339-000 (June 23, 1999), at 1-4. Moreover, the Commission's order on the ISO's proposal contained no indication that a report from the DMA or MSC would have provided any further guidance. *See California Independent System Operator Corporation*, 88 FERC ¶ 61,221 (1999). Therefore, TURN/UCAN's concerns are unwarranted.

199 *See, e.g., AES Redondo Beach, L.L.C., et al.*, 84 FERC ¶ 61,046, at 61,200 (1998) (Commission noted its reliance on the continued activity of the MSC to ensure the proper operation of the Ancillary Services markets).

200 *See Central Hudson Gas & Electric Corporation*, 86 FERC at 61,238 (Commission stated that "relying on both internal staff and an outside expert will help to provide the expertise and the independence necessary for a successful monitoring program.").

both novel and incorrect. TURN/UCAN has raised this issue more than a year and a half after the MMIP was submitted. During all that time, apparently no party – including TURN/UCAN – found fault with the DMA's reporting to the General Counsel.[201] TURN/UCAN's claim is also incorrect, for at least two reasons. First, it fails to recognize that the DMA's critical role in supporting the ISO's functions[202] means that the DMA's analyses must be subjected to and informed by legal and regulatory judgments, which are best supplied by and under the supervision of the General Counsel. Only if there were some reason to believe that this reporting relationship compromises the usefulness and independence of the DMA's analyses to such an extent that the clear benefits of that relationship to the ISO's legal and regulatory function were outweighed, would it be appropriate to change that relationship. However, as explained above, TURN/UCAN has provided no such reason to eliminate this relationship. Second, the MSC's reliance on the DMA's analyses[203] confirms that the present reporting relationship has not undermined the DMA's ability to produce reliable,

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201 *Cf.* Motion for Leave to Intervene and Protest of The Utility Reform Network (TURN) and Utility Consumers Action Network (UCAN), Docket Nos. EC96-19-029 and ER96-1663-030 (Aug. 5, 1998), at 22 (in which TURN/UCAN made no mention of the issue described above).

202 The DMA advises the legal and regulatory staff and management regarding economic issues and possible market power concerns. For example, in the ISO's Emergency Motion for Stay, Notice of Action Taken, Request for Rehearing, and Motion for Clarification, Docket Nos. ER98-2843-001, *et al.* (July 13, 1998), at 35, the ISO expressed the concern that a participant would be able to exercise market power and to charge monopoly prices. As part of its argument, the ISO noted that the DMA had "conducted a preliminary analysis of the potential impact of the exercise of market power in bidding in the ISO's Ancillary Service markets." *Id.*

203 *See* the MSC's *Opinion on Excessive Bid Prices in Ancillary Services Markets*, attached to the ISO's filing in Docket Nos. ER98-2843-001, *et al.* (July 17, 1998) (the MSC noted that "[a] study by the Market Surveillance Unit (see attached) indicates that the potential cost of [opportunistic behavior] can be severe"). *See also* the MSC's *Preliminary Report on the Operation of the Ancillary Services Markets of the California Independent System Operator (ISO)*, Docket Nos. ER98-2843-000, *et al.* (Aug. 19, 1998) (the MSC credited the DMA for "respond[ing] to our numerous data requests and provid[ing] other very useful assistance.").

independent work. The appropriateness of coordination between the DMA and the ISO's legal and regulatory functions must be assessed in the context of the overall market monitoring structure laid out in the MMIP, which includes both the DMA and the MSC. The independence of the MSC serves as a check on any potential concern that the DMA might be "captured" by the ISO's legal and regulatory functions.